IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF STATE, AN AGENCY OF THE STATE OF FLORIDA and KEN DETZNER, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE FOR THE STATE OF FLORIDA,

Petitioners,

v.

FLORIDA GREYHOUND ASSOCIATION, INC., a Florida Corporation and JAMES BLANCHARD, Individually,

Respondents.
_____/

CASE NO.: SC18-1287
L.T. Case No.: 1D18-3260

RESPONDENTS' ANSWER BRIEF

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PREFACE REGARDING RECORD CITATIONS

The trial court record is contained in the Court's online docketing system. References to claims, pleadings, motions and other papers filed with the trial court will be designated according to the record number assigned, i.e., "(R:___)." The transcript from the trial court hearing on July 26, 2018 is included in the record at R:672-728.

STATEMENT OF THE CASE

Florida's 2018 Constitution Revision Commission (the "Commission") approved eight proposed amendments to Florida's Constitution to be submitted to Florida voters for their approval during the 2018 General Election scheduled Tuesday, November 6, 2018. One of the amendments proposed by the Commission, Amendment 13 (as numbered by the Secretary of State), purports it "ENDS DOG RACING." Notably, Florida voters will not see the full language of Amendment 13 on their General Election ballot. See Fla. Stat. §101.161. Instead, Florida voters will be presented with the following ballot title and summary for Amendment 13 as drafted by the Commission:

> BALLOT TITLE: ENDS DOG RACING
>
> BALLOT SUMMARY: Phases out commercial dog racing in connection with wagering by 2020. Other gaming activities are not affected.

This appeal arises from the legal challenge to the ballot title and summary of

Amendment 13 brought by the Plaintiffs/Respondents, the Florida Greyhound Association, Inc. and James Blanchard (hereinafter "Respondents"). Respondents challenged the ballot language for Amendment 13 because it fails to disclose its chief purpose and is affirmatively misleading.

The Respondents filed a motion for summary judgment on July 6, 2018 (R:192). The Respondents' motion for summary judgment included the following exhibits: (A) the Affidavit of James Blanchard (R:219-222); (B) the Commission's complete Final Report dated May 9, 2018 (R:223-274); (C) a transcript of the March 20, 2018 meeting of the Commission discussing proposed Amendment 13 (R:275-346); (D) a transcript of the April 16, 2018 meeting of the Commission discussing proposed Amendment 13 (R:347-391); and (E) the Amendment 13 ballot language as of April 6, 2018, prior to the Commission's final revisions. (R:392-393). The Petitioners filed a cross motion for summary judgment. (R:394). In their response, the Petitioners did not contest the accuracy of any of the facts presented in the Respondents' motion or Mr. Blanchard's Affidavit. A hearing was held on the parties' cross motions for summary judgment on July 27, 2018. At the hearing, the parties stipulated that there were no disputed issues of material fact. (R:606).

On August 1, 2018, the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida entered a Final Judgment in favor of the Respondents, finding the Amendment 13 ballot language was clearly and conclusively defective and

enjoining the Defendants/Petitioners, Florida Department of State and Ken Detzner, (hereinafter "Petitioners") from placing Amendment 13 on the General Election ballot. (R:605-631).

STATEMENT OF FACTS

I. THE RESPONDENTS

James Blanchard is a Florida resident and a registered voter in Collier County. (R:219). Mr. Blanchard is personally engaged in greyhound racing in the State of Florida including owning over 100 greyhound racing dogs, training greyhound racing dogs, and entering into kennel contracts with pari-mutuel facilities for the provision of greyhound racing dogs for live races. (R:219).

The Florida Greyhound Association, Inc. is a Florida corporation made up of approximately 400 dues paying members. The Florida Greyhound Association, Inc. is dedicated to preserving live greyhound racing in Florida. A majority of the Florida Greyhound Association, Inc.'s members live in Florida and own, train, and/or race greyhound dogs at permitted pari-mutuel facilities in the State of Florida. (R:220).

II. GREYHOUND RACING/WAGERING IN FLORIDA

Greyhound racetracks permitted to conduct pari-mutuel wagering are statutorily defined as "pari-mutuel facilities."[1] There are currently eleven permitted

[1] "Pari-mutuel facility" means a racetrack, fronton, or other facility used by permitholder for the conduct of pari-mutuel wagering. Fla. Stat. §550.002(23).

greyhound pari-mutuel facilities in Florida that offer live racing. (R:221). All eleven of Florida's permitted greyhound pari-mutuel facilities currently offer guests the ability to wager on simulcast greyhound races staged both in-state and out-of-state. (R:221). In greyhound racing, a simulcast is the broadcast of a greyhound race occurring in real time at a separate offsite location. Simulcasting allows guests the ability to wager on greyhound races occurring off-site in the same betting pool as those attending the greyhound race in-person.[2] (R:221).

The Division of Pari-Mutuel Wagering has issued approximately 19 pari-mutuel permits to the eleven greyhound pari-mutuel facilities in Florida. Some greyhound racetracks have multiple pari-mutuel permits that operate at a single facility. (R:221). Aside from the rights granted to the Seminole Tribe of Florida in the Seminole Compact, the only persons eligible to hold a valid "cardroom license" (also commonly referred to as a "poker room") in Florida are licensed pari-mutuel

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"Pari-mutuel" means a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. Fla. Stat. §550.002 (22).

[2] Simulcast wagering is a significant form of wagering in Florida. Over $5.5 million was wagered in Florida on simulcast out-of-state races at Florida's greyhound pari-mutuel facilities from July 2016 to June 2017. See 2016/2017 Permitholder Activity Report, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, http://www.myfloridalicense.com /dbpr/pmw/documents/Stats/Handle2016-2017--YTD12--2017-08-16.pdf (last visited August 21, 2018).

permitholders. See Fla. Stat. §849.086(5)(a); Fla. Stat. §551.102(4). Therefore, for each of the eleven permitted greyhound pari-mutuel facilities in Florida to maintain their cardroom license, they must conduct a minimum number of live races. (R:221-222).

III. FLORIDA SLOT MACHINES AMENDMENT 4, 2004

In 2004, a constitutional amendment (number by the Secretary of State as "Amendment 4") was proposed through citizen initiative authorizing Miami-Dade and Broward County voters the ability to approve by separate referendum the use of slot machines at certain pari-mutuel facilities (including greyhound racetracks) located in their respective counties. (R:199). The complete ballot title and summary for Amendment 4 appeared on the General Election ballot in 2004 as follows:

> BALLOT TITLE: Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities
>
> BALLOT SUMMARY: Authorizes Miami-Dade and Broward Counties to hold referenda on whether to authorize slot machines in existing, **licensed parimutuel facilities** (thoroughbred and harness racing, **greyhound racing**, and jai alai) that have conducted live racing or games in that county during each of the last two calendar years before effective date of this amendment. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide. Requires implementing legislation.

(R:199) (emphasis added). Amendment 4 was approved by Florida voters in the 2004 General Election and now appears at Article X, Section 23 of the Florida Constitution. See Fla. Const. Art. X, §23. Both Broward and Miami-Dade County

voters subsequently approved county referenda to allow slot machines at pari-mutuel facilities located in their respective Counties. (R:199-200).

Following the adoption of Article X, Section 23, Florida Constitution, and pursuant to Sections 551.102 & 551.104, Florida Statutes, existing greyhound pari-mutuel facilities in Miami-Dade County and Broward County were eligible to obtain a slot machine license. However, like cardroom licenses, for permitted greyhound pari-mutuel facilities in Miami-Dade County and Broward County to maintain their slot machine license, they must conduct a full schedule of live racing. See Fla. Stat. §551.104. (R:221-222).

IV. 1998 CONSTITUTION REVISION COMMISSION

Today, Florida's Constitution contains just one declaration of a "fundamental value" held by the citizens of the State. That declaration was proposed by Florida's 1998 Constitution Revision Commission as "Amendment 6" titled "Public Education of Children." The complete ballot title and summary for Amendment 6 appeared on the General Election ballot in 1998 as follows:

> Public Education Of Children.— **Declares the education of children to be a fundamental value of the people of Florida**; establishes adequate provision for education as a paramount duty of the state; expands constitutional mandate requiring the state to make adequate provision for a uniform system of free public schools by also requiring the state to make adequate provision for an efficient, safe, secure, and high quality system. (emphasis added).

(R:198). The text of Amendment 6 read as follows:

ARTICLE IX
EDUCATION

SECTION 1. ~~System of~~ Public education.--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. 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.

(R:198-199). Thus, Florida voters were advised in the ballot summary that Amendment 4 declared "[t]he education of children is a fundamental value of the people of the State of Florida."

V. AMENDMENT 13

The full text of proposed "Amendment 13" as approved by the 2018 Commission reads as follows:

A new section is added to Article X of the State Constitution to read:

ARTICLE X
MISCELLANEOUS

Prohibition on racing of and wagering on greyhounds or other dogs.-The humane treatment of animals is a fundamental value of the people of the State of Florida. After December 31, 2020, a person authorized to conduct gaming or pari-mutuel operations may not race greyhounds or any member of the *Canis Familiaris* subspecies in connection with any wager for money or any other thing of value in this state, and persons in this state may not wager money or any other thing of value on the outcome of a live dog race occurring in this state. The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny

> renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.
>
> A new section is added to Article XII of the State Constitution to read:
>
> ARTICLE XII
> SCHEDULE
>
> Prohibition on racing or wagering on greyhounds or other dogs.- The amendment to Article X, which prohibits the racing of or wagering on greyhound and other dogs, and the creation of this section, shall take effect upon the approval of the electors.

(R:273-274). The final ballot title and summary for Amendment 13 is as follows:

> BALLOT TITLE: ENDS DOG RACING
>
> BALLOT SUMMARY: Phases out commercial dog racing in connection with wagering by 2020. Other gaming activities are not affected.

(R:274). Thus, the final ballot language does not disclose that Amendment 13 declares "[t]he humane treatment of animals is a fundamental value of the people of the State of Florida." Notably, the ballot title and summary for Amendment 13 were revised during the final full meeting of the Commission on April 16, 2018. The previous title and summary stated:

> "DOG RACING.—Prohibits gaming or pari-mutuel entities from racing dogs in connection with wagering; **eligibility of such entities to conduct other authorized pari-mutuel and gaming activities is not affected**; **prohibits wagering on outcome of in-state live dog races."**

(R:393) (emphasis added).

The full Commission met on March 20, 2018 and April 16, 2018 to discuss, amongst others, proposed Amendment 13. (R:275-391). As found by the trial court, the Commission engaged in extensive discussions on how cardroom licenses and slot machine licenses are "coupled" with live greyhound racing. (R:625-627). The trial court also found that the Commission engaged in lengthy discussion regarding the reason for the proposed ban on greyhound racing – the perceived inhumane treatment of the greyhounds used in the races. (R:622-623). The trial court relied on these statements to support its conclusion that the chief purposes of Amendment 13 were: "adoption in the constitution of a new 'fundamental value' of humane treatment of animals" and the "significant decoupling of other forms of gaming from pari-mutuel wagering on greyhound racing." (R:619).

STANDARD OF REVIEW

The validity of a proposed constitutional amendment is subject to de novo review. Armstrong v. Harris, 773 So. 2d 7, 11 (Fla. 2000). This Court has stated that any proposed constitutional amendment must be "accurately represented on the ballot; otherwise, voter approval would be a nullity." Id. at 12. Section 101.161(1), Florida Statutes, implementing the requirements of Article XI, Section 5 of the Florida Constitution, codifies this principle:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such

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

(emphasis added); see also Askew v. Firestone, 421 So. 2d 151, 155 (Fla. 1982) ("[T]he voter should not be misled.... All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide.... What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.") (quoting Hill v. Milander, 72 So.2d 796, 798 (Fla. 1954). The accuracy requirement applies to all constitutional amendments; therefore, any constitutional amendment proposed by Florida's Constitution Revision Commission must also satisfy this requirement. Armstrong, 773 So. 2d at 16 (stating that the accuracy requirement "applies across-the-board to all constitutional amendments").

To determine whether Amendment 13 is "accurately represented" in its ballot title and summary and satisfies the requirements of Section 101.161, Florida Statutes, the Court must consider two questions: "(1) whether the ballot title and summary, in clear and unambiguous language, fairly informs the voters of the chief purpose of the amendment; and (2) whether the language of the ballot title and summary, as written, will be affirmatively misleading to voters." See, e.g., Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Med. Conditions, 132 So. 3d

786, 797 (Fla. 2014). The title and summary must also be accurate and informative. See Advisory Opinion to the Attorney Gen. re Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998). The title and summary cannot be misleading, either expressly or by omission. Askew, 421 So. 2d at 158 ("the proposed ballot summary is deceptive, because although it contains an absolutely true statement, it omits to state a material fact necessary in order to make the statement made not misleading."). These requirements make certain that the "electorate is advised of the true meaning, and ramifications, of an amendment." Advisory Opinion to the Attorney Gen. re Tax Limitation, 644 So. 2d 486, 490 (Fla.1994) (quoting Askew, 421 So. 2d at 156). In sum, the ballot title and summary cannot either "fly under false colors" or "hide the ball" as to the amendment's true effect. Armstrong, 773 So. 2d at 16. Where the title and summary do not accurately describe the scope of the text of the amendment, the proposed amendment must be removed from the ballot because it has failed in its purpose. See, e.g., Roberts v. Doyle, 43 So. 3d 654, 659 (Fla. 2010); Term Limits Pledge, 718 So. 2d at 804.

Finally, the Court's analysis does not require consideration of the substantive merit of the proposed amendment. See, e.g., Fla. Dep't of State v. Slough, 992 So. 2d 142, 147 (Fla. 2008) (Lewis, J.); Advisory Opinion to Atty. Gen. ex rel. Limiting Cruel & Inhumane Confinement of Pigs During Pregnancy, 815 So. 2d 597, 600 (Fla. 2002) (Pariente, J., concurring) ("the merits or wisdom of the proposal is

irrelevant to whether the proposed amendment may be placed on the ballot").

SUMMARY OF ARGUMENT

"Nothing in the government of this state or nation is more important than amending our state and federal constitutions." Askew v. Firestone, 421 So. 2d 156, 158 (Fla. 1982) (Boyd, J., concurring). Thus, "[t]he law requires that before voting a citizen must be able to learn from the proposed amendment what the anticipated results will be." Id. In recognition of this principle, Florida law requires ballot titles and summaries for proposed amendments to the Florida Constitution be completely accurate, not misleading, and not omit any material information.

The Final Judgment entered by the trial court (R:635-668) should be affirmed for the following reasons: First, the ballot language for Amendment 13 fails to disclose its true chief purpose – to declare the humane treatment of animals a fundamental value and to decouple the licensure of cardrooms and slot machines from greyhound pari-mutuel operations. Second, the ballot language for Amendment 13 is affirmatively misleading because it fails to advise Florida voters that: (a) it would enshrine in the State Constitution the broad declaration "[t]he humane treatment of animals is a fundamental value of the people of the State of Florida"; (b) it erroneously advises Florida voters that the amendment "ENDS DOG RACING" when, in fact, it will neither end dog racing in Florida nor end wagering in Florida on the outcome of dog races which take place in other states; and (c) it

misinforms Florida voters that "[o]ther gaming activities are not affected." Last, on the issue of decoupling, the ballot language is further defective because it fails to inform voters that Amendment 13 would materially impact portions of Article X, Section 23, of the Florida Constitution by no longer requiring existing pari-mutuel facilities in Broward and Miami-Dade Counties to conduct greyhound races to maintain a slot machine license. These deficiencies, both separately and cumulatively, require striking the ballot title and summary and enjoining placement of Amendment 13 on the 2018 General Election ballot.

ARGUMENT

I. THE BALLOT LANGUAGE FAILS TO DISCLOSE THE TRUE CHIEF PURPOSE OF AMENDMENT 13.

When analyzing whether a proposed amendment is "accurately represented" in its ballot title and summary the first question the Court must consider is "whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment." Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Med. Conditions, 132 So. 3d 786, 797 (Fla. 2014).

Petitioners argue that the chief purpose of Amendment 13 is exactly as stated in its ballot summary: to phase out dog racing in connection with wagering by 2020 while leaving all other gaming activities unaffected. See Initial Brief, p. 11-12. Like using a word to define its own meaning, this argument fails to identify the actual chief purpose of Amendment 13. However, an examination of the plain text of

Amendment 13 evidences a much larger chief purpose – (1) to declare the humane treatment of animals a fundamental value; and (2) to decouple the licensure of cardrooms and slot machines from greyhound pari-mutuel operations.

A. Declaring the Humane Treatment of Animals a Fundamental Value is a Chief Purpose of Amendment 13.

As recognized by the trial court, a review of the actual text of Amendment 13 and the Commission's deliberations on the proposal demonstrate that declaring the humane treatment of animals to be a fundamental value is a chief purpose of the amendment. The first line of Amendment 13 broadly establishes "[t]he humane treatment of animals is a fundamental value of the people of the State of Florida" and goes on to ban the racing of any canine species in connection with wagering. To the extent further analysis beyond a plain reading of the amendment text is even necessary, under general rules of statutory construction the Court may look to the intent of the framers.[3] The transcripts of the Commission's deliberations[4] are littered with evidence of their true intent in proposing Amendment 13: to stop the perceived inhumane treatment of greyhounds.[5]

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[3] See, e.g., Lewis v. Leon County, 73 So. 3d 151, 153–54 (Fla. 2011).

[4] It is not uncommon for this Court to look to Constitutional Revision Commission transcripts in reviewing challenges to amendments proposed by the Commission. See Part IV, below.

[5] The trial court's Final Judgment cited a number of statements by the Commission members regarding the perceived inhumane treatment of greyhounds and the motivation for the proposed amendment. (R:622-623). A few illustrative examples

Further evidencing the true intent of Amendment 13, the Committee to Protect Dogs, a Florida Political Committee created by GREY2K USA Worldwide and the Humane Society of the United States, appeared as an amicus curiae in the case below. (R:161). In its brief to the trial court, the Committee acknowledged that GREY2K USA Worldwide and the Humane Society of the United States were the "chief sponsors of the constitutional amendment" who "worked directly with the chief CRC sponsor of this proposal and provided evidence, statistics, images and legal memoranda" to the Commission in support of the proposal (R:447). The motivations of GREY2K USA Worldwide and the Humane Society of the United States are undeniably animal advocacy and the prevention of perceived animal cruelty.[6] The chief purpose of Amendment 13 is further demonstrated by the chief

include the following: See R:289 ("The only way to stop the inhumanity is to ban it"); R:292 ("[T]hese dogs I have seen firsthand after the fact are scared to death of their own shadow. They are -- it is inhumane, in my opinion it is cruelty to animals."); R:293-294 ("I believe these are some of the worst frankly cruelty to animal cases that I have seen and that are operating legally in our state."); R:318 ("[T]his . . . would be completely unnecessary if the dogs were being cared for in a way that the rest of us, the rest of humanity felt like that they ought to be."); R:336-37 ("This is about the safety of animals.); R:350 ("These are how these dogs live their entire lives, 20 to 23 hours in a cage like this. These aren't pets. They should be. That's how these dogs are living their lives."); R:359 ("I don't think any of us, frankly are in favor of gambling, but if that's what it takes to protect the cruel and inhumane treatment of these dogs, then that's what we'll do."); R:366 ("It is preventing cruelty to animals and abuse and neglect and horror, frankly in my opinion, and we are too good a state for that.")

[6] "As a non-profit organization, we work to pass stronger greyhound protection laws and end the cruelty of dog racing on both national and international levels. We also promote the rescue and adoption of greyhounds across the globe."

sponsors' own website – protectdogs.org – which notes that "Yes on 13 is a grassroots campaign to end the cruelty of greyhound racing in Florida. Voters will have an [sic] historic opportunity to help thousands of greyhounds this November by voting Yes on this **humane amendment**."[7] Recent statements by another chief supporter of Amendment 13 – the Animal Law Section of the Florida Bar – also demonstrate the chief purpose of the proposed amendment. In the most recent publication of the Florida Bar Journal, the Animal Law Section published an article discussing Amendment 13 wherein it acknowledged:

> [T]here is no better place [than the Florida Constitution] for this evolution in the law to be enshrined. The law historically viewed animals as personal property. As we come to understand more about animals, the law is shifting toward a more humane view that recognizes the distinction between living, sentiment beings and other forms of personal property. Future generations will be able to point to this change in the Florida Constitution as an important shift in the way animals are treated and an example of our social and moral progress.

Ryan S. Parker & Ralph A. DeMeo, The Proposed Constitutional Amendment to Ban Greyhound Racing in Florida: The Time is Now, Fla. B.J., September/October

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GREY2K USA Worldwide, https://www.grey2kusa.org/ (last visited August 21, 2018)

"The Humane Society of the United States is the nation's most effective animal protection organization. We are the leading animal advocacy organization, seeking a humane world for people and animals alike." The Humane Society of the United States, http://www.humanesociety.org/about/ (last visited August 21, 2018)

[7] Committee to Protect Dogs, https://protectdogs.org (last visited August 21, 2018) (emphasis added).

2018, at 62. Accordingly, the true chief purpose of Amendment 13 is undoubtedly to declare the humane treatment of animals a fundamental value. See Advisory Opinion to the Attorney Gen. re Referenda Required for Adoption & Amendment of Local Gov't Comprehensive Land Use Plans, 902 So. 2d 763, 771 (Fla. 2005) (noting that the statement in the pregnant pig amendment ballot summary that the "[i]nhumane treatment of animals is a concern of Florida Citizens" was essential because this was the **chief purpose** of the pregnant pig amendment). By failing to inform Florida voters of this purpose the ballot language is conclusively defective and Amendment 13 must be stricken from the General Election ballot.

B. Decoupling Live Greyhound Racing From Other Gaming Activities is a Chief Purpose of Amendment 13.

In addition to the humane treatment of animals, the trial court correctly apprised that the chief purpose of Amendment 13 is to decouple greyhound pari-mutuel license requirements from maintaining cardroom and slot machine licensure – as is currently required by Florida law. Aside from the rights granted to the Seminole Tribe of Florida in the Seminole Compact, the only persons eligible to hold a valid "cardroom license" in Florida are licensed pari-mutuel permitholders. See Fla. Stat. §849.086(5)(a); Fla. Stat. §551.102(4). Therefore, for each of the eleven permitted greyhound pari-mutuel facilities in Florida to maintain their cardroom license, they must maintain pari-mutuel operations. (R:221-222). In addition, following the adoption of Article X, Section 23, Florida Constitution and

pursuant to Sections 551.102 & 551.104, Florida Statutes, existing greyhound pari-mutuel facilities in Miami-Dade and Broward County were eligible to obtain a slot machine license. However, for permitted greyhound pari-mutuel facilities in Miami-Dade and Broward County to maintain their slot machine license, they must maintain pari-mutuel operations. See Fla. Stat. §551.104.

However, as disclosed in the text of Amendment 13, if the amendment is approved by Florida voters, existing greyhound pari-mutuel facilities located throughout Florida will be permitted to continue gaming activities as standalone casinos with no pari-mutuel operations at all. The text of Amendment 13 states:

> The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law.

(R:273-274). The decoupling of the operation of cardrooms and slot machines from licensed greyhound pari-mutuel facilities is a substantial change to existing Florida law and the historical treatment of gaming operations in the State of Florida. Nevertheless, the ballot summary for Amendment 13 fails to disclose this chief purpose to Florida voters.

In addition to the expansion of gambling presented in the plain text of Amendment 13, the deliberations of the Commission further evinces the intent of

the drafters and a chief purpose of Amendment 13. The Commission discussed, at length, the Florida Legislature's inability to enact legislation decoupling gaming from greyhound pari-mutuel operations.[8] Thus, to the extent it is even necessary to look beyond the plain text of Amendment 13 – which devotes almost one third of its text to ensuring cardrooms and slot machine licenses will be free from the statutory pari-mutuel operation requirements – to discern its chief purpose, the intent of the framers also clearly reflects that a chief purpose of Amendment 13 is to decouple gaming operations from greyhound pari-mutuel facilities. Yet, the ballot language of Amendment 13 fails to disclose this important information to Florida voters. Instead, under false colors and without fully advising Florida voters, Amendment 13 seeks to accomplish what Florida's duly elected legislature has resisted, decoupling the licensure of cardrooms and slot machines from greyhound pari-mutuel operations.

[8] The trial court's Final Judgment Order cites to a number of statements from the Commission's deliberations on the topic of decoupling. (R:625-627). A few illustrative examples include the following: R:313 ("And so what we endeavored to do in this amendment here, Commissioner, was make sure that whatever activities the parimutuels were able to engage in today, they would not be impaired by a ban of racing activity in the future."); R:322-323 ("[D]og racing exists in the state of Florida, the only reason is because it is necessary constitutionally for dog racing to exist in order for the parimutuels to exist."); R:327 ("I brought up the point that, you know, this government step in and just dictate the marketplace, this amendment could say you are decoupling.").

II. THE AMENDMENT 13 BALLOT LANGUAGE IS AFFIRMATIVELY MISLEADING.

When analyzing whether a proposed amendment is "accurately represented" in its ballot title and summary the second question the Court must consider is "whether the language of the ballot title and summary, as written, will be affirmatively misleading to voters." Advisory Opinion to Atty. Gen. re Use of Marijuana, 132 So. 3d at 797. The trial court correctly held that the Amendment 13 ballot language is misleading because it deceives voters into believing that the amendment prohibits more than it does and fails to disclose material information to voters by not providing voters with the "truth in packaging" to which they are entitled. In response, the Petitioners make the circular argument that the chief purpose of Amendment 13 is what its ballot language says it is and attempt to explain away the deficiencies of the ballot language by invoking the "common sense" of Florida voters. These arguments are inadequate.

A. The Ballot Language is Affirmatively Misleading Because it Fails to Disclose that Amendment 13 Declares the Humane Treatment of Animals is a "Fundamental Value" of the People of the State of Florida.

The first line of Amendment 13 broadly establishes "[t]he humane treatment of animals is a fundamental value of the people of the State of Florida." The ballot title and summary for Amendment 13 are completely silent regarding its recognition of the humane treatment of animals as a fundamental value. The term "fundamental

value" currently appears only once in the Florida Constitution at Article IX, Section 1 wherein the Constitution states "[t]he education of children is a fundamental value of the people of the State of Florida." The recognition of this fundamental value was added to the Florida Constitution following voters' approval of "Amendment 6" as proposed by Florida's 1998 Constitution Revision Commission. See Commentary to Art. IX, §1, Florida Constitution. Notably, the 1998 ballot language for Amendment 6 clearly disclosed this chief purpose as follows:

> Public Education Of Children.—**Declares the education of children to be a fundamental value of the people of Florida**; establishes adequate provision for education as a paramount duty of the state; expands constitutional mandate requiring the state to make adequate provision for a uniform system of free public schools by also requiring the state to make adequate provision for an efficient, safe, secure, and high quality system.

(emphasis added). Thus, the 1998 Constitution Revision Commission recognized the significance of enshrining a "fundamental value" into the Florida Constitution and disclosed this value in the ballot summary presented to the voters. In contrast to Amendment 6 proposed by the 1998 Constitution Revision Commission, the ballot title and summary for Amendment 13 make no mention of the creation of a new "fundamental value" which is likely to be referenced in the future application of Florida's laws and regulations for generations to come. As aptly stated by Judge Anstead, "[t]he most obvious and effective way to recognize a value as fundamental and of the highest importance and priority is to make provision for that value in our

society's supreme and basic charter, our constitution." Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 410 (Fla. 1996) (Anstead, J., dissenting).

The illogicality of memorializing a statement reflecting Floridians' consensus in the Florida Constitution without ever obtaining the voters' consensus should not be overlooked. Nor should the importance of enshrining statements of society's consensus in our Constitution. "The legal principles in the state constitution inherently command a higher status than any other legal rules in our society. By transcending time and political mores, the constitution is a document that provides stability in the law and **society's consensus** on general, fundamental values." Advisory Opinion to Atty. Gen. ex rel. Limiting Cruel & Inhumane Confinement of Pigs During Pregnancy, 815 So. 2d 597, 600 (Fla. 2002) (Pariente, J., concurring) (emphasis added). The 1998 Constitution Revision Commission understood that as an unelected body it should not add declarations of Floridians' fundamental values to the Florida Constitution without first disclosing those values to Florida voters in the ballot language for approval.

Similarly, when the pregnant pig provision was added to the Florida Constitution at Article X, Section 20, the ballot summary was identical to the first clause of the first sentence of the proposed amendment text which stated: "Inhumane treatment of animals is a concern of Florida citizens." Limiting Cruel & Inhumane

Confinement of Pigs During Pregnancy, 815 So. 2d at 597. Thus, even though the pregnant pig amendment did not create a new fundamental value, it nevertheless found it necessary to disclose to voters in the ballot summary that the proposed amendment included a broad declaration of societal consensus to be enshrined in the Constitution. Amendment 13 fails in this regard.

The fundamental value statement in Amendment 13 goes well beyond the scope of the subject matter disclosed in its ballot title and summary. Where the summary of a proposed amendment does not accurately describe the scope of the text of the amendment to the voters, it fails in its purpose. Term Limits Pledge, 718 So. 2d at 804 (noting that "the problem 'lies not with what the summary says, but, rather, with what it does not say'"). In Term Limits Pledge, the Supreme Court found that the ballot summary's failure to inform the public that the proposed amendment would grant the Secretary of State discretionary constitutional powers concerning elections that they presently did not possess was enough to strike the proposed amendment from the ballot. Id. ("Because the ballot summary is silent as to the constitutional ramifications on, and the discretionary authority vested in, the Secretary of State under the proposed amendment, the ballot summary must fail.")

The scope of the fundamental value declaration in Amendment 13 is not limited to greyhounds or even *Canis Familiaris*, but to all animals. While the ballot title and summary reference "dog(s)" and "greyhounds" five times in total, neither

statement references the broader category of "animals." Thus, a Floridian voting in favor of Amendment 13 merely to support a prohibition on greyhound racing and wagering in Florida will also unwittingly be voting to recognize the humane treatment of all animals as a fundamental value in the Florida Constitution. Likewise, a Floridian voting in favor of Amendment 13 because of his or her belief that it will reduce gambling in the Florida will unknowingly be voting to create only the second recognized "fundamental value" in Florida's constitutional history. Florida voters must be made aware of this declaration on their ballot so that they can weigh its potential effect on other Florida business ventures (e.g., horse racing, dog breeding, and zoos) and educational pursuits by Florida universities (e.g., the use of animals in conducting research). Because the ballot title and summary for Amendment 13 fail to do so, the ballot language must be stricken and Amendment 13 must be enjoined from placement on the General Election ballot.

Petitioners argue that the "fundamental value" declaration in Amendment 13 is merely prefatory and lacks legal effect; therefore, it cannot be the chief purpose of the proposed amendment and need not be disclosed to Florida voters. See Initial Brief, p. 20-23. In support of this contention, Petitioners cite to the "well-established precedent" of Evans v. Firestone to argue that ballot language for proposed constitutional amendments "should tell the voter the legal effect of the amendment, and no more." Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984). However,

Petitioners misconstrue the Court's statement in Evans v. Firestone – which was arguably made *in dicta* – and fail to provide proper context. In Evans v. Firestone, the Court considered whether a ballot summary for a proposed amendment that would limit a defendants' liability in civil actions and elevated the status of the summary judgment rule to that of a constitutional right was fatally misleading when it claimed to "establish" a citizen's right in civil actions that already existed in Florida's Rules of Civil Procedure. Ultimately, the Court ruled that the proposed amendment's failure to advise the voter that it was elevating an existing procedural rule "to the status of a constitutional right, protected in the same manner and to the same degree as are other constitutional rights" was misleading and struck the proposed amendment from the ballot. Id.

In stating that the ballot summary should "tell the voter the legal effect of the amendment, and no more", the Court in Evans v. Firestone was condemning language in the ballot summary it characterized as mere "editorial comment[ary]" providing a "subjective evaluation of special impact." Id. Thus, the Court in Evans v. Firestone was not evaluating whether the offending ballot language was prefatory, whether the text of the amendment omitted from the ballot language had legal effect, or whether the ballot language described the chief purpose of the proposed amendment. Moreover, the Court certainly was not encouraging future proponents of constitutional amendments to provide Florida voters with *less objective*

information regarding the contents of a proposed amendment to the Florida Constitution. Accordingly, Petitioners' argument that voters should only be advised of the legal effect of the proposed amendment and need not be informed of the enshrinement of broad statements reflecting society's consensus in the Florida Constitution is unsupported by caselaw.

Nevertheless, the declaration of a fundamental value does have legal effect and is not merely prefatory. For instance, in Bush v. Holmes, 919 So. 2d 392 (Fla. 2006), this Court found the declaration that education is a fundamental value of the people of the State of Florida to be a critical component of Article IX, section 1. Bush v. Holmes, 919 So. 2d at 405. Specifically, the Court stated:

> Currently, article IX, section 1(a), which is stronger than the provision discussed in *Henderson*, **contains three critical components** with regard to public education. The provision (1) **declares that the "education of children is a fundamental value of the people of the State of Florida"** . . .

Id. (Pariente, J.) (emphasis added). The Court also discussed how this declaration was a key component of the revision proposed by the 1998 Constitutional Revision Commission, stating:

> In 1998, in response in part to *Coalition for Adequacy & Fairness*, the Constitutional Revision Commission proposed and the citizens of this state approved an amendment to article IX, section 1 **to make clear that education is a "fundamental value"** and "a paramount duty of the state …

Id. at 403 (emphasis added). Because that declaration was a critical component of

the 1998 revisions, the 1998 Commission included it in the ballot summary for that proposal. Similarly, the declaration in the text of Amendment 13 that the humane treatment of animals is a fundamental value must be included in the ballot summary presented to Florida voters.

Petitioners' reliance on Gray v. Bryant, 125 So. 2d 846, 851 (Fla. 1960) to argue that the fundamental value clause has no independent legal effect is misguided. The 1960 Florida Supreme Court case did not involve a ballot summary, did not hold that if a proposed constitutional amendment was not self-executing that it was meaningless or perfunctory, and recognized that even constitutional provisions which were not self-executing could be supplemented by implementing legislation. Gray v. Bryant, see also Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 408 (Fla. 1996) (acknowledging that non-enforceable constitutional language may be executed through legislation).

Likewise, the Petitioners' contention that the "fundamental value" language in the proposed amendment constitutes prefatory language is not in line with current statutory construction precepts. Prefatory clauses generally provide introductory wording to state underlying facts or the purpose for the ensuing legally significant portion of a statute or constitutional provision to stand upon. Petitioners have summarily assumed – without full explanation – that the weighty statement in Amendment 13 that "[t]he humane treatment of animals is a fundamental value of

the people of the State of Florida" can be properly categorized as prefatory. However, a comparison of the fundamental value clause in Amendment 13 to constitutional and statutory language previously deemed to be prefatory highlights the inconsistency of this conclusion. Moreover, under well-settled principles of statutory construction, the use of different terms in different portions of the same statute is strong evidence that different meanings were intended. State v. Bradford, 787 So. 2d 811, 819 (Fla. 2001). Thus, the use of "animals" in the first sentence of the text of Amendment 13 indicates a much broader application than the subsequent clauses specifically relating to greyhounds; therefore, the declaration of a fundamental value as to all animals cannot be deemed prefatory.

Petitioners cite to District of Columbia v. Heller, 554 U.S. 570 (2008) to argue that, like the prefatory clause in the Second Amendment of the United States Constitution, the fundamental value clause in Amendment 13 is prefatory. The Court in Heller, analyzing the Second Amendment, found the statement "[a] well regulated Militia, being necessary to the security of a free State" to be prefatory because it was merely a generalized fact which supports and gives purpose to the Constitutional Amendment protecting the right to bear arms. District of Columbia v. Heller. This is legally distinct from the Florida Constitution declaring a fundamental value. While the Second Amendment language states a factual background statement, the "fundamental value" language in Amendment 13 extends beyond the scope of mere

background and context by anointing an assumed shared value of all people of the State of Florida to be enshrined in the Florida Constitution. In addition, the Court in District of Columbia v. Heller did not conclude that the prefatory language had no legal effect – instead, the Court's majority conducted a rigorous analysis of the prefatory language in determining the scope and purpose of the Second Amendment.

B. The Amendment 13 Ballot Title is Demonstrably False.

The ballot title for Amendment 13 broadly represents to Florida voters that the proposed amendment "ENDS DOG RACING" and goes on to state in the ballot summary that Amendment 13 "[p]hases out commercial dog racing in connection with wagering by 2020." Thus, from a plain reading of the ballot title and summary, the implied effect of Amendment 13 is the elimination of dog racing in Florida in its entirety – including all commercial and recreational races, whether associated with wagering or not – and to prohibit all wagering on greyhound or other dog races. As the trial court concluded, this is not an accurate description of the effect of Amendment 13.

Amendment 13 will not "end dog racing" in the State of Florida; rather, individuals and business will be permitted to continue to race dogs both recreationally and commercially, so long as no persons are wagering on the outcome of the race. This is evidenced by the text of Amendment 13 which states that "a person authorized to conduct gaming or other pari-mutuel operations may not race

greyhounds or any other member of the *Canis Familiaris* subspecies in connection with any wager for money . . .", thereby limiting the application of the prohibition on dog racing to pari-mutuel operators only. Nevertheless, the ballot title for Amendment 13 states in absolute terms that it "ENDS DOG RACING."

Petitioners repeatedly attack the trial court's Order for "reading the title in isolation" and failing to read the ballot title and summary together. However, the trial court specifically concluded that whether the title and summary are considered separately or together, both are misleading. (R:608). Further, while Respondents agree with the general proposition that the Court must read the ballot title and summary together in determining whether the ballot information properly informs the voters, the intent of Section 101.161, Florida Statutes, and its case law progeny certainly do not contemplate allowing false statements to be included in the title or summary. Thus, whether read in isolation or in conjunction with the Amendment 13 ballot summary, the fully capitalized title "ENDS DOG RACING" is a false statement that will mislead Florida voters as to the breadth of the proposed amendment. This is an uncurable defect and requires striking the ballot language.

Nevertheless, consideration of the Amendment 13 ballot summary for Amendment 13 raises even more problems. The ballot summary states that Amendment 13 "[p]hases out commercial dog racing in connection with wagering by 2020." The term "commercial dog racing" does not appear in the text of the

amendment, however its use in the ballot summary connotes a distinction between "dog racing" and "commercial dog racing." By citation to the last line of a 2010 Encyclopedia Britannica article the Petitioners attempt to argue that it is common knowledge that the ordinary meaning of the term "dog racing" – presumably distinct from "commercial dog racing" – entails wagering and, therefore, the "average Florida voter" will understand that "phasing out commercial dog racing" or "ends dog racing" does not include dog racing unassociated with wagering. See Initial Brief, p.15. Respondents are unable to locate any Florida court opinion where citation to an encyclopedia article was sufficient to establish the "common sense or knowledge" of Florida voters. Accepting the Petitioners' argument would require the unusual presumption that Florida voters are walking encyclopedias with common knowledge of their entire contents thereby eliminating the need for the proponents of constitutional amendments to explain anything at all. The Petitioners strain credulity by characterizing information that appears in an encyclopedia as the common knowledge of Florida voters. Instead, a plain reading of the ballot title results in a false statement which cannot be presented to Florida voters and should be stricken from the General Election ballot.

C. The Ballot Language is Affirmatively Misleading Because it Fails to Inform Florida Voters that Wagering on Greyhound Racing in Florida Will Continue.

Even accepting Petitioners' contention that the plain meaning of "dog racing"

entails wagering, the Amendment 13 ballot language is still misleading because the proposed amendment will not prohibit gaming or pari-mutuel operators from continuing to engage in the acceptance of wagers on dog races simulcasted from other states. While the text of Amendment 13 specifically applies only to wagering on the outcome of "live dog race[s] occurring in this state", these limitations are not disclosed to Florida voters in the ballot language. Despite the representations made in the ballot title and summary, wagering on dog racing will still be permitted in the State of Florida following the passage of Amendment 13.

Whether Amendment 13 is intended to apply only to pari-mutuel wagering on greyhound races conducted in Florida versus all races wherever conducted was specifically addressed during the Commissions meetings on March 20, 2018 and April 16, 2018. At both meetings the Commission decided that wagering on simulcasted greyhound racing from other states would not be affected by Amendment 13. (R:312-13, 359). However, voters will not be informed of this important caveat.

Notably, the ballot title and summary for Amendment 13 were revised during the final full meeting of the Commission on April 16, 2018. The previous title and summary stated:

> DOG RACING.—Prohibits gaming or pari-mutuel entities from racing dogs in connection with wagering; eligibility of such entities to conduct other authorized pari-mutuel and gaming activities is not affected; **prohibits wagering on outcome of in-state live dog races**.

(R:393) (emphasis added). Without explanation, the ballot title and summary for Amendment 13 were modified during the April 16, 2018 Commission meeting to reflect its final form: "ENDS DOG RACING.—Phases out commercial dog racing in connection with wagering by 2020." It is unclear why the Commission, at the eleventh hour, caused the ballot title and summary for Amendment 13 to be substantially misleading and inaccurate by removing language advising Florida voters of the true scope and limitations of the proposed amendment.

The Florida Supreme Court has found similar defects in ballot titles and summaries warrants striking the proposed amendments from the ballot. In 1994, the Florida Supreme Court found that a proposed amendment ballot title "SAVE OUR EVERGLADES" was misleading because it suggested to Florida voters that the Everglades were in peril while the text of the amendment failed to address any alleged peril. Advisory Opinion to the Attorney Gen.-Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994). In addition, the text of the amendment referred only to "restoring" the Everglades to their original condition, not "saving" the Everglades from peril. Id. Thus, the Court found that the exaggerated title language would mislead voters as to the actual contents and purpose of the proposed amendment. Id. Likewise, the overstated title of Amendment 13 – "ENDS DOG RACING" – is misleading to Florida voters.

The Court in Save Our Everglades was also critical of the proposed

amendment's ballot summary which stated that the sugarcane industry "which polluted the Everglades" would "help to pay to clean up pollution" implying to Florida voters that the sugarcane industry would be sharing in the expense of cleanup when, in fact, sugarcane processors would exclusively be paying the cleanup expenses. Id. The defect in the Save our Everglades ballot summary is minor in comparison to the inconsistencies between the ballot summary and the actual text of Amendment 13. While the ballot summary of Amendment 13 advises Florida voters that it will end dog racing by prohibiting "the racing of, and wagering on, greyhounds," in reality the Amendment will merely prohibit staging live races of greyhounds in Florida in connection with wagering. Recreational greyhound racing will continue unabated. Wagering in Florida on out-of-state greyhound races will also continue unabated.

Further, the undisclosed limitations on the dog racing prohibition of Amendment 13 causes the omission of the word "live" from the ballot title and summary to be material. Although the text of Amendment 13 states that its prohibition is limited to "**live** dog racing occurring in this state", nowhere is this limiting descriptive used in the ballot title or summary. Moreover, neither the ballot title nor summary clarify the geographic limitations of Amendment 13 by stating that its prohibition only applies to races held "**in Florida**." As noted above, prior to the final Commission meeting on April 16, 2018 the ballot summary specifically

advised voters that it related to "in-state live dog races." However, this language was inexplicably deleted at the eleventh hour resulting in an inaccurate summary of Amendment 13.

In Roberts v. Doyle, the Florida Supreme Court held that a material omission from the ballot title and summary related to the scope of the proposed constitutional amendment was sufficiently misleading to exclude the amendment from the ballot. Roberts, 43 So. 3d at 660. The proposed constitutional amendment in Roberts sought to expand Florida's homestead exemption benefits; however, the ballot title and summary failed to advise voters of some of the limitations to claiming the new exemption benefits that were stated in the proposed amendment's text. Id. Thus, voters could be misled that the scope of the exemption was much broader than was presented in the proposed amendment. Id. at 661. Similarly, Amendment 13 misleads Florida voters into believing that the dog racing and wagering prohibitions stated in the ballot title and summary will apply broadly when, in fact, they will not.

Petitioners again cite Floridians' "common sense" to excuse the drafters' failure to disclose to voters that Amendment 13 only affects live dog racing in Florida. See Initial Brief, p. 17-19. In support of this argument the Petitioners cite the pregnant pig and the second-hand smoke amendments as examples of amendments banning specific conduct in Florida that did not specify in their ballot language that their scope was limited to Florida. See Initial Brief, p. 18. However,

these activities are distinguishable from the conduct at issue here because the activity at issue here (greyhound racing), while physically taking place in another state, will continue to take place live, in Florida, via technology (simulcast). Moreover, wagering on greyhound racing in Florida will continue. Thus, contrary to the ballot title and summary, Amendment 13 will neither end dog racing in Florida nor end wagering on dog racing in Florida.

D. The Ballot Summary Statement "Other Gaming Activities are Not Affected" is Affirmatively Misleading.

The ballot summary is further defective in its oblique statement that "[o]ther gaming activities are not affected" because gaming activities at greyhound pari-mutuel facilities will be affected. As a requirement for licensure of current greyhound pari-mutuel facilities to operate card rooms and slot machines the facilities must maintain greyhound pari-mutuel operations. See Fla. Stat. §849.086(5)(a); Fla. Stat. §551.102(4); (R:221-222). Therefore, for the permitted greyhound pari-mutuel facilities in Florida to maintain their cardroom and/or slot machine license, they must maintain pari-mutuel operations. Id. However, as disclosed in the text of Amendment 13, current greyhound pari-mutuel facilities will be permitted to continue gaming activities as standalone casinos with no pari-mutuel operations at all. Thus, to state in the ballot summary that "[o]ther gaming activities are not affected" is false because the statutory requirements to maintain existing cardroom licenses and slot machine licenses in Florida will be significantly altered

if Amendment 13 is adopted. Moreover, gaming activities that Floridians understood were only permissible at greyhound facilities will now operate free from the regulatory conditions Floridians have known since the legalization of poker rooms at pari-mutuel facilities in 1996.

While the Petitioners' Initial Brief all but acknowledges that Amendment 13 will abrogate Florida's statewide "coupling requirement" codified in Section 551.102(4), Florida Statutes, they repeatedly argue that the ballot summary need not "list every statute, regulation, or other form of sub-constitutional law that a proposed amendment would abrogate." See Initial Brief, pp. 28-30. To excuse the Amendment 13 drafters' non-disclosure of its effect on Florida's statutory coupling requirement, Petitioners yet again cite to Floridians' "common sense" arguing that it is common knowledge that the adoption of a constitutional amendment will supersede conflicting statutes or regulations. However, even if the Court were to accept Petitioners' arguments, if Amendment 13 in any way abrogates Florida's statutory coupling requirement, then it will affect other gaming activities thereby rendering the ballot summary statement to the contrary pointedly misleading.

III. THE BALLOT LANGUAGE FAILS TO INFORM VOTERS THAT IT WILL MATERIALLY IMPACT ARTICLE X, SECTION 23 OF THE FLORIDA CONSTITUTION.

Contrary to the Petitioners' argument, adoption of Amendment 13 would result in a change in the constitutional status quo by materially impacting Article X,

Section 23 of the Florida Constitution. The ballot language is misleading because it fails to disclose this material impact to Florida voters.

In 2004, a majority of Florida voters approved "Amendment 4" adding Article X, Section 23 to the Florida Constitution. Article X, Section 23 authorizes the use of slot machines at existing pari-mutuel facilities in Broward County and Miami-Dade County following the approval of a county referendum by a majority of each county's voters. Notably, both the ballot title and summary for Amendment 4 informed Florida voters that they would be voting on whether to allow slot machines **in pari-mutuel facilities**. Specifically, the ballot title and summary read as follows:

> BALLOT TITLE: Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines **in Parimutuel Facilities**
>
> BALLOT SUMMARY: Authorizes Miami-Dade and Broward Counties to hold referenda on whether to authorize slot machines **in existing, licensed parimutuel facilities** (thoroughbred and harness racing, **greyhound racing**, and jai alai) that have conducted live racing or games in that county during each of the last two calendar years before effective date of this amendment. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide. Requires implementing legislation.

This restriction is also continued in the text of Article X, Section 23, which provides in pertinent part:

> (a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within **existing, licensed parimutuel facilities**

> **(thoroughbred and harness racing, greyhound racing, and jai-alai)** that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, **slot machines shall be authorized in such parimutuel facilities**. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

Fla. Const. Art. X, §23(a) (emphasis added). Both Broward County and Miami-Dade County subsequently approved local referendums authorizing slot machines at existing pari-mutuel facilities in their respective counties. (R:199-200).

Thereafter, the Florida legislature adopted implementing legislation at Section 551.104(1), Florida Statutes, which provides for the issuance of licenses to existing pari-mutuel facilities by the Division of Pari-Mutuel Wagering "to conduct slot machine gaming." Under Section 551.104(1), the Division is authorized to issue such licenses to an "eligible facility" – a term that is defined in Section 551.102(4). Section 551.104(2) goes on to establish additional conditions for the issuance of licenses in accordance with Article X, Section 23 of the Florida Constitution:

> (2) An application may be approved by the division only after the voters of the county where the applicant's facility is located have authorized by referendum slot machines within pari-mutuel facilities in that county as specified in s. 23, Art. X of the State Constitution.
>
> (3) A slot machine license may be issued only to a licensed pari-mutuel permitholder, and slot machine gaming may be conducted only at the eligible facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities.

Fla. Stat. §551.104(2) - (3). Thus, Florida voters adopted Article X, Section 23 and, subsequently, Broward County and Miami-Dade County voters approved the related county referendums to allow slot machines under very narrow circumstances, i.e. at existing licensed pari-mutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai). However, the text of Amendment 13 explicitly states that "the failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses . . . and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law." (R:273-274). Thus, if Amendment 13 is approved and made a part of the Florida Constitution, greyhound pari-mutuel permitholders in Broward and Miami-Dade Counties that have obtained a slot machine license will be allowed to maintain their slot machine license without engaging in any pari-mutuel activity. At the very least, Amendment 13 negates a portion of Article X, Section 23 of the Florida Constitution – i.e. the specific references to greyhound racing – while converting the authorization granted under Article X, Section 23 for slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties into an authorization for standalone casinos. Both changes are material and not disclosed to Florida voters in the Amendment 13 ballot language.

Notably, the title and ballot summary initially drafted for Amendment 13

disclosed that the proposed amendment would allow existing greyhound pari-mutuel facilities to continue to conduct other forms of gaming activities. It provided:

> "DOG RACING.—Prohibits gaming or pari-mutuel entities from racing dogs in connection with wagering; **eligibility of such entities to conduct other authorized pari-mutuel and gaming activities is not affected**; prohibits wagering on outcome of in-state live dog races."

(R:393). (emphasis added). However, as previously noted above, the ballot title and summary were revised at the April 16, 2018 final meeting of the Commission and the reference to "such entities" was deleted. Instead of expressly disclosing in the ballot summary that greyhound pari-mutuel facilities could continue to conduct other form of gaming activity, the new ballot title and summary simply provided:

> ENDS DOG RACING.—Phases out commercial dog racing in connection with wagering by 2020. Other gaming activities are not affected.

(R:274). The revised summary is materially misleading as a voter could easily and mistakenly believe the reference to "[o]ther gaming activities are not affected" merely refers to other gaming activities at facilities operated by the Seminole Tribe of Florida or gaming activities at horse racing pari-mutuel facilities, and not the greyhound pari-mutuel facilities which are currently required to conduct greyhound racing in order to offer gaming activities. The final ballot summary makes no mention of its material change to the requirements of Article X, Section 23 of the Florida Constitution.

Florida courts recognize "that lawmakers who are asked to consider

constitutional changes, and the people who are asked to approve them, must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be." Fla. Dep't of State v. Fla. State Conference of NAACP Branches, 43 So. 3d 662, 668 (Fla. 2010) (quoting Smathers v. Smith, 338 So. 2d 825, 829 (Fla. 1976)). In line with this general principle, this Court has routinely held that a ballot summary must inform the voter if the proposed amendment will have a material impact on an existing constitutional provision and, failure to do so, is fatal.[9] For example, in Advisory Opinion to Attorney General in Protect People From Second-Hand Smoke, 814 So. 2d 415, 419 (Fla. 2002) the Court stated:

> **We are most concerned with** relationships and impact on other areas of law when we consider whether the ballot summary and title mislead the voter with regard to effects and **impact on other constitutional provisions.** See Race in Public Education, 778 So.2d at 899-900 (**stating that ballot summaries must be invalidated when they fail**

[9] The Committee to Protect Dogs, an amicus curiae to this proceeding, argued at the trial court hearing on July 26, 2018 that the requirement to disclose material impacts on other constitutional provisions is linked to the single-subject requirement and, therefore, only applicable to citizen initiatives. All parties to this proceeding agree that the single-subject requirement is only applicable to citizen initiatives and not applicable to amendments proposed by the Constitution Revision Commission or Florida Legislature. (R:710-711). However, this Court previously struck an amendment proposed by the Florida Legislature for failure to alert the public to a material change to other provisions of the Constitution. See Florida Dept. of State v. Florida State Conference of NAACP Branches, 43 So. 3d 662, 668-69 (Fla. 2010). Thus, this disclosure requirement appears to apply to all proposed constitution amendments irrespective of the application of the single-subject rule.

> **to mention *constitutional provisions* that are affected**, or when they fail to define terms adequately or to use consistent terminology).

Advisory Opinion to Atty. Gen. in Protect People from Second-Hand Smoke, (emphasis added); see e.g., Advisory Opinion to Atty. Gen. ex rel. Amendment to Bar Gov't from Treating People Differently Based on Race in Pub. Educ., 778 So. 2d 888, 898 (Fla. 2000) (invalidating proposed amendment because "the ballot summaries are defective for not identifying the initiative petitions' effect on [other] existing constitutional provisions"); Armstrong, 773 So. 2d at 17 (striking a proposed amendment for the failure to disclose in the ballot title or summary that it would alter the existing "cruel **or** unusual punishment" standard in the Florida Constitution to, instead, become "cruel **and** unusual"); NAACP Branches, 43 So. 3d at 669 (striking a proposed amendment altering the standards used for establishing legislative and congressional boundaries because it failed to inform voters that it would change the existing mandatory contiguity requirement prescribed by the constitution to only a discretionary requirement); Term Limits Pledge, 718 So. 2d at 803 (finding a ballot summary fatally flawed because it failed to disclose the proposal would substantially impact the constitutional power and duties of the Secretary of State); Tax Limitation, 644 So. 2d at 491-94 (striking proposed amendment seeking to require approval by two-thirds of voters for all future proposed constitutional amendments that impose a state tax because ballot language failed to inform voters that the proposed amendment would substantially affect other

taxing provisions of the constitution without identifying those provisions for the voters).

In this case, the ballot summary is fatally flawed because it fails to disclose that Amendment 13 would substantially and materially impact Article X, Section 23 of the Florida Constitution. Specifically, Amendment 13 would eliminate the requirement that greyhound facilities in Miami-Dade County and Broward County must continue to operate a pari-mutuel facility to maintain a slot machine license. Voters were clearly told that if the proposal passed, slot machines would *only* be allowed in licensed pari-mutuel facilities, including greyhound racing tracks in Miami-Dade and Broward Counties. Thus, slots were only to be permitted as a supplemental form of gambling to add revenue for the greyhound racetracks and other pari-mutuel facilities – not as the primary form of gambling to replace live racing. Consequently, Amendment 13 breaks a compact with Florida voters. The 2004 proposal clearly did not authorize standalone facilities to offer slot machines and, likely, would not have received statewide approval if it had proposed converting greyhound racetracks to standalone casinos as proposed by Amendment 13 and left undisclosed to Florida voters.

Petitioners argues that Article X, Section 23 simply authorized Miami-Dade County and Broward County to permit slot machines at pari-mutuel facilities and Amendment 13 will not affect the original authorization, which has already

occurred. See Initial Brief, p. 25-26. Petitioners then acknowledge that Article X, Section 23 does not set any freestanding constitutional ceiling for slot machine licensing that would prohibit the legislature from expanding the scope of slot machine gaming in Florida and/or allow slot machines in facilities that conduct no pari-mutuel activities. Id. at 27. The Respondents agree. However, the Florida legislature has not chosen to permit standalone slot machines in Miami-Dade County and Broward County, which is precisely what Amendment 13 would accomplish – without disclosure to Florida voters. Thus, the only legal grant of authority for the slot machines in Miami-Dade County and Broward County to operate is Article X, Section 23, which specifically limits slot machine licensure to pari-mutuel facilities only.

Based on this Court's precedent, the ballot summary for Amendment 13 is fatally flawed because it fails to inform voters of this material change to Article X, Section 23. As a result, the proposed ballot title and summary must be stricken and Amendment 13 must be enjoined from placement on the 2018 General Election ballot.

IV. THE TRIAL COURT APPROPRIATELY CONSIDERED STATEMENTS BY MEMBERS OF THE COMMISSION AND PRIOR DRAFTS TO DETERMINE THE INTENT OF THE FRAMERS.

Petitioners argue that in reviewing the Amendment 13 ballot language the trial court should have only considered the final ballot language and not prior drafts,

statements of Commission members, or even similar ballot language used in previously proposed amendments. However, it is not uncommon for this Court to look beyond the ballot language in reviewing challenges to amendments proposed by the Constitutional Revision Commission including the transcripts of the Commission's deliberations. See Caribbean Conserv. v. Fla. Fish & Wildlife, 838 So. 2d 492, 503 (Fla. 2003) (citing the 1998 Commission transcript to support decision that constitutional provision was constitutional); Kainen v. Harris, 769 So. 2d 1029, 1033, 1035 (Fla. 2000) (Anstead, J. concurring & Pariente, J. concurring) (citing Commission transcripts to support Court's holding that the ballot measure was not defective); Bush v. Holmes, 919 So. 2d 392, 417 (Fla. 2006) (Bell, J., dissenting) (citing Commission transcripts to support textual understanding of the amendment). In addition to the Commission members' statements, previous versions of the ballot language evidence the intent of the Commission and help identify the key information presented in the text of Amendment 13 but inexplicably omitted from the final ballot language. Finally, previously proposed amendments – namely the 1998 Education Amendment and 2002 Pregnant Pigs Amendment – while not binding on the decisions of the 2018 Commission, are relevant because they demonstrate the importance of inserting statements of societal consensus into the Florida Constitution and the historical pattern of including these statements in the ballot summary presented to Florida voters.

V. THE COURT HAS AN OBLIGATION TO PREVENT MISLEADING BALLOT LANGUAGE FROM PRESENTATION TO FLORIDA VOTERS.

The Petitioners remind the Court that it must use "extreme care, caution, and restraint" before removing a proposed amendment from the ballot because the amendment process is sanctified from the courts' exercise of power and owed great deference. See Initial Brief, p. 8-9. While this general statement of the law is true, it must be noted that proposed amendments to the Florida Constitution have frequently been stricken from appearing on the ballot and have even been stricken after approval by the Florida electorate.[10] Thus, the greater concern of the Court

[10] See, e.g., Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000) (striking amendment for not informing voters that it would nullify the Cruel or Unusual Punishment Clause from the Florida Constitution); Askew v. Firestone, 421 So. 2d 151 (Fla. 1982) (striking amendment for misleading public about material changes to existing constitutional ban on lobbying by former elected officials); Fla. Dep't. of State v. Fla. State Conf. of NAACP Branches, 43 So. 3d 662 (Fla. 2010) (removing amendment from ballot for not disclosing true purpose and effect on existing constitutional provisions); Advisory Opinion to the Atty. Gen. re Tax Limitation, 644 So. 2d 486 (Fla. 1994) (directing the removal of three proposed amendments from the ballot for being misleading and failing the single-subject requirement); Roberts v. Doyle, 43 So. 3d 654 (Fla. 2010) (striking amendment for failing to comply with constitutional accuracy requirement); Advisory Opinion to Atty. Gen. ex rel. Amendment to Bar Gov't from Treating People Differently Based on Race in Pub. Educ., 778 So. 2d 888 (Fla. 2000) (striking four amendments from ballot for misleading voters by omitting relevant details from summary); Advisory Opinion to the Atty. Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563 (Fla. 1998) (striking amendment for non-compliance with single-subject requirement and for failure to state chief purpose); Advisory Opinion to the Atty. Gen.-Save Our Everglades, 636 So. 2d 1336 (Fla. 1994) (striking proposal for failing to meet single-subject requirement and misleading voters as to its purpose); Florida Dep't. of State v. Slough, 992 So. 2d 142 (Fla. 2008) (removing

should not be the act of striking a defective proposed amendment from the ballot, rather the Court should seek to protect the sanctity of the Florida Constitution by ensuring proposed amendments that go before the electorate will not mislead Floridians into casting a misinformed vote to amend a document intended to reflect society's consensus on general, fundamental values.

The Petitioners attempt to explain away the material omissions from the Amendment 13 ballot language by arguing that ballot language "need not explain every detail or ramification of the proposed amendment." See Initial Brief, p. 31. The Florida Supreme Court has also recognized that in cases dealing with complex and lengthy amendments, it may be difficult to fully summarize a proposed

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the amendment from ballot for misleading voters with "wordsmithing" in title and summary); Advisory Opinion To Atty. Gen. re Independent Nonpartisan Comm'n to Apportion Legislative and Cong. Dist. Which Replaces Apportionment by Legislature, 926 So. 2d 1218 (Fla. 2006) (directing the amendment be stricken from the ballot for failing to meet single-subject requirement and misleading voters with use of "non-partisan" language in summary); Advisory Opinion to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798 (Fla. 1998) (striking proposed amendment for having an inaccurate summary regarding term limit pledges); Evans v. Firestone, 457 So. 2d 1351 (Fla. 1984) (striking amendment because summary was clearly and conclusively defective and embraced more than one subject); Volusia Citizens' Alliance v. Volusia Home Builders Ass'n, Inc., 887 So. 2d 430 (Fla. 5th DCA 2004) (striking amendment from county charter for having summary that was "political rhetoric" and did not properly inform voters); Fla. Dep't of State v. Mangat, 43 So. 3d 642 (Fla. 2010) (striking proposed constitutional amendment on health care for having a misleading summary and title); Smith v. Am. Airlines, Inc., 606 So. 2d 618 (Fla. 1992) (striking proposed constitutional amendment because ballot summary regarding taxation of leaseholds in government-owned property was fatally defective).

amendment in 75 words or less. See, e.g., Advisory Opinion to Atty. Gen. re Ltd. Casinos, 644 So. 2d 71, 75 (Fla. 1994) ("The seventy-five word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all of a proposed amendment's details"). However, this is clearly not one of those cases. In the final ballot summary for Amendment 13, the Commission utilized only 17 words. Thus, the Commission could have used 58 additional words to adequately inform Florida voters that, amongst other things, Amendment 13 declares the humane treatment of animals to be a fundamental value of the people of the State of Florida.

In fact, it is undisputed on the last day of meetings the Commission inexplicably replaced a substantially more accurate ballot summary with the current deficient ballot summary. (R:393). Before the Commission's last-minute revisions to the Amendment 13 ballot summary reducing the information provided to Florida voters, the ballot summary consisted of only 36 words. Accordingly, there was ample opportunity for the Commission to fully disclose to Florida voters the effect of Amendment 13 and the pronouncement of a new fundamental value without exceeding the 75-word statutory limit.

The Florida Supreme Court has stated that "drafters of proposed amendments cannot circumvent the requirements of section 101.161, Florida Statutes by cursorily contending that the summary need not be exhaustive." Advisory Opinion re

Amendment to Bar Gov't From Treating People Differently, 778 So.2d 888, 899 (Fla. 2000); see also Smith v. Am. Airlines, Inc., 606 So. 2d 618, 621 (Fla. 1992) (striking proposed amendment from ballot and noting "[t]he word limit does not give drafters of proposed amendments leave to ignore the importance of the ballot summary and to provide an abbreviated, ambiguous statement in the hope that this Court's reluctance to remove issues from the ballot will prevent us from insisting on clarity and meaningful information."). In this case, the 17-word ballot summary for Amendment 13 omits key information, and the Commission could easily have drafted an accurate summary that fully informed Florida voters and was not misleading.

CONCLUSION

For the reasons set forth herein, Plaintiffs/Respondents, the Florida Greyhound Association, Inc. and James Blanchard, respectfully request that the Court affirm the trial court's Final Judgment and enjoin the Defendants/Petitioners, Department of State and Ken Detzner, from placing Amendment 13 on the General Election Ballot.

DATED this 21st day of August, 2018.

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CERTIFICATE OF TYPE SIZE AND STYLE

This Brief is typed using Times New Roman 14 point, a font which is not proportionately spaced.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished electronically to the following this 21st day August, 2018:

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