

**IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

LEAGUE OF WOMEN VOTERS OF
FLORIDA, INC., *et al.*,

Plaintiffs,

v.

Case No. 2018-CA-001523

KENNETH DETZNER, in his official capacity
As Florida Secretary of State,

Defendant.

_____ /

**DEFENDANT’S CONSOLIDATED CROSS-MOTION
FOR SUMMARY JUDGMENT AND RESPONSE IN OPPOSITION
TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Defendant, Florida Secretary of State Ken Detzner, submits this consolidated Cross-Motion for Summary Judgment and Response in Opposition to Plaintiffs’ Motion for Summary Judgment (“PMSJ”).

At issue is proposed Amendment 8 to the Florida Constitution, dealing with public education in Florida, approved by Florida’s Constitution Revision Commission (the “CRC”) in the form of its Revision 3.¹ If adopted by the people,

¹ Plaintiffs mistakenly refer throughout their motion to “Revision 8,” when they clearly mean to refer to Amendment 8. The proposed amendment, included as Exhibit 5 to Plaintiffs’ Appendix to their motion, is explicitly denoted therein as Revision 3. For the sake of clarity, references herein will be to Amendment 8 rather than Revision 8, which is a proposal to end wagering on dog racing in Florida and is at present to be included on the ballot as Amendment 13.

Amendment 8, in relevant part, would: (1) create term limits of eight consecutive years for school board members; (2) require the Florida Legislature to provide for the promotion of civic literacy in public schools; and (3) limit a school board's duties to operate, control, and supervise free public schools within its school district to schools "established" by the district school board, thereby allowing the State to operate, control, and supervise additional public schools in Florida that it establishes.

After more than a year of public meetings and deliberations, the CRC approved Amendment 8, along with seven other proposals, for placement on the 2018 General Election ballot. Plaintiffs argue that this Court should prevent the Florida Electorate from casting ballots on Amendment 8 because, in Plaintiffs' view, its ballot title and summary are misleading, are inaccurately understated, and fail to inform the voting public of Amendment 8's effects.

Amendment 8 suffers from none of these defects, and this Court should reject Plaintiffs' attempt to interfere with the amendment process, which attempt stems primarily from their disagreement with Amendment 8 as a matter of policy.

As a threshold matter, this Court's review of Plaintiffs' 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," *id.*; *see*

also Preamble, Fla. Const.² In exercising that sovereignty, “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.” *Pope*, 104 So. 2d at 842 (emphasis added). Accordingly, courts must exercise “extreme care, caution, and restraint” before preventing the Florida Electorate from voting on a proposed constitutional revision. *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)) (quotation marks omitted).

Second, judicial review of the amendment process is extremely deferential. If “**any reasonable theory**” exists supporting a revision’s placement on the ballot, then the revision must remain on the ballot. *Armstrong v. Harris*, 773 So. 2d 7, 14 (Fla. 2000) (quoting *Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956)) (internal quotation marks omitted) (emphasis added). 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.* To that end, Florida courts are not to interfere with the amendment process “unless the laws

² “We, the people of the State of Florida, ... do ordain and establish this constitution.” Preamble, Fla. Const.

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).

Here, as shown below, Plaintiffs have failed to meet this heavy burden. Because the ballot title and summary for Amendment 8 provide ample notice to the voters using clear and unambiguous language, the Florida Electorate is entitled to vote on the amendment, and this Court should reject Plaintiffs’ challenge and grant summary judgment in favor of Defendant.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiffs concede that this Court’s review is limited to whether the ballot title and summary for Amendment 8 provide fair notice to the Electorate of Amendment 8’s chief purpose in clear and unambiguous language. *See* PMSJ at 8-9. Given this narrow inquiry, many of the facts Plaintiffs recite in their motion for summary judgment have no legal relevance and, accordingly, the Court should disregard them.

The following undisputed facts, by contrast, are material:

On May 9, 2018, Florida’s Constitution Revision Commission submitted eight proposed constitutional revisions to the Florida Secretary of State. *See* PMSJ at 4.

Specifically, Amendment 8, if adopted, would accomplish the following:

- it would amend article IX, section 4 of the Constitution to impose term limits of eight consecutive years on school board members, and amend article XII of the Constitution to provide for when the term limits provision is to take effect;

- it also would amend article IX of the Constitution by adding a new section pursuant to which the Legislature is to provide for the promotion of civic literacy to ensure that public school students understand and are prepared to exercise their rights and responsibilities as citizens of a constitutional republic; and
- it further would amend article IX, section 4 of the Constitution to limit a school board's duties to operate, control, and supervise free public schools within its school district to schools established by the district school board, thereby allowing the State (or its delegate) to operate, control, and supervise additional public schools in Florida that it (or its delegate) establishes.

See PMSJ Appendix Exhibit 5.

Thus, all three features of Amendment 8 concern public education, and all three propose amendments to article IX of Florida's Constitution (with one also proposing a corresponding amendment to article XII regarding effective date).

The full text of the proposed changes approved by the CRC and included in Amendment 8 is as follows:

REVISION 3

A proposal to revise the State Constitution by the Constitution Revision Commission of Florida.

A proposed revision relating to education; amending Section 4 of Article IX and creating a new section in Article XII of the State Constitution to establish a limitation on the period for which a person may serve as a member of a district school board; amending Section 4 of Article IX of the State Constitution to specify which schools are operated, controlled, and supervised by a school board; and creating a new section in Article IX of

the State Constitution to require the Legislature to provide for the promotion of civic literacy in public education.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 4 of Article IX of the State Constitution is amended, and a new section is added to that article, to read:³

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.

A new section is added to Article XII of the State Constitution to read:

³ The Revision contains a footer reading: “**CODING:** Words stricken are deletions; words underlined are additions.”

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.

PMSJ Appendix Exhibit 5.

Pursuant to Section 101.161(1), Florida Statutes,⁴ the CRC has approved the following statement, including title (falling within the statutory limit of 15 words)

⁴ Section 101.161(1), Florida Statutes, in its entirety, provides:

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 and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. 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. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or

and summary (falling within the statutory limit of 75 words), for inclusion on the November 2018 General Election ballot to inform the Florida Electorate of Amendment 8’s chief purpose and effects:

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.

PMSJ Appendix Exhibit 5.

ARGUMENT

I. APPLICABLE LEGAL STANDARDS FOR ASSESSING CHALLENGES TO BALLOT TITLES AND SUMMARIES.

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

spoken of. This subsection does not apply to constitutional amendments or revisions proposed by joint resolution.

§ 101.161(1), Fla. Stat.

summary, “not exceeding 75 words in length,” that must explain “the chief purpose of the measure.” § 101.161(1), Fla. Stat.

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, the ballot title and summary must “state in clear and unambiguous language the chief purpose of the measure,” *Askew*, 421 So. 2d at 154-55, 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.

The Florida Supreme Court has “reaffirmed numerous times” that the ballot title and summary “may not be read in isolation,” but instead “**must be read together** in determining whether the ballot information properly informs the voters.” *In re Advisory Op. to Att’y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 803–04 (Fla. 2014) (emphasis added) (quoting *Advisory Op. to the Att’y Gen. re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 166 (Fla. 2002)) (collecting cases). This is so because the title and summary have different functions: the title is merely a “caption ... by which the measure is commonly referred to or spoken of,” while the summary is “an explanatory statement ... of the chief purpose of the measure.” § 101.161(1), Fla. Stat. The Florida Supreme Court also has instructed 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 v. Fla. Dep’t of State*, 48 So. 3d 694, 701 (Fla. 2010) (voters presumed to have “a certain amount of common understanding and knowledge”).

“[T]he title and summary need not explain every detail or ramification of the proposed amendment.” *Advisory Op. to the Att’y Gen. re Florida’s Amendment to Reduce Class Size*, 816 So. 2d 580, 585 (Fla. 2002) (quoting *Advisory Op. to the Att’y Gen. re Prohibiting Public Funding of Political Candidates’ Campaigns*, 693 So. 2d 972, 975 (Fla. 1997)). “In other words, ‘the ballot summary is not required to include all possible effects ... nor ‘to explain in detail what the proponents hope to accomplish.’” *Id.* (quoting *Tax Limitation*, 673 So. 2d at 868); *accord Advisory Op. to the Att’y Gen. re Protect People from the Health Hazards of Second-Hand Smoke*, 814 So. 2d 415, 419 (Fla. 2002) (“[A]n exhaustive explanation of the interpretation and future possible effects of the amendment [is] not required in the ballot title and summary.” (quotation marks omitted)). Instead, the ballot title and summary need only “adequately disclose[]” that which is “the primary purpose of the amendment.” *Florida’s Amendment to Reduce Class Size*, 816 So. 2d at 585–86.

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*, 48 So. 3d at 701 (quoting *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008)).

As explained below, the ballot language for Amendment 8 easily satisfies this standard.

II. THE BALLOT TITLE AND SUMMARY, IN CLEAR AND UNAMBIGUOUS LANGUAGE, CONVEY THE CHIEF PURPOSE OF AMENDMENT 8 TO THE FLORIDA ELECTORATE.

Amendment 8's ballot title and summary provide ample notice of the proposal's content in non-misleading, clear, and unambiguous language that plainly and directly conveys the chief purpose of the amendment. No more is required and, accordingly, Defendant is entitled to judgment in his favor as a matter of law.

As noted, Amendment 8 seeks to accomplish the following:

- It would amend article IX, section 4 of the Constitution to impose term limits of eight consecutive years on school board members, and amend article XII of the Constitution to provide for when the term limits provision is to take effect;
- It would further amend article IX of the Constitution by adding a new section pursuant to which the Legislature is to provide for the promotion of civic literacy to ensure that public school students understand and are prepared to exercise their rights and responsibilities as citizens of a constitutional republic; and

- It would further amend article IX, section 4 of the Constitution to limit a school board’s duties to operate, control, and supervise free public schools within its school district to schools established by the district school board, thereby allowing the State (or its delegate) to operate, control, and supervise additional public schools that it (or its delegate) establishes.

Each of the three objectives is discussed, in turn.

A. Terms Limits for School Board Members.

The ballot title of Amendment 8, “SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS,” plainly indicates that the amendment concerns school board term limits. Also included in the ballot statement are the two provisions of the Florida Constitution that would be amended with respect to school board members’ being subjected to term limits: “ARTICLE IX, SECTION 4”; and “ARTICLE XII,” for which there would be a “NEW SECTION.”

The ballot summary goes on to state, in pertinent part: “Creates a term limit of eight consecutive years for school board members.”

Taken together—as the law requires them to be for present purposes—it is readily apparent that the title and summary meet the legal test for inclusion on the ballot. They “fairly inform the voter of the chief purpose of the amendment” and do not “mislead[] 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)).

Moreover, the title and summary together are fully consistent with the actual text of the proposed changes to articles IX and XII of the Constitution with respect to school board term limits, fully set forth in the Statement of Undisputed Material Facts, *supra*.

Apart from Plaintiffs’ objections to the “bundling” of these provisions with the others included in Amendment 8—unfounded objections, because the CRC is not constrained by the single-subject limitation applicable to other proposed amendments (*see* Argument III, *infra*), and because all of the provisions deal with amendments to article IX of the Constitution—Plaintiffs appear to have no beef when it comes to Amendment 8 insofar as it proposes term limits for school board members.

B. Promotion of Civic Literacy.

The ballot title of Amendment 8 includes the language “SCHOOL BOARD ... DUTIES; PUBLIC SCHOOLS,” alerting voters that the amendment will address responsibilities of school boards and public schools. Also included in the ballot statement is the provision of the Florida Constitution that would be amended, *viz.*, “ARTICLE IX ... NEW SECTION.”

The ballot summary then provides, in pertinent part, that the proposal “requires the legislature to provide for the promotion of civic literacy in public schools.”

Viewed together, the title and summary meet and exceed the requirements for getting on the ballot. They fairly inform the voters of the chief purpose of the amendment in this respect, and they are not misleading.

While the wisdom of this provision as a policy matter is beyond the Court’s purview, it is noteworthy that it is consistent not only with the full text of the amendment in seeking to educate children so that they understand their “rights and responsibilities as citizens of a constitutional republic,” but also with the Guarantee Clause of the United States Constitution, which provides, in pertinent part: “The United States shall guarantee to every State in this Union a Republican Form of Government....” Art. IV, § 4, U.S. Const.

Again, apart from Plaintiffs’ unfounded “bundling” objections, Plaintiffs appear to mount no serious challenge to the inclusion in Amendment 8 of the civic literacy provision.

C. Limitation of School Board’s Duties to Public Schools Within Its District Established by the District School Board.

Based on the arguments presented by Plaintiffs, it is clear that it is Amendment 8’s provisions eliminating school boards’ monopoly on establishing and controlling public schools within their districts that is driving Plaintiffs’ efforts to keep the proposal off the ballot.

If passed in November, Amendment 8 will add the following language, shown in bold, to Article IX, section 4(b) of the Florida Constitution: “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.” By adding this language, the Constitution will limit a school board’s control to those public school it establishes, and necessarily eliminate its existing constitutional authority to control public schools that have **not** been established by it.

The ballot summary for Amendment 8 states, in relevant part: “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.” The summary thus informs the Electorate—in clear, unambiguous, non-misleading language—that, if they vote in favor of Amendment 8, then school boards across the state will no longer have control over public schools they do not establish. No more is necessary for inclusion on the ballot summary.

Because the subject matter pervading all of Amendment 8 is public education, it is worth pausing, before discussing more fully the precise language of Amendment 8’s ballot title and summary limiting local school boards’ duties, to consider public education in Florida more broadly.

The voters have enacted article IX of the Florida Constitution, dealing with education, and have resolved that “[t]he education of children is a fundamental value of the people of Florida. It is therefore a paramount duty of **the state** to make

adequate provision for the education of all children residing within its borders.” Art. IX, § 1(a), Fla. Const. (emphasis added). Thus, it is the State—not Florida’s municipalities, and not its local school boards—which the people have made chiefly responsible for ensuring that provision is made to educate all children residing in Florida. In so doing, and in enacting article IX, the people have exercised their authority over public education statewide, and they reserve the power to amend the provisions of article IX.

As Plaintiffs admit, PMSJ at 3, article IX, section 1(a) of the Florida Constitution further imposes a duty on the State to make “adequate provision ... for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high-quality education....” Thus, it is appropriate for the State to take reasonable steps to facilitate the establishment and operation of uniformly excellent free public schools throughout Florida.

However, the Florida Constitution does not define, or delimit, the term “public schools,” and thus leaves that term open for alternatives to the traditional public schools that local school boards have established and operated. As a result, the Legislature has acted within its authority in recognizing, by statute, other types of public schools, including: laboratory schools, § 1002.32, Fla. Stat.; schools for the deaf and blind, § 1002.36, Fla. Stat.; art schools, § 1002.35, Fla. Stat.; and virtual

schools, § 1002.37, Fla. Stat. Most significant as of this particular time in our history are charter schools, § 1002.33, Fla. Stat.

While the term “charter school” is not defined by statute, “[a]ll charter schools in Florida are public schools and shall be part of the state’s program of public education.” § 1002.33(1), Fla. Stat. Florida statutory law provides that charter schools in Florida “may be formed by creating a new school or by converting an existing public school to charter status.” *Id.*

Significantly, the Florida Constitution does not indicate how or by whom public schools are to be established. It does, however, currently give local school boards a monopoly to “operate, control and supervise all free public schools within the school district....” Art. IX, § 4(b), Fla. Const. Based upon that provision, the First District a decade ago held that a statute establishing the Florida Schools of Excellence Commission with the power to authorize charter schools was facially unconstitutional, because it conflicted with the local school boards’ monopoly power under article IX, section 4(b) of the Constitution. *Duval Cty. Sch. Bd. v. State, Bd. of Educ.*, 998 So. 2d 641, 644 (Fla. 1st DCA 2008).

However, that monopoly power—like all other aspects of public education—can be modified or eliminated per amendment of the Constitution. This is the essence of a constitutional republic. And Amendment 8 proposes to do precisely

that—if the voters agree. The question before the Court is whether the voters are to be accorded the opportunity to make that decision for themselves.

Plaintiffs plainly are most exercised about the prospect of local school boards losing their monopoly power to prevent charter schools from forming within their districts and competing with traditional public schools located there. Charter schools are widely popular with many parents and students—indeed, the Florida Department of Education states on its website that charter schools “are very popular” and “among the fastest growing school choice options in Florida.”⁵ But it is well known that charter schools are vigorously opposed by many traditional public school proponents, including teachers’ unions. The popularity of charter schools and the pushback against them are beyond the scope of proper consideration by the Court for purposes of considering whether Amendment 8 may appear on the ballot. These are matters for the voters to consider.

Notably, the Florida Constitution makes no mention of charter schools or any other category of public schools. The Constitution empowers local school boards to “operate, control and supervise all free public schools within the school district....” Art. IX, § 4(b), Fla. Const. It is this provision which gives rise to local

⁵ See <http://www.fldoe.org/schools/school-choice/charter-schools/> (last visited on August 7, 2018).

school boards' authority to establish and run charter schools, because charter schools are "public schools" per section 1002.33(1), Florida Statutes, as shown above.

The ballot title and summary of Amendment 8 go far beyond informing the voters of the chief purpose of the amendment with respect to ending the local school boards' monopoly over charter schools and other alternative forms of public schools, and the title and summary are in no fair sense misleading.

The ballot title, in pertinent part, includes the words "SCHOOL BOARDS ... DUTIES; PUBLIC SCHOOLS." In addition, the ballot statement directs the voters' attention to the provision of the Constitution to be amended, *viz.*, "ARTICLE IX, SECTION 4." Thus, the title alerts voters to proposed changes with respect to the duties of school boards and public schools.

The ballot summary, in pertinent part, states: "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." The summary thus not only apprises voters of the current status of district school boards' duties and how they control all public schools, but also graphically explains that the State will be permitted to exercise those **same duties** over public schools that are **not** established by the local school boards.

While the proposed change to the text of article IX, section 4(b) of the Constitution to empower the State is efficiently accomplished by the addition of just six limiting words, *viz.*, “established by the district school board”—none of which mentions the State—the summary not only is consistent with the text, but also goes out of its way to apprise the voters that the effect of the change will be to give the State the power to operate, control, and supervise public schools not established by the school boards.

Plaintiffs complain at length that the summary is somehow misleading to the public because no mention is made of charter schools in particular. But the language of the summary tracks almost exactly the very language in the Constitution that gives the local school boards their power over charter schools—language likewise devoid of any mention of charter schools. Article IX, section 4 empowers the school board to “operate, control and supervise all free public schools within the school district....” The ballot summary provides that the proposed amendment would empower the State “to operate, control, and supervise additional public schools in Florida that it establishes.” The current language of article IX, section 4(b) has not been construed to be misleading or too restrictive to cover alternative forms of public schools including charter schools when it comes to the school boards’ duties. It follows that the ballot summary, in tracking that language, likewise is not misleading

or too restrictive to cover alternative forms of public schools including charter schools when it comes to the State's duties.

Clearly, local school boards have interpreted the term "public schools" to include charter schools; even when they have refused to license charter schools, they have nevertheless recognized their own authority to grant such licenses. If the school boards were without power to establish and control charter schools under the current wording of article IX, section 4(b)—despite the absence of the term "charter school"—there would be no charter schools in Florida at all. But obviously there are. Hence, from the public's standpoint, there has been no fatal confusion arising from the absence of the words "charter school" from article IX, section 4(b)'s grant of authority to the school boards. The same must hold here with respect to the ballot summary's statement of the amendment's grant of authority to the State.

Just how the State will choose to exercise its power to establish and control public schools is of no moment for present purposes, any more than the question of how school boards would exercise their own power was of any moment when the current version of article IX, section 4(a) was put on the ballot for consideration by the Electorate. How the State chooses to exercise or delegate its authority will be for it to decide, subject to the will of the voters when candidates for the Legislature stand for election. Regardless, such considerations are for the people, not the courts.

Because Amendment 8's ballot title and summary are valid, this Court should grant summary judgment in favor of Defendant and deny Plaintiffs' Motion.

III. PLAINTIFFS' SUMMARY JUDGMENT ARGUMENTS ARE MERITLESS.

If there is anything misleading for the Court to consider, it is Plaintiffs' arguments in support of removing Amendment 8 from the ballot. This is evident almost immediately in their Motion, where they state on the first page: "Revision 8 [sic] ... would (1) remove local school boards' authority to authorize and supervise newly-created charter schools...." PMSJ at 1. As shown above, the only "removal" would be the school boards' monopoly over all newly established public schools, including new charter schools. Nothing in the amendment in any way diminishes the school boards' authority to establish new public schools of whatever sort; nor does the amendment threaten to reduce the school boards' authority or duties with respect to all schools they establish.

Plaintiffs' misleading contentions continue with their misrepresentation that the amendment would "give this authority to unspecified public or private entities in the future." *Id.* As the summary indicates, the amendment would allow for the State—not the private sector—to assume comparable duties with respect to public schools not established by the school boards. How the State would go about doing this, and how it might choose to delegate its duties, are simply not grounds for deeming the ballot title and summary for Amendment 8 to be lacking or misleading.

No matter what the State opts to do, its authority under the amendment would extend only to “public schools”—and in Florida, by law, all charter schools are public schools.

Similarly, Plaintiffs’ gripe that the title and summary “omit crucial information” about the amendment’s “intended effects” is baseless. As explained *supra*, while the change in article IX, section 4(b) of the Constitution to empower the State is efficiently accomplished by the addition of just six limiting words, *viz.*, “established by the district school board”—none of which mentions the State—the summary goes further, by apprising the voters that the change will have the effect of giving the State the power to operate, control, and supervise public schools not established by the school boards.

By the same token, Plaintiffs’ continuing objection that voters would not be adequately informed that the amendment would allow the State to ignore the school boards’ wishes in deciding to establish new charter schools is without merit. The summary could not be plainer that the State will have the authority to exercise duties that are currently exercised solely by the school boards. This is more than adequate to apprise the voters that the State will be able to make such decisions for itself. Whether the State will consider objections lodged by particular school boards to particular proposed new public schools, including new charter schools, will be for the State to decide.

Plaintiffs’ attempts to look behind the actual language of the proposed amendment and the ballot title and summary, by referring to statements made during the course of deliberations about the amendment, are outside the proper scope of the Court’s inquiry, as shown above. The only pertinent questions here are whether the ballot title and summary, taken together, clearly and unambiguously inform the voters of the chief purpose of Amendment 8—which they do—and whether the title and summary are misleading—which they are not.

Plaintiffs further err in objecting to the fact that Amendment 8’s provision concerning school board duties is “bundled” with the other provisions. PMSJ at 18. But the single-subject amendment limitation applies only to citizen initiatives, art. XI, § 3, Fla. Const., and not to CRC proposals, art. XI, § 2, Fla. Const. *See Advisory Op. to the Att’y Gen. re 1.35% Property Tax Cap*, 2 So. 3d 968, 972 (Fla. 2009) (distinguishing citizen initiative amendment process as only one needing single-subject restriction); *Advisory Op. to the Att’y Gen. re Fish and Wildlife Conservation Comm’n*, 705 So. 2d 1351, 1353 (Fla. 1998) (same). In any event, it was reasonable for the CRC to combine the provisions of Amendment 8, because all deal with proposed changes to article IX of the Constitution.

Finally, Plaintiffs’ contentions that the title or summary could have been worded differently—and, by their reckoning, better—misses the mark as a matter of law. Under article XI, section 5 of the Florida Constitution and section 101.161(1),

Florida Statutes, the question is not whether someone else could have drafted a potentially better ballot title and summary, but whether the language of Amendment 8 satisfies the standard for inclusion on the ballot. *See Askew v. Firestone*, 421 So. 2d at 154-55.

CONCLUSION

Because the ballot title and summary for Amendment 8 are clear, unambiguous, and provide fair notice to Florida voters of the chief purpose of the proposed amendment, this Court should grant summary judgment in favor of Defendant and deny Plaintiffs' motion for summary judgment.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of August, 2018, a copy of the foregoing was served by notice of electronic filing via the Court's electronic filing system on all counsel of record:

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