IN THE SUPREME COURT OF FLORIDA

DAWN K. ROBERTS as ACTING SECRETARY OF STATE OF THE STATE OF FLORIDA,

Appellant,

v.

Case No. SC10-1508
L.T. Case No. 2010-CA-2114

BRIAN K. DOYLE and FLORIDA AFL-CIO,

Appellees.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional and Statutory Provisions

ARGUMENT[1]

I. Appellees' Hyper-Technical Reading Creates Confusion Where None Exists

The ballot language may omit details where the primary purpose of the amendment is disclosed. See Advisory Op. to Att'y Gen. re Fla.'s Amendment to Reduce Class Size, 816 So. 2d 580, 585-86 (Fla. 2002). It is "not necessary" to explain every detail. Advisory Op. to Att'y Gen. re Funding of Embryonic Stem Cell Research, 959 So. 2d 195, 201 (Fla. 2007). Moreover, whether a voter "**might**" conceivably be misled under any set of circumstances is not the standard. AB.11, 17. Creative musings of how a voter might interpret a term do not make it misleading. See Advisory Op. to Att'y Gen. re Ltd. Casinos, 644 So. 2d 71, 75 (Fla. 1994) (how voters might perceive "limited"). The standard is whether the ballot language "clearly and conclusively" misleads the public. See Advisory Op. to Att'y Gen. re Fla. Marriage Prot. Amendment, 926 So. 2d 1229, 1240 (Fla. 2006).

Appellees agree that the "chief purpose [of Amendment 3] is to provide an additional exemption to persons who have not owned a principal residence for the

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[1] This brief will use the same citation format as the Initial Brief. References to the Answer Brief shall be by "AB." and references to the Initial Brief shall be by "IB.," followed by the appropriate page number(s). All emphases are supplied.

eight years prior." T.14; AB.18. Appellees contend, however, that the property purchase date is material to the amendment's purpose and that the term "first-time homestead" is misleading. AB.4-6.[2]

A. Property Purchase Date

In their statement of the facts, Appellees concede that "the January 1, 2011 effective date is not challenged in this action." AB.1. Appellees then contend that "[t]he January 1, 2010 provision was not part of the effective date." Id. The property purchase date of January 1, 2010, however, is in the same sentence as and modifies the unchallenged effective date of the proposed amendment – January 1, 2011. AB.1, 3, 10, 13 n.3; IB.14. Indeed, the proposed amendment states: "this section shall take effect January 1, 2011, and shall be available for properties purchased on or after January 1, 2010." Appellees fail to provide an explanation as to why the property purchase date is not a detail of the effective date other than to state that the two are "different." AB.1, 10-11; IB.14.

To that end, Appellees wholly ignore the assessment schedule for homestead properties, a schedule that exemplifies the relationship between the two dates. Pursuant to the constitutional schedule, assessments are made on January 1 of the year following a home purchase. IB.14; Art. VII, § 4, Fla. Const. Accordingly, assessments made on and after January 1, 2011 – the effective date of Amendment

[2] Appellees appear to have dropped their ballot title challenge. AB.9.

3 – would be made on properties purchased on or after January 1, 2010. The Secretary has not "mixe[d]" her defenses of the property purchase date and unchallenged effective date because the two are related. AB.1, 10. If omission of the effective date is not misleading, neither is the omission of a detail of the effective date, the property purchase date.

Regardless, Appellees fail to explain how the property purchase date is not captured in the disclosed "8 years" provision in the ballot summary. AB.10-11; IB.13. To state that there is no "hint" in the ballot language as to a property purchase date ignores the explicit statement in the summary that the exemption is for "persons who have not owned [*e.g.*, purchased] a principal residence during the preceding 8 years." A voter casting his or her ballot on Amendment 3 in November 2010 will not reasonably believe that the exemption is available to those who purchased homes in 2009, for example, because it was within the last eight (8) years. IB.13; T.28, 29; AB.15. Moreover, there will be extensive media campaigns prior to the election and "it is common knowledge that one does not wait until he enters the election booth to decide how he is going to cast his ballot." Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954).

The cases cited by Appellees do not diminish the responsibility of voters and the value of media education as to such details. AB.13. To the contrary, the summaries in those cases failed to disclose the amendment's **chief purpose**, which

rightly should be disclosed in the ballot language, as it is here. IB.16-17; AB.18. Moreover, in Smith v. American Airlines, Inc., 606 So. 2d 618, 621 (Fla. 1992), because "the summary fail[ed] to communicate even the chief purpose," the Court found it unnecessary to decide which, "if any," of the omitted details were material. The cases are inapposite for the proposition Appellees cite them for.

The two other cases Appellees cite are no more analogous and actually support the accuracy of the summary for Amendment 3. AB.11-13. In both of those cases, the failure to reference a duration limitation on an aspect of the subject amendment was found to be misleading. Dep't of State v. Slough, 992 So. 2d 142, 148 (Fla. 2008); Advisory Op. to Att'y Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved, 2 So. 3d 968, 975 (Fla. 2009). Unlike the summaries at issue in Slough and Property Tax Cap, however, the summary in the case at bar clearly specifies the additional exemption's five (5) year duration and explains how it will extinguish. AB.10; IB.5. Indeed, the ballot summary's description of the duration limitation is not at issue, making Slough and Property Tax Cap inapposite.

A more analogous case is Advisory Opinion to the Attorney General re Homestead Valuation Limitation, 581 So.2d 586 (Fla.1991), wherein this Court found that the omission of the Consumer Price Index cap on homestead valuation increases was not fatal because it was captured in the summary's explanation that valuation would be limited to a "maximum of 3%." Id. at 588. Likewise, the

property purchase date of January 1, 2010 is captured (for purposes of its approval or disapproval in the November 2010 general election) by the summary's explicit statement that the exemption is for "persons who have not owned a principal residence during the preceding 8 years." The property purchase date is not "necessary to make the summary not misleading." 1.35% Prop. Tax Cap, 2 So. 3d at 975. "[T]his Court has repeatedly upheld summaries that do not detail every facet of an amendment's proposal." Embryonic Stem Cell Research, 959 So.2d at 201.

B. "First-Time Homestead"

The legislative history of SJR 532 cited by Appellees is irrelevant. AB.15-17; T.22. As Appellees' counsel noted at the final hearing, "interpret[ing] legislative intent . . . is not what we're here for." T.23. This Court's inquiry is limited to whether the summary for Amendment 3 fairly informs voters of the chief purpose of the proposed amendment, rather than the purpose of some prior iteration. AB. 8. The summary for Amendment 3 was not added until the amendment was in its final form; what the amendment used to say is irrelevant. T.20-22.[3]

[3] An objection was made at the final hearing when the prior iterations of SJR 532 were raised for the first time. T.21-22.

Appellees are unnecessarily consumed by differentiating "principal residence" and "first-time homestead." AB.15, 17. The idea that "the authors [of Amendment 3] intended that the term 'principal residence' be read synonymously with 'homestead'" appeared in Appellees' memorandum of law below. R.17. The Secretary's argument has never rested on the assumption that a voter will read them synonymously. AB.15 n.4. To the contrary, the terms are different and neither the summary nor the Secretary's position indicates otherwise. IB.18-20; R.44-45. Appellees' erroneous assumptions and frustrated analysis only inject confusion.

"Principal residence" is generally known to be one's "main home" and is commonly understood as the kind of property eligible for a homestead exemption – the subject of Amendment 3. It is contrary to rational analysis that voters cannot understand that a "principal residence" is their main home and not synonymous with "first-time homestead." "First-time homestead" is naturally read in the summary as referring to its antecedent – "the additional homestead exemption" – available to those "who have not owned a principal residence during the preceding 8 years." Regardless, Appellees' argument that "first-time homestead" is misleading is puzzling given their abandonment of the argument as to the ballot title's reference to "new homeowners." R.16; IB.17-18; AB.9 (failing to address the issue). If "new" is not misleading, neither is "first-time." See Advisory Op. to

Att'y Gen. re Protect People from the Health Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking, 814 So. 2d 415, 421 (Fla. 2002) ("We are unable to discern the logic as to how the application of essentially the same term can produce such dramatically different results.").

"[N]ot . . . during the preceding 8 years" explicitly informs voters that "first-time" is not necessarily literal. T.42-43. Indeed, Appellees' hypothetical voter, a renter since 2001, could not be misled because she has not owned a principal residence during the preceding 8 years – no matter how many homesteads she may have established before 2001. AB.15. Also, the term "first-time homestead" is strikingly similar to "first-time homebuyer" in the well-known federal tax credit available to **not** just those literally new to homeownership.[4] See 26 U.S.C. § 36; T.42. Voters therefore have a common understanding and knowledge that "first-time" is not necessarily literal. See Advisory Op. to Att'y Gen. re Local Trustees, 819 So. 2d 725, 732 (Fla. 2002) ("[It can be presumed] that the voter has a certain amount of common understanding and knowledge").

[4] The moniker "first-time" is even more appropriate here when comparing the eight-year gap in the exemption to the three-year gap in the federal tax credit.

Appellees argue that the "Court has frequently removed proposed amendments from the ballot due to similar ambiguities."[5] AB.17-18. The "ambiguities" involved in the cases Appellees cite, however, were failures to divulge the chief purpose of the amendment. The summary in Smith, 606 So. 2d at 621, "fail[ed] to communicate even the chief purpose," and the summary in Advisory Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers, 705 So.2d 563, 566 (Fla. 1998), failed to mention the amendment would "severely limit," rather than "establish[]" the right to choose health care provider as indicated in the summary. Likewise, in Advisory Opinion to the Attorney General re Proposed Property Rights, 644 So.2d 486, 495 (Fla. 1994), the Court found that the ballot title and summary was "devoid of any mention" that the proposal "would result in a major change in the function of government" resulting in a "substantial" fiscal impact. See also Advisory Op. to Att'y Gen. re Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1021 (Fla. 1994) (omission of the amendment's chief purpose and effect). The summary in Advisory Opinion to the Attorney General re People's Property Rights, 699 So. 2d 1304, 1309 (Fla. 1997), involved undefined legal terms and subjective standards not at issue here. Additionally, the discrepancy that the Court found between the terms "people" and

[5] That the Court has removed amendments when the summary contained a "material" ambiguity is a syllogism, but not otherwise helpful. AB.18 n.8.

"owner" in the ballot language was due to the conflict between the legal definitions of the terms and voters' common understanding. Id. 1308. Here, it is the common understanding of voters that saves them from Appellees' frustrated analysis, along with the "8 years" provision, which must be read in context with the "first-time" reference.

II. The Court May Place the Text of Amendment 3 on the Ballot

In her Initial Brief, the Secretary indicated that the Court has the authority to order that the text of Amendment 3 appear on the ballot in lieu of the challenged summary, as it did in ACLU of Florida v. Hood, Case No. SC04-1671 (Sept. 2, 2004). IB.12 n.2. An analysis of the Court's action in Hood is noticeably absent from Appellees' Answer Brief. Indeed, Appellees ignore Hood entirely and incorrectly state this Court has "never" ordered that the text of an amendment be placed on the ballot in lieu of its summary. AB.20. Appellees cannot insist that allegedly material terms are contained in the text of Amendment 3, yet contend that the text is too "complex[]" or inappropriate to appear on the ballot. AB.20. The text of Amendment 3 related to the challenged portion of the summary is less than a page and a half long. This Court, in fulfilling its duty to uphold the Legislature's proposal under "any reasonable theory," may order the placement of the text of Amendment 3 on the ballot in lieu of the challenged summary. See Gray

v. Golden, 89 So. 2d 785, 790 (Fla. 1956); ACLU of Florida v. Hood, Case No. SC04-1671 (Sept. 2, 2004).

CONCLUSION

The Secretary respectfully requests that the Court reverse the trial court's order and enter a final judgment in her favor.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this 13th day of August 2010 by U.S. mail and email to Barry Richard, Greenberg Traurig, P.A., 101 East College Avenue, Tallahassee, Florida 32301.

_____
Ashley E. Davis

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I HEREBY CERTIFY that the font used in this Reply Brief is Times New Roman 14 point in accordance with Florida Rule of Appellate Procedure 9.210(a)(2).

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Ashley E. Davis