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

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

Plaintiffs,

vs. Case No. 2018-CA-001523

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

Defendant.
_____/

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Rule 1.510 of the Florida Rules of Civil Procedure and this Court's July 23, 2018 Scheduling Order, the Plaintiffs, the League of Women Voters of Florida, Patricia Brigham, and Shawn Bartelt ("Plaintiffs"), submit this Motion for Summary Judgment and Incorporated Memorandum of Law. Plaintiffs seek a final judgment declaring that the ballot title and summary for Revision 8 to the Florida Constitution ("Revision 8") proposed by the Florida Constitution Revision Commission ("CRC") violate section 101.161(1), Florida Statutes, and a final injunction barring Florida Secretary of State Ken Detzner ("Defendant") from placing Revision 8 on the ballot for the general election to be held on November 6, 2018.

I. INTRODUCTION

Revision 8 is a proposed constitutional amendment that would (1) remove local school boards' authority to authorize and supervise newly-created charter schools and potentially other unspecified public schools in their county and (2) give this authority to unspecified public or

private entities in the future. For voter approval of proposed constitutional amendments to be valid, voters must understand what they are voting on. The ballot title and summary drafted by the CRC for Revision 8, however, mislead voters and omit crucial information about both of the Revision's intended effects. Revision 8 is defective and therefore must not be placed on the ballot.

The history of Revision 8 demonstrates that it was drafted and approved to overturn past court cases holding that the Florida Constitution delegates to school boards exclusive initial authority to authorize and supervise all public schools, including charter schools, in their counties. Revision 8's drafters wish to permit the legislature to designate some other entity or entities—a state-wide charter school authorizer, a private entity, or something else—to authorize new charter and potentially other unspecified types of public schools, thereby removing that authority from the local school boards accountable to their voters. But the ballot title and summary for Revision 8 obscure this purpose by omitting the word "charter"; by using terms which are undefined in state law and misleading to voters; and by falsely suggesting that, if Revision 8 is passed, "the state" will establish and supervise new schools.

Plaintiffs have therefore brought this action seeking to prevent the placement of Revision 8 on the ballot, and now move for summary judgment on that claim.

II. BACKGROUND

A. Plaintiffs

Plaintiff Patricia Brigham is an Orange County resident, Florida taxpayer, and president of the League of Women Voters of Florida. Plaintiff Shawn Bartelt is an Orange County resident, Florida taxpayer, and Second Vice President of the League of Women Voters of Florida. The League of Women Voters of Florida, Inc., is a nonpartisan member-ship based issue-advocacy organization with approximately 6,000 members in 29 local chapters across the

state. Plaintiffs have brought suit because they believe that the current title and ballot summary for Revision 8 do not inform the public of the significant effect it would have on local democratic control of public schools.

B. Current Law

Florida's system of public schools is governed by local and state officials and agencies, each with related but independent duties to educate all children in the state. Since 1968, the Florida Constitution has relied on local elected school boards to exercise exclusive authority over the public schools within each school board's respective school district:

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

Art. IX, § 4(b), Fla. Const. (emphasis added). This delegation of constitutional authority includes both traditional public schools and charter schools, both of which are "free public schools" as that term is used in the constitution. § 1002.33, Fla. Stat. ("All charter schools in Florida are public schools and shall be part of the state's program of public education."). Also, since 1998, the Florida Constitution has obligated the State of Florida, including all branches of state government, to provide a uniform, high quality system of free public schools:

> Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allow students to obtain a high quality education . . . .

Art. IX, § 1(a), Fla. Const.

These constitutional provisions do not explicitly address the "establishment" of public schools (the term used in the ballot summary, *see infra* Section II.E). But Florida courts have held that the constitution prohibits the state from enacting measures authorizing new charter schools at the state level if such measures would limit local school districts to merely

"ministerial" functions. *See Duval Cty. Sch. Bd. v. State, Bd. of Educ*., 998 So. 2d 641, 644 (Fla. 1st DCA 2008). The current constitutional and statutory scheme permits the state to play an active role in *reviewing* districts' decisions concerning charter authorization and supervision, but only after local school boards have made authorization decisions in the first instance. *See Sch. Bd. of Palm Beach Cty. v. Fla. Charter Educ. Found., Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (appeals process for district denials of charter authorization complies with Florida Constitution).

C. Constitution Revision Commission

Article XI, Section 2 of the Florida Constitution establishes a 37-member Constitution Revision Commission which convenes every 20 years to debate and propose revisions to the Florida Constitution. A vote of sixty percent of the general electorate is required for any such revision to be effective. Art. XI, § 5(e), Fla. Const. The most recent CRC concluded its work on May 9, 2018, proposing eight revisions for the November 2018 ballot.

D. Proposal 71

In March and April of 2018, the CRC debated a number of revisions to the Florida Constitution. On March 21, 2018, the CRC approved Proposal 71, which, as then drafted, would have made the following revision to Article IX, Section 4(b) (proposed language appears in underlined type; words stricken are proposed deletions):

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

(*See* Appendix 1).

During debates over Proposal 71, its sponsor stated that the proposed revision was intended to overrule *Duval County School Board*, 998 So 2d at 644, and allow the state

unfettered discretion to grant the authority to authorize new charter schools to any of a variety of potential public or private entities. (*See* Appendix 7 at 60-62, 124).

E. Bundling to Create Revision 8

Rather than place Proposal 71 on the ballot on its own, the CRC "bundled" it with two other unrelated changes to the Florida Constitution's education article. The language from Proposal 71 was reworded slightly to provide: "The school board shall operate, control, and supervise all free public schools established by the district school board within the school district . . . ." This language was combined with CRC-approved Proposals 10 and 43 to create a single take-it-or-leave it omnibus education amendment, referred to by the CRC as "Revision 3." (*See* Appendix 5). (The revision appears as Revision 8 on the November 2018 ballot because it is numbered in order after proposed amendments put forth by the Legislature and through citizen petitions.) The portion of Revision 8 that was passed as Proposal 43 would establish term limits for school board members. (*See* Appendix 3). The portion of Revision 8 that was passed as Proposal 10 would create a constitutional requirement for civics education in Florida public schools. (*See* Appendix 4).

Commissioner Donalds was also the sponsor of Proposal 43. She noted that term limits have "overwhelming support with the public," with recent polling showing approval as high as 82 percent. (Appendix 7 at 6-7). The sponsor of Proposal 10, Commissioner Gaetz, explained that he supported bundling his proposal with other education provisions because "it will help some of those other education issues pass. I don't think you are going to get too many people in the state of Florida who are going to look at a ballot that says our children ought to be civically literate and say we are sure as heck against that." (Appendix 6 at 464). However, a number of CRC members recognized that bundling the proposals would cause problems for voters. For instance, Commissioner Smith stated: "These are three separate issues that people have strong

issues on . . . . This one will be a little hard for voters to truly make their decision." (Appendix 8 at 157-158). Similarly, Commissioner Joyner offered that: "The ultimate question that is posed [by combining the proposals] is if you want term limits and civic literacy, then you have to give up control of your local schools. And these are three distinct questions that should be dealt with separately." (Appendix 9 at 163).

Despite these and other objections, the motion to "unbundle" proposals 10, 43, and 71 failed by a 13 to 22 vote. (*See* Appendix 10 at 179). In the end, the 2017-18 CRC approved eight proposed constitutional revisions. Revision 8 was then designated by Defendant Detzner as ballot number 8 on the November 2018 general election ballot. The CRC-drafted and approved[1] title and summary read as follows:

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.

(Appendix 5).

III. LEGAL STANDARD

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law." *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000) (citing *Menendez v. Palms West Condominium*

[1] Only the CRC may prepare ballot language for CRC-proposed revisions. § 101.161(1), Fla. Stat ("The ballot summary of the amendment … and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal….").

Ass'n, 736 So. 2d 58, 60 (Fla. 1st DCA 1999) ("a trial court may grant a motion for summary judgment only if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law")). Courts view cases that center on the "construction of a written instrument and the legal effect to be drawn therefrom" as being questions of law rather than questions of fact. *Id.* at 131 (quoting *Cox v. CSX Intermodal, Inc*., 732 So. 2d 1092, 1096 (Fla. 1st DCA 1999) (internal citation omitted)).

IV. ARGUMENT

Revision 8 should not be placed on the ballot because its ballot title and summary do not accurately inform voters of the important change they are being asked to make to the Florida Constitution. If voters are not accurately informed of such changes, their "approval [is] a nullity." *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000). From the ballot title and summary alone, voters "must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be." *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976).

The purpose of Revision 8 is to allow the legislature to (1) remove from local school boards their current constitutional authority and duty to directly authorize and supervise public schools; and (2) allow that authority to be given to one or more unspecified public or private entities. But the title and summary of Revision 8 obscure the first purpose and affirmatively mislead voters on the second. Revision 8's title and summary both mislead voters about the effects they affirmatively claim it would have, and omit other effects entirely.

A. Plaintiffs Have Standing to Bring this Action

Individual plaintiffs Patricia Brigham and Shawn Bartelt have standing to challenge to bring this action as taxpayers. *See, e.g., Armstrong*, 773 So. 2d at 11 (individual taxpayer plaintiffs had standing to challenge amendment on the grounds that ballot language was

misleading); *City of Hialeah v. Delgado*, 963 So. 2d 754, 756 (Fla. 3d DCA 2007) ("A voter has standing to challenge ballot language on a claim that the language fails to comply with subsection 101.161(1), Florida Statutes."). Plaintiff League of Women Voters of Florida, Inc., also has standing to bring this action on behalf of its members. *See NAACP, Inc. v. Fla. Bd. of Regents*, 863 So. 2d 294, 299 (Fla. 2003) (NAACP had associational standing to challenge policy affecting a substantial number of its members).

B. An Amendment's Merits Are Irrelevant to a Challenge to its Title and Description

In reviewing a challenge to a proposed ballot amendment, courts look only at whether the language of the proposal meets the state constitutional and statutory requirements enumerated below. Courts do not review the merits of the proposed amendment. *See Advisory Op. to Atty. Gen. ex rel. Amendment to Bar Government from Treating People Differently Based on Race in Public Educ.*, 778 So. 2d 888 (Mem), 891 (Fla. 2000). At the ballot amendment stage, courts lack "the authority or responsibility to rule on the merits or the wisdom of these proposed initiative amendments." *Advisory Op. to the Atty. Gen. re Tax Limitation*, 644 So. 2d 486, 489 (Fla. 1994).

C. Courts Must Ensure Ballot Titles and Summaries Are Complete and Accurate

The Supreme Court has held that "'[a]lthough the constitution does not expressly authorize judicial review of amendments proposed by the Legislature … the courts are the proper forum in which to litigate the validity of such amendments.'" *Roberts v. Doyle*, 43 So. 3d 654, 657 (Fla. 2010) (per curiam) (quoting *Armstrong*, 773 So. 2d at 13-14). The Court has extended the accuracy requirement to "appl[y] to all proposed constitutional amendments," not merely those proposed by the Legislature. *Roberts*, 43 So. 3d at 657. Specifically, the courts have the power to determine whether proposed constitutional amendments comply with Article IX, Section 5(a) of the Florida Constitution, which requires that they be "'*accurately* represented on

the ballot; otherwise, voter approval would be a nullity.'" *Id.* (quoting *Armstrong*, 773 So. 2d at 12) (emphasis in original).

To be accurate, a ballot title and summary must avoid both (1) misleading language and (2) material omissions; the Court has described the accuracy requirement as a type of "'truth in packaging' law for the ballot." *Id*. (quoting *Armstrong*, 773 So. 2d at 13). To avoid being misleading, a ballot title and summary must provide a "clear and unambiguous" explanation of the measure's chief purpose. *Askew v. Firestone*, 421 So. 2d 151, 155-56 (Fla. 1982). It must disclose substantial impacts to the Florida Constitution. *Advisory Op. to the Atty. Gen. re Term Limits Pledge*, 718 So. 2d 798, 803-04 (Fla. 1998). Ballot titles and summaries can also be misleading if they do not properly inform voters of the legal significance of the terminology used. *Amendment to Bar Government from Treating People Differently*, 778 So. 2d at 897. Finally, to avoid material omissions, the ballot title and summary must explain both the meaning and the effect of the proposed amendment. *In re Advisory Op. to the Atty. Gen.-Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1021 (Fla. 1994). These requirements are necessary to give the voter "an opportunity to know and be on notice as to the proposition on which he is to cast his vote." *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954) (en banc).

The legislature has further codified the accuracy requirement:

> 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 . . . 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.

Section 101.161(1), Fla. Stat.

The Supreme Court has explained that "[t]he purpose of these requirements is 'to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot.'" *Advisory Op. to the Atty. Gen. Re: Voting Restoration Amendment*, 215 So. 3d 1202, 1207 (Fla. 2017) (quoting *Advisory Op. to Atty. Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998)). They are also intended to deter "advantageous but misleading 'wordsmithing.'" *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008). The sanction for such efforts is removal of the proposal from the ballot:

> When such wording selections render a ballot title and summary deceptive or misleading to voters, the law requires that such proposal be removed from the ballot—regardless of the substantive merit of the proposed changes. Indeed, the use or omission of words and phrases by sponsors, which become misleading, in an attempt to enhance the chance of passage, may actually cause the demise of proposed changes that might otherwise be of substantive merit. If a sponsor—whether it be a citizen-initiative group, commission, or otherwise—wishes to guard a proposed amendment from such a fate, it need only draft a ballot title and summary that is straightforward, direct, accurate and does not fail to disclose significant effects of the amendment merely because they may not be perceived by some voters as advantageous.

Id. (emphasis added); *see also Roberts*, 43 So. at 661 (enjoining secretary of state from placing misleadingly-described amendment on the ballot).

D. There Is No Genuine Issue of Material Fact

The parties have stipulated to an accelerated briefing schedule without an opportunity for discovery, *see* Scheduling Order (July 23, 2018), because this case presents a pure question of law. The only relevant facts—the text of the proposed revision, its supporting ballot title and summary, and the debates of the CRC[2]—are undisputed. Summary judgment is therefore appropriate because this case presents pure questions of law. *Volusia Cty.*, 760 So. 2d at 130-31.

[2] Minutes from relevant days of debate are included in the Appendix at Tabs 6 through 9. They are also available online at https://www.flcrc.gov/Meetings/Transcripts.

E. Plaintiffs Are Entitled to Judgment as a Matter of Law

Revision 8's title and summary contain precisely the kind of misleading language, "wordsmithing," and material omissions that the Florida Supreme Court has declared violate the law. Even though its primary purpose is to designate a new authorizer and regulator for charter schools, the Revision's summary does not use the word "charter," referring instead only to "public schools not established by the school board," a category of public schools that does not currently exist in Florida law. It also does not disclose that it would strip school boards of their right to a say in when new schools are established in their counties. Moreover, the Revision's summary inaccurately states that it permits "the state" the power to operate, control, and supervise new schools, when in fact the amendment is silent regarding what entity will undertake these responsibilities. Finally, Revision 8's title fails to give voters notice of any of the changes it would make to the constitution aside from term limits for school boards.

1. *The ballot summary does not disclose that the purpose of Revision 8 was to allow the creation of charter schools without any input from district school boards.*

The true purpose of Revision 8 matters to this court's decision because the text of proposed constitutional amendments cannot either "'fly under false colors' or 'hide the ball' as to the amendment's true effect." *Armstrong*, 773 So. 2d at 16. Thus it is crucial that, although the CRC debates make clear that the purpose of Proposal 71 was to allow for the designation of a different charter school authorizer than the local school board, the ballot title and summary "hide the ball" regarding that goal.

During the CRC debates, Commissioner Donalds was clear about the purpose and goal of Proposal 71:

> The goal of this amendment, to be clear, is to clarify the intent of the constitutional language that was misinterpreted by the First DCA in the case of Duval County School Board versus the State Board of Education. This is in

> regards to the Florida Schools of Excellence Commission, which was an independent state-level entity, *with the ability to authorize charter schools* throughout the state of Florida, passed under Governor Jeb Bush.
>
> Currently 43 states *have charter schools*. Of those, 34 have a statewide charter authorizer, similar to the Schools of Excellence Commission. …

(Appendix 7 at 53-54) (emphasis added); *see also id.* at 62:20-25 (Stmt. of Cmm'r Martinez) ("I understand what I think you are trying to accomplish, which is to give somebody who wants to organize a charter school greater flexibility, so instead of going to the School Board they can deal with another agency established by the Legislature."); 83:3-9 (Stmt. of Comm'r Lester). Indeed, the initial draft of Proposal 71 explicitly used the term "charter school" in the language it proposed adding to the Florida Constitution (proposed language appears in underlined type):

> The school board shall operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs. <u>Nothing herein may be construed to limit the legislature from creating alternative processes to authorize the establishment of charter schools within the state by general law.</u>

(*See* Appendix 2).

a. <u>The CRC intended that Proposal 71 change the charter school authorization process.</u>

Commissioner Donalds explained that she omitted the word "charter" from the final text of her amendment "because we don't know what innovations are to occur in education over the next 20 years or over the next generation." (Appendix 7 at 69-70). Regardless, CRC discussions show that the commissioners, who participated in debate and approved the proposal for the ballot, understood the revision in terms of its effect on charter schools. To illustrate this point, Volume 1 of the transcript of the CRC's hearing on March 21, 2018 includes the word "charter" some 187 times in 185 pages of testimony. (Appendix 7).

Nor are there any other significant[3] categories of free public schools under Florida law other than charter schools and traditional public schools. Commissioners discussed "collegiate schools" and "lab schools" as alternative types of schools the proposal might affect. But lab schools are formally defined as charter schools under Florida law, *see* section 1002.33(5)(a)(2), Florida Statutes, and collegiate schools are commonly referred to as such, (Appendix 7 at 99) (Stmt. of Cmm'r Levesque) ("We have state colleges today that run some of the highest performing collegiate schools in the state. … They operate in the county where they felt like they could get authorized. But they would love to open collegiate charter schools in the other counties that are in the catchment area.").

Thus, even though the commissioners extensively debated the effect of Proposal 71 on charter schools; understood that charter schools are controversial, (*see* Appendix 7 at 54) ("this is something different for Florida … [i]t creates a lot of debate"); and discussed the proposal's effects on no other category of free public school that exists under current Florida law, they did not include the term "charter" in what became Revision 8. It is precisely because charter schools are a subject of differing views among Florida voters that the omission of that word, which would explain to voters the subject matter of the revision in terms they understand, "hide[s] the ball" and is misleading.

[3] Florida has by statute established a school for the deaf and blind, § 1002.36, Fla. Stat, an arts school, *id.* § 1002.35, and a virtual school, *id.* § 1002.37. The school for the deaf and blind predates the 1968 constitution and its requirement of district involvement. *See, e.g. Lewis v. Leon Cty*, 91 Fla. 118, 190, 107 So. 146, 171 (1926). The arts school is explicitly under the governance of the Miami-Dade County School Board. *See* § 1002.35(2)(a), Fla Stat.. Students enroll in the Florida Virtual School through local districts. *See id.* § 1002.45(c)

b. The CRC intended to allow charter schools to be authorized by multiple entities.

Revision 8 also misleads the voters regarding its effects on which entity or entities will be permitted to authorize new public schools. By removing any constitutional limitations on charter authorization, Revision 8 was also intended to open up the type of entities which could be given that power. As Commissioner Donalds explained, other state legislatures have "decided on a myriad of entities to be high quality authorizers." (*See* Appendix 7 at 60). One study, she explained, found that:

> [T]he five top [charter] authorizers in the country are D.C. Public Charter School Board; the Thomas B. Fordham Foundation in Ohio; the Metropolitan Massachusetts Board of Education; Metropolitan Nashville Public Schools and SUNY, the State University in New York, all different. You have non-profit, a state University, a state board of education, a local school district and a charter board; but what they have in common is that they are not the only place that those schools can go to get authorization in that state.

Id. at 60-61. Revision 8, she explained was intended to allow the Legislature to authorize any of these kinds of entity, or more than one entity, to authorize and supervise charters across the state without the permission of local school boards. *See id.* at 62 ("I want to leave that to the Legislature to decide what is going to work for Florida based on their thorough vetting of the issue to see what is going to be the top quality solution."). The ballot title and summary do not make it clear that there is no designated entity or entities responsible for charter authorization in the future under the amendment's plain language, and that any number of public or private actors could be designated to fill that role.

2. Revision 8 omits mention of the effect it would have on school districts' power to authorize and supervise new charters in their counties.

A proposed constitutional amendment's ballot title and summary must not be misleading—that is, the terminology used must clearly and meaningfully communicate information to voters, and the drafters must not invent terms or fail to define ambiguous terms.

Amendment to Bar Government from Treating People Differently, 778 So. 2d 888 (Mem), 898-99 (citing *Advisory Op. to the Atty. Gen. re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1309, 1311 (Fla. 1997)). Yet Revision 8 invents a category of school—those "not established by the school board" that is undefined in Florida law—and is therefore misleading in this respect as well.

Revision 8's ballot summary states that: "Currently, district school boards have a constitutional duty to operate, control, and supervise all public schools" but then states that Revision 8 "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*." (emphasis added). But Florida law does not include such a category, and so a voter has no basis to know what a "public school not established by a school board" is. The term "charter school," in contrast, is commonly understood by Florida voters and would have, as the CRC's discussions show, more accurately described the types of schools the revision was intended to affect.

This degree of ambiguity is similar to the ambiguity in past proposed amendments that were found to violate the state's constitutional and statutory accuracy requirement. *See Amendment to Bar Government from Treating People Differently*, 778 So. 2d at 898-99 (summary defective for use of term "bona fide qualifications based on sex," which did not adequately explain what the proposed amendment provided and left voters to rely on their own conceptions of its meaning); *People's Property Rights Amendments*, 699 So. 2d at 1308-1309 (summary defective for failure to define terms "owner" and "common law nuisance," causing summary to be confusing, unclear, and not sufficiently informative to voters).

3. Revision 8's ballot language obscures the important change it would make to a board's responsibility to determine when new schools are needed in its county.

The current constitution and implementing laws provide district school boards the exclusive right and ability to make the initial determination as to when and if new schools, charter or not, are needed and desirable in their counties. But neither this fact, nor the changes Revision 8 would make, are clearly explained by the ballot language. When ballot language says that "boards have … a duty to … supervise all public schools," an ordinary voter is unlikely to understand that this is meant to imply that boards *presently* have the right to play the initial key role in the creation of new public schools, including charters. Without understanding the current role of school boards in approving new schools, voters cannot understand the important change they are making to local democratic control of education. Finally, by framing boards' rights as "duties," the ballot summary also incorrectly implies that it is strengthening, or at least maintaining, the role of school boards by removing a burden, instead of weakening it by removing a power.

These deficiencies are similar to those identified in *Florida Dep't of State v. Florida State Conference of NAACP Branches*, 43 So. 3d 662 (Fla. 2010). There, the proposed amendment would have eliminated the constitutional requirement that redrawn legislative districts be "contiguous," and subordinated this consideration to other new discretionary standards. The Court struck the proposed amendment from the ballot, finding "[n]owhere does the ballot language inform the voter that there is currently a mandatory contiguity requirement in article III, and nowhere does the language inform the voter that the contiguity requirement could be diluted by Amendment 7." *Id.* at 668-69. So too here, nowhere does the ballot summary inform the voter of the essential role school boards play in authorizing new schools, and nowhere does the language inform the voter that this role is intended to be diluted by Revision 8.

4. Revision 8's description falsely states that it would give "the state" the power to operate, control and supervise new schools.

The ballot summary for Revision 8 states that it "permits the state to operate, control, and supervise public schools not established by the school board." But, as noted above, Revision 8 is conspicuously silent about who or what would undertake these responsibilities for schools not established by the school board. And the CRC debates cited above show that a number of potential authorizers could be in line to receive that authority. Voters cannot be expected to understand this from the language of the ballot summary. Instead, voters would expect the ballot summary to do what it says—grant "the state," the only entity mentioned, the authority to authorize new schools. This distinction is important. Voters may want to preserve public control to ensure that schools not authorized by their local democratically-elected school boards are nonetheless subject to some form of direct democratic supervision. The ballot summary implies that that is the case, but in fact the amendment was intended to permit that power to be given to a wide variety of third parties, including private entities. [4]

These omissions are alone sufficient to render the ballot summary materially misleading. *Advisory Op. re Term Limits*, 718 So. 2d at 803 (language was materially misleading where it stated that it would "affect[] the powers of the Secretary of State" when it would have in fact "substantially impact[ed] article IV of the Florida Constitution regarding the Secretary of State's powers and duties" by providing him with significant new non-ministerial duties); *In re Advisory Op. to the Atty. Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 652 (Fla. 2004) (where "amendment's chief purpose [wa]s to provide an additional homestead exemption for

[4] Indeed, Commissioner Donalds rejected a proposal to amend the ballot title to read, "Alternative State Supervision of Certain Public Schools," stating that what the revision actually allows for is "supervision of public schools *by an alternative overseen by the state*." (Appendix 8 at 147-48, 152-54) (emphasis added).

some homeowners" ballot summary which said that it "'provide[d] property tax relief' to all Florida homeowners" was misleading because "[w]hether the amendment would ultimately result in 'tax relief,' … [d]epend[ed] on a variety of factors independent of the amendment.").

5. Revision 8's title omits proposal 71 entirely and unnecessarily.

The title of Revision 8 is also misleading through omission. That title is: "SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS." While the vague reference to "school board … duties" is presumably intended to allude to Proposal 71, a voter could easily believe from the title of Revision 8 that it consists solely of a proposal to limit the term limits for school boards. Nor was there any need for such an abbreviated eight-word title: the title of a ballot initiative may be up to 15 words long. § 101.161(1), Fla Stat. Hence the CRC could have titled Revision 8, for example, "school board term limits; permits new authorizers of charter schools; requires civics education." This thirteen-word title would have not only put voters on notice of all three parts of Revision 8 (including the civics education requirement the present title entirely ignores), but would also have informed voters of what "school board … duties" the revision intends to change.

Moreover, Proposal 71 could have been its own standalone revision, had it not been bundled with two other unrelated proposals. Thus voters could have had a clearer choice. There was no need to describe three separate proposals in a 15-word title and 75-word summary (the maximum length permitted by statute, § 101.161(1), Fla Stat.). There is no limit on the number of proposals the CRC can advance. It chose to bundle the three proposals together to increase, in its view, their chances of passage. But this court can only permit it to do so if it fully and accurately described all three proposals in the ballot title and description. That it failed to do.

V. CONCLUSION

"The voters of Florida deserve nothing less than clarity when faced with the decision of whether to amend our state constitution . . . ." *Slough*, 992 So. 2d at 149. Because the ballot summary for Revision 8 clearly and conclusively fails to adequately inform the voter of the chief purposes and effects of the revision, and is affirmatively misleading, placement of Revision 8 on the ballot would violate Article XI, Section 5, Florida Constitution, and Section 101.161(1), Florida Statutes. Plaintiffs respectfully request that this Court enter final judgment declaring that Revision 8 violates section 101.161(1), Florida Statutes, and prohibiting Defendants from placing Revision 8 on the ballot, and grant such further relief as the Court deems appropriate.

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CERTIFICATE OF SERVICE

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

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