

**IN THE SUPREME COURT OF FLORIDA**

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Case No.: SC18-1366

L.T. No.: 1D18-3644; 2018-CA-1525

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**DEPARTMENT OF STATE, et. al.,**

*Appellants,*

v.

**LEE HOLLANDER, PATRICIA BRIGHAM, AND THE LEAGUE OF  
WOMEN VOTERS OF FLORIDA, INC., AND AMY KNOWLES**

*Appellees.*

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**On Discretionary Review and Certification  
from the First District Court of Appeal  
Case Nos. 1D18-3643, -3644**

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**ANSWER BRIEF  
OF APPELLEES LEE HOLLANDER, PATRICIA BRIGHAM,  
AND THE LEAGUE OF WOMEN VOTERS OF FLORIDA, INC.**

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**TABLE OF CONTENTS**

TABLE OF CITATIONS ..... iii

STATEMENT OF THE CASE..... 1

STATEMENT OF THE FACTS ..... 4

STANDARD OF REVIEW ..... 10

SUMMARY OF THE ARGUMENT ..... 11

ARGUMENT ..... 12

    I. Amendment 6’s Ballot Language is Affirmatively and  
    Materially Misleading ..... 12

        a. The Ballot Summary Misleads Voters as to the  
        Amendment’s Potential Effect on Criminal  
        Defendants and Claims a Misleading Chief  
        Purpose of Creating Rights for Crime Victims ..... 17

        b. The Ballot Summary is Misleading in its Assertion  
        that it Creates Victims’ Rights..... 28

        c. The Ballot Title and Summary Mislead Voters and  
        “Hide the Ball” Regarding Accused’s Right to a  
        Speedy Trial and the Timelines for Appeals and  
        Collateral Attacks..... 29

        d. The Ballot Title and Summary Mislead Voters and  
        “Hide the Ball” Regarding the Meaning of Victim  
        for Purposes of the Amendment..... 32

        e. The Ballot Title and Summary Mislead Voters and  
        “Hide the Ball” Regarding the Enforcement Rights  
        of Crime Victims ..... 35

        f. The Ballot Title and Summary Mislead Voters  
        Regarding a Court’s Requirement to Facilitate

Victims' Rights .....	36
II. The Ballot Title Materially Misleads Voters and "Hides the Ball" by Entirely Omitting the Amendments Third Subject .....	37
CONCLUSION .....	38
CERTIFICATE OF SERVICE .....	40
CERTIFICATE OF FONT COMPLIANCE .....	41

## TABLE OF CITATIONS

### Cases:

<i>Advisory Opinion to Att’y Gen. re Additional Homestead tax Exemption</i> , 880 So. 2d 646, 653 (Fla. 2004).....	14, 32
<i>Advisory Op. to Att’y Gen. ex rel. Amend. to Bar Gov’t from Treating People Differently Based on Race in Public Educ.</i> , 778 So. 2d 888 (Mem), 891 (Fla. 2000) .....	21, 27, 32, 34
<i>Advisory Op. to the Att’y Gen. re People’s Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects</i> , 699 So. 2d 1304, 1309, 1311 (Fla. 1997).....	32, 34
<i>Advisory Op. to the Att’y Gen. re Right of Citizens to Choose Health Care Providers</i> , 705 So. 2d 563, 566 (Fla. 1998).....	10
<i>Advisory Op. to the Att’y Gen. re Right to Treatment and Rehabilitation for Non-Violent Drug Offenses</i> , 818 So. 2d 491, 497 (Fla. 2002) .....	10
<i>Advisory Op. to the Att’y Gen. re Save our Everglades</i> , 636 So. 2d 1336, 1342 (Fla. 1994).....	29
<i>Advisory Op. to the Att’y Gen. re Tax Limitation</i> , 644 So. 2d 486, 489 (Fla. 1994).....	21, 27
<i>Advisory Op. to the Att’y Gen. re Term Limits Pledge</i> , 718 So. 2d at 804.....	15, 25, 31
<i>Advisory Op. to the Att’y Gen. re Voting Restoration Amend.</i> , 215 So. 3d 1202, 1207 (Fla. 2017).....	10, 14, 25, 31
<i>Armstrong v. Harris</i> , 773 So. 2d 7, 11 (Fla. 2000):.....	<i>Passim</i>
<i>Askew v. Firestone</i> , 421 So. 2d 151, 156 (Fla. 1982).....	15, 31
<i>Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.</i> , 467 U.S. 837 (1984).....	37

<i>Let Miami Beach Decide v City of Miami Beach</i> , 120 So. 3d 1282, 1292 (Fla. 3d DCA 2013) .....	14, 28
<i>Roberts v. Doyle</i> , 43 So. 3d 654, 659 (Fla. 2010).....	15, 31
<i>State v. Nelson</i> , 26 So. 3d 570, 576 (Fla. 2010) .....	30
<i>Wadhams v. Board of Cnty Comm’rs</i> , 567 So. 2d 414, 416 (Fla. 1990) .....	15, 31

**Florida Statutes:**

101.161(1), Florida Statutes:.....	10, 13
960.001, Florida Statutes .....	23
960.0015, Florida Statues .....	29, 30

**Other Authorities:**

**Florida Constitution:**

Article I, Section 14 .....	22
Article I, Section 16 .....	<i>Passim</i>
Article I, Section 24 .....	22
Article V, Section 8.....	9
Article V, Section 21.....	9
Article XI, Section 5 .....	12

## **STATEMENT OF THE CASE**

In its Final Report, the 2018 Constitution Revision Commission (“CRC”) proposed eight revisions to the State Constitution. Proposed Revision 1 is the revision at issue in this proceeding. The Department of State designated Proposed Revision 1 to appear as Amendment 6 (“Amendment 6”) on the ballot for the 2018 general election scheduled to be held on Tuesday, November 6, 2018. This appeal arises from Appellees’ challenges to Amendment 6’s ballot title and summary.

Lee Hollander, Patricia Brigham, and the League of Women Voters of Florida, Inc. (hereinafter cumulatively referred to as the “Hollander Plaintiffs”) filed their Amended Complaint for Declaratory Judgment and Injunctive Relief in the Second Judicial Circuit, in and for Leon County, on July 26, 2018. (R. at 86-155.) In that action, the Hollander Plaintiffs sought a judgment declaring that Amendment 6’s ballot title and summary are affirmatively and materially misleading, fail to inform voters of the true scope of the amendment, and fail to inform voters of the Amendment’s chief purpose. (R. at 86-155.) The Hollander Plaintiffs, as a result, also sought to enjoin Ken Detzner (“Detzner”) and the Department of State (“Department”) from placing Amendment 6 on the ballot for the general election. (R. at 86-155.)

The Hollander Plaintiffs filed a Notice of Priority Status in the trial court on July 13, 2018. (R. at 75-77.) The trial court subsequently established an expedited

schedule for the filing and hearing of pleadings, motions for summary judgment, and responses and replies thereto. (R. at 81-85.) Thereafter, Marsy Law for Florida, LLC (“Marsy Law LLC”) filed a Motion to Intervene on August 2, 2018 and an Agreed Order Granting Intervention by Marsy Law for Florida, LLC was entered the same day. (R. at 165-69.)

Amy Knowles (“Knowles”) originally filed suit in Monroe County, Florida. (R. at 507.) Venue was subsequently transferred to the Second Judicial Circuit and, on August 3, 2018, Amy Knowles (“Knowles”) filed her Petition for Declaratory Relief or, in the Alternative, for Writ of Mandamus, in the Second Judicial Circuit, in and for Leon County. (R. at 505-13.) The Knowles Petition sought to remove Amendment 6 from the ballot on the basis that its ballot title and summary were insufficient and violated Florida’s single-subject test. (R. at 505-13.) The trial court, *sua sponte*, thereafter entered an Order Declaring Priority and Order Setting Final Hearing/Non-Jury Trial which established an expedited schedule for the filing and hearing of pleadings, motions for summary judgment, and responses and replies thereto. (R. at 514-18.)

In compliance with the expedited schedule, the Hollander Plaintiffs filed their Motion for Summary Judgment on August 2, 2018. (R. at 385-406.) The Hollander Plaintiffs’ Motion for Summary Judgment included the following exhibits: (A) the CRC’s Final Report and (B) Volume I of the Transcript from the

A.M. Session of the CRC Meeting held on April 16, 2018. (R. at 170-384.) On August 10, 2018, Detzner and the Department filed a Consolidated Response to the Hollander Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment. (R. at 419-40.) Marsy Law LLC also filed a Motion for Summary Judgment on the same day. (R. at 407-18.) The Hollander Plaintiffs thereafter filed a Consolidated Response/Reply to Appellants' Motions for Summary Judgment and Responses to the Hollander Plaintiffs' Motion for Summary Judgment. (R. at 441-53.) Deztner and the Department filed a Reply to the Hollander Plaintiffs' Consolidated filing on August 20, 2018. (R. at 454-64.) On August 22, 2018, the parties filed a Joint Pretrial Stipulation in which the parties stipulated that there were no disputed issues of material fact. (R. at 465-74.)

On August 17, 2018, also in compliance with the expedited schedule entered in her case, Knowles filed her Motion for Summary Judgment and Incorporated Memorandum of Law. (R. at 526-42.) Detzner and the Department also filed a Motion for Summary Judgment and Incorporated Memorandum of Law on that same day. (R. at 543-558.) Responses and a Reply were filed on August 20, 21, and 22, respectively. (R. at 559-575.)

Although the cases were not formally consolidated at the trial level, a joint hearing was held on the parties' respective Motions for Summary Judgment in both actions on August 24, 2018. On August 27, 2018, the trial court entered Final



Judgment in favor of Appellees in both actions, finding that the ballot title and summary were incomplete and inaccurate, misleading, and clearly and conclusively defective. (R. at 475-85, 578-88.) The Final Order enjoined Detzner and the Department from placing Amendment 6 on the general election ballot. (R. at 475-85, 578-88.) Detzner and the Department filed a Notice of Appeal in both actions the same day. (R. at 486-99, 589-601.) The Knowles and Hollander actions were consolidated by this court, *sua sponte*, for purposes of this appeal.

### **STATEMENT OF THE FACTS**

The full text of Amendment 6 reads as follows:

Section 16 of Article I of the State Constitution is amended to read:

#### **ARTICLE I DECLARATION OF RIGHTS**

##### **SECTION 16. Rights of accused and of victims. —**

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(b) To preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and

juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents, every victim is entitled to the following rights, beginning at the time of his or her victimization:

(1) The right to due process and to be treated with fairness and respect for the victim's dignity.

(2) The right to be free from intimidation, harassment, and abuse.

(3) The right, within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused. However, nothing contained herein is intended to create a special relationship between the crime victim and any law enforcement agency or office absent a special relationship or duty as defined by Florida law.

(4) The right to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.

(5) The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.

(6) A victim shall have the following specific rights upon request:

a. The right to reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary. A victim shall also be provided reasonable, accurate, and timely notice of any release or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated.

b. The right to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.

c. The right to confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.

d. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.

e. The right to receive a copy of any presentence report and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.

f. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.

g. The right to be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.

h. The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.

(7) The rights of the victim, as provided in subparagraph (6)a., subparagraph (6)b., or subparagraph (6)c., that apply to any first appearance proceeding are satisfied by a reasonable attempt by the appropriate agency to notify the victim and convey the victim's views to the court.

(8) The right to the prompt return of the victim's property when no longer needed as evidence in the case.

(9) The right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.

(10) The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.

a. The state attorney may file a good faith demand for a speedy trial and the trial court shall hold a calendar call, with notice, within fifteen days of the filing demand, to schedule a trial to commence on a date at least five days but no more than sixty days after the date of the calendar call unless the trial judge enters an order with specific findings of fact justifying a trial date more than sixty days after the calendar call.

b. All state-level appeals and collateral attacks on any judgment must be complete within two years from the date of appeal in non-capital cases and within five years from the date of appeal in capital cases, unless a court enters an order with specific findings as to why the court was unable to comply with this subparagraph and the circumstances causing the delay. Each year, the chief judge of any district court of appeal or the chief justice of the supreme court shall report on a case-by-case basis to the speaker of the house of representatives and the president of the senate all cases where the court entered an order regarding inability to comply with this subparagraph. The legislature may enact legislation to implement this subparagraph.

(11) The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect

to their rights. This information shall be made available to the general public and provided to all crime victims in the form of a card or by other means intended to effectively advise the victim of their rights under this section.

(c) The victim, the retained attorney of the victim, a lawful representative of the victim, or the office of the state attorney upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record.

(d) The granting of the rights enumerated in this section to victims may not be construed to deny or impair any other rights possessed by victims. The provisions of this section apply throughout criminal and juvenile justice processes, are self-executing, and do not require implementing legislation. This section may not be construed to create any cause of action for damages against the state or a political subdivision of the state, or any officer, employee, or agent of the state or its political subdivisions.

(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term "victim" includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. The term "victim" does not include the accused. The terms "crime" and "criminal" include delinquent acts and conduct. ~~Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.~~

Section 8 of Article V of the State Constitution is amended, and section 21 is added to that article, to read:

ARTICLE V

JUDICIARY

SECTION 8. Eligibility.—No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of ~~seventy-five~~ seventy years except upon temporary assignment ~~or to complete a term, one-half of which has been served~~. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

SECTION 21. Judicial interpretation of statutes and rules. — In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo.

A new section is added to Article XII of the State Constitution to read:

ARTICLE XII

SCHEDULE

Eligibility of justices and judges. — The amendment to Section 8 of Article V, which increases the age at which a justice or judge is

no longer eligible to serve in judicial office except upon temporary assignment, shall take effect July 1, 2019.

(R. at 176-83.) The ballot title and summary for Amendment 6 reads as follows:

RIGHTS OF CRIME VICTIMS; JUDGES. – Creates constitutional rights for victims of crime; requires courts to facilitate victims’ rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes. Requires judges and hearing officers to independently interpret statutes and rule rather than deferring to government agency’s interpretation. Raises mandatory retirement age of state justices and judges from seventy to seventy-five years; deletes authorization to complete judicial term if one-half of term has been served by retirement age.

(R. at 184.)

### **STANDARD OF REVIEW**

The validity of a proposed constitutional amendment is subject to de novo review. *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000).

In reviewing the validity of a ballot title and summary under Section 101.161(1), Florida Statutes, there are two areas of focus: first, whether “the ballot title and summary . . . fairly inform the voter of the chief purpose of the amendment” and, second, “whether the language of the title and summary, as written, misleads the public.” *Advisory Op. to the Att’y Gen. Re: Voting Restoration Amend.*, 215 So. 3d 1202, 1207 (Fla. 2017) (quoting *Right to Treatment and Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 497 (Fla. 2002) and *Advisory Op. to Att’y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998)).

## SUMMARY OF THE ARGUMENT

The ballot title and summary for Amendment 6 reads as follows:

**RIGHTS OF CRIME VICTIMS; JUDGES.** – Creates constitutional rights for victims of crime; requires courts to facilitate victims’ rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes. Requires judges and hearing officers to independently interpret statutes and rule rather than deferring to government agency’s interpretation. Raises mandatory retirement age of state justices and judges from seventy to seventy-five years; deletes authorization to complete judicial term if one-half of term has been served by retirement age.

(R. at 184.)

The ballot summary for Amendment 6 is affirmatively and materially misleading insofar as it fails to inform voters that it will result in the loss of current constitutional rights of criminal defendants, will modify speedy trial procedures, will restrict timeframes for criminal appeals, will provide constitutional “victim’s” rights to corporations and other business entities in criminal proceedings, and purports to “create” constitutional rights for victims of crime even though rights for crime victims already exist in Florida’s constitution. The ballot summary is further affirmatively and materially misleading in that it leads voters to believe that victims can independently enforce their amended rights and leads voters to believe that the amendment obligates courts to facilitate victims’ rights, neither of which are true. In addition, the ballot title is misleading in that it omits one of the three subjects of the amendment and, accordingly, fails to inform voters that it intends to



eliminate the doctrine of judicial deference to agency interpretations of statutes and rules.

Thus, the ballot title and summary are affirmatively and materially misleading and fail to inform the voters of the true scope of the amendment, its true meaning and ramifications, and its true chief purposes. Based on the foregoing, the Final Judgment finding that Amendment 6 does not meet the constitutional and statutory requirements for placement on the ballot and enjoining Appellants from placing Amendment 6 on the 2018 general election ballot should be affirmed.

## **ARGUMENT**

### **I. AMENDMENT 6's BALLOT LANGUAGE IS AFFIRMATIVELY AND MATERIALLY MISLEADING.**

Article XI, Section 5 of the Florida Constitution states:

SECTION 5. Amendment or revision election. –

*(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution, initiative petition or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourth of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.*

(emphasis added). Construing this language, this Court has stated: “Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.” *Armstrong*, 773 So. 2d at 12. This accuracy requirement, which has been codified by the Legislature in section 101.161, Florida Statutes, applies to all proposed constitutional amendments, regardless of whether proposed by the Legislature, the Constitution Revision Commission, citizen initiative, the Taxation and Budget Reform Commission, or constitutional convention. *See Armstrong*, 773 So. 2d at 11-12.

Section 101.161(1), Florida Statutes, provides, in pertinent part, as follows:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word “yes” and also by the word “no,” and shall be styled in such a manner that a “yes” vote will indicate approval of the proposal and a “no” vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The 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. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is

commonly referred to or spoken of. This subsection does not apply to constitutional amendments or revisions proposed by joint resolution.

As this Court has explained, “[t]he purpose of these requirements is ‘to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot.’” *Voting Restoration Amend.*, 215 So. 3d at 1207 (quoting *Advisory Op. to Att’y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998)).

Notably, “where a proposed constitutional revision results in the loss or restriction of an independent fundamental state right, the loss must be made known,” in the ballot language. *Armstrong*, 773 So. 2d at 12 (quoting *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992)).

The gist of the accuracy requirement is simple: “[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. Stated another way, the accuracy requirement functions as “as a kind of ‘truth in packaging’ law for the ballot.” *Id.* at 13. Thus, evaluating whether a ballot title and summary is accurate “requires consideration of the ballot proposal’s ‘true meaning, and ramifications.’” *Let Miami Beach Decide v City of Miami Beach*, 120 So. 3d 1282, 1292 (Fla. 3d DCA 2013) (quoting *Armstrong*, 773 So. 2d at 17). The importance of the accuracy requirement is likewise simple. Voters cast their ballots based “*only* on the ballot title and summary.” *Advisory Opinion to Att’y Gen. re Additional Homestead tax*

*Exemption*, 880 So. 2d 646, 653 (Fla. 2004) (emphasis in original). Accordingly, “the proposed amendment [must] be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.” *Armstrong*, 773 So. 2d at 12.

Where a ballot title or summary omits material facts necessary to make such title or summary accurate or fails to accurately describe the scope of the text of the amendment, it fails in its purpose and must be stricken. *Term Limits Pledge*, 718 So. 2d at 804 (“When the summary of a proposed amendment does not accurately describe the scope of the text of the amendment, it fails in its purpose and must be stricken.”); *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010) (“A proposed amendment must be removed from the ballot when the title and summary do not accurately describe the scope of the text of the amendment, because it has failed in its purpose.”); *Armstrong*, 773 So. 2d at 12 (Finding that “the ballot language in the present case is defective for what it does *not* say: It does not tell voters the ‘chief purpose’ of the amendment” where the amendment would have the effect of nullifying existing constitutional rights but was presented under the guise of “preserving” others); *Wadhams v. Board of Cnty Comm’rs*, 567 So. 2d 414, 416 (Fla. 1990) (finding a ballot summary deceptive where it contained true statements but omitted other material facts necessary in order to make the statements not misleading); *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982) (Noting that “[t]he problem, therefore, lies not with what the summary says, but, rather, with

what it does not say” where a purpose of the amendment was to remove constitutional language but such purpose was not mentioned in the ballot summary.)

Amendment 6 groups a number of distinct changes to the Florida Constitution into one revision proposal. According to the ballot summary, Amendment 6 purports to: (i) create constitutional rights for victims of crime; (2) require judges and hearing officers to independently interpret statutes and rules; and (3) raise the mandatory retirement age of state judges and preclude their ability to complete a term if one-half of term has been served.

In actuality, Amendment 6 would, among other things, restrict the existing constitutional rights of those accused of crimes, expand existing constitutional rights for victims of crimes, modify speedy trial procedures, restrict the time for appeals in criminal cases, provide constitutional “victim’s” rights to corporations and other business entities, eliminate the longstanding doctrine of judicial deference to agency interpretations of statutes and rules, and raise the mandatory retirement age for state judges from 70 to 75. Accordingly, although Amendment 6 does address some of the items mentioned in the ballot summary, the ballot title and summary fail to inform the voters of the true scope of the amendment and its chief purposes by entirely omitting any reference to several significant changes made by the amendment. Additionally, the ballot title and summary fail to inform

voters of the significant ramifications of those changes. For these reasons, the ballot title and summary are insufficient and the Final Order enjoining Detzner and the Department from placing Amendment 6 on the ballot should be affirmed.

**A. THE BALLOT SUMMARY MISLEADS VOTERS AS TO THE AMENDMENT'S POTENTIAL EFFECT ON CRIMINAL DEFENDANTS AND CLAIMS A MISLEADING CHIEF PURPOSE OF CREATING RIGHTS FOR CRIME VICTIMS.**

The ballot summary states that Amendment 6 “[c]reates constitutional rights for victims of crime.” What the ballot summary fails to mention, however, is that Amendment 6 substantially alters and curtails the existing constitutional rights of criminal defendants. Article 1, Section 16, of the Florida Constitution, currently states:

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

(emphasis added.) Based on the emphasized provision, the constitution is explicitly clear that the existing victims' rights may only be exercised to the extent that they do not interfere with the previously mentioned constitutional rights of the accused. Under the guise of "creat[ing] constitutional rights for victims of crime," Amendment 6 entirely deletes this language.

In conjunction with removing the prohibition on interfering with the rights of the accused, Amendment 6 would give victims, in pertinent part:

- (1) The right to due process and to be treated with fairness and respect for the victim's dignity.
- (2) The right to be free from intimidation, harassment, and abuse.
- (3) The right, within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused. However, nothing contained herein is intended to create a special relationship between the crime victim and any law enforcement agency or office absent a special relationship or duty as defined by Florida law.
- (4) The right to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.
- (5) The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.

Importantly, Amendment 6 would also require that these rights “are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents.”

By removing the language protecting the rights of the accused, substantially amending existing victims’ rights, and requiring that victims’ rights are protected “no less vigorously” than those of the accused, Amendment 6 entirely alters the current balance of accused’s constitutional rights and victims’ constitutional rights. Notably, this restructuring comes solely at the expense of the accused. Neither the ballot title nor summary inform the voters of this monumental shift. In fact, the ballot summary and title are entirely silent on this issue and fail to inform voters that the revisions have any impact whatsoever on the rights of the accused, let alone that they significantly impair the constitutional rights of the accused.

One of the most significant parts of Amendment 6 is its removal of the existing language stating that victims’ rights “may only be exercised to the extent that they do not interfere with the constitutional rights of the accused.” In the trial court, Appellants downplayed the significance of the removal of this language. Appellants suggested that the language was removed because in light of the revisions, it was simply a “stub” at the end of the paragraph which had no



contextual meaning and was, therefore, an irrelevant outlier.<sup>1</sup> The CRC transcripts suggest otherwise, however.<sup>2</sup> At its final meeting, the CRC heavily debated a proposed amendment which would have added the stricken language back into Amendment 6. Commissioner Cerio opposed the amendment, stating that allowing this language to remain would be “basically gutting Marsy’s law” and further that it would open Marsy’s law up to “significant weakening” which “only harms victims, [ ] doesn’t help them, and [ ] provides no meaningful help to a defendant because there is no harm to the defendant by what is being proposed in Marsy’s law.” (R. at 279.) Counsel for Appellants repeated this sentiment at the hearing, suggesting that the language was unnecessary because “there are no rights in the Florida Constitution that are being eliminated by this Amendment.”

This is inaccurate as Amendment 6 does affect other established, constitutional rights. Accused currently have the right to have compulsory process for witnesses and to confront adverse witnesses at trial. Thus, if desired, the accused would have the constitutional right to call and confront the alleged victim at trial. This right is absolute and is not to be compromised by any rights of the

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<sup>1</sup> Second Judicial Circuit Court Hearing, <https://thefloridachannel.org/videos/8-24-18-second-judicial-circuit-court-hearing-lee-hollander-v-department-of-state/>

<sup>2</sup> The text of Amendment 6 likewise shows that the CRC understood the importance of including language of this type when it inserted a similar provision on behalf of victims: “The granting of the rights enumerated in this section to victims may not be construed to deny or impair any other rights possessed by victims.” (R. at 181.)

victim. If Amendment 6 were adopted, the rights of the accused would then be subject to being balanced against rights of the victim. It goes without saying that any victim is likely to perceive being called and questioned at trial as unfair, disrespectful, intimidating, harassing, and abusive. That perception, when coupled with the rights set forth in subsections (1), (2), and (3) of the relevant provisions of Amendment 6, would very foreseeably result in situations where the accused would be prevented from fully confronting an adverse witness, the victim, due to Amendment 6's elaborate and expansive increase in victims' rights.

Appellants suggest that this argument is invalid because the accused's rights in this regard are also protected by the United States Constitution. As the trial court recognized, however, Florida's protections for the accused differ in many ways from the baseline protections for the accused established by the United States Constitution. (R. at 482.) Notably, however, an in-depth analysis of whether the accused's rights will ultimately remain the same despite the deletion of this language is beyond the purview of this Court's current review, which is strictly limited to whether the ballot title and summary provides voters with notice of the true contents and ramifications of the amendment or otherwise misleads voters. Thus, Appellants' argument is misplaced. *See Advisory Op. to Att'y Gen. ex rel. Amend. to Bar Gov't from Treating People Differently Based on Race in Public Educ.*, 778 So. 2d 888 (Mem), 891 (Fla. 2000); *Advisory Op. to the Att'y Gen. re*

*Tax Limitation*, 644 So. 2d 486, 489 (Fla. 1994) (At the ballot amendment stage, courts lack “the authority or responsibility to rule on the merits or the wisdom of these proposed initiative amendments[.]”)

Other constitutional provisions and are also affected by Amendment 6. Article I, Section 14 of the Florida Constitution, titled “Pretrial release and detention” provides that:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Amendment 6 would directly affect this constitutional provision by requiring that “the safety and welfare of the victim and the victim’s family [be] considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim’s family.” Article I, Section 24, of the Florida Constitution, titled “Access to public records and meetings” would likewise be affected. This provision states in pertinent part that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

Amendment 6, however, grants victims “[t]he right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential or privileged information of the victim.” The ballot title and summary are entirely silent as to these effects.

The importance of this stricken language is also mirrored by the fact that it is twice incorporated into section 960.001, Florida Statutes, titled “Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.” In particular, section 960.001(1)(a)5, Florida Statutes, states that:

The right of a victim, who is not incarcerated, including the victim’s parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim’s parent or guardian if the victim is a minor, and the next of kin of a homicide victim, to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused, as provided by s. 16(b), Art. I of the State Constitution

(emphasis added.) Section 960.001(1)(a)5, Florida Statutes, gives victims “[t]he right of a victim to a prompt and timely disposition of the case in order to minimize the period during which the victim must endure the responsibilities and stress involved to the extent that this right does not interfere with the constitutional rights of the accused.” (emphasis added.) It is telling that the legislature felt it important to incorporate this protection for the accused into its statutory scheme twice yet the CRC wants to sweep its removal under the rug by suggesting that it is “stub” language with no “contextual meaning.” Despite the CRC’s attempt to

downplay the removal of this language, it is a significant and fundamental change which deserves, at a minimum, a mention in the ballot summary.

The ballot title and summary also do not exhibit or disclose Amendment 6's chief purpose, which is to significantly expand the rights of victims of crime, to prioritize those rights over those of the accused, and to subordinate the rights of the accused. Appellants have suggested that a voter with "a certain amount of common sense and knowledge" would read the ballot title and summary "with common sense and in context." They surmise that, using this common sense, the voter would clearly understand that the new rights "created" for victims "may well come at the expense of criminal defendants... and therefore may, in particular cases, conflict with the interests of defendants." This argument falls far short of explaining how a voter with common sense and knowledge would interpret approximately 10 words referencing the "creat[ion] [of] constitutional rights for victims of crime" to indicate a substantial amendment to and expansion of victims' current constitutional rights and the complete subordination of the accused's rights. As a result, Appellants' arguments in this regard are without merit.

Appellants themselves acknowledge the breadth and significance of Amendment 6 in their filings below. In particular, Appellants acknowledged that the Florida Constitution currently contains only a "single, barebones sentence" regarding victims' rights and that "Amendment 6 would replace that sentence with

a comprehensive regime that not only would maintain the three generic rights currently set forth in Article I, Section 16(b). . . but also would “[c]reate[] nine wholly new rights for victims of crime and their families[.]” (R. at 429-30.) In actuality, Amendment six would transform this one “single, barebones sentence” of only 55 words into a vast, extensive, 4 page, 1300 word provision which provides victims with approximately 20 enumerated rights. If Amendment 6 were adopted, the Florida Constitution will contain one paragraph consisting of approximately 21 lines of text concerning accused’s rights and approximately four pages, consisting of 11 paragraphs, 13 subparagraphs, and approximately 132 lines of text, concerning victims’ rights.

Despite these expansive revisions, the ballot summary relating to this portion of Amendment 6 is only 25 words long. It is difficult to imagine how a scant 25 words could possibly “provide fair notice of the content of [a] proposed amendment” which exceeds 1300 words. *Voting Restoration Amend.*, 215 So. 3d at 1207 (quoting *Term Limits Pledge*, 718 So. 2d at 803). Had the summary explained that the Amendment “expands” constitutional rights for victims at least one of the inherent flaws of the summary would have been avoided. *See generally* Roberto Martinez, William J. Schifino, Jr., & William N. Spicola, *Amendment 6 Rights of Crime Victims; Judges*, FLA. BAR JOURNAL, Sept./Oct. 2018, at 12 (Florida Bar Journal article authorized by two CRC members and the CRC general counsel

which states that Amendment 6’s “first proposal significantly expands victims’ rights in the criminal justice system.” (emphasis added)). The CRC was also fully capable of identifying which amendments expanded existing rights or created new rights, as they clearly did so with regard to other amendments.<sup>3</sup>

Additionally, any argument by Appellants that the ballot summary is so short because of the statutorily imposed word limit is without merit. Had the CRC not bundled this proposal with two others, the ballot summary for this proposal could have been 75 words long and more accurately informed voters of the content of these sweeping changes. The CRC may not knowingly bundle multiple significant and sweeping proposals into one amendment and then use the well-known and established word limits as an excuse for failing to draft a sufficient ballot title and summary.

Notably, the ballot title and summary are obviously worded to persuade voters to vote yes under the guise of giving victims rights. Understandably, one

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<sup>3</sup> See Amendment 8 ballot summary (R. at 193 (stating that the amendment “creates a term limit of eight consecutive years for school board members” where a term limit does not currently exist in the Constitution)); Amendment 10 ballot summary (R. at 210-11 (stating that the amendment “Creates office of domestic security and counterterrorism within department of law enforcement” where office did not previously exist in Constitution)); Amendment 12 ballot summary (R. at 221 (stating “Expands current restrictions on lobbying for compensation by former public officers; creates restrictions on lobbying for compensation by serving public officers and former justices and judges” where lobbying restrictions on former public officers existed but were expanded but a new category of restriction specifically focusing on serving public officers and justices and judges was created)).

would be hard pressed to find a voter who doesn't support victims' rights, which is exactly why the ballot title and summary are misleadingly titled this way. It is important to note that this challenge to Amendment 6 does not reach the substance of the proposal. It is not "anti-victims' rights." Instead, it is focused only on whether the ballot title and summary are sufficient to afford the voters an opportunity to make an informed and reasoned decision. Therefore, in reviewing a challenge to a proposed ballot amendment, this Court should look only at whether the language of the ballot title and summary meet the applicable requirements and should not consider the merits of the proposed amendment itself. *See Amend. to Bar Gov't from Treating People Differently*, 778 So. 2d at 891; *Tax Limitation*, 644 So. 2d at 489 (At the ballot amendment stage, courts lack "the authority or responsibility to rule on the merits or the wisdom of these proposed initiative amendments[.]")

As shown above, Amendment 6 would fundamentally alter the constitutional rights of the accused and would affect other constitutional provisions. The ballot title and summary stating only that the Amendment addresses "Rights of Crime Victims" and "[c]reates constitutional rights for victims of crime" fails to advise voters of the sweeping and extensive changes Amendment 6 would actually accomplish. As a result, the ballot summary and title affirmatively for Amendment 6 "hide the ball" with regard to the constitutional rights of the accused and are



affirmatively and materially misleading because they fail to make known that the amendment will result in the loss of independent, fundamental state rights of criminal defendants. *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (quoting *Traylor*, 596 So. 2d at 962). In addition, the ballot title and summary fail to advise voters of the true chief purpose of the amendment. *See Armstrong*, 773 So. 2d at 12. The ballot title and summary, thus, fall far short of advising voters of the amendment’s “true meaning and ramifications.” *See Armstrong*, 773 So. 2d at 17; *Let Miami Beach Decide*, 120 So. 3d at 1292 (Fla. 3d DCA 2013).

**B. THE BALLOT SUMMARY IS MISLEADING IN ITS ASSERTION THAT IT CREATES VICTIMS’ RIGHTS.**

The opening sentence of Amendment 6’s ballot summary explicitly states that it: “*Creates* constitutional rights for victims of crime.” (emphasis added.) This is inaccurate and misleads the public into thinking that there are no existing Florida constitutional rights for crime victims and that this amendment will create such constitutional victims’ rights for the first time. To the contrary, however, victims of crime already have explicit constitutional rights in Florida’s constitution, including the right to be informed, to be present, and to be heard at all crucial stages of criminal proceedings, to the extent they do not interfere with the rights of the accused. Art. I, § 16(b), Fla. Const.

Amendment 6, therefore, does not “create” constitutional rights for victims, it only modifies and expands the existing victims rights already set forth in the

Florida Constitution. In fact, Article 1, Section 16, of the Florida Constitution, the very section that Amendment 6 revises, is titled “Rights of the accused *and of victims.*” (emphasis added.) The CRC could have easily used the term “amends” or “revises,” which would not mislead voters into thinking that the current constitution is void of any protections for victims. Instead, however, the CRC formulated summary misleads by using the word “creates.” Moreover, to the extent that the text of the summary states that the proposed amendment “[c]reates constitutional rights for victims of crime,” “the summary more closely resembles political rhetoric rather than it does an accurate and informative synopsis of the meaning and effect of the proposed amendment.” *In re Advisory Op. to the Att’y Gen. – Save our Everglades*, 636 So. 2d 1336, 1342 (Fla. 1994).

By causing voters to believe that victims of crime do not currently have any “constitutional rights” and failing to disclose what additional rights for victims are being added to the Constitution, the ballot summary is affirmatively and materially misleading.

**C. THE BALLOT TITLE AND SUMMARY MISLEAD VOTERS AND “HIDE THE BALL” REGARDING ACCUSED’S RIGHT TO A SPEEDY TRIAL AND THE TIMELINES FOR APPEALS AND COLLATERAL ATTACKS.**

Amendment 6 gives the state attorney the constitutional right to demand a speedy trial and requires that all state level appeals and collateral attacks be

completed within two years for non-capital cases and within five years for capital cases.

The first of these provisions fundamentally alters the speedy trial provisions of Florida Rule of Criminal Procedure 3.191 and Article 1, Section 16, of the Florida Constitution, which both currently allow a speedy trial demand only from a defendant. It also fundamentally alters the speedy trial provisions of section 960.0015, Florida Statutes. This provision, which does allow the State to demand a speedy trial, only allows such a demand when the defendant has already requested and received three continuances and, for felony cases, 125 days have passed from the filing of formal charges or, for misdemeanor cases, 45 days have passed from the filing of formal charges. § 960.0015, Fla. Stat. Without notice to the voters, the self-executing provisions of Amendment 6 sweep these substantive and procedural requirements aside.

Additionally, Amendment 6 abrogates a defendant's well-established right to waive his right to a speedy trial by allowing the State Attorney to demand and enforce a speedy trial, regardless of a defendant's waiver of same. *See State v. Nelson*, 26 So. 3d 570, 576 (Fla. 2010) ("As with other rights that constitute a personal privilege, a defendant may waive his or her right to a speedy trial...") Such waivers are often necessitated to preserve a defendant's existing constitutional rights, such as the right to counsel or the right to call or confront

witnesses who may otherwise be unavailable absent the waiver. Nowhere in the ballot title or summary are voters given notice of this significant change. Voters are similarly not given notice regarding Amendment 6's effect on the timelines for completing appeals and collateral attacks.

By omitting any reference to the revisions of speedy trial procedures and the timelines for completing all appeals and collateral attacks, the ballot summary and title omit material facts necessary to make the title and summary not misleading and fail to accurately describe the scope of the amendment. Appellants attempt to defend these deficiencies by suggesting that the ballot title and summary need not explain the complete details of the proposed amendment. Appellants' argument, however, overlooks the requirement that the ballot summary and title "provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Voting Restoration Amend.*, 215 So. 3d at 1207 (quoting *Term Limits Pledge*, 718 So. 2d at 803). It further overlooks the requirement that the ballot summary accurately describe the scope of the amendment and include all material facts necessary to make the title or summary not misleading. *Term Limits Pledge*, 718 So. 2d at 804; *Roberts v. Doyle*, 43 So. 3d at 659; *Armstrong*, 773 So. 2d at 12; *Wadhams*, 567 So. 2d at 416; *Askew v. Firestone*, 421 So. 2d at 156. These requirements are especially important in light of the fact that voters cast their vote based only on the

ballot title and summary and are not at liberty to scour the full text of the amendment in the voting booth. *Additional Homestead tax Exemption*, 880 So. 2d at 653 (Voters cast their ballots based “*only* on the ballot title and summary” (emphasis in original)).

Here, as established above, Amendment 6’s ballot title and summary fail to provide fair notice of the content and scope of the proposed amendment. The ballot summary and title, therefore, are materially misleading and prevent voters from casting an intelligent and informed ballot.

**D. THE BALLOT TITLE AND SUMMARY MISLEAD VOTERS AND “HIDE THE BALL” REGARDING THE MEANING OF VICTIM FOR PURPOSES OF THE AMENDMENT.**

A proposed constitutional amendment’s ballot title and summary must not be misleading—that is, the terminology used must clearly and meaningfully communicate information to voters and the drafters must not invent terms or fail to define ambiguous terms. *Amend. to Bar Gov’t from Treating People Differently*, 778 So. 2d at 898-99 (citing *Advisory Op. to the Att’y Gen. re People’s Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1309, 1311 (Fla. 1997)). Ballot titles and summaries are misleading if they do not properly inform voters of the legal significance of the terminology used. *Amend. to Bar Gov’t from Treating People Differently*, 778 So. 2d at 897.

Amendment 6 expansively broadens victims' rights. The amendment also uses a novel and expanded definition of the term "victim" which would grant constitutional "victims'" rights to corporations. The granting of constitutional victims' rights to corporations would be a radical shift in Florida criminal law. Nonetheless, the ballot title and summary for Amendment 6 do not disclose anywhere that the amendment creates constitutional rights for corporations equal to that of human victims. This argument is not made up from whole cloth.

On April 16, 2018, the final day the CRC met, Commissioner Coxe proposed a revision to Amendment 6 which would narrow the definition of victim to natural persons. (R. at 283-84.) In response, Commissioner Cerio, the sponsor of Amendment 6, disclosed that he intended the amendment to apply to corporate entities as well as natural persons. (R. at 284-86.) During the debate on Commissioner Coxe's proposal, Commissioner Rich Newsome stated that he "never dreamed" that the amendment would apply to corporate entities and indicated he previously had no idea that the victims' rights proposal would grant constitutional rights to corporations and political action committees. (R. at 286-89.)

Commissioner Newsome expressed concern that such corporations and political action committees could seek to use the amendment to make an example of someone bouncing a check, criminally prosecute an economic competitor, or target a political enemy. (R. at 286-89.) Ultimately, the CRC rejected

Commissioner Coxe’s proposal which would have narrowed the broad definition of victim to include only natural persons. (R. at 290.) As evidenced by Commissioner Rich Newsome’s comments, even the CRC commissioners themselves did not seem to realize that the provision used a novel and expanded definition of the term “victim” which would grant constitutional rights to corporations. If CRC commissioners themselves “never dreamed” that the term “victims” would mean anything other than individual humans and were surprised otherwise, then it is not at all a leap to expect that the average voter, even using “a certain amount of common sense and knowledge,” would also think that the amendment addresses only individual natural persons and not corporations.

This omission creates an ambiguity similar to ambiguities contained in past proposed amendments which were found to violate the state’s constitutional and statutory accuracy requirement. *See Amend. to Bar Gov’t from Treating People Differently*, 778 So. 2d at 898-99 (summary defective for use of term “bona fide qualifications based on sex,” which did not adequately explain what the proposed amendment provided and left voters to rely on their own conceptions of its meaning); *People’s Property Rights Amend.*, 699 So. 2d at 1308-09 (summary defective for failure to define terms “owner” and “common law nuisance,” causing summary to be confusing, unclear, and not sufficiently informative to voters). As with the foregoing cases, the ballot summary here is affirmatively and materially

misleading, “hides the ball” from the voting public, and fails to advise voters as to the true scope of the amendment by failing to disclose the new and novel definition of the commonly used term “victim.”

Importantly, the Hollander Plaintiffs do not ask this Court to weigh in on whether it is wise to include corporations and other entities within the definition of “victim.” Rather, they assert only that the ballot summary and title fail to mention this issue entirely and, as a result, are misleading and fail to give voters fair notice of the true contents and ramifications of the amendment.

**E. THE BALLOT TITLE AND SUMMARY MISLEAD VOTERS AND “HIDE THE BALL” REGARDING THE ENFORCEMENT RIGHTS OF CRIME VICTIMS.**

The ballot summary, by stating that the amendment “authorizes victims to enforce their rights,” misleads voters into thinking that victims have the ability to bring a private cause of action to enforce their Amendment 6 rights. Amendment 6, however, does not allow victims to file a lawsuit to enforce their rights and does not provide for a cause of action for damages. In fact, Amendment 6 does not truly allow victims to enforce their rights in any proceeding. At most, it permits victims to “assert and seek enforcement” in the context of ongoing proceedings and have their “request” promptly considered. (emphasis added.) Moreover, it specifically provides that “this section may not be construed to create any cause of action for damages against the state or a political subdivision of the state, or any officer,



employee, or agent of the state or its political subdivisions.” (emphasis added.) Thus, the summary is affirmatively and materially misleading because it suggests that victims of crime can file legal claims to enforce their Amendment 6 rights when in fact the Amendment creates no private right of action for enforcement.

Appellants argue that voters will not be misled as to the enforcement rights of crime victims because the ballot summary states that the Amendment “authorizes victims to enforce their rights throughout criminal and juvenile justice processes.” Even though, as Appellants argue, this provision does not specifically refer to a civil cause of action, it is still misleading as even a voter using “a certain amount of common sense and knowledge” may not understand the nuances and intricacies of the different remedies available in criminal and juvenile justice proceedings versus civil proceedings.

Because the summary suggests that victims of crime can enforce their Amendment 6 rights, when in fact the Amendment does not actually provide any mechanism for enforcement, it is affirmatively and materially misleading.

**F. THE BALLOT TITLE AND SUMMARY MISLEAD VOTERS REGARDING A COURT’S REQUIREMENT TO FACILITATE VICTIMS’ RIGHTS.**

Amendment 6’s ballot summary states that the amendment “requires courts to facilitate victims’ rights[.]” The text of Amendment 6, however, contains absolutely no requirement that courts facilitate victims’ rights. The text does not

even contain the word “facilitate” or require that courts do anything with regard to the enumerated victims’ rights. As a result, the ballot summary is again misleading in suggesting to voters that Amendment 6 “requires courts to facilitate victims’ rights.

**II. THE BALLOT TITLE MATERIALLY MISLEADS VOTERS AND “HIDES THE BALL” BY ENTIRELY OMITTING THE AMENDMENT’S THIRD SUBJECT.**

The ballot title, in its entirety, reads: “RIGHTS OF CRIME VICTIMS; JUDGES.” This title references only two of the three subjects of Amendment 6. Amendment 6, in fact, addresses a third subject: “Deference to state agency interpretation of statutes and rules.” This third subject would preclude application of the *Chevron* doctrine by Florida judges and administrative hearing officers—a stark departure from longstanding practice. The *Chevron* doctrine, established by the United States Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), requires deference to an agency’s interpretation of its rules, unless clearly erroneous, arbitrary, or unreasonable. This doctrine has guided Florida courts in reviewing agency action for the past 30 years. Mere reference to “Judges” does nothing to inform the public of the about-face in courts’ deference to state agencies that would take place were the amendment adopted.

Appellants do not provide any valid reason for Amendment 6’s title entirely omitting the Amendment’s third subject: “Deference to state agency interpretation of statutes and rules.” Instead, Appellants rely on the proposition that ballot title and summary must be read together in determining whether the ballot title and summary properly inform voters. While this proposition is valid, it has no application here where the ballot title is a mere 5 words in length, but can be up to 15 words in length. Given that the CRC had an additional ten words to spare, there is no reason for the title to “hide the ball” on this sea change in deference to state agencies. Thus, the ballot title is affirmatively and materially misleading by indicating that Amendment 6 includes two subjects when it actually includes three.

### **CONCLUSION**

For the foregoing reasons, this Court should affirm the Final Judgment enjoining Appellants from placing Amendment 6’s ballot title and summary on the general election ballot.

Respectfully submitted,

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I HEREBY CERTIFY that the foregoing brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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