SC18-1368

In the Supreme Court of Florida

KEN DETZNER, IN HIS OFFICIAL CAPACITY AS FLORIDA SECRETARY OF STATE,
Petitioner,

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.,
Respondents.

PETITIONER'S BRIEF

ON DISCRETIONARY REVIEW AND CERTIFICATION
FROM THE FIRST DISTRICT COURT OF APPEAL
Case No. 1D18-3529

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STATEMENT OF THE CASE AND FACTS

I. On May 9, 2018, the CRC submitted eight proposed constitutional revisions for placement on the 2018 General Election ballot. At issue in this case is Revision 3, which relates to public education in Florida.[1] Specifically, if approved by the Electorate, Revision 3 will amend the Florida Constitution by imposing term limits of "eight consecutive years" on school board members and by requiring the Legislature to provide for "the promotion of civic literacy." R. at 62. Consistent with this theme, Revision 3, if passed, will also limit each district school board's authority to the "operat[ion], control and supervis[ion] of only those "free public schools" that are "established by the district's school board." R. at 62. Currently, the Florida Constitution provides each district school board with authority to "operate, control and supervise . . . *all* free public schools within the school district," Art. IX, § 4(b), Fla. Const. (emphasis added), irrespective of whether the school district "established" the school.

To accomplish these goals, Revision 3, if passed, would amend the Florida Constitution in the following manner (additions underlined):

[1] Below, the Circuit Court referred to Revision 3 by the ballot position assigned by the Department of State—"Amendment 8." *See* Constitutional Amendments, Florida Department of State, https://dos.myflorida.com/ elections/laws-rules/ constitutional-amendments/ (last visited Aug. 26, 2018).

ARTICLE IX

EDUCATION

SECTION 4. School districts; school boards.—

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law. A person may not appear on the ballot for re-election to the office of school board if, by the end of the current term of office, the person would have served, or but for resignation would have served, in that office for eight consecutive years.

(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.

SECTION . Civic literacy.—As education is essential to the preservation of the rights and liberties of the people, the legislature shall provide by law for the promotion of civic literacy in order to ensure that students enrolled in public education understand and are prepared to exercise their rights and responsibilities as citizens of a constitutional republic.

R. at 60-61. Revision 3 would also add the following section to Article XII of the State Constitution:

ARTICLE XII

SCHEDULE

Limitation on terms of office for members of a district school board.-This Section and the amendment to Section 4 of Article IX imposing term limits for the terms of office for members of a district school board shall take effect on the date it is approved by the electorate, but no service in a term of office which commenced prior to November 6, 2018, will be counted against the limitation imposed by this amendment.

R. at 61-62.

To inform Florida's Electorate of Revision 3's effect (and in accordance with Section 101.161(1), Florida Statutes), the following CRC-approved ballot title and summary will appear on the November 2018 General Election ballot:

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. at 62.

II. Respondents filed suit in Leon County Circuit Court, seeking to enjoin the Secretary from placing Revision 3 on the ballot because, in their view, the ballot language is defective. The Circuit Court, at the parties' request and in view of looming election deadlines, set an expedited briefing schedule on cross-motions for summary judgment and held a final hearing shortly after briefing concluded. R. at 18-21. On August 20, the court issued its final order, which granted Respondents' motion and denied Petitioner's motion after holding that the ballot language for Revision 3 would mislead the public regarding Revision 3's true purpose and effect. R. at 300.

Specifically, the court found that the ballot language fails to state Revision 3's chief purpose, which, in the court's view, is to dilute "the essential role school boards play in authorizing" and operating charter schools and to "exclude district school boards from any role in establishing" them. R. at 308. The Court also concluded the ballot language was misleading because it says that Revision 3 would "'permit[] *the state* to operate, control, and supervise public schools not established by the school board'" while remaining "silent about who or what would undertake these responsibilities for schools not established by the school board." R. at 309.

Petitioner appealed, and the First DCA certified, pursuant to Article V, Section 3(b)(5) of the Florida Constitution, that the case involves a question of great

public importance requiring immediate resolution by this Court. On August 22, 2018, this Court accepted jurisdiction and set an expedited briefing schedule.

SUMMARY OF ARGUMENT

I. This Court's precedents require that the ballot language corresponding to a proposed amendment disclose to the Electorate the amendment's "legal effect," and *only* its legal effect. *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984). Article IX, Section 4(b) of the Florida Constitution currently requires each district's school board to "operate, control, and supervise all free public schools within the school district." Art. IX, § 4(b), Fla. Const. Revision 3, if approved by the Electorate, will add a clause to that provision that would narrow the authority of school boards to "operate, control, and supervise" only those free public schools that the school boards themselves "establish[]." R. at 61. The corresponding ballot language discloses both the constitutional status quo and the how it would change. R. at 62. This Court's precedents require nothing more; indeed, they *permit* nothing more.

II. The Circuit Court erred by concluding that Revision 3 has a different, undisclosed chief purpose—to dilute "the essential role school boards play in authorizing" charter schools and to "exclude district school boards from any role in establishing" them. R. at 308.

A. Like the current language of the Florida Constitution, Revision 3 addresses only who shall "operate, control, and supervise" Florida's public schools.

Both are silent as to who shall "establish" those schools, so there is no legal effect on this issue for the ballot language to disclose. In concluding otherwise, the Circuit Court mistakenly relied on the language of an earlier draft proposal that was never approved by the CRC and is not before this Court. Similarly, in concluding that the Florida Constitution gives local school boards exclusive power to "authorize" charter schools, Respondents rely on an incorrect reading of *Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008).

B. The ballot language accurately discloses that the Revision would affect "all" public schools, R. at 62, and the ballot language was neither required nor permitted to emphasize the Revision's potential effect on charter schools in particular. *First,* charter schools are entirely creatures of statute, and this Court has long rejected the argument that ballot language must "disclose the effect that the proposed amendment would have on existing statutory law." *In re Advisory Op. to Att'y Gen. ex rel. Local Trustees*, 819 So. 2d 725, 731 (Fla. 2002)). *Second,* in concluding otherwise, the Circuit Court inappropriately looked to policy discussions among CRC members rather than the Revision's language, contrary to this Court's requirement that the ballot language must disclose the revision's "legal effect," and not its "political motivation." *Evans*, 457 So. 2d at 1355. *Third*, the Revision's legal effect extends to "*all*" public schools in Florida, R. at 61 (emphasis added), including traditional K-12 public schools, not merely nontraditional public schools or a subset

of them. Were the language to emphasize a subset of the schools Revision 3 would affect, it would be misleading.

III. The Circuit Court erred by concluding that the ballot language was affirmatively misleading. In the court's view, Revision 3 "'permits *the state* to operate, control, and supervise public schools not established by the school board,'" even though the Revision "is conspicuously silent about who or what would undertake these responsibilities for schools not established by the school board." R. at 309 (emphasis added). Revision 3 would indeed leave the Florida Constitution silent as to who shall "operate, control, and supervise" public schools not established by school boards. The ballot language, however, is accurate and non-misleading because this Court's precedents make clear that "[t]he voter must be presumed to have a certain amount of common sense and knowledge," *Advisory Op. to the Att'y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996), and, just as many other constitutional provisions leave gaps to be filled by the Legislature, Revision 3 would leave for the Legislature—*i.e.*, the State—to decide who shall supervise such schools. Moreover, any ambiguity pertains to the "legal effect of the amendment's text rather than the clarity of the ballot title and summary," and is therefore beyond the scope of pre-election review. *See In re Advisory Op. to the Att'y Gen. re: Voter Control of Gambling*, 215 So. 3d 1209, 1216 (Fla. 2017).

IV. As a final basis to strike Revision 3 from the ballot, the Circuit Court concluded that "[t]he title of Revision [3] is misleading through omission." R. at 309. In so concluding, the court disregarded this Court's admonition that "the ballot title and summary must be read together." *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) (quotation marks omitted).

LEGAL STANDARD AND STANDARD OF REVIEW

I. As a threshold matter, this Court's review of Respondents' challenge 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.* (internal 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 (internal 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. THE BALLOT LANGUAGE FULLY AND ACCURATELY ADVISES THE ELECTORATE OF REVISION 3'S LEGAL EFFECT.

To discern a proposed amendment's "chief purpose," this Court uses an "objective" test to discern the amendment's "main effect." *Armstrong*, 773 So. 2d at 18. This Court has elaborated that, in disclosing to the Electorate the revision's "chief purpose," that ballot language need only, and should only, disclose a proposed amendment's "legal effect." *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984). "The political motivation behind a given change," in contrast, "must be propounded

outside the voting booth." *Id*

Article IX, Section 4(b) currently requires each district's school board to "operate, control and supervise all free public schools within the school district." Art. IX, § 4(b), Fla. Const. If approved by the Electorate, Revision 3 would amend Article IX, Section 4(b) of the Florida Constitution by adding the following language (additions underlined):

> 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. at 61, 307. In other words, school boards currently possess the authority to "operate, control and supervise all free public schools." Revision 3, if approved by the electorate, will add a clause to Article IX, Section 4(b) that would narrow the authority of school boards to "operate, control and supervise" only those free public schools that the school board itself "establish[es]."

The wisdom of limiting the school boards' respective authority is not before this Court, and despite the arguments of Respondents below and the findings of the trial court in ruling for Respondents, neither the policy merits of changes in public education, nor the discussion by certain CRC members regarding such policies, has any bearing on the legal issues governing this case. The only question is whether

Revision 3's ballot summary clearly communicates Revision 3's "legal effect" to the Electorate. *Evans*, 457 So. 2d at 1355.

Revision 3's summary does precisely that. Specifically, the ballot language discloses the status quo:

> - "Currently, district school boards have a constitutional duty to operate, control, and supervise all public schools."

Then, it discloses the legal effect Revision 3 will have if it passes. First, it indicates that, if passed, Revision 3 will leave intact school boards' respective authority to control the schools they establish:

> - "The amendment maintains a school board's duties to public schools it establishes."

And, second, the summary informs the Electorate that, if Revision 3 passes, the Florida Constitution will no longer give school boards control over the schools they do not establish:

> - "[The amendment] permits the state to operate, control, and supervise public schools not established by the school board."

R. at 62.

II. THE TRIAL COURT ERRED IN CONCLUDING THAT THE BALLOT LANGUAGE CONTAINS MATERIAL OMISSIONS.

The Circuit Court concluded that Revision 3's chief purpose was to dilute "the essential role school boards play in authorizing" and operating charter schools in particular and to "exclude district school boards from any role in establishing" them.

R. at 308. It further concluded that this purpose will not be disclosed on the ballot. *Id.* Those conclusions were incorrect.

A. Local School Boards Currently Have No Constitutional Authority To Establish Or Authorize Public Schools, And The Revision Would Not Change The Status Quo.

The Circuit Court's error becomes evident when its analysis is placed in the context of Florida law currently governing public schools. The Florida Constitution provides that each school district's local "school board shall operate, control and supervise all free public schools within the school district." Art. IX, § 4(b), Fla. Const. The Florida Constitution does not define the term "public schools" and, of particular relevance here, does not use the term "charter schools" at any point. Nor does the Florida Constitution say who shall be responsible for establishing the State's public schools.

The Florida Legislature has filled these gaps, providing for many different kinds of public schools and addressing how (and by whom) each shall be established. By statute, traditional "public K-12 schools" are "establish[ed]" by "district school boards." § 1003.02, Fla. Stat. "All charter schools in Florida," too, "are public schools and shall be part of the state's program of public education." § 1002.33(1), Fla. Stat.

Under Florida statutes, district school boards have a prominent role in establishing most charter schools. *See* § 1002.33(5)(a), Fla. Stat. (providing that "[a]

district school board may sponsor a charter school" and "[a] state university may grant a charter to a lab school created under s. 1002.32 and shall be considered to be the school's sponsor"). Florida law also provides for a variety of other free public schools. *See* § 1002.32, Fla. Stat. (developmental research schools); § 1002.36, Fla. Stat.; (Florida School for the Deaf and Blind); § 1002.35, Fla. Stat. (New World School of the Arts); § 1002.34, Fla. Stat. (charter technical career centers); § 1002.3305, Fla. Stat. (College-Preparatory Boarding Academy Pilot Program for at-risk students).

Like the current language of the Florida Constitution, Revision 3, if passed, will affect the entity that "shall operate, control and supervise" "all free public schools." R. at 61. And like the current language of the Florida Constitution, Revision 3 remains silent as to who may establish them, leaving that question to the Legislature. *See* R. at 61. Because Revision 3, if passed, would maintain this status quo, the Circuit Court erred by concluding that Revision 3's ballot summary is defective; Revision 3 will *neither* dilute "the essential role school boards play in authorizing" charter schools, *nor* "exclude district school boards from any role in establishing" them. R. at 308.

1. In reaching its conclusion to the contrary, the Circuit Court mistakenly relied on the language of an earlier draft proposal that was never approved by the CRC and is not before this Court. Specifically, a draft proposal would have amended

Article IX, Section 4(b) of the Florida Constitution as follows:

> 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. at 307. The Circuit Court referred to this language to bolster its conclusion that the CRC's intended Revision 3 "to exclude district school boards from any role in establishing" charter schools. R. at 308.

That reliance was error. This Court's precedent requires only that the ballot language disclose what the *operative* version of a proposed constitutional revision would accomplish; there is no place for consideration of earlier drafts that were scuttled before the CRC finalized its work. The ballot language, moreover, must disclose the revision's "legal effect," and *only* its legal effect. *Evans*, 457 So. 2d at 1355. Any "political motivation" behind Revision 3—including the merits of which entity will have the constitutional prerogative to control charter schools—"must be propounded outside the voting booth" and not through Revision 3's ballot summary. *Id.*; *accord Fla. Educ. Ass'n*, 48 So. 3d at 701 (requiring disclosure of "the amendment's true *effect*" (emphasis added; quotation marks omitted)); *Armstrong*, 773 So. 2d at 16 (same); *Advisory Op. to the Att'y Gen. re Fla.'s Amendment to*

Reduce Class Size, 816 So. 2d 580, 585 (Fla. 2002) ("[T]he ballot summary is not required to . . . explain in detail what the proponents hope to accomplish." (quotation marks omitted)).

In any event, the "intention" of the CRC, R. at 308, cannot be ascertained from the Commission's drafts and debates. Its "collective psychology is a hopeless stew of intentions," and "the final language that passes into law" is "all [that the members] have agreed on." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 392-93 (2012); *see also Anderson v. State*, 87 So. 3d 774, 777 (Fla. 2012) ("A court primarily discerns legislative intent by looking to the plain text of the relevant statute" and secondarily by resolving ambiguity through resort "to the rules of statutory interpretation and construction."). Here, the "final language" the CRC approved plainly does not address the "establishment" of public schools at all; rather, it mirrors the current language of the Florida Constitution, which, as both Respondents and the Circuit Court acknowledge, is silent on the issue. *See* R. at 29, 303. And should this Court find ambiguity in how Florida law speaks to the "establishment" of public schools, this ambiguity is part of *Revision 3's* text, and *not* part "of the ballot title and summary." The clarity of the latter is the only question before this Court. *Advisory Op. to the Att'y Gen. Re: Voter Control of Gambling*, No. SC16-778, 2017 WL 1409673 (Fla. Apr. 20, 2017).

2. Respondents also argued below that Revision 3 would eliminate the "exclusive power of the school boards to 'authorize' charter schools," which, Respondents claim, emanates from Article IX, Section 4(b) of the Florida Constitution. R. at 283. The Circuit Court agreed. *See* R. 308 (ruling that the purpose of the Revision was to dilute "the essential role school boards play in authorizing" charter schools). As discussed above, however, Article IX, Section 4(b) currently affords school boards the authority only to "operate, control and supervise" public schools, including charter schools; it does not give school boards the power to "authorize" such schools, much less the *exclusive* power to do so.

In support of their proposed deviation from the plain language of the Florida Constitution, Respondents identify just one case, *Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008). That decision is inapposite. The statute in question "established the 'Florida Schools of Excellence Commission' as an independent, state-level entity with the power to authorize charter schools throughout the State of Florida." *Id.* at 642. The First District found the statute unconstitutional *not* because it gave the Commission power to "authorize" charter schools, but instead because it also gave the Commission "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." *Id.* at 643.

B. This Court's Precedents Permit, If Not Require, Ballot Language That Omits Specific Reference To Revision 3's Potential Effect On Charter Schools.

Although Revision 3 and its corresponding ballot language both address school boards' authority to operate, control, and supervise all "public schools," Respondents argued below that the ballot language should have specifically emphasized the Revision's potential effect on school boards' authority to operate and supervise *charter* schools, a subset of public schools. That is so, Respondents argued, because "CRC discussions show that the commissioners, who participated in debate and approved the proposal for the ballot, understood the revision in terms of its effect on charter schools." R. at 38. "Nor," Respondents argued, "are there any other significant categories of free public schools under Florida law other than charter schools and traditional public schools." R. at 39 (footnote omitted). The Circuit Court agreed, faulting the CRC because the ballot language refers to "all public schools" but "does not mention charter schools," which, in the court's view, is "the term the voters would understand." R. at 307. For three reasons, that conclusion is wrong.

First, the Florida Constitution does not address charter schools at all; they are creatures of statute, *see* § 1002.33, Fla. Stat., and neither Respondents nor the Circuit Court suggested otherwise. This Court has long rejected the argument that ballot language must "disclose the effect that the proposed amendment would have on

existing statutory law." *In re Advisory Op. to Att'y Gen. ex rel. Local Trustees*, 819 So. 2d 725, 731 (Fla. 2002) (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, moreover, to know that the policy areas addressed in proposed amendments often are "currently governed by" various statutes. *Id*. Indeed, "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. *Id.*

Second, although the court identified no ambiguity in the pertinent language of the Revision—"all free public schools"—the court looked behind the Revision's plain language because "CRC discussions show that the commissioners . . . understood the revision in terms of its effect on charter schools." R. at 38. But, as discussed above, this Court's precedent requires that the ballot language must disclose the revision's "legal effect," and *only* its legal effect—not its "political motivation," which "must be propounded outside the voting booth." *Evans*, 457 So. 2d at 1355; *accord Fla. Educ. Ass'n*, 48 So. 3d at 701 (requiring disclosure of "the amendment's true *effect*" (emphasis added; quotation marks omitted)); *Armstrong*, 773 So. 2d at 16 (same). This Court has also held that "the ballot summary is not required to . . . explain in detail what the proponents hope to accomplish." *Florida's Amendment to Reduce Class Size*, 816 So. 2d at 585 (quotation marks omitted).

Third, any contention that Revision 3 primarily concerns charter schools erroneously assumes that the Revision's legal effect extends only to nontraditional public schools (of which charter schools are a subset) and, conversely, that the Revision's legal effect does not extend to traditional K-12 public schools. *See* R. at 39 ("Nor are there any other significant categories of free public schools under Florida law other than charter schools and traditional public schools." (footnote omitted)). The current language of the Florida Constitution, however, concerns the operation, control, and supervision of "all free public schools." Art. IX, § 4(b), Fla. Const. The Revision, too, would address the operation, control, and supervision of "all free public schools" by limiting school boards' authority to the public schools they themselves establish. R. at 61. Neither the current language of the Constitution nor the language of the Revision is limited to "nontraditional" public schools.

This is important because, as discussed above, the Constitution does not say who shall establish traditional public K-12 public schools. Currently, Section 1003.02, Florida Statutes assigns that authority to local school boards. The Constitution would, if amended by Revision 3, remain silent as to who shall establish traditional K-12 public schools, leaving to the Legislature who shall establish them and, in turn, who shall "operate, control, and supervise" them. R. at 62. The same is true of the many kinds of nontraditional public schools created by statute. *See* § 1002.32, Fla. Stat. (developmental research schools); § 1002.36, Fla. Stat. (Florida

School for the Deaf and Blind); § 1002.35, Fla. Stat. (New World School of the Arts); § 1002.34, Fla. Stat. (charter technical career centers); § 1002.3305, Fla. Stat. (College-Preparatory Boarding Academy Pilot Program for at-risk students).

In other words, the ballot language discloses that Revision 3 will have a legal effect on *all public schools* in Florida, because that is the legal effect Revision 3 will have if passed in November. The ballot language Respondents demand, by contrast, would emphasize the Revision's effect on *charter schools*—a mere subset of the schools the Revision would actually affect. Such emphasis would render the ballot summary affirmatively misleading by obscuring the Revision's effect on all other public schools, including traditional K-12 public schools.

III. THE TRIAL COURT ERRED IN CONCLUDING THAT THE BALLOT LANGUAGE IS AFFIRMATIVELY MISLEADING.

The Circuit Court found that the ballot language was affirmatively misleading because it says Revision 3 "'permits *the state* to operate, control, and supervise public schools not established by the school board,'" even though the Revision "is conspicuously silent about who or what would undertake these responsibilities for schools not established by the school board." R. at 309 (emphasis in original).

To be sure, Revision 3 would leave the Florida Constitution silent as to who shall "operate, control and supervise" public schools not established by school boards. The ballot language, however, is accurate and non-misleading because, just as many other constitutional provisions leave gaps to be filled by the Legislature,

Revision 3 would leave for the Legislature—*i.e.*, the State—to decide who shall supervise such schools. The current language of Article IX, Section 4(b), discussed above, is one such example. That provision does not define the term "public schools" or say who shall "establish" them, but the Legislature filled those gaps by, *e.g.*, delegating the authority to establish traditional K-12 public schools to local school boards. *See* § 1003.02, Fla. Stat.

The court's chief concern seems to have been that the ballot language fails to disclose the possibility that the Legislature would be free to assign supervisory authority over such schools to another entity. *See* R. at 309. This Court's precedents, however, make clear that "[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." *Advisory Op. to the Att'y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996); *see also Fla. Educ. Ass'n*, 48 So. 3d at 701 (voters are presumed to have "a certain amount of common understanding and knowledge"). That common sense and knowledge surely include that the Legislature cannot and does not conduct the entire business of the State, and that the Legislature routinely assigns authority to a wide variety of agencies and, where allowed by law, private entities. Because Revision 3 is silent as to delegation, common sense dictates that the Legislature may assign authority over public schools to the same extent the Legislature may assign other authority. Any ambiguity pertains to the "legal effect of the amendment's text

rather than the clarity of the ballot title and summary," and is therefore beyond the scope of pre-election review. *Voter Control of Gambling*, 215 So. 3d at 1216.

IV. THE TRIAL COURT ERRED BECAUSE IT READ THE BALLOT TITLE IN ISOLATION.

As a final basis to strike Revision 3 from the ballot, the Circuit Court concluded that "[t]he title of Revision [3] is misleading through omission." R. at 309. The title included in the ballot language reads in full: "SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS." *Id.* The Circuit Court faulted this language because "the vague reference to 'school board . . . duties'" could lead a voter to believe that the Revision "consists only of a proposal to limit the term limits for school boards." *Id.*

This Court has repeatedly held that "the ballot title and summary must be read together." *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) (quotation marks omitted). Here, the ballot title discloses that Revision 3 pertains to both school board term limits *and* duties, and the ballot summary explains the Revision's legal effect on both, including, as discussed above, Revision 3's effect on school boards' duty to "operate, control, and supervise" public schools. R. at 62. Because the Circuit Court failed to read the ballot title and summary in tandem, its objection to the ballot title in isolation does not provide grounds for striking Revision 3 from the November

ballot.[2]

CONCLUSION

For the foregoing reasons, this Court should quash the order under review and approve the ballot title and summary for Revision 3 for placement on the ballot.

Respectfully submitted.

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[2] The Circuit Court also faulted the ballot language because, in the court's view, the change to Article IX, Section 4 of the Florida Constitution "could have been its own standalone revision, had it not been bundled with two other unrelated proposals." R. at 309. As this Court has made clear, however, "[o]nly proposals originating through a petition initiative are subject to [a] single-subject rule." *Charter Review Comm'n of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) (citing Art. XI, Fla. Const.). 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.*

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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CERTIFICATE OF SERVICE

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 27th day of August, 2018, to the following:

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