IN THE SUPREME COURT OF FLORIDA

Case No. SC18-1368
Lower Tribunal Case Nos. 2018-CA-001523, 1D18-3529

KEN DETZNER, in his official capacity as Florida Secretary of State,
Appellant,

v.

LEAGUE OF WOMEN VOTERS OF FLORIDA, INC.,
PATRICIA BRIGHAM, individually, and as President of the League of Women Voters of Florida, Inc., and **SHAWN BARTELT**, individually, and as Second Vice President of the League of Women Voters of Florida, Inc.,
Appellees.

ANSWER BRIEF OF APPELLEES

On Review from the Circuit Court of the Second Judicial Circuit
in and for Leon County

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STATEMENT OF THE CASE AND FACTS

Appellees accept Appellant's Statement of the Case and Facts, with the following additional facts:

The portion of Revision 8 at issue in this case started out as CRC Proposal 71, filed by sponsor Commissioner Erika Donalds. As initially proposed, Proposal 71 would make the following changes to Article IX, Section 4(b) of the Florida Constitution:

> ARTICLE IX
> EDUCATION
>
> SECTION 4. School districts; school boards.—
> . . . .
>
> (b) The school board shall operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs. Nothing herein may be construed to limit the legislature from creating alternative processes to authorize the establishment of charter schools within the state by general law.

(R. 53).

The sponsor subsequently filed a delete-all amendment for Proposal 71, explaining that the amendment achieved "the exact same outcome":

> (b) The school board shall operate, control, and supervise all free public schools established by within the school district and determine the rate of school district taxes

> within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

This amendment was approved by the Commission. (R. 51; 124:4-8; 144:20-145:14, 148:13-149:8; 194:20-195:1).

According to Commissioner Donalds, the purpose of Proposal 71 was to overrule *Duval County School Board v. State, Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008), in which the First District Court of Appeal invalidated a statewide commission created to authorize charter schools. (R. 122:19-123:3). The court held that this commission, which had been statutorily vested with "all the powers of operation, control and supervision of free public education specifically reserved in article IX, section 4(b) of the Florida Constitution, to locally elected school boards, with regard to charter schools sponsored by the Commission," posed a "total and fatal conflict" with Article IX, Section 4 of the Florida Constitution. 998 So. 2d at 643, 644.

Although its purpose was to overrule the court's invalidation of the statewide commission in *Duval County*, Proposal 71 did not provide for such a commission. This was very intentional on the part of the sponsor:

> The reason why I didn't define specifically that a statewide charter authorizing board should be created, which I could have done; the State Board of Education is created in the Constitution. The Board of Governors are created in the Constitution. I could have said we are going to create a state authorizing board.

> It is because in looking at what a quality authorizer is across the country, I have found that it is not always a state board. It could be a state university . . . . It could be a metropolitan area . . . . I want to leave that to the Legislature to decide what is going to work for Florida based on their thorough vetting of the issue to see what is going to be the top quality solution.

(R. 130:19-131:14).[1] Commissioner Donalds had previously cited a study as finding that the five top authorizers in the country were "a non-profit, a state University, a state board of education, a local school district and a charter board." (R. 127:19-23; 129:15-24).

The Commission conducted its last public hearing for "input from Floridians about potential changes to the Florida Constitution" on March 13, 2018. (R. 294-96).

The full Commission considered and approved Proposal 71, as amended, on March 21, 2018. (R. 51, 99, 120-105).

On April 6, 2018, Proposal 71 was combined with Proposals 10 and 43 and filed as Proposal 6003 or Revision 3. (R. 298). As combined into Revision 3, the language that originated from Proposal 71 now provided:

[1] Although the transcript attributes this statement to Commissioner Washington, this is an error; these statements were made by Commissioner Donalds. *See* Constitutional Revision Comm'n, Video of 3/22/18 Part 1, https://thefloridachannel.org/videos/3-21-18-constitution-revision-commission-part-1/, at 1:11:45 (last visited Aug. 27, 2018).

ARTICLE IX
EDUCATION

SECTION 4. School districts; school boards.—
. . . .

(b) The school board shall operate, control, and supervise all free public schools established by the district school board within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

(R. 60-62). As prepared and approved by the Style and Drafting Committee, the ballot title and summary for Revision 3 provided:

CONSTITUTIONAL AMENDMENT
ARTICLE IX, SECTION 4, NEW SECTION
ARTICLE XII, NEW SECTION

SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS.—Creates a term limit of eight consecutive years for school board members and requires the legislature to provide for the promotion of civic literacy in public schools. Currently, district school boards have a constitutional duty to operate, control, and supervise all public schools. The amendment maintains a school board's duties to public schools it establishes, but permits the state to operate, control, and supervise public schools not established by the school board.

(R. 62). The full Commission considered Revision 3 on April 16, 2018. (R. 198-253; 298). It approved Revision 3, including the ballot title and summary as prepared by the Style and Drafting Committee. (R. 60-62, 298).

For ease of comparison, the ballot title and portions of the ballot and summary and revision text from Revision 3, subsequently renumbered by Appellant as Revision 8, at issue in this case are set forth in table form below:

Ballot Title and Summary	**Revision Text**
CONSTITUTIONAL AMENDMENT ARTICLE IX, SECTION 4 . . . . SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS.- . . . . Currently, district school boards have a constitutional duty to operate, control, and supervise all public schools. The amendment maintains a school board's duties to public schools it establishes, but permits the state to operate, control, and supervise public schools not established by the school board.	Section 4 of Article IX of the State Constitution is amended . . . to read: ARTICLE IX EDUCATION SECTION 4. School districts; school boards.- . . . . (b) The school board shall operate, control, and supervise all free public schools <u>established by the district school board</u> within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

(R. 60-62).

SUMMARY OF ARGUMENT

It is well established in Florida law that a sponsor's duty in crafting a ballot summary of a proposed constitutional amendment is to disclose to voters the amendment's "true meaning, and ramifications." *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982). A ballot summary must not include editorial comments or political motivations, only the amendment's "legal effect." *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984). But where the true meaning and ramifications of an amendment cannot be discerned from the text of the amendment itself, simply parroting the text in the summary does not fulfill the sponsor's duty to describe the amendment's true meaning.

Both the ballot summary and revision text in this case suffer from a fatal ambiguity: they both use an undefined phrase, "established by the school board" to describe schools that are removed from the operation, control and supervision of district school boards. As this phrase has no established meaning under the Florida Constitution or Florida law, voters will be left to guess at its meaning and resort to their own conception of the meaning of the term.

The summary also does not disclose the revision's effect upon school boards' existing authority under the Florida Constitution to authorize public schools. This exclusive authority was conclusively recognized by the First District in *Duval County School Bd. v. State, Board of Education*, 998 So. 2d 641 (Fla. 1st

DCA 2008). The failure to disclose significant changes to existing constitutional authority renders a ballot summary defective.

Although Revision 8's ballot summary and revision text reference a change in school board authority as to "public schools," the history of the revision and the filings of the participants in this Court demonstrate that the "true meaning and ramifications" of the revision bear most immediately and directly upon one specific type of public schools: charter schools. The ballot summary's failure to explain this effect is an additional way which the proposal is defective.

The ballot summary is also affirmatively defective because it tells voters that the revision permits "the state" to operate, control, and supervise public schools not established by the school board when the revision in fact does no such thing. Nothing in the Florida Constitution suggests "the state" is synonymous with "the legislature." And "the legislature" is expressly referenced elsewhere in the ballot summary – suggesting that the term "the state" was intended to refer to something different. Whereas the sponsor of the proposal deliberately did not assign the authority that was removed from school boards to any particular entity, it is misleading to voters to suggest this authority has been assigned to "the state."

Finally, the ambiguous and misleading nature of the ballot title and summary for Revision 8 is compounded by the fact that it is comprised of three distinct, unrelated provisions. Although the Florida Constitution does not limit revisions by

the Commission to a single subject, this does not insulate such revisions from challenge if the bundling results in the revision summary being ambiguous or misleading, as it does here.

ARGUMENT

Introduction

Florida law imposes an "accuracy requirement" upon all proposed constitutional amendments. *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000). This requirement flows from Article XI, section 5 of the Florida Constitution and is codified in Section 101.161(1), Florida Statutes (2018). *Id.*

Under these provisions and this Court's precedent applying them, a ballot title and summary must provide a clear and unambiguous explanation of the measure's "chief purpose." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982). The ballot title and summary cannot be misleading, either expressly or by omission. *Id.* at 156 ("The problem . . . lies not with what the summary says, but, rather, with what it does not say."). A ballot title and summary cannot "fly under false colors" or "hide the ball" as to the amendment's true effect. *Armstrong*, 773 So. 2d at 16.

Courts will only strike proposed amendments from the ballot that are "clearly and conclusively defective." *Askew*, 421 So. 2d at 154. If there is "any reasonable theory" under which a proposed amendment may be upheld, it is the

Court's duty to do so. *Armstrong*, 773 So. 2d at 14 (quoting *Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956)). "This deference, however, is not boundless, for the constitution imposes strict minimum requirements that apply across-the-board to all constitutional amendments . . . ." *Id.*

In conducting this analysis, the Court does not consider or address the substantive merit or the wisdom of the proposed amendment. *E.g., Florida Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

Standard of Review

The standard of review of the validity of a proposed constitutional amendment is de novo. *E.g., Florida Dep't of State v. Florida State Conference of NAACP Branches*, 43 So. 3d 662, 667 (Fla. 2010).

I. THE BALLOT SUMMARY MUST DISCLOSE THE AMENDMENT'S TRUE MEANING AND RAMIFICATIONS.

Appellant seeks to describe the function of the ballot title and summary in the narrowest possible terms, asserting that it must only disclose the amendment's "legal effect." (Initial Brief 10, 15) (citing *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984)). This statement is true so far as it goes, but it is lifted out of context from *Evans* and does not take into account the extensive body of case law imposing a duty upon an amendment's sponsor to disclose an amendment's true meaning.

In *Evans*, the Court was concerned that the ballot summary contained an editorial comment to the effect that the amendment would "avoid[] unnecessary costs." 457 So. 2d at 1355. The Court found the inclusion of this phrase inappropriate, explaining: "the ballot summary is no place for subjective evaluation of special impact. The ballot summary should tell the voter the legal effect of the amendment, and no more. The political motivation behind a given change must be propounded outside the voting booth." *Id.* However, in discussing other flaws in the ballot summary the Court in *Evans* echoed the more comprehensive test found in this Court's precedents, *i.e.*, "the fundamental right of the voter to be given fair notice so that he or she may make an informed decision on the merits of the provision." *Id.* (emphasis omitted). Thus *Evans*, consistent with the Court's other precedents, stands for the proposition that a ballot summary must give sufficient notice of an amendment's "legal effect" so as to enable the voter to make an informed decision on the merits.

The requirement that the ballot title and summary provide meaningful information to voters regarding the effect of the amendment is well established in Florida law. As this Court explained more than thirty years ago in *Askew*, the purpose of section 101.161 "is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment." 421 So. 2d at 156 (striking ballot measure because it did not give the electorate fair notice of the "actual change"

being wrought by the amendment). In the years that have followed, the Court has been forced to strike amendments that fail to comply with this requirement. *E.g.*, *Wadhams v. Board of County Comm'rs*, 567 So. 2d 414, 416 (Fla. 1990) (finding ballot deceptive because, although it contained an absolutely true statement, it omitted a material fact necessary to make the statement not misleading); *Smith v. American Airlines*, 606 So. 2d 618, 621 (Fla. 1992) ("we do not believe that the ballot summary here is written clearly enough for even the most educated voters to understand its chief purpose"); *Florida Dept. of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008) (a sponsor wishing to guard a proposed amendment from being stricken "need only draft a ballot title and summary that is straightforward, direct, accurate and does not fail to disclose significant effects of the amendment").

Under these precedents, where an amendment's text contains an ambiguity, it is not sufficient for the sponsor to repeat that ambiguous text in the summary and claim that summary adequately describes the "legal effect." This approach fails to give "fair notice" to the voter enabling her to make an informed decision on the merits, *Evans*, 457 So. 2d at 1355, or notice of the amendment's "true meaning, and ramifications." *Askew*, 421 So. 2d at 156.

II. THE TRIAL COURT CORRECTLY DETERMINED THAT REVISION 8'S BALLOT TITLE AND SUMMARY FAIL TO DISCLOSE ITS CHIEF PURPOSE AND EFFECT.

A. The phrase "established by the school board" is ambiguous.

The trial court correctly found that "Revision 8 invents a new category of school—those 'not established by the school board'—but [because] this phrase is undefined in Florida law . . . both the text and summary are entirely unclear as to which schools will be affected by the revision." (R. 332).

Appellant does not directly address this fatal ambiguity, instead suggesting that who "establishes" schools is a question for the Florida Legislature that is not implicated by Revision 8. (Initial Brief 13-14). Appellant is incorrect. The question of what entity "establishes" the various types of public schools is directly implicated by Revision 8. This is because if the revision passes, public schools not "established by the school board" can no longer be operated, controlled, and supervised by the school board. In order to cast an informed vote on the merits of this proposal, voters must be informed of its "true meaning"—that is, which schools will be affected by this change.

Appellant does not dispel this ambiguity regarding which public schools are "established by the school board." Appellant acknowledges the applicability of Section 1003.02, Florida Statutes (2018), which requires that district school boards "establish, organize, and operate public K-12 schools," but limits this

acknowledgement to "traditional" public schools, though the cited statute itself contains no such limitation. (Initial Brief 13). Consistent with this alleged limitation, Appellant will only acknowledge that district school boards "have a *prominent role* in establishing most charter schools." (*Id.*) (emphasis added). Thus it is unclear if Appellant takes the position that charter schools are among the public schools not "established by the school board." *Amici* filing briefs in support of Appellant, on the other hand, contend unequivocally that "[l]ocal school districts have the exclusive power to establish new public charter schools." (Brief of Amici Curiae Florida Consortium of Public Charter Schools, *et al.* at 6); (*see also* Brief of Amici Curiae the Urban League of Miami, *et al.* at 8) ("The creation of new public schools in Florida is a near monopoly, controlled on the ground by local school boards who currently have exclusive authority over whether a new public charter public school opens in their respective counties").

Under either view, Revision 8 would constitute a significant "actual change" which voters must be informed of. If local school boards are deemed currently to have exclusive authority to establish all public schools, including charter schools, then Revision 8 obliquely eliminates that exclusive authority and opens the door for another unspecified entity to establish new public schools, including charter schools. Alternatively, if local school boards are deemed to have only a "prominent role in establishing," but not in fact to have "established" charter

schools, then upon passage of Revision 8 school boards would no longer have constitutional authority to operate, control and supervise those charter schools they did not previously "establish." Neither of these two possible effects is clearly communicated to voters.

This portion of the summary contains an additional ambiguity not identified by the trial court—it uses a different tense than the revision text. The text of Amendment 8 limits the school boards' authority to those public schools "established by the district school board," *i.e.*, past tense, meaning the schools that had been previously established by the school board at the time of the revision's adoption. But the summary states that the amendment "maintains a school board's duties to public schools it establishes," using future tense, suggesting that school boards' authority to operate, control and supervise public schools will be limited to those it establishes after the amendment is adopted. This inconsistency unnecessarily contributes to the ambiguity of the ballot summary.

This Court has stricken amendments with similar ambiguities which would have prevented voters from casting intelligent votes. In *In re Advisory Op. to the Atty. Gen.-Restricts Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994), the proposed amendment would have limited the adoption of certain new laws regarding discrimination, and repealed existing laws inconsistent with the amendment. *Id.* at 1019. The Court found the measure defective because "[b]oth

the summary and the text of the amendment omit any mention of the myriad of the laws, rules, and regulations that may be affected . . . ." *Id.* at 1021. Additionally, the Court found the summary defective for failing to explain that the amendment would "curtail the authority of government entities." *Id.* The Court concluded, "[w]e cannot approve an ambiguity that will in all probability confuse the voters who are responsible for deciding whether the amendment should be included in the state constitution." *Id.*

The Court also struck a proposal due to its use of ambiguous terms in *Advisory Op. to the Atty. Gen. re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use*, 699 So. 2d 1304 (Fla. 1997), *receded from on other grounds*, 2 So. 2d 968 (Fla. 2009). There, the Court found the use of the undefined terms "owner" and "common law nuisance" misleading. *Id.* at 1308-09. These terms were used in both the summary and the amendment text. *Id.* at 1307. The Court explained that because "common law nuisance" was not defined, "the voter [was] not informed as to what restrictions [were] compensable under the terms of the amendment" and the proposal had to be stricken from the ballot. *Id.* at 1309.

Similarly, in *Advisory Op. to the Atty. Gen. re Amendment to Bar Govt. from Treating People Differently*, 778 So. 2d 888, 898-99 (Fla. 2000), the ballot summary used the phrase "bona fide qualification based upon sex" but did not

define it. This "[left] voters to guess at its meaning . . . undoubtedly rely[ing] on their own conception" of the meaning of the term. *Id.* at 899. Rejecting the sponsor's reliance upon prior cases holding that the summary need not be exhaustive, the Court held: "Although significant detail regarding implementation and speculative scenarios may be omitted, . . . ballot summaries which do not adequately define terms, use inconsistent terminology, fail to mention constitutional provisions that are affected, and do not adequately describe the general operation of the proposed amendment must be invalidated." *Id.* at 899-900.

These cases, and others, refute Appellant's contention that any ambiguity in the amendment text is outside the scope of the Court's pre-election review. (Initial Brief 7, 16, 22-23). It is beyond dispute that in all cases the ballot title and summary must convey the amendment's "true meaning and ramifications." Where an ambiguity in the amendment text is not remedied in the ballot summary, this obligation is not fulfilled and the amendment must be stricken. *See Restricts Laws Related to Discrimination*, 632 So. 2d at 1021; *People's Property Rights Amendments* 699 So. 2d at 1309; *see also Evans v. Bell*, 651 So. 2d 162, 166 (Fla. 1st DCA 1995) (where ballot summary and "text" cited non-existent provision of charter, "[e]ven prudent and conscientious voters could have been misled, had they looked up the reference in the city's charter"). The single case relied upon by

Appellant for the proposition that ambiguities in the text are not relevant at this stage, *Advisory Op. to the Atty. Gen. re: Voter Control of Gambling in Fla.*, 215 So. 3d 1209 (Fla. 2017), is not to the contrary. There the Court found that the chief purpose of the amendment was reasonably clear from reading together the ballot title and summary. *Id.* at 1216. It was only the ancillary issue of whether the amendment would apply retroactively that the Court declined to review until "after the electorate approved the amendments." *Id.* (emphasis in original). Unlike *Voter Control of Gambling*, in the present case the trial court determined that the ambiguity in the amendment text, repeated in the ballot summary, prevented the voters from being informed of the amendment's chief purpose and effect. (R. 306-08). This determination is squarely within the scope of this pre-election proceeding.

B. The summary does not disclose that school boards' existing constitutional authority to operate, control and supervise all public schools includes the exclusive power to authorize new public schools in the school boards' districts.

The trial court gleaned from Revision 8 an "intention . . . to exclude district school boards from any role in establishing (as well as operating, controlling, and supervising) at least certain public schools going forward," and held that this significant change in the role of local school boards is not explained in the ballot summary. (R. 308).

Appellant disputes that Article IX, Section 4(b) currently confers upon the school boards authority to authorize new public schools (Initial Brief 13-14, 17), but Appellant is wrong. In *Duval County School Bd. v. State, Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008), the First District considered whether a statute creating "an independent, state-level entity with the power to authorize charter schools throughout the State of Florida" conflicted with school boards' constitutional authority under Article IX, Section 4. *Id.* at 642-43. The court held that the statute, which provided "for the creation of charter schools throughout Florida" and "the creation of a parallel system of free public education escaping the operation and control of local elected school boards," vested in the statewide commission "*all* of the powers of operation, control and supervision of free public education specifically reserved in article IX, section 4(b) of the Florida Constitution to locally elected school boards, with regard to charter schools sponsored by the Commission." (emphasis added). Thus, the court found that the challengers had met the high burden of demonstrating the facial unconstitutionality of a statute, *i.e.*, that "no set of circumstances exist under which the statute would be valid," and that the statute's provisions "present[ed] a total and fatal conflict with article IX, section 4 of the Florida Constitution." *Id.* at 643, 644.

The only fair reading of this decision is that school boards' exclusive authority in Article IX, Section 4(b) to "operate, control, and supervise" all free

public schools within their districts encompasses the power to "authorize" all new public schools. Thus, a statute calling for new public schools to be authorized by a statewide commission posed a "total and fatal conflict" with this constitutional authority. The court did not parse out the portion of the statute providing for the commission's "authorization" of new public schools from the portions calling for the commission's operation, control and supervision of them. Appellant's assertion to the contrary must be rejected.

Likewise, Appellants' blithe assertion that Revision 8 would change only the school boards' authority to "operate, control and supervise" certain public schools but would maintain the "status quo" as to who may establish them by leaving that to the legislature (Initial Brief 14), deliberately misses the point. The legislature's authority is at all times circumscribed by the constitution. Although Article IX, Section 4(b), does not expressly specify—either currently or as contemplated by Revision 8—who "establishes" public schools, by removing schools *not* established by the school boards from their supervision, Revision 8 implicitly but unmistakably dilutes school boards' current constitutional authority to establish public schools.

As the trial court correctly found, Amendment 8's failure to inform voters of this significant change to the constitutional authority of school boards is akin to the omission in *Florida Dep't of State v. Florida State Conf. of NAACP Branches*, 43

So. 3d 662, 668-69 (Fla. 2010). (R. 308). By allowing new discretionary considerations to prevail over existing constitutional requirements, the amendment "clearly alter[ed] the nature of the contiguity requirement currently contained in article III," but this effect was not made clear in either the ballot summary or amendment text. *Id.* at 668-669. "Failing this clear explanation, the voters will be unaware of the valuable right—the right to have districts composed of contiguous territory—which may be lost if the amendment is adopted." *Id.* at 669. The same is true here.

Appellant also seeks to characterize the effect of Revision 8 upon school boards' power to authorize charter schools as a "political motivation" which need not be included in the ballot summary. (Initial Brief at 15, 19). But the school boards' loss of a role in authorizing public schools, including charter schools, is not a "political motivation"—it is precisely the "true meaning, and ramifications" of the revision which must be disclosed. *Askew,* 421 So. 2d at 156. Voters have children in these schools, teach in these schools, hire graduates from these schools, and pay taxes toward these schools. Whether or not their locally elected school board members will lose their exclusive constitutional authority to authorize all public schools in their districts, including charter schools, is exactly the type of effect that this Court's precedents require the sponsor of a proposed amendment to reveal to voters.

Although it is not necessary to view the history of this proposal in the Commission in order to reach this conclusion regarding the revision's "true meaning and ramifications," it was not improper for the trial court to do so. This Court has previously examined the discussions and debates conducted by the Constitution Revision Commission in ascertaining the framers' intended meaning of constitutional amendments. *Caribbean Conservation Corp. v. Florida Fish & Wildlife Conservation Comm'n*, 838 So. 2d 492, 503 (Fla. 2003) (citing CRC discussion immediately before revision was approved for placement on the ballot); *Schreiner v. McKenzie Tank Lines, Inc.*, 432 So. 2d 567, 569-70 (Fla. 1983) (reaching conclusion regarding meaning of constitutional provision "primarily based on the intent of the drafters . . . [a]fter reviewing all of the transcripts available from meetings of the Constitutional Revision Commission").

The history of this proposal in the Commission reinforces the above determination that at least one of its chief purposes was to overrule the *Duval County School Board* decision. (R. 122:19-123:3, 245:8-15). And although Appellant now contends this case is "inapposite" to the issue of school boards' power to authorize charter schools (Initial Brief 17), *Amici* charter school groups supporting Appellant describe this decision as "a major blow to the school choice movement" in its determination "that all control of public schools—whether traditional, charter, or otherwise—is reserved ***exclusively*** for locally elected school

boards." (Brief of Amici Curiae Florida Consortium of Public Charter Schools, *et al*. at 5) (emphasis in original) (*see also* E. Donalds & B. Gibson, *Amendment 8 School Board Term Limits and Duties; Public Schools*, Fla. B.J. 17 (Sept./Oct. 2018) (citing *Duval County* for proposition that "[p]revious legislative attempts to allow entities other than school boards to authorize schools, including charter schools, have been rejected by courts as unconstitutional")).

C. The "true meaning and ramifications" of Revision 8 necessarily include its impact on charter schools.

The history of this proposal in the Commission, together with the filings by *Amici* in support of Appellant, also reinforce the trial court's determination that the failure to use the term "charter schools" in the summary obscures the measure's chief purpose and effect. (R. 307). This is not, as Appellants contend, because Appellees mistakenly believe that Revision 8 is intended to apply only to nontraditional schools, or charter schools, or that the term "charter school" exists in Revision 8 or the current constitution. (Initial Brief 20). These arguments attack straw men. In light of Appellant's contention that school boards only "play a prominent role in establishing most charter schools" (Initial Brief 13), but do not necessarily "establish" them, charter schools are by far the largest single category of public schools that may be most immediately affected by the passage of Revision 8. Failure to disclose this fact conceals the measure's true meaning and

ramifications. *Restricts Laws Related to Discrimination*, 632 So. 2d at 1021 (failure to identify any of the myriad of law, rules, and regulations that may be affected by the amendment precluded voters from being able to cast their ballots intelligently). Contrary to Appellant's contention, this Court has *not* "long rejected the argument that ballot language must disclose the effect on existing statutory law." (Initial Brief 18-19) (citing *Advisory Op. to the Att'y Gen. Re Local Trustees*, 819 So. 2d 725, 731 (Fla. 2002)). The case cited by Appellant, and the cases cited therein, merely stand for the uncontroversial proposition that it is sometimes possible to convey an amendment's chief purpose without identifying every possible statutory effect. In those cases, the summary did so. In contrast, in this case the failure to mention "charter schools" is a significant omission that prevents the ballot summary from conveying the true meaning and ramifications of the amendment.

As a demonstration of the substantial impact of Revision 8 on charter schools, one need look no further than the filings of *Amici* in support of Appellant. Both sets of *amici* offer strong support for charter schools and offer extensive policy arguments on the benefits of Revision 8, despite their irrelevance to this proceeding. (*See* Brief of Amici Curiae Florida Consortium of Public Charter Schools, *et al.* at 8-15; Brief of Amici Curiae the Urban League of Miami, *et al.* at 3-11).

III. THE TRIAL COURT CORRECTLY DETERMINED THAT THE BALLOT SUMMARY IS AFFIRMATIVELY MISLEADING.

Appellant acknowledges that Revision 8 is silent as to what entity will be charged with the operation, control and supervision of public schools not "established by the school board," but nevertheless contends the ballot summary correctly tells voters that this gap will be filled by the "the state" because this term is synonymous with the "Florida Legislature." (Initial Brief 21-22). It is not.

The most obvious source of information for voters on this subject—the Florida Constitution itself—does not support Appellant's contention. The only definition of "the state" found in the Florida Constitution is in Article II, Section 3, which provides: "Branches of government.—The powers of the state government shall be divided into legislative, executive and judicial branches." Nothing in this introductory provision suggests to voters that the legislature will be the branch to "operate, control, and supervise public schools not established by the school board." Additionally, the state legislature has its own article—Article III—and is uniformly referred to as "the legislature" throughout that article as well as the remainder of the Florida Constitution. Thus, nothing in the constitution itself would suggest to voters that "the state" referred to in the ballot summary is synonymous with "the legislature."

Furthermore, the ballot summary makes specific reference to "the legislature" with regard to civic literacy – it "requires the legislature to provide for the promotion of civil literacy in public schools." (R. 62). Because the first sentence of the ballot summary specifies that a responsibility will be undertaken by "the legislature," a voter would expect that the reference to "the state" in the last sentence must mean something other than "the legislature." As Appellant notes, "[t]he voter must be presumed to have a certain amount of common sense and knowledge," and terms must be "read with common sense and in context." (Initial Brief 22) (citing *Advisory Op. to the Att'y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996)).

A voter using common sense would reasonably think "the state" referred to one of its executive authorities involved in education, such as the State Board of Education or the State Department of Education. Even accepting for purposes of argument that the revision's silence on this matter results in it defaulting to the legislature, the ballot summary does not give the voter fair notice of this result. And the ballot summary is entirely inconsistent with the expressed intention of the proposal's sponsor *not* to assign this authority to any particular entity so as to maximize future flexibility. (R. 127:19-23; 129:15-24; 130:19-131:14). Instead, the ballot summary affirmatively misleads voters by telling them that "the state"

will conduct this function. Because this statement is facially inaccurate, the ballot summary is fatally defective.

IV. THE MISLEADING NATURE OF REVISION 8'S BALLOT TITLE AND SUMMARY IS COMPOUNDED BY ITS BUNDLING OF THREE UNRELATED REVISIONS INTO A SINGLE BALLOT MEASURE.

The trial court correctly found that the Commission's bundling of three separate proposals into one contributed to its failure to accurately inform voters of the chief purpose of the measure. (R. 309). Appellant dismisses this finding, noting that the Florida Constitution does not impose a single subject requirement on proposals by the Constitutional Revision Commission. (Initial Brief 24). Appellees do not contend otherwise. Rather, Appellees contend that where, as here, the combination of unrelated proposals rises to the level of rendering the ballot summary deceptive, it violates the Florida Constitution's accuracy requirement which *is* applicable to the Commission's revisions.

This Court has explained that the reason citizens' initiatives are expressly subject to a single subject requirement, whereas the other methods of amending the Florida Constitution are not, is because the initiative method does not provide a "filtering legislative process for the drafting of any specific proposed constitutional amendment or revision." *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984). In contrast, the "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.* According to this Court, "[n]o single-subject requirement is imposed because this process embodies adequate safeguards *to protect against logrolling and deception*." *Charter Review Comm'n v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) (emphasis added).

Logrolling is best prevented for many reasons recognized by this Court: to prevent a hodge-podge of unrelated matters in the same act, to prevent surprise or fraud in provisions of which the title gave no intimation, and to fairly apprise the people of the subjects of the matters being considered. *State v. Thompson*, 750 So. 2d 643, 646 (Fla. 1999) (citing *State ex rel. Flink v. Canova*, 94 So. 2d 181, 184 (Fla. 1957)).

This Court's decisions in *Fine* and *Charter Review Commission* do not stand for the proposition that the absence of a single-subject requirement for revisions proposed by methods other than citizens' initiative operates as a free pass for unlimited logrolling or deception. Rather, it reflects a level of optimism and trust that the processes followed by these other methods will "protect against logrolling and deception." Where these processes fail, and logrolling and deception occur such that the Court's optimism and trust is misplaced, courts must find the

products of these processes to be in violation of the applicable section of Article XI of the Florida Constitution.

Here, although the Commission held numerous public hearings, these hearings had concluded at the time Proposal 71 was combined with Proposals 43 and 10 to create Proposal 6003, which ultimately became Revision 8 as numbered by Appellant. (*Compare* R. 296, showing last Commission public hearing on March 13, 2018 *with* R. 298, showing Proposal 6003 being filed on April 6, 2018). Therefore, there was no opportunity for public hearing and debate in the drafting of the combined proposal.

Further, the final product produced by this process, Revision 8, reflects a transparent effort to bury a vague but significant proposal among two other proposals that are popular and easily understood. As fully explained above, the portion of the ballot summary that addresses the changes to the scope of local school boards' authority pertaining to public schools in their district is fatally ambiguous and affirmatively misleading. Its defects are hidden from voters by its placement with two other simple and concise measures which are easily understood. The title for the combined proposal makes no mention whatsoever of the intended reduction in school boards' authority. Indeed, as the ballot title is "a caption, not exceeding 15 words in length, by which the measure is commonly

referred to or spoken of," *see* section 101.161(1), Florida Statutes (2018), Revision 8 has been commonly referred to as the "school board term limits" measure.

In short, the safeguards for this measure "failed to protect against logrolling and deception," and for this additional reason, Revision 8 is fatally defective.

CONCLUSION

The trial court correctly determined that the ballot title and summary of Revision 8 fail to inform voters in clear and unambiguous language of the amendment's chief purpose and effect. Accordingly, voter approval would be a nullity. The trial court's ruling should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rules 2.516(b)(1) and (f) of the Florida Rules of Judicial Administration, I certify that the foregoing document has been furnished to Edward Wenger (Edward.wenger@myfloridalegal.com) and Blaine Winship (blaine.winship@myfloridalegal.com), The Capital, Office of Attorney General, 400 South Monroe Street, Suite PL-01, Tallahassee, FL 32399-6536, by email via the Florida Courts e-filing Portal this by email via the Florida Courts e-filing Portal this 29th day of August, 2018.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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