IN THE SUPREME COURT OF FLORIDA

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

Appellant,

vs.

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

Appellees.
_____/

CASE NO.: SC18-1368
L.T. Case Nos.: 1D18-3529
2018-CA-1523

BRIEF OF *AMICI CURIAE* THE URBAN LEAGUE OF MIAMI AND THE CENTRAL FLORIDA URBAN LEAGUE IN SUPPORT OF APPELLEES.

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STATEMENT OF IDENTITY AND INTEREST

The Urban League of Greater Miami is a non-profit community-service organization in Miami-Dade County. The Central Florida Urban League is a non-profit community service organization covering the seven counties in central Florida. They provide services in employment, childcare, senior citizen services, housing, economic development, training, community service, political advocacy, and education. (Together, they will be collectively referred to as the "Urban League" throughout this brief.) One of the main focuses of the Urban League is on achieving academic excellence in the community. The Urban League's historical emphasis has been on enabling children of color to reach their fullest potential and it has participated in numerous important educational cases in this State over the years. For example, the Urban League recently filed an *amicus brief* in *Citizens for Strong Schools, Inc. v. Florida State Board of Education* (Case No. SC18-67) currently pending before this Court. Hence, the Urban League has a significant interest in the issues before this Court.

The single issue in this case is whether constitutional Revision 8 placed on the upcoming November ballot by Florida's Constitutional Revision Commission and dealing with Florida's public education system should remain on the November ballot. If this Court decides to uphold the lower court's summary judgment order, it will maintain the local school board's near monopoly on the

establishment of public schools in Florida and potentially undo years of hard work by the Florida Legislature to open up public education to competition from charter public schools and other educational entities, something especially important to the Urban League since the academic performance of minority students is much better in Florida's charter public schools than in the traditional public schools run by local school boards. Hence, the Court's decision will significantly affect the communities and populations that the Urban League serves. The Urban League has a distinct interest in improving Florida educational quality and in increasing educational choices for the low-income communities it serves.

SUMMARY OF ARGUMENT

The ballot title and summary of Revision 8 are clear and unambiguous. Florida law is clear that a ballot proposal need not explain every actual or potential ramification of the proposed amendment since, by law, the ballot title and summary are limited to a few words. *See In re Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So.2d 1336, 1341 (Fla. 1994). The burden is upon anyone challenging a proposed amendment to prove it is clearly and conclusively defective. *Askew v. Firestone*, 421 So.2d 151, 154 (Fla. 1982). The ballot summary for Revision 8 accurately and succinctly informs the voters that, in 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," and, thus, accurately explains its chief purpose and legal effect on the point of local school boards' authority over public schools within their borders. Revision 8 presents a clear choice to voters. After reading the ballot title and summary, voters clearly know the "legal effect" of Revision 8 here, and that is all the ballot summary is really required to tell them.

STANDARD OF REVIEW

The standard of review of a trial court's ruling on a summary judgment motion is *de novo*. *Volusia County. v. Aberdeen at Ormond Beach, L.P.*, 760 So.2d 126, 130 (Fla.2000). However, with regard to the ballot question at issue in this appeal, this Court should invalidate Revision 8 "only if the record shows that the [ballot language] is clearly and conclusively defective." *Armstrong v. Harris*, 773 So.2d 7, 11 (Fla.2000).

LEGAL ARGUMENT

According to our Florida Constitution, "the education of children is a fundamental value of the people of the State of Florida." Article IX, § 1(a), Fla. Const. In 1996, the Florida legislature authorized the creation of the first charter public schools. Charter public schools were specifically created to compete with traditional public school to provide more educational school choice to Florida parents. In Florida, charter public schools are nonsectarian public schools that operate pursuant to a charter contract with a public sponsor, in this case a

supervising local school board. See § 1002.33(1), Fla. Stat.; *Sch. Bd. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1227 (Fla. 2009). Charter schools in Florida are, through and through, public schools. *Id*. Although charter public schools have more autonomy than traditional public schools (in terms of staffing, curriculum and resource allocation), the Florida Legislature has ensured that charter public schools remain accountable to the local school boards who sponsor them, to their governing boards, to the Florida Department of Education, and to the parents who send their children there. Moreover, charter public school students are subject to the same standardized and other testing as traditional public school students. Charter public school applications, governance, enrollment, and other requirements are set out in a comprehensive and reticulated charter school statute, § 1002.33, Fla. Stat.

In Florida, almost 300,000 students attend charter public schools, 68% of whom are students of color.[1] For far too long, minority children and children in poverty were sentenced to attend local public schools designated for their zip codes, but the introduction of Florida's charter public schools and other school choice options has helped minority students break that cycle somewhat. Indeed, the academic achievement of minority students in Florida's charter public schools is

[1] *See* Florida's Charter Schools, Florida Department of Education Fact Sheet (Sept. 2017)(http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter_Sept_2017_rev.pdf).

much better than the academic achievement of minority students in traditional public schools. The Florida Department of Education's most recent annual Report on Student Achievement in Florida's Charter Schools shows the difference in performance to be quite marked:

> **Student Achievement in Florida's Charter Schools: Key Findings**
>
> The data contained in this report, based on over 4.3 million test scores, is derived from student performance on the Florida Standards Assessments (FSA) for English Language Arts and Mathematics (Mathematics data includes Algebra I, Algebra II and Geometry end-of-course exams) as well as the statewide assessments for Science (NGSS Science and Biology) and Social Studies (Civics and U.S. History). This report is designed to allow a comparative analysis of the academic achievement of students attending charter schools versus students attending traditional public schools. Using data from the 2016-17 school year, the report makes 195 comparisons in three areas: absolute achievement, learning gains and achievement gaps. Each of these areas includes overall as well as sub-group comparisons across subject areas and grade levels.
>
> The achievement section of this report measures the percentage of students who scored a level three or above on the statewide assessment. This data is used to measure overall rates of grade level performance by grade groupings and by subgroup. This section of the report contains 77 separate comparisons of student achievement. In 62 of the 77 comparisons, students enrolled in charter schools demonstrated higher rates of grade level performance. In 15 of the 77 comparisons students enrolled in traditional public schools demonstrated higher rates of grade level performance.
>
> ***The achievement gap section of the report contains data that are used to analyze the gap between white students and African-American students and white students and Hispanic students in***

> ***English Language Arts, Mathematics, Science and Social Studies. This section of the report includes 22 separate comparisons of achievement gaps. The achievement gap was lower for charter school students in 20 of the 22 comparisons while the achievement gap was lower for traditional public schools in 2 of the 22 comparisons***.
>
> The learning gains section of the report includes 96 comparisons. The report compares the percentage of students in charter schools making learning gains against the percentage of students in traditional public schools making learning gains by subject, grade level and subgroup. The percentage of students making learning gains was higher in charter schools in 79 of the 96 comparisons. The percentage of students making learning gains was higher in traditional public schools in 11 of the 96 comparisons. There was no difference in the percentage of students making learning gains in 6 of the 96 comparisons (emphasis supplied).[2]

Despite the fact that learning performance of minority students in Florida is much better in charter public schools, a significant number of local school boards remain hostile to allowing new public charter schools to open within their borders because local school districts compete with charter public schools for both students and money.

But, having the fox guarding the proverbial hen house here is a wholly untenable situation that Revision 8 was designed to ameliorate since, under the Florida Constitution, only local school boards currently have the authority to "operate, control, and supervise" local public schools (and Revision 8 would change this and would also impose term limits on local school board members).

[2] The complete 2017 report by the Florida Department of Education can be viewed online at http://www.fldoe.org/core/fileparse.php/7778/urlt/SAR1718.pdf.

Florida voters should be allowed to decide whether they want charter public schools to remain at the mercy of their school board competitors or not.

I. **Revision 8 Is A Much Needed Change to the Florida Constitution**.

The text of Revision 8 is both simple and plain, providing in its entirety:

> 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.

Revision 8 deals with three related subjects: 1) terms limits for school board members; 2) the promotion of civic literacy by the Florida Legislature, and 3) maintaining local school boards' authority to control public schools they establish, but allowing the state to create control public schools not established by local school boards. The ballot proposal was designed, in material part, to eliminate local school boards' virtual monopoly over new public schools, and it is this part of Revision 8 that the plaintiffs challenged below.

By its terms, Revision 8's summary confirms that 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."

This is exactly what Revision 8 does, and it is a much needed change to the Florida Constitution.

The creation of new public schools in Florida is a near monopoly, controlled on the ground by local school boards who currently have exclusive authority over whether a new charter public school opens in their respective counties. The wealthy, of course, can opt out and obtain a high-quality education for their children at private schools. But these schools are beyond the economic reach of most Floridians and therefore cannot be said to provide meaningful competition to traditional public schools. Further, the Florida Legislature has permitted the creation of charter public schools throughout the state, but some local schools boards are intentionally throttling the growth of charter public schools to thwart competition. This is demonstrated, in part, by the fact that it is estimated that there are currently more than 100,000 children on charter school waiting lists throughout the State.

Economists have long taught us about the evils of a monopoly. Monopolists are "largely immune" to competitive pressures to improve, leaving consumers - here, Florida's parents and their children -- with fewer choices. "The problem with monopolies is that there is no competition, and when there is no competition, there is no incentive to adjust, change, or, in the case of publics schools, improve." Barbara M. DeLuca, Counterpoint, in *School Finance* 270 (William E. Tro ed.,

2012). "[B]ecause monopoly firms are unchecked by competition, the outcome in a market with a monopoly is often not in the best interest of society." N. Gregory Mankiw, *Principles of Microeconomics* 312 (4th ed. 2007). Economic theory demonstrates "the inefficiency of monopoly"; by increasing the cost and lowering "output" (here, educational results), "a deadweight loss arises." Douglas McTaggart, *et al., Economics* 223 (7th ed. 2013). There is no reason to believe that the public education system is immune to these adverse effects of monopoly - indeed, experience demonstrates that they are, in fact, quite pervasive.

To be sure, just like traditional public schools, charter public schools can vary in quality - some are excellent and some are not. But when charter schools fail, they are closed by the automatic operation of Florida law. However, when traditional public schools fail, they generally continue to operate for many years. It is the competition provided by the presence of one or more charter public schools that induces local public schools to improve. Competition in the private economy leads to higher quality and lower prices, and the same results occur in education - if only the local school boards permitted increased competition. There is, in fact, substantial empirical evidence that this is true. For example, one study examined the effects of the introduction of the Florida Tax Credit Scholarship Program, which offers scholarships to eligible low-income students to attend private schools. The study concluded that "the increased competitive pressure faced by public

schools associated with the introduction of Florida's FTC Scholarship Program led to general improvements in public school performance." David N. Figlio, et al., Competitive Effects of Means- School Vouchers, NBER Working Paper 16056, at 35 (2010), available at http://www.nber.org/papers/w16056. Another study found that competition induces public-school principals to innovate more, to devote more time to increasing efficiency, and to seek more autonomy from school authorities. Paul Teske, et al., Does Charter School Competition Improve Traditional Public Schools?, at 10 (2000), available at http://www.manhattan-institute.org/pdf/cr_10.pdf. A study by the United States Department of Education found similarly that, after entry of charter schools, "[m]ost districts implemented new educational programs, made changes in educational structures in district schools, and/or created new schools with programs that were similar to those in the local charter schools," and "nearly half of district leaders reported becoming more customer service oriented, increasing their marketing and public relations efforts, or increasing the frequency of their communication with parents." U.S. Dep't of Educ., Challenge and Opportunity: the Impact of Charter Schools on School Districts 1-2 (2001), available at https://www2.ed.gov/rschstat/eval/choice/summary.html.

All of Florida's citizens deserve the opportunity to vote on whether Florida will be a state where children of color have better, more robust educational options

or whether the local school districts should keep their virtually unfettered power to stifle competition to the detriment of the State and its most needy students. Indeed, this is exactly why this Court has held that "[o]nly where the record shows that the ballot language is 'clearly and conclusively defective' should the court invalidate the ballot question." *City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So. 3d 18, 22 (Fla. 4th DCA 2012) *citing Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000). For all these reasons, Revision 8 should remain on the November ballot, and the summary judgment entered by the trial court below should be reversed.

II. Revision 8's Ballot Title and Summary Are Perfectly Proper And This Court Removes A Ballot Proposal From The Ballot Only When Its Title And Summary Substantially Mislead Voters Regardless.

"[T]here is a strong public policy against courts interfering in the democratic processes of elections." *Fla. League of Cities v. Smith*, 607 So.2d 397, 400 (Fla.1992). Hence, this Court's task is solely "to determine whether the ballot language sets forth the substance of the [proposal] in a manner that satisfies the requirements of section 101.161, Florida Statutes." *Id*. It is against this backdrop that Revision 8 must be analyzed.

Section 101.161(1), Fla. Stat., sets the standards for ballot titles and summaries. It states that the "ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of and

limits the ballot summary to 75 words that must explain "the chief purpose of the measure." § 101.161(1), Fla. Stat. The purpose of a ballot title and summary 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 Att'y Gen. re: Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (*quoting Advisory Op. to the Att'y Gen. - Fee on the Everglades Sugar Prod*., 681 So. 2d 1124, 1127 (Fla. 1996)). The ballot title and summary must "state in clear and unambiguous language the chief purpose of the measure." *Health Care Providers*, 705 So. 2d at 566. They cannot "fly under false colors" or "hide the ball" as to the proposed amendment's true effect. *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000). According to *City of Miami v. Staats*, 919 So.2d 485, 487 (Fla. 3d DCA 2005), "[t]he purpose of this requirement is to provide the voter with fair notice of the content of the proposed measure so that he or she will not be misled as to its purpose and may intelligently cast his or her vote." *See also Askew v. Firestone,* 421 So.2d 151, 155 (Fla.1982) (stating "the ballot must give the voter fair notice of the decision he must make").

Revision 8 suffers from no legal defect. Section 101.161(1), Fla. Stat., requires that the substance of the public measure be printed in "clear and unambiguous" language on the ballot. However, Florida law makes it clear that the ballot question does not have to "explain every detail or ramification of the

proposed amendment." *City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So.3d 18 (Fla. 4th DCA 2012) (*quoting Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So.3d 694, 700 (Fla.2012)). Instead, it only must describe its chief purpose. *Id*.; *see also Let Miami Beach Decide v. City of Miami Beach*, 120 So.3d 1282 (Fla. 3d DCA 2013). To that end, the words of Revision 8 are appropriately both simple and clear, as required by law:

> 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.

The ballot title does not exceed 15 words and states how the proposal is "commonly referred to or spoken of" accurately. The amendment's chief purpose is fully and accurately explained in the ballot title and summary, which "may not be read in isolation, but must be read together in determining whether the ballot information properly informs the voters." *Advisory Op. to the Att'y Gen. re: Voluntary Universal Pre-Kindergarten Educ*., 824 So.2d 161, 166 (Fla. 2002).

Appellees contended below, and the trial court found, that the ballot did not contain sufficient details about charter schools. However, there is no requirement that all the details of a proposal be explained to voters. Florida courts have

previously held that § 101.161(1), Fla. Stat., simply does not require the kind of excessive detail sought by the trial court in its Summary Final Judgment for Plaintiffs. *See Miami Dolphins, Ltd. v. Metro. Dade Cnty*, 394 So.2d 981, 987 (Fla.1981); *Miami Heat Ltd. P'ship v. Leahy*, 682 So.2d 198, 203 (Fla. 3d DCA 1996).

The trial court, in particular, seemed to think it problematic that Revision 8's summary did not mention the word "charter schools." But, if Revision 8 passes, the Florida Legislature may decide to open competition in public education to other entities besides charter schools. Hence, any summary of Revision 8 that included the word "charter schools," as the trial court would require, might turn out to be both misleading and wrong. The intent of Revision 8 on this point is only to take away the local school district's destructive monopoly over public schools in Florida. It is not to prescribe what kinds of public school competition might be introduced into Florida's educational system by the Florida Legislature. To this end, Revision 8's summary is both accurate and clear as, under this proposed constitutional change, "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." As this Court itself has noted:

> It is true... that certain of the details of the [text] as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test.

> There is no requirement that the referendum question set forth the [text] verbatim nor explain its complete terms at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting.

Advisory Op. to the Att'y Gen. re Right to Treatment & Rehabilitation, 818 So. 2d 491, 498 (Fla. 2002)(*quoting Metropolitan Dade County v. Shiver*, 365 So. 2d 210, 213 (Fla. 3d DCA 1978)). The same maxim is applicable here.

Appellees cited *Armstrong v. Harris*, 773 So.2d 7 (Fla.2000), below in support of their argument that Revision 8's ballot summary is misleading. However, a review of *Armstrong* opinion indicates that it the *Armstrong* case wholly distinguishable and does not support their position as that case involved an immediate change and was actually trying to accomplish exactly the opposite of what the voters were being asked. This is clearly not the case here.

Florida law does not require—neither by its clear language, implication, logic nor application—that all details, aspects and ramifications of a proposal be explained to voters; it simply requires that "the ballot must give the voter fair notice of the decision he must make." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (*quoting Miami Dolphins Ltd. v. Metro. Dade Conty*, 394 So. 2d 981, 987 (Fla. 1981)). Specifically, § 101.161(1) Fla. Stat., provides, in pertinent part:

> 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 shall be an explanatory statement,

> not exceeding 75 words in length, of the chief purpose of the measure The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Indeed, in describing a measure, a ballot question need not explain every aspect of the proposal or discuss the many details of the effects of the plan, it must only provide a brief description of what is being proposed. *Miami Dolphins Ltd*., 394 So. 2d at 987 ("While there certainly are many details of the plan not explained on the ballot, we do not require that every aspect of a proposal be explained in the voting booth."); *see also Miami Heat Ltd. P'ship. v. Leahy*, 682 So. 2d 198, 203 (Fla. 3d DCA 1996) ("[T]hat certain of the details of the ordinance as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein.... is not the test. There is no requirement that the referendum question set forth the ordinance verbatim nor explain its complete terms at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting.").

The trial court below was correct in noting in his summary judgment order that the Revision 8 summary did not specifically mention "charter schools." However, as explained above, the failure to mention "charter schools" is of no moment since the Florida Legislature can choose to expand Florida's educational system in many ways in the future, and not just by establishing new charter public schools. In *Advisory Opinion to the Attorney General re Limited Casinos*, 644 So.

2d 71, 75 (Fla. 1994), this Court upheld a summary even though it did not "reveal the number of casinos authorized, [or] disclose the location and number of existing pari-mutuel facilities, and [failed] to mention that one casino must be placed [at a specific location in Miami Beach]." The instant case is very similar. Yet, this very Court, noting the constraints of the 75-word limit, did not require all details of the casino changes to be listed, but found that the summary provided voters with "sufficient information to make an informed decision." *Id*. Moreover, in *Advisory Opinion to the Attorney General re Protect People from the Health Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, this Court rejected arguments that voters would not understand that the term "enclosed indoor workplace" in the summary also included restaurants. *Id,* 814 So. 2d 415, 418-19 (Fla. 2002). This Court found that voters could be expected to understand that a restaurant may be a workplace. *Id*. Further, under Florida law, even if a ballot measure omits issues which are of legitimate concern, as long as the omission does not mislead the public, the measure will not be invalidated. *See Advisory Opinion to the Atty Gen. re Ltd. Casinos*, 644 So.2d 71, 75 (Fla. 1994) ("The seventy-five word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all of a proposed amendment's details."). Rather, the test in determining the validity of a ballot title and summary under Fla. Stat. § 101.161(1) is only: "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. In this case, there is nothing misleading about a ballot summary that states exactly what the impact of Revision 8 will be after passage – some public schools will remain in control of local school districts and some may not. Indeed, it is hard to imagine how the Revision 8 summary could actually be clearer given that it is unknown how the Florida Legislature may choose to expand public educational opportunities in the future and the 75-word statutory limit applicable here. In short, the voting public will not be misled by Revision 8 in any way, and the importance of the issue demands that all Florida citizens be given the opportunity to vote on how they want the State's public education system to expand further into this century.

CONCLUSION

"The education of children is a fundamental value of the people of the State of Florida." Article IX, § 1(a), Fla. Const. The innovation and competition that charter public schools have injected into the public school system furthers the cherished idea of American education that, in a democratic society, children of every color should have the ability to obtain the best free public education possible. Revision 8 gives teeth to that promise. WHEREFORE, for all the foregoing reasons, the Urban League respectfully requests that this Court reverse

the trial court's summary judgment striking Revision 8 from the ballot and allow the citizens of Florida to determine who they want to control the expansion of public education in Florida by voting on Revision 8 in November.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this *amicus* brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2).

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 to Counsel for Appellant, KEN DETZNER, via Blaine Winship, Esq. (blaine.winship@myfloridalegal.com), The Capital, Office of Attorney General, 400 South Monroe Street, Suite PL-01, Tallahassee, FL 32399-6536; and Counsel for Appellees, LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., PATRICIA BRIGHAM, and SHAWN BARTELT via Ronald Meyer, Esq. (rmeyer@meyerbrookslaw.com), P.O. Box 1547, Tallahassee, FL 32302; by email via the Florida Courts e- filing Portal this 27th day of August, 2018.

Respectfully submitted,

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