IN THE
SUPREME COURT OF FLORIDA

CASE NO. SC00-1644

DENNIS G. KAINEN, GERALD F. RICHMAN, JOHN L. (JIM) HAMPTON, DON L. HORN, REBEKAH J. POSTON, and NORMAN DAVIS,

Petitioners,

vs.

KATHERINE HARRIS, as
Secretary of State of the State of Florida,

Respondent.

PETITION FOR WRIT OF MANDAMUS
(Expedited Consideration Sought)

A Petition for Writ of Mandamus
Directed to a State Officer,
Invoking the Court's Original Jurisdiction

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CERTIFICATE OF FONT SIZE AND STYLE

This Petition is typed using a Times New Roman 14-point font.

JURISDICTION

This Court has original jurisdiction to issue writs of mandamus directed to state officers, pursuant to Article V, § 3(b)(8), Fla. Const., and Rule 9.030(a)(3), Fla.R.App.P. See generally, The Florida Senate v. Harris, 750 So. 2d 626 (Fla. 1999) (granting Senate's original action request for a writ of mandamus against the Secretary of State); Florida League of Cities v. Smith, 607 So. 2d 397 (Fla. 1992) (court had jurisdiction to consider petition for writ of mandamus to remove proposed constitutional amendment from ballot).

FACTS

Petitioners are Florida citizens and registered voters in Miami-Dade County and Palm Beach County who support merit selection and retention of judges. They challenge the recently enacted legislation amending section 101.161, Florida Statutes, which creates the November 7, 2000 ballot language on the general election issue of a local option for selection and retention of circuit and county judges. See 2000 Fla. Sess. Law Serv. Ch. 00-361, § 1 (S.B. 2104) (West). (App. 5-7). Petitioners seek to strike that ballot language, and to replace it with the language contained in the 1999 predecessor version of section 101.161 (App. 3-4), which is faithful to Article V, § 10(b)(3)(a.), Florida Constitution. (App. 1-2). Alternatively, Petitioners suggest that the constitutional

provision, providing for "[a] vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election," is self-executing, and that the constitutional language provides appropriate ballot language.[1]

* * *

In 1998, the Florida Constitutional Revision Commission proposed a change to the Florida Constitution, relating to the merit selection and retention of trial court judges. The proposal was passed by the voters of the State and incorporated into the Constitution.

That new provision of the Constitution, Article V, § 10(b)(3)(a.), provides that "[a] vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit and county at the general election in the year 2000. . . ." (App. 1).

In 1999, in accordance with that constitutional amendment, the Legislature added subsection (3) to section 101.161 (Laws 1999, Ch. 99-355, § 10), to be effective on January 1, 2000. That section provided in pertinent part:

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[1] A prompt decision by this Court is needed, because the ballots for the November 7, 2000 general election are scheduled to be printed immediately following the October 3, 2000 primary election. Therefore, a separate motion to expedite consideration of this case has been filed contemporaneously with this Petition.

> (3)(a) The ballot for the general election in the year 2000 must contain a statement allowing voters to determine whether circuit or county court judges will be selected by merit selection and retention as provided in § 10, Art. V of the State Constitution. The ballot in each circuit must contain the statement in paragraph (c). The ballot in each county must contain the statement in paragraph (e).
>
> * * *
>
> (c) 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 circuit court judges in the ...(number of the circuit)... judicial circuit be selected through merit selection and retention?" 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 merit selection and retention, the ballot shall state: "Shall county court judges in ...(name of county)... be selected through merit selection and retention?" This statement must be followed by the word "yes" and also by the word "no."
>
> * * *

App. 3-4 (emphasis supplied).

That 1999 statute was amended in 2000. It is the 2000 amendments to subsections (3)(c) and (3)(e) that Petitioners contend are unconstitutional and should be stricken from

the ballot. The new statutory ballot language (App. 6-7) is:

> (c) [t]he 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? . . . .
>
> * * *
>
> (e) [t]he 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? . . . .

Although Article V, section 10(b)(3), Florida Constitution, *supra*, p. 2, guarantees and requires "a local option to select circuit court judges and county court judges by merit selection and retention rather than by election. . ." (emphasis supplied), the 2000 amendment to section 101.161, Fla. Stat., does *not* include the term "merit selection and retention." Nor does the 2000 amendment ballot language accurately reflect the limited role of the judicial nominating commission in nominating judicial candidates for the Governor's consideration. See Argument, *infra*; see also Article V, § 11, Fla. Const. (describing the method for filling judicial vacancies, *via* judicial nominating commission

recommendations and gubernatorial appointments).

Petitioners – citizens, lawyers, and voters who have an interest in the integrity of the judiciary and in the fairness of the constitutionally mandated 2000 election on the judicial merit selection and retention issue – challenge the 2000 amendments to section 101.161 because they are not accurate or informative, and because they mislead the electorate.

NATURE OF THE RELIEF SOUGHT

Petitioners seek a writ of mandamus directed to the Florida Secretary of State, directing her not to utilize the ballot language contained in § 101.161(3)(c) and (e), Fla. Stat., as amended, 2000 Fla. Sess. Law Serv. Ch. 00-361, § 1 (S.B. 2104) (West), on the ballot of the November 7, 2000 general election. That statute, as amended, is misleading as to the role of the judicial nominating commission in the merit selection process, and is not faithful to the Article V, § 10 constitutional mandate to have an election on "merit selection and retention" of circuit court and county court judges.

Because the Florida Constitution requires that the local option for merit selection and retention of circuit and county judges be presented in a general election in the year 2000, once the 2000 amendments to § 101.161 are declared invalid, the ballot language regarding merit selection and retention in the 1999 version of section 101.161 should be

automatically revived, and the Secretary of State should be directed to use that ballot language on the ballot of the November 7, 2000 general election. Or, as an alternative, the Article V, § 10(b)(3)(a.) mandate should be treated as self-executing, and the ballot should utilize the language of the Constitution itself.

ARGUMENT

THE BALLOT LANGUAGE CONTAINED IN THE 2000 AMENDMENTS TO § 101.161, FLORIDA STATUTES (S.B. 2104), REGARDING THE SELECTION AND RETENTION OF CIRCUIT AND COUNTY JUDGES, IS MISLEADING AND VIOLATES ARTICLE V, § 10 OF THE FLORIDA CONSTITUTION AND SHOULD BE STRICKEN FROM THE NOVEMBER 7, 2000 BALLOT AND REPLACED WITH CONSTITUTIONAL BALLOT LANGUAGE

A. THE COURT SHOULD EXERCISE ITS DISCRETIONARY MANDAMUS JURISDICTION

"Florida law is well settled that mandamus may be used only to enforce a right that is both clear and certain." Florida League of Cities v. Smith, 607 So. 2d 397, 400 (Fla. 1992). As discussed more fully in section "B", *infra*, the voters of this state are entitled to be presented with unambiguously accurate, nonmisleading ballot language, and the statutory ballot language challenged in this Petition does not meet that standard. Thus, Petitioners, as registered voters, have a "clear and certain" right to have the offending

ballot language stricken from the November 7, 2000 general ballot, enforceable through this Petition for Writ of Mandamus.

The Court should exercise its mandamus jurisdiction to direct the Secretary of State to remove the misleading and invalid ballot language from the November 7, 2000 general election ballot. In Dickerson v. Stone, 251 So. 2d 268, 271 (Fla. 1971), the Court held that mandamus will issue where "the functions of government will be adversely affected unless an immediate determination is made by this Court." See Moreau v. Lewis, 648 So. 2d 124, 126 (Fla. 1995) (discussing the use of mandamus to challenge the constitutionality of a statute). Given the constitutionally required year 2000 election on merit selection and retention of circuit and county court judges, this case meets the Dickerson test.

B. THE BALLOT LANGUAGE IS FALSE, AND FAILS TO GIVE "FAIR NOTICE"

Our state Constitution commands that "[a] vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit and county at the general election in the year 2000." Art. V, § 10(b)(3)(a.) (emphasis supplied). As in any election, the voters must be accurately informed about the issues, through ballot language that "must be accurate and informative" in order to assure "`that the voter will not be misled as to its purpose,

and can cast an intelligent and informed ballot.'" Amendment to Bar Government from Treating People Differently, ___ So. 2d ___, 2000 WL 963904 *4 (Fla. 2000), quoting Advisory Opinion to the Attorney General re Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998). See also Askew v. Firestone, 421 So. 2d 151, 155 (Fla. 1982). Thus, if it is flawed, the statutory ballot language for the constitutionally mandated election must be stricken *and* replaced, in time for the printing of the ballots for the November 7, 2000 election.[2]

The ballot language in the 2000 amendments to § 101.161misleads the voters in several significant ways. First, and most obviously, the statute misrepresents the role of the judicial nominating commission by telling voters that the alternative to the election of judges is "selection by the judicial nominating commission and appointment by the Governor. . . ." (emphasis supplied). That language grossly overstates the role of the commission, minimizes the role of the Governor, and omits the critical fact that *merit* is the standard that will govern judicial appointments.

The judicial nominating commissions *do not select* judges; the judicial nominating commissions – as the name implies – investigate applicants for the bench and *nominate* multiple candidates per vacancy, for the Governor's consideration. See Article V, § 11, Fla. Const.; see also, Uniform Rules of Procedure for Circuit Judicial

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[2] See Section "C," *infra*, with regard to replacing the invalid ballot language.

Nominating Commissions, Section V ("No nominee shall be recommended to the governor for appointment. . . ."); id., Section VI ("the commission shall select no less than three nominees . . . . The names of such nominees selected by the commission shall be certified to the governor . . . ."); id., Section VII: "The chairperson of the commission shall make public the names of all persons recommended for gubernatorial appointment, without indicating any preference of the commission." (emphasis supplied); id., Section VIII ("A commissioner's conduct should not . . . disclose partisanship or partiality in the consideration of applicants").

Contrary to the ballot language recently enacted by the Legislature, it is the Governor – not the judicial nominating commission – who then *selects* one of the several candidates nominated by the commission, and appoints that person to the bench. Art. V, § 11(c), Fla. Const. ("The governor shall make the appointment within sixty days after the nominations have been certified to the governor.").

The second misleading and unconstitutional aspect of the 2000 amendments to § 101.161 is the fact that the new ballot language completely omits the term "merit selection and retention" – contrary to section 10(b)(3) of the Florida Constitution, which explicitly provides for "a local option to select circuit [and county] judges by merit

selection and retention rather than by election. . . ." (emphasis supplied).[3]

Indeed, the word "merit," the touchstone of the constitutional amendment and the most important aspect of the local option mandated by the Constitution, does not appear in the 2000 amendment ballot language. That omission, and the completely misleading description of the roles of the judicial nominating commission and the Governor, renders the statutory language inaccurate and uninformative, preventing voters from casting intelligent and informed ballots. This Court has emphasized 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.'" Askew v. Firestone, 421 So. 2d at 155, quoting Crawford v. Gilchrist, 64 Fla. 41, 54, 59 So. 963,

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[3] The legislative history of CS/HB 1955, a companion bill to SB 2104, amending section 101.161, makes it clear that the removal and omission of the term "merit selection" was intentional. The Staff Analysis of CS/HB 1955, as revised by the Committee on Election Reform, states in the summary:

> Rather than using the phrase "merit selection," the bill explains that voters can choose between directly electing judges or allowing judges to be selected by the judicial nominating commission, appointment by the Governor, and retention by popular vote.

The staff analysis further concludes that alteration to the ballot language, made at the suggestion of the Committee on Judiciary, "explains the merit selection and retention process rather than only using the phrase `merit selection and retention.'" Unfortunately, if the Legislature sought to "explain" the merit selection process *via* the amended ballot language, it failed to explain the process accurately, because it misrepresented the role of the judicial nominating commission, as discussed, *supra*.

968 (1912). Giving effect to a constitutional amendment, *via* an election to implement a constitutional command, demands that the same care and deliberation be given to the ballot language for that election. Misleading ballot language – like that created by the 2000 amendment – requires that this Court provide a remedy.

C. THE REMEDY

1. Automatic Revival of the 1999 Statutory Ballot Language

If the Court declares § 101.161, Fla. Stat., as amended, 2000 Fla. Sess. Law Serv., Ch. 00-361, § 1 (S.B. 2104) (West) to be invalid, and directs the Secretary of State to remove the ballot language contained in subsections (c) and (e) from the November 7, 2000 general election ballot, other language must be substituted in order to give effect to the Constitutional directive that the merit selection issue be presented to the voters in the year 2000. The proper course would be to find that the invalidity of the amendment would result in the automatic revival of the 1999 statutory ballot language. See B.H. v. State, 645 So. 2d 987 (Fla. 1994) (automatic revival of unconstitutional statute's immediate predecessor); compare, Smith v. Smathers, 372 So. 2d 427, 429 (Fla. 1979) (where revised Election Code that completely abolished write-in candidates was unconstitutional, repealed sections of statute were revived and remained in force and effect to provide a procedure for write-in candidacies in future elections until properly

changed by the legislature).

In B.H. v. State, this Court observed that:

> Florida law has long held that, when the legislature approves unconstitutional statutory language and simultaneously repeals its predecessor, then the judicial act of striking the new statutory language automatically revives the predecessor unless it, too, would be unconstitutional.

645 So. 2d at 995 (footnote omitted). "[T]his rule generally is applicable only where the loss of the invalid statutory language will result in a 'hiatus' in the law that would be intolerable to society." Id. (citation omitted). The view that revival is proper to avoid an intolerable hiatus in the law is "[t]he apparently unanimous view of the jurisdictions addressing the problem. . . ." Id.

That principle applies here. A hiatus would not be tolerable in this case, because the Florida Constitution mandates a local option for merit selection in the year 2000 general election. And, the immediate predecessor version of § 101.161 provides the perfect remedy, statutory ballot language that is consistent with the Florida Constitution:

> (c) 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 circuit court judges in the ...(number of the circuit)... judicial circuit be selected through merit selection and retention?" 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 merit selection and retention, the ballot shall state: "Shall county court judges in ...(name of county)... be selected through merit selection and retention?" This statement must be followed by the word "yes" and also by the word "no."
>
> * * *

§ 101.161, Fla. Stat. (1999) (Emphasis supplied) (App. 4). That is the ballot language that should be used in the November 2000 general election.

2. Article V, § 10(b)(3)(a), Fla. Const., is Self-Executing

Alternatively, if the Court does not agree that revival of the 1999 statutory ballot language is the proper course, and in view of the necessity for an election in the year 2000, Article V, § 10(b)(3)(a.) should be deemed self-executing, and the constitutional language itself should be used on the November 2000 ballot.

This Court set forth the applicable test in Gray v. Bryant, 125 So. 2d 846 (Fla. 1960):

> The basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment. If the provision lays down a sufficient rule, it speaks for the entire people and is self-executing. The fact that the right granted by the provision may be supplemented by legislation, further protecting the right or making it available, does not of itself prevent the provision from being self-executing.

Id. at 851 (internal citations omitted). Thus, if the Legislature's language is stricken (and the prior enactment is not revived), the language of the constitutional provision at issue here meets the Bryant test, and can be used to provide the ballot question. Thus, the ballot language, requiring a "yes" or "no" answer to each sub-part, would read:

> Shall circuit court judges in the [number of circuit] judicial circuit be selected by merit selection and retention rather than by election?
>
> and
>
> Shall county court judges in [name of county] be selected by merit selection and retention rather than by election?

See Art. V, § 10(b)(3)(a.).[4]

In Bryant, the Court noted a presumption in favor of self-executing constitutional provisions:

> The will of the people is paramount in determining whether a constitutional provision is self-executing and the modern doctrine favors the presumption that constitutional provisions are intended to be self-operating. This is so because in the absence of such presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people.

125 So. 2d at 851. And the warning issued in Bryant is *apropos* here, where the Legislature has already undermined the meaning of Article V, § 10(b)(3)(a.) *via* its 2000

[4] Viewing the constitutional language in that ballot format highlights the disparity between what the Constitution contemplates and what the Legislature enacted in its 2000 amendments to § 101.161. In the Constitution, "merit selection and retention" appears first and "election" is the final word; in the legislative amendment, "merit selection and retention" has been omitted, and the term "election" – now appearing first – has been expanded to "election by a vote of the people," a redundancy.

amendments:

> [A] construction that would hold the section not to be self-executing would make it possible for the legislature to fail to act in accordance with the rule prescribed therein and thereby to frustrate the people's will.
>
> Where there is a choice as here such a constitutional provision must always be construed to be self-executing for such construction avoids the occasion by which the people's will may be frustrated.

Bryant, 125 So. 2d at 852.[5]

CONCLUSION

For the foregoing reasons, the Court should declare section 101.161(3)(c) and (e), Florida Statutes, as amended, 2000 Fla. Sess. Law Serv., Ch. 00-361, § 1 (S.B. 2104) (West), to be unconstitutional under the Florida Constitution, and grant this petition for

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[5] Compare, Advisory Opinion to the Governor – 1996 Amendment 5 (Everglades), 706 So. 2d 278 (Fla. 1997), which held that the "polluter pays" constitutional amendment was not self-executing, because it "fails to lay down a sufficient rule for accomplishing its purpose." Id. at 281. That amendment left a host of policy decisions unanswered about various rights and responsibilities, the purposes intended to be accomplished, and the means by which the purposes might be accomplished. Id. It raised questions about the cost of pollution abatement, who might assert a claim, and how one would be judged to be a polluter. Id. In short, the Legislature had to act to give effect to the amendment, because its general intent was not specific enough to answer the policy and practice questions that it raised. Here, in contrast, the Constitution says there "shall" be an election in 2000, and states what the voters' choice in that election must be. Thus, ballot language in this case can come from the Constitution itself, without the need for a legislative enactment.

a writ of mandamus, directing the Respondent, the Florida Secretary of State, to strike the ballot language contained therein from the ballot in the November 2000 general election and replace it with the ballot language contained in section 101.161(3)(c) and (e), Fla. Stat. (1999), as provided in the statute prior to the 2000 enactment of the unconstitutional statutory amendments, or replace it with the language of the Constitution.

Respectfully submitted,

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By:_____
BRUCE ROGOW

By: _____
BEVERLY A. POHL

Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to (1) ROBERT BUTTERWORTH, ATTORNEY GENERAL, PL-01 THE CAPITOL, TALLAHASSEE, FL 32399-1050, and (2) KATHERINE HARRIS, SECRETARY OF STATE, THE CAPITOL, TALLAHASSEE, FL 32399-0250, by FedEx this 14th day of August, 2000.

BRUCE ROGOW

Article V, Fla. Const.

SECTION 10. Retention; election and terms.--

(a) Any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law. If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. When a justice or judge so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge)

(name of justice or judge)

of the

(name of the court)

be retained in office?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. The term of the justice or judge retained shall commence on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

(b)(1) The election of circuit judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that circuit approves a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(2) The election of county court judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approves a local option to select county judges by merit selection and retention rather than by election. The election of county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(3)a. A vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit and county at the general election in the year 2000. If a vote to exercise this local option fails in a vote of the electors, such option shall not again be put to a vote of the electors

of that jurisdiction until the expiration of at least two years.

b. After the year 2000, a circuit may initiate the local option for merit selection and retention or the election of circuit judges, whichever is applicable, by filing with the [1]secretary of state a petition signed by the number of electors equal to at least ten percent of the votes cast in the circuit in the last preceding election in which presidential electors were chosen.

c. After the year 2000, a county may initiate the local option for merit selection and retention or the election of county court judges, whichever is applicable, by filing with the supervisor of elections a petition signed by the number of electors equal to at least ten percent of the votes cast in the county in the last preceding election in which presidential electors were chosen. The terms of circuit judges and judges of county courts shall be for six years.

History.--S.J.R. 52-D, 1971; adopted 1972; Am. C.S. for S.J.R.'s 49, 81, 1976; adopted 1976; Ams. proposed by Constitution Revision Commission, Revision Nos. 7 and 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

[1]**Note.**--Section 24(b), Art. XII, State Constitution, effective January 7, 2003, provides that "[i]n the event the secretary of state is removed as a cabinet office in the 1998 general election, the term 'custodian of state records' shall be substituted for the term 'secretary of state' throughout the constitution and the duties previously performed by the secretary of state shall be as provided by law."

§ 101.161, Fla. Stat. (1999). 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.

(2) The substance and ballot title of a constitutional amendment proposed by initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to s. 120.54. The Department of State shall give each proposed constitutional amendment a designating number for convenient reference. This number designation shall appear on the ballot. Designating numbers shall be assigned in the order of filing or certification of the amendments. The Department of State shall furnish the designating number, the ballot title, and the substance of each amendment to the supervisor of elections of each county in which such amendment is to be voted on.

(3)(a) The ballot for the general election in the year 2000 must contain a statement allowing voters to determine whether circuit or county court judges will be selected by merit selection and retention as provided in s. 10, Art. V of the State Constitution. The ballot in each circuit must contain the statement in paragraph (c). The ballot in each county must contain the statement in paragraph (e).

(b) 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 (c) or paragraph (d) and the ballot for any county must contain the

statement in paragraph (e) or paragraph (f).

(c) 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 circuit court judges in the ...(number of the circuit)... judicial circuit be selected through merit selection and retention?" This statement must be followed by the word "yes" and also by the word "no."

(d) 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 circuit court judges in the ...(number of the circuit)... judicial circuit be selected by vote of the electorate of the circuit?" 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 merit selection and retention, the ballot shall state: "Shall county court judges in ...(name of county)... be selected through merit selection and retention?" This statement must be followed by the word "yes" and also by the word "no."

(f) 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 county court judges in ...(name of the county)... be selected by vote of the electorate of the county?" This statement must be followed by the word "yes" and also by the word "no."

FL LEGIS 00-361

2000 Fla. Sess. Law Serv. Ch. 00-361 (S.B. 2104) (WEST)

FLORIDA 2000 SESSION LAW SERVICE

Sixteenth Legislature, Second Regular Session

Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted.

Chapter 00-361

S.B. No. 2104

ELECTIONS--CIRCUIT AND COUNTY COURT JUDGES--BALLOTS

An act relating to elections; amending s. 101.161, F.S.; providing an exception to ballot statement and title length requirements; revising ballot language used to change the method of selecting circuit and county court judges; amending s. 105.041, F.S.; providing procedure for determining the position on the ballot of the names of candidates for the office of circuit judge; amending s. 101.161, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (3) of section 101.161, Florida Statutes, are amended to read:

<< FL ST § 101.161 >>

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. <<+ 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.

(3)(a) The ballot for the general election in the year 2000 must contain a statement allowing voters to determine whether circuit or county court judges will be selected by merit selection and retention as provided in s. 10, Art. V of the State Constitution. The ballot in each circuit must contain the statement in paragraph (c). The ballot in each county must contain the statement in paragraph (e).

(b) 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 (c) or paragraph (d) and the ballot for any county must contain the statement in paragraph (e) or paragraph (f).

(c) 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+>> <<-selected through merit selection and retention->>?" This statement must be followed by the word "yes" and also by the word "no."

(d) 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+>> <<-selected by vote of the electorate of the circuit->>?" 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 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+>> <<- selected through merit selection and retention->>?" This statement must be followed by the word "yes" and also by the word "no."

(f) 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+>> <<- selected by vote of the electorate of the county->>?" This statement must be followed by the word "yes" and also by the word "no."

* * *

[text omitted here]

Section 3. This act shall take effect July 1, 2000.

Approved by the Governor June 23, 2000.

Filed in Office Secretary of State June 23, 2000.

FL LEGIS 00-361