IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC18-1339

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

COUNTY OF VOLUSIA, et al.

Appellants,

v.

KENNETH J. DETZNER, et al.

Appellees.

BROWARD COUNTY'S REPLY BRIEF ON THE MERITS

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ARGUMENT

I. AMENDMENT 10 FAILS TO "CLEARLY AND UNAMBIGUOUSLY" INFORM VOTERS THAT ITS ENACTMENT WILL RESULT IN THE LOSS OF VOTERS' RIGHTS.

This Court's mandate to drafters of ballot summaries is clear: "where 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." *Armstrong v. Harris*, 773 So. 2d 7, 17 (Fla. 2000) (quoting *Traylor v. State*, 596 So. 2d 957, 962-63 n.5 (Fla. 1992)) (emphasis omitted). The loss of rights must be "clearly and unambiguously stated in the ballot language." *Fla. Dep't of State v. Fla. State Conference of NAACP Branches*, 43 So. 3d 662, 669 (Fla. 2010) [hereinafter, *NAACP Branches*].

Amendment 10 divests voters of their right to abolish or change the manner of selecting constitutional officers. Appellees have provided no argument for how this loss of rights is "clearly and unambiguously stated in the ballot language." *See id*. Appellees, having avoided discussing this clear mandate, instead suggest several unprecedented bases for pardoning Amendment 10's fatal omission.

Appellees assert that technically replicating the changes to the constitution's text is sufficient. This position, however, was rejected in *NAACP Branches*, where this Court struck the summary because it failed to inform voters of its effect on their

rights despite the fact that the text of the ballot summary was nearly identical to the proposed amendment. *Id*. A ballot title and summary must inform voters of an amendment's "*true purpose and effect*"——mere recitation of the technical changes to the constitution's text is insufficient. *Id.* (emphasis added); *see Fla. Dep't of State v. Mangat*, 43 So. 3d 642, 562 (Fla. 2010) (Pariente, J., concurring). Here, merely partially reciting Amendment 10's text does not disclose its chief purpose: to strip voters of their current, well-established (since 1968) rights to regulate the default constitutional offices.

Appellees have alternatively conjectured, without citation to authority, that the average voter is sufficiently familiar with Article VIII, section 1(c) of the Florida Constitution and that they will be able to "connect the dots" from that unmentioned (in the ballot measure) provision to Article VIII, section 1(d) of the Florida Constitution. Appellees have failed to cite a single case where this Court has imputed voters with specific legal knowledge in order to sustain a ballot item. That is because there are none. In fact, this Court requires the opposite, mandating that ballot items inform "*each participating voter*"—not some hypothetical "average voter"—that an amendment would result in the "loss or restriction of an independent fundamental state right." *Armstrong*, 773 So. 2d at 17; *see also NAACP Branches*, 43 So. 3d at 669 ("Failing this clear explanation, the voters will be unaware of the valuable right . . . which may be lost if the amendment is adopted.").

Florida Association of Court Clerks ("Clerks") have taken an even more extreme position, charging *voters* with the obligation of conducting research in order to decipher Amendment 10's effect on their rights. The Clerks fail to cite a single case where this Court has held that it is a voter's responsibility to figure out for themselves that an amendment would strip them of their rights.[1] That is because there are none. In fact, this Court requires the opposite: "the availability of public information about a proposed amendment cannot be a substitute for an accurate and informative ballot summary." *Smith v. Am. Airlines, Inc.*, 606 So. 2d 618, 621 (Fla. 1992).

This Court has said that "voters are generally required to do their homework and educate themselves about the details of a proposal and about the *pros and cons of adopting the proposal*." *Smith*, 606 So. 2d at 621 (emphasis added). Voters through research, for example, can learn that by abolishing the redundant and inefficient office of tax collector, the people of Broward have saved about $11 million a year. (R. 329.) But this Court has *never* held that voters have an

[1] The Clerks cite *Voter Control of Gambling in Florida*, 215 So. 3d 1209 (Fla. 2017) and *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010). Neither case stands for the proposition that it should be left up to voters to find out that they are losing a state constitutional right, but instead recite the general rule that voters are expected to have some common understanding and knowledge. Nothing these cases states or even suggests that voters are required to have specific legal knowledge. This argument is more fully addressed in Broward's Initial Brief.

independent obligation to ascertain an amendment's important aspects, such as the loss of state constitutional rights, for themselves.

Appellees have relegated Amendment 10's deprivation of voters' rights to the categories of immaterial detail and incidental impact. Appellees fail to cite even a single case where this Court has said that the loss of a state constitutional right is an insignificant detail that does not need to be included in a ballot item. That is because there are none. Again, this Court has said the opposite, that the loss of state constitutional rights "*must be made known* to each participating voter at the time of the general election." *Armstrong*, 773 So. 2d at 17 (emphasis added).

In 1968, the voters of Florida approved an amendment granting each countywide electorate the right to abolish or change the manner of selecting the default officers, and since 1968, voters have repeatedly exercised that right. The loss of this right is the quintessential example of an important aspect of an amendment that *must* be disclosed "clearly and unambiguously" in the amendment's ballot title and summary. *See NAACP Branches*, 43 So. 3d at 669. Amendment 10's failure to do so is fatal and this Court should strike Amendment 10 from the ballot.

II. THE LACK OF A SINGLE SUBJECT REQUIREMENT DOES NOT PERMIT DECEPTIVE AND MISLEADING LOGROLLING.

Appellees have treated the lack of a single subject requirement as a license to logroll. Logrolling is defined 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." *In re Adv. Op. to Att'y Gen–Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994). Logrolling is an inherently deceptive practice and should not be condoned here. *See State v. Thompson*, 750 So. 2d 643, 646-47 (Fla. 1999); *see 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 pairing of proposals purporting to "retain" the department of veterans' affairs and "create" an office of domestic security and counterterrorism with a proposal that would strip voters of their rights is a paragon example of logrolling.[2] This combination of proposals has resulted in the CRC having insufficient words to properly explain the true effect of the individual proposals. *See Fine*, 448 So. 2d at 995 (Fla. 1984) (McDonald, J., concurring) ("The very broadness of the proposed amendment amounts to logrolling because the electorate cannot know what it is voting on—the amendment's proponents' simplistic explanation reveals only the tip

[2] The Tax Collectors assert that Broward offers no evidence to support an argument that the CRC acted in bad faith. Bad faith is not an element of logrolling. The intent of the CRC is immaterial, but the misleading effect of the amendment is self-evident.

of the iceberg."). The decision to squander many of the seventy-five permissible words on unrelated proposals does not permit the CRC to mislead voters as a result.[3]

"Simply put, the ballot must give the voter fair notice of the decision he must make." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982). "What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Id.* at 155 (citing *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954)). Not only have the drafters of Amendment 10 fatally omitted that its enactment would result in the loss of rights, they have sugarcoated this poison pill, sandwiching it between largely symbolic yet misleading proposals about veterans and counterterrorism. In doing so, the CRC has forced voters to balance potential support for these other, innocuous (or even seemly popular) proposals with some unknown, unexplained, and not fully developed impact to home rule power.

Currently, there is no direct precedent governing the practice of logrolling non-initiative proposals, and this case will govern the drafting practices of future

[3] The CRC's decision to bundle unrelated proposals left it with insufficient words to even inform voters that Amendment 10 does not actually "create" the Office of Domestic Security and Counterterrorism but instead elevates an existing office and effectuates a simple name change. This itself is misleading. *See Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984). Gannon, citing *Advisory Opinion to Attorney General re Rights of Electricity Consumers Regarding Solar Energy Choice*, 188 So. 3d 822 (Fla. 2016), argues this provision is not misleading. In *Solar Energy Choice*, this court distinguished *Evans*, stating that, unlike *Evans*, the amendment's ballot summary was qualified with a statement explaining that a right was being established "*under Florida's constitution*." *Id.* at 833. Amendment 10 contains no similar qualifying language, rendering it essentially on all fours with *Evans*.

ballot items. This Court can either signal that logrolling is perfectly fine or can put a stop to it here. The voters of Florida deserve better than Amendment 10's logrolling; they deserve "nothing less than clarity when faced with the decision of whether to amend our state constitution." *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008). Therefore, this Court should not condone this misleading practice and should strike Amendment 10 from the ballot.

CONCLUSION

Broward respectfully request that this Court reverse the trial court and strike Amendment 10 from the ballot.

Date: August 31, 2018

Respectfully submitted,

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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 31, 2018.

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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).

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