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SC18-1366, 1367

In the Supreme Court of Florida

DEPARTMENT OF STATE, ET AL.,	DEPARTMENT OF STATE, ET AL.
Petitioners,	*Petitioners,*
v.	v.
LEE HOLLANDER, ETC., ET AL,	AMY KNOWLES,
Respondents.	*Respondents.*

PETITIONERS' BRIEF

ON DISCRETIONARY REVIEW AND CERTIFICATION
FROM THE FIRST DISTRICT COURT OF APPEAL
Case Nos. 1D18-3643, -3644

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STATEMENT OF THE CASE AND FACTS

I. On May 9, 2018, Florida's Constitution Revision Commission ("CRC") submitted eight proposed constitutional revisions for placement on the 2018 General Election ballot. At issue in this case is Revision 6, which, if adopted by Florida's electorate, would create rights for crime victims, raise the mandatory retirement age for judges, and eliminate judicial deference to agencies' interpretations of statutes and rules. R. 479-480.

If passed, Revision 6 would—as relevant to this case—amend Article I, Section 16 of the Florida Constitution as follows (additions underlined; deletions struck through):

> 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.

To inform Florida's electorate of Revision 6's effect (and in accordance with Section 101.161(1), Fla. Stat.), the following CRC-approved ballot title and summary will appear on the November 2018 General Election ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 16
ARTICLE V, SECTIONS 8, 21
ARTICLE XII, NEW SECTION

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 rules 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. 479-480.

II. Two challenges to Revision 6 were filed. R. 006, 505. Respondents Ken Hollander, Patricia Brigham, and the League of Women Voters of Florida, Inc. (the "Hollander Respondents") filed suit in Leon County and noticed it as a priority status

case. R. 066, 075. Respondent Amy Knowles filed suit in Monroe County (R. 505), but the circuit court transferred the suit to Leon County and assigned it to Judge Gievers. R. 476, n.2.

Both lawsuits claim that the ballot language for Revision 6 is misleading and seek to enjoin Petitioners from placing Revision 6 on the ballot. R. 476-477. Aside from arguing that the title does not mention the de novo review portion of the proposal, neither Respondent attacked the summary for misleading as to the effect of the judicial retirement age and de novo review portions of the amendment—both focused their attack on the summary's explanation of the victims' rights portion of the proposal. The Knowles complaint also has a second count alleging that Revision 6 violates a purported single-subject limitation. R. 511-513. Petitioners moved to dismiss that second count. R. 519, n.1.

The circuit court (Gievers, J.) imposed an expedited briefing schedule on cross-motions for summary judgment in both cases. R. 081-085; R. 514-518. The circuit court also ordered that the two cases would travel together, but would not be consolidated. R. 515. The summary judgment motions in both cases were heard on August 24, 2018. R. 476.

On August 27, 2018, the circuit court issued the same Final Judgment in both cases. R. 475-485, 578-588. The circuit court found the ballot title and summary to be misleading, and enjoined Petitioners from placing Revision 6 on the ballot. R.

484. The Final Judgment did not rule on Knowles' single-subject challenge (*See* R. 475-485), even though it had been addressed in the summary judgment papers in the Knowles case and in Petitioners' Motion to Dismiss. R. 529-530, 555-551, 568-569, 572-574, 519 n.1.

On August 27, Petitioners appealed each case to the First District Court of Appeal. R. 486-499, 589-561. The next day, the parties in each case filed a joint suggestion for certification that the judgment under review concerns a matter of great public importance and requires immediate resolution by this Court. They also jointly requested expedited treatment. The First District issued the requested certification on August 28, 2018. This Court accepted jurisdiction on that same day, ordering expedited briefing and scheduling the case for oral argument on September 5, 2018.

SUMMARY OF ARGUMENT

This Court has long maintained that the amendment process is "the most sanctified area in which a court can exercise power," and a proposed amendment should be submitted to the electorate unless its ballot language is "clearly and conclusively" defective. Because the ballot language at issue in this case fully informs the electorate of the proposed amendment's chief purpose and is not misleading, Florida's voters have a right to consider its merits and cast their vote. The trial court's ruling to the contrary must be quashed.

A ballot title and summary must fairly inform the voters of the proposed

amendment's chief purpose. Revision 6 has three main components: creating victims' rights, raising the mandatory retirement age for judges, and eliminating judicial deference to agencies' interpretations of statutes and rules. The ballot language accurately and adequately describes the chief purpose for each component.

The trial court nonetheless faulted the ballot language for what it considered to be material omissions, making several general conclusions about supposed effects of the victims' rights portion of Revision 6 which the court found necessary for inclusion in the ballot language. But under this Court's precedent, a ballot title and summary do not need to mention every detail, effect, or ramification of a proposed constitutional amendment. If an omission is not material, the ballot will not be stricken. Such should be the result here. The voters are told the proposal will create constitutional rights for victims; it need not list all of them in detail.

Among the court's several errors in finding that the ballot language contains material omissions is what the court considered to be the repeal of existing constitutional victims' rights. That conclusion elevates form over substance and does not rise to the level of a material omission. In fact, the summary would be misleading if it mentioned that current victims' rights would be repealed. The proposal would not extinguish existing constitutional victims' rights to be

informed, be present, and be heard. Those rights will continue to exist, but now with more detail about when and how they can be invoked.

The Final Judgment also conclusorily opined that the ballot language omitted material effects of Revision 6 on the rights of the accused. But the constitutional rights of criminal defendants, such as the right to a speedy trial, the right to counsel, and the right to obtain process for witnesses, would not be altered or infringed by Revision 6. Nor could they. The same rights of the accused which are guaranteed in Article 1, Section 16(a) of the Florida Constitution are also protected by the Sixth Amendment to the United States Constitution. If there were any conflict between a victim's rights under a state constitution and the federal constitutional rights of a criminal defendant—and the proposal's text provides no reason the courts should construe it that way—the Supremacy Clause would require the federally secured rights of a criminal defendant to prevail. A state constitution need not explicitly state that its provisions do not supersede federal constitutional requirements, as they *cannot* do so.

And the court inexplicably concluded that Revision 6 would "significantly change the existing Florida Criminal Justice System and Florida Juvenile Justice System" and those changes needed to be disclosed in the ballot language. But the order does not explain how Revision 6 would single-handedly provide such wide-sweeping reforms, especially since no constitutional rights of the accused in either

court system will be repealed or modified and their constitutional rights will prevail over victims' rights. If Revision 6 would have any impact on the court systems which is not mentioned in the ballot language, it would be a modification of statute or procedural rule, and this Court's precedent makes clear that ballot language need not advise of changes to statutory or other sub-constitutional law. That precedent need not and should not be revisited. Voters have the common sense to understand that criminal and juvenile procedure are the subject of statutes and procedural rules, and the state constitution will supersede any conflicting statute or rule. Indeed, requiring disclosure of every form of sub-constitutional law that an amendment might abrogate would not only be unnecessary, but also would place an inordinately high burden on the drafters of ballot summaries by making it impossible to comply with the 75-word limit.

Finally, while the trial court did not address the issue, the proposal's embrace of more than one subject cannot provide a basis for invalidating it. This Court has made clear that the Constitution imposes no single-subject requirement on proposals by the Constitution Revision Commission. Respondent Knowles' argument below that Revision 6 should be faulted for its embrace of more than one subject, if accepted, would impose—in effect, if not in name—a single-subject requirement on CRC revisions. Such a result would deprive the CRC of a power

that the Constitution gives it and would mark a departure from well-settled precedent.

LEGAL STANDARD AND STANDARD OF REVIEW

I. As a threshold matter, this Court's review of the Final Judgment is governed by two animating principles. First, the amendment process "is the most sanctified area in which a court can exercise power." *Pope v. Gray*, 104 So. 2d 841, 842 (Fla. 1958). Under the Florida Constitution, "[s]overeignty resides in the people and the electors have a right to approve or reject a proposed amendment to the organic law of the State, limited *only* by those instances where there is an *entire* failure to comply with a *plain* and *essential* requirement of the organic law in proposing the amendment." *Id.* (emphases added). Accordingly, a court must exercise "'extreme care, caution, and restraint before it removes a [proposed] constitutional amendment from the vote of the people.'" *In re Advisory Op. to Att'y Gen. re Authorizes Miami-Dade & Broward Cty. Voters to Approve Slot Machines in Parimutuel Facilities*, 880 So. 2d 522, 523 (Fla. 2004) (quoting *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982)).

Second, and relatedly, judicial review of the amendment process is extremely deferential. If "'any reasonable theory'" can support an amendment's placement on the ballot, it should be upheld. *Armstrong v. Harris*, 773 So. 2d 7, 14 (Fla. 2000) (quoting *Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956)). Compared to the deference

owed legislative acts, this standard "is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval." *Id.* (quotation marks omitted). To that end, Florida courts are not to interfere with the amendment process "unless the laws governing the process have been 'clearly and conclusively' violated." *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab.*, 818 So. 2d 491, 499 (Fla. 2002).

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

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

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

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

ARGUMENT

I. REVISION 6 HAS THREE PURPOSES AND THE BALLOT LANGUAGE FAIRLY INFORMS VOTERS OF EACH OF THOSE THREE PURPOSES.

The purpose of Revision 6's ballot title and summary is "to provide fair notice of the content of" Revision 6. *Advisory Op. to the Att'y Gen.-Fee on the Everglades Sugar Prod.*, 681 So. 2d at 1127. Revision 6 would make three changes to the Constitution: It would create additional victims' rights, it would raise the age of retirement for judges, and it would require courts to interpret state statutes or rules de novo. The ballot title and summary clearly, unambiguously, and directly convey each of these purposes. As a result, the circuit court erred in holding that the

revision's ballot language was misleading.[1]

II. THE BALLOT TITLE IS NOT INCOMPLETE OR MISLEADING BECAUSE IT DESCRIBES REVISIONS 6'S CHIEF PURPOSE OF CREATING RIGHTS FOR CRIME VICTIMS.

Summaries need only explain the chief purpose of the amendment. *See* § 101.161(2), Fla. Stat. Revision 6 has three chief purposes. The chief purpose at issue here is the portion of the summary that says Revision 6 "*[c]reates* constitutional rights for victims of crimes." And that is indeed the main, material effect of that portion of Revision 6. Article I, Section 16(b) of the Florida Constitution currently provides that:

> 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.

That single sentence is the sole provision of the Florida Constitution that currently addresses victims' rights. Revision 6 would replace that sentence with a comprehensive regime that not only would maintain the three generic rights

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[1] CRC proposals may have more than one "chief purpose." Unlike citizen initiated constitutional amendment proposals, constitutional amendments proposed by the CRC may embrace more than one subject. *Compare* Art. XI, § 3, Fla. Const. (amendments proposed by initiative "shall embrace but one subject and matter directly connected therewith….") *with* Art. XI, § 2, Fla. Const. (which has no similar restriction).

currently set forth in Article I, Section 16(b)—the rights to "be informed," "be present," and "be heard"—but also would create nine wholly new rights for victims of crime and their families:

> "The right to due process and to be treated with fairness and respect for the victim's dignity." § (b)(1);
>
> "The right to be free from intimidation, harassment, and abuse." § (b)(2);
>
> "The right, within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused." § (b)(3);
>
> "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." § (b)(4);
>
> "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." § (b)(5);
>
> The right to 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)(6);
>
> "The right to the prompt return of the victim's property when no longer needed as evidence in the case." § (b)(8);
>
> "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." § (b)(9);
>
> "The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings." § (b)(10).

It is therefore clear that the "chief purpose"—in other words, the chief "legal effect," *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984)—of this change is to create new rights for victims, not to repeal those currently set forth in Article I, Section 16(b), nor to significantly change the criminal justice and juvenile justice systems. The ballot summary accurately discloses the chief purpose related to victims' rights.

Nor would Revision 6 eliminate any of the existing constitutional rights of crime victims. Even though the current language would be deleted and replaced with entirely new language, the replacement language would not have the effect of repealing any existing rights of crime victims. Their current constitutional rights are "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." Art. I, § 16(b), Fla. Const. Each of those rights would substantively remain intact with the passage of Revision 6, but with more detail and clarification of when victims can invoke or enforce those rights.

Victims will continue to have rights to be informed and to be present, but the main difference gained by Revision 6 is a more detailed description of when those rights could be invoked. R. 178. Similarly, a victim's right to be heard will continue to be available and Revision 6 fleshes out the stages when that right can be invoked. *Id*. Thus, victims would lose no rights with the passage of Revision 6.

Nor can the ballot language be faulted for a supposed failure to disclose its application to victims of juvenile offenses. The summary specifically states that it "authorizes victims to enforce their rights throughout criminal *and juvenile justice* processes." Voters, therefore, are expressly told that the proposal relates to victims' rights in the juvenile justice system as well as the criminal system.

III. THE BALLOT LANGUAGE DOES NOT MISLEAD AS TO THE PROPOSAL'S EFFECT ON CRIMINAL DEFENDANTS.

The trial court found that the title and summary fail to mention a supposed effect of Revision 6 on the rights of the accused. R. 483. Nothing in Revision 6's text purports to infringe the rights of criminal defendants. Regardless, the rights of victims under Revision 6 *cannot* infringe or supersede the rights of the accused, which are set forth in Article 1, Section (a) of the Florida Constitution and the Sixth Amendment, and which would be given priority status through the Supremacy Clause of the United States Constitution.

Victims' new rights would have the same qualified status in relation to the rights of the accused which they had before. If there is a conflict between the constitutional rights of criminal defendants and the constitutional rights of crime victims, the constitutional rights of criminal defendants are paramount. The rights of victims under the Florida Constitution cannot interfere with rights of the accused, which are guaranteed to them under the United States Constitution. The Supremacy Clause would bar a victim from exercising her state constitutional rights, before or

after the passage of Revision 6, if those rights would infringe on the accused's rights under the United States Constitution. *See* Art. VI, U.S. Const.; *see also State v. Riggs*, 942 P.2d 1159, 1163 (Ariz. 1997) (en banc) ("[I]f, in a given case, the victim's state constitutional rights conflict with a defendant's federal constitutional rights to due process and effective cross-examination, the victim's rights must yield.") (internal citation omitted). In other words, whether a state constitution explicitly provides that it should not be construed to "interfere with the constitutional rights of the accused," R. 476, makes no legal difference. Either way, the state constitution *cannot* interfere with the accused's constitutional rights.

Under the federal constitution, the rights of those accused of a crime include the right to a speedy and public trial where the crime was committed, the right to be informed of the nature and cause of the accusation, the right to confront adverse witnesses, the right to compulsory process to obtain witnesses, and the right to counsel. *See* Amend. VI, U.S. Const. The state constitutional rights of the accused are listed in Article 1, Section 16(a) of the Florida Constitution and that list includes those same rights. Thus, a crime victim's state constitutional rights would not and could not interfere with the constitutional rights of the accused, and the trial court erred by finding that there was any interference for the ballot language to disclose.

The only right of the accused that the trial court's order noted as not being mentioned in the title or summary is Article I, Section 14 of the Florida Constitution,

which provides for pretrial release on reasonable conditions. R. 482. The order refers to the portion of Revision 6's text that requires "the safety and welfare of the victim and the victim's family [to be] considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victims' family." R. 177-178.

But the very same constitutional provision that the order cites already requires the safety of victims and their families to be taken into consideration when assessing whether to grant pretrial release. Article I, Section 14 requires pretrial release on reasonable conditions unless "no conditions of pretrial release can reasonably protect the community from risk of physical harm to persons…." Art. I, § 14, Fla. Const. Victims and their families are members of the community whose safety already must be considered by a court when deciding whether to grant pretrial release and under what conditions. *Id.*; *see also* § 907.041(4)(c) 8.c., Fla. Stat, and Fla. R. Crim. P. 3.131(a). Those protections would exist with or without Revision 6.

In their summary judgment papers, Appellees suggested that Revision 6 would interfere with other rights of the accused. Both sets of Appellees argued that Revision 6 would affect the accused's right to speedy trial and that this alleged ramification was omitted in the summary. R. 404 (Hollander); R. 528 (Knowles). But nothing in Revision 6 would undermine a criminal defendant's right to a speedy trial. The proposal would create a new right that prosecutors can demand in "good

faith" to avoid "unreasonable delay." R. 180. It will not alter the accused's right to a speedy trial in Article 1, Section 16(b) of the Florida Constitution.

Florida's speedy trial rule is found in Fla. R. Crim. P. 3.191. Under the rule, "every person charged with a crime shall be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest if the crime charged is a felony." Fla. R. Crim. P. 3.191. The rule also provides that a person is taken into custody "when the person is arrested as a result of the conduct or criminal episode that gave rise to the crime charged." Fla. R. Crim. P. 3.191(d).

Revision 6 would not infringe a criminal defendant's right to a speedy trial. It proposes to add a speedy trial right that can be invoked by a state attorney under certain circumstances to avoid unreasonable delay. That new procedure is intended to bring quicker "closure" to crime victims. This new option would not impact any existing rights of criminal defendants. They have no constitutional right to unreasonably delay the prosecution of their charges. Criminal defendants have a constitutional right to demand a speedy trial, not a slow one. *See* Art. 1, § 16(a), Fla Const.; *see also* Amdt. 6, U.S. Const. The speedy trial rights of the accused and of the state attorney can co-exist without infringing on the accused's other constitutional rights.

The Hollander Respondents also suggested that a defendant may waive his right to a speedy trial because he does not have legal counsel or he cannot secure the

presence of a witness for trial.[2] R. 444. Revision 6 leaves entirely intact a defendant's existing ability to waive his speedy trial right; to allow the prosecution to invoke its own right to speedy trial will not deprive the defendant of his ability to waive his own speedy-trial right. In any event, while Revision 6 would allow the prosecution to insist on a speedy trial, that authority will be constrained. If the state seeks a speedy trial under Revision 6, the trial court must consider whether the demand is made in "good faith" and would avoid "unreasonable delay." Lack of counsel or the genuine unavailability of a favorable, material witness would defeat a state attorney's speedy trial demand.

Moreover, it could be misleading for the ballot title and summary to refer to the speedy trial right of the accused which is described in Florida Rule of Criminal Procedure 3.191 or Article I, section 16, of the Florida Constitution. Neither of those provisions currently refers to a speedy trial right of the prosecution, and Revision 6 does not alter the accused's right to speedy trial.

The Hollander Respondents also contended that the ballot title's omission of the appeal and collateral attack deadlines was material. R. 449. They are mistaken. The Revision would add a provision requiring that "[a]ll state-level appeals and collateral attacks on any judgment must be complete within two years from the date

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[2] Criminal defendants have the right to assistance of counsel and the right to have compulsory process for obtaining favorable witnesses. *See* Amend. VI, U.S. Const.; *see also* Art. 1, § 16., Fla. Const.

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." R. 180. This has no impact on prisoners' existing rights, because a prisoner has no "right" to insist—and, indeed, no interest in insisting—that a court take *longer* to resolve a collateral attack than the ordinary default periods prescribed by the proposal, even if there is no good reason "why the court was unable to comply" with the provision and avoid such a delay.

Moreover, Revision 6's summary need not describe each of its twenty changes and the "ripple effect" of each change. "'[T]he title and summary need not explain every detail or ramification of the proposed amendment.'" *Florida's Amendment to Reduce Class Size*, 816 So. 2d at 585 (quoting *Advisory Op. to the Att'y Gen. re Prohibiting Public Funding of Political Candidates' Campaigns*, 693 So. 2d 972, 975 (Fla. 1997)). "In other words, 'the ballot summary is not required to include all possible effects . . . nor 'to explain in detail what the proponents hope to accomplish.'" *Id.* (quoting *Advisory Op. to Att'y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996) (emphasis added)). Instead, the ballot title and summary need only "adequately disclose[ ]" "the primary purpose of the amendment." *Florida's Amendment to Reduce Class Size*, 816 So. 2d at 585–86. The proposal's expeditious resolution of trial, appellate, and collateral proceedings need not be described in the

ballot title and summary so long as the title and summary fairly inform the voters of the amendment's chief purpose and their written language do not mislead the public. *See Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 701 (Fla. 2010) (quoting *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008)).

To the extent the trial court relied on a supposed undisclosed effect on existing statutory law or rules of procedure, *see* R. 482–83, that reliance was likewise improper. Multiple times, this Court has rejected the argument that ballot language should be stricken for declining to "disclose the effect that the proposed amendment would have on existing statutory law." *Local Trustees*, 819 So. 2d at 731 (citing *Advisory Op. to Att'y Gen. re Protect People from the Health Hazards of Second-Hand Smoke*, 814 So. 2d 415 (Fla. 2002)). Voters are presumed to know that the policy areas addressed in proposed amendments often are "currently governed by" various statutes and other forms of sub-constitutional law. *Id.* Criminal and juvenile procedure certainly is no exception. Moreover, "it would be virtually impossible to indicate within the word limit of the ballot summary all the ramifications the proposed amendment would have on" existing statutory law and procedural rules. *Id.* In any event, doing so would be unnecessary. Florida voters are presumed to have "a certain amount of common understanding and knowledge." *Fla. Educ. Ass'n*, 48 So. 3d at 701. That common understanding and knowledge includes the understanding that the Constitution of Florida is the State's fundamental law, and

any statute or rule to the contrary is void. *See So. Drainage Distribution v. State*, 112 So. 561, 568 (Fla. 1927) (observing that laws in conflict with the state Constitution "are null, void, and of no effect"). Voters don't need a ballot summary to inform them that a proposed constitutional amendment, if adopted, will supersede any conflicting statutes or rules of procedure.

The electorate will be fairly informed of Revision 6's chief purpose regarding victim's rights. A need for expeditious justice is associated with victims and falls within the range of victims' rights that a voter would reasonably expect to be included in Revision 6. A voter with common sense would easily surmise that the conclusion of judicial proceedings at the trial level or on appeal without unnecessary delay would bring closure to crime victims, and it is within the scope of victims' rights created in Revision 6.

IV. REVISION 6'S GROUPING OF PROPOSALS DOES NOT PROVIDE A BASIS TO INVALIDATE IT.

Although Respondent Knowles, in her summary-judgment motion, attacked Revision 6 on the basis of its grouping of proposals, and Petitioners moved to dismiss and moved for summary judgment on the basis that the grouping does not provide a cognizable basis for striking the proposed amendment, the trial court did not address the parties' arguments in its orders. Should Respondent Knowles again raise this argument in this Court, it should be rejected. The Florida Constitution permits the Constitution Revision Commission to propose revisions that embrace

more than one subject, up to and including a revision of the entire Constitution. Respondent Knowles' argument—if accepted—would impose, in effect if not by name, a single-subject requirement on CRC proposals contrary to the constitutional text and this Court's precedent.

The Florida Constitution establishes four processes by which it may be amended: "through the legislature; through the Constitution Revision Commission ["CRC"]; through a petition initiative; and through a Constitutional Convention." *Charter Review Comm'n of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) (citing Art. XI, Fla. Const.). "Only proposals originating through a petition initiative are subject to [a] single-subject rule." *Id.* Of particular relevance here, "[n]o single-subject requirement is imposed" on proposals reported by the CRC "because this process embodies adequate safeguards to protect against logrolling and deception." *Id.* Indeed, the Florida Constitution affirmatively sanctions multi-subject revisions proposed by the CRC, granting the Commission authority not only to propose revisions to "any part of" the Florida Constitution on a piecemeal basis, but also to propose revisions to "this [c]onstitution" as a whole. *See* Art. XI, § 2(c), Fla. Const. (authorizing the CRC to propose "a revision of this constitution *or* any part of it" (emphasis added)).

Given the well-established authority of the CRC to propose multi-subject revisions, and even revisions of the entire constitution, Revision 6's embrace of

several subjects cannot provide a basis for rejecting it. To hold otherwise would deprive the CRC of a power that the Florida Constitution confers upon it and mark a departure from decades of this Court's precedent.

CONCLUSION

For the foregoing reasons, this Court should quash the order under review and approve the ballot title and summary for Revision 6 for placement on the ballot.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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I certify that a true and correct copy of the foregoing brief has been furnished by electronic service through the Florida Courts E-Filing Portal on this 30th day of August, 2018, to the following:

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