IN THE SUPREME COURT OF FLORIDA
CASE NO.: SC08-1529

ANDY FORD, et al.,
Petitioners,
vs.

KURT S. BROWNING, in his official capacity
as Florida Secretary of State,
Respondent,
vs.

FLORIDA CATHOLIC CONFERENCE, et al., and
HONORABLE ALLAN BENSE, et al.,
Intervenor-Respondents.

ANSWER BRIEF OF SECRETARY OF STATE KURT BROWNING

On Review from the Second Judicial Circuit Court in
and for Leon County, Case No. 2008-CA-1905

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PRELIMINARY STATEMENT

In this Brief, citations to the record on appeal are referred to as [R* #], where * is the volume number and # is the page number. Respondent Browning has provided the Court with an appendix that is tabbed in the same way as the appendix provided to the trial court below, i.e., each numbered tab in the appendix is indexed to the same materials in the appendix below. For example, a citation to "Tab 1" in the appendix on appeal correlates to the same materials at Tab 1 in the record below. The trial court's decision is set forth at Tab A of the Appendix and is referred to as the "Order" when cited. The initial brief of Petitioner is cited as [IB #] where # is the page number.

STATEMENT OF THE CASE AND FACTS

This appeal arises from the trial court's final order upholding the Taxation and Budget Reform Commission's (TBRC) constitutional authority to place two proposed amendments on the 2008 general election ballot, and rejecting a ballot title challenge to one of the proposals. Based on its detailed review of the public education system, the TBRC proposed these two amendments to protect the continuity of ongoing state programs and the ability of private entities to provide important educational services that might otherwise be invalidated under this Court's interpretation of article IX, section 1 in Bush v. Holmes, 919 So. 2d 392 (Fla. 2006), and the First District's interpretation of article I, section 3 in Bush v. Holmes, 886 So. 2d 340 (Fla. 1st DCA 2004).

The History of the Creation of the TBRC

In 1988, Florida's electorate voted to adopt article XI, section 6 of the Florida Constitution, which created the TBRC "to review the revenue needs and expenditure processes of the state, recommend statutory changes, and propose revisions to the constitution."[1] The TBRC was modeled after the Constitution Revision Commission (CRC), which in 1968 was the first commission in the

[1] *See* Smith v. Am. Airlines, 606 So. 2d 618, 619 (Fla. 1992); Talbot D'Alemberte, The Florida Constitution 152 (1991) (noting the TBRC's "broad charge").

country given the power to propose amendments directly to the people. Talbot D'Alemberte, The Florida Constitution 147 (1991).

The TBRC was proposed to the voters via a joint legislative resolution. *See* Fla. HJR 1616 (1988). The Senate and House offered different resolutions. Under the Senate's proposal, the TBRC's authority to propose amendments was narrow and limited only to taxation issues under article VII of the constitution. *See* Fla. SJR 360 (1988). That proposal was rejected in favor of the House's more expansive version, which gave the TBRC "jurisdiction over matters pertaining to taxation, budget, and governmental expenditures."[2] As passed by the voters, the House version transferred authority from the existing CRC to the TBRC to review tax, budget, and expenditure-related matters in "any part" of the constitution and to propose related reforms.[3]

The TBRC's Authority

Section 6(d) of article XI of the Florida Constitution sets forth the TBRC's scope of authority for reviewing a broad range of matters:

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[2] Fla. HJR 1616 (1988); Memo. from Donna Blanton to Steve Uhlfelder, TBRC Commissioner, at 2 (July 31, 1991) [hereinafter "Blanton Memo."] (available at Fla. Dep't of State, Div. of Archives, ser. 1470, carton 6, Tallahassee, Fla.) (**Tab 3**); Fla. H.R., tape recording of proceedings (May 31, 1988) (available at Fla. Dep't of State, Div. of Archives, ser. 38, box 94, Tallahassee, Fla.).

[3] Fla. HJR 1616 (1988). The TBRC's 25 members are appointed by the Governor (11), the Speaker of the House (7), and the Senate President (7). Art. XI, § 6(a), Fla. Const. Four non-voting members of the legislature are included. Id.

> (d) The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a strategic decisionmaking process.

Nothing in section 6(d) excludes such review in the public education context.

Section 6(e) provides that the TBRC must hold public hearings as needed, issue a report, and make proposals, if any, for statutory or constitutional revisions:

> (e) The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall issue a report of the results of the review carried out, and propose to the legislature any recommended statutory changes related to the taxation or budgetary laws of the state. Not later than one hundred eighty days prior to the general election in the second year following the year in which the commission is established, the commission shall file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it dealing with taxation or the state budgetary process.

The TBRC's Rules

The TBRC, both in 1991 and 2007, adopted rules to define its power to revise any part of the constitution dealing with "taxation" and the "state budgetary

process."[4] Each TBRC interpreted its authority under section 6(d) and 6(e) in the same pragmatic and reasonable way to fulfill its "primary role … to recommend statutory and constitutional changes." Id.

The TBRC's Initial Proceedings: 1991-92

The TBRC, which first convened in 1991, concerned itself with expenditures of public funds generally and with education expenditures specifically. The four constitutional amendments it ultimately proposed dealt mostly with taxation matters, but one involved a spending restriction to limit the use of a one-cent local sales tax to "the purpose of funding local government services."[5] A different proposal related to education spending and the lottery received a favorable 20-4 vote, but failed due to the TBRC's then-existing voting requirements.[6] Moreover, the TBRC considered other education amendment proposals similar to those in the

[4] *See* TBRC Rule 1.005 (as amended Feb. 26, 2008); TBRC Rule 1.005 (as amended Oct. 8, 1991) (**Tab 4**).

[5] *See* Authorizing Municipalities and Counties To Levy A One-Cent Sales Tax With Local Voter Approval (1992) (proposed art. VII, § 9, Fla. Const.), available at http://election.dos.state.fl.us/-initiatives/fulltext/pdf/12-2.pdf. In the 1992 general election, two of the four proposals passed, one failed, and one was invalidated prior to the election due to its ballot summary. *See* Smith v. Am. Airlines, 606 So. 2d 618 (Fla. 1992).

[6] *See* TBRC Meeting Proceedings for Apr. 22, 1992, Minutes, at 4 (the vote failed because a majority of the House's appointees did not support it) (**Tab 5**).

instant case, including an education choice-related proposal and a proposal to limit administrative spending. *See* **Tabs 6 & 7**.

Modifications to the TBRC and CRC in 1996 & 1998

Modifications to the TBRC and CRC were made in 1996 and 1998 to address concerns about their authority and procedures. In 1996, the CRC's plenary authority to propose constitutional amendments on any topic was restored due to concerns that the TBRC's broad authority over taxation and budget matters might potentially "neuter" the CRC's authority to propose amendments.[7] Specifically, the concern was that the CRC might propose a matter that incidentally affected taxation and budget matters thereby subjecting it to claims of exceeding its authority.[8] As a consequence, the CRC's full authority was restored; the scope of the TBRC's broad authority, however, was left unchanged.

In 1998, article XI, section 6 was amended due to concerns that the TBRC's unique voting requirements were unworkable. The initial requirement (two-thirds vote of the full commission *and* a majority vote of the members of each appointing authority (Governor, Senate, and House)) was replaced with only the former.

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[7] Give Constitution Meaning with Amendment to Fix 'Glitches,' Ft. L. Sun-Sent., Apr. 28, 1996, at 4G (**Tab 8**).

[8] William A. Buzzett & Deborah K. Kearney, Commentary, Fla. SJR 210 (1996), Fla. Stat. Ann., Art. XI, § 2, Fla. Const. (West) (**Tab 9**) (hereinafter "Buzzett & Kearney, Art. XI, § 2").

Section 6 was also amended to provide that the TBRC would convene every 20 years instead of every 10 years, beginning in 2007. Either the CRC or TBRC now meets every 10 years on a staggered basis.

The TBRC's Proceedings: 2007-08

On March 16, 2007, the TBRC convened for the second time in its history. During thirteen months of public meetings, it exhaustively studied the state's fiscal situation and needs, received input from experts, considered dozens of proposals to amend the Florida statutes or constitution, and issued numerous detailed reports. For example, the Government Services Committee issued substantial reports in six major budget-related areas: the Courts System, Public Education, Health and Aging, Public Safety and Corrections, Transportation, and Water Policy.[9] The Public Education Report alone exceeds 100 pages, incorporating testimony from numerous experts and education analysts, none of which were religious groups.[10]

The TBRC passed seven proposed constitutional amendments that were presented to the Secretary of State for placement on the November 2008 general election ballot. TBRC Proposals 3-6 and 8 (as designated by the Secretary of State) mainly address taxation issues: tax assessments, tax exemptions, eliminating

[9] *See* TBRC Reports, available at http://www.floridatbrc.org/reports08.php.

[10] Fla. TBRC Publ. Educ. Report, Gov't Servs. Comm. at 2-3 (Nov. 29, 2007) (hereinafter "TBRC Educ. Rep."), *available at* http://www.floridatbrc.org/pdf-/GSCEducationReport08.pdf (**Tab 1**).

certain taxes, increasing certain tax rates, and lowering millage rates. One addresses taxation and education funding.[11]

Proposals 7 and 9

Proposals 7 and 9 address the TBRC's finding that limited public-private programs "are an efficient way to use Florida tax dollars and to provide *statewide* tax savings for Floridians." TBRC Educ. Report at 18 (*see* **Tab 1**). They arise due to uncertainty created by the decisions of this Court and the First District in the Bush v. Holmes litigation, judicial precedents that conceivably could be used to invalidate a number of existing state programs and thereby dramatically increase the state's fiscal obligations.[12] The TBRC's Public Education Report, which included detailed information including that of the non-partisan Collins Center for Public Policy, stated that six of Florida's innovative state programs had saved Florida's taxpayers more than $4.4 billion; it concluded that if "the [Bush v. Holmes] decision were applied to the Corporate Tax Credit Scholarship Program,

[11] Proposal 5 proposes the replacement of the state-required school property tax with revenue from a variety of funding options, including an increased sales tax and elimination of certain sales tax exemptions.

[12] In Bush v. Holmes, 886 So. 2d 340 (Fla. 1st DCA 2004), the court interpreted article I, section 3 to prohibit the state from providing funds to sectarian and non-sectarian schools. On appeal, this Court relied upon the education clause in article IX, section 1 to prevent the state from funding non-governmental schools; it did not "approve or disapprove" the First District's interpretation of article I, section 3. Bush v. Holmes, 919 So. 2d 392, 413 (Fla. 2006).

the McKay Scholarship Program, and the Voluntary Pre-K program, the cost to Florida taxpayers might reach an additional $4.1 billion dollars in additional operating and capital costs."[13]

Proposal 7

Proposal 7 directly addresses the limitation on governmental expenditures in article I, section 3, which states: "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." Art. I, § 3, Fla. Const. The First District interpreted article I, section 3 to invalidate Florida's Opportunity Scholarship Program. Holmes, 886 So. 2d at 366. Proposal 7 removes this fiscal limitation and clarifies that: "An individual or entity may not be barred from participating in any public program because of religion."[14] If adopted, these changes would align Florida law with federal law, which permits government to procure secular services from religiously-affiliated entities. *See* Zelman v. Simmons-Harris, 536 U.S. 639 (2002) (school choice program does not violate federal religion clauses).

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[13] *See* TBRC Educ. Report (*see* **Tabs 1 & 2**); *see also* Fla. TBRC, CS/CP 40 Final Staff Analysis 1, 7-9 (Mar. 19, 2008) (discussing risk of Bush v. Holmes applying to existing education programs) (**Tab 10**).

[14] *See* TBRC, CS/CP 20 Staff Analysis and Impact Statement 1 (Mar. 26, 2008) (**Tab 11**).

Proposal 9

Proposal 9 combines two substantive amendments to article IX of the Florida Constitution involving education expenditures. First, it adds a new section 8, requiring that 65 percent of a school district's education funds be spent on classroom instruction:

> SECTION 8. Requiring sixty-five percent of school funding for classroom instruction. -- At least sixty-five percent of the school funding received by school districts shall be spent on classroom instruction, rather than on administration. Classroom instruction and administration shall be defined by law. The legislature may also address differences in administrative expenditures by district for necessary services, such as transportation and food services. Funds for capital outlay shall not be included in the calculation required by this section.

Second, it amends the limitation in article IX, section 1(a), which this Court interpreted to invalidate a state scholarship program that permitted students to attend private schools. Amended article IX, section 1(a) would read:

> SECTION 1. Public funding of education.--
> a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. This duty shall be fulfilled, at a minimum and not exclusively, through adequate ~~Adequate~~ provision ~~shall be made~~ by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. Nothing in this subsection creates an entitlement to a publicly-financed private program.

These two amendments were combined in a single proposal because they affected the same article of the constitution – article IX. [R2 299-301; *see* **Tab 17**] Finally, the TBRC prepared a ballot title and summary (*see* Section II below) for Proposal 9. In the title and summary, the 65 percent provision is placed first due to drafting conventions, because it proposes a completely new section. Id.

The Trial Court's Ruling

After the TBRC transmitted the proposed amendments to the Secretary of State on April 28, 2008, the Petitioners filed this action on June 13, 2008. A scheduling order was entered, pursuant to which the parties filed their respective motions for summary judgment, legal memoranda, and proposed orders. [R1 82] The trial court held a hearing on August 4, 2008, and issued its decision later that day. [R4 673 (*see* **Tab A**)]

First, the court set forth the applicable and highly deferential standards of review, which require a clear and conclusive showing that the TBRC exceeded its authority, that the amendments must be submitted to the voters if any reasonable theory exists to support the TBRC's actions, that the TBRC's authority is to be construed consistent with the intent of the framers and voters, and that constitutional provisions must be read in pari materia "to form a congruous whole" and to avoid rendering any language superfluous. [Id. at 677-79 (Order at 5-7) (citations omitted)]

Next, based on these standards, the court held that the TBRC had the authority to propose the two amendments. It held that the scope of the TBRC's authority to propose constitutional changes under section 6(e) logically flowed from and related to the scope of its authority in section 6(d), both provisions to be read together in a manner not to render either's language superfluous. It rejected the Petitioners' narrow reading of section 6(e), a reading that would render "useless that portion of section 6(d) allowing the TBRC to 'examine constitutional limitations on taxation and expenditures at the state and local level.'" [Id. at 680 (Order at 8)] It concluded that "[s]ection 6(d) would be substantially rendered superfluous under the Petitioners' construction of 6(e)." [Id.]

Further, the court held that the "natural meanings of 'budget' and 'process' convey broad meanings." It found that in "the context of state government operations, the concept of 'budgetary process' necessarily take into account how the state raises revenue, how much revenue is raised, how state monies are spent, the relationship between revenues and expenditures, and ways to help the state become fiscally sound while meeting the needs of the people. For Florida, the budgetary process is complex, far-reaching, and involves many portions of the constitution." [Id. at 681 (Order at 9)]

In addition, the court agreed with the parties that "the TBRC's own understanding of its mandate is particularly important" due to the principle that

"courts should not 'depart from the contemporaneous construction of a statute by a state agency … unless the construction is clearly … erroneous.'" [Id. (citation omitted)] The court noted that both the 1991 and 2007 TBRCs adopted rules that defined "taxation" and the "state budgetary process" broadly, and that Petitioners failed to explain persuasively why Proposals 7 and 9 did not squarely fall within the TBRC's powers. [Id. at 682 (Order at 10)]

> The constitutional provision addressed by Ballot Initiative 7 is the prohibition against the public funding of religious and sectarian institutions in Article I, section 3. Plaintiffs fail to explain persuasively why Ballot Initiative 7's elimination of this barrier to state budgetary expenditures for religiously-affiliated programs, thereby allowing them to be eligible for educational services, public contracting, and procurement matters, is not a matter of the state's budgetary process. Likewise Plaintiffs fail to explain persuasively why Ballot Initiative 9's alteration of the education clause as it applies to public funds is not a matter of the state's budgetary process.

[Id.] The court further held that these proposals "are not impermissible simply because they affect portions of the Constitution involving religious freedoms and public education. The Court concludes that both proposals involve matters involving taxation and the budgetary process." [Id.]

The court also rejected the argument that the 65% requirement in Proposal 9 is impermissible because it concerns a local and not a "state" budgetary process. The court found it undisputed that a 35% cap on administrative spending would impact the state's budget and that the proposal was not transformed into a local

budget issue just because the state distributes school funds to local districts. [Id. at 683 (Order at 11)] Moreover, the court read section 6(e) in view of section 6(d), which explicitly contemplates the TBRC's review of both state and local spending limitations. [Id.]

Finally, the court rejected the argument that the ballot *title* is misleading because it purportedly gives too much emphasis to the 65 percent spending requirement. It concluded that the "ballot title and summary, read as a whole, do not create any improper balance in their contents. … When considered in tandem, the ballot title and summary sufficiently inform the voters of the chief purpose of Ballot Initiative 9, as to both the 65 percent spending requirement and the modification of the state's funding duty." [Id. at 685 (Order at 13) (emphasis in original)]

SUMMARY OF ARGUMENT

The trial court correctly held that the TBRC has the constitutional authority to propose two amendments, Proposals 7 and 9, both of which involve constitutional limitations on expenditures at the state and local level and thereby fall within the core of the TBRC's constitutional powers under article XI, section 6. The constitutional language establishing the TBRC, along with its purpose, structure and history, reflect the plain intention of the people that the TBRC have broad authority to propose comprehensive reforms, particularly as to education matters, which comprises one-third of the state's annual budget.

The trial court's conclusion that the phrase "state budgetary process" in section 6(e) conveys a broad rather than narrow meaning is the most natural one based on the constitutional text as a whole and the broad remedial purpose of the TBRC, which meets every 20 years to comprehensively review and propose constitutional reforms. The trial court correctly rejected the Petitioners' narrow and unworkable interpretation of the constitutional text, which would create anomalous results and render portions of section 6(d) superfluous.

For example, the TBRC is required to "examine constitutional limitations on taxation and expenditures at the state and local level" under section 6(d) but, under Petitioners' view, it is prohibited from making proposals to amend or revise such limitations under section 6(e). The trial court properly rejected such an illogical

reading, basing its decision on basic principles of constitutional interpretation such as the requirement that sections of the constitution be read together to avoid a nonsensical result that renders other language superfluous.

The trial court also correctly concluded that proposals involving matters related to taxation or the budgetary process, such as Proposals 7 and 9, are permissible even if they affect portions of the constitution involving "substantive" provisions, such as religious liberty or public education. No authority exists for the claim of "substantive" or "structural/procedural" limitations on the subject matter of the TBRC's authority. In addition, the trial court correctly held that the TBRC's interpretations of its authority are entitled to deference and support its actions here.

Further, the history of the TBRC, and its relation to the Constitution Revision Commission, support a broad reading of the TBRC's authority. The authority transferred in 1988 from the CRC to the TBRC was deemed so broad as to neuter the CRC; the CRC's full authority was restored in 1998, but the TBRC's broad authority was (and remains) unchanged.

Finally, the 65 percent requirement is well within the TBRC's authority due to its undisputed impact on the state's budget, a third of which is distributed to local school districts. In addition, the ballot title for Proposal 9 complies with applicable standards. The title, as well as the summary, state the chief purposes of the proposal and, read together or separately, are not misleading.

LEGAL ARGUMENT

I. PROPOSALS 7 AND 9 ARE WITHIN THE TAXATION AND BUDGET REFORM COMMISSION'S BROAD CONSTITUTIONAL POWERS.

A. Petitioners fail to meet the stringent standard of review for removing a proposed amendment from the ballot.

Petitioners bear a substantial burden to remove a proposed constitutional amendment from the ballot. This Court long ago explained the amendment process to be "the most sanctified area in which a court can exercise power." Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958). As the Court stated, "[s]overeignty 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 organic law." Id. Courts must act with "extreme care, caution, and restraint" before removing a constitutional amendment from the vote of the people. Advisory Op. to the Att'y Gen. re: Fla. Marriage Protection Amendment, 926 So. 2d 1229, 1233 (Fla. 2006) (quoting Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982)).

Given this extreme degree of care, caution, and restraint, the trial court correctly held that judicial review is highly deferential. If "any reasonable theory" exists for approving an amendment's ballot placement, it should be upheld. Armstrong v. Harris, 773 So. 2d 7, 14 (Fla. 2000) (quoting Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956)); *see also* Am. Airlines, 606 So. 2d at 621 (noting

reluctance to remove a TBRC-proposed amendment "from a vote of the public"). Interference with the amendment process is improper "unless the laws governing the process have been 'clearly and conclusively' violated." Advisory Op. to the Att'y Gen. re: Right to Treatment & Rehab. For Non-Violent Drug Offenses, 818 So. 2d 491, 498-99 (Fla. 2002).

This burden is heightened due to the TBRC's extremely limited window for exercising its broad authority to propose amendments (once every twenty years and not again until 2027), the presumption that the TBRC has acted within its authority,[15] and the deference due its own determination of its authority.[16] This burden is justifiably the most stringent possible given that the TBRC has no power to change the Constitution or impose or change organic law; instead its authority only extends to proposing amendments for voters' consideration, who may accept or reject them. As this Court stated over fifty years ago:

[15] *See* Fla. Interexchange Carriers Ass'n v. Beard, 624 So. 2d 248, 250 (Fla. 1993) (Public Service Commission presumed to act within its authority unless shown to the contrary).

[16] *See* P.W. Ventures, Inc. v. Nichols, 533 So. 2d 281, 283 (Fla. 1988) (an agency's interpretation of its jurisdiction comes within "the well established principle that the contemporaneous construction of a statute by the agency charged with its enforcement and interpretation is entitled to great weight"); Pershing Indus., Inc. v. Dep't of Banking & Fin., 591 So. 2d 991, 993 (Fla. 1st DCA 1991) ("If an agency's interpretation is one of several permissible interpretations, it must be upheld despite the existence of reasonable alternatives.").

> [S]overeignty 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*. *Changes in government such as proposed here are provoked in the interest of economy and efficiency, they necessarily contemplate the abolition of some offices, boards and agencies and the combination of others, but this is well within the power of the electorate.*

Gray, 89 So. 2d at 790 (emphasis added). The highlighted language emphasizes the heightened burden and judicial scrutiny that is required in this case.

The ultimate goal and central purpose of the TBRC, for which the people created it, was to present broad and comprehensive proposals upon which the people may vote. For this reason, to the extent any doubt about the TBRC's jurisdiction exists, it should be resolved in favor of the constitutional exercise of its authority.

B. The purpose and plain language of article XI, section 6 authorize TBRC Proposals 7 & 9.

The purpose and plain language of article XI, section 6 support the TBRC's authority to present Proposals 7 and 9 to the voters. The importance of determining the *purpose* of the TBRC is both fundamental and determinative. As the Fourth District recently noted:

> *In interpreting constitutional provisions*, as distinguished from statutes, *we consider the object or purpose to be accomplished by the provision*, the prior state of the law, including the origin of the provision, as well as contemporaneous and practical considerations. Comments by the Constitution Revision Commission, as the author of the provision, as to the meaning of text are especially important.

City of Ft. Lauderdale v. Crowder, 983 So. 2d 37, 39 n.2 (Fla. 4th DCA 2008) (emphasis added). As the TBRC's own title suggests,[17] it has broad constitutional authority to examine and propose taxation and budget reforms. The broad purpose to be accomplished, the history of the TBRC's creation, the language of section 6 read as a whole, other contemporaneous and practical matters, and commentary of the TBRC itself must each be considered; all support the TBRC's action.

The obvious goal of the TBRC is for its work efforts under section 6(d) to be transformed into meaningful reform proposals under section 6(e), which provides that the TBRC is to report on its findings, make recommended "statutory changes related to the taxation or budgetary laws of the state," and propose "a revision of this constitution or any part of it dealing with taxation or the state budgetary process." Sections 6(d) and 6(e) must be read together in conjunction with the TBRC's purpose of broad and comprehensive tax and budget reform. Indeed, the ballot summary of the 1988 proposal to establish the TBRC told voters that the

[17] Fla. Dep't of Rev. v. Piccadilly Cafeterias, Inc., 128 S. Ct. 2326, 2336 (2008) (noting that "titles and section headings are tools available for the resolution of a doubt about the meaning of a statute") (citation omitted).

TBRC's purpose was to "review matters relating to state and local taxation and the budgetary process" and to "submit proposed constitutional changes to the voters."[18] Nothing in sections 6(d) or 6(e) precludes the TBRC from exercising these broad responsibilities with respect to education-related tax or budget issues (one-third of the state's budget)[19] or the provision of educational services by private entities. Rather, the TBRC's authority broadly encompasses *any* substantive area that involves tax or budget matters. No "substantive" limitation exists, as discussed below.

Given the TBRC's purpose and the language of section 6, Petitioners take an unjustifiably constricted view of the TBRC's authority to propose constitutional revisions. They ignore the TBRC's broad overall purpose and urge a cramped and isolated interpretation of section 6(e)'s language. Rather than viewing the TBRC's broad charge in section 6(d) as complementing its section 6(e) authority to propose a constitutional revision to any part of the constitution that deals with "taxation or the state budgetary process," they characterize this authority as "narrow" and claim that Proposals 7 and 9 exceed this authority. [IB 18] They fail to explain how this

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[18] Taxation and Budget Reform Commission (1988) (proposed art. XI, § 6, Fla. Const.), *available at* http://election.dos.state.fl.us/initiatives/initdetail.asp?-account=10&seqnum=51.

[19] *See* Governor Charlie Crist, Policy and Budget Recommendations, Fiscal Year 2008-09, at 2, *available at* http://www.thepeoplesbudget.state.fl.us/handouts.pdf.

narrow view can be squared with the language of section 6(d), which explicitly contemplates that the TBRC may review "constitutional limitations on taxation and expenditures at the state and local level." They also mischaracterize Proposals 7 and 9 as involving only matters of "religion" and "educational policy," claiming that these proposals have no relation whatsoever to the TBRC's broad tax and budget reform authority. [IB 35-39]

It is a fundamental principle of constitutional interpretation that sections 6(d) and 6(e) must be read together and harmonized in determining the scope of the TBRC's authority to propose amendments. *See* Physicians Healthcare Plans Inc. v. Pfeifler, 846 So. 2d 1129, 1134 (Fla. 2003) ("constitutional provisions must be read in pari materia 'to form [a] congruous whole so as to not render any language superfluous'") (citation omitted). They may not be interpreted in a way that would render either provision unnecessary. Hechtman v. Nations Title Ins. of New York, 840 So. 2d 993, 996 (Fla. 2003). Courts follow the plain meaning of a statute's text except when to do so leads to an absurd result. Maddox v. State, 923 So. 2d 442 (Fla. 2006).

Petitioners' cramped interpretation violates all of these fundamental canons of construction. Read together, the scope of the TBRC's authority to propose statutory and constitutional changes in section 6(e) must logically flow from and relate to the scope of authority in section 6(d). To construe section 6(e) narrowly,

in the face of section 6(d)'s breadth, would lead to illogical results and render portions of section 6(d) superfluous. It is illogical for the TBRC to have broad powers in section 6(d) to study matters for constitutional change, but be powerless to propose them under an indefensibly narrow reading of the phrase "taxation or the state budgetary process." For example, it would be illogical for the TBRC to have the authority in section 6(d) to "examine *constitutional* limitations on taxation and expenditures at the state and local level," determine that a constitutional limitation should be revised, but be prevented from proposing an amendment under Petitioners' unduly restrictive view of section 6(e).[20] Section 6(d) is rendered pointless and superfluous under Petitioners' construction of section 6(e). The best evidence of the intended scope of section 6(e) is the text of section 6(d).

It would be odd to accept Petitioners' interpretation of the phrase "state budgetary process" when they have been unable to define it in any meaningful or workable way. The phrase does not appear in the Florida constitution, the Florida Statutes, or Florida caselaw other than in section 6. It is defined only in the TBRC's rules, which are entitled to deference (discussed below). That it is used

[20] The Petitioners' assertion that the TBRC's powers are limited to merely studying possible constitutional reforms under section 6(d), issuing a report recommending such reforms, and then hoping that either the legislature, the CRC, or a group of citizens will decide to take action in proposing them for placement on the ballot [IB 23-24] ignores that the TBRC was designed to avoid such an illogical result by having the independence to bypass the legislature and propose constitutional reforms directly to the voters.

only in section 6, and lacks a specific identifiable definition in the constitution, statutes, or caselaw, supports that it is most naturally read in a broad (rather than restrictive) way to fulfill the TBRC's purpose of proposing comprehensive tax and budget reform. Indeed, under the canon of *noscitur a sociis* (words are known by the company they keep), the phrase is surrounded by a string of broad phrases in section (d) thereby reflecting an intent that it too be broadly construed. Nehme v. Smithkline Beecham Clinical Labs., Inc., 863 So. 2d 201, 205 (Fla. 2003) (court "examines the other words used within a string of concepts to derive the legislature's overall intent").

Moreover, Petitioners' "plain text" argument for invalidating the TBRC's proposals is wholly conclusory. They claim that the phrase "budgetary laws" in section 6(e) regarding recommended statutory changes is *broader* than the term "budgetary process" in section 6(e) regarding proposed constitutional revisions. [IB 19 n.4] Petitioners fail to explain their conclusion, stating only that "constitutional amendments dealing with the 'budgetary process' are … those that deal with structural and procedural aspects." Id. This distinction in section 6(d)'s language, however, is easily explained. The phrase "budgetary laws" is merely shorthand for the statutory "laws" that the legislature enacts; the legislature may enact "laws" but they cannot enact constitutional provisions. The most natural reading of section 6(e), given neighboring section 6(d)'s breadth, is that the TBRC

has authority to propose revisions to "budgetary laws" (i.e., laws enacted by the legislature).

Similarly, the most natural reading of the phrase "budgetary process" is a broad one that enables the TBRC to propose revisions to any portion of the constitution touching upon the state budgetary process generally. Contrary to Petitioners' claims, it is implausible that the phrase "budgetary process" was meant to constrict the TBRC's authority. Their claim that the word "laws" is broad and the word "process" is narrow ignores the context and meaning of these terms in section 6(e). It is akin to arguing "due process of law" is a narrow concept when, of course, courts have given this constitutional language a broad substantive meaning. Petitioners' reading of this phrase places "greater strain" on the constitutional text; of the two views presented, Petitioners' clearly is less plausible. Piccadilly Cafeterias, Inc., 128 S. Ct. at 2332-33.[21]

Beyond reading the phrase "budgetary process" to preserve the viability of the language in section 6(d), context renders the natural meanings of "budget" and

[21] In addition, the argument that the TBRC's authority over proposing amendments to the "state budgetary process" is essentially limited to article III, section 19, enacted via a TBRC- proposed amendment in 1992, makes little sense. [IB 20] This interpretation would strip the TBRC of its authority and transform it into only a "taxation" reform commission. No evidence exists that the first TBRC intended this amendment to exhaust its authority and simply closed its book on reforms of the state budgetary process once voters adopted its proposal. To the contrary, it has defined its authority broadly and pursued more than just taxation reforms.

"process" exceptionally broad. The primary definitions of the word "budget" includes "[a]n itemized summary of probable expenses and income for a given period" and "a systematic plan for meeting expenses in a given period…."[22] The primary definitions of the word "process" include a "system of operations in the production of something" and a "series of actions, changes, or functions that bring about an end result."[23] In the context of state governmental operations, the concept of a "budgetary process" must necessarily account for how the state raises revenue, how much revenue is being raised, how state monies are spent, the relationship between revenues and expenditures, and ways to help the state become fiscally sound while meeting the needs of its people. Florida, one of the nation's most populous states, has a budgetary process that is complex and far-reaching, touching upon many portions of the constitution, thereby undermining Petitioners' narrow reading of section 6.

In the final analysis, the most natural and reasonable reading of section 6(d) is that it sets the scope of the TBRC's authority broadly to examine tax and budget issues, while section 6(e) empowers it to act upon the results of its examination, including, where it deems appropriate, to propose constitutional revisions on any matter that relates to taxation or the state budgetary process as broadly defined.

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[22] The American Heritage Dictionary 214 (2d College Ed. 1985).

[23] Id. at 987.

Petitioners' restrictive and insupportable view of the phrase "state budgetary process" would thwart the central purpose of the TBRC, which is to propose statutory and constitutional reforms for the legislature's and people's consideration, respectively.

C. The TBRC's rules and prior actions support a broad interpretation of its authority.

The trial court correctly relied upon the TBRC's interpretation of its own authority, which is entitled to deference unless its interpretation is unreasonable or contrary to the plain meaning and purpose of article XI, section 6. Nichols, 533 So. 2d at 283. The presumption is that an agency's interpretation of its own authority is correct. Id. Indeed, Petitioners have conceded that the TBRC's "understanding … of its own mandate is particularly important because of the well-established principle that courts should not 'depart from the *contemporaneous* construction of a statute by a state agency … unless the construction is clearly … erroneous.'" [R1 33 (citing Level 3 Communications, LLC v. Jacobs, 841 So. 2d 447, 450 (Fla. 2003) (emphasis supplied))]

Pursuant to article XI, section 6(c), the TBRC in both 1991 and 2007 adopted rules interpreting the scope of their authority to propose constitutional amendments by defining the terms "taxation" and "state budgetary process." These definitions, which are entitled to deference and presumed correct, provide:

> **1.005 – Functions and Duties.**
> The primary role of the Commission shall be to recommend statutory *and constitutional changes dealing with taxation and the state budgetary process*. The "state budgetary process" means *the manner in which every level of government in the state expends funds*, incurs debt, assesses needs, acquires financial information, and administers its fiscal affairs, and includes the legislative appropriation process *and the budgetary practices and principles of all agencies and subdivisions of the state involved in financial planning, determining, implementing, administering, and reviewing governmental programs and services*. "Taxation" means all public revenues and revenue raising laws at every level of government in the state.[24]

Under the TBRC's own rules, which are accorded deference, Proposals 7 and 9 easily fall within these highlighted definitions. Petitioners read the rules in a narrow way, claiming that they limit the TBRC's review to only "structure or procedure by which a budget is developed and implemented." [IB 29] Petitioners fail to explain persuasively how article I, section 3's current constitutional limitation on the use of public funds and how article IX, section 1's constitutional limitation on the use of funds for only public schools are not topics squarely within the TBRC's rules, given that both clearly involve "the manner in which every level of government in the state expends funds" and both relate to "the budgetary practices and principles" of agencies and subdivisions of the state involved in "financial planning, determining, implementing, administering, and reviewing governmental programs and services."

[24] TBRC Rule 1.005 (amended Oct. 8, 1991) (emphasis added); TBRC Rule 1.005 (amended Feb. 26, 2008) (using substantively the same definitions) (**Tab 4**).

It is instructive that, much like the TBRC in 2007, the TBRC in 1991 considered an education-related spending amendment proposal that combined an express requirement that lottery funds be spent on education with a requirement that local districts provide school choice options.[25] This proposal would have amended article X, section 15, an article not listed in the interim report upon which Petitioners place great emphasis. [IB 30] Although the educational choice element of the proposal ultimately was dropped, the TBRC overwhelmingly (20-4) supported the lottery-education spending proposal in 1991.[26] Moreover, much like the 65 percent requirement in Proposal 9, the TBRC in 1991 considered, but ultimately failed to pass, an amendment proposal to limit education spending on administration. *See* **Tab 7**.

Finally, it bears noting that both TBRCs received legal advice on the scope of their authority. In one of its initial meetings in 2007, general counsel for the TBRC circulated a memorandum highlighting those portions of the Florida

[25] *See* TBRC, Gov't Services/Procedures Structures Joint Comm. Meeting Proceedings for Aug. 6, 1991, Minutes, at 3 (**Tab 6**).

[26] *See* TBRC Meeting Proceedings for Apr. 22, 1992, Minutes, at 4 (failing after not receiving majority support from the House TBRC appointees) (**Tab 5**).

Constitution within the TBRC's purview, which included both article I, section 3 and article IX; the TBRC in 1991 received similar advice.[27]

In sharp contrast to the substantial evidence to the contrary, Petitioners' argument relies on the first TBRC's *interim* report that listed sections of the Florida Constitution under its purview. [IB 20] This interim report was issued early in the process and did not claim to be an exhaustive list of sections of the constitution within the TBRC's authority.[28] Indeed, the first TBRC did not even follow the suggestion in this interim report; it proposed a revision to article IV, section 1, a section *not* enumerated in the interim report.[29] Two other proposals involved entirely new sections, also not enumerated in the interim report. Id.

Notably, the first TBRC enunciated a broad interpretation of its scope of authority in its interim report, stating that its "purpose … is to examine and make recommendations on questions of taxation and spending."[30] It more fully defined

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[27] *See* Cibula Handout, Fla. TBRC Gov't Proc. and Structures Comm. Meeting, June 26, 2007 (**Tab 12**), *available at* http://www.floridatbrc.org/reports.php; *see also* Blanton Memo. (**Tab 3**) (affirming the 1991 TBRC's authority to propose a constitutional amendment involving school choice).

[28] *See* Fla. TBRC, A Program for Reform of Florida Government at 15 (Feb. 1991) ("the following sections are covered by the Reform Commission").

[29] *See* Fla. Sec'y of State, Div. of Elections, *Initiatives/Amendments/Revisions*, *at* http://election.dos.state.fl.us/initiatives/initiativelist.asp (year=1992; status = all).

[30] Fla. TBRC, A Program for Reform of Florida Government, at 5 (**Tab 13**).

its role as follows: "The Commission has been given ten constitutional responsibilities. They encompass the broadest possible meaning of financial policy, both at the state and local level. They involve procedural, institutional and substantive considerations."[31] Not only did the first TBRC broadly interpret its scope, but it expressly stated that it would "review the funding formulas for public education (K-12)."[32] Thus, both the 1991 and 2007 TBRCs understood their constitutional mandate to encompass far more than what Petitioners assert, including the authority to propose education spending-related revisions.

D. Proposals 7 and 9 are not invalid simply because they implicate "substantive" portions of the constitution.

The trial court correctly rejected the Petitioners' argument that the TBRC lacks authority under section 6 to examine or propose *substantive* constitutional limitations. [IB 19, 26, 29] Their argument that section 6(d) is concerned with only "structural" or "procedural" matters is likewise indefensible. [Id.] Nothing in section 6 supports Petitioners' distinction between "substantive" and "non-substantive" revisions to the constitution or their claim that only "structural" or "procedural" matters may be acted upon. They cite no authority for the proposition

[31] Id. at 21.

[32] Id. at 38; *see also* Fla. TBRC, Florida's Fiscal Future Balancing Needs & Taxes (1991) at 45 ("Fla. Fiscal Future"), *available at* http://www.floridatbrc.org/pdf/90-92FloridasFiscalFuture.pdf (discussing the TBRC's intention to propose an education spending-related amendment) (**Tab 14**).

that the TBRC "was never envisioned as a vehicle for dealing with substantive purposes for which the state – much less local school districts and other political subdivisions – could and could not expend funds." [IB 26]

Indeed, under Petitioners' view, a TBRC hypothetical proposal to eliminate a tax exemption for religious organizations (or to create such an exemption) would be an unconstitutional "substantive" proposal involving religion even though it directly relates to taxation, a result that is contrary to the TBRC's broad remedial purpose of constitutional reform.

In this regard, the trial court correctly concluded that Proposals 7 and 9 are not impermissible simply because they affect portions of the constitution involving religious freedoms and public education. [R4 682 (Order at 10)] As the trial court held, both proposals clearly involve "matters involving taxation or the budgetary process." [Id.] Indeed, they are supported by non-partisan evidence showing that the state's budget will be protected substantially if they are approved. [R1 171, 173-88 (**Tabs 1 & 2**)] The constitutional impediment to be removed via Proposal 7 involves the religious discrimination in the use of public funding in article I, section 3. Petitioners fail to explain why Proposal 7's elimination of this clear economic barrier for religiously-affiliated entities to be eligible and compete for educational services, public contracting, and procurement matters is not a matter of immense importance to the state's budget.

Further, they fail to explain how elimination of a constitutional funding limitation that happens to involve a civil liberty, here religious freedom, is inconsistent with the TBRC's broad remedial purpose. For instance, suppose article I, section 3 stated that no public funds could be taken directly or indirectly from the public treasury in aid of any African-American companies, and that these companies, if allowed to compete for government contracts, would increase competition and generate budgetary savings for state and local governments. Would the TBRC's proposal to eliminate the existing language and replace it with the type of language in Proposal 7 be an impermissible "substantive" proposal involving civil rights? Clearly not. So long as the proposal revises the constitution or a section of the constitution that deals with taxation or budgetary matters – which article I, section 3, clearly does – the proposal is permissible.[33]

Likewise, the constitutional impediment to be removed via Proposal 9 is this Court's reading of the education clause as it applies to public funds. Petitioners fail to explain why Proposal 9's elimination of this economic barrier to the availability

[33] Petitioners claim that the proposed new line in Proposal 7, which states that "[a]n individual or entity may not be barred from participating in any public program because of religion," is improper because it is a "substantive provision" that "does not even remotely relate to taxation or the state budgetary process." [IB 35-36] Petitioners, however, err by viewing this provision in isolation rather than in context with the entire proposed change to article I, section 3. Viewed in proper context, the sentence merely emphasizes the purpose of eliminating the constitutional funding restriction, which is to ensure that individuals and entities are not barred from participating in public programs on religious grounds.

of alternative private educational services is a matter unrelated to the state's budget. Contrary to Petitioners' assertions [IB 39], the TBRC is not dealing solely in "education policy" when it proposes a change to the manner in which the state's budget is used for public funding of education. To interpret the TBRC's authority as precluding constitutional reforms that may affect "education policy" or the like is to render the TBRC's authority meaningless.

Further, the TBRC historically has made educational funding a key priority. The first TBRC proposed school spending reforms, noting that the "funding of Florida's educational system is of great concern to the [TBRC]." *See* Fla. Fiscal Future at 45 (**Tab 14)**. It focused on proposing an education-spending amendment to direct lottery funds to schools and included a requirement that school districts offer increased school choices. *See* **Tab 6**. The TBRC later separated these two elements, proposing the lottery funds directive as a constitutional amendment, but recommending that the legislature "explore the feasibility and merits of choice." Fla. Fiscal Future at 45-46 (**Tab 14**). While the lottery directive failed to make the ballot due to then-stringent voting requirements,[34] the legislature took action on the TBRC's recommendations by enacting various educational programs that save the

[34] In 1998, Florida voters eliminated the former requirement in article XI, section 6(c) that constitutional proposals receive the support of a majority of each of the Governor's, Senate's, and House's appointees, which was in addition to the "affirmative vote of two thirds of the full commission" requirement that remains in the constitution. *See* Art. XI, § 6(c), Fla. Const.

state billions of dollars. *See, e.g.,* §§ 220.187, 1002.33, 1002.37, 1002.38, & 1002.39, Fla. Stat.; [R1 171, 173-88 (**Tabs 1 & 2**)]

The judicial precedents in the Bush v. Holmes litigation are of recent vintage and potentially threaten many of these programs, which save billions of taxpayer dollars. The initial TBRC in 1991 did not have the benefit of this Court's and the First District's decisions in that litigation, which would require constitutional amendments to modify. For this reason, the TBRC in 2007 has merely continued the path the 1991 TBRC began by considering budgetary reforms related to educational spending and funding.

E. The constitutional history of the TBRC and CRC demonstrate the TBRC's broad authority.

The history of the TBRC and its companion commission, the CRC, supports a broad construction of the TBRC's authority. The legislature jointly proposed the constitutional amendment that created the TBRC after determining that a constitutionally based commission would be better positioned to bring fiscal reform to Florida.[35] The joint resolution was based on the broader House version, which, unlike the Senate version, did not limit the TBRC's purview to taxation:

[35] William A. Buzzett and Deborah K. Kearney, Commentary, Fla. HJR 1616 (1988), Fla. Stat. Ann., Art. XI, § 6, Fla. Const. (West) (**Tab 16**) (hereinafter "Buzzett & Kearney, Art. XI, § 6").

> Proposed amendment to s. 6 Art. XI, State Const. - Provides for the establishment of a taxation and budget reform commission … to review the tax structure and budgetary process of the State and [sic] well as its revenue needs, *expenditures, productivity, and efficiency*. The commission may hold public hearings and recommend proposals for constitutional or statutory changes.[36]

The sponsor of the proposal broadly summarized the TBRC's "jurisdiction over matters pertaining to taxation, budget, *and governmental expenditures*."[37]

More importantly, the history of the relationship between the TBRC and CRC conclusively shows that the TBRC's authority to propose constitutional revisions is broad rather than narrow. When the TBRC was created, it was given the CRC's authority on tax and budget reform matters. As the commentary to article XI, section 2 states:

> *In 1988, section 2(c) was amended to remove matters relating to taxation or the state budgetary process from the jurisdiction of the constitution revision commission and place them under the purview of the newly created taxation and budget reform commission.* The amendment to section 2(c) was part of a larger amendment creating an independent tax and budget reform commission (Article XI, section 6). *The purpose of the new commission was to provide a method to accomplish tax reform in a comprehensive and complete manner*.[38]

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[36] Fla. H. Comm. on Fin. and Tax., HJR 1616 (1988) Final Staff Analysis & Econ. Impact Statement 2 (June 21, 1988) (**Tab 15**).

[37] Fla. H.R., tape recording of proceedings (May 31, 1988) (available at Fla. Dep't of State, Div. of Archives, ser. 38, box 94, tape 2 of 7 Tallahassee, Fla.).

[38] *See* Buzzett & Kearney, Art. XI, § 6, supra note 35 (emphasis added) (**Tab 16**).

The broad authority transferred to the TBRC, however, presented difficult constraints for the CRC, whose actions could easily have tax or budget implications.[39] To avoid a conflict, the CRC's original plenary jurisdiction was restored in 1996:

> Sections 2(a) and (c) were amended by restoring the jurisdiction of the constitution revision commission to all matters relating to Florida's constitution, including tax and budget issues. Just eight years earlier, an amendment removed the review of tax and budget issues from the jurisdiction of the constitution revision commission and placed it with the taxation and budget reform commission. *Subsequently, many felt that this amendment compromised the duties of the constitution revision commission because the review of matters within the constitution may inadvertently have budget or taxation ramifications. As a result of this amendment, the constitution revision commission and the taxation and budget reform commission now share jurisdiction over tax and budget matters.*[40]

The highlighted language shows clearly that the TBRC's jurisdiction was considered so broad that the CRC required an amendment restoring its original jurisdiction so that it could carry out its mission. All the while the TBRC's broad jurisdiction over tax and budget matters has remained constant. This fact undermines decisively the Petitioners' contention that the language of section 6 must be narrowly construed and given a restrictive reading.

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[39] *See* Give Constitution Meaning with Amendment to Fix 'Glitches,' Ft. L. Sun-Sent., Apr. 28, 1996, at G4 (concluding that the CRC "is kind of neutered if they can't look at tax and budget issues") (**Tab 8**).

[40] *See* Buzzett & Kearney, Art. XI, § 2, supra note 8 (emphasis added) (**Tab 9**).

Petitioners' contrary argument, that the TBRC has had a very narrow constitutional charge from its inception, is based on 1990 Miami Herald editorials and a limited *CRC* discussion in 1998. [IB 26-27] Neither have legal or persuasive force. Indeed, the CRC discussion referred to the TBRC's authority over "tax structure," "budget structure," the "budget process," and even "taxing, revenue, and spending" [41] matters thereby reflecting a broad versus narrow charge.

F. The 65 percent requirement is within the TBRC's authority.

Petitioners erroneously argue that the 65 percent requirement in Proposal 9 is impermissible because it does not concern a *state* budgetary process. [IB 40] They claim that the TBRC cannot propose amendments dealing with "local" processes because section 6(e) includes the term "state" in the phrase "taxation or the state budgetary process." [Id.]

As the trial court held, a 35 percent cap on administrative spending clearly protects the state budget and promotes the effective use of tax dollars. State spending on education exceeds $20 billion, which is about one-third of the annual budget.[42] That state funds are distributed to local school districts does not diminish the fact that education funding is one of state's most substantial budgetary items.

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[41] Fla. Const. Revision Comm'n, Proceedings Tr. at 253: 5-10 (Feb. 24, 1998).

[42] *See* Governor Charlie Crist, Policy and Budget Recommendations, Fiscal Year 2008-09, at 2, *available at* http://www.thepeoplesbudget.state.fl.us/handouts.pdf.

Petitioners claim that the state budget for education would be unaffected by the 35 percent cap, but that view ignores that the amount of funding the state chooses to appropriate for education may depend, quite naturally, on the manner in which it is expended. It is only natural to agree to provide funding more readily when an assurance exists that it will be spent efficiently.

Moreover, as the trial court noted, that state "funds are distributed to local school districts does not transform [Proposal 9] to an exclusively local budget issue." [R4 683 (Order at 11)] The court also noted that sections 6(d) and 6(e), when read together, contemplate that the TBRC has authority regarding constitutional limitations on taxation and spending at the state and local level. Indeed, one must wonder whether reform commissions broadly charged with reviewing and proposing reforms of the "state election process" or the "state judicial process" would be prohibited from considering the role of counties and their supervisors of election and county courts and their administration, respectively, under the Petitioners' narrow interpretation. Petitioners' approach would seem to suggest that these commissions would be limited to changing only the state election code or rules of civil or criminal procedure, for example. Contrary to Petitioners' assertion [IB 29 n.12], however, the phrase "state budgetary process" is sufficiently broad and flexible to include more than just the "State of Florida" and its budget procedures. Indeed, it is Petitioners who are

rewriting the phrase "state budgetary process" more narrowly to mean the "state's budget procedures" – each of these words connoting a more restricted view.

Petitioners also overlook that the legislature in 1988 explained to voters in the ballot summary of the amendment creating the TBRC that the TBRC would "review matters relating to state *and local* taxation and the budgetary process." (Emphasis added.)[43] In this regard, the TBRC has traditionally viewed its authority as extending to local matters of statewide importance. The reports issued and amendments proposed by the 1991 TBRC suggest that the phrase "state budgetary process" does not foreclose local issues. In its 1991 report, the TBRC looked to the ballot summary language, stating that "the amendment transferred the authority to review matters relating to state *and local* taxation and the budgetary process[]."[44] The TBRC also characterized its scope of authority as "encompass[ing] the broadest possible meaning of financial policy, both at the state *and local* level."[45]

Finally, the TBRC in 1991 proposed an amendment with the chief purpose of impacting the local budgetary process. It proposed a one-cent local sales tax,

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[43] Taxation And Budget Reform Commission (1988) (proposed art. XI, § 6, Fla. Const.), *available at* http://election.dos.state.fl.us/initiatives/initdetail.asp?-account=10&seqnum=51.

[44] Fla. TBRC, A Program for Reform of Florida Government at 13 (Feb. 1991), *available at* http://www.floridatbrc.org/pdf/90-92ProgramForReform.pdf. (emphasis added) (**Tab 13**).

[45] Id. at 21 (emphasis added).

restricting its use to "the purpose of funding local government services."[46] Much like the 1991 proposal, Proposal 9's imposition of a spending mandate on school districts statewide – which it funds – is within its constitutional authority.

II. PROPOSAL 9's BALLOT TITLE GIVES FAIR NOTICE TO VOTERS AND IS NOT MISLEADING.

Section 101.161(1), Florida Statutes, sets the standards for ballot titles and summaries. It states that 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" and limits the ballot summary to 75 words that must explain "the chief purpose of the measure." § 101.161(1), Fla. Stat. (2007). 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 the Att'y Gen. – Fee on the Everglades Sugar Prod., 681 So. 2d 1124, 1127 (Fla. 1996)). The ballot title and summary must "state in clear and unambiguous language the chief purpose of the measure." Health Care Providers, 705 So. 2d at

[46] Authorizing Municipalities and Counties To Levy A One-Cent Sales Tax With Local Voter Approval (1992) (proposed art. VII, § 9, Fla. Const.), *available at* http://election.dos.state.fl.us/-initiatives/fulltext/pdf/12-2.pdf.

566. They cannot "fly under false colors" or "hide the ball" as to the proposed amendment's true effect. Armstrong v. Harris, 773 So. 2d 7, 16 (Fla. 2000).

As the trial court held, Proposal 9 suffers from none of these defects. Petitioners make no argument that the ballot summary is defective, nor do they contend that it is in any way misleading, insufficient, or ambiguous, or that it "hides the ball" as to the proposed amendment's true effects. Rather, their only contention is that the ballot *title* is misleading by giving too much emphasis (i.e., "disproportionate information") on the 65 percent requirement. [IB 44-45][47] Petitioners have cited no authority for this proposition. None exists.

Neither section 101.161 nor the caselaw provides any support for the Petitioners' claim. The ballot title and summary for Proposal 9 state as follows:

> **REQUIRING 65 PERCENT OF SCHOOL FUNDING FOR CLASSROOM INSTRUCTION; STATE'S DUTY FOR CHILDREN'S EDUCATION. –** Requires at least 65 percent of school funding received by school districts be spent on classroom instruction, rather than administration; allows for differences in administrative expenditures by district. Provides the constitutional requirement for the state to provide a "uniform, efficient, safe, secure, and high quality system of free public schools" is a minimum,

[47] Petitioners erroneously state that the trial court tacitly concluded that the ballot title was misleading, and that it "upheld the ballot title on the ground that the defect in the title was cured by the more balanced summary language that followed it." [IB 45] The trial court made no such findings. Instead, the trial court held that the "ballot title and summary, read as a whole, do **not** create any improper imbalance in their contents" and that "[w]hen considered in tandem" they "sufficiently inform the voters of the chief purposes of Ballot Initiative 9." [R4 685 (Order at 13 (underline in original; bold added))]

> nonexclusive duty. Reverses legal precedent prohibiting public funding of private school alternatives to public school programs without creating an entitlement. [48]

The ballot title does not exceed 15 words and states how the proposal is "commonly referred to or spoken of" accurately. The amendment's chief purpose is fully and accurately explained in the ballot title and summary, which "may not be read in isolation, but must be read together in determining whether the ballot information properly informs the voters." Advisory Op. to the Att'y Gen. re: Voluntary Universal Pre-Kindergarten Educ., 824 So. 2d 161, 166 (Fla. 2002).

The primary case upon which Petitioners rely, In re Advisory Op. to the Att'y Gen.-Save Our Everglades, 636 So. 2d 1336 (Fla. 1994), is clearly distinguishable. In that case, this Court held that the ballot title and summary were both misleading. Specifically, the ballot title – "SAVE OUR EVERGLADES" – was affirmatively misleading because it "implies that the Everglades is lost, or in danger of being lost, … and needs to be 'saved' via the proposed amendment" when "nothing in the text of the proposed amendment hints at this peril." Id. at 1341. The Court held that this title was merely "emotional language" that had nothing to do with the amendment itself. Id.

[48] The TBRC's decision to place the 65 percent requirement first was based on objective drafting standards that required placement of any new constitutional language first to be followed by changes to existing constitutional language. *See, e.g.*, TBRC, transcript of proceedings, vol. 2 at 178-79 (Apr. 25, 2008) (**Tab 17**).

Here, Petitioners do not contend that the ballot title is inaccurate or rhetorical, or that it implies some perilous condition unsupported by the text of the proposed amendment. Indeed, the ballot title is entirely neutral in tone. Petitioners' belief that other ballot titles might be more proportionate or appropriate[49] is immaterial if the ballot title complies with section 101.161 and is otherwise not misleading. Petitioners' assertion that voters who only read the title, and who thereby deem themselves "sufficiently informed," may ignore the ballot summary is at odds with the legions of cases stating that the ballot title and summary must be read together to determine if ballot information properly informs voters.

The gist of Petitioners' objection is that the ballot title is defective because it describes what the 65 percent spending requirement would do, while "merely identifying the general subject matter" of the remainder of the proposal. [IB 44] But this scenario violates neither section 101.161(1) nor any ballot title principles in the caselaw. The ballot title is limited to 15 words, is accurate and non-misleading, and is accompanied by an accurate and non-misleading ballot summary to which Petitioners do not object. Even if some "proportionality test"

[49] [IB 44-46] Paradoxically, Petitioners state that the ballot title would pass muster if it provided *less* information, offering the following title as legally acceptable: "allocation of school district funding; state's duty for children's education." [IB 44] They also offer as legally acceptable the following: "Requiring 65 percent of school funding for classroom instruction; allowing state funding of private schools." [IB 45]

applied, the ballot title and summary, read as a whole, set forth as much information about the proposed change to the state's duty to provide for education as they do about the 65 percent spending mandate.

In short, whether read independently or together, the ballot title and summary comply with section 101.161(1) and accurately inform voters of the chief purposes of Proposal 9, as to both the 65 percent spending requirement and the modification of the state's funding duty.

CONCLUSION

For the foregoing reasons, Secretary of State Browning requests that this Court fully affirm the circuit court's order granting final summary judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of August, 2008, I caused a true and correct copy of this brief and appendix to be hand delivered to: Ronald G. Meyer, Jennifer S. Blohm, Esqs., Meyer & Brooks, P.A., 2544 Blair Stone Pines Dr., P.O. Box 1547, Tallahassee, FL 32302, *Counsel for Petitioners*; Stephen H. Grimes, Jerome W. Hoffman, Nathan A. Adams, IV, Esqs., Holland & Knight, P.O. Drawer 810, Tallahassee, FL 32302, *Counsel for Intervenors Florida Catholic Conference, Inc., et al.*; Daniel Woodring, Esq., Woodring Law Firm, 3030 Stillwood Court, Tallahassee, FL 32308, *Counsel for Intervenors Hon. Allan Bense, et al.*

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), I certify that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the Rule's font requirement.

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