

IN THE SUPREME COURT OF FLORIDA JUL 28 PM 4: 23

FLORIDA DEPARTMENT OF STATE,  
an agency of the State of Florida, *et al.*,

CLERK, SUPREME COURT

BY \_\_\_\_\_

Appellants,

v.

Case No. SC10-1375  
L.T. Case No. 2010-CA-1803

FLORIDA STATE CONFERENCE OF  
NAACP BRANCHES, *et al.*,

Appellees.

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**INITIAL BRIEF OF APPELLANTS**

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## PRELIMINARY STATEMENT

Reference to the record on appeal shall be by “R” followed by the volume number and page number(s), *e.g.*, (R1–25-26). Supplemental Volume 1 shall be designated “RS1.”

Citations to audio recordings of legislative proceedings are presented in an abbreviated format, omitting the parenthetical that indicates the location of the recording. All recordings of the proceedings of the Florida House are on file with the Clerk of the House of Representatives. All recordings of the proceedings of the Florida Senate are on file with the Secretary of the Senate.

In addition, a video recording of the meeting of the House Select Policy Council on Strategic and Economic Planning on April 15, 2010, is available at <http://tinyurl.com/PCB-4-15-2010> (time stamp 9:21). A video recording of the meeting of the House Rules and Calendar Council on April 19, 2010, is available at <http://tinyurl.com/HJR7231-4-19-2010> (time stamp 34:50). Video recordings of floor debate in the Florida Senate on April 28 and 30, 2010, are available at <http://tinyurl.com/SenateArchives> (time stamps 4:25:45 and 1:54:44, respectively).

All emphases are supplied.

## **STATEMENT OF CASE AND FACTS**

### **The Question Presented**

This appeal arises from a trial court order striking from the general election ballot a constitutional amendment proposed by the Florida Legislature that relates to redistricting. The trial court interpreted the proposed amendment to eliminate the long-standing and undisputed requirement in Article III, Section 16(a), Florida Constitution, that state legislative districts must consist of contiguous territory. It did so despite the total absence of any legislative intent to eliminate the contiguity requirement and without regard to the fundamental canons by which constitutional language is ordinarily interpreted and harmonized.

This appeal presents a single question: Whether the amendment can only be interpreted to eliminate the constitutional mandate that state legislative districts consist of contiguous territory, a result never intended by the Legislature, and one insupportable by the basic principles of constitutional interpretation.

### **Statement of the Facts**

On January 22, 2010, the Florida Department of State certified for ballot placement two constitutional amendments proposed by initiative petition. (R1–11.) The amendments, sponsored by FairDistrictsFlorida.org (“Fair Districts”) and designated Amendments 5 and 6, would create a two-tiered hierarchy of new redistricting requirements applicable to state legislative districts (Amendment 5)

and congressional districts (Amendment 6). (R1-18-19.) Amendments 5 and 6 would prohibit the intent to favor or disfavor incumbents or political parties and provide minimum protections for racial and language minorities. (*Id.*) After these mandates are satisfied, Amendments 5 and 6 would require districts to be compact and, wherever feasible, to follow political and geographical boundaries. (*Id.*)

Amendments 5 and 6 are notable because the Florida Constitution does not presently impose any subjective or fact-intensive constraints on redistricting. Since 1968, the Constitution has imposed two basic requirements on the creation of state legislative districts. First, Senate districts must number between 30 and 40, while Representative districts must number between 80 and 120. Art. III, § 16(a), Fla. Const. Second, districts must consist of “contiguous, overlapping or identical territory.” *Id.* This Court has construed this provision to require contiguity—that is, that all territory of a district be in actual, physical contact. *In re Senate Joint Res’n 2G, Special Apportionment Session, 1992*, 597 So. 2d 276, 279 (Fla. 1992). The Florida Constitution imposes no requirements on congressional redistricting.

Amendments 5 and 6 precipitated significant public debate and discussion in the Legislature. In ten legislative committee meetings between December 2009 and April 2010, the Legislature studied the likely impact and practical feasibility of implementing Amendments 5 and 6. Fla. H.R. Select Policy Council on Strategic & Econ. Planning (Dec. 9, 2009; Jan. 11, 2010; Feb. 11, 2010); Fla. S. Comm. on

Reapp. (Dec. 9, 2009; Jan. 11, 2010; Jan. 13, 2010; Jan. 20, 2010; Feb. 11, 2010; Feb. 17, 2010; Mar. 2, 2010; Mar. 17, 2010; Apr. 12, 2010). On April 30, 2010, in response to Amendments 5 and 6, a supermajority of three-fifths of the Legislature approved the proposal challenged here—subsequently designated Amendment 7—for placement on the 2010 general election ballot. (R1-13.)

Amendment 7 directs the Legislature, in the creation of state legislative and congressional districts, to “balance and implement” all standards contained in the State Constitution. It creates two new standards that enable the Legislature to balance the compactness and local-boundary requirements of Amendments 5 and 6 with the promotion of minority rights and communities of interest. (R1-20-21.)

The text of Amendment 7 provides:

In establishing congressional and legislative district boundaries or plans, the state shall apply federal requirements and balance and implement the standards in this constitution. The state shall take into consideration the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities of common interest other than political parties may be respected and promoted, both without subordination to any other provision of this article. Districts and plans are valid if the balancing and implementation of standards is rationally related to the standards in this constitution and is consistent with federal law.

(R1-20-21.) The ballot language is virtually identical to the amendment text:

STANDARDS FOR LEGISLATURE TO FOLLOW IN  
LEGISLATIVE AND CONGRESSIONAL REDISTRICTING.—In  
establishing congressional and legislative district boundaries or plans,  
the state shall apply federal requirements and balance and implement  
the standards in the State Constitution. The state shall take into

consideration the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities of common interest other than political parties may be respected and promoted, both without subordination to any other provision of Article III of the State Constitution. Districts and plans are valid if the balancing and implementation of standards is rationally related to the standards in the State Constitution and is consistent with federal law.

*(Id.)*

On May 21, 2010, Appellees brought this challenge to the accuracy of the proposed ballot title and summary. (R1-6-21.) Appellees contended that, because Amendment 7 establishes new redistricting criteria that would not be subordinate to other standards in Article III of the Constitution, it “eliminates” the mandate that districts be contiguous. (R1-56-58.) Appellees also argued that (1) Amendment 7 does not create any new standards, contrary to the language of the title (R1-55-56); (2) Amendment 7 “nullifies” Amendments 5 and 6, and the failure to identify this consequence is fatal (R1-62-67); (3) the summary must provide a definition for the phrase “communities of common interest” (R1-58-60); and (4) the summary must elaborate upon the legal standard of review created by Amendment 7 (R1-60-62).

On June 25, 2010, the Secretary of State, the Florida House, and the Florida Senate each filed responses to Appellees’ Motion for Summary Judgment. (R1-120-58, 159-81, 182-84.) They emphatically rejected the suggestion that the proposed amendment would affect the existing contiguity mandate. (R1-127-29,

165-70.) “The balancing of equal and coordinate standards,” the Florida House maintained, “would not permit the Legislature to disregard contiguity.” (R1-166.)

At a final hearing on July 8, 2010, the Secretary and the Florida House and Senate explained that Amendment 7 was proposed in response to Amendments 5 and 6—not to eliminate the existing contiguity mandate. (RS1, Tr., 62:19–64:8.) They explained that the phrase “without subordination” was designed to place the standards in Amendment 7 on an equal footing with the standards in Amendments 5 and 6, so that neither set of standards would be inferior to the other, and both sets of standards would be balanced and implemented. (*Id.*; RS1, Tr., 31:6–32:15.)

On July 12, 2010, the trial court concluded that the ballot summary of Amendment 7 is misleading. The trial court recognized its obligation to uphold Amendment 7 if “any possible interpretation” can support its validity, but it then rejected the Legislature’s interpretation of its own amendment. (R2-271.) The court concluded that, because Amendment 7 permits the Legislature to promote minority communities and communities of interest “without subordination” to the other standards in Article III, it would necessarily “subordinate contiguity” to the new standards in Amendment 7 and render contiguity “aspirational only.” (R2-271.) In its order, the court complained that Amendment 7 “would allow this or any future legislature, if it chose to do so, to gerrymander districts guided by no mandatory requirements or standards and subject to no effective accountability so

long as its decisions were rationally related to, and balanced with, the aspirational goals set out in Amendment 7 and the subordinate goal of contiguity.” (R2–272.)

On July 13, 2010, the Secretary and the Florida House and Senate appealed. (R2—274-281.) The appellate court certified the question presented as a matter of great public importance, *see* Art. V, § 3(b)(5), Fla. Const., and this Court accepted jurisdiction.

## SUMMARY OF ARGUMENT

The ballot language of Amendment 7, which is virtually identical to the amendment itself, is accurate and will not mislead voters. To conclude otherwise, the trial court adopted a strained interpretation in disregard of the proposal's plain meaning, settled rules of interpretation, and the intent of the Legislature supported by a substantial body of legislative history. This Court must reverse.

Amendment 7 does not eliminate the long-standing constitutional mandate that state legislative districts be contiguous. Instead, it requires the Legislature to balance and implement all standards in the Constitution. This includes contiguity, which will remain in the Constitution. No constitutional standards will be ignored.

Amendment 7 does not afford the Legislature *carte blanche* to violate any standards. It enables the Legislature, in the formation of state legislative districts, to promote minority rights and communities of interest "without subordination" to other standards. This ensures that the standards in Amendment 7 will be weighed and balanced alongside the subjective standards proposed by Amendments 5 and 6, two amendments proposed by initiative petition. It does not permit the Legislature to ignore and violate the constitutional requirement that districts be contiguous.

The trial court erred in removing Amendment 7 from the ballot. This Court should find that the ballot language of Amendment 7 is not misleading and reverse.

## ARGUMENT

### I. Standard of Review.

Because this case presents a pure question of law, this Court's standard of review is *de novo*. *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000) (concluding that a *de novo* standard applies on appeal in a challenge to the accuracy of ballot language accompanying a constitutional amendment proposed by the Legislature).

If a legislative act is reasonably susceptible of *any* construction that will avoid invalidity, the Court is bound, from the respect due to a coordinate branch, to adopt that construction. *State v. Presidential Women's Ctr.*, 937 So. 2d 114, 116 (Fla. 2006); *Fla. State Bd. of Arch. v. Wasserman*, 377 So. 2d 653, 656 (Fla. 1979).

### II. The Ballot Language of Amendment 7 Is Accurate.

#### A. The Legal Standard.

The Legislature is vested with constitutional authority, upon approval of a three-fifths supermajority of each chamber, to propose and submit to the judgment of the voters amendments to the Florida Constitution. Art. XI, §§ 1, 5, Fla. Const.

The substance of any proposed amendment must appear on the ballot. *See* § 101.161(1), Fla. Stat. (2009). The Court has held that the Constitution implicitly requires that ballot language be accurate. *Armstrong*, 773 So. 2d at 12.<sup>1</sup> The ballot

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<sup>1</sup> Section 101.161(1), Florida Statutes, codifies this constitutional mandate. *Armstrong*, 773 So. 2d at 12. In the case of a legislatively proposed amendment, however, the constitutional accuracy requirement is the controlling provision. A

must give voters “fair notice” of the decision to be made. *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982). Ballot language “cannot either ‘fly under false colors’ or ‘hide the ball’ as to the amendment’s true effect.” *Armstrong*, 773 So. 2d at 12.

The ballot is not required to describe the proposed amendment’s effect on other pending amendments, but only its substantial effects on existing provisions of the Florida Constitution. *Compare Adv. Opinion to Att’y Gen. re Fla. Growth Mgmt. Initiative Giving Citizens Right to Decide Local Growth Mgmt. Plan Changes*, 2 So. 3d 118, 123 (Fla. 2008), *with id.* at 130-31 (Lewis, J., dissenting).

The challengers of ballot measures bear the weighty burden to prove that ballot language is “clearly and conclusively defective.” *Armstrong*, 773 So. 2d at 11. A court “must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people.” *Askew*, 421 So. 2d at 156.

Importantly, this Court has accorded legislatively proposed amendments an additional measure of deference. *Armstrong*, 773 So. 2d at 14. It has explained:

The legislature which approved and submitted the proposed amendment took the same oath to protect and defend the Constitution that we did and our first duty is to uphold their action if there is any

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legislative enactment directing that an amendment be placed on the ballot cannot be invalid for conflict with an earlier legislative enactment. *See McKendry v. State*, 641 So. 2d 45, 46 (Fla. 1994) (“[W]hen two statutes are in conflict, the later promulgated statute should prevail as the last expression of legislative intent.”). It would raise substantial constitutional issues if the Legislature, through its ordinary lawmaking powers, could restrict the constitutional authority of future Legislatures to propose amendments pursuant to Article XI, Section 1, Florida Constitution.

reasonable theory under which it can be done. This is the first rule we are required to observe when considering acts of the legislature and it is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval.

*Id.* (quoting *Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956)). Thus, in *Smathers v. Smith*, 338 So. 2d 825, 827 (Fla. 1976), the Court refused to strike a legislatively proposed amendment because it entertained “a doubt as to whether the Legislature has violated what appear to be the strictures on their amendatory powers.” This heightened standard comports with the presumption of constitutionality that attends all legislative acts, and which requires that invalidity “appear beyond a reasonable doubt.” See *Crist v. Fla. Ass’n of Criminal Defense Lawyers, Inc.*, 978 So. 2d 134, 139 (Fla. 2008) (quoting *Franklin v. State*, 887 So. 2d 1063, 1073 (Fla. 2004)).

**B. Amendment 7 Does Not Affect Contiguity.**

The trial court wrongly concluded that Amendment 7 would permit the Legislature to ignore Article III, Section 16(a), Florida Constitution, and create non-contiguous districts in furtherance of minority voting rights and communities of interest. As Appellants explained below, Amendment 7 was never intended to—and would not—permit the Legislature to ignore contiguity.

**1. The Plain Meaning of Amendment 7 Refutes the Trial Court’s Interpretation.**

In the interpretation of legislative enactments, “legislative intent is the polestar by which the court must be guided,” *Bautista v. State*, 863 So. 2d 1180,

1185 (Fla. 2003),<sup>2</sup> and courts strive to give effect to “the intent of the framers and adopters.” *Coastal Fla. Police Benevolent Ass’n, Inc. v. Williams*, 838 So. 2d 543, 548 (Fla. 2003). In this inquiry, the plain meaning of the enactment is “always the starting point.” *GTC, Inc. v. Edgar*, 967 So. 2d 781, 785 (Fla. 2007).

The plain meaning of Amendment 7 is simple: The standards created by Amendment 7 will stand on an equal footing with other constitutional standards. All standards must be implemented. Some, like compactness, are inherently flexible and subjective. These must be reconciled with each other, and a sensible balance must be struck between them. But none may be broken or ignored.

This reading is apparent from the face of the amendment. Amendment 7 does not remove contiguity from the Florida Constitution. Contiguity will remain in the Constitution. At the same time, Amendment 7 commands the Legislature to “balance and implement the standards” in the Florida Constitution. This provision directs the Legislature to implement *all*—not *some*—standards in the Constitution.

“Implement” means to “carry out, accomplish; *especially*: to give practical effect to and ensure actual fulfillment by concrete measures.” Merriam-Webster Dictionary. The Legislature would fail to carry out, accomplish, and give practical

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<sup>2</sup> The same principles that regulate the interpretation of statutes are equally applicable to the interpretation of joint resolutions adopted by the Legislature, *see In re Apportionment Law Appearing as Senate Joint Resolution 1 E*, 414 So. 2d 1040, 1043 (Fla. 1982), and to provisions of the Florida Constitution, *see Coastal Fla. Police Benev. Ass’n, Inc. v. Williams*, 838 So. 2d 543, 548 (Fla. 2003).

effect to the contiguity requirement were it to establish non-contiguous districts. In fact, the creation of non-contiguous districts would violate Amendment 7 itself.

Moreover, Amendment 7 provides that a redistricting plan is valid if “the balancing and implementation of standards is rationally related to the standards contained in this constitution.” If the Legislature ignored contiguity and created districts of non-contiguous territory, the redistricting plan would not implement the standards in a rational way, and the redistricting plan would not be upheld.

The trial court, however, isolated the second sentence of Amendment 7 and concluded that, because it permits the Legislature to promote minority rights and communities of interest “without subordination” to other provisions of Article III, it permits the Legislature to disregard contiguity in furtherance of those interests.

This is not a reasonable interpretation. It converts “without subordination,” which merely ensures that the standards in Amendment 7 are not relegated to an inferior position, into a complete preemption of other constitutional standards. It ignores the well-established maxim that constitutional provisions must be read as a coherent whole and in *pari materia*, see *Bush v. Holmes*, 919 So. 2d 392, 406-07 (Fla. 2006), and pays no attention to Amendment 7’s explicit command that all standards be implemented. And it ignores the command to “balance” standards—a command that presupposes the equal dignity of those standards. Merriam-Webster Dictionary (defining “balance” to mean “to equal or equalize in weight . . .”).

It is notable that the Legislature chose the phrase “without subordination,” rather than the familiar word “notwithstanding.” “Notwithstanding” would have denoted primacy, or superiority. Words such as “elevate” or “priority” would also have denoted a paramount status. But the Legislature provided only that the new standards are not subordinate—or *inferior*—to other standards. If the Legislature had intended to preempt standards, it would have used more fit language. Because it is “presumed to know the meaning of words,” *State v. Bodden*, 877 So. 2d 680, 685 (Fla. 2004), the Legislature’s choice of words is purposeful and significant.

The phrase “without subordination” is relevant to standards which, by their nature, can be weighed and balanced with one another. Some standards are flexible and subjective and leave room for compromise. Thus, compactness does not require perfect circles or squares, but some acceptable degree of compactness. The acceptable degree of compactness might depend on an assessment of the other interests which the Legislature might validly pursue.<sup>3</sup> A district that becomes less

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<sup>3</sup> See, e.g., *Matter of Legislative Districting of State*, 475 A.2d 428, 437, 439 (Md. 1982) (“[T]he . . . compactness requirement . . . is a relative, rather than an absolute standard. . . . [T]he compactness requirement must be applied in light of, and in harmony with, the other legitimate constraints which interact with and operate upon the constitutional mandate that districts be compact in form.”).

The interpretation of the compactness requirement in Amendments 5 and 6, moreover, remains to be determined. Some courts have construed compactness to impose an aesthetic mandate, and look only to the geometric shape of the district. See, e.g., *Larios v. Cox*, 314 F. Supp. 2d 1357, 1370 n.19 (N.D. Ga. 2004). Other courts have concluded that compactness embraces considerations beyond simple

compact in order to promote a community of interest—or which deviates from a local boundary to further minority interests—might reflect a rational harmonization of such relative standards. This is an illustration of the weighing and balancing of *equal* standards envisioned by Amendment 7. It is what Amendment 7 demands.

But a district cannot be *somewhat* contiguous, or *slightly less* contiguous. Contiguity is objective—a clear, binary choice. A district is either contiguous or not contiguous. It either consists of one, unified territory, or multiple, unconnected territories. Such clear, objective standards cannot be defeated by other standards—merely because those other standards are not inferior, or subordinate—where, as here, Amendment 7 expressly commands the implementation of *all* standards. To balance, harmonize, and implement all redistricting standards, the Legislature must strictly adhere to such objective standards as contiguity. Were the Legislature to ignore such black-and-white standards, its redistricting plan would not be upheld.

Like contiguity, the existing constitutional limit on the number of districts the Legislature may create is an absolute, objective requirement. Art. III, § 16(a), Fla. Const. (requiring 80 to 120 representative districts and 30 to 40 senatorial districts). By the trial court’s reading, the Legislature could create any number of districts—say, four hundred Senate districts—if it determined that smaller districts

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aesthetics, requiring the creation of “functional voting districts that allow for effective representation.” *De Grandy v. Wetherell*, 815 F. Supp. 1550, 1569 (N.D. Fla. 1992); accord *Matter of Legislative Districting of State*, 475 A.2d at 437-39.

would promote communities of common interest. Plainly, this cannot be, and the Court would never interpret Amendment 7 to permit this result. If the Legislature created four hundred Senate districts, it would not “implement” all standards, and its redistricting plan would be invalid. This example depicts the absurdity of the trial court’s interpretation and proves that the standards created by Amendment 7 can—and must—coexist in harmony alongside other constitutional standards.<sup>4</sup>

A second example demonstrates the plain meaning of Amendment 7. Like Amendment 7, Amendments 5 and 6 create new standards. Like Amendment 7, Amendments 5 and 6 do not subordinate all standards to contiguity. Thus, the first subsection of Amendments 5 and 6 provides that districts and redistricting plans:

shall not be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; *and districts shall consist of contiguous territory.*

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<sup>4</sup> Appellees did not respond to this argument in their papers, and offered little more at the hearing (RS1, Tr. at 12:25 – 13:5 (“I *suppose* you could argue that if we think we ought to have pockets of noncontiguous communities of common interest forming a legislative district, *maybe* they would *even* trump and not be subordinated to the numeric objective criteria currently contained in Article III.”)).

The trial court did not squarely address—but studiously avoided—the same argument. (R2–271 (“*Apart from* the number of districts required to be drawn, the Florida Constitution currently contains only one requirement . . . . Amendment 7 . . . were it to pass, would make that one mandatory requirement [*i.e.*, contiguity] aspirational only . . . .”).) The court did not explain why it considered the contiguity requirement “*apart from*” the existing constitutional numerical requirement.

(R1–18-19.) The amendments then provide that the “order in which the standards within [each subsection] are set forth shall not be read to establish any priority of one standard over the other.” According to the trial court’s interpretation, because the Legislature must ensure the equal opportunity of racial and language minorities to participate in the political process—and because this mandate is not subordinate to contiguity—it may ignore the contiguity requirement and create non-contiguous districts in order to promote the rights of minorities. This is not a correct reading of Amendments 5 and 6, and it is not a correct reading of Amendment 7.<sup>5</sup>

**2. The Rules of Construction Refute the Trial Court’s Interpretation.**

The trial court’s conclusion that Amendment 7 eliminates the contiguity requirement ignores fundamental rules of construction and conflicts with this Court’s recent decision in *Advisory Opinion to Attorney General re Standards for Establishing Legislative District Boundaries*, 2 So. 3d 175, 190 (Fla. 2009).

In *Standards for Establishing Legislative District Boundaries*, this Court rejected an analogous argument with respect to Amendments 5 and 6. There, the opponents of Amendments 5 and 6 argued that, because the Constitution presently requires districts of “either contiguous, overlapping or identical territory,” Art. III,

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<sup>5</sup> The reverse of this proposition, however, is equally true. If it is a correct reading of Amendment 7, it is a correct reading of Amendments 5 and 6. And, if Amendment 7 must be removed from the ballot for that reason, Amendments 5 and 6 must be as well.

§ 16(a), Fla. Const., Amendments 5 and 6, which require contiguous territory but make no mention of “overlapping or identical territories,” repealed those criteria and, without notice to voters, nullified the option to create multi-member districts.

This Court disagreed. It explained that:

A new constitutional provision prevails over prior provisions of the Constitution (a) if it specifically repeals them or (b) if it cannot be harmonized with them. Nevertheless, it is settled that *implied repeal of one constitutional provision by another is not favored*, and every reasonable effort will be made to give effect to both provisions. Unless the later amendment expressly repeals or purports to modify an existing provision, *the old and new should stand and operate together unless the clear intent of the later provision is thereby defeated*.

2 So. 3d at 190 (plurality opinion) (quoting *Jackson v. City of Jacksonville*, 225 So. 2d 497, 500-501 (Fla. 1969)). This Court found it possible to harmonize the multi-member district provision in the existing Constitution with the contiguity provision of Amendment 5 and 6. The Court found that there was no implied repeal of the option to create multi-member districts and no defect in the ballot summaries.

Conspicuously absent from the appealed order is the finding that it is impossible to construe Amendment 7 in harmony with the existing contiguity requirement. Instead, the trial court chose to construe Amendment 7 to relegate contiguity to a “subordinate” standard. This is not a fair reading of Amendment 7—much less the only reading—and was never intended by the Legislature. Just as Amendments 5 and 6 did not impliedly repeal the provision that permits multi-member districts, Amendment 7 does not impliedly repeal contiguity.

This Court's conclusion in *Standards for Establishing Legislative District Boundaries* is consistent with accepted principles of constitutional interpretation. The Court has often explained that constitutional provisions must, if possible, be harmonized. "A construction that nullifies a specific clause will not be given to a constitution unless absolutely required by the context." *Gray v. Bryant*, 125 So. 2d 846, 858 (Fla. 1960). If a "constitutional provision will bear two constructions, one of which is consistent and the other which is inconsistent with another section of the constitution, the former must be adopted so that both provisions may stand and have effect." *Broward County v. City of Fort Lauderdale*, 480 So. 2d 631, 633 (Fla. 1985) (quoting *Burnsed v. Seaboard Coastline R.R.*, 290 So. 2d 13, 16 (Fla. 1974)). These precepts plainly dictate that courts are "precluded from construing one constitutional provision in a manner which would render another superfluous, meaningless, or inoperative." *Chiles v. Phelps*, 714 So. 2d 453, 459 (Fla. 1998).

The interpretation of the trial court deprives the contiguity provision of effect and meaning. The interpretation advanced by Appellants harmonizes Amendment 7 with existing constitutional provisions, giving scope and operation to them all. Unless the latter interpretation is utterly untenable, it must be adopted.

Further, the trial court disregarded the well-settled axiom that, when two constructions are "possible," one of which would sustain the legislative act, courts must adopt the valid construction and sustain the enactment. *State v. Presidential*

*Women's Ctr.*, 937 So. 2d 114, 116 (Fla. 2006); *State v. Williams*, 343 So. 2d 35, 37 (Fla. 1977). Appellees contended below that "without subordination" means "not lower," and that "not lower *may* mean higher." (R2-190.) Not true here. In this cases, "without subordination" means "equal to." The command to "balance" and "implement" all standards proves that Amendment 7 does not elevate its own standards to a superior or paramount position. This Court should not unnecessarily adopt an interpretation of the proposed amendment that renders the ballot summary misleading when other, at least equally reasonable interpretations are available.

In the cases cited by the trial court, the effect of the proposed amendment was not debatable. Their impact was clear and definite. *Askew*, 421 So. 2d 151; *Evans v. Bell*, 651 So. 2d 162 (Fla. 1st DCA 1995). In *Askew*, the Court struck a proposal to bar legislators from lobbying within two years after vacating office. Because the summary did not disclose that the proposal would replace an existing, unconditional two-year ban, it created the impression that the proposal enacted a new prohibition, while it relaxed an existing prohibition. In *Evans*, voters were not advised that a proposal to create an appointive career service board was a substitute for an existing provision that established an elective career service board.

In *Askew* and *Evans*, there was no dispute that the proposed amendments took the places of existing provisions, and that voters were never informed of the substitution. In this case, the trial court first adopted an extreme construction of

Amendment 7 and then, on the basis of that extreme construction, invalidated it. This Court's precedents reject such needless nullification of legislative enactments.

### **3. The Legislative History Refutes the Trial Court's Interpretation.**

If Amendment 7 were ambiguous, the Court must "consider its history, [the] evil to be corrected, and the purposes intended by the Legislature." *McKibben v. Mallory*, 293 So. 2d 48, 52 (Fla. 1974); accord *E.A.R. v. State*, 4 So. 3d 614, 629 (Fla. 2009). In the construction of any legislative enactment, the "primary and overriding consideration" is "to give effect to the evident intent of the legislature." *Deason v. Fla. Dep't of Corr.*, 705 So. 2d 1374, 1375 (Fla. 1998). The intent of the Legislature is of such predominant importance that, while not necessary here, courts will deviate from the strict, literal meaning of an enactment to effectuate the manifest intent of the Legislature. *Deason*, 705 So. 2d at 1375; *State v. Ramsey*, 475 So. 2d 671, 673 (Fla. 1985); *State v. Webb*, 398 So. 2d 820, 824 (Fla. 1981).

Legislative history is an "invaluable tool" in the construction of legislative acts. *Massey v. David*, 979 So. 2d 931, 942 (Fla. 2008). The legislative history of Amendment 7 demonstrates that it was never intended to displace contiguity.

Between December 2009 and April 2010, legislative committees met on ten occasions to discuss the practical workability of Amendments 5 and 6 and to prepare for their implementation and potential implications for the redistricting process. See Fla. H.R. Select Policy Council on Strategic & Econ. Planning (Dec.

9, 2009; Jan. 11, 2010; Feb. 11, 2010); Fla. S. Comm. on Reapp. (Dec. 9, 2009; Jan. 11, 2010; Jan. 13, 2010; Jan. 20, 2010; Feb. 11, 2010; Feb. 17, 2010; Mar. 2, 2010; Mar. 17, 2010; Apr. 12, 2010). On February 11, 2010, the Chairperson of Fair Districts appeared before two legislative committees and attempted to answer questions presented by members of the committees. *See* Fla. S. Comm. on Reapp. & Fla. H.R. Select Policy Council on Strategic & Econ. Planning (Feb. 11, 2010). These discussions underscored significant concerns with Amendments 5 and 6.

On April 15, 2010, the House Select Policy Council on Strategic and Economic Planning first considered the proposed committee bill that became Amendment 7. Fla. H.R. Select Policy Council on Strategic & Econ. Planning, recording of proceedings (April 15, 2010). Extensive debate followed, both in committee and on the floor. The Legislature devoted ten hours and fifteen minutes to Amendment 7, including more than six hours of House and Senate floor debate.<sup>6</sup> In all this time, there was not one suggestion—either in committee or on the floor, by supporters or by opponents, in prepared statements or in answers to questions, in the House or in the Senate, or in public comments—that Amendment 7 would

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<sup>6</sup> *See* Fla. S., recording of proceedings (Apr. 30, 2010) (1:29:12); Fla. S., recording of proceedings (Apr. 28, 2010) (2:01:59); Fla. H.R., recording of proceedings (Apr. 26, 2010) (1:36:29); Fla. H.R., recording of proceedings (Apr. 23, 2010) (1:01:01); Fla. H.R. Rules & Calendar Council, recording of proceedings (Apr. 19, 2010) (1:27:35); Fla. S. Comm. on Reapp., recording of proceedings (Apr. 16, 2010) (1:52:31); Fla. H.R. Select Policy Council on Strategic & Econ. Planning, recording of proceedings (Apr. 15, 2010) (43:43).

repeal contiguity. There is no evidence that such an effect was ever contemplated before Appellees' counsel decided to devise a legal challenge to Amendment 7.

Indeed, the legislative history furnishes clear evidence that Amendment 7 was intended *not* to affect contiguity. When House Joint Resolution 7231 was introduced, counsel for the Florida House explained to members of the Rules and Calendar Council that, if the voters approved Amendment 7 but not Amendments 5 and 6, Amendment 7 “would go into effect, but we would have a situation where the only standards in the Florida Constitution are *contiguity and a couple of others that don't relate to this at all.*” See Fla. H.R. Rules & Calendar Council, recording of proceedings (Apr. 19, 2010) (comments of George N. Meros, Jr.). The council reported the bill favorably. See Fla. H.R. Jour. 763 (Reg. Sess. Apr. 19, 2010).

Statements made in floor debate by supporters of Amendment 7 confirm this position. Asked how the proposal would “change the current redistricting process,” Representative Erik Fresen responded: “The intent of this bill is not to change the current process, but rather to respond to the proposed change in the process of Amendments 5 and 6. . . . So it's not changing the current process, but it's an additional component to the two proposed amendments that would change the current process.” Fla. H.R., recording of proceedings (Apr. 23, 2010). And Representative Robert C. Schenck explained that “communities of interest will be weighed in concert with the other standards in our State Constitution. We never

intended for that standard to somehow mandate that communities of interest ever trump the other standards.” Fla. H.R., recording of proceedings (Apr. 26, 2010).<sup>7</sup>

There is no mention in the comprehensive staff analyses that attended the House and Senate proposals of an intent or expectation that Amendment 7 would or could, in any manner, affect contiguity. *See* Fla. S. Comm. on Ethics & Elec. CS/SJR 2288 (2010) Staff Analysis (Apr. 19, 2010); Fla. H.R. Rules & Calendar Council, HJR 7231 (2010) Staff Analysis (Apr. 20, 2010) (available at R1-77-98). And in this litigation, the Florida House and Senate have disavowed any intent to eliminate the long-standing contiguity mandate. Their statements in this litigation add to the substantial body of evidence that already supports the same conclusion.

Thus, Amendment 7 was never intended by the Legislature to sweep away the standards presently applicable to redistricting. Rather, the entire current of the

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<sup>7</sup> At one point, the Senate considered a proposal that would have recited various redistricting standards and given them “priority” over other standards in the Constitution. *See* Fla. S. CS for CS for SJR 2288 (2010). It then abandoned this approach in favor of the proposal that contained the milder phrase “without subordination.” *See* Fla. S. Jour. 941-42 (Reg. Sess. Apr. 28, 2010). Further, the abandoned Senate proposal restated the contiguity requirement, demonstrating an intent that contiguity remain a priority. It was unnecessary to restate contiguity in Amendment 7, because it did not prioritize its standards to other provisions. This proposal, however, is less noteworthy because it was never considered by the Senate and, in any event, courts generally do not draw inferences from proposals that do not pass, *United States v. Craft*, 535 U.S. 274, 287 (2002); *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990).

legislative debate concerned the anticipated consequences of Amendments 5 and 6.

Three specific concerns emerged from hours of committee and floor debate:

**First:** Supporters of Amendment 7 expressed concern that Amendments 5 and 6 would jeopardize the electoral position of racial minorities. *See* note 6. The concern rests on two considerations. Amendments 5 and 6 permit deviations from compactness and local boundaries *only* to promote the interests of minorities. But districts drawn predominantly on the basis of race violate equal protection. *Miller v. Johnson*, 515 U.S. 900, 916 (1995). Thus, because race is the *sole* justification under Amendments 5 and 6 for the creation of a district that is not strictly compact, the creation of such a district would, without Amendment 7, be telltale evidence of pure, race-based redistricting—and such minority districts will be constitutionally vulnerable.<sup>8</sup> Amendment 7, by permitting the Legislature to promote communities of interest in balance with compactness, establishes a race-neutral justification that will support the validity of districts that elect minority-preferred candidates.

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<sup>8</sup> Under Amendments 5 and 6, the requirement of contiguity and the prohibition against favoring or disfavoring an incumbent or political party would also be superior to the compactness and local-boundary requirements, but it is difficult to imagine any set of circumstances in which these would compel the creation of a district that is not compact or deviates from local boundaries.

On occasion, race-based redistricting might be justifiable to the extent reasonably necessary to comply with the federal Voting Rights Act, *Bush v. Vera*, 517 U.S. 952, 977 (1996) (plurality opinion), but these cases are not common.

Moreover, as the Chairperson of Fair Districts explained, Amendments 5 and 6 would require the Legislature first to create “minority districts” and then to make “the other districts” strictly compact and adherent to local boundaries. Fla. S. Comm. on Reapp., recording of proceedings (Feb. 11, 2010) (comments of Ellen Freidin). Thus, in creating “the other districts,” the Legislature would be unable to deviate from strict compactness to promote minority communities. Amendment 7 allows the Legislature to balance “the ability of . . . minorities to participate in the political process and elect candidates of their choice”—even *after* it has created the so-called “minority districts” that Amendments 5 and 6 require at the outset.

**Second:** The Legislature expressed concern that, under Amendments 5 and 6, “aesthetic issues” such as compactness and local boundaries would “likely supersede the interest of maintaining communities of interest.” Fla. H.R. Rules & Calendar Council, HJR 7231 (2010) Staff Analysis 19 (Apr. 20, 2010) (available at R1-77-98). Accordingly, the requirement of compactness—unless balanced with communities of interest—might prevent the preservation of Congressional District 25, which now includes the Everglades, one of the “most significant environmental communities of interest in the world.” *Id.* Amendment 7 permits the Legislature to strike a sensible balance between the geometric considerations dominant under Amendments 5 and 6 and the protection of real communities with real interests.

**Third:** Amendments 5 and 6 assign standards to two subsections, but they expressly refuse to prioritize standards within each subsection. Thus, Amendments 5 and 6 presuppose the possibility of conflict among their standards. By providing that standards must be balanced, Amendment 7 would afford flexibility in cases of conflict or collision between the unranked standards of Amendments 5 and 6.

While Amendment 7 will affect and influence the implementation of standards contained in Amendment 7, it was not designed to and will not nullify Amendments 5 and 6. In presenting the bill in committee, Representative William Proctor stated that Amendment 7 would “blend” or “merge together” redistricting criteria traditionally considered by the Legislature and those of Amendments 5 and 6. Fla. H.R. Rules & Calendar Council, recording of proceedings (Apr. 19, 2010). Counsel for the Florida House noted that the standards created by Amendments 5, 6, and 7 would be balanced and implemented in “conjunction,” or “combination.” *Id.* (comment of George N. Meros, Jr.). When asked whether Amendments 5 and 6 would “be subordinate to” Amendment 7, Representative Dorothy Hukill, leading debate on the House floor, stated: “No.” Fla. H.R., recording of proceedings (Apr. 23, 2010). Representative Steve Crisafulli explained that Amendment 7 “does not in any way trump or try and override any of the language in [Amendments] 5 and

6. . . . [T]his is in no way, shape, or form an effort to trump the language.” *Id.*<sup>9</sup>

As Representative Hukill explained: Amendment 7 “is very clear that [its] factors are to be considered, but they will not take precedence.” Fla. H.R. Select Policy Council on Strategic & Econ. Planning, recording of proceedings (Apr. 15, 2010).

The express exclusion of political parties from the phrase “communities of common interest” is additional evidence that Amendment 7 was not intended to undermine Amendments 5 and 6. This exclusion, added by floor amendment to the joint resolution, *see* Fla. H.R. Jour. 938 (Reg. Sess. Apr. 23, 2010) (amendment 1 to HJR 7231 (2010)), bars any possible argument that the authority to respect and promote communities of common interest undoes the prohibition in Amendments 5 and 6 against redistricting with an intent to favor or disfavor a political party.

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<sup>9</sup> In their efforts to defeat Amendment 7, its opponents characterized it as a devious plot to “gut” Amendments 5 and 6 and defeat the will of the people. In their review of legislative history, however, courts give weight to the “comments made by proponents of a bill,” *Ellis v. N.G.N. of Tampa, Inc.*, 561 So. 2d 1209, 1213 (Fla. 2d DCA 1990), *quashed on other grounds by* 586 So. 2d 1042 (Fla. 1991); *accord Asphalt Pavers, Inc. v. Dep’t of Revenue*, 584 So. 2d 55, 58 (Fla. 1991), and not to the comments of its opponents. The “views of opponents of a bill with respect to its meaning . . . are not persuasive,” *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 585 (1988):

We have often cautioned against the danger, when interpreting a statute, of reliance upon the views of legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach. The fears and doubts of the opposition are no authoritative guide to the construction of legislation. It is the sponsors that we look to when the meaning of the statutory words is in doubt.

*Id.*

The trial court's conclusion that no possible interpretation of Amendment 7 could preserve contiguity—and that either the existing standards or the standards in Amendment 7 must predominate—contradicts the plain intent of the Legislature.

**C. Ballot Language That Closely Follows the Amendment Text Is Presumptively Clear and Unambiguous.**

In recent cases, this Court has shown a strong reluctance to invalidate proposed amendments where the ballot summary is a virtual restatement of the amendment text. The trial court erroneously found deception in a summary that faithfully echoes the language of the proposed amendment.

The summary of Amendment 7 is a virtual recitation of the amendment. The only discrepancies enhance the clarity of the summary. Besides restating the amendment, the summary merely replaces “this constitution” with “the State Constitution” and “this article” with “Article III of the State Constitution.”

In such circumstances, this Court has approved proposed ballot language with little difficulty. In *Advisory Opinion to the Attorney General re the Medical Liability Claimant's Compensation Amendment*, 880 So. 2d 675 (Fla. 2004), the Court sustained a measure to limit attorney compensation in medical malpractice cases. In finding the ballot language clear and unambiguous, the Court found no “material or misleading discrepancies between the summary and the amendment.” *Id.* at 679. “In fact, the summary . . . [came] very close to reiterating the briefly

worded amendment.” *Id.* Thus, the Court held that “the wording of the title and summary was sufficient to communicate the chief purpose of the measure.” *Id.*

In *ACLU of Florida, Inc. v. Hood*, 881 So. 2d 664 (Fla. 1st DCA 2004), the plaintiffs attacked a legislatively proposed amendment authorizing the Legislature to require parental notification prior to the termination of a minor’s pregnancy. While the text of the amendment authorized the Legislature to require parental notification “notwithstanding” the minor’s right of privacy under Article I, Section 23 of the Florida Constitution, the summary did not make the same disclosure. In a unanimous decision, this Court ordered that the full language of the amendment—including the reference to the constitutional right of privacy—appear on the ballot verbatim. *ACLU of Fla., Inc. v. Hood*, Case No. SC04-1671 (Fla. Sep. 2, 2004).<sup>10</sup>

Next, in *Advisory Opinion to the Attorney General re Florida Marriage Protection Amendment*, 926 So. 2d 1229 (Fla. 2006), the Court upheld a proposed amendment to define marriage. The differences between the amendment text and

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<sup>10</sup> Because the election was fast approaching, the Court issued its order quickly and stated it would later publish an opinion. *ACLU of Fla., Inc.*, Case No. SC04-1671 (Fla. Sep. 2, 2004). Later, the Court decided that, with “the election . . . having been held on November 2, 2004, [the Court] has now determined that no opinion shall be issued.” *Id.* (Fla. Dec. 22, 2004). This post-*Armstrong* case demonstrates that when a ballot summary is defective, an amendment proposing a completely new section can be placed on the ballot in lieu of a defective summary, the remedy being far superior to striking the entire question because it enforces the self-executing constitutional authority of the Legislature to propose amendments. See Art. XI, § 1, Fla. Const. (providing that constitutional amendments proposed by the Legislature “shall be submitted to the electors”).

ballot summary were minimal. The Court explained that the “title and summary do not impermissibly employ terminology divergent from that contained in the text of the actual proposed amendment,” and that “the language submitted for placement on the ballot contains language that is essentially identical to that found in the text of the actual amendment.” *Id.* at 1237.

In *Advisory Opinion to Attorney General re Funding of Embryonic Stem Cell Research*, 959 So. 2d 195 (Fla. 2007), the Court approved a proposal to fund embryonic stem-cell research. The Court noted that, while the summary omitted some details, its “language . . . closely tracks that which is used in the amendment itself.” *Id.* at 201. And, in *Advisory Opinion to the Attorney General Extending Existing Sales Tax to Non-Taxed Services Where Exclusion Fails to Serve Public Purpose*, 953 So. 2d 471, 488, 491 (Fla. 2007), the Court approved a summary that “closely follow[ed] the language of the full initiative,” and that portion of a second summary that “follow[ed] the proposed constitutional amendment very closely.”

The text and summary of Amendment 7 are virtually identical. As these precedents recognize, it is hardly possible to convey the substance of a proposal more clearly and unambiguously than by a verbatim recitation. In fact, an accurate summary is important precisely “[b]ecause voters will not have the actual text of the amendment before them in the voting booth when they enter their votes.”

*Armstrong*, 772 So. 2d at 12-13; accord *In re Adv. Opinion to the Atty. Gen. re*

*Add'l Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004) (ballot accuracy is necessary because “[v]oters deciding whether to approve a proposed amendment to our constitution never see the actual text of the proposed amendment”). Where, as in this case, the entire text of the proposed amendment is presented to voters on the ballot, any concerns regarding an inaccurate “summary” are alleviated.

Indeed, the 2000 legislative amendment to Section 101.161(1), Florida Statutes, recognized that the Legislature may elect to place the entire amendment on the ballot—rather than a summary. That section did—and does—require that the “substance” of an amendment be “printed in clear and unambiguous language on the ballot.” Prior to 2000, that “substance” was “an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.” § 101.161(1), Fla. Stat. (1999). In *Wadhams v. Board of County Commissioners*, 567 So. 2d 414, 416 (Fla. 1990), the Court construed “explanatory statement” to mean a summary, and invalidated an amendment that had been placed on the ballot in its entirety.

In 2000, however, the Legislature amended Section 101.161(1), Florida Statutes, to exclude legislatively proposed amendments from the requirement of an “explanatory statement.” See Ch. 2000-361, § 1, Laws of Fla. Thus, while the “substance” of legislatively proposed amendment must still appear on the ballot “in clear and unambiguous language,” the “substance” of the amendment need not

be an “explanatory statement,” or summary. The Legislature is not constrained by word limits, and it may place the entirety of the amendment on the ballot.<sup>11</sup>

In this case, voters *will* have the actual words of the amendment before them. The ballot will give voters fair notice of the matter to be decided. Voters presented with the actual words of the proposed amendment will not be misled, and parties challenging such ballot language must carry a uniquely heavy burden.

Finally, the Legislature reasonably believed that no summary could be more accurate than the amendment text itself. The Legislature was well aware of this Court’s insistence on an accurate ballot summary, *cf. Fla. DCF v. F.L.*, 880 So. 2d 602, 609 (Fla. 2004) (“The Legislature is presumed to know the judicial constructions of a law when amending that law . . .”), and it elected to provide voters the entirety of Amendment 7. Had it done otherwise, it would have only altered Appellees’ tactics—not immunized the ballot language from challenge.

No ballot language could have avoided this challenge. While courts are not concerned with the merits of an amendment, *see Adv. Opinion to Att’y Gen. re Funding of Embryonic Stem Cell Research*, 959 So. 2d at 197, litigants are. Never

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<sup>11</sup> This amendment was a reaction to the *Armstrong* litigation, which was then pending before this Court. *See* Fla. S. Comm. on Ethics & Elec., SB 2104 (2010) Staff Analysis 2 (Mar. 20, 2000). The Legislature sought to “provide[] an exception to the ballot summary requirements of s. 101.161, F.S., for amendments proposed by joint resolution of the Legislature.” *Id.* at 1. *Armstrong*, which was decided later that year, relied on the former version of the statute. 773 So. 2d at 12.

have Appellees offered what they believe to be accurate ballot language, and in this litigation they challenge ballot language identical to the amendment text.

For the Legislature’s constitutional authority to propose amendments to have real meaning, this Court must require that challengers satisfy a substantial burden—not merely point out perceived imperfections in a summary.<sup>12</sup> There are countless ways to critique any ballot summary crafted by the Legislature. But the “legislature which approved and submitted the proposed amendment took the same oath to protect and defend the Constitution that [the Justices of this Court] did and [the Court’s] first duty is to uphold their action if there is any reasonable theory under which it can be done.” *Armstrong*, 773 So. 2d at 14 (quoting *Gray*, 89 So. 2d at 790). Consistent with that oath, the Legislature accompanied Amendment 7 with a full and complete statement. The Court should not presume that members of the Legislature intended to obliterate contiguity without notice to the voters—and in violation of their oaths. The summary accurately reflects the amendment.<sup>13</sup>

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<sup>12</sup> Including Amendment 7, four of the six amendments slated by the Legislature for the general election ballot this November are now in litigation. See *Doyle v. Roberts*, Case No. 2010-CA-2114 (Fla. 2d Cir. Ct.); *FEA v. Roberts*, Case No. 2010-CA-2537 (Fla. 2d Cir. Ct.); *Mangat v. Dep’t of State*, Case No. 2010-CA-2202 (Fla. 2d Cir. Ct.). Each of these cases challenges the summary proposed by the Legislature, and each—predictably—accuses the Legislature of “hiding the ball.”

<sup>13</sup> Even if Amendment 7 eliminates the contiguity requirement (which it decidedly does not), its summary would not be misleading. The summary must “*identify the articles or sections of the constitution substantially affected.*” *Adv.*

## CONCLUSION

Amendment 7 was never intended to affect the long-standing requirement that state legislative districts consist of contiguous territory. Its plain meaning, the established rules of constitutional interpretation, and the clear legislative history of the proposed amendment resoundingly oppose the conclusion of the trial court.

Because the attempt to construe Amendment 7 to repeal the contiguity requirement is nothing more than a display of lawyerly inventiveness, without any foundation either in the plain meaning of the proposed amendment or the manifest intent of the Legislature, this Court should reverse the order of the trial court.

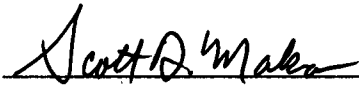
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*Opinion to Att’y Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 976 (Fla. 2009) (quoting *Fine v. Firestone*, 448 So. 2d 984, 989 (Fla. 1984)) (emphasis added). The function of a summary is to “put a voter on notice” that an existing provision will be affected, *id.*—not to describe that effect in detail.

Here, the summary identifies the only affected article of the Constitution. The ballot summary advises voters that the standards created by Amendment 7 will not be subordinate to any other provisions in Article III. This is sufficient to afford “fair notice of that which [the voter] must decide.” *Askew*, 421 So. 2d at 155.

The trial court’s order imposes a more stringent standard of clarity and precision on the ballot summary than on the amendment text itself. If Amendment 7 eliminates the constitutional requirement of contiguity, it does so in these words: “without subordination to any other provision of this article.” The ballot summary, however, contains words of identical import: “without subordination to any other provision of Article III of the State Constitution.” The summary is not required to anatomize the terms of a proposed amendment, and detail the provisions of Article III. Instead, the voters must “do their homework and educate themselves about the details of a proposal,” *Smith v. Am. Airlines, Inc.*, 606 So. 2d 618, 621 (Fla. 1992), before entering the voting booth, *Adv. Opinion to Att’y Gen. re Right to Treatment & Rehab.*, 818 So. 2d 491, 498 (Fla. 2002). “If he does not, it is no function of the ballot question to provide him with that needed education.” *Id.*

Respectfully submitted, this 28th day of July, 2010.

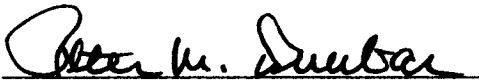


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I certify that a copy of this Brief was furnished by electronic mail and

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## **CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT**

I certify that the font used in this Brief is Times New Roman 14 point and is in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).



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