SC18-1366, 1367

In the Supreme Court of Florida

DEPARTMENT OF STATE, ET AL.,

Petitioners,

v.

LEE HOLLANDER, ETC., ET AL,

Respondents.

DEPARTMENT OF STATE, ET AL.

Petitioners,

v.

AMY KNOWLES,

Respondents.

PETITIONERS' REPLY BRIEF

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

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ARGUMENT

I. THE BALLOT TITLE IS NOT INCOMPLETE OR MISLEADING IN ITS DESCRIPTION OF AMENDMENT 6'S CHIEF PURPOSE OF CREATING RIGHTS FOR CRIME VICTIMS.

The Hollander Respondents contend that the statement in the ballot summary that Amendment 6 "[c]reates constitutional rights for victims of crimes" will "mislead[ ] 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." Hollander Br. 28. This argument rests on a false premise and reads into the ballot summary language that isn't there. To say that Amendment 6 "creates" victims' rights is not to say or imply that there are no such rights. Indeed, it is true that Amendment 6 "creates" victims' rights—nine of them, to be precise. *See* Pet. Br. 16. And because the summary accurately states what Amendment 6 would do, it is not "political rhetoric." Hollander Br. 29.

Moreover, there is no need for the ballot title and summary to inform the electorate about Amendment 6's interaction with the existing rights of crime victims. The state constitution currently entitles victims "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 those rights do not interfere with the constitutional rights of the accused." Art. I, § 16(b), Fla. Const. Amendment 6 would not repeal or substantially alter those current constitutional rights. They will continue to exist without

interruption, only with more constitutional detail about when and how those rights can be invoked. Thus, there is no material abrogation of an existing constitutional provision the ballot language for Amendment 6 fails to disclose. "The possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment." *In re Advisory Op. to Att'y Gen. ex rel. Local Trustees*, 819 So. 2d 725, 730 (Fla. 2002) (quotation marks omitted). It is only when a proposal would "substantially affect or alter" an existing provision that the modification or alteration must be disclosed. *Id.* By leaving in place—in substance, if not in form—the constitution's current victims' rights, Amendment 6 will not usher in an undisclosed substantial alteration to the constitutional status quo. The only substantial change it would bring is the creation of additional victims' rights, which is fully disclosed in the ballot language.

The Hollander Respondents also argue that the voters are not informed whether Amendment 6 would guarantee rights to corporations who are victims of crimes. Hollander Br. 33. That argument improperly points to an ambiguity in the language of the amendment, not a defect in the ballot title and summary. There are no language discrepancies between the terms used in the ballot summary and the proposed amendment which could mislead voters. The amendment itself does not state whether a corporation can be a "victim" endowed with the same constitutional rights as human victims of crimes, and the ballot summary does not attempt to

summarize the amendment's definition of "victim." Thus, there are no wording discrepancies between the summary and the amendment for this Court to fault.

To the extent that the Hollander Respondents challenge the ballot language for not explaining Amendment 6's potential effect on corporations' rights, that is a matter for litigation if the amendment passes. Such questions are beyond the scope of this appeal, as Respondents' "arguments concern the ambiguous legal effect of the amendment's text rather than the clarity of the ballot title and summary." *Advisory Op. to Att'y Gen. re: Voter Control of Gambling*, 215 So. 3d 1209, 1216 (Fla. 2017). In addition, not all terms used in a proposed constitutional amendment must be defined in the ballot language. *See, e.g.*, *In re Advisory Opinion to the Atty. Gen. re Medical Liability Claimant's Compensation Amendment*, 880 So. 2d 675, 679 (Fla. 2004) (the precise meaning of the amendment's term "medical liability" is better left to later ligation should the amendment be approved). It certainly is not the function of ballot language to take a position on a possible legal effect that likely will be subject to dispute and future litigation.

Even assuming for the sake of argument that Amendment 6 clearly made corporations and other business entities eligible for victims' rights—and nothing in the amendment's text, which speaks only of "persons," makes that clear—the ballot language need not address the issue. Not every ramification of a proposal must be described in its summary. *See Advisory Op. to Att'y Gen. re Funding of Embryonic*

Stem Cell Research, 959 So. 2d 195, 201 (Fla. 2007); *Advisory Op. to the Att'y Gen. re Prohibiting Public Funding of Political Candidates' Campaigns*, 693 So. 2d 972, 975 (Fla. 1997). Summaries need only explain the chief purpose of the amendment, which Amendment 6's ballot title and summary sufficiently communicate by advising that it will create enforceable victims' rights.

The Hollander Respondents also mistakenly contend that the ballot summary would "mislead[ ] voters into thinking that victims have the ability to bring a private cause of action to enforce their Amendment 6 rights," including "a cause of action for damages." Hollander Br. 35. The relevant portion of the ballot language states that Amendment 6 "authorizes victims to enforce their rights throughout criminal and juvenile justice processes." Nothing in that phrase refers to civil litigation or would lead a voter to leap to the conclusion that Amendment 6 would create new private causes of action, for damages or otherwise. Indeed, the ballot language—by making clear that the enforcement of victims' rights will occur in "criminal and juvenile justice processes"—suggests, if anything, that Amendment 6 would *not* create entirely separate causes of action, but would instead require that enforcement take place within criminal and juvenile proceedings. And even though not every voter may be able to grasp that there is a difference between criminal, juvenile justice, and civil proceedings, "[t]his Court presumes that the average voter has a certain amount of common understanding and knowledge." *Fla. Educ. Ass'n v. Fla.*

Dep't of State, 48 So. 3d 694, 701 (Fla. 2010) (internal citation omitted). The average voter should be credited with the basic understanding that adults and juveniles charged with a crime are prosecuted by the government, not by private citizens, and that a juvenile justice system applies to minors charged with offenses. Moreover, it is not the job of the ballot language to explain "the nuances and intricacies of the different remedies available in criminal and juvenile justice proceedings versus civil proceedings," Hollander Br. 36, because "[i]t is not necessary to explain every ramification of a proposed amendment, only the chief purpose." *In re Advisory Op. to Att'y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994).

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

Respondents and the Amici Curiae argue that Amendment 6 will cause impacts on the rights of the accused, as well as on the criminal and juvenile justice systems, which must be mentioned in the ballot summary. They are wrong. Amendment 6 will not "substantially alter[ ] and curtail[ ] the existing constitutional rights of criminal defendants," Hollander Br. at 17; "significantly impair the constitutional rights of the accused," *id.* at 19; or abridge defendants' "constitutional right to call and confront the alleged victim at trial," *id.* at 20. Nor will it infringe criminal defendants' right to due process in the speedy trial, restitution, direct appeal, and collateral attack contexts, or their rights to effective assistance of counsel and confrontation of adverse witnesses. Fla. Pub. Defender Ass'n Br. 7–14. It will

not do so because, as Petitioners have explained, it *cannot* do so. *See* Pet. Br. 18–19. And it is of no consequence that Amendment 6 would delete the existing phrase in Article I, Section (b) "to the extent that these rights do not interfere with the *constitutional* rights of the accused" (emphasis added). *See* Hollander Br. 18, 19, 23. No provision of the state Constitution may be given the effect of interfering with the federal Constitution, including its guarantees to criminal defendants. In other words, regardless whether any provision of the state constitution expressly states that it should not be construed to violate the federal Constitution, it *cannot* be so construed, or at least cannot be given effect if it is so construed.

Rather than grapple with Petitioners' argument, the Hollander Respondents point to "CRC transcripts," which they contend "suggest otherwise." Hollander Br. 20. Even ignoring that the CRC's motivations are irrelevant, as this Court must focus only on whether the ballot language discloses Amendment 6's main "legal effect," *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984), rather than what the CRC "hope[d] to accomplish," *Advisory Op. to Att'y Gen. re Florida's Amend. To Reduce Class Size*, 816 So. 2d 580, 585 (Fla. 2002), and even ignoring that CRC transcripts are poor evidence of the main legal effect of the amendment,[1] the transcripts do not

[1] Multi-member, deliberative government bodies have no singular intent other than to enact or adopt the legal text at issue. *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 392–93 (2012) (explaining that "collective intent" of a legislature "is pure fiction"; such a body's "collective psychology is a hopeless stew of intentions"; and "the final language that passes into

lend Respondents any help. In the portion that the Hollander Respondents quote, the Commissioner observed that "there is no harm to the defendant by what is being proposed." R. 279. This observation is correct: a state constitution *cannot* have the effect of infringing criminal defendants' rights secured to them under the federal Constitution.

The constitutional rights of the accused are firmly embedded in both the state and federal constitutions. The fundamental right to due process of law is guaranteed in the Fifth and Fourteenth Amendments and Florida's Declaration of Rights. Amend. V, U.S. Const.; Amend. XIV, U.S. Const.; Art. I, § 9, Fla. Const. 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. Amend. VI, U.S. Const.; Art. 1, § 16(a), Fla. Const.

Victims' constitutional rights exist in the state constitution, but the federal Constitution protects only the rights of criminal defendants. Under the Supremacy Clause, state victims' rights necessarily will be subordinate to the federal

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law" is "all [that the members] have agreed on"). Indeed, under this Court's precedent, "[a] court primarily discerns legislative intent by looking to the plain text" and secondarily by resolving ambiguity through resort "to the rules of statutory interpretation and construction." *Anderson v. State*, 87 So. 3d 774, 777 (Fla. 2012).

constitutional rights of the accused. No matter how victims' rights are written into a state constitution, a court could not allow them to abridge the accused's rights under the federal Constitution. "The Supremacy Clause requires that the Due Process Clause of the U.S. Constitution prevail over state constitutional provisions." *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." *Id.* If Amendment 6 passes, Florida courts will continue to balance the rights of criminal defendants and their victims to ensure that the federally secured constitutional rights of the accused are not infringed.

If an accused's rights under the federal Constitution, such as the right to counsel or to call or confront witnesses, would be hampered by the state's demand for a speedy trial, *see* Hollander Br. 30, the court would not only be compelled to deny the demand because of its duty to elevate the constitutional rights of the accused over state constitutional rights, but also because the new provision itself requires that the state's request be based on "good faith" and to prevent unreasonable delay. The state's right to a speedy trial certainly must yield to the accused's rights under the federal Constitution. Indeed, under the proposed amendment, courts will remain free to reject the prosecution's speedy trial demand "with specific findings justifying" postponement of trial—and any potential conflict with the accused's

constitutional rights (such as his rights to due process and the effective assistance of counsel) certainly would require courts to reject the prosecution's speedy trial demand.

The Hollander Respondents also argue that the rights of the accused to confront their accusers and to have compulsory process for witnesses could be compromised, Hollander Br. 20–21, but they do not point this Court to the part of Amendment 6 that they believe would allow victims to avoid testifying. If they refer to Section (b)(3), that provision would not give victims a "get out of court free" card. Under that section, victims would have "[t]he right, *within the judicial process,* to be *reasonably protected* from the accused and any person acting on behalf of the accused." (emphases added). Amendment 6 does not create a right for victims to unilaterally decide to avoid service of process or unexpectedly not show up for a scheduled deposition, trial, or hearing. As the summary states, victims' rights will be facilitated and enforced within the judicial system, not outside it: the amendment "[r]equires courts to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice systems."

If the Hollander Respondents refer to the section of Amendment 6 that would allow "victims to be free from intimidation, harassment, and abuse," that provision would not intrude on the rights of the accused. The Confrontation Clause in the Sixth Amendment "only guarantees an opportunity for effective cross-examination, not

cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Pennsylvania v. Ritchie*, 480 U.S. 39, 52-53 (1987) (emphasis and quotation marks omitted). The accused has no right to intimidate, harass, or abuse victims through cross-examination. Even without Amendment 6, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdale*, 475 U.S. 673, 679 (1986).

Nor would Amendment 6 infringe on criminal defendants' discovery rights. Under current law, the accused has no unbridled right to discover evidence that may be sensitive and immaterial without court supervision. *See Ritchie*, 480 U.S. at 59. Moreover, Respondents' argument that Amendment 6 would infringe on the accused's right to pretrial release is based on a faulty premise. Hollander Br. 22. As Petitioners have explained, Pet. Br. 20, courts already are constitutionally charged with protecting the community, which would include victims and their families, when determining pretrial release and its reasonable conditions. Art. I, § 14, Fla. Const.; *see also* Fla. R. Crim. P. 3.131(b); § 904.046(1), Fla. Stat.

In the end, the Hollander Respondents' proffered cure to the supposed defects in the ballot language suggests that there is no real disease. In their view, the ballot

language should have "explained that the Amendment 'expands' constitutional rights for victims," rather than that it "creates" them. Hollander Br. 25. As Petitioners have explained, the ballot summary is entirely accurate, as the proposal will indeed "create nine wholly new rights for victims of crime and their families." Pet. Br. 16. Regardless, whether the language had used the word "expand" instead of "create" would have made no difference; a creation of victims' rights necessarily entails an expansion of them.

Amici the Florida Public Defenders' Association, et al. largely echo the unpersuasive arguments that the Hollander Respondents raise, but they do raise at least one additional matter. Amici suggest that Amendment 6 would require restitution to be paid to a victim before the accused can be released before trial or from a sentence of incarceration. Fla. Pub. Defenders' Ass'n Br. 10 ("[A] defendant's sentence or release cannot be conditioned on the ability to pay restitution."). Nothing in the proposal purports to make restitution a condition of release. The proposal gives victims "[t]he 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." Nothing in the text of Amendment 6 makes payment of restitution a condition of release from pre-trial detention or a sentence of incarceration. Thus, there is no such effect that the ballot language fails to disclose. In any event, to the extent that conditioning release on

payment of restitution would violate due process, *see* Fla. Pub. Defenders' Ass'n Br. 10 (citing *Bearden v. Georgia*, 461 U.S. 660, 672 (1983) and *Noel v. State*, 191 So. 3d 370, 379 (Fla. 2016)), as Petitioners repeatedly have explained, Amendment 6 *cannot* have the effect of abridging criminal defendants' federal constitutional rights.

* * *

Ballot language need not describe every detail or ramification of the proposed amendment. *Save Our Everglades*, 636 So. 2d at 1341. The ballot summary accurately states that Amendment 6 will "[c]reate[ ] constitutional rights for victims of crime; requires courts to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes." Each of the victim's rights described in the amendment is a right that voters would reasonably expect after having read the summary. Moreover, voters understand that victims and the accused have different interests, and that by allowing victims to "enforce their rights," Amendment 6 will allow victims to advance their interests. However, Amendment 6 does not seek to deprive the accused of their constitutional rights, need not and should not be construed to create rather than avoid constitutional concerns, and could not have the effect of impliedly repealing existing constitutional rights. Because Amendment 6 does not and cannot have the impacts that Respondents and their amici attribute to it, their arguments against the ballot language are unavailing.

III. RESPONDENTS WRONGLY READ THE BALLOT TITLE IN ISOLATION.

The Hollander Respondents contend that the ballot title, because it "references only two of the three subjects of Amendment 6" and omits reference to its prohibition on judicial deference to agency interpretations, is "affirmatively and materially misleading." Hollander Br. at 37, 38. They acknowledge as "valid" the "proposition that [the] ballot title and summary must be read together in determining whether the ballot title and summary properly inform the voters." *Id.* at 38. Indeed, that concession is compelled by this Court's precedent, *see, e.g.*, *In re Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 804 (Fla. 2014) (collecting cases that have "reaffirmed numerous times" the "proposition that the ballot title and summary must be read together") (quotation marks omitted)), and should foreclose Respondents' argument. The ballot summary advises, correctly, that Amendment 6 would "[r]equire[ ] judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency's interpretation."

Nonetheless, Respondents seek a novel departure from this Court's well-established precedent, arguing that "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." Hollander Br. 38. Respondents cite no case holding that the ballot title may be read in isolation without the context of the summary if the title is less than the maximum of 15 words, and

this Court should not make this case the first to announce such a significant departure from its case law. Reading the title or summary in isolation would make little sense, as they serve different functions. The ballot title is simply "a caption . . . by which the measure is commonly referred to or spoken of," while the summary is "an explanatory statement . . . of the chief purpose of the measure." § 101.161(1), Fla. Stat. Thus, it is the task of the summary, not the title, to advise voters of the measure's chief purposes. Reading the title or summary in isolation also would make little sense because the voters have both, and are presumed to have read both, when they cast their ballot. *See Fla. Dep't of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008) (observing that the voters will have both the ballot title and summary in the voting booth, and concluding that they must be "read together").

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

A. Respondent Knowles focuses her brief on Amendment 6's embrace of more than one subject, but she raises an argument that bears little resemblance to the claim she pled and argued below. All but conceding that CRC proposals are not subject to single-subject review, Knowles Br. 14–15, and all but conceding that "the constitutional right to vote" does not "independently guarantee[ ]" a right to vote on non-bundled proposals, *id.* at 17, Respondent Knowles appears to abandon the single-subject claim she asserted in her complaint. *Compare* R. 512–13 (claiming "violation of Florida's single-subject test"). Knowles now recasts her attack on

Amendment 6 as one brought "on logrolling grounds." *Id.* at 13. Knowles contends that the CRC process contains insufficient safeguards against logrolling, and "nothing in the Florida Constitution" authorizes "bundling." *Id.* at 17. Knowles relies on "the plain language of Article XI, Section 2(c)." *Id.* In Knowles' view, that language "contemplates that a single 'proposal' will be used to amend a single 'part' of the constitution," and Amendment 6 "amends *several* parts of the constitution" because it would amend three different articles. *Id.* at 18.

Knowles' new attack misconstrues the constitutional text and is foreclosed by this Court's precedent. Article XI, section 2(c) authorizes the CRC to propose "a revision of *this constitution* or *any part* of it." Art. XI, § 2(c), Fla. Const. (emphases added). The Florida Constitution thus 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. Knowles offers no persuasive rationale for her assertion that, despite such broad authority, the CRC lacks the lesser power to propose a revision that would, if adopted, amend just a few provisions of the Constitution.

Nor can Knowles point to any freestanding constitutional prohibition of "logrolling." Rather, as this Court has made clear, the Florida Constitution wards against logrolling through its single-subject requirement—a requirement that

pertains only to citizen initiatives—and through the structural safeguards inherent in the non-initiative processes. As this Court has explained, concern about "logrolling" is unique to proposals via petition initiative because "the public has had no representative interest in drafting" them. *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984). The other processes by which amendments may be proposed—"[t]he legislative, revision commission, and constitutional convention processes"—"all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal." *Id.*

As for the CRC specifically, "[u]nder article XI, Florida Constitution, a thirty-seven member Constitution Revision Commission is required to convene, adopt rules of procedure, examine the constitution, hold public hearings, and prepare a report on proposed revisions. The report is published to the electorate prior to election." *Charter Review Comm'n of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994). "That opportunity for input in the drafting of a proposal is not present under the initiative process." *Fine*, 448 So. 2d at 988.

Because "the citizen's initiative process—as contrasted with . . . the constitutional revision commission process . . . —lacks the 'filtering' process for carefully considered drafting and the public hearing process," the single-subject requirement applies to amendments proposed by "citizen's initiative," and *only* to such amendments. *In re Advisory Op. to Att'y Gen. re Limits or Prevents Barriers*

to Local Solar Elec. Supply, 177 So. 3d 235 (Fla. 2015) (citing *In re Advisory Opinion to the Atty. Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994)). In other words, "the single-subject limitation exists because the citizen initiative process does not afford the same opportunity for public hearing and debate that accompanies the other constitutional proposal and drafting processes (*i.e.*, constitutional amendments proposed by the Legislature, by a constitutional revision commission, or by a constitutional convention)." *Advisory Op. To Atty Gen. re Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Districts Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1224 (Fla. 2006).

Knowles disagrees with this binding precedent. She argues that the structural safeguards the Florida Constitution provides for CRC proposals are, in her view, insufficient to "guarantee that bundling will never occur." Knowles Br. 17. Knowles is entitled to her view of whether the Florida Constitution establishes a good or bad system for amendment, but she is not entitled to a different system. Nor has she articulated any persuasive basis why this Court should depart from the precedents with which she evidently disagrees.

B. Amicus the Criminal Law Section of the Florida Bar, citing *Smathers v. Smith*, 338 So. 2d 825 (Fla. 1976), argues that CRC proposals are subject to a "germaneness" requirement. Criminal Law Section Br. 12. That argument ignores

that *Smathers* was expressly limited to legislative proposals because of the "locational specificity" to which those proposals are tied. *Smathers*, 338 So. 2d at 827–28. Unlike article XI, section 1's requirements for legislative proposals, article XI, section 2(c) does not tie the CRC's proposals to "sections" or "articles." *Id.* at 828. Rather, the CRC may propose "a revision of this constitution or any part of it." Art. XI, § 2(c). Indeed, *Smathers* recognized this distinction and made clear that CRC proposals "are not in any way affected by our decision today." *Smathers*, 338 So. 2d at 827–28. Amicus' reliance on *Smathers*, therefore, is unavailing.

Amicus' argument that "[t]he proposed amendment infringes on Florida citizens' constitutional right to vote," Criminal Law Section Br. 15, is likewise meritless. The plaintiff in *Smathers* argued before this Court that the multi-subject amendment at issue there "would violate the 'one person-one vote' guarantee of the Fourteenth Amendment." *Smathers*, 338 So. 2d at 826. This Court rejected that argument, finding it "without merit." *Id.* at 827 n.2. Thus, this Court's precedent forecloses Amicus' right-to-vote argument, which hinges entirely on Fourteenth Amendment one-person-one-vote case law. *See* Criminal Law Section Br. 16–17 (citing *Reynolds v. Sims*, 377 U.S. 533 (1963) and *Bush v. Gore*, 531 U.S. 98 (2000)).

Even if Amicus' right-to-vote argument were not foreclosed by this Court's precedent, it is entirely inconsistent with our constitutional history—specifically, the process by which the people adopted the United States and Florida Constitutions and

subsequently amended those documents. The United States Constitution covers a wide variety of subjects—not merely the structure of government, but myriad issues, including, *e.g.*, the definitions of "pirac[y]" (Art. I, § 8, U.S. Const.) and "[t]reason" (Art. III, § 3, U.S. Const.), the validity of the national debt (Art. VI, U.S. Const.), and the requirement that criminal trials be by jury (Art. III, § 2, U.S. Const.). Nevertheless, the Constitution was presented and ratified as a single, unified proposal. Florida's entire 1968 Constitution likewise was proposed to and ratified by the Electorate as a set of just three ballot amendments. *See* Open Letter from Brecht Heuchan, Chairman, CRC Style & Drafting Committee (May 1, 2018), *available at* https://www.flcrc.gov/Media/PressRelease/Show/1100.

Each of the many Amendments to the United States Constitution, too, was proposed and ratified as a single, unified proposal, and many of them cover multiple subjects. For example, the Fourteenth Amendment—the very provision that Amicus invokes—contains provisions addressing a wide variety of issues in no less than five sections. *See* Amend. XIV, U.S. Const. For example, that amendment bars the States from depriving any person of life, liberty, or property without due process of law; requires equal protection of the law; defines United States citizenship and guarantees the privileges and immunities to which citizens are entitled (*id.* § 1); requires that citizens be represented proportionately in Congress (*id.* § 2); sanctions criminal disenfranchisement by the states (*id.*); absent congressional approval, prohibits

individuals from holding public office if they, "having previously taken an oath . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same" (*id.* § 3); and validates "the public debt of the United States," including debt incurred during the Civil War (*id.* § 4).

Amicus' argument, therefore, boils down to the self-defeating assertion that the process by which the Fourteenth Amendment was ratified would have violated the Fourteenth Amendment. Amicus' argument also would have the effect of invalidating the entire Florida Constitution, as its 1968 revision was proposed to and ratified by the Electorate as a set of just three ballot amendments. *See* Open Letter from Brecht Heuchan, Chairman, CRC Style & Drafting Committee (May 1, 2018), *available at* https://www.flcrc.gov/Media/PressRelease/Show/1100.

To the extent that Amicus appears to advance a First Amendment argument, *see* Criminal Law Section Br. 16 (noting "the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens"), that argument is self-defeating for similar reasons. Like the Fourteenth Amendment, the First Amendment encompasses several distinct matters, such as a bar to the establishment of religion and a guarantee of the right to petition the government for a redress of grievances. Amend. I, U.S. Const. If Amicus' theory were sound, the process by which the First Amendment was ratified would have violated the First Amendment.

In short, our constitutional history is replete with examples of situations in which voters have been asked to vote up or down on bundled provisions addressing distinct rights and issues—including the ratification of the United States Constitution, the First and Fourteenth Amendments, and the 1968 Florida Constitution. That longstanding historical practice militates against the theory that the First and Fourteenth Amendments require arguably unrelated provisions to be adopted on a piecemeal basis. And it underscores the line-drawing problems that Amicus' theory would generate: How "germane" must provisions be to trigger the First and Fourteenth Amendment "right" that Amicus asks this Court to recognize for the first time in the history of American jurisprudence?

C. Even if, contrary to the constitutional text and this Court's precedent, this Court were inclined to review Amendment 6 for some minimal level of relatedness, Amendment 6 would pass that review. It addresses three topics: victims' rights in criminal and juvenile proceedings, the retirement age of justices and judges, and judicial interpretation of statutes and rules. All of these topics relate to the state court system. Thus, even if a rational connection between these topics were required (and, as explained above, it is not), Amendment 6 would easily pass muster.

Indeed, Amendment 6 resembles prior successful CRC revisions. For example, the 1998 CRC, in its proposed Revision 7—which the voters adopted—proposed local elections on whether to transition from judicial elections to merit

selection and retention, increases to county judges' terms, corrections to the terms of judicial qualification commission members, and changes in the way the state court system was funded. *See* FSU Law Research Ctr., Fla. Const. Revision Comm'n Collection, http://fall.fsulawrc.com/crc/ballot.html#rev7 (last visited Sept. 2, 2018); Fla. Dep't of State, Div. of Elections, Nov. 3, 1998 Gen. Election, https://results.elections.myflorida.com/?ElectionDate=11/3/1998&DATAMODE (vote results) (last visited Sept. 2, 2018). All of these changes were distinct subjects, but all had a rational connection to the state court system. So, too, it is with Amendment 6. If this Court were to call Amendment 6 into doubt due to its allegedly impermissible embrace of different subjects, it could also call into doubt the numerous provisions in the Florida Constitution that stem from successful multi-subject CRC proposals, including the 1998 CRC's Revision 7. This Court need not and should not take such an unprecedented step, especially as it has already rejected the logically deficient Fourteenth Amendment theory on which Amicus' argument depends. *See Smathers*, 338 So. 2d at 827 n.2.

V. AMICI'S POLICY ARGUMENTS ARE BEYOND THE SCOPE OF THIS COURT'S REVIEW.

Respondents' amici raise various arguments concerning the wisdom and merits of Amendment 6. *See* Criminal Law Section Br. 3–4; Florida Public Defender Ass'n Br. 12–14, 15, 16, 18. Under binding precedent, these arguments "must be propounded *outside* the voting booth." *Evans v. Firestone*, 457 So. 2d 1351, 1355

(Fla. 1984) (emphasis added). In fact, the ballot language *cannot* advise the voters of the proponents' (or opponents') policy arguments. This Court consistently has condemned "political rhetoric" and "emotional" or "editorial" language, and it has stricken ballot titles and summaries that contained it. *See Fla. Dep't of State v. Mangat*, 43 So. 3d 642, 648 (Fla. 2010); *In re Advisory Op. to Att'y Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004). Once inside the ballot box, voters must be afforded an opportunity to vote based on a synopsis of the proposed amendment's legal effect, rather than political or emotional appeals appearing on the ballot. In compliance with this Court's precedent, Amendment 6 contains no such editorial language and "tell[s] the voter the legal effect of the amendment, and no more." *Evans*, 457 So. 2d at 1355.

Petitioners understand that amici oppose Amendment 6 on policy grounds. But as this Court repeatedly has stressed, this proceeding—like the ballot language that it involves—is not the forum for the airing of such concerns. *See In re Advisory Op. to Att'y Gen. re Fla. Min. Wage Amend.*, 880 So. 2d at 636, 643 (Fla. 2004) ("We caution . . . that our opinion today . . . must not be construed in any way as a ruling on the underlying merits or wisdom of the amendment."). Here, this Court is tasked only with determining whether the ballot title and summary disclose Amendment 6's chief purpose and do so without misleading the voters. *See* § 101.161(1), Fla. Stat. For the reasons expressed in Petitioners' initial brief and in

this reply brief, Amendment 6 passes that standard. The voters are entitled to weigh its merits in the upcoming election, and this Court should allow them that opportunity. Those who support the measure and those who oppose it, including the amici, will then have their chance to make their competing arguments to the ones charged with weighing them—the voters.

CONCLUSION

For the foregoing reasons, as well as Petitioners' opening brief, this Court should quash the order under review and approve the ballot title and summary for Amendment 6 for placement on the ballot.

Respectfully submitted.

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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 3rd day of September 2018, to the following:

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