

IN THE SUPREME COURT OF FLORIDA

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**CASE NUMBER: SC 18-1339**  
**Lower Tribunal Case Numbers: 1D18-3361, 1D18-3362, 1D18-3363**

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COUNTY OF VOLUSIA, et al.,  
Appellants,

v.

KENNETH J. DETZNER, et. al.,  
et al.,  
Appellees.

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**ANSWER BRIEF OF APPELLEE, FLORIDA TAX COLLECTORS  
ASSOCIATION**

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**TABLE OF CONTENTS**

TABLE OF CITATIONS ..... ivv

PRELIMINARY STATEMENT ..... 1

STATEMENT OF THE CASE AND FACTS ..... 1

SUMMARY OF THE ARGUMENT ..... 6

ARGUMENT ..... 8

**I. INTRODUCTION ..... 8**

    A. Standard of Review ..... 8

    B. Unique Status of Constitutional County Officers ..... 8

**II. THE AMENDMENT 10 BALLOT SUMMARY SATISFIES THE ACCURACY REQUIREMENT..... 12**

    A. Legal Standard for Title and Ballot Summaries..... 12

    B. Amendment 10’s Ballot Summary Satisfies the Accuracy Requirement Because it Clearly and Unambiguously Informs the Voters of the Chief Purpose of the Amendment ..... 14

    C. The Ballot Summary Does Not “Hide the Ball” or Require Voters to “Go Find the Ball” as it Pertains to the Voting Rights of County Electors ..... 18

    D. Use of the Words “Ensures Election” is Accurate ..... 24

    E. The Fact that Ballot Summary Closely Tracks the Language of the Amendment Does Not Render it Inaccurate or Misleading. .... 27

    F. The Ballot Summary is not Inaccurate or Misleading as it Relates to the

Removal of the Ability of Abolishment of Officers through a Special Act.....28

G. Grouping of Proposals is Irrelevant and Does Not Render the Ballot  
Summary Inaccurate or Misleading.....30

H. The Amendment 10 Ballot Summary is Not Inaccurate or Misleading Due  
to the Failure to Inform the Voters on the Speculative Outcome of a Present  
Challenge to Language that is Being Removed by the Amendment.....32

CONCLUSION .....34

CERTIFICATE OF SERVICE .....35

CERTIFICATE OF COMPLIANCE.....36

**TABLE OF CITATIONS**

**Cases**

*Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000)..... 12-13, 15, 17-18, 20-21

*Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1983).....13, 16, 18, 20-21, 27

*Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986).....33

*Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1983).....23

*Fla. Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).....12-14, 17, 25

*Fla. Educ. Ass’n v. Fla. Dep’t of State*, 48 So. 3d 694, 704 (Fla. 2010).....13, 20

*Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982).....14

*Metropolitan Dade County v. Shiver*, 365 So. 2d 210, 213 (Fla. 3d DCA  
1978).....13

*Orange County v. Singh*, No. SC 18-79 (Fla. 2018).....32

*Roberts v. Doyle*, 43 So. 3d 654, 660 (Fla. 2010).....8

*Smith v. Am. Airlines, Inc.*, 606 So. 2d 618, 621 (Fla. 1992).....20-21

**Statutes**

§ 101.161(1), Fla. Stat. (2018).....5-6, 12, 14, 30

**Other Authorities**

Art. VI, §5(a), Fla. Const.....12

Art. VIII, §1(d), Fla. Const.....8-10

H. Kenza van Assenderp & Kayla M. Scarpone, *Telli v. Broward County—A  
 Misunderstanding of County Home Rule and an Abridging of the Status of  
 the Constitution’s County Officers Who are Not the Charter’s County  
 Officers*, 39 *Nova L. Rev.* 1, 4 (2014).....9-11

Presumption Definition, *Black’s Law Dictionary* (10th ed. 2014), available at  
 Westlaw.....22

## **PRELIMINARY STATEMENT**

Appellants Broward County (“Broward”), Miami-Dade County (“Miami-Dade”), and Volusia County (“Volusia”) will be collectively referred to as “Counties.” Appellees Kenneth Detzner (“Detzner”), the Department of State (“the Department”), Florida Association of Court Clerks (“Clerks”), Florida Tax Collectors Association (“FTCA”), and Anne M. Gannon (“Gannon”) will be collectively referred to as “Respondents.” The Record will be cited as (R. \_\_\_\_). The transcript will be cited by reference to the transcript page and corresponding PDF page as (T. \_\_\_\_: PDF \_\_\_\_).

## **STATEMENT OF THE CASE AND FACTS**

The Constitution Revision Commission has sent to Defendant Secretary of State eight (8) proposed revisions to the Florida Constitution for inclusion on the November 2018 ballot. *See* (R. 19-70). One of those proposals is Amendment 10. Amendment 10 consists of four (4) proposals individually considered and approved by the Constitution Revision Commission then grouped together into a single amendment by the Commission for presentation to the voters on the ballot. (R. 48-58).

The practice of grouping multiple proposals into a single amendment is a common practice. In 1968, the sweeping overhaul of the Florida Constitution—including, among others, all the provisions related to county home rule and the

creation of the Constitution Revision Commission—were presented to the voters on the ballot in only three (3) grouped amendments. (R. 698-742, Exhibit A). Past Constitution Revision Commissions have also grouped multiple proposals into single amendments. In 1998, Amendment 13, titled “Miscellaneous Matters and Technical Revisions,” consisting of seven (7) truly unrelated proposed revisions to the Constitution was placed on the ballot and passed. (R. 698-742, Exhibit B). The Rules adopted by the 2017-2018 Constitution Revision Commission expressly authorized the Style and Drafting Committee to “recommend the grouping of related proposals” and the entire Commission to adopt grouped proposals. Rule 5.4 of the 2017-2018 Constitution Revision Commission. (R. 698-742, Exhibit C).

Amendment 10 deals in part with the state-Constitution County Officers created under Article VIII, Section 1(d) of the Florida Constitution. The relevant language of this portion of the Amendment (hereinafter “County Officer Revision”) is set forth below:

Sections 1 and 6 of Article VIII of the State Constitution are amended to read:

ARTICLE VIII  
LOCAL GOVERNMENT

SECTION 1. Counties.-

...

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; ~~except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.~~ Unless ~~When not~~ otherwise provided by county charter or special law approved by vote of the electors or pursuant to Article V, section 16, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. Notwithstanding subsection 6(e) of this article, a county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or establish any manner of selection other than by election by the electors of the county.

...

SECTION 6. Schedule to Article VIII.-

...

(g) SELECTION AND DUTIES OF COUNTY OFFICERS.—

(1) Except as provided in this subsection, the amendment to Section 1 of this article, relating to the selection and duties of county officers, shall take effect January 5, 2021, but shall govern with respect to the qualifying for and the holding of the primary and general elections for county constitutional officers in 2020.



(2) For Miami-Dade County and Broward County, the amendment to Section 1 of this article, relating to the selection and duties of county officers, shall take effect January 7, 2025, but shall govern with respect to the qualifying for and the holding of the primary and general elections for county constitutional officers in 2024.

...

(R. 64-69).

The ballot title and summary for Amendment 10 are as follows:

CONSTITUTIONAL REVISION  
ARTICLE III, SECTION 3  
ARTICLE IV, SECTIONS 4, 11  
ARTICLE VIII, SECTIONS 1, 6

STATE AND LOCAL GOVERNMENT STRUCTURE  
AND  
OPERATION. —

Requires legislature to retain department of veterans' affairs. Ensures election of sheriffs, property appraisers, supervisors of elections, tax collectors, and clerks of court in all counties; removes county charters' ability to abolish, change term, transfer duties, or eliminate election of these offices. Changes annual legislative session commencement date in even numbered years from March to January; removes legislature's authorization to fix another date. Creates office of domestic security and counterterrorism within department of law enforcement.

(R. 69-70).

Appellants, Volusia, Broward, and Miami-Dade Counties are charter counties. (R. 71-192; R. 255-78; R. 519-50). Volusia, Broward, and Miami-Dade

Counties have provisions within their prospective charters abolishing one or more of the state-Constitution's County Officers created by Article VIII, Section 1 (d) and transferring the duties of such state-Constitution County Officers to a charter-created office.<sup>1</sup> (R. 85-87; R. 260-61, 63; R. 261-62; R. 548-49).

Volusia, along with two Volusia county residents and voters, Philip T. Fleuchaus and T. Wayne Bailey, filed a complaint against Secretary of State Kenneth Detzner on June 7, 2018, (R. 011-102), seeking a declaration that the title and ballot summary for Amendment 10 fail to meet the constitutional standard for accuracy incorporated into Section 101.161, Florida Statutes, and a judgment striking the proposed amendment from the November 6, 2018 ballot. The trial court consolidated the Volusia case with one filed by Broward County against the Secretary and the Department of State, that likewise challenged the ballot title and summary for Amendment 10 (R. 204-05). The trial court subsequently granted intervention by Miami-Dade County as a party-Plaintiff to the case. (R. 855-57).

The Florida Association of Court Clerks, the Florida Tax Collectors Association, and Anne Gannon, the Tax Collector in and for Palm Beach County, Florida, filed motions to intervene as party-Defendants to the case that the trial court granted. (R. 103; 112; 119).

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<sup>1</sup> FTCA contends that the facts relating to the specific changes made by the Plaintiff Counties' charters are not material to the resolution of this case. However, such facts are relevant to the Counties' interests in this case.

All parties stipulated before the trial court that there were no genuine material factual disputes involved in this case. (R. 976). The trial court heard cross-motions for summary judgment filed by all original and intervening parties on August 3, 2018, and entered an order granting final summary judgment in favor of Defendants on August 9, 2018. (R. 976-81). The trial court's order held that the ballot title and summary complied with section 101.161, Florida Statutes, and should be included on the ballot. *Id.* Volusia, Broward, and Miami-Dade timely filed Notices of Appeal on August 10, 2018. (R. 982-92; 993-1004; 1005-1016). Upon joint motion of all parties, the First District Court of Appeal certified this case as one of great importance that requires immediate resolution by this Court.

This Court accepted jurisdiction on August 14, 2018. This Court granted leave for the Florida Sheriffs Association, Florida Association for Constitutional Officers, and the Florida Association of Counties, Inc. to participate in this case in the limited role of *amicus curiae*.

### **SUMMARY OF THE ARGUMENT**

This appeal primarily challenges the portion of the Amendment 10 ballot summary corresponding to the County Officer Revision. Such Revision would ensure, in all Florida counties, that the state-Constitution's County Offices of the Sheriff, Property Appraiser, Supervisors of Election, Tax Collector, and Clerk of Court be maintained as independently-elected, sovereign offices accountable only

to the citizens of the county they serve, rather than the county's local governing body. As determined correctly by the trial court below, the Amendment 10 ballot summary meets the accuracy requirement under Florida law. The multitude of challenges asserted against the ballot summary by Appellants lack merit and are merely veiled attempts to preclude the proposed amendment from being placed before the citizens of Florida on the November ballot for fear that if passed, it will force such charter counties to give up power and leverage within their local government structure.

The Amendment 10 ballot summary passes constitutional muster because it clearly and accurately conveys the chief purpose and effect of the Amendment and fairly informs the voters so they may intelligently cast their vote on the measure. In short—the Amendment 10 ballot summary tells voters exactly what the proposed Amendment will do and nothing more. Contrary to Appellants' arguments, the ballot summary does not “hide the ball” regarding the impact on county elector voting rights or fail to disclose the amendment's full trade off and chief impacts. Nor does the fact that the Amendment contains multiple proposals grouped together for presentation on the ballot mean that the Amendment will confuse or mislead voters or force a “false choice.”

Because Appellants have failed to demonstrate that the Amendment 10 ballot summary is “clearly and conclusively defective,” this Court must not interfere with the right of the people to vote on the proposed amendment.

## **ARGUMENT**

### **I. INTRODUCTION**

#### **A. Standard of Review**

This Court reviews appeals involving challenges to ballot language for proposed constitutional amendments *de novo*. *See Roberts v. Doyle*, 43 So. 3d 654, 660 (Fla. 2010).

#### **B. Unique Status of Constitutional County Officers**

Currently, the Florida Constitution creates five (5) independent, state-Constitution County Officers in each county and mandates that they shall be elected for terms of four years unless a county, through a charter or special law approved by vote of the electors of the county, establishes a different manner of selection for those independent, state-Constitution County Officers or abolishes the Offices by transferring the statutory duties of the state-Constitution’s County Officers to another office within the county government. *See* Art. VIII, §1(d), Fla. Const.

These five (5) state-Constitution County Officers:

have been imbued with sovereignty and maintain a status of independence from the [local] county government, the Board of County Commissioners. These officers maintain sovereign plenary power to carry out important state work assigned to them by general law to be performed and carried out at the county level and to exercise reasonable discretion in carrying out that work, not inconsistent with the express [statutory] duties. These officers *are not* subject to regulation or interference by the local county government—the Board of County Commissioners.

H. Kenza vanAssenderp & Kayla M. Scarpone, *Telli v. Broward County—A Misunderstanding of County Home Rule and an Abridging of the Status of the Constitution’s County Officers Who are Not the Charter’s County Officers*, 39 Nova L. Rev. 1, 4 (2014). “The sovereign independence of the Constitution’s County Officers is important and is set up by our Constitution to eliminate even the appearance—much less the reality—of local influence on the important state work performed by these officers on the county level.” *Id.* at 13.

The independence and election of the Constitution’s County Officers maintains service and accountability only to the electorate in the local county political subdivision and not to the interests of the local general purpose collegial governing body that would benefit from exercising undue influence and political control over these offices to the detriment of the people and to the detriment of the people’s interest in due process. . . .

*Id.*

The election of independent state-Constitution County Officers is the *default* County Officer structure established under the current Florida Constitution. *See Id.* at 14; Art. VIII, §1(d), Fla. Const. As long as these state-Constitution County

Officers have not been abolished and their duties transferred to a local county government office, the state-Constitution County Officers maintain their independent status separate and apart from the regulation and control of the local county government. *See vanAssenderp et. al., supra*, at 15; Art. VIII, §1(d), Fla. Const. The current Constitution does authorize a county government, through either a charter or special law approved by the electors of the county, to change the *manner* in which the state-Constitution County Officers are selected. *Id.* However, even if the manner of selection (*i.e.*, a manner other than election) is changed, these Officers still remain the state-Constitution’s County Officers, “with plenary power and sovereign authority, and therefore shall not be subject to the control of the county government.” *Id.*

The current Constitution also “allows a charter county—through its charter, or through a special act approved by the charter county voters—to abolish completely one or more of the Constitution’s article VIII, section 1, subsection (d) County Officers, and transfer the duties of that office to a charter-created office.” *Id.* at 15; Art. VIII, §1(d), Fla. Const. Once abolishment and transfer of duties has occurred, this office is no longer the state-Constitution’s County Office; the state-Constitution’s County Office *no longer exists* in that county even though the new charter county office to which the duties have been transferred may use the same name. *vanAssenderp et. al., supra*, at 16; Art. VIII, §1(d), Fla. Const. The county

charter office does not enjoy “the same independence and plenary power of a sovereign office to carry out the important state duties delegated by the Legislature with insulation from influence of the local government,” that the state-Constitution’s County Officer once enjoyed. *vanAssenderp et. al., supra*, at 15. “The office is thus transformed into a non-sovereign *charter* county office—either elected or appointed—and is open to complete regulation and control by the county government.” *Id.* This distinction between the state-Constitution’s County Officers and a charter or local county government officer (sometimes with the same name) to which the duties have been transferred following abolishment of the state-Constitution’s County Officer is often blurred or overlooked by charter counties when addressing issues related to the status of the state-Constitution’s County Officers.<sup>2</sup>

Amendment 10 ensures the election and preservation of the state-Constitution’s County Officers (*i.e.*, makes the current *default* structure for state-Constitution County Officers mandatory and no longer subject to change). If Amendment 10 passes, all counties in Florida will be required to have five (5) independent state-Constitution County Officers who shall only be elected for four (4) year terms. Individual counties, through their county charters, will no longer

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<sup>2</sup> Indeed, Appellee Miami-Dade significantly overlooks this distinction in its Initial Brief, discussed *infra*.



have the ability to change the manner of selection of the state-Constitution's County Officers, vary the length of the officers' terms, or abolish the officers and transfer the duties to another charter-created office subject to the complete regulation and control of the local county governing body.

## **II. THE AMENDMENT 10 BALLOT SUMMARY SATISFIES THE ACCURACY REQUIREMENT**

### **A. Legal Standard for Title and Ballot Summaries**

A proposed amendment to the Florida Constitution must be submitted to the electors for approval. Art. VI, §5(a), Fla. Const. Florida law requires that an amendment have a ballot title and summary printed in "clear and unambiguous language." § 101.161(1), Fla. Stat. (2018). Any proposed constitutional amendment must be "accurately represented on the ballot; otherwise, voter approval would be a nullity." *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000).

The court must consider two questions when determining whether a ballot title and summary satisfy the requirements of section 101.161: "(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public." *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008). The court must "exercise extreme caution and restraint before removing a constitutional amendment from Florida voters." *Id.* A

court may not interfere with the “right of the people to vote on a proposed amendment” unless the record shows that the proposal is “clearly and conclusively defective.” *Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1983). The relevant test is not whether the opponent of the measure or a court could draft a better ballot summary. *Metropolitan Dade County v. Shiver*, 365 So. 2d 210, 213 (Fla. 3d DCA 1978) (“It is true ... that certain of the details of the [text] as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test.”)

“A 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. A reviewing court should look to the amendment itself to determine if the summary’s stated chief purpose is, in fact, the amendment’s main effect. *Id.* at 18. The accuracy requirement is “of paramount importance for the ballot title and summary” because voters do not have the actual amendment in front of them when they vote. *Id.* at 11. Wording selections that would “render a ballot title and summary deceptive or misleading to voters” require a proposed amendment to be removed from the ballot. *Slough*, 992 So. 2d at 149. However, ballot summaries “need not explain every detail or ramification of the proposed amendment.” *Fla. Educ. Ass’n v. Fla. Dep’t of State*, 48 So. 3d 694, 704 (Fla. 2010). The summary must inform the voters of the choice they are to make, but the court will “presume

that the average voter has a certain amount of common understanding and knowledge.” *Id.*

The law simply requires “that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.” *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982) (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954)).

**B. Amendment 10’s Ballot Summary Satisfies the Accuracy Requirement Because it Clearly and Unambiguously Informs the Voters of the Chief Purpose of the Amendment**

A constitutional amendment is required to have a ballot title and summary. § 101.161(1), Fla. Stat. (2018). The title is not to exceed fifteen (15) words and the summary is not to exceed seventy-five (75) words. *Id.* The ballot summary must be printed in “clear and unambiguous language” that “fairly inform[s] the voter of the chief purpose of the amendment.” *Fla. Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008). The portion of the ballot summary for the County Officer Revision contained in Amendment 10 states that the amendment will “ensure election” of all five (5) of the state-Constitution’s County Officers in every county, and that it will remove a charter county’s ability to “abolish, change term, transfer duties, or eliminate election” of those Offices. The chief purpose of the amendment is to ensure the election and preservation of the state-Constitution’s County Officers in every county (*i.e.*, to make the *default* state-Constitution

County Officers structure established under the current Constitution mandatory in every county and not subject to change). The County Officer Revision effectuates this purpose by ensuring that the five (5) state-Constitution County Officers are elected in each county and that a county's ability to change the manner of selection of such offices or to abolish and transfer the duties of such Officers is removed. As determined correctly by the trial court, that is the exact purpose the ballot summary expresses; in short—the amendment does what the ballot summary says it does. (R. 978) (“An average Florida voter should easily understand that the chief purpose of the amendment is to make all five constitutional officers and offices mandatory in all 67 counties of Florida; to mandate that all five constitutional officers be elected in all 67 counties; and that the county charters may not abolish, change the term, transfer duties or eliminate the elections of these five constitutional offices.”) “The ballot summary should, and this one does, tell the voter the legal effect of the amendment and no more...The language used appears to be an honest attempt by the CRC to inform the voters what a ‘yes’ vote will mean.” (R. at 978-79).

In *Armstrong v. Harris*, the Supreme Court of Florida found a ballot summary to be defective because the main effect of the amendment was not mentioned “or even hinted at” anywhere in the ballot summary. *Armstrong*, 773 So. 2d 7, 18 (Fla. 2000). The Court noted the proposed amendment would change

the constitutional prohibition of “cruel *or* unusual punishment” to “cruel *and* unusual punishment.” *Id.* at 17 (emphasis added). The ballot summary was clearly and conclusively defective because it failed to inform the voter that this important wording would be changed. *Id.* at 17-18. The Court explained that a citizen could have voted for the amendment thinking that “he or she was protecting state constitutional rights *when in fact the citizen was doing the exact opposite...*” *Id.* at 17 (emphasis added). The ballot summary was misleading in this regard because it was deceptive; it implied that the amendment did one thing, when it actually did the exact opposite.

Likewise, the Supreme Court of Florida in *Askew v. Firestone* found a ballot summary to be misleading because it failed to fairly inform the voter of the amendment’s chief purpose. *Askew*, 421 So. 2d 151, 156 (Fla. 1983). In *Askew*, the Court found that although the summary indicated “that the amendment [was] a restriction on ... lobbying activities,” it actually allowed “incumbent office holders... to immediately commence lobbying before their former agencies which [was then] precluded.” *Id.* In this regard, the ballot summary deceptively implied to voters that *the amendment would do the opposite of what it actually did*. The Court reasoned that while the description contained in the ballot summary was technically accurate with regard to the financial disclosure requirements, the ballot summary failed to disclose the true purpose of the amendment: to lift the existing

restriction rather than impose a new one. *Id.* The Court found the ballot summary clearly defective and concluded that a proposed amendment “must stand on its own merits and not be disguised as something else.” *Id.*

The Supreme Court of Florida has also held wording selections that “render a ballot title and summary deceptive or misleading to voters” require a proposed amendment to be removed from the ballot. *Slough*, 992 So. 2d at 149. In *Slough*, the Court found the ballot title and summary defective because they left voters “with the impression that the amendment will accomplish something permanent and continuing, when in reality it does not.” *Id.* at 148. The Court reasoned that if a ballot title and summary do not “clearly and unambiguously disclose [the] significant and distinct effect of [the] proposed [a]mendment” the voter would likely be “confused or misled” about the actual impact of the amendment. *Id.* at 149.

The portion of the Amendment 10 ballot summary which corresponds to the County Officer Revision is not clearly and conclusively defective because the main effect of the amendment is fairly disclosed in the ballot summary. The summary informs the voter of its chief purpose: to ensure the election and preservation of the five (5) state-Constitution County Officers in every Florida county. The ballot summary also fairly informs the voter that passage of the amendment will remove a county charter’s authority to make certain enumerated and previously-permitted

changes to the five (5) state-Constitution County Offices, including complete abolishment.

Unlike the ballot summaries in *Armstrong* and *Slough*, the ballot summary for Amendment 10 explains the main effect of the amendment. Likewise, unlike the ballot summaries in both *Armstrong* and *Askew*, the relevant portion of the ballot summary here does not deceive voters into believing that they are voting to implement a change opposite to that which the amendment actually effectuates. The ballot summary is clearly and unambiguously written and does not confuse or mislead the voter as to the actual impact of the amendment. The ballot summary explains that an affirmative vote on Amendment 10 will ensure election and preservation of the five (5) state-Constitution County Officers in every county and further informs the voters that current authority for charter counties to make enumerated changes to those Offices, including but not limited to complete abolishment, will be removed by the amendment.

**C. The Ballot Summary Does Not “Hide the Ball” or Require Voters to “Go Find the Ball” as it Pertains to the Voting Rights of County Electors**

Appellants unanimously contend that the portion of the Amendment 10 ballot summary corresponding to the County Officer Revision “hides the ball” because the true chief purpose of the County Officer Revision is to abrogate the right of the individual electors of each county to determine the structure of their

county government through local referendum. Appellants argue that the ballot summary fails because the rights of county voters are not expressly mentioned in the ballot summary; instead, the ballot summary states that “county charters” will be prohibited from making specific changes. However, as correctly determined by the trial court, the chief purpose of the Amendment is to ensure the election and preservation of the five (5) state-Constitution County Officers in every Florida county. (R. 978). This chief purpose is accomplished through the amendment by striking and overriding the current provisions by which the *default* state-Constitution County Officer structure established under the current Constitution may be changed by charter counties. The ballot summary accurately conveys this change as it relates to charter counties by stating that the county charters will no longer be able to “abolish, change term, transfer duties, or eliminate election of” the enumerated state-Constitution County Officers.

While a vote of the county electors is required for the adoption of a charter provision, once passed, it is the *charter provision* that mandates a deviation from the default structure. Similarly, although a sixty percent (60%) favorable vote of the state electors will be required to pass Amendment 10, if passed, it will be *the Constitutional provision itself*—Article VIII, Section 1(d), as amended—that will ensure the election and preservation of the five (5) independent state-Constitution County Officers in all counties. Although the Amendment 10 ballot summary does



not set forth in detail the procedure by which a charter provision deviating from the current default structure is enacted, the ballot summary clearly, unambiguously, and fairly informs the voters that the *ability* to make such changes under a county charter will be removed by the amendment.

Further, as noted by the trial court, “[n]o reasonable voter should be confused by the semantics of [the] phrase [which begins: ‘removes county charters’ ability to....’]” (R. 980). In reaching this ruling, the trial court “presume[d] that the average voter has a certain amount of common understanding and knowledge.” *Fla. Educ. Ass’n v. Fla. Dep’t of State*, 48 So. 3d 694, 704 (Fla. 2010). The court held that “[t]he average voter would ‘connect the dots’ that removal of these rights under the charter would by necessity mean that voters could not vote to exercise these prohibited rights.” (R. 980). Appellants contend that such presumption was made in error.

Specifically, Miami-Dade argues that the Amendment involves complex legal issues that voters simply cannot understand. Miami-Dade Brief at 15, 31-33. Similarly, Broward states that the trial court’s ruling requires voters to “go out and find the ball,” Broward Initial Brief at 13, and asserts that a voter’s ability to independently access information does not make up for a deficient ballot summary. *Id.* To support these arguments, Appellants cite *Askew*, in which the Court stated: “The burden of informing the public should not fall only on the press and

opponents of the measure—the ballot title and summary must do this,” 421 So. 2d at 156; *Armstrong*, which held: “voters were not told on the ballot that the amendment will nullify the Cruel or Unusual Punishment Clause...[v]oters were thus not permitted to cast a ballot with eyes wide open on the issue,” 773 So. 2d at 22; and *Smith v. American Airlines, Inc.*, which held: “availability of public information about a proposed amendment cannot be a substitute for an accurate and informative ballot summary.” 606 So. 2d 618, 621 (Fla. 1992). Broward also asserts that the trial court’s presumption is “pure speculation” and contends that such a conclusion would “require evaluation of factual evidence, such as scientific surveys, which is impossible given the expedited nature of these proceedings.” Broward Initial Brief at 15, n. 8. Broward makes this assertion for the first time at the appellate level despite the fact that Broward, along with all other parties, stipulated before the trial court that there were no genuine material factual disputes involved in this case.

Appellants’ additional arguments are flawed for two reasons. First, the cases relied upon for the proposition that it is not up to the voter or others to determine the true effect of the proposed amendment are distinguishable from this case. As noted above, in both *Armstrong* and *Askew*, the ballot summaries affirmatively stated or implied that the amendments would do the exact opposite of their actual

chief effect. In *Smith*, the ballot summary was, at best, “ambiguous about its chief purpose.” *Smith*, 606 So. 2d at 621.

There is a distinction between presuming that voters may and should be able to draw on common knowledge allowing them to easily “connect the dots” and expecting opponents of the measure and/or the press to inform voters that the true chief purpose of a measure is the opposite of what is stated in the ballot summary language.

Second, the precise purpose of a presumption is to support a finding without having to resort to factual evidence, unless such presumption is affirmatively rebutted.

Presumption (15c) **1.** Something that is thought to be true because it is highly probable. **2.** A legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts....A ‘presumption’ is a rule of law that courts or juries shall or may draw a particular inference from a particular fact or from particular evidence, unless and until the truth of such inference is disproved. John D. Lawson, *The Law of Presumptive Evidence* 639 (2d ed. 1899).

Presumption Definition, *Black's Law Dictionary* (10th ed. 2014), available at Westlaw.

Broward contends that the trial court did no more than improperly rely on the “bare assertions” of counsel as to what the average voter knows. Broward Initial Brief at 15, n. 8. However, the trial court was entitled to draw on its learned

knowledge and experience to presume what the average voter knows or should know. Moreover, Appellants collectively have offered nothing more than bare assertions about what voters do not know. This is insufficient to rebut the presumption made by the trial court.

In an effort to present the chief effect of the County Officer Revision as an overly complicated legal issue of which the average voter could not possibly expect to understand, Miami-Dade sets forth a lengthy list of the various implications and ramifications that it asserts “voters would have to understand” in order to grasp the chief effect of the proposed Revision. However, Miami-Dade’s list only further demonstrates why it would be virtually impossible to explain the intricate details of every various ramification of a proposed amendment in a brief and succinct ballot summary. Notably, even after removing the introductory phrase “each voter would need to understand,” from each sentence contained in Miami-Dade’s lengthy list and explanation of ramifications, the list exceeds 200 words. *See* Miami-Dade Initial Brief at 32-33.

Relatedly, Appellants also contend that the portion of the ballot summary corresponding to the County Officer Revision is inaccurate and misleading because it only discloses half of the tradeoff to be made. *See Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1983). Appellants assert that the ballot summary only conveys that voters will be ensuring a right to vote for Constitution County Officers without

sufficiently disclosing that the voters' county referendum rights to alter the Constitution's current default Constitution County Officer structure are being given up in return. As discussed above and as determined correctly by the trial court, the Amendment 10 ballot summary sufficiently and accurately informs voters that their ability to vote on a local level to effectuate the types of changes now permitted under the Constitution is being removed. The average voter can "connect the dots" and appreciate the trade-off to be effectuated by a vote in favor of Amendment 10 and the County Officer Revision contained therein.

#### **D. Use of the Words "Ensures Election" is Accurate**

Next, Appellants argue that the use of the words "ensures election" is inaccurate and misleading because it implies that Amendment 10 is creating a new right that does not already exist or implying a threat that such right will be eliminated. This characterization is simply inaccurate. As discussed above, election of the state-Constitution's County Officers is merely a *default* under the current Constitution. Any individual county may at any time take actions to proceed to eliminate the election of the state-Constitution's County Officers, or alternatively, to abolish the Office altogether in which case there could be no *elected state-Constitution* County Officer.

Merriam-Webster's dictionary defines "ensure" as "to make sure, certain, or safe" and also lists "guarantee" as synonymous with "ensure." (R. 689). This is

exactly what Amendment 10 does in relation to election of the enumerated state-Constitution County Officers. The Amendment ensures or guarantees that election will be the only manner of selection for these state-Constitution County Officers and that these Offices can no longer be abolished. There is no word other than “ensure” that would more appropriately describe this chief purpose of the Amendment. There is no assurance or guarantee under the current Constitution that all five (5) of the state-Constitution’s County Officers will exist and be elected in every county. Therefore, the ballot summary does not improperly convey that the Amendment is “creating” a new right or, as Miami-Dade contends, implies the non-existence of a right that in fact already exists.

Appellants also contend that use of the word “ensure” is political rhetoric meant to invoke an emotional response and goad voters into passing the Amendment by a favorable vote. Such argument is reaching. As accurately recognized by the trial court, “[t]he language used appears to be an honest attempt by the CRC to inform the voters what a ‘yes’ vote will mean.” (R. 979).

Relatedly, Miami-Dade spends a great deal of its Initial Brief arguing that the use of the phrase “ensures election” of the five (5) Constitution County Officers is inaccurate and misleading because “even in the very limited instances where charter county voters have exercised their right to abolish constitutional [county] officers, the newly-established [charter] officers who wield the power of

the abolished offices are themselves elected.” Miami-Dade Initial Brief at 13. This argument overlooks the vital distinction between the state-Constitution’s County Officers and a charter county office to which the duties of the state-Constitution’s County Officer have been transferred and narrowly focuses on the words “ensures election” while improperly ignoring the context provided by the balance of the phrase. *Slough*, 992 So.2d at 147 (explaining that the court must consider the “language of the title and summary, as written” to determine whether the ballot title and summary satisfy the requirements of the statute). Amendment 10 “ensures election *of*” the five (5) state-Constitution County Officers in every county. There can be no elected state-Constitution County Officer when such office has been abolished in a county—once abolished, the state-Constitution’s County Officer no longer exists and thus, cannot be elected.

While Miami-Dade has an elected charter official called the “property appraiser,” it is not the state-Constitution’s elected Property Appraiser that is imbued with sovereignty and maintains a status of independence separate and apart from the local county government. *See* Miami-Dade Initial Brief at 4-7. Likewise, Miami-Dade does not have a separate and independently elected state-Constitution Sheriff, Tax Collector, or Supervisor of Elections. *Id.* Rather, it has a non-independent, elected County Mayor that exercises *all* of the duties of the once independently-elected, sovereign offices of the state-Constitution’s Sheriff, Tax

Collector, or Supervisor of Elections. *Id.* The fact that these charter offices may be elected does not render the Amendment 10 ballot summary inaccurate and misleading. The use of the words “ensures election of” clearly and unambiguously applies only to the state-Constitution’s County Officers that are listed directly thereafter in the ballot summary.

**E. The Fact that Ballot Summary Closely Tracks the Language of the Amendment Does Not Render it Inaccurate or Misleading**

Miami-Dade contends that the trial court’s finding was made in error because the portion of the Amendment 10 ballot summary corresponding to the County Officer Revision merely “regurgitates” the actual amendment text without identifying the effect of the change. Miami-Dade Initial Brief at 14.

While there may be circumstances where a ballot summary that simply tracks the amendment language is misleading, this does not mean that a ballot summary is misleading in every instance in which the ballot summary language closely tracks the amendment language. Indeed, while the text of some amendments may need further description or information to place the amendment language in context,<sup>3</sup> such is not the case here where the amendment language

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<sup>3</sup> See *Askew v. Firestone*, 421 So. 2d 151, (Fla. 1982). In *Askew*, the ballot summary was struck down because, though the summary simply tracked the language of the amendment, the Court found that the summary did not explain the measure’s chief purpose. In *Askew*, the ballot summary affirmatively stated or



itself clearly and unambiguously conveys what the amendment actually does in relation to the election and preservation of the five (5) Constitution County Officers in every county.

**F. The Ballot Summary is not Inaccurate or Misleading as it Relates to the Removal of the Ability of Abolishment of Officers through a Special Act**

Appellants contend that the ballot summary for Amendment 10 is inaccurate and misleading because it does not specifically mention that the state-Constitution's County Officers can no longer be abolished and their duties transferred to another charter-created local government office by way of a special law approved by the electors of the county. Contrary to Appellants' argument, the Amendment 10 ballot summary does fairly inform voters that the state-Constitution's County Officers can no longer be abolished and the duties transferred to another office, regardless of the specific mechanism used to effectuate such change. This is because the ballot summary states that Amendment 10 "[e]nsures election of sheriffs, property appraisers, supervisors of elections, tax

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implied that the amendment would do the exact opposite of its actual chief effect. Importantly, the ballot summary's flaw was not that it simply mirrored the amendment text, rather, the flaw was that the summary did not explain the chief purpose. Unlike *Askew*, the ballot summary in this case does explain Amendment 10's chief purpose.

collectors, and clerks of court in all counties.” When there exists a mandate that *the state-Constitution’s* Sheriff, Property Appraiser, Supervisor of Elections, Tax Collector, and Clerk of Court must be elected in all counties in Florida, then it logically follows that *there cannot be an abolishment of such Offices*, no matter the mechanism employed to abolish the office.

As discussed above, under the current Constitution, once the state-Constitution’s County Office is abolished and its duties transferred, the state-Constitution’s County Office entirely ceases to exist. An office that does not exist cannot be elected. Thus, by ensuring or guaranteeing that there shall be elected five (5) distinct and independent state-Constitution County Officers in *every county*, Amendment 10 also ensures or guarantees that no county will be able to abolish those Offices and replace them with a charter county officer—no matter the particular mechanism employed to effectuate such change. The details of the current procedural mechanisms used to effectuate the changes are extraneous ramifications that need not be included in the ballot summary language in order to fairly inform the voters of the chief purpose of the amendment, which is to ensure the election and preservation of the five (5) state-Constitution County Officers in every Florida county. The omission of the precise procedural mechanism does not render the ballot summary clearly and conclusively defective.

### **G. Grouping of Proposals is Irrelevant and Does Not Render the Ballot Summary Inaccurate or Misleading**

Appellants once more argue vehemently that the CRC crafted an affirmatively misleading ballot summary by grouping more than one proposal together for presentation to the voters on the ballot. Appellants contend that the County Officer Revision is obscured by being sandwiched between two popular proposals and that the grouping of these proposals forces the voters to make a “false choice” because they must accept or reject all grouped proposals.

Again, Appellants raise nothing more than political critiques of the common practice undertaken by current and past Constitution Revision Commissions of grouping multiple revisions into a single amendment for consideration and presentation on the ballot. Appellants admit that there is no legal prohibition against grouping proposals and cannot deny that past precedent supports the practice. For example, in 1968, the sweeping overhaul of the Florida Constitution—including all the provisions related to county home rule—was presented to the voters on the ballot in only three (3) grouped amendments.

Moreover, there is no authority to support Appellants’ contention that the grouping of multiple proposals into a single amendment is a basis to find the title and ballot summary for such amendment clearly and conclusively defective in violation of Article XI, Section 5(a), Florida Constitution, and Section 101.161,

Florida Statutes. As noted by Volusia, the CRC's ability to group proposals for inclusion together on the ballot would only seem to be constrained by principles of sound discretion and good faith. Volusia Initial Brief at 25. As raised by Appellees below, the CRC had a sound and reasonable basis for grouping the proposals into Amendment 10 in the manner that it did. (R. 790-93; Tr. 61-62; PDF 71-72). These measures were grouped as logical related in that they all deal with the structure and operation of government. (R. 691). Additionally, despite Appellants' Initial Briefs and trial court filings that employ their own political rhetoric to imply that the CRC's decision was the result of bad faith,<sup>4</sup> the trial court observed correctly that there was no evidence presented to support a finding of bad faith. *See* (Tr. 17; PDF 24; Tr. 61-62; PDF 71-72)

For these reasons, this Court should disregard Appellants' political arguments attacking the grouping of proposals as wholly irrelevant and focus solely on the import of the language contained within the title and ballot summary. FTCA contends that as long as the ballot summary accurately conveys the chief purposes of each provision proposed within Amendment 10, it satisfies the accuracy requirement as a whole. Here, the ballot summary does just that.

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<sup>4</sup> For example, Broward refers to the CRC's grouping as a "tactic" in its Initial Brief. Broward Initial Brief at 20. FAC described the decision as "political gamesmanship" in its Amended *Amicus* Brief. FAC Amended *Amicus* Brief at 4.

Appellants' continued political assault on the summary portions corresponding to the Department of Veteran's Affairs and Office of Domestic Security and Counterterrorism likewise fail for reasons previously set forth in FTCA's Motion for Summary Judgment. (R. 833-35).

**H. The Amendment 10 Ballot Summary is Not Inaccurate or Misleading Due to the Failure to Inform the Voters on the Speculative Outcome of a Present Challenge to Language that is Being Removed by the Amendment**

Appearing in this case in the limited capacity of *amicus curiae*, the Florida Association of Counties, Inc. ("FAC") argues that the portion of the Amendment 10 ballot summary that corresponds to the County Officer Revision is inaccurate and misleading because it fails to inform the voters that by removing the ability of county voters to change the "manner of selection" of the state-Constitution County Officers, the Amendment *may* remove the ability of county voters to determine whether the state-Constitution County Officers are elected in non-partisan elections. FAC's argument relies completely upon a challenge raised in another case currently pending before this Court, *Orange County v. Singh*, No. SC 18-79 (Fla. 2018). In that case, the parties dispute the proper interpretation of the provision contained in Article VIII, Section 1(d) which states: "when provided by county charter or special law approved by vote of the electors of the county, any [state-Constitution] county officer may be chosen in another manner therein

specified.” Petitioner Orange County and *amicus curiae* FAC argue in that case that “chosen in another manner” means “chosen via another method,” while the County Officer Respondents argue that “chosen in another manner” means “in a manner *other* than election.”

FAC argues in this case that: “Should this Court agree that the meaning of the phrase ‘manner of selection’ should be broadly construed to encompass nonpartisan elections, then a vote for Revision 10 prohibiting county charters from establishing a manner of selection would have impacts that most voters could not have imagined and likely did not intend.” FAC *Amicus* Brief at 9. The fact that a charter county has asserted a challenge in another case pending and unresolved before this Court, that a portion of the language proposed to be removed by Amendment 10 is ambiguous cannot possibly mean that the ballot summary is also ambiguous. This argument stretches the bounds of credulity. The extension or implication of FAC’s argument is that for the Amendment 10 ballot summary to satisfy the accuracy requirement, the ballot summary would have to inform voters that the effect of their vote actually depends on the unknown outcome of the Court’s ruling on the meaning of a provision that will be removed by the amendment. This certainly must fall within the category of speculative ramifications that this Court has stated need not be included in a ballot summary.

*See Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986) (citing *Miami Dolphins v. Metropolitan Dade County*, 394 So. 2d 981 (Fla. 1981)).

FAC's newly injected argument into this case via its *amicus* brief is another example of the fact that opponents of a proposed amendment can and will always be able to dream up a multitude of critiques of a seventy-five (75) word or less ballot summary. However, FAC and Appellants have failed to demonstrate that any of the multiple challenges lodged at the Amendment 10 ballot summary renders it "clearly and conclusively defective," such that the Court must order the extreme measure of striking it from the ballot.

## CONCLUSION

For all of the reasons stated above, Appellants have failed to demonstrate that the Amendment 10 ballot summary is "clearly and conclusively defective." As held by the trial court below, the Amendment 10 ballot summary complies with the accuracy requirement under Florida law by telling the voter the legal effect of the amendment and no more. Because the ballot title and summary for Amendment 10 fairly inform the voters of the amendment's chief purpose—that is—to ensure the election and preservation of the state-Constitution's County

Officers in all counties, this Court must not interfere with the right of the people to vote on the proposed amendment.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copy of the foregoing was filed via the E-Portal which will electronically serve a copy to all parties registered for electronic service on this 28th day of August, 2018.




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Timothy R. Qualls, Esquire



**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the type size and style used in this brief is double-spaced 14-point Times New Roman, and that this brief fully complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

  
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Timothy R. Qualls, Esquire