

**IN THE SUPREME COURT OF FLORIDA
CASE NO.: SC18-1339**

COUNTY OF VOLUSIA, et al.,

Appellants,

vs.

KENNETH DETZNER, et al.,

Appellees.

ON REVIEW FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL
CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

**ANSWER BRIEF OF APPELLEE
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STATEMENT OF THE CASE AND FACTS

This case is before the Court on review of a circuit court order rejecting Appellants' challenges, entering summary judgment in favor of Appellees, and determining that the proposed ballot title and summary for proposed Revision 10 to the Florida Constitution are not misleading and do not violate the provisions of section 101.161, Florida Statutes. Revision 10 proposes four changes to state and local government structure and operation. Appellants' challenges relate primarily to one proposed change, which would ensure the five constitutional officers enshrined for over 100 years in Florida's constitution are elected by the voters in both charter and non-charter counties, and would prohibit county charters from taking away the rights of voters to elect such officers, or abolishing or amending the duties of such constitutional officers.

I. Background.

A. The Constitutional Revision Commission.

Florida's Constitutional Revision Commission (the "CRC") convenes once every 20 years to examine Florida's Constitution and propose revisions for consideration by voters. The CRC first met in 1977, convened again in 1997, and convened for the third time in 2017. R. 786.

The 2017-2018 CRC held more than fifteen public hearings across the state, more than any previous CRC, reviewed thousands of public comments, conducted

months of in-depth research and debate, and considered a number of proposed constitutional revisions. After considering the numerous proposals received, the CRC consolidated various proposals into proposed constitutional amendments for consideration by Florida's electorate. R. 786-87. Each proposed amendment requires at least 60 percent approval to pass and become part of Florida's constitution. R. 787.

To reduce the size of the general election ballot, the CRC did not propose a separate amendment for each constitutional change, but instead consolidated a number of proposals, as appropriate, into eight amendments proposed by the CRC. R. 787. Election officials have recognized that long ballots create a disincentive to voting, and the consolidation of related ideas together in one proposed amendment ensures the ballot does not become too lengthy. R. 815. Indeed, if each of the proposals approved by the CRC were placed on the ballot as single amendments, twenty-five separate proposed amendments would appear on the ballot; and in some areas of the state, each of those measures would be translated into multiple languages. R. 815.

The consolidation or "grouping" of related ideas in one ballot proposal is not a novel idea, and is consistent with CRC precedent. R. 816. Both previous CRCs consolidated related revisions into constitutional amendments and did so with more frequency than the current CRC. R. 816. Indeed, in 1968, when the voters of

Florida ratified an entirely new constitution, the revisions were bundled into only three ballot amendments. R. 816.

B. Revision 10.

Revision 10¹ relates to “state and local government structure and operation,” and consists of four proposals considered by the CRC – CRC Proposals 9, 13, 26, and 103. R. 787. If approved by the Florida electorate, Revision 10 would require local constitutional officers (sheriff, tax collector, property appraiser, supervisor of elections, and clerk of court) in all Florida counties to be elected through local elections, and would prohibit county charters from abolishing these offices, transferring their duties to another office or officer, or changing the length of their terms. In addition, Revision 10 would create the Office of Domestic Security and Counterterrorism within the Department of Law Enforcement, and requires, rather than authorizes, the Legislature to provide for a state Department of Veterans’ Affairs. The Revision also changes the start date for the legislative session, and removes the Legislature’s ability to fix an alternative date.

C. Ballot Title And Summary.

To avoid ballots that are excessively long and confusing to voters, Florida has established requirements for the descriptions of proposed constitutional

¹ Initially numbered as CRC Revision 5, but designated as Revision 10 for ballot purposes by the Secretary of State. Revision 10 will be referred to herein as “Revision 10” or the “Revision.”

amendments submitted to the electorate on state-wide ballots. § 101.161(1), Fla. Stat. Pursuant to section 101.161(1), the ballot shall include an explanatory statement of the chief purpose of the proposed measure not to exceed 75 words, together with a ballot title not to exceed 15 words. *Id.*; see also *Advisory Op. to the Att’y Gen. re Protect People from the Health Hazards of Second-Hand Smoke*, 814 So. 2d 415, 418 (Fla. 2002). Consistent with these statutory requirements, the CRC’s Style and Drafting Committee prepared the following ballot title and ballot summary for inclusion on the November, 2018 ballot with respect to Revision 10:

CONSTITUTIONAL AMENDMENT
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. 793.

D. Election Of County Constitutional Officers.

Florida's Constitution establishes five independently elected public officials at the county level – Sheriff, Clerk of the Circuit Court, Tax Collector, Supervisor of Elections, and Property Appraiser. Art. VIII, sec. 1(d), Fla. Const. These public officials derive their responsibilities, powers and authorities directly from the Florida Constitution, and have independent authority under the constitution to carry out specific duties of statewide concern at the county level.

The 1885 Florida Constitution initially required all county constitutional officers to be elected. R. 809. Nearly 100 years later, through amendments relating to the 1968 Florida Constitution, the method of selection and duties of some county constitutional officers in some counties changed when counties were given broader authority under the home rule doctrine. R. 809. Currently, charter counties may, by charter, choose a constitutional officer by a manner other than county-wide elections, abolish a constitutional office, or transfer its duties to another office. R. 789. No such changes to the constitutional officers' duties or method of selection may be made by non-charter counties. R. 789.

Of Florida's 67 counties, 20 counties have adopted county charters. R. 810. Of these 20 charter counties, eight counties have changed the manner of selecting at least one of the five constitutional officers, or restructured or abolished at least one of the five constitutional offices and transferred the powers to another county

office. *Id.* These counties include Appellants Broward, Miami-Dade and Volusia, in addition to Brevard, Clay, Duval, Orange, and Osceola. R. 810-811.

Although Revision 10 makes changes to four provisions of Florida's Constitution, Revision 10 raised the ire of Appellants only with respect to the changes it proposes to sections 1 and 6 of Article VIII of the Florida Constitution: namely to restore the Florida Constitution's requirement that the five county constitutional officers be elected by the county electorate, and their respective duties preserved. If the Revision is adopted by the Florida electorate, all Florida voters, whether residing in charter or non-charter counties, will elect all five constitutional officers with fixed four year terms, and their offices cannot be abolished, or their duties transferred to another office or officer. *Id.* Appellants assert the proposed change is not a measure to ensure democratic elections for county officers, but instead a misleading assault to home rule.

II. Procedural Posture.

Volusia and Broward filed separate Circuit Court complaints seeking declaratory and injunctive relief. R. 11 and 204. The cases were consolidated, and various parties were granted leave to intervene in the proceeding. Miami-Dade was granted leave to intervene as a party-plaintiff, while Ms. Gannon, the Florida Association of County Clerks, and the Florida Association of Tax Collectors

intervened as party-defendants. R. 103, 112, 855. Each of the parties filed cross-motions for summary judgment. R. 133, 224, 476, 506, 661, 674, 784, 817.

After oral argument, the trial court granted Appellees' Motions for Summary Judgment and denied Appellants' Motions for Summary Judgment. R. 976. In rejecting Appellants' arguments, the trial court found that the title and ballot summary of the Revision complied with section 101.161, Florida Statutes, and that the Revision "is not misleading to the voters of the state of Florida and that it should be included on the November 2018 general election ballot." R. 980.

The trial court rejected Appellants' arguments that the chief purpose of the Revision is to "extinguish or repeal the constitutional rights of the voters of the plaintiff['] counties," and also found that that the CRC did not make any "editorial comments to entice or persuade voters one way or the other on the amendment." R. 978-79. Instead, the Court determined that the ballot title and summary clearly, fairly and unambiguously informed voters of the chief purpose of the Amendment, stating:

[a]n average Florida voter could easily understand that the chief purpose of the amendment is to make all five constitutional officers and offices mandatory in all 67 Florida counties of Florida; to mandate that all five constitutional officers be elected in all 67 counties; and that county charters may not abolish, change the term, transfer duties or eliminate the election of these five constitutional officers.

R. 978. The Court recognized that “[t]he language used appears to be an honest attempt by the CRC to inform the voters what a ‘yes’ vote would mean.” R. 979. The Court also rejected Appellants’ argument that the “voters will be more likely than not to vote for the amendment” because of the “placement of the two state issues at the beginning and at the end of the ballot summary.” *Id.*

Appellants immediately filed separate Notices of Appeal to the First District Court of Appeal. R. 982-1016. The First District granted the Parties’ joint request to certify the case as one requiring immediate resolution by the Florida Supreme Court and *sua sponte* consolidated the three appeals. This Court accepted jurisdiction on August 14, 2018.

SUMMARY OF ARGUMENT

The trial court correctly determined Revision 10’s ballot title and summary comply with Florida law and are not misleading. Appellants face an extremely high burden to succeed on their claims, as Florida Courts have recognized before taking the extraordinary step of removing a constitutional amendment from voter consideration. Appellants must establish by clear and convincing evidence that the Revision is “clearly and conclusively defective.” Appellants have failed to meet this high burden.

Revision 10’s summary and title clearly and unambiguously inform voters of the Revision’s chief purpose of ensuring the election of the state’s five

constitutional officers, as well as other changes to the state government's structure and operations. Contrary to Appellants' arguments, Revision 10 is not a veiled assault on home rule.

The trial court also appropriately rejected Appellants' assertion that the ballot summary must include explanatory language detailing the process by which county charters are amended. Such language would be redundant, unnecessary, and result in the summary exceeding the 75 word limit established by Florida law.

The ballot title and summary also are not misleading and do not use impermissible terminology or political rhetoric. Rather, the summary clearly identifies the chief purpose of the proposed amendment. Notably, the relative merits of the proposed amendment are not at issue in this proceeding, and a decision regarding the merits is instead appropriately left to the voters.

Appellants' attacks on the ballot summary as it relates to changes to the Department of Veterans' Affairs and creation of the Office of Domestic Security and Counterterrorism within the Department of Law Enforcement are likewise meritless. The summary is not misleading with respect to these proposed changes, and instead appropriately describes each proposed change.

Finally, Appellants' argument that the CRC has engaged in improper logrolling with respect to Revision 10 is meritless. As Appellants admit, the CRC is not bound by the single-subject rule and Appellants have not identified any

precedent for applying such principles to CRC proposed amendments. Indeed CRC precedent supports the consolidation of more than one constitutional change into a proposed amendment. Moreover, the ballot summary accurately describes all four changes included in the Revision, and therefore satisfies the only applicable requirements of Florida law. Appellants fail to meet their very high burden, and the trial court’s final order rejecting Appellants’ challenges should be affirmed.

STANDARD OF REVIEW

This Court’s review in cases challenging a ballot title and summary is *de novo*. See *Fla. Educ. Ass’n v. Fla. Dept. of State*, 48 So. 3d 694, 699 (Fla. 2010). In considering such challenges, this Court has recognized that it must exercise “extreme caution and restraint” before removing a constitutional amendment from Florida voters. *Advisory Op. to the Att’y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 184-185 (Fla. 2009) (citing *Advisory Op. to the Att’y Gen. re Fla. Marriage Prot. Amendment*, 926 So. 2d 1229, 1233 (Fla. 2006)). Appellants’ challenge must be rejected, and the voters permitted to consider the proposed amendment, unless Appellants can establish by clear and convincing evidence that the Revision is “clearly and conclusively defective.” *Advisory Op. to the Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice*, 188 So. 3d 822, 827 (Fla. 2017) (emphasis added).

In determining the accuracy of the ballot title and summary, the Court does not review the substantive merit or wisdom of the proposed amendment. *Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 700 (Fla. 2010) (citing *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008)).

ARGUMENT

I. Revision 10's Ballot Title And Summary Comply With Florida Law.

The trial court correctly determined Revision 10's ballot title and summary comply with Florida law and are not misleading. As explained more fully below, Revision 10's summary and title inform the voters of the Revision's chief purpose of ensuring the election of the state's five constitutional officers, as well as other changes to the state government's structure and operations. Contrary to Appellants' arguments, Revision 10 is not a veiled assault on home rule.

A. Applicable Law.

In determining whether the Revision is accurately represented on the ballot, this Court considers two questions: (1) whether the ballot title and summary, in clear and unambiguous language, fairly inform 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 Advisory Op. to the Att'y Gen. re Voter Control of Gambling*, 215 So. 3d 1209, 1215 (Fla. 2017). To comply with the requirements of law, the ballot language "must state the chief

purpose of the proposed amendment.” *Armstrong v. Harris*, 773 So. 2d 7, 18 (Fla. 2000). However, “[w]hile the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment.” *Fla. Educ. Ass’n v. Fla. Dept. of State*, 48 So. 3d 694, 700 (Fla. 2010) (citing *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986)).

This Court has noted that even though a ballot summary may omit some details or could have better explained the text of the amendment or its ramifications, that fact alone does not require a proposal to be struck. *Advisory Op. to the Att’y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 185 (Fla. 2009) (quoting *Advisory Op. to Att’y Gen. re Right to Treatment & Rehab. for Non-Violent Drug Offenses*, 818 So. 2d 491, 498 (Fla. 2002)). Further, a ballot summary need not reference every area of government or constitutional provision that may be affected to comply with Florida law. See *Advisory Op. to the Att’y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175 (Fla. 2009).

B. The Ballot Title And Summary State The Chief Purpose Of The Measure In Clear And Unambiguous Language.

As required by Florida law, the ballot title and summary state the chief purpose of Revision 10 in clear and unambiguous language: if approved by the electorate, the Revision would remove charter counties’ ability to abolish or make

changes to the five constitutional offices under the Florida Constitution. As the trial court stated:

The ballot summary begins by declaring that the amendment ensures the election of the five listed constitutional officers in “all counties.” The summary then says that the amendment “removes county charters’ ability to abolish, change term, transfer duties, or eliminate election of these offices.” 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 county charters may not abolish, change the term, transfer duties or eliminate the election of these five constitutional officers.

R. 978. Appellants reject the above clearly stated chief purpose, and claim that the chief purpose of the Revision is instead to “divest county voters of their current constitutional right to democratically decide upon the structure of their respective local governments.” Broward Br. at 5. Appellants thus argue that despite ensuring that all five constitutional officers will be democratically elected by the voters in each county, the Revision is really a wolf in sheep’s clothing intended to deceive voters into unwittingly giving up their current constitutional right to vote for county charters that abolish the five constitutional officers altogether, or provide for the selection of such officers via a means other than democratic elections. It is, however, common sense that by “ensuring” the five constitutional officers are elected and removing the ability of a county charter to eliminate election of such

offices, the Revision would prohibit county charters from selecting constitutional officers via methods other than election.

Appellants base their arguments, in part, on the assertion that the summary must describe how county charters are amended, and therefore must make clear that when Revision 10 states that county charters may not abolish, change the term, transfer duties, or eliminate the election of these five constitutional officers, the Revision actually prevents voters from approving county charters that would abolish, change the term, transfer duties or eliminate the election of these five constitutional officers. As the trial court noted in rejecting this argument, however, the judiciary “must assume some level of understanding on behalf of the voter.” R. 979-80.

By expressly stating it “removes county charters’ ability to abolish, change term, transfer duties, or eliminate election of these offices,” the Revision’s summary clearly and unambiguously informs the voter that charter counties once possessed the power to make certain changes to those five constitutional offices, and the Revision, if adopted by the voters, would remove that power. R. 793 (emphasis added); *see also Fla. Educ. Ass’n v. Fla. Dept. of State*, 48 So. 3d 694, 704 (upholding summary as not misleading, although it did not mention that under the pre-amendment constitution, the Legislature already had school funding responsibility); *Advisory Op. to the Att’y Gen. re Florida Marriage Protection*

Amendment, 926 So. 2d 1229, 1238 (summary fulfilled requirement of informing the voter of the chief purpose in clear and unambiguous language); *Advisory Op. to the Att’y Gen. re Right to Treatment and Rehabilitation*, 818 So. 2d 491, 499 (Fla. 2002) (ballot and summary fairly apprised the voter of the amendment’s chief purpose); *Advisory Op. to the Att’y Gen. re Voter Control of Gambling*, 215 So. 3d 1209, 1216 (summary was reasonably clear about amendment’s chief purpose even where the amendment itself was ambiguous as to whether it would apply retroactively).

Additionally, the trial court correctly recognized that including additional explanatory language to detail the process by which charters are amended would be redundant and make the summary “greatly exceed the 75 word limit.” R. 979. The level of detail suggested by Appellants is not what is required by section 101.161 or the Florida Constitution, and the 75 word ballot summary for the Revision need not provide a detailed treatise on the nuances of home rule and the powers afforded to county charters in order to “not mislead” the voting public. One need only look to the Appellants’ multipage description of the nuances of home rule and the different ways the voters hypothetically could be impacted by Revision 10 to understand the impossibility and impracticality of a 75 word ballot summary including the level of detail Appellants suggest is required. Such detail is not required, and the ballot summary complies with Florida law by describing

the “chief purpose” of the proposed amendment. *Fla. Educ. Ass’n v. Fla. Dept. of State*, 48 So. 3d 694, 700 (Fla. 2010) (citing *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla.1986)) (“While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment.”).

C. The Ballot Title And Summary Are Not Misleading And Do Not Use Impermissible Political Rhetoric.

Appellants next argue that the ballot title and summary are misleading and that the summary utilizes terms and political rhetoric which have previously been rejected for use in ballot summaries. More specifically, Appellants allege that the summary’s use of the term “[e]nsures election” is misleading because it fails to advise voters of the status quo and suggests that the proposed amendment is necessary to ensure the right to elect constitutional officers, when in fact such officers must be elected unless a county charter abolishes such elections. The fallacy in Appellants’ argument is evident. While Appellants are correct that constitutional officers must be elected unless a charter abolishes such offices or prescribes a different method for selection of such officers, the phrase “ensures election” clearly indicates the Revision will prevent any possibility that such constitutional officers are not elected in all counties. Therefore, contrary to Appellants’ assertions, the ballot title and summary do not misstate the current

status quo, but instead very clearly state that the proposed amendment would change the status quo and require that all constitutional officers be elected.

Similarly, Appellant Volusia County argues that the use of the terms “ensures” and “all” constitute improper political rhetoric and an “emotional appeal” because they “imply a threat to vote for the named offices.” Volusia Brief at 24. This argument fails for several reasons.

First, Florida Courts have repeatedly upheld the use of similar words and terms in proposed ballot summaries as not improper political rhetoric. For example, the use of the term “protect” in a ballot summary has continually been upheld by the Florida Supreme Court.² *See, e.g., Advisory Op. to Att’y Gen. re Fla. Marriage Protection Amendment*, 926 So. 2d 1229, 1238-39 (ballot title and

² Appellants’ reliance on *Florida Department of State v. Mangat*, 43 So. 3d 642 (Fla. 2010), is misplaced. Although Appellants correctly state that the Court in *Mangat* found that mention of “mandates that don’t work” was impermissible political rhetoric, it did so because neither the summary nor the amendment identified what mandates were at issue or why they did not work. Similarly, the Court took issue with portions of the amendment that stated that the amendment would “ensure access to health care without waiting lists” and would “protect the doctor-patient relationship” because the text of the amendment did not even reference “waiting lists” or “the doctor-patient relationship,” and the Court determined that the amendment would not have affected either. The Court did *not* hold that the terms “ensure” or “protect” were *per se* misleading, but instead found that broader statements which happened to include such words were misleading. Thus, *Mangat* does not stand for the proposition that terms such as “ensure” or “protect” cannot be used, but rather that when used in a summary, the terms, like the entirety of the summary, must be accurate. As discussed above, the reference to “all counties” and “ensures election” in the summary is accurate.

summary describing amendment as “protecting marriage” did not contain impermissible political rhetoric); *Advisory Op. to Att’y Gen. re Protect People from the Health Hazards of Second Hand Smoke*, 814 So. 2d 415, 421-22 (upholding ballot title and summary that used term “protect” as not misleading); *Fla. Educ. Ass’n v. Fla. Dept. of State*, 48 So. 3d 694, 699-700 (Fla. 2010) (use of the word “maintain” not misleading).

Second, as noted above, the summary’s use of the term “ensures election” and a reference to “all” counties only informs the voters that if passed, the Revision would require (or ensure) that constitutional officers are elected in every county (or all counties) – a right not currently guaranteed in charter counties. The next portion of the Revision language makes the proposed changes even more clear, stating that the Revision would “remove county charters’ ability to abolish, change term, transfer duties, or eliminate election of these offices.” As such, the trial court correctly found the Revision’s ballot title and summary do not use impermissible political rhetoric. R. 979 (“The Court finds that the CRC did not make any editorial comments to entice or persuade voters one way or the other on the amendment. The language used appears to be an honest attempt by the CRC to inform the voters what a ‘yes’ vote will mean.”)

In a similar vein, Appellant Miami-Dade argues that the ballot summary is misleading and defective because it does not disclose potential effects on Miami-

Dade County specifically. However, the ballot summary plainly states that the Revision will ensure election of the constitutional officers in all counties, and the term “all counties” obviously includes Miami-Dade. The Revision’s effects on Miami-Dade would be the very same effects on other charter counties, and thus the ballot summary need not single out Miami-Dade.

If anything, Appellants’ construction of the Revision and its application is misleading. The Revision will in no way “strip” the county electorate of the ability to craft all aspects of their local, county government.

Appellants also assert that the Revision would result in a “transfer of power” from local county voters to state voters, without adequate notice to the electorate. As support for its argument, Appellant Miami-Dade cites to *Advisory Op. to the Att’y Gen. re: Fish and Wildlife Conservation Commission*, 705 So.2d 1351, 1355 (Fla. 1998). The case is, however, inapposite. This Court found fault with the summary at issue in *Fish and Wildlife* because it failed to advise voters that the proposed amendment would strip the Legislature of its exclusive power to regulate marine life. Here, by contrast, the summary for Revision 10 expressly advises voters that the proposed amendment would “remove[] county charters’ ability to abolish, change term, transfer duties, or eliminate election of these offices.”

Further, as the trial court observed, voters across the state have an interest in ensuring the election of county constitutional officers across the entire state – even

in charter counties. T. 79-80. As the trial court noted, voters have an interest when traveling to another county in knowing that constitutional officers such as the Sheriff are elected. T. 79-80. Appellants' attempt to characterize this reasonable interest in uniformity at the state level as malicious meddling is exactly the type of impermissible political rhetoric of which they repeatedly accuse Appellees, and is directed not to the sufficiency of the ballot summary and title, but instead to the substance or the actual effects of the proposed constitutional amendment itself. *See, e.g.*, Miami-Dade Brief at 20-21. Likewise, Appellants' references to past corruption scandals regarding constitutional officers also improperly focuses on the underlying substance and effect of the proposed amendment summarized in the Revision, rather than the appropriateness of the ballot summary and title. As the trial court observed, "it is not th[e] Court's responsibility nor within its power to rule upon the wisdom of the proposed amendment." *See Armstrong v. Harris*, 773 So. 2d 7, 18 (Fla. 2000) ("In evaluating an amendment's chief purpose, a court must look not to subjective criteria espoused by the amendment's sponsor but to objective criteria inherent in the amendment itself, such as the amendment's main effect."); *see also Rights of Electricity Consumers Regarding Solar*, 188 So.3d at 832 ("...we do not consider or address the merits or wisdom of the proposed amendment."). The sole question before the Court is whether the ballot title and summary accurately identify the chief purpose of the Revision in such a manner as

to allow the statewide electorate to make an informed decision. That is where the inquiry ends, and no inquiry regarding the relative merit of the substance of the Revision is appropriate. It is up to the voters, not Appellants, to decide whether the constitutional changes proposed in Revision 10 should be approved.

D. The Remainder Of The Changes In The Revision Are Not Misleading.

Appellants' attack on the remaining changes included in the Revision likewise fail. First, Appellants argue that because the Department of Veterans' Affairs already exists, the summary statement that the Revision "[r]equires the Legislature to retain" the Department is misleading, in that it gives voters the "impression" that the Department is in danger and needs to be saved. Appellants fault the summary for failing to inform voters that the Department is already provided for in the constitution and statutory law. However, the ballot summary's use of the word "retain" cannot be read as implying anything other than that the Department already exists. "Requiring" the Legislature to "retain" the Department therefore clearly advises voters that the Department currently exists, and the Revision, if passed, would require that it continue in existence (or be "retained"). Thus, this language is an accurate description of what the Revision would achieve if passed, and is not misleading. That the Revision would permanently enshrine the Department in the constitution and remove the ability to abolish it does not necessitate the conclusion that the Department is currently under immediate attack.

See Advisory Op. to the Att’y Gen. re Rights of Electricity Consumers Regarding Solar, 188 So. 3d 822, 831 (Fla. 2016) (“Neither the ballot title nor the summary misleads the public by suggesting that the amendment is necessary for consumers to be able to own or lease solar equipment installed on their property to generate electricity for their own use.”)

Next, Appellants challenge the portion of the Revision which would create the Office of Domestic Security and Counterterrorism within the Department of Law Enforcement. Appellants argue that the ballot summary implies the Revision would create a new office, when in fact it would simply elevate an existing office to the constitutional level. While it is true that domestic security and counterterrorism departments already exist, it is also true they do not exist as a constitutional office. Accordingly, the ballot title and summary are both accurate and not misleading in this regard. Florida law is clear that a summary that clearly states it will establish a right under the Florida Constitution is not misleading where no current constitutional provision establishes that right. *See Advisory Op. to the Att’y Gen. re Rights of Electricity Customers Regarding Solar*, 188 So. 3d 822, 833 (Fla. 2016) (“In contrast [to *Evans*], the ballot summary in this case is not misleading because it explicitly claims to ‘establish[] a right *under Florida’s constitution*’ and no constitutional provision currently provides electricity consumers with the specific right ‘to own or lease solar equipment installed on

their property to generate electricity for their own use.”) (emphasis in original). Finally, Appellants’ assertion that the Department created by the Revision is redundant again impermissibly looks to the subjective intent of the sponsors and asks this Court to consider the merits of the amendment.

II. The Ballot Title And Summary Do Not Require Specialized Knowledge For The Voter To Understand.

Appellants further attack the Revision by claiming that the average voter would need specialized legal knowledge to interpret the ballot title and summary to make a fully informed choice. Broward Brief at 13-14; Miami-Dade Brief at 31-33. However, as the trial court below correctly held, the summary need not disclose every possible detail and ramification. Rather, the Court can assume that average voters have done some research beforehand, and come to the ballot box with basic knowledge and understanding. *Metropolitan Dade County v. Shiver*, 365 So. 2d 210, 213 (Fla. 3d DCA 1978); *Advisory Op. to the Att’y Gen. re Right to Treatment & Rehabilitation*, 818 So. 2d 491, 498 (Fla. 2002) (“voters must acquaint themselves with the details of a proposed amendment together with the pros and cons thereon before they enter the voting booth and if they do not, it is no function of the ballot to provide that needed education”).

Although Appellants have spent countless pages detailing the history and extolling the virtues of home rule in Florida, Appellants also paradoxically assert that the average voter is completely unaware that these rights exist and that this is

“specialized legal knowledge.” Miami Brief at 31-32. However, as the trial court properly determined, the Court must assume some level of understanding on the part of the voter, and the summary complies with Florida law. Further, if such specialized knowledge were required for the voters to cast their vote with “eyes wide open,” it would be impossible to craft an appropriate ballot summary, as the summary would have to provide a detailed treatise on the nuances of home rule and the powers afforded to county charters in order to “not mislead” the voting public. Indeed, Miami-Dade County alone spends several pages and over 200 words enumerating everything it asserts the summary for Revision 10 would need to include.

III. The Revision Does Not Violate Single-Subject Prohibitions.

Appellants’ argument that Revision 10 constitutes improper logrolling fails for several reasons. First, Appellants have repeatedly conceded that the CRC is not bound by the single-subject rule which applies to citizen initiatives. *See, e.g.*, T. 64, Broward Brief at 17; R. 669. Rather, Florida’s Constitution expressly authorizes the CRC to propose revisions to Florida’s Constitution in whole, or in part. Art. XI, § 2(c), Fla. Const. As such, Appellants appear to recognize that the Revision may include more than one related proposal unless the ballot summary is misleading.

Second, Appellants appear to concede that the consolidation of several constitutional changes into one proposed amendment would only be improper if it rendered the ballot summary misleading. The ballot summary at issue appropriately describes the chief purposes of the Revision and is not misleading simply because four constitutional changes are included in the Revision. The CRC has historically consolidated similar proposals into ballot amendments, and often with much greater frequency than the most recent Commission. Election officials have recognized that long ballots create a disincentive to voting, and that grouping proposals together by subject keeps the ballot from becoming too lengthy to complete. Consistent with this thinking, the four changes contained in Revision 10 are accurately identified under the umbrella of “State and Local Government Structure and Operation,” and are not “wholly unrelated.” Furthermore, although Revision 10 covers four structural and operational proposals related to state and local government, the provision relating to the election of constitutional officers is described by 34 words – nearly half of the 75 word limit. Appellants’ argument that the CRC attempted to “hide the ball” therefore is not supported by the facts.

In further argument that the CRC attempted to “logroll” or “sugarcoat” the Revision, Appellants selectively quote the CRC Style and Drafting Committee, and cherry pick discussions about grouping of proposals in order to imply there is some nefarious intent to “pull the wool” over the eyes of the state electorate. Broward

Brief at 17, n.9. To the contrary, transcripts of the CRC Meetings reflect that the consolidation of four proposals pertaining to state and local government into Revision 10 was extensively discussed, debated, and voted upon, and the majority of the Commissioners agreed the grouping was logical and done with the best intentions for the benefit of the Florida electorate.³ R. 451-52. Even when questioned by the trial court below, Appellants could not articulate nor identify any improper motivation or other nefarious intent by the CRC for trying to “logroll, “sugarcoat,” or in essence, “sneak” the proposal ensuring election of the county’s constitutional officers “past the voters.” T. 18, 37.

In addition, in arguing that the summary sugarcoats the “critical amendment by logrolling it in with largely symbolic, yet seemingly popular, proposals about veterans and counterterrorism,” Appellants substitute their own subjective views relating to relative importance and/or attractiveness of the various proposals for that of the state’s electorate. Broward Brief at 17. For example, the proposed change to article IV, section 11 to permanently establish the Department of Veterans’ Affairs is no small change. R. 458.

³ The single-subject limitation exists for citizens’ initiative proposals because the initiative process “does not provide the opportunity for public hearing and debate that accompanies the other methods of proposing amendments.” *Advisory Op. to the Att’y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 180 (Fla. 2009).

Additionally, the creation of an Office of Domestic Security and Counterterrorism at the constitutional level is neither redundant nor inconsequential. Rather, the Office would unify existing counterterrorism squads and domestic security task forces and “bring together the best” of local Sheriffs, Police Chiefs, and other professionals as needed. R. 454. Regardless, the merits of this Office are again a debate on the wisdom of the amendment, which is the role of the electorate, not the courts. Even the seemingly minor change to the state date for the Legislative Session may be of great importance to many voters. R. 445. Accordingly, Appellants’ attempt to cast this “bundling” as an attempt by the CRC to “sneak” the proposals relating to constitutional officers past the voters is not supported by fact or reason.

Appellants also attack the placement of the proposal relating to county constitutional officers in the middle of the other proposals and state that it “visually obscures” the true effect of the Revision. R. 883-85. However, the placement of the provisions has no bearing on the substance at issue. As determined by the trial court, there is no basis to accept the notion that voters would be more likely to vote for the Revision because of the placement of the two state issues at the beginning and at the end of the ballot summary. R. 979. This Court should likewise reject Appellants’ arguments. The CRC’s decision to consolidate certain changes into a

single proposed amendment does not violate Florida law and does not render the Revision's ballot summary misleading or defective.

CONCLUSION

For the foregoing reasons, Appellants have failed to meet their high burden and demonstrate Revision 10 does not comply with Florida law. Accordingly, Ms. Gannon respectfully requests this Court affirm the trial court's decision and allow the Revision to appear on the November, 2018 General Election Ballot, and award such other relief as this Court deems just and appropriate.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief was written in Times New Roman 14-point font in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Florida Court's E-Filing Portal and was served via e-mail on August 28, 2018 to:

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