SC23-53

In the Supreme Court of Florida

GOVERNOR RON DESANTIS, ET AL.,
Appellants,

v.

DREAM DEFENDERS, ET AL.,
Appellees.

On Review of a Certified Question from the United States Court of Appeals for the Eleventh Circuit
Case No. 21-13489

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March 20, 2023

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INTRODUCTION AND STATEMENT OF THE CASE

The U.S. Court of Appeals for the Eleventh Circuit referred this matter to the Court for resolution of a certified question under Florida Rule of Appellate Procedure 9.150. Specifically, the Eleventh Circuit requested assistance interpreting the definition of "riot" that the Legislature added to Section 870.01, Florida Statutes in 2021.

1. Florida has long criminalized the violent act of rioting. *See* § 870.01, Fla. Stat. (1973). For the nearly 50 years between Section 870.01's enactment and 2021, that law declared that "[a]ll persons guilty of a riot, or of inciting or encouraging a riot, shall be guilty of a felony of the third degree," *id.*, but did not define the term "riot." Accordingly, this Court consulted the common law for guidance and defined "riot," consistent with its common law meaning, as:

> A tumultuous disturbance of the peace by three or more persons, assembled and acting with a common intent, either in executing a lawful private enterprise in a violent and turbulent manner, to the terror of the people, or in executing an unlawful enterprise in a violent and turbulent manner.

State v. Beasley, 317 So. 2d 750, 752 (Fla. 1975) (citing 1 Hawkins, *Pleas of the Crown* 513 (8th ed. 1824)). This Court therefore held that, to charge the crime of rioting under Section 870.01, "the charging document must articulate facts which establish that three or more

persons acted with a common intent to mutually assist each other in a violent manner to the terror of the people and a breach of the peace." *Id.* at 753.

The importance of deterring rioting became especially apparent in 2020, which was marred by repeated "outbreaks of violence and destruction." HB 1 Final Bill Analysis, Fla. House of Reps., at 2 (May 3, 2021).[1] One such incident in May 2020 "began as a peaceful protest near the University of South Florida" but "devolved into unrest as police were forced to form barriers around businesses after several stores were broken into and looted." *Id.* "One sporting goods store and a gas station were set on fire. A crowd of people launched fireworks into officers, while others threw bottles and rocks, and the windows of multiple police cars were broken." *Id.* "Tampa's mayor issued a citywide curfew and city and county leaders reported more than 50 businesses were damaged or burglarized and more than 50 police cars were damaged." *Id.*

Jacksonville, Miami, and St. Petersburg, too, "experienced peaceful protests mixed with outbreaks of violence and destruction."

[1] *Available at* https://flsenate.gov/Session/Bill/2021/1/Analyses/h0001z.CRM.PDF

Id. "[P]eaceful protests involving over 1,000 participants escalated when a group of about 200 people began confronting police, throwing water bottles, rocks, and bricks, and attempting to set police cars on fire. Some officers were injured by rocks and bricks while one officer was hospitalized after being stabbed in the neck." *Id.* (footnote omitted). In all such incidents, peaceful protesters were "mixed with" individuals "responsible for acts of violence and property damage," *id.*, underscoring the need for clearer lines to protect peaceful protestors but hold violent ones responsible.

It was against that backdrop that, in April 2021, the Legislature enacted House Bill 1 (HB 1). Among other things, HB 1 established enhanced penalties for rioting offenses, created the crimes of "aggravated rioting" and "destroying or demolishing a memorial or historic property," and prohibited the immediate release of certain rioters upon arrest. *See* Ch. 2021-6, §§ 4–7, 9, 11, 15, 19–20, Laws of Fla. HB1 also added a statutory definition of the crime of "riot":

> A person commits a riot if he or she willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in: (a) Injury to another person; (b) Damage to property; or (c) Imminent danger of injury to another person or damage to property.

§ 870.01(2), Fla. Stat. To make doubly sure that this provision could not be construed to criminalize wholly peaceful activity, the Legislature added that a riot does not include "constitutionally protected activity such as a peaceful protest." *Id.* § 870.01(7).

2. Plaintiffs are organizations that seek, among other things, to defund the police, R.396 ¶ 5; R.399 ¶ 20, which they emphasize is "critical" to their work, R.371 ¶ 10. To accomplish this and related objectives, they organize what they describe as peaceful protests, which they allege have been chilled by the passage of HB 1. They brought this facial, pre-enforcement challenge against the Governor, the Duval County Sheriff, and other defendants alleging that HB 1's amended definition of "riot" is unconstitutionally overbroad and void-for-vagueness. R.338–47 ¶¶ 145–75.

In Plaintiffs' view, it is unclear "whether a person must share a common intent with three or more persons to engage in violent or disorderly conduct" and whether "willfully participates" provides insufficient notice of what conduct is prohibited. R.512. Their principal concern is "that one could plausibly read the statute to prohibit a peaceful protester from continuing to peacefully protest the moment he or she knows that violence has broken out between several persons at a demonstration." R.512.

3. Plaintiffs sought a preliminary injunction, which the trial court granted, agreeing with Plaintiffs that "the statute can plausibly be read to criminalize continuing to protest after violence occurs, even if the protestors are not involved in, and do not support, the violence." R.539. In the trial court's view, it "is unclear whether a person must share an intent to do violence" and "unclear what it means to participate" in a violent public disturbance. R.539.

The Governor's position was that mere presence at a protest where others are engaging in violent behavior, without more, does not subject a protester to liability because "peaceful protest" is outside the statute's ambit. § 870.01(7), Fla. Stat. Liability attaches only if the protester (1) "willfully participates in a violent public disturbance involving an assembly of three or more persons," (2) "acting with a common intent to assist each other in violent and disorderly conduct," (3) "resulting in" "[i]njury to another person," "[d]amage to property," or "[i]mminent danger" of either. *Id.* § 870.01(2).

The trial court rejected that reading as "strain[ing] the rules of construction, grammar, and logic beyond their breaking points," "ignor[ing] the plain text of the statute," R.529, "usurp[ing] the

powers of the Florida Legislature," R.530, and requiring the court to "twist itself into a pretzel," R.538.

4. Defendants appealed, and after briefing and argument, the Eleventh Circuit determined that "[t]he proper interpretation of the statutory definition is a novel issue of state law that the Florida Supreme Court has yet to address" and exercised its "discretion to certify a question to th[is] Court to determine precisely what conduct the definition prohibits." *Dream Defenders v. Governor of Fla.*, 57 F.4th 879, 893 (11th Cir. 2023). That question is as follows:

> What meaning is to be given to the provision of Florida Stat. § 870.01(2) making it unlawful to "willfully participate[ ] in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in . . . [i]njury to another person; . . . [d]amage to property; . . . or [i]mminent danger of injury to another person or damage to property"?

Id. at 894. "To assist the Florida Supreme Court in answering [that] question," the Eleventh Circuit "ask[ed] th[is] Court to consider" the following:

> 1. What qualifies as a "violent public disturbance"? Is it something more than "three or more persons[ ]acting with a common intent to assist each other in violent and disorderly conduct resulting in injury to another person, damage to property, or imminent danger of injury to another person or damage to property"?
>
> 2. What conduct is required for a person to "willfully

> participate in a violent public disturbance"? Can a person "willfully participate in a violent public disturbance" without personally engaging in violence and disorderly conduct or advocating for violence and disorderly conduct? If so, what level of "participat[ion]" is required?
>
> 3. To obtain a conviction, does the State have to prove beyond a reasonable doubt that the defendant intended to engage or assist two or more other persons in violent and disorderly conduct? If not, what must the State prove regarding intent?
>
> 4. May a person be guilty of the crime of riot if the person attends a protest and the protest comes to involve a violent public disturbance in which three or more people acting with a common intent to assist each other engage in violent and disorderly conduct and the violent disturbance results in injuries to another person, damage to property, or imminent danger of injury to another or damage to property, but the person did not engage in, or intend to assist others in engaging in, violent and disorderly conduct?

Id. at 894–95.

SUMMARY OF ARGUMENT

Whatever else the statute prohibits, Subsection (7) makes clear that it "does not prohibit . . . peaceful protest." § 870.01(7), Fla. Stat. Consistent with that safe harbor, a defendant can be found guilty under Subsection (2) only if he participates in a "*violent* public disturbance," with "intent to assist in . . . *violent* . . . conduct," resulting in "*injury*" or "*damage*." *Id.* § 870.01(2) (emphases added).

1. A "public disturbance" is "any disorder which constitutes a breach of the peace and affects the public." *United States v. Bridgeman*, 523 F.2d 1099, 1114 (D.C. Cir. 1975) (footnote omitted). And "[t]he term 'violence' . . . has a clear meaning: the use of physical force to cause harm." *Somers v. United States*, ---So.3d---, 2022 WL 16984702, at *4 (Fla. 2022). Thus, a "violent public disturbance" is a "breach of the peace" that "affects the public" and involves "the use of physical force to cause harm."

2. To "participate" commonly means "[t]o be active or involved in something," American Heritage Dictionary of the English Language 1285 (5th ed. 2016), or "[t]o share in something," *id*. That is most consistent not only with Subsection (7)'s safe harbor for "peaceful protest," but also with the requirement that the defendant "willfully" participate in a violent public disturbance. A person who "willfully participates" in a "violent public disturbance" participates with intent, knowledge, and purpose both as to the disturbance and its violent character.

Thus, to violate the statute, a defendant must be active in violence. "Personally engaging in violence" is sufficient, as the Eleventh Circuit suggests, *see Dream Defenders*, 57 F.4th at 894,

although it is not necessary. "[A]dvoca[cy] for violence," *id.*, too, is sufficient, but only when "directed to inciting or producing imminent" violence. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Other conduct may fall within the ambit of the statute—for example, supplying weapons at the site of a disorderly protest. Nonviolent protest activity will never violate the statute, regardless of the behavior of others present.

3. It is also clear that a person does not violate the statute unless he acts with common intent to assist in violence. "'[A] qualifying phrase separated from antecedents by a comma is evidence that the qualifier is supposed to apply to all the antecedents instead of only to the immediately preceding one.'" *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1170 (2021) (collecting treatises). Here, a modifying phrase ("acting with a common intent") is set off from two antecedents ("person" and "assembly of three or more persons") by a comma, reading in full: "A person commits a riot if he or she willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent . . . ." § 870.01(2), Fla. Stat. "[T]he modifying phrase" thus "refer[s] to both antecedents," *Bingham, Ltd. v. United States*, 724 F.2d 921, 925 n.3 (11th Cir. 1984), such that the second clause requires "common intent" among

the "person" (the defendant) and the "assembly of three or more persons."

4. The Eleventh Circuit's fourth question posits a person whose only conduct is "attend[ing] a protest" at which others become violent. *Dream Defenders*, 57 F.4th at 894–95. As discussed above, the statute excludes "peaceful protest" from its ambit. Beyond that, the person would not have "willfully participated" in the "violent public disturbance," because he did not participate in the violence and did not intend to do so or act with a common intent to engage in violent or disorderly conduct.

ARGUMENT

ACTS OF PEACEFUL PROTEST DO NOT VIOLATE FLORIDA'S RIOT STATUTE.

Florida's prohibition on rioting carefully delimits the type of violent activity that is proscribed. Subsection (2) states:

> A person commits a riot if he or she willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in: (a) Injury to another person; (b) Damage to property; or (c) Imminent danger of injury to another person or damage to property.

§ 870.01(2), Fla. Stat. Underscoring that only violent conduct is outlawed, Subsection (7) clarifies that "[t]his section does not prohibit

constitutionally protected activity such as a peaceful protest." *Id.* § 870.01(7).

When construing a statute, this Court "follow[s] the 'supremacy-of-text principle'—namely, the principle that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'" *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 56 (2012)). "'[E]very word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.'" *Id.* at 946–47 (quoting *Advisory Op. to Governor re Implementation of Amendment 4*, 288 So. 3d 1070, 1078 (Fla. 2020)).

The heart of the certified question is whether the statute applies to a person who is present at a violent protest but "d[oes] not engage in, or intend to assist others in engaging in, violent and disorderly conduct." *Dream Defenders*, 57 F.4th at 895; *see also id.* at 894 (questioning whether a person can "'willfully participate in a violent public disturbance' without personally engaging in violence and disorderly conduct or advocating for violence and disorderly conduct"). By far the best reading of the statute is that it does not

reach such conduct. Should the Court nevertheless find the statute ambiguous on that point, the same result obtains under the rule of lenity. *See Conage v. United States*, 346 So.3d 594, 602–03 (Fla. 2022).

A. Subsection (7)

To begin with, whatever else the statute prohibits, Subsection (7) makes explicit that it "does not prohibit constitutionally protected activity such as a peaceful protest." § 870.01(7), Fla. Stat. What that conveys is unmistakably clear: A person cannot be found guilty of rioting for conduct that constitutes, on his part, "a peaceful protest." And that safe harbor squarely encompasses the conduct central to the Eleventh Circuit's question—mere peaceful presence at a protest without "engag[ing] in, or intend[ing] to assist others in engaging in, violent and disorderly conduct"—*i.e.*, "without personally engaging in violence and disorderly conduct or advocating for violence and disorderly conduct." *Dream Defenders*, 57 F.4th at 894–95. Subsection (7) thus dispels any notion that Section 870.01 might criminalize innocent protesting. It assures protesters that they are not liable even if *other* individuals at a protest, outside their control, escalate their own behavior to the point of violence.

The trial court dismissed Subsection (7) as a boiler-plate savings clause that merely "restate[s] the constitutional avoidance canon." R.524. That is simply inaccurate. The statute specifies particular "constitutionally protected activity" that is categorically excluded from its ambit—"peaceful protest." § 870.01(7), Fla. Stat. In any event, it is not that Subsection (7) renders the statute immune to constitutional scrutiny. Rather, Subsection (7) is an "explicit rule[] of construction protecting First Amendment rights" that must be "credited" by the Court in construing the rest of the statute. *Blum v. Holder*, 744 F.3d 790, 798 (1st Cir. 2014) (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 406 n.3 (2013)).

Here, that means the Court should give Subsection (2) the meaning most consistent with protecting peaceful protestors. The Legislature "would not have prohibited under [Subsection (2)] what it specifically exempted from prohibition under [Subsection (7)]." *Holder v. Humanitarian L. Project*, 561 U.S. 1, 24 (2010). "[I]f [peacefully protesting] could be characterized as a [riot], the statute's specific exclusion of [peacefully protesting] would not make sense." *Id.*

B. Subsection (2)

Consistent with Subsection (7)'s safe harbor for "peaceful

protest," a defendant can be found guilty under Subsection (2) only if he participates in *violence*, acting with common *violent* intent, resulting in injury or damage. Subsection (2) provides:

> A person commits a riot if he or she willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in: (a) Injury to another person; (b) Damage to property; or (c) Imminent danger of injury to another person or damage to property.

§ 870.01(2), Fla. Stat. Like countless other criminal statutes, that language defines a crime by listing its elements in succession, each separated by a comma: "A person commits a riot if he" (1) "willfully participates in a violent public disturbance involving an assembly of three or more persons," (2) "acting with a common intent to assist each other in violent and disorderly conduct," (3) "resulting in" injury to another person, damage to property, or "[i]mminent danger" of either. § 870.01(2), Fla. Stat.

1. The Eleventh Circuit first asks, "[w]hat qualifies as a 'violent public disturbance'"? *Dream Defenders*, 57 F.4th at 894.

The term "public disturbance" is familiar to the law. Many states

and the federal government use the term in defining "riot."[2] A "public disturbance" is "any disorder which constitutes a breach of the peace and affects the public." *Bridgeman*, 523 F.2d at 1114 (footnote omitted). It is not necessary that members of the public at large be subjectively "disturbed"—to constitute a "public disturbance," it is enough that "the nature of the defendants' conduct is calculated to induce fear or terror." *Id.* at 1115 (quoting 2 F. Wharton, Criminal Law and Criminal Procedure § 865, at 732 (R. Anderson ed., 1957)).

Florida requires, in addition, that the requisite public disturbance be "violent." And as this Court has explained, "the term 'violence' . . . has a clear meaning: the use of physical force to cause harm." *Somers*, 2022 WL 16984702, at *4. Thus, a "violent public disturbance" is a "public disturbance" involving "the use of physical force to cause harm."

The statute further narrows the universe of relevant "violent public disturbance[s]" to those "involving" "an assembly of three or

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[2] *E.g.*, 18 U.S.C. § 2102; Colo. Rev. Stat. § 18-9-101; D.C. Code § 22-1322; Ky. Rev. Stat. Ann. § 525.010(5); La. Stat. Ann. § 14:329.1; N.C. Gen. Stat. § 14-288.2; N.D. Cent. Code § 12.1-25-01. Those provisions have been upheld against vagueness challenges. *See, e.g., United States v. Matthews*, 419 F.2d 1177, 1180–82, 1187 (D.C. Cir. 1969) (rejecting vagueness challenge to District of Columbia riot statute that used the term "public disturbance").

more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in: (a) Injury to another person; (b) Damage to property; or (c) Imminent danger of injury to another person or damage to property." § 870.01(2), Fla. Stat.

2. The Eleventh Circuit next asks, "[w]hat conduct is required for a person to 'willfully participate in a violent public disturbance'"? *Dream Defenders*, 57 F.4th at 894.

That is an expansive question, but the most sensible way to answer it is to ask what differentiates the mere peaceful protestor, whom the statute expressly protects, from one who participates in a "violent public disturbance." The answer is that the latter must "participate" in violence.

That is supported by the meaning of the word "participate" and the context in which that word appears. To "participate" commonly means "[t]o be active or involved in something," American Heritage Dictionary of the English Language 1285 (5th ed. 2016), or "[t]o share in something," *id.*; *see State v. McDuffie*, No. 2 CA-CR 2014-0346, 2015 WL 7729793, at *2 (Ariz. Ct. App. Nov. 30, 2015) (unreported decision) (adopting the definition of "participate" set forth above in the context of Arizona's anti-riot statute). Many other states use the

term "participate" to define criminal rioting,[3] and none we are aware of has construed the term to include de minimis or passive involvement or mere presence. That makes sense because "determining whether a person . . . 'participated'" in serious criminal behavior "is a 'particularized, fact-specific inquiry into whether [his] personal conduct was merely indirect, peripheral, and inconsequential association or was active, direct and integral.'" *United States v. Vasquez*, 1 F.4th 355, 360–61 (5th Cir. 2021) (citing *Chen v. U.S. Att'y Gen.*, 513 F.3d 1255, 1258–59 (11th Cir. 2008)); *cf. United States v. Brown*, 936 F.2d 1042, 1047–48 (9th Cir. 1991) (holding that "it requires more than purely passive behavior" to "knowingly participate[ ]" in an antitrust violation under the Sherman Act). To "participate[ ] in a violent public disturbance," § 870.01(2), Fla. Stat., thus means to "be active" or "share in," American Heritage

[3] *E.g.*, Alaska Stat. § 11.61.100; Del. Code Ann. tit. 11, § 1302; Haw. Rev. Stat. § 711-1103; N.J. Stat. Ann. § 2C:33-1; Ohio Rev. Code Ann. § 2917.03; Okla. Stat. tit. 21, § 1312; 18 Pa. Stat. and Cons. Stat. Ann. § 5501; Tenn. Code Ann. § 39-17-302; Tex. Penal Code Ann. § 42.02. Many other states use the very similar term "engage." *E.g.*, Ala. Code § 13A-11-3; Ark. Code Ann. § 5-71-201; Conn. Gen. Stat. § 53a-176; Mich. Comp. Laws § 752.541; N.D. Cent. Code § 12.1-25-03; N.Y. Penal Law § 240.06; Or. Rev. Stat. § 166.015; 720 Ill. Comp. Stat. Ann. 5/25-1; Ind. Code § 35-45-1-2; Me. Rev. Stat. Ann. tit. 17-A, § 503; Utah Code Ann. § 76-9-101.

Congress, too, uses "participate." 18 U.S.C. §§ 2101-02. So does the Model Penal Code. *See* Model Penal Code § 250.1.

Dictionary of the English Language 1285, violence.

That interpretation is not only most consistent with Subsection (7)'s safe harbor for "peaceful protest," but also accords with the requirement that the defendant "willfully" participate in a violent public disturbance. Like the safe harbor, the "willfulness" requirement is powerful evidence of legislative intent to shield "activity that an ordinary person would engage in innocently" while punishing activity that "exhibit[s] a purpose to do wrong." *Ratzlaf v. United States*, 510 U.S. 135, 143–44 (1994) (citation and internal quotation marks omitted). "Willfully" means "intentionally, knowingly and purposely," *In re Standard Jury Instructions in Crim. Cases-Rep. 2016-12*, 216 So. 3d 1281, 1282 (Fla. 2017), and involves "conscious wrong or evil purpose" by the actor, *Willful*, Black's Law Dictionary (11th ed. 2019).

Further reinforcing the point, "[a]s a matter of ordinary English grammar," the term "willfully" "appli[es] to all the subsequently listed elements of the crime." *See Flores-Figueroa v. United States*, 556 U.S. 646, 650 (2009). That is, "[i]f we say that someone knowingly ate a sandwich with cheese, we normally assume that the person knew both that he was eating a sandwich and that it contained cheese." *Id.* at 651. Likewise, a person who "willfully participates" in a "violent

public disturbance" participates with intent, knowledge, and purpose both as to the disturbance and its violent character.

The Eleventh Circuit asks, "[c]an a person 'willfully participate in a violent public disturbance' without personally engaging in violence and disorderly conduct or advocating for violence and disorderly conduct?" *Dream Defenders*, 57 F.4th at 894. As discussed above, a defendant "willfully participates in a violent public disturbance" only if he is active in violence. "Personally engaging in violence" is certainly sufficient. "[A]dvoca[cy] [for] violen[ce]" is sufficient only if it is "directed to inciting or producing imminent" violence. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969); *see Beasley*, 317 So. 2d at 753 (limiting the crime of inciting a riot to "advocat[ing] violence and tend[ing] to incite an immediate breach of the peace"). Other conduct may well fall within the ambit of the statute—for example, supplying weapons at the site of a disorderly protest. But protesting wholly nonviolently does not violate the statute simply because the peaceful protestor may know that others at the same protest have turned to violence.

3. The Eleventh Circuit next asks, "does the State have to prove beyond a reasonable doubt that the defendant intended to engage or assist two or more other persons in violent and disorderly conduct?"

Dream Defenders, 57 F.4th at 894. In other words, "[t]o be guilty of rioting does a person also need to share the common intent to assist in violent and disorderly conduct?" *Id.* at 892. The answer is yes.

Deploying the last-antecedent rule, under which "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows," *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003), the trial court concluded that the phrase "acting with a common intent" referred only to the immediately preceding "assembly of three or more persons," R.519–20 (quoting *Barnhart*). Thus, in the district court's view, the person accused under the statute need not share intent with the "assembly of three or more persons." R.516.

That is wrong because it fails to give effect to the comma immediately preceding the modifying phrase. "'[A] qualifying phrase separated from antecedents by a comma is evidence that the qualifier is supposed to apply to all the antecedents instead of only to the immediately preceding one.'" *Facebook, Inc.*, 141 S. Ct. at 1170 (collecting treatises); *accord Kasischke v. State*, 991 So. 2d 803, 812–13 (Fla. 2008). In that circumstance, the comma "cancel[s] the last-antecedent canon." Scalia & Garner, Reading Law at 161.

Here, the modifying phrase ("acting with a common intent") is

set off from two antecedents ("person" and "assembly of three or more persons") by a comma, reading in full: "A person commits a riot if he or she willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent . . . ." § 870.01(2), Fla. Stat. "[T]he modifying phrase" thus "refer[s] to both antecedents," *Bingham, Ltd.*, 724 F.2d at 925 n.3, such that the second clause requires "common intent" among the "person" (the accused) and the "assembly of three or more persons." That reading is all the more natural because both relevant antecedents—the rioting "person" and the "persons" in the "assembly"—are "persons." "When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *Porto Rico Ry., Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920).

4. The Eleventh Circuit's final question is:

> May a person be guilty of the crime of riot if the person attends a protest and the protest comes to involve a violent public disturbance in which three or more people acting with a common intent to assist each other engage in violent and disorderly conduct and the violent disturbance results in injuries to another person, damage to property, or imminent danger of injury to another or damage to property, but the person did not engage in, or intend to assist others in engaging in, violent and disorderly

conduct?

Dream Defenders, 57 F.4th at 894–95. The answer is no.

The hypothetical posits a person whose only conduct is "attend[ing] a protest" at which others become violent. As discussed above, the statute excludes "peaceful protest" from its ambit. Even setting aside the safe harbor, that person would not have "willfully participated" in the "violent public disturbance," because the person did not himself engage or assist in the violence and did not intend to do so or act with a common intent to engage or assist in violent or disorderly conduct.

* * *

For the reasons discussed above, application of traditional tools of statutory construction shows that the statute does not prohibit peaceful protest. Should this Court nevertheless find the statute ambiguous after exhausting those tools, the result would be the same under the rule of lenity. *See Conage*, 346 So.3d at 602–03.

CONCLUSION

The Court should respond to the certified question consistent with the discussion above.

Dated: March 20, 2023

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CERTIFICATE OF FONT AND WORD COUNT COMPLIANCE

I certify that the size and style of type used in this brief is 14-point Bookman Old Style, in compliance with Fla. R. App. P. 9.210(a)(2), and that this brief contains 4,769 words in compliance with Fla. R. App. P. 9.370(b).

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