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**IN THE SUPREME COURT FOR THE STATE OF FLORIDA**

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| **COUNTY OF VOLUSIA,** et al.,<br><br>Appellants,<br><br>v.<br><br>**KENNETH DETZNER**, et. al.,<br><br>Appellees. | Case No. SC18-1339<br><br>1st DCA Case Nos. 1D18-3361<br>1D18-3362<br>1D18-3363<br><br>L.T. Case Nos. 372018 CA 001270<br>372018 CA 001342 |

# INITIAL BRIEF OF APPELLANT MIAMI-DADE COUNTY ON THE MERITS

Respectfully submitted,

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## Statement of the Case and Facts

This case involves a proposed amendment to the Florida Constitution that seeks to eliminate the sole mechanism for the people of Miami-Dade County (and other counties) to decide for themselves whether to abolish certain local constitutional officers and, if so, in whom to vest the powers of those local officers. The proposed amendment not only takes an inherently local decision about county electors' choices in structuring their local government and places it before the voters of the entire state, but it also hides the import of the decision within deceptive ballot language that fails to adequately explain the chief purpose and effect of this monumental change to the power of local electors. Moreover, the proposed amendment surrounds this critical issue about the electors' very ability to choose the structure of their local government with three minor, ministerial, and potentially popular changes that are already accomplished by legislation rather than constitutional amendment, thus occupying valuable ballot space that could have been used to better apprise the electors of the significant constitutional choice they face.

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. If Florida's electors are to be presented with such a dramatic change to local government, the ballot language should fully inform them about their current constitutional powers and how a proposed amendment would affect those powers. Only then would the Florida Constitution reflect the will of the people.

## Constitutional Home Rule

The Florida Constitution grants the electors of charter counties broad home rule powers to govern themselves in the conduct of local affairs. *See* art. VIII, § 1(d), Fla. Const. of 1968. Critical among those powers is the right of county electors to decide for themselves whether to abolish county constitutional offices and provide for the powers and responsibilities of those offices to be folded into their county government under the legislative direction of their elected county commissions. *See id*. Specifically, the Florida Constitution mandates that "[t]here shall be elected by the electors of each county . . . a sheriff, a tax collector, a property appraiser, a supervisor of electors, and a clerk of the circuit court; <u>except</u> when provided by county charter . . . ." *See id.* (emphasis supplied). Where the voters of a charter county exercise that exception, "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." *Id.* Additionally (in the case of charter counties) or alternatively (in the case of non-charter counties), these offices may be abolished or "chosen in another manner" as provided "by special law approved by vote of the electors of the county." *Id.*

In either event, the decision to abolish county constitutional offices presently requires a vote whether to approve a special law or adopt, amend, or repeal a county charter – a vote that, unlike the proposed amendment, is held entirely and exclusively within the affected county. *See id.* at § 1(c), 1(d).

**Miami-Dade County Home Rule**

Unlike other Florida charter counties who exercise their home rule powers under Article VIII, §1(d) of the Florida Constitution of 1968, Miami-Dade County also exercises home rule powers through Article VIII, §11 of the Florida Constitution of 1885. *See* art. VIII, § 11, Fla. Const. of 1885 (1957) ("[t]he electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government . . . ."). Miami-Dade County's home rule provision in the Florida Constitution of 1885 was incorporated into the Florida Constitution of 1968 through Article VIII, § 6, which provides:

> All provisions of the Metropolitan Dade County Home Rule Charter, heretofore or hereafter adopted by the electors of Dade County pursuant to Article VIII, Section 11, of the Constitution of 1885, as amended, shall be valid, and any amendments to such charter shall be valid; provided that the said provisions of such charter and the said amendments thereto are authorized under said Article VIII, Section 11, of the Constitution of 1885, as amended.

Through adoption or amendment of the Miami-Dade County Home Rule Charter, the electors of Miami-Dade County:

> [m]ay abolish and may provide a method for abolishing from time to time all offices provided for by [ ] the Constitution or by the

> Legislature . . . and may provide for the consolidation and transfer of the functions of such offices . . .provided . . . that if said home rule charter shall abolish any county office or offices as authorized herein, that said charter shall contain adequate provision for the carrying on of all functions of said office or offices as are now or may hereafter be prescribed by general law.

*Id.* at § 11(f). As a result, Miami-Dade County electors draw their authority to abolish county constitutional officers from two independent constitutional fonts: Article VIII, § 1(d) and Article VIII, § 6(e).

To avail themselves of the home rule powers granted by the Florida Constitution, on May 21, 1957, Miami-Dade County's electors adopted the Miami-Dade County Home Rule Charter ("Home Rule Charter"), becoming the first charter county in Florida to exercise home rule powers. *See* R.521. Through § 8.01 of that Home Rule Charter, the County's electors abolished the county constitutional offices of Assessor of Taxes (Property Appraiser), Tax Collector, and Supervisor of Registration (Supervisor of Elections) and transferred the duties and functions of such offices to the County Manager.[1] *See id.* at 546-47. In addition, the County's

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[1] Section 8.01(A) of the Miami-Dade County Charter of 1957 provided:

> On May 1, 1958, the following offices are hereby abolished, and the powers and functions of such offices are hereby transferred to the County Manager who shall provide for the continuation of all duties and functions of these offices required under the Constitution and general laws of this state: County Assessor of Taxes, County Tax Collector, County Surveyor, County Purchasing Agent, and County Supervisor of Elections.

*See* R.546.

electors gave the Board of County Commissioners (the "Board") the authority to abolish other elective offices and provide for their duties and functions to be transferred to other offices. *See id.* at 547. Soon thereafter, through Ordinance 57-3, the Board abolished the County's Office of Sheriff and established the Public Safety Department, under the direction of an appointed department head, to perform all the Sheriff's functions (except for service of process). *See Dade County v. Kelly*, 99 So. 2d 856 (Fla. 1957).

On November 3, 1959, and October 17, 1961, the County's electors rejected proposed Home Rule Charter amendments to reconstitute the Offices of Sheriff and Tax Assessor as elected offices. *See* R.554. Then, after a third attempt on November 5, 1963, the County's electors again defeated a proposal to make the Tax Assessor an elected office but narrowly approved an amendment to re-establish an elected Sheriff. *See* R.556.

Over the next few years, the elected County Sheriff was accused of various levels of corruption, including criminal charges related to campaign finance violations. *See, e.g., Buchanan v. The Miami-Herald Publishing Company*, 230 So. 2d 9 (Fla. 1969). After three years of a failed experiment with an independent, elected sheriff, on November 8, 1966, the County's electors approved another Home Rule Charter amendment to abolish the elected Sheriff and transfer those powers and responsibilities back to the appointed County Manager. *See* R.557.

On January 26, 2007, the County's electors again reconsidered their form of government under the Home Rule Amendment and elected to create a "strong mayor" form of government. *See* R.565. Under this system, the electors transferred the duties and functions of the abolished county constitutional officers from the County Manager (whose office they would later abolish) to an elected County Mayor. *See id*. On January 29, 2008, the County's electors chose to transfer the duties and functions of the Property Appraiser from the County Mayor to an independently elected Property Appraiser, a Home Rule Charter Office existing within the structure of County government. *See* R.601.

Currently, in Miami-Dade County, the powers of Sheriff, Tax Collector, Property Appraiser, and Supervisor of Elections are all exercised by an elected official. The County's Property Appraiser is independently elected, while the duties and responsibilities of the Sheriff, Tax Collector, and Supervisor of Elections are exercised by the elected County Mayor. While the Mayor designates various department directors to carry on the duties and responsibilities of these roles, the electors nevertheless elect the official that is ultimately responsible for those functions.

Under the County's Home Rule Amendment and Charter, and consistent with 60 years of history, the County's electors have determined by election of the people

– not by mandate of the government – whether the County's constitutional officers should be appointed or elected.

**The Proposed Revision to the Florida Constitution**

On May 9, 2018, the Florida Constitution Revision Commission ("CRC") transmitted its Final Report to Defendant-Appellee, Florida Secretary of State Kenneth Detzner. One of the proposed revisions, identified as "Revision 5: State and Local Government Structure and Operation," (subsequently renumbered by the Secretary of State to Revision 10) endeavored to upend county voters' long-held home rule powers. *See* R.637.

Revision 10 seeks to amend the Florida Constitution to undo one of the foundational tenets of constitutional home rule: the county electors' authority to determine the structure of their county government for themselves. Revision 10 would eliminate the provision that currently allows county voters to abolish and reconstitute county constitutional offices into county charter offices, under the direction of, or independent of, their elected county commissions. By eliminating this option, the proposed amendment would henceforth prevent each county's electors from deciding how best to select these officers and under what conditions these officers would exercise the powers of county government and administration.

As if changing a constitutional county home rule precept that dates back to the Florida Constitution of 1885 is not sufficient on its own to merit the people's consideration, Revision 10 bundles this foundational rewrite with two mom-and-apple-pie proposals (one guaranteeing the existence of an already existing Department of Veterans' Affairs; the other constitutionalizing an already existing Office of Domestic Security within the Florida Department of Law Enforcement) and one anodyne, insider-baseball provision that concerns the Florida Legislature's meeting calendar. *See* R.400-02. Disturbingly, the provision that significantly unravels constitutional home rule is crammed in the middle of these otherwise innocuous, albeit potentially popular, provisions.

In its entirety, the proposed ballot question reads as follows:

> 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.

*See* R.646.

The purpose of the ballot question is to authorize the following changes to Article VIII of the Florida Constitution.[2] First, Article VIII, § 1(d) is amended as follows:

> (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 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.

*See* R.645. Second, Article VIII, § 6(g) is created as follows:

> (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

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2 Words ~~stricken~~ are deletions; words underlined are additions.

> govern with respect to the qualifying for and the holding of the primary and general elections for county constitutional officers in 2024.

*See id*.

**The Proceedings Below**

In response to Revision 10's attempt to remove charter county voters' home rule powers, Broward and Volusia County independently sued the Florida Department of State and Secretary Detzner, seeking declaratory and injunctive relief based on Revision 10's failure to comply with the accuracy requirements of § 101.161, Fla Stat. *See* R.1055-69 & 204-05. The trial court consolidated the Broward and Volusia lawsuits, and permitted Miami-Dade County to intervene as a plaintiff. *See* R.855. The Florida Association of Court Clerks, Florida Tax Collectors Association, and Anne M. Gannon were given leave to intervene as party defendants, advocating on behalf of Revision 10. *See* R.129, 176, & 1087.

All named parties filed and fully briefed cross-motions for summary judgment. *See* R.133, 224, 476, 506, 661, 674, 784, & 817. At an August 3, 2018 hearing, the trial court heard argument from all parties on the cross-motions. *See* R.976. Six days later, on August 9, 2018, the trial court entered an Order Granting Final Summary Judgment in favor of the defendant-appellees and against the plaintiff-appellants, finding that "the title and ballot summary of CRC proposed Revision 10 are in compliance with Florida Statute 101.161." *See* R.980.

The county plaintiffs filed separate Notices of Appeal to the First District Court of Appeal. *See* R.983, 994, & 1108. The First District granted the parties' joint request to certify the case as one requiring immediate resolution by this Court and *sua sponte* consolidated the three appeals. This Court subsequently accepted jurisdiction and ordered expedited briefing to afford this Court the opportunity to consider the case prior to the printing of General Election ballots.

## 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) (holding ballot title and summary on proposed amendment misleading for failing to include material information on the effect of the proposal). And, "[b]ecause [this Court] review[s] the proposed amendment de novo, [the Court] may also consider whether any portion of the title and summary are misleading," even if the "material omission from the ballot title and summary that is misleading to the voter … was not raised by the parties." *Id.*

In conducting its review, this Court considers two questions: <u>first</u>, "whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,'" and <u>second</u>, "'whether the language of the title and summary, as written, misleads the public." *Id.* (quoting *Fla. Dep't of State v. Slough*, 992 So. 2d

142, 147 (Fla. 2008)); *see also* FLA. STAT. § 101.161(1).[3]

## Summary of the Argument

While cloaked in the concept that it "ensures election[s]," Revision 10's ballot summary fails to accurately inform voters that, if passed, those same voters (whether in Miami-Dade County, another charter county, or even non-charter counties throughout the state) will lose the right to hold elections and decide for themselves the structure of their local government on a county level. The trial court correctly found "that the amendment does not inform the voter that a yes vote 'repeals' or 'eliminates' the constitutional rights of the people in the charter counties by their vote alone to restructure their county government." But the trial court nonetheless found that this critical information about the voters' lost rights was both unnecessary and unable to be included in the ballot language because "the language used by the CRC must be included" and because adding accurate information about the loss of this right "would make the summary greatly exceed the 75-word limit." R.979.

Rather than supporting Revision 10, the trial court's blinkered focus on both the need to recite the language of the proposed change rather than its effect and the

[3] FLA. STAT. § 101.161(1) provides, in pertinent part:

> Whenever a constitutional amendment … is submitted to the vote of the people … [t]he ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.

willingness to trade any attempt at clarity for word limits helps demonstrate why this measure must be removed from the ballot. This is because regardless of the number of words used, "the ballot must give the voter fair notice of the decision he must make," not simply notice of the language changes being made to the Florida Constitution. *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (striking ballot language that restated text of proposed constitutional amendment without describing what rights voters would be abandoning).

Revision 10 would fundamentally mislead voters throughout the state, and the trial court erred in approving it for five reasons:

<u>First</u>, the ballot summary misleads voters by failing to adequately describe the rights those voters currently have in establishing their own form of local government. The ballot summary fails to explain that, even in the very limited instances where charter county voters have exercised their right to abolish constitutional officers, the newly-established officers who wield the power of the abolished offices are themselves predominately elected (for example, the elected Miami-Dade County Mayor holds the powers of the Sheriff, Tax Collector, and Supervisor of Elections). Without this necessary information concerning the current forms of government that voters in counties throughout the state have chosen, state-wide 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.

Second, contrary to the trial court's conclusion, Florida law does not require the text of the proposed constitutional amendment to be included in the ballot summary, and certainly not where, as here, the text obscures rather than informs the voters about the amendment's effect on their material rights. While Revision 10 frames the ballot language as prohibiting county charters from abolishing constitutional offices, the amendment does not inform the voters 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. This Court has repeatedly struck down ballot summaries that merely regurgitate proposed amendment text without identifying the effect of the change, because that type of summary is insufficient to inform the voter of the choice. Certainly, the trial court's erroneous conclusion that the amendment text must be included cannot justify keeping a materially confusing summary on the ballot.

Third, 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. The ballot language presents the voters with a false choice between preserving the election of county constitutional officers or running the risk of having those officers selected in some other way against their will. But the voters in each county already have the right to elect county constitutional officers. The real choice Revision 10 poses – but does not actually explain – is whether voters in each county want the voters of the entire state to strip them of the ability to choose a different structure for their local government. If Revision 10 were to be placed on the ballot, voters could end up taking away their rights to determine the structure of their own local governments without notice and without having received an adequate explanation that would allow those voters to make an intelligent, informed choice.

Fourth, although ballot language need not explain every detail or ramification of the decision the voter must make, the language must provide enough notice to allow a voter to make an intelligent choice at the ballot box. This language fails to do so. The trial court is correct that some "level of understanding on behalf of the voter" is assumed when determining the chief purpose of the amendment. But this level of understanding does not include the complex issues of local government that this proposed amendment addresses – and then hides among anodyne and unobjectionable amendments.

Fifth, the trial court's belief that Revision 10 cannot be adequately summarized in the 75-word limit imposed by statute is flatly erroneous, as the drafters of the ballot summary only consumed 34 of the available 75 words to address this fundamental shift in the powers of county voters to determine the nature of their local government. That the drafters of the amendment chose to bundle this critical change to county government with other ministerial amendments, rather than use an additional 40 words to provide clarity and fairness to the voters, cannot possibly justify allowing a confusing and misleading question on the ballot.

Because the CRC's proposed ballot language fails to adequately and accurately ask the voters if they approve of a fundamental change to local government in the Florida Constitution, the proposed ballot language seeking approval of this amendment must be removed from the ballot.

## Argument

### I. The Ballot Language Misleads Voters Because It Fails to Describe the Current State of the Law

Revision 10 falsely informs voters that the proposed amendment is necessary to "ensure" the election of "sheriffs, property appraisers, supervisors of elections, tax collectors, and clerks of court in all counties." *See* R.646. In fact, the default rule under the Florida Constitution is that those positions are already elected. *See* Fla. Const., art. VIII, § 1(d) ("There <u>shall be elected by the electors of each county</u> . . . a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court . . . .") (emphasis supplied).

This Court has consistently held that ballot language is invalid when it fails to explain to voters the existing state of the law, thereby leaving them uninformed of the "true meaning" and "ramifications" of a proposed measure and giving them the false impression that they are gaining something when, in actuality, the proposal takes something away. *See Askew*, 421 So. 2d at 155-56. As a result, ballot language is required to "identify the constitutional and statutory provisions that the proposed amendments will affect." *See Advisory Op. to Att'y Gen. re: Amendment to Bar Gov't From Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 898 (Fla. 2000) [hereinafter, "*Discrimination in Public Education*"] (holding that ballot summaries were "defective for not identifying the initiative petitions' effect" on two particular constitutional provisions) (citing *Advisory Op. to the Att'y Gen. re: Stop Early Release of Prisoners*, 642 So. 2d 724, 726 (Fla. 1994) (invalidating a petition because it substantially modified another constitutional provision but did not mention this consequence in the ballot summary)).

In addition, this Court has invalidated proposed ballot language where the proposed ballot summary implies the non-existence of something that, in fact, exists. *See Discrimination in Pub. Educ.*, 778 So. 2d at 898 (citing *Advisory Op. to the Att'y Gen. re: Tax Limitation*, 644 So. 2d 486, 494 (Fla. 1994) (invalidating a ballot question because it implied that there was no existing cap or limitation on taxes in the constitution when, in fact, such a limitation existed); *Advisory Op. to the Att'y Gen. re: Casino Authorization, Taxation & Reg.*, 656 So. 2d 466, 469 (Fla. 1995) (invalidating a petition because the ballot summary implied that the amendment was necessary to prohibit casinos in Florida)).

That the language about "ensuring" election obscures rather than informs is further evidenced by the fact that, in the limited instances when county electors have opted to abolish county constitutional offices, the functions and powers of those offices often shifted to other elected offices. For example, Miami-Dade County's voters abolished the offices of sheriff, tax collector, and supervisor of elections. *See* R.546-547. But they transferred the functions and powers of those offices to the County Mayor, who is an elected official. *See* § 2.01, Miami-Dade County Home Rule Charter (2016) ("There shall be elected by the qualified electors of the county at large a Mayor . . . ."). Similarly, the County's Property Appraiser is also elected. *See id*. at § 5.04(A) ("the Miami-Dade County Property Appraiser shall be elected on a nonpartisan basis, by a majority of the qualified electors voting at a county-wide election held within Miami-Dade County, Florida"). Accordingly, Miami-Dade County in fact has an elected county charter officer who exercises the powers and responsibilities of the property appraiser, sheriff, tax collector, and supervisor of elections. In painting with too broad a brush, Revision 10 misstates the status quo and thereby misleads voters. *See* R.569-624.

In failing to describe the current state of constitutional authority, Revision 10 also fails to tell voters that the offices in question – sheriff, tax collector, property appraiser, supervisor of elections, and clerk of court – are elected positions by default and that voters presently have a right to: (1) elect those offices as already stipulated in the Florida Constitution; (2) abolish those offices, in whole or in part, by charter adoption/amendment and transfer their statutory duties to other offices; (3) abolish those offices, in whole or in part, upon local approval of a special law, and transfer their statutory duties to other offices; (4) abolish those offices, in whole or in part, as county constitutional offices and instead provide for the election of the office as county charter offices; or (5) travel back and forth between these modes of selection, upon local election, based on the local community's experiences and needs.

Since the Florida Constitution already "ensures" election of the affected offices for all Florida counties as the default provision absent any change by vote of the county's electorate, Revision 10's misleading presentation of the current state of the law reveals that the true purpose of the proposed amendment is not to "ensure" the election of those offices, but rather to remove voters' existing rights to change that default condition by election. *See* art. VIII, § 1, Fla. Const. (providing that "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"); *see also, e.g., id.* at § 11 (authorizing the Miami-Dade County Charter to "abolish" and "provide a method for abolishing from time to time" each of the specified offices).

Miami-Dade County's experience is illustrative of the various permutations in filling the roles of these offices. For example, when the voters of Miami-Dade County adopted Miami-Dade County's Charter in 1957, Miami-Dade County's electors chose to abolish certain offices by charter, and required that the powers and functions of those offices be transferred to the Manager. *See* R.565 ("On May 1, 1958, the following offices are hereby abolished, and the powers and functions of such offices are hereby transferred to the County Manager who shall provide for the continuation of all duties and functions of these offices required under the Constitution and general laws of this state: County Assessor of Taxes, County Tax Collector, County Surveyor, County Purchasing Agent, and County Supervisor of Elections."). With respect to other offices, Miami-Dade County's electors granted the Board of County Commissioners with the power to abolish elected offices and transfer their powers and functions elsewhere. *See id.* ("In the event that other elective officers are abolished by the Board, the Board shall . . . provide for the continuation of all duties and functions of those offices required under the Constitution and general laws.").

Miami-Dade County's experience with the sheriff's office also demonstrates counties' existing ability to exercise flexibility in their government structure. The voters did not abolish the sheriff's office in the 1957 charter. *See id.* But, soon after the adoption of the Miami-Dade County Charter, the Board of County

Commissioners exercised its charter-given power to abolish the office, adopting an ordinance that transferred most of the functions of the office to an appointed department head. *See Kelly*, 99 So. 2d 856 (Fla. 1957). Subsequently, in 1959 and 1961, Miami-Dade County's electors considered and rejected amendments to reconstitute the sheriff as an elected office. *See* R.554-56. In 1963, Miami-Dade County's electors approved reconstituting the sheriff as an elected office. *See* R.556. This proved to be a poor decision, as the elected sheriff was ensnared in a series of legal problems. *See Buchanan*, 230 So. 2d at 9. Accordingly, in 1966, voters approved a charter amendment to abolish the sheriff as an elected officer. *See* R.619 ("On November 9, 1966, the Office of Sheriff is hereby abolished and the powers and functions of such office are hereby transferred to the Mayor, who shall assume all the duties and functions of this office required under the Constitution and general laws of this state. The Mayor may delegate to a suitable person or persons the powers and functions of such office.").

The flexibility presently available to voters is also demonstrated by Miami-Dade County's experience with the Property Appraiser (or Tax Assessor). The voters abolished that office as an elected office in the 1957 charter. *See* R.546 (abolishing the office of County Assessor of Taxes and transferring the powers and functions of that office to the County Manager). Voters were thrice asked to reconstitute that office as an elected office – in 1959, 1961, and 1963 – each time unsuccessfully. *See*

R.556-57. Miami-Dade County's property appraiser remained an appointed official until January 29, 2008, when county voters chose to transfer the powers and functions of that office to an elected property appraiser existing within the structure of Miami-Dade County's government. *See* R.601 ("Commencing with the general election to be held in November 2008 and every four years thereafter, the Miami-Dade County Property Appraiser shall be elected on a nonpartisan basis, by a majority of the qualified electors voting at a county-wide election held within Miami-Dade County, Florida.").

This existing range of choices – choices the voters currently hold – disappears upon adoption of Revision 10. But Revision 10 never informs the voters of the loss of their existing rights in a sufficient manner for them to make an informed choice. *See Askew*, 421 So. 2d at 155-56; *see also Discrimination in Pub. Educ.*, 778 So. 2d at 898.

Additionally, Revision 10 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. *See, e.g.*, *Discrimination in Pub. Educ.*, 778 So. 2d at 898; *In re: Advisory Op. to the Att'y Gen.—Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1021 (Fla. 1994) [hereinafter, "*Laws Related to Discrimination*"] ("Both the summary and the text of the amendment omit any mention of the myriad of laws, rules, and regulations that may be affected by the repeal of 'all laws inconsistent with this amendment.' The summary also fails to state that the proposed amendment would curtail the authority of government entities"). Worse yet, Revision 10 fails to tell voters of its true effect on existing constitutional provisions, thereby suggesting that voters are gaining a new right, rather than losing an existing one.

If it had been adequately drafted, Revision 10 would not only advise voters that they were amending Article VIII, §§ 1(d), 6(e), 9, 10, 11, and 24 (not to mention creating a new § 6(g)), but also it would advise voters that they are repealing portions of voter-approved charters. *See Advisory Op. to the Att'y Gen. re: 1.35% Property Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 976 (Fla. 2009) [hereinafter, "1.35% Property Tax Cap"] ("Lastly, we find the ballot summary misleading because it does not inform the voters of the repeal of an existing Florida constitutional provision . . . . There is nothing in the summary, or indeed the amendment itself, which would put a voter on notice that this constitutional provision is being repealed"). Yet the ballot language for Revision 10 provides none of this critical information. This renders the ballot question fatally defective. *See id.* at 976.

In short, as this Court has "repeatedly held" in other cases, Revision 10 must be stricken from the ballot for its "fail[ure] to mention constitutional provisions that are affected." *Cf. Discrimination in Pub. Educ.*, 778 So. 2d at 899-900.

## II. The Ballot Language Misleads Voters Because It Only Describes the Language of the Proposal, Not Its Chief Purpose or Effect

Revision 10 fails to adequately inform voters that the proposal will completely foreclose the ability of the electors of Miami-Dade County or any charter or non-charter county to change their county constitutional offices by election conducted only within their county. By eliminating this current right of county voters, Revision 10 eviscerates a critical component of Home Rule without adequate notice to the electorate.

Although the trial court recognized that the ballot language did not include this very significant transfer of constitutional power, the trial court nevertheless concluded that only "the language used by the CRC must be included" in order "to fully and clearly inform the voters" of the proposed change. *See* R.979. This was error. This Court has repeatedly recognized that "[t]he ballot summary should tell the voter the legal effect of the amendment" not merely repeat or summarize the language of the proposed change. *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984); *see also Armstrong v. Harris*, 773 So. 2d 7, 18 (Fla. 2000) (providing that ballot summaries must explain "the amendment's main effect" not just repeat the language of the amendment).

This is because for ballot language to be placed before the voters, "the title and summary must be accurate and informative" so that "the electorate is advised of the true meaning, <u>and ramifications</u>, of an amendment." *Discrimination in Pub.*

*Educ.*, 778 So. 2d at 892 (internal citation omitted; emphasis added). Only when the voter is given "fair notice of the content of the proposed amendment … will [the voter] not be misled as to its purpose, and can [the voter] cast an intelligent informed ballot." *Id.*; *see also Smith v. Am. Airlines, Inc.*, 606 So. 2d 618, 620 (Fla. 1992) ("[t]he summary must give voters sufficient notice of what they are asked to decide to enable them to intelligently cast their ballots"); *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954) ("[w]hat the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot"). As such, "[w]hen the summary of a proposed amendment does not accurately describe <u>the scope</u> of the text of the amendment, it fails in its purpose and must be stricken." *Advisory Op. to the Att'y Gen. re: Term Limits Pledge*, 718 So. 2d 798, 804 (Fla. 1998) (removing proposed amendment from the ballot for failing to accurately describe the scope of the resulting changes) (emphasis added).

Here, rather than explaining Revision 10's effect on Florida voters' rights, the ballot language merely parrots portions of the amendment that the proposed change "[e]nsures election of sheriffs, property appraisers, supervisors of elections, tax collectors and clerks of courts" and "removes county charters' ability to abolish, change term, transfer duties, or eliminate election of these offices." By merely reciting the ultimate constitutional text without stating what rights the voters will lose by its adoption, the ballot summary misleads voters into thinking that that no other interests are at stake in the election.

As this Court noted in *Evans*, "it is clearly misleading to reveal only one half of a constitutional 'trade off' in the ballot summary" by failing to recognize which rights are being lost. 457 So. 2d at 1355. The real choice is whether the voters desire to transfer the power over local government structure back from the voters in each county to the voters of the entire state, and that choice must be clearly presented. Because the ballot language instead hides the real choice behind a merely technical recitation of the final language, the ballot language misleads the voters.

In *Advisory Op. to the Att'y Gen. re: Fish and Wildlife Conservation Commission*, this Court removed from the ballot a similar transfer of power between government units without adequate notice to the voters. 705 So. 2d 1351, 1355 (Fla. 1998). There, the ballot summary failed to "explain to the reader that the power to regulate marine life lies solely with the legislature" and that by adopting the proposed amendment, that power will be transferred to a separate constitutional entity. *Id.* In reviewing this failure of notice, this Court found that because "[t]he summary does not sufficiently inform the public of this transfer of power" between governmental units, "the ballot summary does not meet the requirements of section 101.161, [and] the title, summary, and proposed text must be stricken from the ballot." *Id.*

Just as in *Fish and Wildlife Conservation Commission*, Revision 10's ballot language only uses the language of the measure itself to describe one half of the exchange before the voters, (i.e., "ensur[ing] election of sheriffs, property appraisers, supervisors of elections, tax collectors and clerks of courts") and does not identify or explain to the voters that the effect of the change is to transfer electoral power from the voters of each county independently to the voters of the state as a whole.[4]

If adopted, Revision 10 will transfer each county voters' power to decide for themselves whether to abolish constitutional officers through their charters to the state as a whole through the Florida Constitution. The ballot language neither explains nor references this transfer of power to a different unit of the electorate. As such, the ballot summary is misleading, and Revision 10 may not be placed on the 2018 General Election Ballot.

## III. The Ballot Language Misleads Voters Because It Implies that the Proposal will Ensure Voters' Rights to Express Their Will Through One Type of Election Without Informing Voters that They Will Lose the Right to Participate in Another Type of Election

Revision 10's failure to accurately inform the electorate that it removes county voters' rights to choose the structure of their county government is magnified by the ballot's deceptive use of the verb "ensures," to imply a false choice between

[4] A separate loss of power that is wholly unmentioned in the ballot question is the Florida Legislature's power to prompt a local election through the passage of a special law altering the manner of election of the officers in question. *See* art. VIII, § 1(d), Fla. Const.

preserving the election of county constitutional officers or running the risk of those officers being selected in some other way against the voters' will. While the ballot language implies, under the false cloak of "ensuring" electoral choice, that the amendment promotes a charter county elector's ability to decide who will wield the powers of these important offices through the ballot box, the proposed amendment in fact drastically curtails the critical political power of and electoral options available to county voters. Moreover, as described above, election of county constitutional officers, or the election of officers who wield their constitutional powers, is almost universal throughout the state. By holding out the promise that the proposal "ensures election," the ballot language deceives voters into supporting a constitutional change that will take away a right of theirs that is not identified (independent authority over the structure of their county government) to reiterate a right that already exists (elected county constitutional officers).

Additionally, by describing the amendment as "remov[ing]" the authority of "county charters," rather than acknowledging that the authority over a county charter ultimately belongs to the local voters, the ballot language misleads voters into believing the only powers that are being affected are those of county government, and not the power of local voters. Left unsaid is the very real fact that the only way to currently abolish or alter county constitutional offices is by the very mechanism the drafters of Revision 10 attempt to appear so keen to protect: an election. If it had not been drafted to deceive voters and fly under a false cloak, the ballot question would have at least stated that Revision 10 would "remove the authority <u>of county voters</u> to provide for choosing county officers in a manner other than election."

Indeed, it bears emphasizing that when the structure of county government is changed, the change is a result of voter action utilizing a power that resides with "the electors . . . and in them alone." *See, e.g., Chase v. Cowart*, 102 So. 2d 147, 149 & 153 (Fla. 1958) (holding that the Home Rule Amendment allows "the people of Dade County to change the structure of their government to conform to their local needs"); *Kelly*, 99 So. 2d at 860 (Fla. 1957) (Thornal, J., concurring) (noting that the Home Rule Amendment "was intended to supply the people of [Dade County] with a vehicle by which they could transport themselves into happier climes of more effective, more efficient, and more serviceable government").

In *Askew*, 421 So. 2d at 155, this Court was similarly confronted with a ballot summary that, although accurate in its summary of the text of the proposed amendment regarding the lobbying activities of legislators, implied to the voters that the proposed amendment was creating a lobbying restriction when it was actually eviscerating it. This Court removed the proposed amendment from the ballot, holding that "[a]lthough the summary indicates that the amendment is a restriction on one's lobbying activities, the amendment actually gives incumbent office holders, upon filing a financial disclosure statement, a right to immediately commence lobbying before their former agencies which is presently precluded." *Id*. at 155-6; *See also Advisory Op. to the Att'y Gen. re: Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (removing proposed amendment from ballot because "the proposed amendment creates an illusory right to choose a heath care provider when in fact it would severely limit an individual's ability to enter into a health care contract").

Here, the ballot language similarly implies that it is "ensuring" elections, when it is instead transferring that power from the county electorate to the state electorate. The real, undisclosed, choice being presented to the voters is not a choice between "ensur[ing]" elections or not having elections, but rather the choice of who makes that decision in the first place – the voters of the state through the constitution, or the voters of each county through their respective charters. If Revision 10 were to be placed on the ballot, charter county electors' independent choice would not be "ensured" – it would be eliminated without full disclosure.

The misleading nature of Revision 10 extends beyond the portion of the ballot language regarding county constitutional officers. Indeed, Revision 10 is rife with misleading language. It implies a threat to the already-existing department of veterans' affairs by imploring voters to "retain" the office as if it were under imminent attack, and it asks voters to "create" an office for domestic security and counterterrorism when the office for domestic security already exists to, among other duties, prevent, preempt, and deter terrorism in Florida.

These emotional pleas to the voter to "ensure" elections, "retain" services for veterans, and "create" domestic security that all already exist all serve the purpose of misleading voters to accomplish the true ramification of the proposal: to "gut" Home Rule.

## IV. The Ballot Language Misleads Voters Because It Requires Specialized, Undisclosed Information to Fully Understand the Effect of the Measure

In excusing the ballot language's failure to inform voters of the loss of their right to restructure county government by local election, the trial court asserts that Florida law requires the Court to "assume some level of understanding on behalf of the voter." R.979. While true to some extent, this Court has cautioned that "[a]lthough significant detail regarding implementation and speculative scenarios may be omitted … ballot summaries which … fail to mention constitutional provisions that are affected[] and do not adequately describe the general operation of the proposed amendment must be invalidated." *Discrimination in Pub. Educ.*, 778 So. 2d at 899-900 (holding that "drafters of proposed amendments cannot circumvent the requirements of section 101.161, Florida Statute, by merely cursorily contending that the summary need not be exhaustive"). Moreover, "[t]he burden of informing the public should not fall only on the press and opponents of the measure - the ballot summary and title must do this." *Askew*, 421 So. 2d at 156.

Here, the ballot language that the trial court approved would require voters in the ballot box to fully understand the ramifications of what rights they will lose through an amendment that "removes county charters' ability to abolish, change term, transfer duties, or eliminate election of these offices." Voters would need to understand that "county charters' ability" really means an ability that actually belongs to the voters and not to an intervening legal entity, and that eliminating that ability from a county charter would deprive voters of the sole method available to them to determine the structure of their county government. Voters would need to know that the "county charters" are what grant county voters with the authority of local Home Rule. Voters would need to know that, once removed, the only method of exercising the rights they previously held and exercised locally would be for the voters of the state to again amend the Florida Constitution in a statewide election to either re-instate that right or abolish an office. Voters would need to know that the effect of this amendment would be to transfer a power that currently exists in county voters alone to voters in the state as a whole. Voters in charter counties who have already abolished and reconstituted the powers in another elected or unelected office would need to know that their rights to vote for the charter county officers, like the elected Miami-Dade Strong Mayor who exercises the powers of the supervisor of elections, sheriff, and tax collector or the elected Miami-Dade County Property Appraiser, have been diminished. And voters in Miami-Dade County, who possess unique home rule powers under both the Florida Constitution of 1885 and the Florida Constitution of 1968, would need to know that this amendment also alters a fundamental tenant of Miami-Dade County Home Rule.

These are complex issues of local government and local government structure, which are studied in specialized law school classes and are not common knowledge of the voters. As this Court has held, "[w]hile … voters may be presumed to have the ability to reason and to draw logical conclusions," ballot language must still be "written clearly enough for even the more educated voters to understand its chief purpose." *Smith*, 606 So. 2d at 621 (removing ballot summary which "not only assumes an extensive understanding of [the subject matter], but also requires the voter to infer a meaning which is nowhere evident on the face of the summary itself"). Even if voters could research these issues, this Court has cautioned that "the availability of public information about a proposed amendment cannot be a substitute for an accurate and informative ballot summary." *Id.*

If voters are to be asked to approve a change to the constitution – particularly one that changes the very structure of their constitutionally protected local government – the ballot summary must give them sufficient information to fully understand and appreciate the effect and general operation of the proposed amendment. Revision 10 utterly fails to accomplish this critical task.

## V. The Ballot Language Misleads Voters Because It Omits Material Information to Unnecessarily Reduce the Word Count of the Ballot Summary

The trial court erroneously found that including the necessary information to adequately inform the voters "would be redundant and would make the summary greatly exceed the 75-word limit." R.979. While a summary is not required to "explain the proposal at great and undue length … the word limit does not give drafters of proposed amendments leave to ignore the importance of the ballot summary and to provide an abbreviated, ambiguous statement in the hope that this Court's reluctance to remove issues from the ballot will prevent us from insisting on clarity and meaningful information." *Smith*, 606 So. 2d at 621.

As this Court has long held, the overarching principle in ballot accuracy cases is that the ballot must give the voter fair notice of the decision to be made. *See Askew*, 421 So. 2d at 155. This does not mean that a ballot initiative may, in very few words, describe a measure that avoids for the sake of brevity the "extremely broad collateral impact" or "domino effect" that the measure would have. *See Laws Related to Discrimination*, 632 So. 2d at 1022 (Kogan, J., concurring).

Yet Revision 10 makes no effort on this front. Despite proposing, among other things, a sweeping change to the structure of county government, a reduction of voter choice, and a modification of specific voter-approved charters, Revision 10 utilizes only 34 words of the statutorily-afforded 75.

This is not a result of the impossibility of accurately describing the proposed change within the prescribed word limit. Rather, it reflects a policy judgment to bundle this significant change with anodyne, uncontroversial, and unrelated amendments. Specifically, Revision 10's proponents have indicated that their decision to combine multiple proposals into one was not to adequately inform the voters but to prevent perceived voter fatigue. But Florida law does not mandate the crafting of ballot language to avoid voter fatigue; it mandates the crafting of ballot language such that "[t]he ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." *See* FLA. STAT. § 101.161(1). Anything less will "fail[ ] to inform the voter of the chief purpose of [Revision 10] and the effect it will have on the existing, mandatory constitutional provisions." *See Fla. Dep't of State v. Fla. State Conference of NAACP Branches*, 43 So. 3d 662, 669 (Fla. 2010) (striking down ballot summary that failed to inform the voter of "the amendment's true meaning and ramifications"). Artificially constraining the ballot summary of the most significant portion of the amendment signifies that Revision 10 was crafted to hide the ball and fly under false cloak, not to inform the voters. It must be stricken from the ballot.

## Conclusion

Simply put, if the voters of the State are going to approve an amendment that fundamentally changes material portions of the Florida Constitution relating to the structure of county government by transferring the power from county voters to the rest of the state, the voters should at least do so with open eyes and adequate information about that decision. Instead, Revision 10 lulls voters into a sense of complacency by misleading them as to the scope of the proposed change. *See Armstrong*, 773 So. 2d at 22 ("When Florida citizens are being called upon to nullify an original act of the Founding Fathers, each citizen is entitled – indeed, each is duty-bound – to cast a ballot with eyes wide open."). The ballot language for Revision 10 is misleading, the decision of the trial court should be reversed, and this measure should be removed from the General Election ballot.

Dated August 22, 2018

Respectfully submitted,

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**Certificate of Type Size and Style**

Undersigned counsel certifies that the type size and style used in this brief is 14 point, Times New Roman.

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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 generated by the Florida Courts E-Filing Portal on August 22, 2018 to:

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