IN THE SUPREME COURT
FOR THE STATE OF FLORIDA

CASE NO.: SC18-1339

COUNTY OF VOLUSIA, *et al.*,

Appellants,

v.

KENNETH J. DETZNER, *et al.*,

Appellee.

Lower Tribunal Nos.:
1D18-3361; 1D18-3362; 1D18-3363;
372018CA001270XXXXXX; and
372018CA001342XXXXXX

BROWARD COUNTY'S BRIEF ON THE MERITS

Andrew J Meyers, Broward County Attorney
Mark A. Journey, Florida Bar No. 134783
Joseph Jarone, Florida Bar No. 117768
Counsel for Broward County
Office of the Broward County Attorney
Governmental Center
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Facsimile: (954) 357-7641
mjourney@broward.org
jkjarone@broword.org

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PRELIMINARY STATEMENT

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

STATEMENT OF THE CASE AND FACTS

In 1968, Floridians amended the Florida Constitution to grant local electors the right to engage in "home rule" through the democratic adoption of county charters. Art. VIII, §1(c)-(d), (g) Fla. Const. (1968). In 1974, Broward's voters approved the Broward County Charter (the "Charter"). (R. 256-76.) Broward's residents, through the Charter, voted to abolish the office of tax collector and transfers those duties to a department within Broward's organizational structure. (R. 260, 262-63.) Additionally, Broward's residents voted to transfer certain of the Clerk of Court's duties (duties unrelated to the judiciary) to various county officials and departments. (R. 260, 262-63.) These changes made by Broward's voters in 1974 remain in effect today (about 44 years later). (R. 293-95.)

From 2017 to 2018, the Constitution Revision Commission (the "CRC") met to consider various proposed revisions to the Florida Constitution. (R. 216, 486, 501, 1059, 1120.) Among these were Proposals 9, 13, 26, and 103. Each was separately considered and individually approved prior to being sent to the CRC's Style and Drafting Committee. (R. 343-99.) Proposal 9 would require the presently existing Department of Veterans Affairs to be a mandatory office (R. 332); Proposal 26 would rename an existing office, the Office of Domestic Security, to the "Office of Domestic Security and Counterterrorism (R. 338-340, 390);[1] and Proposal 103 would mandate changes to the scheduling of state legislative sessions. (R. 341-42.) Proposal 13 is far more consequential; it would reverse certain home rule powers granted to countywide voters in the 1968 Constitution. (R. 333-37.)

The Style and Drafting Committee logrolled these four unrelated proposals into a single amendment, now known as Amendment 10. (R. 400-02.) The CRC drafted a single ballot title and summary for the four distinct proposals:

> 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;

[1] When arguing in support of Proposal 26, the sponsor said it would only "rename the [Office of Domestic Security]." (R. 390.) However, Amendment 10, as drafted, asserts it will "create" the Office of Domestic Security and Counterterrorism"—not rename an already existing office. (R. 473.)

> removes legislature's authorization to fix another date. Creates office of domestic security and counterterrorism within department of law enforcement.

(R. 473.)

Broward sued the Department and Detzner for declaratory and injunctive relief, arguing that Amendment 10 failed to state its chief purpose and was misleading. (R. 1055-69.) Broward's suit was consolidated with a lawsuit filed by Volusia alleging the same, and Miami-Dade intervened as a plaintiff into Broward's suit. (R. 204-05, 855.) The Clerks, Tax Collectors, and Gannon intervened as defendants. (R. 976-77.)

The parties filed cross-motions for summary judgment. (R. 133, 224, 476, 506, 661, 674, 784, 817.) The trial court granted Respondents' motions for summary judgment and denied Counties' motions for summary judgment. (R. 976.)

Broward, Miami-Dade, and Volusia filed separate notices of appeal to the First District Court of Appeal. (R. 983, 994, 1005-06.) The First District granted the parties' joint motion to certify the case as one requiring immediate resolution by the Florida Supreme Court and *sua sponte* consolidated the three appeals. (Aug. 13, 2018 Order Granting Certification of Cause to Florida Supreme Court). This Court accepted jurisdiction. (Aug. 14, 2018 Order Accepting Jurisdiction).

SUMMARY OF THE ARGUMENT

This Court has unequivocally stated that if a proposed constitutional amendment would strip voters of their state constitutional rights, voters must be told so clearly and unambiguously in the Amendment's ballot title and summary. Amendment 10's ballot language does not clearly and unambiguously inform voters that its chief purpose is to strip them of their currently existing right to develop, if they so choose to, an organizational structure they believe best fits the need of their respective counties to replace the constitutional default provision addressing five constitutional offices.

Rather than ensure that voters are able to intelligently cast their vote by clearly explaining the actual impact of the proposed amendment, the drafters used their limited words to logroll three unrelated, though seemingly appealing, proposals into the same amendment, forcing voters to balance potential support for these other proposals with any concern regarding some unknown, unexplained, and not fully developed impact to home rule power.

This Court should reject this form of misleading drafting and demand that voters be given the "full truth," in plain terms, where, as here, a proposed amendment would deny them longstanding constitutionally granted rights.

This Court has consistently required "truth in packaging" with regard to such ballot measures. The drafters of Amendment 10 instead allocated precious words to

sugarcoat the amendment through logrolling, leaving insufficient remaining words to adequately explain its primary thrust and most significant impact. Accordingly, Amendment 10 should be stricken from the November 2018 ballot.

STANDARD OF REVIEW

"The standard of review of the validity of a proposed constitutional amendment is de novo." *Fla. Dep't of State v. Fla. State Conference of NAACP Branches*, 43 So. 3d 662, 667 (Fla. 2010) [hereinafter, *NAACP Branches*]. Additionally, grants of summary judgment are reviewed de novo. *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130-31 (Fla. 2000).

ARGUMENT

I. AMENDMENT 10 USES POLITICALLY ADVANTAGEOUS WORDSMITHING TO "HIDE THE BALL" AS TO ITS CHIEF PURPOSE: TO STRIP VOTERS OF THEIR RIGHT TO STRUCTURE THEIR OWN COUNTY'S CONSTITUTIONAL OFFICES.

The chief purpose of Amendment 10 is to divest county voters of their current constitutional right to democratically decide upon the structure of their respective local governments. But the ballot language does not clearly say this. Instead, it "hides the ball" as to this chief purpose, merely telling voters only *how* the amendment is to be implemented (and not sufficiently explaining even that) rather than *whose* constitutional rights the amendment would strip.

A. Legal Standard

"Because voters will not have the actual text of the amendment before them in the voting booth when they enter their votes, the accuracy requirement is of paramount importance for the ballot title and summary." *Armstrong v. Harris*, 773 So. 2d 7, 13-14 (Fla. 2000). The ballot title and summary must give the voter "fair notice of the decision he must make." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982). "Fair notice in terms of a ballot summary must be actual notice consisting of a clear and unambiguous explanation of the measure's chief purpose." *Id.* at 156. This accuracy requirement "functions as a kind of 'truth in packaging' law for the ballot." *Armstrong*, 773 So. 2d at 13.

When evaluating a ballot title and summary, this Court asks two questions: "(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public." *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008) (citation omitted). "A ballot title and summary cannot either 'fly under false colors' or 'hide the ball' as to the amendment's true effect." *Armstrong*, 773 So. 2d at 16.

B. The 1968 Constitution Granted Voters Broad Home Rule Rights to Regulate the Structure of Their Respective Local Governments and the Default Constitutional Offices.

In 1968, Florida's citizens enacted the 1968 Constitution, granting Floridians robust rights to engage in local self-governance. Art. VIII, §1, Fla. Const. (1968). Previously, the 1885 Constitution had forced voters to elect, in most counties, the sheriff, tax collector, clerk of the circuit courts, supervisor of elections, and property appraiser. Art. VIII, §6, Fla. Const. (1885). With the 1968 Constitution, local electors' control over these offices was expanded to include the ability to abolish an office by transferring its duties to another office or to change the manner in which officers are selected. Art. VIII, §1(c)-(d), Fla. Const. These rights imbued a county's voters with robust powers over the default offices, enabling them to institute things like term limits. *See Telli v. Broward Cty.*, 94 So. 3d 504, 512 (Fla. 2012) (citing *Cook v. City of Jacksonville*, 823 So. 2d 86, 95-96 (Fla. 2002) (Anstead, J., dissenting)).

The 1968 Constitution gave voters two legal mechanisms to regulate the constitutional offices. Art. VIII, §1(d), Fla. Const. The first mechanism is that voters may act through their county charter. *See id*. Functioning as a county's constitution, the charter belongs to the people and may be amended, repealed, or enacted only through vote of a local electorate. Art. VIII, §1(c), Fla. Const.; *see also Hollywood, Inc. v. Broward Cty.*, 431 So. 2d 606, 609 (Fla. 4th DCA 1983) ("In

essence, the charter acts as the county's constitution . . . ."). The second mechanism is a legislative special law that must also be approved, even in non-charter counties, by local referendum. Art. VIII, §(1)(d), Fla. Const.[2]

Under the present constitutional scheme, the constitutional right to change the manner of selecting or to abolish the default offices is vested in a county's voters. This right would be lost if Amendment 10 were enacted.

C. Amendment 10 "Hides the Ball"—It Does Not Tell Voters It Is Removing Their Constitutional Rights.

This Court has been "assiduous in the past in scrutinizing ballot titles and summaries to assure that they fairly inform the voters of the substance and effect of proposed amendments." *Adv. Op. to Att'y Gen. re Use of Marijuana for Certain Medical Conditions*, 132 So. 3d 786, 825 (Fla. 2014) (Labarga, J., dissenting). This scrutiny is at its apex where an amendment would deprive voters of their state constitutional rights. *See Armstrong*, 773 So. 2d at 22; *NAACP Branches*, 43 So. 3d at 699; *see also NAACP Branches*, 43 So. 3d at 670 (Pariente, J., concurring) ("It should hardly be a controversial proposition that voters must be able to cast an intelligent and informed vote on the proposed constitutional amendment and

[2] This provision is constitutionally unique as generally the Legislature can enact other special laws affecting non-charter counties without requiring a local referendum. Art. VIII, §1(f), Fla. Const. This shows the drafters' intention that power over these default offices should be held only by local electors.

understand whether the proposed amendment adds to their existing rights, alters existing rights, or dilutes existing rights provided to them by their constitution.").

Where voters are asked to decide upon their state constitutional rights, "each citizen is entitled—indeed, each is duty-bound—to cast a ballot with eyes wide open." *Armstrong*, 773 So. 2d at 22. As succinctly articulated in *Armstrong*:

> [W]here a proposed constitutional revision results in the loss or restriction of an independent fundamental state right, the loss must be made known to each participating voter at the time of the general election. *Cf. People Against Tax Revenue Mismanagement v. County of Leon*, 583 So. 2d 1373, 1376 (Fla. 1991) ("This is especially true if the ballot language gives the appearance of creating new rights or protections, when the actual effect is to reduce or eliminate rights or protections already in existence.").

Id. at 17-18 (emphasis omitted).

Amendment 10 tells voters it "[e]nsures election of" the default officers "in all counties." But it is "clearly misleading to reveal only one half of a constitutional 'trade off' in the ballot summary." *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984) (citing *Askew*, 421 So. 2d at 157 (Ehrlich, J., concurring)). Voters must be told both sides—they must also be told what they are losing.

The summary obliquely states that Amendment 10 "removes *county charters' ability* to abolish, change term, transfer duties, or eliminate election of" the default officers. (Emphasis added). The summary opportunistically "hides the ball" as to the amendment's true effect. It fails to inform voters that it removes *voters'* state

constitutional right to do these things.[3] "The problem, therefore, lies not with what the summary says, but, rather, with what it does not say." *Askew*, 421 So. 2d at 156.

As discussed above, county charters are merely one of two possible vehicles for abolishing or changing the manner of selecting the constitutional officers.[4] But to say that county charters do anything at all is simply a legal fiction that merely tells voters *how* the default offices can be abolished and *how* the manner of selecting of these officers may change. The ballot language fatally fails to tell voters *whose* rights are being affected. *See Adv. Op. Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (stating an amendment must explain the "important aspects" and "important consequences" of an amendment). County electorates control their county charters; county charters do not control county electorates. It is the current constitutional right of county voters that would be lost if the amendment were approved. The ballot measure says nothing of this.

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[3] The trial court agreed that "Plaintiffs are correct in pointing out that the amendment does not inform the voter that a yes vote 'repeals' or 'eliminates' the constitutional rights of the people in charter counties by their vote alone to structure their county government." (R. 979.) Counsel for Detzner, the Department, and the Clerks implicitly conceded this point when arguing that voters would be able to "presume" and "infer" the amendment's effect on voters' rights. (T. 54, 86-87: PDF 61, 93-94.)

[4] Amendment 10 also completely fails to mention that the Florida Legislature can currently enact a special law that must be approved by local referendum to abolish or change the manner of selecting the constitutional officers.

Informing voters that their own rights are being affected is a "material fact[] necessary to make the summary not misleading." *See Adv. Op. to Att'y Gen.–Ltd. Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991). The "chief purpose" of Amendment 10 is to diminish the rights of *voters*. The voters presently have options to (1) elect these officers, (2) not elect these officers, or (3) have the functions of these offices performed by another office. Amendment 10 would take these options away from voters, leaving them with only the ability to elect what are now default constitutional officers to perform default constitutional functions.

Indeed, "the ballot title and summary may not be read in isolation, but must be read together in determining whether the ballot information properly informs the voters." *Slough*, 992 So. 2d at 148 (citation omitted). Amendment 10's title refers only to local government's "structure and operation"—saying nothing of voters' rights, and thus misleading voters into believing that their rights will be unaffected. *See id.* (stating that a specific reference in the ballot title would lead voters to believe that matters not referenced would be unaffected).[5]

Before being asked to give up a right, voters must first be told of the existence of the right. *See Armstrong*, 773 So. 2d at 21; *NAACP Branches*, 43 So. 3d at 669.

[5] In fact, the failure to reference voters' rights, along with the misleading title and summary, will likely result in the belief that the proposed amendment limits only the power of the state Legislature or county commissions.

To "hide the ball" by failing to clearly and unambiguously inform voters that the amendment strips them of their rights violates this Court's "truth in packaging" requirement. This requirement is particularly important as Amendment 10 appears to *grant* voters the right to elect the five constitutional officers (a right they currently possess if they choose to retain it). *See Armstrong*, 773 So. 2d at 17-18. If voters are told that Amendment 10 would supposedly "grant" them rights, they must also be told that this "grant" comes with a deprivation of existing constitutional rights. The drafters of Amendment 10 chose not to provide this critical information, deciding instead to use precious, limited words to sugarcoat the proposal through logrolling.

As this Court has repeatedly stated, and should again state here, where an amendment divests voters of rights, it must be "clearly and unambiguously stated in the ballot language" because "[f]ailing this clear explanation, the voters will be unaware of the valuable right . . . which may be lost if the amendment is adopted." *NAACP Branches*, 43 So. 3d at 669. Here, voters are being asked to vote away rights without the ballot measure providing them with a clear explanation of those rights. Therefore, Amendment 10 must be stricken from the ballot.

D. Voters' Ability to Independently Access Information Does Not Excuse a Deficient Ballot Measure.

Although the trial court agreed with Counties that Amendment 10 did not tell voters it removed "the constitutional rights of the people," the trial court accepted

Respondents' assertion that voters' independent knowledge could fill in the gaps left by the ballot measure. (R. 979-80) (emphasis omitted). The court concluded that voters could "connect the dots" between the loss of charters' powers and loss of their own rights—despite voters' rights being nowhere mentioned in the ballot title or summary. (R. 980.) In effect, the trial court asked voters to go "find the ball."

This Court has imputed the average voter with "a certain amount of common understanding and knowledge." *See Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010). For example, in *Advisory Opinion to Attorney General re Tax Limitation*, this Court stated that it was generally known that ordinarily a simple majority prevails when a vote is taken. 673 So. 2d 864, 868 (Fla. 1996). In *Advisory Opinion to Attorney General re Protect People from Health Hazards of Second-Hand Smoke*, this Court stated that people were generally aware that smoking was limited indoors, considering the pervasiveness of signs. 814 So. 2d 415, 419 (Fla. 2002). In *Florida Education Association v. Florida Department of State*, voters were held to be aware that the Legislature's funding obligation would decrease if classroom sizes were increased because that was a logical inference drawn from information contained within the ballot summary. 48 So. 3d 694, 703 (Fla. 2010).

This imputation of knowledge does not extend to matters involving more sophisticated legal structuring and principles. *Askew*, for example, would not have turned out as it did if voters were assumed to have possessed knowledge of the

existing ban on lobbying. *See Askew*, 421 So. 2d at 153. Had that been assumed, the chief purpose of the amendment in that case would have been quite clear. *See id*. Nor would the ballot summary in *Armstrong* have been stricken had voters been assumed to know of Florida's existing right against cruel or unusual punishment. *Armstrong*, 773 So. 2d at 18. More recently, the amendment in *NAACP Branches* would have gone to the voters had this Court assumed people knew about the contiguity requirement. *See NAACP Branches*, 43 So. 3d at 669. If voters had known of the contiguity requirement, they would have been able to infer the amendment's effect on that requirement. *See id.*

Voters' ability to independently ascertain the chief purpose of an amendment has been repeatedly rejected as a panacea for a defective ballot measure. *See Askew*, 421 So. 2d at 156 ("The burden of informing the public should not fall only on the press and opponents of the measure-the ballot title and summary must do this."); *Smith v. Am. Airlines, Inc.*, 606 So. 2d 618, 621 (Fla. 1992) ("[T]he availability of public information about a proposed amendment cannot be a substitute for an accurate and informative ballot summary.").[6] To find otherwise would shift the

[6] In the lower court, Respondents accused Counties of insulting voters' intelligence. Broward does not imply that voters are ignorant, but rather that these rules exist as a prophylactic against the unintentional, permanent deprivation of state constitutional rights and to guard against misleading summaries such as the one in the instant case.

burden of informing voters of an amendment's important effects from the drafters of ballot language to the voters themselves.[7] This would encourage drafters of these amendments to strategically omit information to obfuscate what some might view as unpalatable effects of an amendment.

Rather than muse about what voters do or do not know about their constitutional rights[8] or require voters to conduct legal research before voting, this Court has adopted a clear mandate for the drafters of ballot measures: draft them fairly and accurately and, where rights would be lost, clearly explain to voters the loss of their rights. If the drafters of ballot measures "hide the ball," it is not up to voters to go and find it. If a sponsor of an amendment feels it has merit, it should sufficiently explain its effects and permit voters to consider it "with eyes wide open." *Armstrong*, 773 So. 2d at 22. Because the drafters failed to do so in the instant case, the amendment must be stricken.

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[7] In fact, the trial court refused to address the issue of whether Amendment 10 applied prospectively or retroactively, stating it was an issue for another day. (R. 980.) Thus, voters not only must find out for themselves the amendment's effect on their rights, they must wait until *after* its passage to find out if it will nullify their prior, democratic decisions or will merely restrict future restructuring.

[8] As a practical matter, this exercise would be unworkable. The trial court's claim that the average voter knows about their exclusive right to enact and amend county charters was pure speculation. To make a finding as to what the "average voter" knows and does not know, a court would need to look outside the bare assertions of counsel. This would require the evaluation of factual evidence, such as scientific surveys, which is impossible given the expedited nature of these proceedings.

II. THIS COURT SHOULD NOT COUNTENANCE LOGROLLING WHERE ITS EFFECT IS TO RENDER A BALLOT ITEM MISLEADING.

"The proposal of amendments to the Constitution is a highly important function of government that should be performed with the greatest certainty, efficiency, care, and deliberation." *Crawford v. Gilchrist*, 59 So. 963, 968 (Fla. 1912). "The voters of Florida deserve nothing less than clarity when faced with the decision of whether to amend our state constitution, for it is the foundational document that embodies the fundamental principles through which organized government functions." *Slough*, 992 So. 2d at 149.

Here, the CRC was given seventy-five words to explain to voters that Amendment 10 would deprive them of their state constitutional rights. § 101.161(1), Fla. Stat. It could have used these words to make the voters' choice clear and permit voters to engage in the weighty task of determining the merits of the amendment. The CRC did not do that; instead, it logrolled.

Amendment 10's summary begins with eight words telling voters that it would "[r]equire[]" the Legislature to "retain" the Department of Veterans' Affairs (a department that has existed uninterrupted for three decades and as to which there is no evidence of any danger of abolishment). It ends with twelve words purporting to "create" the Office of Domestic Security and Counterterrorism, which is itself misleading because this Office already exists. *See* § 943.0311(1)(a), Fla. Stat.;

Evans, 457 So. 2d at 1353; (R. 390.) All the amendment would do is effectuate a simple name change and codify an existing office in the state Constitution. *See* § 943.0311(1)(a), Fla. Stat.; (R. 390.) Twenty-two words were then used to describe changes to scheduling of the legislative session. As a consequence of this logrolling, only thirty-four words remained, sandwiched by these other elements, to address the county-level impact of Amendment 10.

To be clear, Broward does not contend that the CRC is currently bound by a single-subject rule. Although the process of having public hearings is supposed to act as a safeguard against logrolling and deception, *see Charter Review Comm'n of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994), the process clearly did not prevent the CRC from logrolling in this instance.[9] It is lamentable that a body that convenes once every twenty years, whose purpose is to propose revisions to the Florida Constitution, would deprive voters of the ability to individually assess a proposal that would strip them of important aspects of their right to local self-governance. It is even more lamentable that the CRC would sugarcoat this critical amendment by logrolling it in with largely symbolic, yet seemingly popular, proposals about veterans and counterterrorism. *See In re Adv. Op. to the Att'y Gen.–*

[9] As CRC Commissioner Roberto Martinez, who voted against the logrolling, recognized, "not everybody in Florida was born last night. And I think people are going to get the impression that we're trying to do something here, *we're trying to pull a fast one by them*." (R. 456) (emphasis added).

Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994) (defining logrolling as "a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue"). But that is what the CRC did.

The accuracy requirement applies "across-the-board to all constitutional amendments," and to the extent logrolling has rendered the ballot measure misleading, it cannot be tolerated. *Armstrong*, 773 So. 2d at 14; *see also Fine v. Firestone*, 448 So. 2d 984, 995 (Fla. 1984) (McDonald, J., concurring) ("Combining multiple propositions into one proposal constitutes 'logrolling,' which, if our judicial responsibility is to mean anything, we cannot permit.") (footnote omitted). The logrolling has resulted in a summary that "hides the ball" as to its important effect of removing voters' constitutional rights because the CRC had insufficient remaining words to, if it were so inclined, explain to voters the primary import of the measure. The logrolling here has resulted in the submersion of this important change to voters' rights between popular amendments relating to veterans and counterterrorism. In effect, voters are compelled to balance support for these popular proposals with any concern they may have for some unknown, unexplained, and not fully developed impact upon home rule power, inhibiting them from "casting of an intelligent and informed vote." *See Adv. Op. to Att'y Gen.–Ltd. Casinos*, 644 So. 2d 71, 74 (Fla. 1994).

This Court exercises the utmost care before striking an amendment, requiring the amendment to be "clearly and conclusively defective." *Armstrong*, 773 So. 2d at 11. This standard exists to ensure that trivialities and details that would not fit within a seventy-five-word summary do not impede Floridians' right to decide upon changes to their Constitution. *See Smith*, 606 So. 2d at 621-22. It does not exist to excuse amendments that fail to inform voters of an amendment's chief purpose—particularly where that chief purpose is the deprivation of rights. *See id.*; *Armstrong*, 773 So. 2d at 21-22. Indeed, the Court is not reticent to strike ballot items "that fail[] to clearly and fully inform the voter of the significant effects of the amendment." *Use of Marijuana for Certain Medical Conditions*, 132 So. 3d at 825 (Labarga, J., dissenting). This fact is most readily apparent from the sheer number of cases in which this Court has stricken amendments because of misleading ballot language.

In *Slough*, this Court recognized that drafters of constitutional amendments, in that case the Taxation and Budget Reform Commission, had "attempt[ed] to use phrases and wording techniques in an attempt to persuade voters to vote in favor of the proposal." *Slough*, 992 So. 2d at 149. It then cautioned that such techniques "may actually cause the demise of proposed changes that might otherwise be of substantive merit." *Id.* It admonished drafters to "draft a ballot title and summary that is straightforward, direct, accurate and does not fail to disclose significant

effects of the amendment merely because they may not be perceived by some voters as advantageous." *Id*.

The CRC did not heed this Court's warning. Instead of drafting an informative ballot measure, telling voters the "true effect" of Amendment 10, that would allow voters to cast a vote with "eyes wide open," the CRC decided to "hide the ball" and logroll. *See id.* at 147; *Armstrong*, 773 So. 2d at 22. This tactic should not be tolerated. If Amendment 10 is allowed to remain on the ballot, it would embolden future drafters to repeat this tactic. Clearly, voters are permitted to enact any change to the Florida Constitution consistent with federal law, but when they do, they must be informed of the decision that they must make. Here, voters are not informed that they must decide between *their own rights* and the things Amendment 10 has to offer. Because this fundamental aspect of Amendment 10 is undisclosed, Amendment 10 must be stricken.

CONCLUSION

This Court should, once again, make clear that the precious words of a ballot measure must be used to properly inform voters, and not used, by logrolling or through other tactics, to hide the ball. For the aforementioned reasons, the Court should reverse the trial court ruling and strike Amendment 10 from the ballot.

Date: August 22, 2018

Respectfully submitted,

Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Fax: (954) 357-7641

By: /s/ *Mark A. Journey*
Mark A. Journey, Florida Bar No. 134783
Senior Assistant County Attorney
mjourney@broward.org
Joseph K. Jarone, Florida Bar No. 117768
Assistant County Attorney
jkjarone@broword.org
Scott Andron, Florida Bar No. 112355
Assistant County Attorney
sandron@broward.org
Claudia Capdesuner, Florida Bar No. 1002710
Assistant County Attorney
clcapdesuner@broward.org
Counsel for Broward County

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to all parties of record in the matter specified in the attached service list on August 22, 2018.

/s/ *Mark A. Journey*
Mark A. Journey, Florida Bar No. 134783

CERTIFICATE OF COMPLIANCE

I certify that the lettering in this brief is Times New Roman 14-point and complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ *Mark A. Journey*
Mark A. Journey, Florida Bar No. 134783

SERVICE LIST

County of Volusia, et al. v Kenneth J. Detzner, et al.
Florida Supreme Court Case No. SC18-1339

Party	Method of Service	Contact Information
Attorneys for Florida Secretary of State	E-mail via the Florida Court's e-Filing Portal	Edward M. Wenger, Esq. Jordan E. Pratt, Esq. Office of the Attorney General The Capital, PL-01 Tallahassee, FL 32399 Edward.Wenger@myfloridalegal.com Jordan.Pratt@myfloridalegal.com Jenna.Hodges@myfloridalegal.com Jennifer.Bruce@myfloridalegal.com
Attorneys for Florida Secretary of State	E-mail via the Florida Court's e-Filing Portal	David A. Fugett, Esq., and Jesse C. Dyer, Esq. Florida Department of State R.A. Gray Building, Suite 100 500 S. Bronough Street

Party	Method of Service	Contact Information
		Tallahassee, FL 32399-0250 David.Fugett@dos.myflorida.com Jesse.Dyer@dos.myflorida.com Ashley.Black@dos.myflorida.com
Attorney for Florida Association of Court Clerks	E-mail via the Florida Court's e-Filing Portal	Barry S. Richard, Esq. Greenberg Traurig, P.A. 101 E College Avenue Tallahassee, FL 32301-7742 richardb@gtlaw.com TrammellC@gtlaw.com
Attorneys for Florida Association of Tax Collectors	E-mail via the Florida Court's e-Filing Portal	Timothy R. Qualls, Esq., and Kayla M. Scarpone, Esq. Young Qualls, P.A. 216 South Monroe Street Tallahassee, FL 32301 tqualls@yvlaw.net kscarpone@yvlaw.net stalevich@yvlaw.net
Attorneys for Miami-Dade County	E-mail via the Florida Court's e-Filing Portal	Oren Rosenthal, Esq., Michael B. Valdes, Esq., Miguel A. Gonzalez, Esq. Miami-Dade County Attorney's Office 111 NW 1st Street, Ste. 2810 Miami, FL 33128-1930 orosent@miamidade.gov mbv@miamidade.gov gmiguel@miamidade.gov dmh@miamidade.gov mpd1@miamidade.gov
Attorneys for Florida Association of Constitutional Officers	E-mail via the Florida Court's e-Filing Portal	Gigi Rollini, Esquire, Glenn Burhans, Jr., Esquire Stearns, Weaver, Miller et al. 106 E. College Avenue, Ste. 700 Tallahassee, FL 32301 grollini@stearnsweaver.com ptassinari@stearnsweaver.com gburhans@stearnsweaver.com

Party	Method of Service	Contact Information
		cabbuhl@stearnsweaver.com
Attorney for Florida Sheriff's Association	E-mail via the Florida Court's e-Filing Portal	Thomas W. Poulton, Esquire DeBevoise & Poulton, P.A. 1035 S. Semoran Blvd., Ste. 1010 Winter Park, FL 32792 poulton@debevoisepoulton.com cook@debevoisepoulton.com
Attorneys for Palm Beach County Tax Collector	E-mail via the Florida Court's e-Filing Portal	John A. Tucker, Esq., Robert H. Hosay, Esq., Benjamin J. Grossman, Esq., Nicholas Meros, Esq., Christina Kennedy, Esq., and James E. McKee, Esq. Foley & Lardner, LLP 106 E. College Avenue, Ste. 900 Tallahassee, FL 32301-7732 JTucker@foley.com AVWilliams@foley.com RHosay@foley.com MLong@foley.com BjGrossman@foley.com CForjet@foley.com NMeros@foley.com CKennedy@foley.com JMckee@foley.com GFinkelstein@foley.com
Attorney for Florida Association of Counties	E-mail via the Florida Court's e-Filing Portal	Laura Youmans, Esquire 100 S. Monroe Street Tallahassee, FL 32301 lyoumans@flcounties.com