IN THE SUPREME COURT OF FLORIDA

KEN DETZNER, in His Official Capacity as
Secretary of State of Florida,

Appellant

v.

Case No.: SC18-1513
LT No(s).: 1D18-3804
372018CA001925

HARRY LEE ANSTEAD and
ROBERT BARNAS,

Appellees.

ANSWER BRIEF OF APPELLEES ANSTEAD AND BARNAS

On Discretionary Review from District Court of
Appeal, First District of Florida

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SUMMARY OF ARGUMENT

The trial court hold that Appellees had brought a timely action challenging whether Amendments 6, 7, 8, 9, 10 and 11 (Constitution Revision Commission revisions 1-6) should be removed from the ballot because bundling of independent and unrelated measures in each violated the rights of voters guaranteed by §101.161Fla. Stat. and the First Amendment and, as to Amendments 6, 8, and 11, because their ballot language failed to inform voters of the true effect and purpose and was misleading and deceptive. (Order, ROA 131-7.)

The trial court declined to rule on the challenge to Amendments 6, 8 and 10, which were then on appeal to this Court in other cases, but struck Amendments 7, 9 and 11 from the ballot on grounds that bundling independent and unrelated proposals in each of them for a single "yes" or "no" vote violated §101.161 Fla. Stat. (ROA 133.) The trial court also held that the ballot language for Amendment 11 was deceptive and misleading for failing to inform the voters of its true effect and purpose and struck it from the ballot on that additional grounds. Although the trial court entered no order pertaining to Amendments 6, 8 and 10, it noted, "This Court's findings apply to all 6 of the proposed amendments;..." (ROA 133.)

The trial court's rulings on timeliness and remedy are amply supported by this Court's holding in *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), Article V §2(a) Florida Constitution, Fla. R. App. P. 9.040(c) and decisions applying them.

Each of the challenged amendments bundles independent and unrelated discrete propositions for a single vote that requires voters to vote "yes" on propositions they oppose in order vote "yes" on propositions they favor, or to vote "no" on propositions they favor in order to vote "no" on propositions they oppose, or to forgo voting. Appellees challenge this bundling as infringing the right to vote guaranteed by the First Amendment and also violating §101.161 Fla. Stat. that requires a "yes" vote to approve a proposal and a "no" vote to reject a proposal. Appellees also challenged the ballot language for failing to include a ballot summary with "an explanatory statement .....of the chief purpose of the measure." The ballot summary of each and every one of the ballot statements lacks "an explanatory statement" of its "chief purpose." (ROA 20.)

The trial court held that the bundling in Amendments 7, 9 and 11 violates §101.161 Fla. Stat., saying: "Voters cannot reasonably answer the statutorily required yes or no question, §101.161(1) Fla. Stat. without potentially being deprived of their First Amendment constitutional right to cast a meaningful vote on each independent and unrelated proposal, and without section 101.161(1) being

complied with." Order, p. 5. (ROA 135.) The Order did not rule explicitly on the *chief purpose* argument except to the extent it was implicit in the holding that §101.161 Fla. Stat. requires an independent vote on each independent and unrelated discrete proposition.

The trial court's interpretation of §101.161Fla. Stat. is correct and should be affirmed. The provision is written entirely with singular nouns - *amendment , measure, the proposal, "explanatory statement, a "yes" vote, a "no" vote* and *the chief purpose.* In addition, it is reinforced by decisions of this Court that guarantee Florida voters the right to intelligently cast votes of their choice. Moreover, deciding the issue on state law grounds enriches the law of Florida and avoids doing so under the First Amendment.

Amendment 11 includes a proposition to remove this language - "except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law" - from Article I §2(a) Florida Constitution. The ballot language states only, "Removes discriminatory language related to real property rights." (ROA 23.) Appellees submit that the omission of the limitation to "aliens ineligible for citizenship" hides the true purpose and effect from the voters, requiring the measure to be removed from the ballot. The trial court agreed and held: "The instant ballot

language hides the effect of the vote from the voter," and removed the measure from the ballot. Order, p. 6. (ROA 136.)

This Court should affirm this holding for the reasons stated. In addition, this Court should be aware that the same proposal was submitted to the 2008 voters for a single vote under this ballot language: "Proposing an amendment to the State Constitution to delete provisions authorizing the Legislature to regulate or prohibit the ownership, inheritance, disposition, and possession of real property by aliens ineligible for citizenship." Being fully informed of the true effect of the measure, the 2008 voters rejected it. (See Part V, i*nfra*.)

Appellees also challenge Amendments 6 and 10 on misleading ballot language grounds but the trial court withheld ruling on those challenges.

Finally, if this Court should choose not to affirm on state law grounds, it must find that the challenged bundling of independent and unrelated discrete propositions for a single "yes" or "no" vote violates the First Amendment. Otherwise, the state could force voters to vote "yes" or "no" on a bundled proposal, such as: "Banning all abortions and banning all sales of handguns." The progression of First Amendment cases leads unerringly to the conclusion that this bundling cannot be permitted. *Harman v. Forssenius*, 380 U.S. 528, 85 S. Ct. 1177, 14 L. Ed. 2d 50 (1965), struck down a poll tax, stating:

> The right is fundamental 'because preservative of all rights.' *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S.Ct. 1064, 1071, 30 L.Ed. 220.

Id., Harman v. Forssenius, 85 S. Ct. at 1183. *Burson v. Freeman*, 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992) held:

> Accordingly, this Court has concluded that a State has a compelling interest in protecting voters from confusion and undue influence.

Id., Burson v. Freeman, 112 S. Ct. at 1851. *Wesberry v. Sanders*, 376 U.S. 1, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964) opined:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.

Eu v. San Francisco Cty. Democratic Cent. Comm., 489 U.S. 214, 109 S. Ct. 1019, 103 L. Ed. 2d 271 (1989), cautioned:

> A State's broad power to regulate the time, place, and manner of elections "does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens." *Tashjian v. Republican Party of Connecticut*, 479 U.S., at 217, 107 S.Ct., at 550. To assess the constitutionality of a state election law, we first examine whether it burdens rights protected by the First and Fourteenth Amendments..... If the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny *only if the State shows that it advances a compelling state interest, ...and is narrowly tailored to serve that interest*, ... *Dunn v. Blumstein*, 405 U.S. 330, 343, 92 S.Ct. 995, 1003, 31 L.Ed.2d 274 (1972).

Id., Eu v. San Francisco Cty. Democratic Cent. Comm., 109 S. Ct. at 1019.

For all these reasons this Court should affirm the trial court's decision.

ARGUMENT

Appellees address Appellant's argument in the format and order of Appellant's Initial Brief.

I. APPELLEES' ACTION IS TIMELY AND PROPER

Appellees' commenced this action by filing a petition for writ of quo warranto in this Court relying upon the Court's holding in *Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011). (ROA 6-24.) The petition sought to have the Secretary of State remove constitution revisions 1-6 presented by the Constitution Revision Commission from the Ballot after he had assigned them ballot positions 6, 7, 8, 9, 10 and 11. On August 28, 2018 this Court transferred the action to the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida without having made any determination as to proper denomination of the cause of action or as to the merits.

Thereafter, the circuit court conducted a hearing on the merits and rendered the decision that is now on appeal in this Court. As to Appellant's claim that Appellees sought the wrong remedy, Appellees refer to Article V § 2(a) Florida Constitution, which states in part:

> (a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently

> invoked, and *a requirement that no cause shall be dismissed because an improper remedy has been sought.*

(Italics added.) Pursuant to that provision, this Court has adopted this rule:

> (c) Remedy. If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy.

Fla. R. App. P. 9.040(c). *State ex rel. Miami Herald Pub. Co. v. McIntosh*, 322 So. 2d 544 (Fla. 1975) exemplifies the application of those provisions. There, this Court treated an improper petition for writ of prohibition as a petition for conflict certiorari and rendered a decision on the merits.

In response to Appellant's "wrong remedy" submission, the trial court referred to this Court's decision in *Fla. House of Representatives v. Crist*, 999 So. 2d 601 (Fla. 2008) as a basis to render a decision on the merits. (Order, p. 2. [ROA 132].) The trial court also noted that Respondent (Appellant here) requested no time for additional argument or briefing "in the event this action was to proceed as a case as a declaratory action or in some other vehicle."[1] (ROA 132, n.2.)

Appellant's statement that Appellees have "conceded" that the Secretary of

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[1]Although there is no transcript in the record to document this, the undersigned lawyer certifies that Appellees orally suggested to the trial court that it consider the action as one for declaratory and injunctive relief or as a petition for writ of mandamus if the court should deem quo warranto to be an improper remedy.

State has the "power and duty" to place the proposed amendments on the 2018 ballot (Initial Brief, p. 11) is a mischaracterization of the initial pleading. Appellees *have not conceded* that Appellant has the duty to place proposals with misleading and deceptive or otherwise defective ballot language on the ballot, but merely made the appropriate allegation to establish Appellant as the proper defendant in the action. Appellant himself admits that he is the "responsible official." (Initial Brief, p. 12.)

In short, Appellees respectfully submit that Appellant's arguments in Part I of the its Initial Brief are without merit.

II. APPELLANT'S SUBMISSION THAT APPELLEES' ACTION SHOULD BE DISMISSED ON "EQUITABLE CONSIDERATIONS" IS WITHOUT MERIT.

In Part II Appellant makes three unrelated arguments that may be summarized as:

- Appellees filed their action too late.
- Appellees' theory of action "would effectively invalidate the Commission's constitutionally prescribed authority to propose a singular revision to 'this constitution' as a whole."
- It is too late for this Court to grant "the principal relief they seek."

Initial Brief, pp. 17-19.

A. APPELLEES' ACTION WAS TIMELY FILED.

The trial court rejected Appellant's untimeliness submission stating:

> The Court finds no merit in the timeliness issues raised by the Respondent. This Petition is deemed timely filed.

(Order, p. 1, n. 1. [ROA 131.)

The trial court's holding on this point is fully supported by this Court's decision in *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000). In *Armstrong* petitioners filed a petition for writ of mandamus in this Court on October 9 to challenge a measure to be submitted for a vote on November 3. *Id., Armstrong v. Harris*, 773 So. 2d at 9. Instead of transferring the case to the circuit court as it did in this action, this Court "declined to exercise jurisdiction" without prejudice to petitioners to seek relief in the circuit court, which they did on October 19. Ultimately, after further litigation and after the voters *approved* the measure on November 3, this Court invalidated the election on the grounds that the measure was presented to the voters with misleading and deceptive ballot language. *Id., Armstrong v. Harris*, 773 So. 2d at 22. In short, this Court held that the *Armstrong* action was not untimely delayed.

In contrast, Appellees initiated this action in this Court on August 14, 2018 to challenge proposals to be voted upon on November 6, 2018. If the action was not untimely in *Armstrong v. Harris, a fortiori* this action was not untimely.

Accordingly, this Court should affirm the trial court's order holding that Appellees' action was timely filed.

B. APPELLEES' THEORY WOULD NOT "EFFECTIVELY INVALIDATE THE COMMISSION'S CONSTITUTIONALLY PRESCRIBED AUTHORITY TO PROPOSE A SINGULAR REVISION TO 'THIS CONSTITUTION' AS A WHOLE."

Appellees find it difficult to take Appellant's "the sky is falling" submission seriously. In essence, Appellant argues that this Court lacks the capacity to make distinctions between different categories of propositions of the kind that it is constantly called upon to make and does make. In short, Appellant's submission assumes that the Court lacks the judgment to make a distinction between valid and invalid propositions. This supposition is unfounded.

The essence of Appellees' principal argument, which is addressed in detail below, is:

> [b]undling a ballot question with *functionally independent and unrelated proposals* for a single vote, some of which a voter would approve and others of which a voter would reject, constitutes an unreasonable infringement upon a voter's First Amendment rights to vote for or against a proposition without paying the price of voting for (or against) an unrelated proposition. No sufficiently important state interest justifies such an infringement upon the right to vote.

(Petition, p. 5. [ROA 14].) Appellees also challenge the bundling as violating §101.161 Fla. Stat., which is the primary basis of the trial court's order. *Id.*, Petition, p. 11 (ROA 20.)

Appellees' petition also explicitly submits:

> A single ballot question *might* include a functionally related comprehensive plan to revise the whole of the constitution or an article of it that could be considered as a unit to approve or disapprove as a whole without violating a voter's right to vote.

Id., Petition, p. 5. (ROA 14.)

Drawing the distinction between *functionally independent and unrelated proposals* and a *functionally related comprehensive plan to revise the whole of the constitution* would be ordinary grist for this Court to chew although it could sometimes be challenging. But making nice distinctions in hard cases is at the heart of the job of the judiciary. This Court has often labored to apply the "one subject" limitation on the legislature's law-making power imposed by Article III §6 Florida Constitution but regularly does it. Similarly, this Court routinely passes on one-subject challenges to citizen initiatives pursuant to Article XI §3 Florida Constitution. Certainly, the job of making the "one-subject" distinction has not invalidated or undermined the legislature's law-making authority nor has it undermined the authority of citizens to initiate amendments and revisions to the constitution. Neither will adoption of Appellees' bundling theory invalidate the Constitution Revision Commission's authority to propose a revision to the entire constitution or parts of it.

Even so, as this Court well knows, if a Florida practice violates the First

Amendment, the First Amendment controls:

> All procedures used by a State as an integral part of the election process must pass muster against the charges of discrimination or *of abridgment of the right to vote*. *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368; Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 897.

Moore v. Ogilvie, 394 U.S. 814, 818, 89 S. Ct. 1493, 1495–96, 23 L. Ed. 2d 1 (1969). (Italics added.) This point is amplified in Part IV of this brief.

C. APPELLEES HAVE SOUGHT RELIEF THAT IS WITHIN THE COURT'S POWER TO GRANT

Appellant's submission that this Court cannot grant Appellees "the principal relief they seek" is without merit. Appellees requested that Amendments 6,7, 8, 9, 10 and 11 be removed from the ballot or for "other appropriate relief." Petition, p. 15. (ROA 24.) At this stage, if it should be too late to order removal from the ballot, this Court could provide appropriate and sufficient relief such as ordering the Appellant not to certify the election results or entering an order to invalidate the challenged measures, if they should be approved, as it did in *Armstrong v. Harris*. In sum, Appellant's submission on this grounds is without merit.

III. SECTION 101.161 FLA. STAT. REQUIRES THAT FLORIDA VOTERS NOT BE DENIED THE RIGHT TO VOTE BY BUNDLING INDEPENDENT AND UNRELATED PROPOSALS SOME OF WHICH VOTERS SUPPORT AND SOME OF WHICH VOTERS OPPOSE FOR A SINGLE "YES" OR "NO" VOTE.

Appellant's phrasing of its Part III statement misunderstands the ultimate

source of voters' rights. The ultimate right to vote is protected by the First Amendment to the United States Constitution and Article I §4 Florida Constitution. The state may, of course, provide additional protection, which §101.161 Fla. Stat. does, but that statute may not be interpreted to restrict rights that the constitutions protect.

Appellees will briefly address each portion of Appellant's Part III arguments and then provide more detailed support for affirming the trial court's order.

A. Legal Background

> [FIRST] THE SINGLE SUBJECT CRITERION DOES NOT CONTROL THIS LITIGATION

The single-subject limitation in Article XI §3 Florida Constitution and its absence in Article XI §2 is not an approval of the Constitution Revision Commission's bundling of independent and unrelated discrete proposals for a single vote. In fact, the Commission was aware of this itself. Its adopted rules included this provision:

> 3.7 Proposals; Single subject
> Each filed proposal shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

A Resolution establishing the Rules of the Constitution Revision Commission for

the 2017-2018 term, p. 16.[2]

Appellant has not explained why the Commission deviated from its rules. Nor has Appellant supported its submission that Appellees' bundling claim interferes with the Commission's proper authority to propose "a *revision* of this constitution or any part of it." Article XI §2(c) Florida Constitution. (Italics added.)

Unlike the legislature, Article XI §1 Florida Constitution, and the citizens, Article XI §3 Florida Constitution, both of which have authority to propose *revisions* and *amendments*, the Commission has authority to propose only *revisions.*[3] As Appellant himself has explained in citing *Telli v. Broward Cty.,* 94 So. 3rd 504 (Fla. 2012), including *two authorities* in the legislature and the citizens and including only *one* in the Commission necessarily limits the Commission to the one authority. Initial Brief, p. 20. In sum, bundling an assortment of independent and unrelated discrete propositions, many of which appear to be

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[2]http://flcrc.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/CRCResolution1.pdf page 16, Rule 3.7 start

[3]Initially, Article XI §3 authorized citizens to initiate only "amendments" to the constitution. Applying that limitation, this Court removed an initiated proposal to revise many sections of the constitution in a single vote. *Adams v. Gunter*, 238 So.2d 824 (Fla. 1970). Thereafter, the legislature adopted 1972 House Joint Resolution 2853 to authorize citizen initiation of *revisions* to the constitution and it was approved by the people. No similar enlargement of the Constitution Revision Commission's authority has occurred.

amendments, does not make a revision.

The origin of the single-subject rule in Article XI §3 Florida Constitution[4] apparently derived from the "one-subject" rule in Article III §6 Florida Constitution that places this restriction of the legislature's law making power:

> Every law shall embrace but one subject and matter properly connected therewith.

Most states have provisions of this sort in their constitutions and the purpose is to prevent "log rolling" in the collegial process of creating laws in the legislative bodies. They provide some structure to the disorderly process of making laws, which this Court acknowledged in its reference to "the famous epigram of Bismarck, 'to retain respect for sausages and laws, one must not watch them in the making.'" *Petition of Graham,* 104 So. 2d 16, 18 (Fla. 1958). More pointedly, this Court has observed:

> Of course, one of the purposes of this provision was to prevent surprise of fraud upon the legislature, by means of provisions of bills of which the title gave no notice, and which might, therefore, be overlooked and carelessly and unintentionally adopted. Cooley, Const. Lim. 178.

State v. Palmes, 3 So. 171, 175 (1887).

As applied to initiatives to revise or amend the constitution, a correlative

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[4]Fla. Const. art. XI, § 4. The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

purpose of the one-subject limitation in Article XI §3 Florida Constitution would be to protect citizen-signers of petitions from being fooled by inadequate ballot titles and erroneous statements of those collecting signatures. In contrast, legislative and revision commission proceedings to create proposals to for constitutional change are collegial, limited, focused and do not involve almost-simultaneously voting on the dozens or even hundreds of bills coming together at once as in the ordinary legislative law-making process.[5] Hence, in creating proposals to change the constitution, the members of the legislature and of revision commissions have less need for the one-subject protection than has been provided to signers of initiative petitions.

Nevertheless, however explained, the absence of a single-subject limitation in a revision-amendment provision of a state constitution does not eliminate the protection the Florida Constitution provides voters to allow them to vote as they choose. Many decisions of this Court have acknowledged the right of voters to elect candidates *of their choice.* See, e.g., *In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992*, 601 So. 2d 543 (Fla. 1992). Consistent with the right to vote for candidates and propositions of choice is the oft-repeated requirement that the voter be permitted to cast an *intelligent* vote:

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[5]This Court examined the purpose of both the legislative and initiative single subject requirements in *Fine v. Firestone*, 448 So. 2d 984, 988-989 (Fla. 1984).

> All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide. .....What the law requires is that the ballot be fair and advise the voter sufficiently to enable him *intelligently* to cast his ballot.

Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954). (Italics added.) See also, *Armstrong v. Harris*, 773 So. 2d 7, 12–13 (Fla. 2000), *Askew v. Firestone*, 421 So.2d 151, 154–55 (Fla.1982) and *Wadhams v. Bd. of Cty. Comm'rs of Sarasota Cty*., 567 So. 2d 414, 417 (Fla. 1990).

This Court's holdings that a voter must be permitted to vote as the voter chooses and to "intelligently cast a ballot" cannot be squared with the proposition that the voter may be forced to vote "yes" on an opposed proposition in order to vote "yes" on a favored proposition, or to vote "no" on a favored proposition in order to vote "no" on an opposed proposition, or to forgo voting.

Although Florida law plainly condemns the bundling in this case, the First Amendment also protects Florida voters from being forced to vote against their choices. As *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986) explained: :

> [t]he Constitution grants to the States a broad power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices. But this authority does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens. The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to

vote.

Tashjian v. Republican Party of Connecticut, 107 S. Ct. 550. This holding was extended by *Eu v. San Francisco Cty. Democratic Cent. Comm*., 489 U.S. 214, 222, 109 S. Ct. 1013, 1019, 103 L. Ed. 2d 271 (1989):

> To assess the constitutionality of a state election law, we first examine whether it burdens rights protected by the First and Fourteenth Amendments. .... If the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest.

Id., Eu v. San Francisco Cty. Democratic Cent. Comm., 109 S. Ct. at 1019. Appellees more fully address the First Amendment in Part IV.

[SECOND] THIS COURT'S PRECEDENTS DO NOT SUPPORT THE VALIDITY OF BUNDLING OF THE SORT APPELLEES HAVE CHALLENGED

It cannot be disputed that this Court has repeatedly exercised great caution in removing proposed amendments from the ballot. Nevertheless, it is equally without dispute that this Court has often found it necessary to remove propositions from the ballot because the ballot language was deceptive or failed to inform the voter of the content of the measure or denied the voter the right to intelligently cast a ballot. The number of these decisions is large, well known to this Court, and need not be cited here. This case is simply another in the line that this Court should hold denies voters the right to vote without undue infringement.

B. Analysis

> [FIRST] THE TRIAL COURT WAS CORRECT TO HOLD THAT THE TEXT OF §101.161 FLA. STAT. PRECLUDES BUNDLING OF THE TYPE APPELLEES HAVE CHALLENGED
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> The relevant part of §101.161 Fla. Stat. provides:
>
> (1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. .....The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.

§101.161 Fla. Stat. Contrary to Appellant's argument, the text fully supports the trial court's holding that the ballot language of these bundled proposals violates this provision. First, §101.161 Fla. Stat. is written with singular nouns and verbs, not plural, i.e., "such amendment" and "public measure" and "an explanatory statement" and "of the chief purpose and "of the measure." All of this points to "a vote" on each independent and unrelated discrete proposition instead of a single vote on bundled, i.e., plural, independent and unrelated measures some of which the voter favors and others of which the voter opposes. In short, §101.161 Fla. Stat. precludes requiring a voter to vote "no" on something the voter approves and to "yes" on something the voter rejects, or to forgo voting. This Court should affirm the trial court on this grounds.

In addition to the reason the trial court held that Amendments 7, 9, and 11 violate §102.161 Fla. Stat. Appellees submitted and maintain that the ballot summary on each of the measures does not comprise "An Explanatory Statement, Not Exceeding 75 Words in Length, of the Chief Purpose of the Measure" as required by this portion of §101.161 Fla. Stat.:

> The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.

None of the proposals challenged by Appellees complies with this mandate and this Court should strike all from the ballot on that basis alone.

The ballot language of each of the three ballot questions directly ruled upon by the trial court is:[6]

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[6]In addition, Appellees challenged proposed Amendments 6, 8 and 10 on the same grounds. Their ballot summaries are:

Proposed Amendment 6

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 16
ARTICLE V, SECTIONS 8, 21
ARTICLE XII, NEW SECTION
RIGHTS OF CRIME VICTIMS; JUDGES.—Creates constitutional rights for victims of crime; requires courts to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes. Requires judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency's interpretation. Raises mandatory retirement age of state justices and judges from seventy to seventy-five years; deletes authorization to complete judicial term if one-half of term has been served by retirement age.

Proposed Amendment 7

CONSTITUTIONAL AMENDMENT

ARTICLE IX, SECTIONS 7, 8
ARTICLE X, NEW SECTION
FIRST RESPONDER AND MILITARY MEMBER SURVIVOR BENEFITS; PUBLIC COLLEGES AND UNIVERSITIES.—Grants mandatory payment of death benefits and waiver of certain educational expenses to qualifying survivors of certain first responders and military

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Proposed Amendment 8

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.

Proposed Amendment 10

CONSTITUTIONAL AMENDMENT
ARTICLE III, SECTION 3
ARTICLE IV, SECTIONS 4, 11
ARTICLE VIII, SECTIONS 1, 6
STATE AND LOCAL GOVERNMENT STRUCTURE AND OPERATION.—Requires legislature to retain department of veterans' affairs. Ensures election of sheriffs, property appraisers, supervisors of elections, tax collectors, and clerks of court in all counties; removes county charters' ability to abolish, change term, transfer duties, or eliminate election of these offices. Changes annual legislative session commencement date in even numbered years from March to January; removes legislature's authorization to fix another date. Creates office of domestic security and counterterrorism within department of law enforcement.

members who die performing official duties. Requires supermajority votes by university trustees and state university system board of governors to raise or impose all legislatively authorized fees if law requires approval by those bodies. Establishes existing state college system as constitutional entity; provides governance structure.

Proposed Amendment 9

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 2
ARTICLE X, SECTIONS 9, 19
PROPERTY RIGHTS; REMOVAL OF OBSOLETE PROVISION; CRIMINAL STATUTES.—Removes discriminatory language related to real property rights. Removes obsolete language repealed by voters. Deletes provision that amendment of a criminal statute will not affect prosecution or penalties for a crime committed before the amendment; retains current provision allowing prosecution of a crime committed before the repeal of a criminal statute.

Proposed amendment 11

CONSTITUTIONAL AMENDMENT
ARTICLE II, SECTION 7
ARTICLE X, SECTION 20
PROHIBITS OFFSHORE OIL AND GAS DRILLING; PROHIBITS VAPING IN ENCLOSED INDOOR WORKPLACES.—Prohibits drilling for the exploration or extraction of oil and natural gas beneath all state-owned waters between the mean high water line and the state's outermost territorial boundaries. Adds use of vapor generating electronic devices to current prohibition of tobacco smoking in enclosed indoor workplaces with exceptions; permits more restrictive local vapor ordinances.

This Court has long held that ballot language that fails to inform the voter of the *chief purpose* of the measure to be voted upon cannot remain on the ballot. *Askew v. Firestone*, *supra.* None of the ballot statements of proposed Amendments

7, 9 and 11 (or of any of Commission Revisions 1-6) contains an "explanatory statement" of the "*chief purpose*" of the proposed amendment. Indeed, none of them has a "*chief purpose*" unless it be to require voters to vote to approve proposals they disapprove or to reject proposals they approve in order to vote for or against an independent unrelated proposal. In short, bundling of independent and unrelated discrete proposals deprives the voters of the authority to assess the "chief purpose" of each unrelated and independent proposal and constitutes logrolling outlawed not only §101.161 Fla. Stat. but, as explained below, also by the First Amendment.

[SECOND] THE TRIAL COURT'S APPLICATION OF §101.161 FLA. STAT. DOES NOT IMPEDE THE AUTHORITY OF THE CONSTITUTION REVISION COMMISSION TO PROPOSE REVISIONS OF THE ENTIRE CONSTITUTION OR REVISIONS OF ANY PART OF IT.

Appellant's argument on this point merely repeats the same contention made earlier. Initial Brief, p. 17. Appellees' unconstitutional or unlawful bundling argument applies to bundling of independent and unrelated discrete propositions to the amend the constitution and does not impugn comprehensive interrelated proposals to revise the whole constitution or any part of it. Nothing in the trial court's decision impedes the Constitution Revision Commission to exercise its full authority properly. As noted above, the Commission itself recognized this in R. 3.7

of its governing rules. Appellant's argument on this point is without merit.

[THIRD] THE TRIAL COURT'S APPLICATION OF §101.161 FLA. STAT. IS CONSISTENT WITH THIS COURT'S CASE LAW.

Appellant submits: "Without analysis, explanation, or citation to any authority, the Circuit Court effectively ruled that the single-subject requirement applicable to citizen initiative proposals also applies to revisions proposed by the CRC." Initial Brief, p. 24. This statement is a blatant mischaracterization of the trial court's order, which is that a proposal may not bundle independent and unrelated proposals some of which voters favor and others of which voters oppose for a single "yes" or "no" vote. (ROA 133.) This is not "imposing" the single subject requirement on revisions proposed by the Commission that involve *dependent* and *interrelated* subjects. This Court's decisions in *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984) and *In re Advisory Opinion to the Attorney Gen.-Restricts Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994) illustrate the point.

Fine removed a citizen-initiated proposal from the ballot that:

> ...contains at least three subjects. It limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.

Id., Fine v. Firestone, 448 So. 2d at 992. It is entirely possible, without any need to

decide here, that a Constitution Revision Commission could have packaged these same subjects as a proper revision with appropriate ballot language.

In re Advisory Opinion to the Attorney Gen.-Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994) is also germane. A citizen initiative bundled ten classifications of people to be protected for a single vote on an anti-discrimination measure. This Court removed it for the ballot, saying:

> The proposed amendment also violates the single-subject requirement because it enumerates ten classifications of people that would be entitled to protection from discrimination if the amendment were passed. The voter is essentially being asked to give one "yes" or "no" answer to a proposal that actually asks ten questions.

Id., In re Advisory Opinion to the Attorney Gen.-Restricts Laws Related to Discrimination, 632 So. 2d at 1020. In contrast, a Constitution Revision Commission might well have authority to incorporate these matters plus other interrelated subjects in a *revision* to Article I of the constitution with appropriate ballot title. The example Appellant has provided may be exemplary, Revision 7, "Local Option for Selection of Judges and Funding of State Courts," *available at* http://fall.fsulawrc.com/crc/ballot.html. Initial Brief, p. 25. That revision pertained to provisions of only Article V and might well constitute a proper revision of that article. These examples need not be ruled on in this case but they highlight the fact that Appellant is overreaching as to the application of the trial court's bundling

decision under §101.161 Fla. Stat.

> [FOURTH] APPLICATION OF THE RULE THAT A VOTER MAY NOT BE REQUIRED TO VOTE A SINGLE "YES" OR SINGLE "NO" VOTE ON BUNDLED *INDEPENDENT AND UNRELATED* PROPOSITIONS WHEN THE VOTER IS FORCED TO VOTE "YES" ON AN *OPPOSED* DISCRETE PROPOSITION IN ORDER TO "YES" ON A *FAVORED* DISCRETE PROPOSITION, OR TO VOTE "NO" ON A *FAVORED* PROPOSITION IN ORDER TO VOTE "NO" ON AN *OPPOSED* PROPOSITION, OR TO FORGO VOTING DOES NOT BURDEN THE COMMISSION'S DISCRETION.

Appellant's submission that wrongful bundling may be excused by the Commission's desire to reduce the length of ballots is without merit. As shown earlier and below, bundling that abridges the right to vote cannot be justified by a claim of mere inconvenience. The justification must be narrowly tailored to support a compelling state interest. *Eu v. San Francisco Cty. Democratic Cent. Comm*., *supra.,* 109 S. Ct. at 1019. The Commission is limited to proposing *revisions* of the Constitution or parts of it and has independent discretion as to the number it proposes.

Appellant also repeats its challenge to the capacity of the Court to distinguish between bundling *independent* and *unrelated* discrete propositions and a "comprehensive plan of revision." Initial Brief, p. 26. As Appellees have submitted above, making judgments of this kind may sometimes be demanding but doing so is a commonplace task that this Court routinely executes. As indicated

above, applying the single subject requirements in the Florida constitution is one example.

As to bundling, the questions the Court would ask might be: "Does the measure infringe the right of voters to intelligently vote as they choose without undue infringement? If 'yes,' is the infringement narrowly tailored to support a compelling state interest?" Answers to these questions are not difficult in this case. The Commission's proposals require voters to vote "yes" on an *opposed* discrete proposition in order to "yes" on a *favored* discrete proposition, or to vote "no" on a *favored* proposition in order to vote "no" on an *opposed* proposition, or to forgo voting. This burdens the right of voters to intelligently cast votes on propositions of their choice. Appellant has proposed no compelling state interest to justify this infringement on the right to vote.

> [FIFTH] THE CONSTITUTION REVISION COMMISSION'S PROPOSALS *"CLEARLY AND CONCLUSIVELY"* VIOLATE FLORIDA VOTERS' RIGHT TO VOTE.

Appellant's fifth argument merely repackages what has gone before. The answer is that Appellees have *clearly and conclusively* shown how and why the challenged bundled proposals must be removed from the ballot. Appellant's submission is without merit.

IV. THE CHALLENGED PROPOSALS VIOLATE FLORIDA VOTERS' FIRST AMENDMENT RIGHT TO VOTE.

Although the trial court expressed approval of Appellees' First Amendment claim, it actually grounded its decision on the holding that the bundling in the challenged proposals violated §101.161 Fla. Stat. In short, bundling denies the voters guarantee right to vote a "yes" on propositions the voter approves and "no" on those the voter rejects. This Court, too, may affirm the trial court's decision on state law grounds, thereby making it unnecessary to render an opinion on Appellees' First Amendment claims. In the event this Court finds it necessary to address the First Amendment claims, Appellees provide the following authority for their position.

Preliminarily, Appellant's "historical" justifications are readily "debunked." Initial Brief, pp. 29 and 30. The adoption of the 1968 Florida Constitution and parts of it were not bundles of independent and unrelated discrete proposals but were comprehensive revisions of an entire form of government and major parts of it. Appellees have consistently submitted that voters may intelligently address a single ballot question, such as: "Do you favor the form of government that now exists? Or do you favor the proposed change?" These questions provide a clear choice that the voter may approve or reject. These questions are worlds apart from a bundled question such as: " Do you favor banning all abortions and the banning of all sales of handguns?" and those posed in the proposals Appellees have challenged.

Appellant's references to adoption of the United States Constitution is simply wrong in the context of this case. As this Court knows, the First Amendment did not exist when the Constitution was initially adopted and when the First Amendment was adopted. Moreover, the United States Constitution was adopted by conventions called in the states and not by a vote of the people. Article VII United States Constitution. Similarly, amendments to the United States Constitution are ratified by legislatures of the states or conventions called in the states, and not by vote of the people. Article V, United States Constitution. Indeed, every amendment adopted after the adoption of the bill of rights, which included the First Amendment, is tightly confined to a single subject.[7] Finally, the First Amendment protections of the right to vote have greatly advanced since the birth of this nation.

THE PROPOSAL TO AMEND THE CONSTITUTION CHALLENGED BY APPELLEES VIOLATE THE FIRST AMENDMENT RIGHTS OF FLORIDA VOTERS

Appellant claims that Appellees' submission that requiring voters to cast a single "yes" or "no" vote (or not vote at all) on a bundle of independent and unrelated political proposals, some of which the voter supports and others of which

[7] With the possible exception of the content of the Fourteenth Amendment that became the vehicle that imposed the First Amendment on state power.

the voter opposes, infringes the First Amendment right to vote is "novel." The easy answer to that is "so what?" A primary function of this Court and of the United States Supreme Court is to apply constitutional rights to novel sets of facts. Without seminal decisions, judge-made law would be frozen and development of constitutional principles stymied. *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982) is a seminal voting rights decision of this Court. There, the Court held that a voter cannot be hoodwinked by ballot language to vote "yes" on a proposal whose actual content the voter opposes. The Court did not refer to the First Amendment but its decision plainly acknowledges that such a proposal violates the right to vote however conceived.

In adjudicating this bundling claim the Court must be mindful of its contours. They are that the voter may not be required to vote a single "yes" or single "no" vote on bundled *independent and unrelated* propositions when the voter is forced to vote "yes" on an *opposed* discrete proposition in order to "yes" on a *favored* discrete proposition, or to vote "no" on a *favored* proposition in order to vote "no" on an *opposed* proposition, or to forgo voting. Bundling of this sort plain abridges the right of the voter to as it wishes. Such an abridgement can be approved *only* if it is necessary to advance a compelling state interest that cannot otherwise be advanced.

This limitation on bundling applies only to *independent and unrelated* discrete propositions such as those before the Court in this action. As Appellees have stated above, it would not apply to proposed revisions of an entire constitution, or an article of it, or related and dependant portions of it. Hence, votes on the 1968 Florida constitution would not have been affected by it. In elections of that sort, voters chooses to select one form of constitutional government including all related parts over another form. This is entirely different from being required to vote "yes" for a discrete single proposition that one opposes in order to vote "yes" for an independent and unrelated discrete proposition one favors (or vice versa).

That is the exact dilemma Florida voters will face when voting upon the proposals Appellees have challenged. If forcing voters to cast a single voter on these independent and unrelated discrete proposals does not unconstitutionally burden the right to vote, the state would be free to force completely abhorrent choices on the people. Suppose the Commission had bundled proposal A to *ban all abortions* with proposal B *to ban the sale of handguns* for a single "yes" or "no" vote? Would that infringe the right of many Florida voters to vote as they actually wished to vote? It would surely do so. Just as surely it would abridge the First Amendment rights of voters who wished to vote "yes" on one proposition and "no" on the other. The State may not place this price on the right to vote.

Suppose the legislature were to enact a law that required all voters to vote *for all republican candidates* or *for all democrat candidates* or to forgo voting? Would that abridge the First Amendment right to vote of Florida voters who wish to vote by person and not by party? It would surely do so.

Suppose the legislature were to enact a law pursuant to Article V §10(a) Florida Constitution to bundle all Justices running for retention in a single "yes" or "no" vote? And suppose in a given year Justice A and Justice B were bundled together. Justice A was highly esteemed and popular and Justice B was incompetent and corrupt. Justice A wished to see Justice B removed from the bench[8] but, as a voter, Justice A's choices would be to vote *for* incompetent and corrupt Justice B, or to vote against Justice B and Justice A, or to forgo voting. The State may not exact this price on Justice A's right to vote. It would violate the First Amendment rights of Florida voters, including especially Justice A, to vote for candidates of their choice.

In contrast, the requirement that Florida voters vote for or against joint governor/lieutenant-governor "candidacies," Article IV §5(a) Florida Constitution, is not nullified by the anti-bundling aspect of the First Amendment. Unlike justices

[8]Although Justice A might search for a theory to separate the ballot, that is not the point of this hypothetical.

who must exercise *independent* judgment, joint governor/lieutenant-governor candidates are *not* independent and unrelated to each other. A Florida governor has power to "assign duties pertaining to the office of governor" to the lieutenant governor, Article IV §2 Florida Constitution, and in the event of vacancy the lieutenant governor succeeds to the office of governor. Article IV §3(a) Florida Constitution. In short, the voters vote for related and dependent teams of two and not for individuals.

Although Appellees' lawyer has found no case on "all fours" with this one decided *on First Amendment grounds*, this Court has openly embraced the reasoning that bundling of independent and unrelated discrete propositions in one votes is an unconstitutional burden on voters under the Florida constitution. *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984) removed an initiated proposal from the ballot that:

> ...contains at least three subjects. It limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.

Id., Fine v. Firestone, 448 So. 2d at 992. In *Fine,* this Court held:

> The single-subject requirement in article XI, section 3, mandates that the electorate's attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution. *This requirement avoids voters having to accept part of an*

> *initiative proposal which they oppose in order to obtain a change in the constitution which they support*. An initiative proposal with multiple subjects, in which the public has had no representative interest in drafting, places voters with different views on the subjects contained in the proposal in the position of having to choose which subject they feel most strongly about.

Id., Fine v. Firestone, 448 So. 2d at 988. (Italics added.)

Evans v. Firestone, 457 So. 2d 1351, 1354 (Fla. 1984) explained and extended the *Fine* holding, saying":

> Where separate provisions of a proposed amendment are an "aggregation of dissimilar provisions [designed] to attract support of diverse groups to assure its passage," 448 So.2d at 988, the defect is not cured by either application of an over-broad subject title or by virtue of being self-contained.

Id., Evans v. Firestone, 457 So. 2d at 1354.

Thereafter, the initiated proposal in *In re Advisory Opinion to the Attorney Gen.-Restricts Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994) bundled ten classifications of people for a single vote on an anti-discrimination measure. This Court removed it for the ballot, saying:

> The proposed amendment also violates the single-subject requirement because it enumerates ten classifications of people that would be entitled to protection from discrimination if the amendment were passed. The voter is essentially being asked to give one "yes" or "no" answer to a proposal that actually asks ten questions. For example, a voter may want to support protection from discrimination for people based on race and religion, but oppose protection based on marital status and familial status. Requiring voters to choose which classifications they feel most strongly about, and then requiring them to cast an all or nothing vote on the classifications listed in the amendment, defies the purpose of the single-subject limitation. Therefore, the proposed amendment fails the single-subject requirement of article IV,

section 3 of the Florida Constitution.

Id., In re Advisory Opinion to the Attorney Gen.-Restricts Laws Related to Discrimination, 632 So. 2d at 1020.

Although this Court condemned the *Fine, Evans* and *Discrimination* proposals as violating the anti-logrolling provision in the Florida constitution, these decisions acknowledge that bundling of disparate matters for one vote puts an unacceptable burden on voters - requiring them to vote for a measure the voter opposes (or against one a voter supports). Because these prior decisions condemned bundling under the Florida constitution, the Court was not required to consider First Amendment restrictions on bundling.

Nevertheless, a progression of First Amendment decisions points unerringly to the rightness of the proposition Appellees present to this Court. As stated by Chief Justice Warren in the "novel" and historic *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964):

> *And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the essence of a democratic society*, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Reynolds v. Sims, *Id.,* at 84 S. Ct. 1378. (Italics added.) If the First Amendment

protects the right of voters to vote for "candidates" *of their choice* to make laws for them, it must also protect the right of voters to vote for "propositions" of *their choice* that will become governing laws. *Reynolds v. Sims* continued:

> Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, *Ex parte Yarbrough*, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274, and to have their votes counted, *United States v. Mosley*, 238 U.S. 383, 35 S.Ct. 904, 59 L.Ed. 1355.....The right to vote can neither be denied outright, *Guinn v. United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340..., nor destroyed by alteration of ballots, see *United States v. Classic*, 313 U.S. 299, ..., nor diluted by ballot-box stuffing *Ex parte Siebold*, 100 U.S. 371, 25 L.Ed. 717... .. And history has seen a continuing expansion of the scope of the right of suffrage in this country... **The right to vote freely for the candidate of one's choice is of the essence of a democratic society**, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Id., Reynolds v. Sims, 84 S. Ct. 1362, 1377–78. (Bold added.) The bundling Appellees have attacked in this case burdens the First Amendment right of Florida voters to vote for discrete and independent constitutional propositions *of their choice*, to vote against those they oppose, and not to be forced to forgo voting as an alternative.

This Court has not lagged in acknowledging the right of voters to elect candidates *of their choice.* See, e.g., *In re Constitutionality of Senate Joint*

Resolution 2G, Special Apportionment Session 1992, 601 So. 2d 543 (Fla. 1992). Consistent with the acknowledged right of voters to vote as they choose is the oft-repeated requirement that the voter be permitted to cast an *intelligent* vote:

> All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide. .....What the law requires is that the ballot be fair and advise the voter sufficiently to enable him *intelligently* to cast his ballot.

Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954). (Italics added.) See also, *Armstrong v. Harris*, 773 So. 2d 7, 12–13 (Fla. 2000), *Askew v. Firestone*, 421 So.2d 151, 154–55 (Fla.1982) and *Wadhams v. Bd. of Cty. Comm'rs of Sarasota Cty*., 567 So. 2d 414, 417 (Fla. 1990).

The importance and quality of the First Amendment right to vote has been acknowledged by many decisions of the United States Supreme Court. In an opinion by Chief Justice Warren , *Harman v. Forssenius*, 380 U.S. 528, 85 S. Ct. 1177, 14 L. Ed. 2d 50 (1965) struck down a poll tax, stating:

> The right is fundamental 'because preservative of all rights.' *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S.Ct. 1064, 1071, 30 L.Ed. 220.

Id., Harman v. Forssenius, 85 S. Ct. at 1183. As to quality of the protection the First Amendment supplies, *Burson v. Freeman*, 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992) held:

> Accordingly, this Court has concluded that a State has a compelling interest in protecting voters from confusion and undue influence.

Id., Burson v. Freeman, 112 S. Ct. at 1851. *Wesberry v. Sanders*, 376 U.S. 1, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964) opined:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.

Plainly, the right to vote directly on the fundamental law itself is as valuable as the right to vote on the representative who will make the laws. Furthermore, as to the nature of the restriction the First Amendment imposes on state power, the United States Supreme Court has held:

> A State's broad power to regulate the time, place, and manner of elections "does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens." *Tashjian v. Republican Party of Connecticut*, 479 U.S., at 217, 107 S.Ct., at 550. To assess the constitutionality of a state election law, we first examine whether it burdens rights protected by the First and Fourteenth Amendments..... If the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny *only if the State shows that it advances a compelling state interest, ...and is narrowly tailored to serve that interest*, ... *Dunn v. Blumstein*, 405 U.S. 330, 343, 92 S.Ct. 995, 1003, 31 L.Ed.2d 274 (1972).

Eu v. San Francisco Cty. Democratic Cent. Comm., 489 U.S. 214, 222, 109 S. Ct. 1013, 1019, 103 L. Ed. 2d 271 (1989). (Italics added.) See also, *Hill v. Stone*, 421 U.S. 289, 95 S. Ct. 1637, 44 L. Ed. 2d 172 (1975):

> The basic principle expressed in these cases is that as long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand

unless the district or State can demonstrate that the classification serves a compelling state interest.

Id., Hill v. Stone, 95 S. Ct. at 643.

In sum, the bundling Appellees have challenged is a source of confusion and undue influence on Florida's voters and deprives them of the right to vote intelligently as they choose. As shown herein, that abridgement violates First Amendment protections and Appellant has not and cannot justify it with a narrowly tailored compelling state interest. Accordingly, if the Court does not affirm the trial court's decision on state law grounds, Appellees respectfully submit that it must do so on First Amendment grounds.

V. THE BALLOT LANGUAGE OF PROPOSED AMENDMENT 9 (CRC REVISION 6) IS DECEPTIVE AND MISLEADING BECAUSE IT HIDES THE BALL FROM THE VOTERS AT TO ITS TRUE EFFECT.

Proposed amendment 9, if adopted, would remove the clause - "except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law" - from Article I §2 Florida Constitution.[9] As to this proposal, the ballot language informs the voter

[9]Art. 1 § 2 All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because

only:

> PROPERTY RIGHTS; REMOVAL OF OBSOLETE PROVISION; CRIMINAL STATUTES.–Removes discriminatory language related to real estate property rights. [remainder omitted.]

The ballot language does not inform the voter that the "discriminatory" language cannot directly affect property rights of voters who by law must be citizens but affects property rights only of "aliens ineligible for citizenship." This omission blatantly "hides" the ball as to the nature and effect of the proposal from the voter.

In sum, this ballot language is clearly and deceptive misleading because it does not disclose to the voter the true purpose and effect of the proposal, i.e., to remove the power of the legislature to regulate or prohibit "ownership, inheritance, disposition and possession of real property by *aliens ineligible for citizenship*."[2] (Added.) While the existing language may seem distasteful to many people, it has a long history[10] in Florida and the nation and voters are entitled to know the effect of their votes, which the ballot language hides from them.

In addition, this Court should be mindful that 2008 Florida voters rejected a proposal to remove this same - "except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated

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of race, religion, national origin, or physical disability.

[10]See, e.g. MEASURE SEEKS TO REMOVE 'ALIEN LAND LAW' PROVISION FROM THE CONSTITUTION, 4/1/2007 FLBN 7

or prohibited by law" - clause from Article I §2 Florida Constitution.[11] The 2008 proposal was submitted to the voters under this ballot language:

> CONSTITUTIONAL AMENDMENT
> ARTICLE I, SECTION 2
> DECLARATION OF RIGHTS.--Proposing an amendment to the State Constitution to delete provisions authorizing the Legislature to regulate or prohibit the ownership, inheritance, disposition, and possession of real property by aliens ineligible for citizenship.

Florida voters rejected the 2008 proposal by 3,871,704 votes against and 3,564,090 for.[12]

The right of Florida voters not to be misled by deceptive ballot language cannot be denied and the proposal to amend Article I §2 Florida Constitution should be stricken on that basis alone as well as for reasons previously discussed.

Although the trial court did not rule directly on these measures because they were then pending for decision in this Court, Appellees also challenge the ballot language of Amendments 6 (Commission revision 1) and Amendment 8 (Commission revision 3) as deceptive and misleading. The ballot language of Amendment 6 fails to

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[11] Although unnecessary for the Court's decision, it may review a brief discussion of the background of that exception at http://archive.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s0166.ms.pdf.

[12] https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=69.

inform voters that the measure affects the existing constitutional rights of those accused of crime and the language of Amendment 8 fails to inform the voters that the measure would eliminate the venerable mandate that Florida have a uniform system of free public schools. Although this Court has previously rendered opinions on these proposals, Appellees adhere to their submissions.

CONCLUSION

For all the reasons stated above, Appellees respectfully submit that this Court should affirm the trial court's decision. If it should be appropriate to do so, this Court should also remove Amendments 6, 8, and 10 from the ballot on unlawful bundling grounds and 6 and 10 on misleading ballot language grounds.

CERTIFICATE AS TO FONT

The undersigned lawyer certifies that this brief is presented in Times New Roman 14 Font.

CERTIFICATE OF SERVICE

The undersigned lawyer certifies that this brief was emailed or efiled to the following counsel on September 21, 2018: Amit Agarwal, amit.agarwal@myflorida.com, Edward M. Winger, edward.wenger@myfloridalegal.com, and Jordan E. Pratt, jordan.pratt@myfloridalegal.com.

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[2]All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; *except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law*. No person shall be deprived of any right because of race, religion, national origin, or physical disability. Article I §2 (Italics added.)