

SC18-1339

In the Supreme Court of Florida

COUNTY OF VOLUSIA, ET AL.,
Petitioners,

v.

KENNETH J. DETZNER, ET AL.,
Respondents.

RESPONDENTS' BRIEF

ON DISCRETIONARY REVIEW AND CERTIFICATION
FROM THE FIRST DISTRICT COURT OF APPEAL
Case Nos. 1D18-3361, -3362, -3363

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STATEMENT OF THE CASE AND FACTS

I. On May 9, 2018, the Constitution Revision Commission (“CRC”) submitted eight proposed constitutional revisions for placement on the 2018 General Election ballot. At issue in this case is Revision 10, which, if, adopted by Florida’s Electorate, would bar counties from abolishing, via county charter or special law, five constitutional offices: (1) sheriff, (2) tax collector, (3) property appraiser, (4) supervisor of elections, and (5) clerk of the circuit court. *See R.* at 642. Revision 10 would also prohibit counties from transferring the duties of these five constitutional offices to another officer or office; changing the length of the four-year term of office for these officers; or establishing any manner of selection of these officers other than election. *Id.*

To accomplish these goals, Revision 10, if passed, would, in relevant part, amend Article VIII, Section 1 of the Florida Constitution in the following manner (additions underlined; deletions stricken):

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.

...

Id. Revision 10 would also amend Article VIII, Section 6 of the Florida Constitution by adding the following language:

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.

...

Id. at 645-46.

To inform Florida's Electorate of Revision 10's effect (and in accordance with Section 101.161(1), Florida Statutes), the following CRC-approved ballot title and summary will appear on the November 2018 General Election ballot:

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.

Id. at 646-47.

II. On June 7, 2018, the County of Volusia, Philip T. Fleuchaus, and T. Wayne Bailey ("Volusia County") filed suit in Leon County Circuit Court. *Id.* at 11. Broward County filed its own suit on June 15, 2018. *See id.* at 785 n.1. Both counties asked the Circuit Court to enjoin the Secretary of State from placing Revision 10 on the ballot because, in the counties' view, the ballot language is defective. *See id.* at 11, 785 n.1.

The Leon County Circuit Court consolidated Volusia County and Broward County's respective cases on July 12, 2018. *Id.* at 204. The court subsequently allowed Miami-Dade County to intervene alongside Volusia County and Broward

County. *Id.* at 855.¹ It also allowed three additional parties (the Florida Association of Court Clerks, Inc.; the Florida Tax Collectors Association; and Anne M. Gannon, in her official capacity as the Palm Beach Tax Collector) to intervene on behalf of the Secretary. *Id.* at 129, 176, 1087.

The Circuit Court, at the parties' request and in view of looming election deadlines, set an expedited briefing schedule on cross-motions for summary judgment and held a final hearing shortly on August 3, 2018. *Id.* at 977. On August 9, 2018, the court issued its final order, which granted the Secretary's motion (as well as the non-County intervenor's motions) for summary judgment and denied the Counties' motions. *Id.* at 976, 980. In so doing, the Circuit Court concluded that the ballot language for Revision 10 is "in compliance with Florida Statute 101.161" because it "is not misleading to the voters of the state of Florida" and, accordingly, "should be included on the November 2018 general election ballot." *Id.* at 980.

Specifically, the Circuit Court recognized that the Counties' "primary argument is that the true chief purpose of Revision 10 is to extinguish or repeal the constitutional rights of the voters of the" Counties. *Id.* at 978. The court, however, "disagree[d]" with the Counties' "assert[ion] that the ballot summary does not make

¹ Although Volusia, Broward, and Miami-Dade County have all submitted their own briefs, they advance a number of overlapping arguments. For that reason, this brief refers to all three, collectively, as "the Counties." The Secretary has indicated where one argument is specific to a particular county.

its chief purpose clear.” *Id.* Because “[t]he ballot summary begins by declaring that [Revision 10] ensures the election of the five listed constitutional officers ‘in all counties,’” and “then says that [Revision 10] ‘removes county charters’ ability to abolish, change term, transfer duties, or eliminate election of these offices,” the Circuit Court reasoned that “[a]n average Florida voter should easily understand that the chief purpose of” Revision 10 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
- to mandate that “county charters may not abolish, change the term, transfer duties or eliminate the election of these five constitutional officers.”

Id.

The Circuit Court also considered, and rejected, the Counties arguments that Revision 10’s ballot summary (1) uses impermissible political rhetoric; (2) “‘hides the ball’ by sandwiching the provisions concerning county government between the ‘feel good’ measures for state government concerning veterans affairs and counter terrorism”; and (3) will mislead the voter by using the phrase “removes the county charters’ ability” when “it is really *the voters* in the charter counties who are losing those rights.” *Id.* at 979-80 (emphasis in original). Regarding the latter, the Circuit Court was “not convinced that any voter could be misled by the alternative language used by the CRC in its ballot summary, *id.* at 979; noted that courts “must assume

some level of understanding on behalf of the voter, *id.*; and concluded that “no reasonable voter should be confused by the semantics of this phrase” because “[t]he average voter would ‘connect the dots’ that removal of these rights under the charter would by necessity mean that the voters could not vote to exercise those prohibited rights,” *id.* at 980.

The Counties appealed, *see id.* at 982, 993, 1005, and the First District certified that, under Article V, Section 3(b)(5) of the Florida Constitution, this case involves a question of great public importance requiring immediate resolution by this Court. On August 14, 2018, this Court accepted jurisdiction and set an expedited briefing schedule.

SUMMARY OF ARGUMENT

After voluminous briefing and an afternoon of argument before the Circuit Court, two aspects of this litigation have become clear. The first is that Revision 10’s ballot title and summary clearly, plainly, accurately, and comprehensively describe Revision 10’s chief purpose and the legal effect it will have on the Florida Constitution if the voters approve it this November. The second is that the Counties fervently disagree with Revision 10 as a matter of policy and governmental structure. But after fully articulating their view regarding the importance of voter rights and democratic governance over *county charters*, the fact remains that the relief they seek is to prevent Florida’s Electorate from determining whether to enshrine

Revision 10's proposed changes in the *State's* charter—the Florida Constitution. This Court should, as the Circuit Court did before it, reject this attempt to interfere with the State's democratic process.

I. Revision 10, in relevant part, would take away the ability of “a county charter” to “abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court.” R. at 642. Revision 10's ballot summary, in turn, informs the voters that it will “*remove*”—which the Oxford English Dictionary defines as “take (something) away,” *see* Remove, Oxford English Dictionary Online. <https://en.oxforddictionaries.com/definition/remove> (last visited August 28, 2018)—a “county charter[']s ability to abolish, change term, transfer duties, or eliminate election of these offices.” R. at 646-47. Revision 10's ballot summary need say no more to comply with the requirements necessary to appear on the November 2018 General Election Ballot.

II. The Circuit Court correctly rejected the Counties' argument that Revision 10's ballot language does not clearly and accurately inform Florida's Electorate of Revision 10's chief purpose. This Court has made clear that a Revision's chief purpose equates to its legal effect, *see Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984). Revision 10's legal effect is to prevent all Florida counties from abolishing, via charter or special law, five constitutional offices, transferring their duties to any other office or officer, or selecting those officers through any means

other than election. Revision 10's ballot summary informs Florida's electorate of this legal effect by stating that Revision 10, if passed, will (1) "[e]nsure[] election of" these offices "in all counties" and (2) "remove[] county charters' ability to abolish, change term, transfer duties, or eliminate election of these offices." R. at 646-47. The CRC's decision to use the phrase "county charters' ability," rather than "county voters' ability," in Revision 10's ballot summary does not hide Revision 10's chief purpose, because the average voter understands that voting to prohibit a county charter from affecting these offices is the same as voting to prohibit his or her own ability, via county charter amendment, to affect these offices.

III. The Circuit Court also correctly rejected the Counties' argument that Revision 10's ballot language is misleading.

First, there is no single-subject requirement for CRC-ballot proposals. This Court should reject the Counties' attempt to create what would be, in effect if not in name, a single-subject requirement by labeling any revision that bundles amendments "misleading." Even though the Revision accomplishes four different things, the ballot summary precisely and clearly describes each of those four things, so it is not in any way misleading.

Second, the CRC, which must comply with a 75-word cap for all ballot summaries, was under no obligation to recite every potential effect on every county charter. This is because voters are presumed to have the common-sense knowledge

that a constitutional amendment limiting how the structure of county government may be changed via county charters would necessarily abrogate any county charter that conflicts with the new constitutional amendment.

Third, Revision 10’s ballot summary includes no political rhetoric at all; instead (as cogently described by the Circuit Court), “[t]he language used appears to be an honest attempt by the CRC to inform the voters what a ‘yes’ vote will mean” and includes no “editorial comments to entice or persuade voters one way or the other on the” Revision. R. at 979.

And *fourth*, because, as the Circuit Court acknowledged, “it is not a [c]ourt’s responsibility nor within its power to rule upon the wisdom of the proposed amendment,” *id.* at 978, the Counties’ respective views regarding the merits and importance of home-rule authority have no bearing on whether Revision 10’s ballot summary misleads Florida’s Electorate about what Revision 10 will do if it is adopted. Because Revision 10’s ballot summary in fact accurately, and non-misleadingly informs Florida’s Electorate what Revision 10 will do if it is adopted, it must remain on the November ballot.

LEGAL STANDARD AND STANDARD OF REVIEW

I. As a threshold matter, this Court’s review of the Counties’ challenges is governed by two animating principles. First, the amendment process “is the most sanctified area in which a court can exercise power.” *Pope v. Gray*, 104 So. 2d 841,

842 (Fla. 1958). Under the Florida Constitution, “[s]overeignty resides in the people and the electors have a right to approve or reject a proposed amendment to the organic law of the State, limited *only* by those instances where there is an *entire* failure to comply with a *plain* and *essential* requirement of the organic law in proposing the amendment.” *Id.* (emphases added). Accordingly, a court must exercise “‘extreme care, caution, and restraint before it removes a [proposed] constitutional amendment from the vote of the people.’” *In re Advisory Op. to Att’y Gen. re Authorizes Miami-Dade & Broward Cty. Voters to Approve Slot Machines in Parimutuel Facilities*, 880 So. 2d 522, 523 (Fla. 2004) (quoting *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982)).

Second, and relatedly, judicial review of the amendment process is extremely deferential. If “‘any reasonable theory’” can support an amendment’s placement on the ballot, it should be upheld. *Armstrong v. Harris*, 773 So. 2d 7, 14 (Fla. 2000) (quoting *Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956)). Compared to the deference owed legislative acts, this standard “is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval.” *Id.* (internal quotation marks omitted). To that end, Florida courts are not to interfere with the amendment process “unless the laws governing the process have been ‘clearly and conclusively’ violated.” *Advisory Op. to Att’y Gen. re Right to Treatment & Rehab.*, 818 So. 2d 491, 499 (Fla. 2002).

II. Section 101.161(1), Florida Statutes, codifies the standard for ballot titles and summaries of proposed constitutional amendments. Any such measure “submitted to the vote of the people” shall include a ballot title “not exceeding 15 words in length, by which the measure is commonly referred to or spoken of,” and a ballot summary, “not exceeding 75 words in length,” that must explain “the chief purpose of the measure.” § 101.161(1), Fla. Stat. (2017).

The purpose of the ballot title and summary is “to provide fair notice of the content of the proposed amendment.” *Advisory Op. to the Att’y Gen.-Fee on the Everglades Sugar Prod.*, 681 So. 2d 1124, 1127 (Fla. 1996). To satisfy section 101.161, Florida Statutes, they must “state in clear and unambiguous language the chief purpose of the measure,” *Askew*, 421 So. 2d at 155, so that the proposed amendment does not “fly under false colors” or “hide the ball” as to its effect, *Armstrong*, 773 So. 2d at 16 (internal quotation marks omitted).

In assessing a proposed amendment’s ballot title and summary, a court asks two questions: “First, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’” *Fla. Educ. Ass’n v. Fla. Dep’t of State*, 48 So. 3d 694, 701 (Fla. 2010) (quoting *Fla. Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008)).

III. Because this appeal concerns a legal determination whether the ballot language satisfies the applicable standard, this Court reviews the trial court's ruling *de novo*. *Slough*, 992 So. 2d at 147.

ARGUMENT

I. REVISION 10'S BALLOT TITLE AND SUMMARY FULLY AND ACCURATELY ADVISE THE ELECTORATE OF REVISION 10'S LEGAL EFFECT.

The purpose of Revision 10's ballot title and summary is "to provide fair notice of the content of" Revision 10. *Advisory Op. to the Att'y Gen.-Fee on the Everglades Sugar Prod.*, 681 So. 2d at 1127. As recognized by the Circuit Court, Revisions 10's ballot title and summary provide ample notice of the proposal's content in non-misleading, clear, and unambiguous language that plainly and directly conveys the chief purpose of the amendment. No more is required and, accordingly, the Secretary was correctly awarded judgment as a matter of law.

Currently, Article VIII, Section 1(d) of the Florida Constitution provides:

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. . . .*

Art. VIII, § 1(d), Fla. Const. (emphases added). If passed by Florida's Electorate in

November, Revision 10 will amend Article VIII, Section 1(d) by, first, removing the italicized language in the above block quote. The legal effect of this removal is to eliminate the ability of counties, through either charter (in the case of charter counties) or special law (in the case of non-charter counties), to “abolish,” “choose in another manner,” or “transfer” the duties of the five named constitutional officers. What would be left, then, is a Florida Constitutional mandate that, in *all* counties, there “shall be elected . . . , for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.” Lest there be any confusion, Revision 10 would also add the following language to Article VIII, Section 1(d):

[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.

R. at 642.

This Court has made plain that a “ballot summary should tell the voter the legal effect of the amendment, and no more.” *Evans*, 457 So. 2d at 1355. As is plain from above, the “legal effect” of Revision 10 is to:

- (1) leave intact the language in Article XIII, Section 1(d) stating that “[t]here shall be elected by the electors of each county . . . a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court”;
- (2) remove the language in Article XIII, Section 1(d) allowing a “county charter or special law” to abolish an office, transfer the duties of an office, or select a representative of an office by any means other than election; and
- (3) add language Article XIII, Section 1(d) confirming that “a county charter may not abolish” any of these offices, transfer the duties of these offices, change the term length of these offices, or select representatives for these offices by any means other than election.

R. at 642. These “legal effects” are plainly, unambiguously, and entirely disclosed by Revision 10’s ballot summary, which states that, if passed, Revision 10 will:

- (1) “[e]nsure[] election of sheriffs, property appraisers, supervisors of elections, tax collectors, and clerks of court in all counties”; and
- (2) “removes county charters’ ability to abolish, change term, transfer duties, or eliminate election of these offices.”

Id. at 646-47.

The Circuit Court was correct to conclude that “[a]n average Florida voter should easily understand that the chief purpose of” Revision 10 “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” to make clear “that county charters may not abolish, change the term, transfer duties or eliminate the election of these five constitutional officers.” *Id.* at 978. This Court’s precedents confirm that nothing more is required for placement on the ballot. For

that reason, the Court should affirm the Circuit Court’s grant of summary judgment.

II. THE TRIAL COURT WAS RIGHT TO REJECT THE COUNTIES’ MISCHARACTERIZATION OF REVISION 10’S CHIEF PURPOSE.

As was the case before the Circuit Court, all three Counties offer the same primary objection to Revision 10’s inclusion on the November ballot: when the CRC decided to inform Florida’s Electorate that a vote in favor of Revision 10 would mean a vote in favor of “remov[ing] *county charters*’ ability to abolish, change term, transfer duties, or eliminate election of these offices,” R. at 646-47, the CRC was purportedly trying to hide from Florida’s Electorate that Revision 10’s chief purpose was extinguishment of *the voters*’ rights.²

The Circuit Court agreed that “that the amendment does not inform the voter that a yes vote ‘repeals’ or ‘eliminates’ the constitutional rights of *the people* in the

² According to Broward County, “[t]he chief purpose of [Revision] 10 is to divest county voters of their current constitutional right to democratically decide upon the structure of their respective local governments[,] [b]ut the ballot language does not clearly say this.” Broward Cty. Br. at 5. According to Miami-Dade County, “[w]hile Revision 10 frames the ballot language as prohibiting county charters from abolishing constitutional offices,” it is defective for failing to state that “(i) the actual rights affected belong to them; (ii) voters in charter counties will no longer have the right to change the structure of their local government; and (iii) voters in non-charter counties will lose the right to enact a charter capable of altering the structure of their local government.” Miami-Dade Cty. Br. at 14. And according to Volusia County, “[t]he ballot language does not clearly and unambiguously disclose that voters in all 67 counties have a valuable right under article VIII, section 1(d), to determine in a charter or special law referendum whether any of the five offices will be chosen in another manner or abolished,” and that “[t]he extinguishment of this right of county voters is a primary effect, thus a chief purpose, of the revision for county government.” Volusia Cty. Br. at 19.

charter counties by their vote alone to structure their county government.” R at 979 (emphasis in original). But the court remained unconvinced “that any voter could be misled by the alternative language used by the CRC in its ballot summary.” *Id.* After observing that courts “must assume some level of understanding on behalf of the voter,” *id.*, Circuit Court concluded that “no reasonable voter should be confused by the semantics of this phrase” because “[t]he average voter would ‘connect the dots’ that removal of these rights under the charter would by necessity mean that the voters could not vote to exercise those prohibited rights.” *Id.* at 980.

The Circuit Court did not err in rejecting this argument, and this Court should similarly reject it here. As a threshold matter, all three counties are wrong as a matter of plain constitutional textual interpretation. The Florida Constitutional provision that Revision 10 would amend (Article VIII, section 1(d)) speaks to the currently existing power of *county charters* to abolish certain constitutional officers:

(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.

Art. VIII, § 1(d), Fla. Const. (emphases added). If Revision 10 is approved by Florida’s Electorate this November, Article VIII, Section 1(d) will change what a “a

county charter” can do:

(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. Unless otherwise provided by 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.

R. at 642 (emphasis added). In other words, the entire premise in support of the County’s respective arguments that Revision 10’s ballot summary “hides the ball” is wrong. Revision 10’s ballot summary plainly informs the Electorate what it will do—change what a *county charter* may accomplish. To accept the Counties’ argument, then, would mean accepting a misreading of the current constitutional text.

Even taking this argument at face value, it still fails. Voters are presumed to have “a certain amount of common understanding and knowledge,” *Fla. Educ. Ass’n*, 48 So. 3d at 701; *see also Advisory Op. to the Att’y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996). And part of the “common understanding and knowledge” a voter must be presumed to have is that a vote in favor of removing a

“county charter[’]s” ability “to abolish, change term, transfer duties, or eliminate election of these offices” means a vote in favor of removing *the voter’s own ability* to “to abolish, change term, transfer duties, or eliminate election of these offices” through his or her county charter. R. at 642. This is because county charters are amended by *vote* of the county’s Electorate.³ And the fact that county charters are amended by vote of a county’s Electorate is not a “sophisticated legal . . . principle,” Broward Cty. Br. at 13, that necessitates “specialized law school classes,” Miami-Dade Cty. Br. at 33, to comprehend. It is, instead, Florida civics 101.

The CRC’s decision to use “county charter” instead of “county voter” plainly does not render Revision 10’s ballot summary removable from the 2018 General Election Ballot, particularly given this Court’s admonition that, if “any reasonable theory” exists to support a revision’s placement on the ballot, then the revision must

³ Indeed, Miami-Dade County appears to concede that it would be satisfied if Revision 10’s ballot summary stated that Revision 10 “would ‘remove the authority of *county voters* to provide for choosing county officers in a manner other than election.” Miami-Dade Cty. Br. at 29 (emphasis in original).

Miami-Dade County takes issue with the Circuit Court’s stray statement that “[t]o fully and clearly inform the voter the language used by the CRC must be included.” R. at 979. The Circuit Court, however, did not suggest that the CRC could insulate ballot language from legal challenge merely by using the same language of the Revision itself. Rather, the Circuit Court’s rejection of the Counties’ argument was premised on its conclusion that it “must assume some level of understanding on behalf of the voter”—*i.e.*, that the “average voter would ‘connect the dots’ that removal of these rights under the charter would by necessity mean that the voters could not vote to exercise those prohibited rights.” R. at 980.

remain on the ballot. *Armstrong*, 773 So. 2d at 14. Accordingly, the Court should affirm the Circuit Court’s grant of summary judgment in favor of the Secretary.

III. THE CIRCUIT COURT CORRECTLY CONCLUDED THAT REVISION 10’S BALLOT TITLE AND SUMMARY ARE NOT MISLEADING.

A. The CRC Did Not Impermissibly “Logroll” Unrelated Constitutional Amendments Into Revision 10.

Despite their concession that the CRC “is not bound by a single-subject rule,” Broward Cty. Br. at 17, the Counties argue that the CRC has “sugarcoat[ed] this critical amendment by logrolling it in with largely symbolic, yet seemingly popular, proposals about veterans and counterterrorism,” *see, e.g., id.* In their view, the CRC’s decision to include a number of amendments under the umbrella of Revision 10 renders Revision 10 misleading. The Circuit Court, however, “reject[ed] the argument that voters will be more likely than not to vote for the amendment in November because of the placement of the two state issues” (*i.e.*, the retention of the department of veterans’ affairs and the creation of the office of domestic security and counterterrorism within the department of law enforcement)⁴ “at the beginning

⁴ The Counties, at times, make the fleeting argument that Revision 10’s ballot summary is misleading because it states that Revision 10 will “‘create’ the Office of Domestic Security and Counterterrorism,” even though this Office already exists by virtue of Florida statute. Broward Cty. Br. at 16. But that is precisely what Revision 10 will do if passed: “The Office of Domestic Security and Counterterrorism *is created* within the Department of Law Enforcement.” R. at 641 (emphasis added). That Revision 10’s ballot language “closely tracks” the language of the Revision itself is a virtue, not a vice. *See Advisory Op. to Att’y Gen. re Funding of Embryonic Stem Cell Research*, 959 So. 2d 195, 201 (Fla. 2007).

and at the end of the ballot summary.” R. at 979.

This Court should reach the same conclusion. The Counties correctly acknowledge that “[o]nly proposals originating through a petition initiative are subject to [a] single-subject rule,” *Charter Review Comm’n of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) (citing Art. XI, Fla. Const.), because, as this Court has held, the CRC “process embodies adequate safeguards to protect against logrolling and deception,” *id.* For that reason, their argument distills to another plea for this Court to conclude that Revision 10’s ballot title and summary are misleading. All four proposals, however, are related to “STATE AND LOCAL GOVERNMENT STRUCTURE AND OPERATION”—which is Revision 10’s ballot title.⁵ Thus, bundling these provisions in this manner, standing alone, is not misleading.

B. Revision 10 Is Not Misleading Because It Does Not Provide A Recitation Of “The Current State Of The Law.”

In Miami-Dade County’s view, the CRC was required to provide “information concerning the current forms of government that voters in counties throughout the

⁵ Volusia County’s argument that Revision 10’s ballot “title does not aid in fairly informing the voter,” Volusia Cty. Br. at 29, is foreclosed by this Court’s admonition that “[t]he ballot title and summary may not be read in isolation,” but instead “must be read together in determining whether the ballot information properly informs the voters.” *In re Advisory Op. to Att’y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 804 (Fla. 2014) (emphasis added) (quoting *Advisory Op. to Att’y Gen. re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 166 (Fla. 2002)) (collecting cases). As discussed above, Revision 10’s ballot summary clearly and completely informs Florida’s Electorate as to Revision 10’s chief purpose and effect.

state have chosen, statewide voters will be unable to make an informed, intelligent choice as to what rights they are giving up or are being asked to strip from voters in other counties.” Miami-Dade Cty. Br. at 13. According to Miami-Dade County, Revision 10 must be stricken because it “fails to inform voters of the myriad constitutional provisions that adoption of the measure would affect, not to mention the undoing of charters, which voters had previously approved, eliminating some or all the positions.” *Id.* at 22.⁶

Revision 10’s ballot summary does indeed inform Florida’s Electorate that a “yes” vote on Revision 10 is a vote in favor of changing county charters that have already dispensed with the listed constitutional officers. The summary states—correctly, clearly, and without qualification—that Revision 10 would “[e]nsure[] election of” the five constitutional officers at issue “in *all* counties.” R. at 646-47 (emphasis added). Thus, the summary makes clear that Revision 10, if adopted, will ensure the *election* of these officers—and, by clear implication, the *existence* of their offices—in *all* counties, including the ones that may have previously abolished

⁶ Volusia County similarly argues that Revision 10’s ballot summary fails to identify for Florida’s Electorate which constitutional provisions Revision 10 will affect, if passed. *See* Volusia Cty. Br. at 19 (“The ballot language does not clearly and unambiguously disclose that an intended main effect of revision 10 is to implicitly but substantially modify article VIII, section 1(c).”); *see also id.* at 20 (“The ballot language does not clearly and unambiguously tell the voter that the revision expressly overrides article VIII, section 6(e).”). But in November, voters will see on the ballot that Revision 10, if adopted, will indeed affect “ARTICLE VIII, SECTIONS 1, 6.” *See* R. at 646-47.

them.⁷ That is more than sufficient notice for inclusion on the ballot.

To the extent that Miami-Dade County is arguing that the CRC had an obligation to identify for Florida's Electorate *every* county charter that might be affected if Revision 10 passes, that argument must fail. In a similar context, this Court has rejected the argument that ballot language should be stricken for declining to "disclose the effect that the proposed amendment would have on existing statutory law." *In re Advisory Opinion to Atty. Gen. ex rel. Local Trustees*, 819 So. 2d 725, 731 (Fla. 2002) (citing *Advisory Op. to Att'y Gen. re Protect People from the Health Hazards of Second-Hand Smoke*, 814 So. 2d 415 (Fla. 2002)). Voters are presumed to know that the policy areas addressed in proposed amendments often are "currently governed by" various statutes, and "it would be virtually impossible to indicate within the word limit of the ballot summary all the ramifications the proposed amendment would have on" existing statutory law. *Id.* The same is true of other forms of sub-constitutional law, such as county charters. Voters have the common

⁷ This logic also defeats Volusia County's argument that Revision 10's ballot summary is defective because it "does not clearly and unambiguously impart that the revision also removes legislative power . . . to propose by special law for every county, charter or non-charter, that the five named offices be selected in another manner or abolished and duties transferred." Volusia Cty. Br. at 21-22. By informing the Florida Electorate that Revision 10 will ensure that *all* counties, as a matter of Florida *constitutional* law, must hold elections for these five offices, Revision 10's ballot summary plainly informs the Florida Electorate that, if passed Revision 10 will prevent the Florida legislature from abolishing these offices via *statute*.

sense to know that the structure of county government may be addressed in county charters and that a proposed amendment to the State’s fundamental law would abrogate them to the extent of any conflict. Moreover, a ballot summary need not waste valuable ink explaining something the voters are presumed to already know, and a requirement to do so would make the 75-word limit unworkable.

C. Revision 10’s Ballot Language Does Not Use Impermissible Political Rhetoric.

In Volusia County’s view, Revision 10’s ballot summary is likely to inflame the passions of the Electorate by “inviting an emotional response.” Volusia Cty. Br. at 23. According to Volusia County, “[t]he words ‘ensures’ and ‘all’” are both ambiguous and “reasonably understood as emotional appeal because they imply a threat to vote for the named offices.” *Id.* at 24.⁸ The Circuit Court rejected this argument, noting, first, that a “ballot summary should . . . tell the voter the legal effect of the amendment and no more.” R. at 979 (citing *Fla. Dep’t of State vs. Mangat*, 43 So. 3d 642 (Fla. 2010)). The Circuit Court then found “that the CRC did

⁸ Miami-Dade County and Broward County also object to the CRC’s use of the word “ensures.” *See, e.g.*, Miami-Dade Cty. Br. at 30 (“Revision 10 actively misleads the voters by pledging to ‘ensure election’ of constitutional officers, while at the same time taking away the ability of charter county voters to initiate an election to decide this issue for themselves.”). This argument, however, ignores the next clause in Revision 10’s ballot summary, which makes plain that a “yes” vote on Revision 10 means a vote in favor of “*remov[ing]* county charters’ ability to abolish, change term, transfer duties, or eliminate election of these offices.” R. at 646-47 (emphasis added).

not make any editorial comments to entice or persuade voters one way or the other on the amendment,” and that “[t]he language used appears to be an honest attempt by the CRC to inform the voters what a ‘yes’ vote will mean. R. at 979.

The Circuit Court was correct when it concluded that Revision 10’s ballot summary does not impermissibly appeal to the emotions of the Electorate or raise the specter of some unidentified threat. Revision 10 would “[e]nsure[] election of sheriffs, property appraisers, supervisors of elections, tax collectors, and clerks of court in all counties.” R. at 646-47. The phrase “ensuring elections” is accurate, non-misleading, and emotionally neutral because Revision 10, if accepted, will amend Article VIII, section 1 to prevent a county from “establish[ing] any manner of selection” of these constitutional officers “other than by election by the electors of the county.” *Id.* at 31. In other words, the Revision 10 ballot summary clearly indicates that, if passed, Revision 10 would “[m]ake certain that” these officials will be selected by election—the dictionary definition of the word “ensure.” Ensure, Oxford English Dictionary Online. <https://en.oxforddictionaries.com/definition/ensure> (last visited August 28, 2018). Nothing about this language implies any impending or immediate threat that would serve to inflame the passion or raise the emotions of the Florida electorate.⁹

⁹ Volusia County also expresses confusion regarding Revision 10’s scope and effect, including whether it will apply prospectively or retroactively. *See* Volusia Cty. Br. at 30-35. As the Circuit Court correctly concluded, *see* R. at 980, any

D. Neither The Counties’ Interest In, Nor The Historical Pedigree Of, Constitutional Home Rule Authority Has Any Bearing On The Sole Inquiry Before This Court.

All three Counties have spilled much ink, before this Court and the Circuit Court, championing their views on the importance and historical pedigree of county Home-Rule Authority and the way in which they have exercised this authority over time. *See, e.g.*, Miami-Dade Cty. Br. at 1 (“If placed on the ballot as drafted, the ballot language will leave the voters of this state unaware of the true impact of their vote on Florida’s longstanding tradition and constitutional protection of county home rule.”). It bears repeating, however, that the relative merit of expansive Home-Rule Authority has *no relevance* to the sole legal inquiry this Court must undertake—whether Revision 10’s ballot title and summary “provide fair notice of the content of the proposed amendment.” *Advisory Op. to the Att’y Gen.-Fee on the Everglades Sugar Prod.*, 681 So. 2d at 1127 (Fla. 1996). And because the Revision 10’s ballot title and summary plainly satisfy this test, the Court should affirm the

purported ambiguity regarding *Revision 10’s* effect, divorced from Revision 10’s ballot title and summary, is far outside the scope of this litigation. *See id.* (“At issue at the hearing and in the briefs is also the question of whether the effect of the proposed amendment is prospective or retrospective. If the amendment is passed that is a question for another case and another day. It is not for this Court to answer except to state that whether its application is prospective or retrospective does not make the ballot summary confusing to the average Florida voter. The combined effects of the words used by the CRC ‘ensure election . . . in all counties’ with ‘removes county charters’ ability’ informs any reasonable voter that if passed the amendment would require in the future all five listed constitutional offices in all 67 counties would be elected to the same terms and with the same duties.”)

Circuit Court’s grant of summary judgment in favor of the Secretary and allow Florida’s Electorate to determine how best to weigh the substantive worth of Revision 10.

CONCLUSION

Florida’s Constitutional amendment process is “the most sanctified area in which a court can exercise power,” and a proposed amendment should be submitted to the Electorate unless its ballot language is “clearly and conclusively” defective. Because the ballot language at issue in this case fully informs the Electorate of the Revision 10’s chief purpose and is not misleading, Florida’s voters are entitled to consider its merits in November. For these reasons, and for those offered above, this Court should affirm the Circuit Court’s grant of summary judgment in favor of the Secretary.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared 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 certify that a true and correct copy of the foregoing brief has been furnished by electronic service to all counsel through the Florida Courts E-Filing Portal on this 28th day of August, 2018.

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