SC17-2284

In the Supreme Court of Florida

CITY OF MIAMI BEACH,

Petitioner,

v.

FLORIDA RETAIL FEDERATION, INC., *ET AL*.

Respondents.

RESPONDENT STATE OF FLORIDA'S ANSWER BRIEF

ON DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL
Case No. 3D17-0705

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INTRODUCTION

Federal law establishes a minimum wage of $7.25 per hour. Through article X, section 24 of the Florida Constitution (the "Amendment"), Florida voters provided an inflation-indexed, statewide minimum wage now fixed at $8.10 per hour. Miami Beach believes that the minimum wage should be higher, and in 2016, it enacted an ordinance (the "Ordinance") providing for a local minimum wage that would reach $13.31 per hour by 2021.

Whether the City is right, as a policy matter, that local employees should receive at least $13.31 per hour is not at issue in this case, nor is the policy issue whether the Legislature should allow municipalities to set their own minimum wages. The parties agree that the sole question presented here is whether the Florida Constitution prohibits the Legislature from preempting local minimum wage laws, as the Legislature has under section 218.077, Florida Statutes. It does not. As explained below, and as all four judges to have considered the issue have concluded, the Florida Constitution permits the Legislature to make that policy decision in favor of the uniformity of state law.

Article VIII, section 2(b) of the Florida Constitution expressly recognizes the Legislature's authority to limit municipal authority "by law"—a provision this Court has repeatedly construed to permit the Legislature to preempt local

ordinances. The City does not dispute this principle. It contends instead that the Amendment alters it by prohibiting the Legislature from preempting local minimum-wage ordinances. This contention runs headlong into an insurmountable roadblock: the Amendment says nothing about *the Legislature's* authority to preempt. Instead, subsection (f) counsels that "*[t]his amendment* . . . shall not be construed to preempt" governments' authorities to require higher minimum wages. It is one thing to clarify that a new constitutional amendment creating a statewide minimum wage does not, in itself, prohibit the Legislature or other public bodies from enacting higher minimum wages. It is another to argue, as the City does, that municipalities have a new, unfettered right to require higher local minimum wages free from any legislative oversight, contrary to article VIII, section 2(b)'s text and the Legislature's longstanding preemption authority.

The circuit court and the Third District both recognized this distinction, rejected the City's argument, and held that summary judgment against the City is appropriate. While the City offers numerous arguments against those rulings, it cannot overcome the fundamental obstacle: the Amendment establishes no limitation on the Legislature's preemption authority. This Court should affirm the Third District's well-reasoned decision.

STATEMENT OF THE CASE AND OF THE FACTS

A. The Legislature Preempts Local Minimum Wages.

Like many states,[1] Florida limits local governments' power to impose minimum wages. Specifically, section 218.077(2), Florida Statutes, prohibits political subdivisions, including the City of Miami Beach, from requiring employers to pay a wage other than the federal or state minimum wage. It provides:

> Except as otherwise provided in subsection (3), a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage, to apply a state or federal minimum wage to wages exempt from a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law.

§ 218.077(2), Fla. Stat.[2] Whether the Florida Constitution prohibits this statute is the only issue in this case.

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[1] By 2017, twenty-seven prohibited local governments from enacting local minimum wages. Yuki Noguchi, *As Cities Raise Minimum Wages, Many States Are Rolling Them Back*, http://www.npr.org/2017/07/18/537901833/as-cities-raise-minimum-wages-many-states-are-rolling-them-back (July 18, 2017); *e.g.*, Ala. Code § 25-7-41(b); Colo. Rev. Stat. § 8-3-102(1)(g); Ga. Code § 34-4-3.1(b); Mich. Comp. L. § 123.1385; 43 Pa. Cons. Stat. § 333.114a; R.I. Gen. L. § 28-12-25; Tenn. Code § 50-2-112; Wis. Stat. § 104.001(2).

[2] Section 218.077(3) contains an exception for a political subdivision's own employees; employees of contractors or subcontractors; and employees of businesses receiving direct tax subsidies. *Id.* § 218.077(3).

The Legislature enacted section 218.077 in 2003, when Florida had no state law on minimum wages. Ch. 2003-87, Laws of Fla.; R. 251–52, 255; Fla. S. Comm. on Comp. Plan., CS for SB 54, Staff Analysis 2 (Apr. 7, 2003). The law's recitals explained that "promoting . . . economic growth" is one of the State's "most important responsibilities." Ch. 2003-87, Laws of Fla. That goal "depends upon maintaining a stable business climate that will attract new employers to the state and allow existing employers to grow." *Id.*

After concluding that the "federal minimum wage provisions strike the necessary balance between the interests of workers and their employers," *id.*, the Legislature made two related policy decisions: (1) it would not enact a higher statewide minimum wage, and (2) it would prevent local governments from requiring employers to pay any minimum wage other than the federal minimum wage. On this second point, the Legislature was concerned with "artificial constraints [that] would disrupt Florida's economy and threaten the public welfare" by "encourag[ing] residents to conduct their business in jurisdictions where wage costs, and hence prices, are lower." *Id.* Local minimum wages could "drive businesses out" of those local communities, and even "out of the state in search of a more favorable and uniform business environment." *Id.* For these reasons, the Legislature concluded not only that there should be no separate state minimum

wage, but also no local minimum wages.

B. Florida Voters Approve a Statewide Constitutional Minimum Wage; the Legislature Enacts Implementing Legislation and Maintains Local Minimum Wage Preemption.

Two months after the Governor signed section 218.077 into law, Floridians began collecting signatures for a constitutional amendment to create a statewide minimum wage. R. 26, 252, 261. On November 2, 2004, Floridians' ballots presented the following summary of an amendment creating a statewide minimum wage:

> This amendment creates a Florida minimum wage covering all employees in the state covered by the federal minimum wage. The state minimum wage will start at $6.15 per hour six months after enactment, and thereafter be indexed to inflation each year. It provides for enforcement, including double damages for unpaid wages, attorney's fees, and fines by the state. It forbids retaliation against employees for exercising this right.

R. 261. The Amendment passed convincingly, with more than 70 percent of the vote. R. 262. The ballot summary did not mention legislative preemption or local minimum wages, and the Amendment's sponsor likewise did not inform this Court of any effect on legislative preemption when seeking its approval to present the Amendment to the voters. *See infra* 36–40.

Consistent with the summary, subsection (a) of the Amendment articulates the policy—that "[a]ll working Floridians are entitled to be paid a minimum

wage"—and subsection (c) defines what that minimum wage is and how it will be adjusted for inflation. Art. X, § 24, Fla. Const. Subsection (d) prohibits retaliation, and subsection (e) provides for enforcement, including the damages set out in the summary. *Id.*

The City argues that subsection (f) entitles it to disregard section 218.077's preemption. Initial Br. 22–37. That subsection provides:

> **(f) Additional legislation, implementation, and construction.** Implementing legislation is not required in order to enforce this amendment. The state legislature may by statute establish additional remedies or fines for violations of this amendment, raise the applicable Minimum Wage rate, reduce the tip credit, or extend coverage of the Minimum Wage to employers or employees not covered by this amendment. The state legislature may by statute or the state Agency for Workforce Innovation may by regulation adopt any measures appropriate for the implementation of this amendment. *This amendment provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment*. It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.

Art. X, § 24(f), Fla. Const. (emphasis added).

Although the Amendment did not require implementing legislation, it contemplated that the Legislature might "adopt . . . measures appropriate for the implementation of this amendment." Art. X, § 24(f), Fla. Const. In 2005, the Legislature enacted such measures in the Florida Minimum Wage Act, but it retained section 218.077's preemption of local minimum wages. *See* Ch. 2005-353, Laws of Fla.[3]

In 2013, the Legislature updated section 218.077 to add the state minimum wage to the federal minimum wage as a wage that a "political subdivision," such as Miami Beach, could "require an employer to pay." Ch. 2013-200, § 1, Laws of Fla. The Legislature continued otherwise to prohibit local minimum wages. *See id.*

C. The City Enacts a Minimum Wage, Violating Section 218.077.

For thirteen years after the Legislature preempted local minimum wages, every Florida county and municipality abided by section 218.077's ban on local minimum wages. On June 8, 2016, the City of Miami Beach became the first Florida municipality to enact a local minimum wage. Miami Beach Ord. No. 2016-4020 (codified at §§ 18-920 *et seq.*, 102-371, Miami Beach Code). Its Ordinance requires employers to pay a minimum wage of at least $10.31 per hour by January

[3] The City faults various provisions of the Florida Minimum Wage Act. Initial Br. 7–8 & n.14. Those provisions are not at issue here.

1, 2018, ascending one dollar per year until it reaches $13.31 per hour in 2021. § 18-921, Miami Beach Code. It prohibits retaliation, provides a private right of action, and authorizes the city manager to deny licenses and permits to businesses that fail to pay the Ordinance's minimum wage. *Id.* §§ 18-922, 18-923, 18-926. The Ordinance's recitals quote subsections (a) and (f) of the Amendment. R. 264.

In a June 6, 2016 memorandum, Miami Beach's City Attorney acknowledged that section 218.077 preempted the Ordinance, but opined that the Amendment "reserved the authority of local governments to establish higher minimum wages than that set by federal or state law." R. 73. In his view, "Florida's statutory preemption of a local minimum wage . . . is unconstitutional because it violates that Amendment by taking power reserved to the municipalities and preempts it to the state." *Id.* The City Attorney's analysis cited only subsection (a)'s policy statement and subsection (f)'s statement that "[t]his amendment . . . shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law . . . that provides for payment of higher or supplemental wages . . . ." *Id.* The City Attorney did not explain why text addressing only *the Amendment's* preclusive effect should be understood to prohibit *the Legislature* from preempting local wage regulation under article VIII, section 2(b), nor did he identify any other text in the

Amendment as relevant to the City's purported authority to pass a minimum-wage ordinance. *Id.*

The City held a hearing before enacting the Ordinance. One speaker, who said she was a staff attorney from the National Employment Law Project and was "very excited to be here to support" the proposed ordinance, claimed that one of her colleagues had been the "lead drafter" of the Amendment. R. 86. Her coworker, she said, had "intended as part of that constitutional amendment to give cities like the City of Miami Beach the right to enact [a] local minimum wage that exceeds the state minimum wage." *Id.* The speaker did not claim any personal knowledge supporting these assertions, nor did she claim that the "lead drafter" had made his intentions known to anyone else at any time before the Amendment was approved.

D. The Circuit Court and Third District Unanimously Reject the City's Argument that the Amendment Prohibits Legislative Preemption.

Florida Retail Federation, Inc. and other plaintiffs sued the City, seeking a declaration that section 218.077, Florida Statutes, preempted the minimum wage ordinance, and requesting an injunction. R. 7–13.[4] The City argued that section

[4] Plaintiffs voluntarily dismissed their claim for injunctive relief following the summary-judgment order. R. 444–46.

218.077 violated the Amendment; the State then intervened to defend the statute's constitutionality. R. 14–44, 214–17. Plaintiffs filed a cross-motion for summary judgment, which the circuit court granted. R. 270–77, 462–69.

In its summary-judgment order, the circuit court recognized that "courts do not have the authority to invalidate a statute unless it is clearly contrary to a prohibition found in the Constitution." R. 465. It further acknowledged that the Legislature "has particularly broad authority to limit the municipal power of local governments under Article VIII, § 2(b) of the Florida Constitution," including "the power to enact preemption statutes." *Id.* Therefore, the court reasoned, "the only way for the City's minimum wage ordinance to be viable is if the City identifies a constitutional provision prohibiting the State from preempting said ordinance." R. 466.

The court then rejected the City's argument that the Amendment "authorizes and empowers municipalities to establish a local minimum wage" free from legislative oversight. R. 467. "Rather," the court concluded, "the Amendment provides that *the Amendment itself* shall not be construed as preempting a municipality from establishing a higher minimum wage." *Id.* In the court's view, the problem with the City's argument was not so much "what the Amendment says but what the Amendment does not say." *Id.* For example, the Amendment "does

not prohibit other laws, such as § 218.077, from preempting a local minimum wage ordinance," nor does it "invalidate or even reference the Legislature's preemption powers recognized in Article VIII, § 2(b) and the case law interpreting same." *Id.*

The court likewise rejected the City's argument that enforcing section 218.077 would render subsection (f) "nugatory," explaining that the provision was "extraneous to the issue presented." R. 467. Instead, the court concluded that subsection (f) answers the question "whether *the Amendment* prohibits a municipality from enacting a local minimum wage." R. 467–68 (emphasis added). But that question, the court explained, was "not the question before the court. The question here is whether the Constitutional Amendment preempted *the State statute*." R. 468. (emphasis added). The court held that it did not.

On appeal, the Third District unanimously affirmed. The court began by recognizing that, under this Court's precedent, it must enforce the Amendment's language "as written," and that "the statute itself enjoys a presumption of correctness"—especially because the Legislature enacted it pursuant to its well-established preemption authority under article VIII, section 2(b). *City of Miami Beach v. Fla. Retail Fed'n, Inc.*, 233 So. 3d 1236, 1239 (Fla. 3d DCA 2017). The court observed that the Amendment "contains no language expressly nullifying or limiting the statute's preemption provision." *Id.* Instead, as it recites, the

Amendment "both 'provides for payment of a minimum wage' and 'shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body' to adopt a higher minimum wage." *Id.* (quoting art. X, § 24(f), Fla. Const.). In other words, "a plain reading of" the Amendment reveals that it "(i) does not directly preempt [the] City's higher minimum wage, but also (ii) does not nullify or limit the effectiveness of section 218.077(2) . . . ." *Id.*

In the final analysis, the court concluded that, "had the drafters of [the Amendment] wanted to restrict the Legislature's ability to prohibit a municipality from adopting its own minimum wage ordinance, they could have employed clear and direct language to achieve that purpose." *Id.* at 1240. "For whatever reason, the drafters of the provision chose not to" do so, and the court "decline[d] [the] City's invitation" to add such language "by judicial fiat." *Id.* Because the Amendment did not abrogate the statute and because the statute prohibited the City's ordinance, the Third District unanimously affirmed the circuit court's summary judgment.

SUMMARY OF THE ARGUMENT

Because the Legislature has the authority to preempt the City's minimum-wage ordinance, the Third District's unanimous judgment should be affirmed.

Article VIII, section 2(b) of the Florida Constitution allows the Legislature to limit municipal authority "by law," a provision that this Court has repeatedly

interpreted to allow the Legislature to preempt municipal ordinances. The City does not question this longstanding principle. Instead, it contends that a 2004 constitutional amendment that created a statewide minimum wage—article X, section 24 of the Florida Constitution—prohibits the Legislature from preempting local minimum wages.

Neither the Amendment's text, nor the history of its adoption, supports the City's position. Although the Amendment addresses *its own* effect on local minimum wages, it says nothing about *the Legislature's* authority to preempt local minimum wages under article VIII, section 2(b). Rather, it clarifies that "this amendment" itself—that is, article X, section 24—"shall not be construed to preempt or otherwise limit the authority of the legislature or any other public body" to require higher wages. As the lower courts explained, that text does not abrogate the Legislature's long-established article VIII, section 2(b) authority to preempt local minimum wages. The Amendment's incorporation of the federal Fair Labor Standards Act ("FLSA") as a "guide" confirms this interpretation, as that law similarly provides that it does not preempt any higher minimum wage but remains silent on states' authority to enact their own preemption statutes.

The City's principal response is that the text recognizes other public bodies' "authority" to require higher minimum wages. But under the Florida Constitution's

long-existing division of power between state and local governments, municipal authority is not absolute; instead, municipal authority may be limited by statute, as section 218.077 has done here. As it applies to local governments, the Amendment's text is properly understood to ensure that its creation of a statewide minimum wage, standing alone, is not construed to prohibit higher local minimum wages. In other words, it leaves the policy decision whether minimum wages should be higher—and whether localities should have their own say regarding the issue—to the political process. Should the Legislature in the future determine that the best policy is to allow municipalities to enact their own minimum wages, the Amendment will not stand as a barrier. Until then, local minimum wages, including the City's, are validly preempted by section 218.077.

The history behind the Amendment confirms this interpretation. The Amendment was approved after the Legislature's decisions not to adopt a minimum wage higher than the federal one and to prohibit local governments from adopting their own local minimum wages. If the sponsor had intended the Amendment to affect legislative preemption of local minimum wages, it had full opportunity to make that intent clear. The ballot summary—the only information presented to voters in the voting booth—disclosed only that the proposed amendment "creates a Florida minimum wage covering all employees in the state

covered by the federal minimum wage," along with enforcement provisions. And when the sponsor sought this Court's approval to place the Amendment on the ballot, its characterization was even more measured. It told this Court that the Amendment's "one unified purpose" was to "creat[e] a state minimum wage." To drive the point home, the sponsor assured the court that "[t]he amendment has *no effect* on *any provision* in the current Florida Constitution," which necessarily includes article VIII, section 2(b), the provision under which the Legislature had preempted local minimum wages.

No evidence supports the City's claim that the Amendment was intended to give local governments the power to enact minimum wages, free from Legislative oversight. All it can cite in support is post-hoc hearsay from a speaker made in support of the City's local minimum wage, which she offered more than a decade after the Amendment's adoption. Even if her statements weren't hearsay, they still would carry no weight. After-the-fact testimony of hidden drafter intent never disclosed to the voters at the time of adoption can hardly provide a basis to rewrite the Amendment's carefully crafted text.

In sum, while it is clear that voters adopted a constitutional amendment providing for an inflation-indexed statewide minimum wage that is higher than the federal minimum wage, it is equally clear that the Amendment does not alter the

Legislature's well-established, preexisting power to preempt local minimum wages under article VIII, section 2(b). Although the Legislature plainly cannot undercut the constitutionally mandated minimum wage, it is free to prohibit local governments from enacting higher minimum wages. The Third District, like the circuit court, correctly held that section 218.077, Florida Statutes, validly preempts the City's Ordinance. Its judgment should be affirmed.

STANDARD OF REVIEW

This Court reviews *de novo* a lower court's interpretation of a constitutional provision. *Benjamin v. Tandem Healthcare, Inc.*, 998 So. 2d 566, 570 (Fla. 2008).

ARGUMENT

I. SECTION 218.077 IS PRESUMED CONSTITUTIONAL.

Where, as here, the issue is whether a duly enacted statute violates the Constitution, courts give significant deference to the Legislature's judgment. In "all constitutional challenges," statutes enjoy a "presumption of correctness and all reasonable doubts about the statute's validity are to be resolved in favor of constitutionality." *Fla. Dep't of Revenue v. Am. Bus. USA Corp.*, 191 So. 3d 906, 911 (Fla. 2016). Thus, a court is "without authority" to hold a law unconstitutional unless it is "clearly contrary to some express or necessarily implied prohibition found in the Constitution." *Abdool v. Bondi*, 141 So. 3d 529, 541 (Fla. 2014).

Rules for constitutional construction "parallel" those of statutory construction. *Graham v. Haridopolos*, 108 So. 3d 597, 603 (Fla. 2013). Although this Court has occasionally suggested that constitutional text should be more liberally construed than statutory text, *e.g.*, *Coastal Fla. Police Benevolent Ass'n v. Williams*, 838 So. 2d 543, 549 (Fla. 2003), when the constitutional text is "clear, unambiguous, and addresses the matter in issue, then it must be enforced as written," *Graham*, 108 So. 3d at 603. Put differently, "[a]mbiguity is an absolute prerequisite to judicial construction"; "when constitutional language is precise, its exact letter must be enforced." *Benjamin*, 998 So. 2d at 570.

That this Court examines the "full purpose" of a constitutional provision to determine whether a statute conflicts with it, Initial Br. 17, and that the Amendment might be considered "remedial," *id.*, does not displace these rules of construction. Where a text is "unambiguous and clear upon its face, courts must accord" it "its plain meaning and are not free to construe it otherwise." *Jenny v. State*, 447 So. 2d 1351, 1353 (Fla. 1984). A court may not "rewrite" the text or "ignore the words chosen by the" drafter "so as to expand its terms," even if it is appropriately characterized as remedial. *Knowles v. Beverly Enterprises-Fla., Inc.*, 898 So. 2d 1, 7 (Fla. 2004).

II. THE AMENDMENT'S TEXT DOES NOT ADDRESS, AND MUCH LESS DOES IT UNAMBIGUOUSLY CURTAIL, THE LEGISLATURE'S PREEXISTING PREEMPTION AUTHORITY.

A. Article VIII, Section 2(b) Empowers the Legislature to Preempt Municipal Ordinances.

Article VIII, section 2(b) of the Florida Constitution controls this case. That provision "specifically recognizes" that municipalities "'may exercise any power for municipal purposes *except as otherwise provided by law*.'" *Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014) (quoting, with emphasis, art. VIII, § 2(b), Fla. Const.). "The critical phrase of article VIII, section 2(b)—'except as otherwise provided by law'—establishes the constitutional superiority of the Legislature's power over municipal power." *Id*. Although Florida municipalities possess "broad authority to enact ordinances under [their] municipal home rule powers" pursuant to this home-rule provision, "municipal ordinances must yield to state statutes." *Id.* at 494–95.

In other words, "[a]lthough municipalities and the state may legislate concurrently in areas that are not expressly preempted by the state, a municipality's concurrent legislation must not conflict with state law." *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993) (citing *City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066 (Fla. 3d DCA 1981)). An ordinance is therefore "invalid to the extent that it attempts to regulate an area expressly preempted to state government." *City of*

Miami Beach v. Amoco Oil Co., 510 So. 2d 609, 609 (Fla. 3d DCA 1987). Neither the City, nor amici, dispute the Legislature's established power to preempt under article VIII, section 2(b). Fla. League of Cities Br. 8, 13; Legal Scholars Br. 15.

Whatever home-rule authority the City possesses to enact a local minimum wage in the first instance, article VIII, section 2(b) makes clear that the Legislature is free to preempt that authority. As the City concedes, its Ordinance violates section 218.077(2)'s rule that "a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage." Initial Br. 1 (conceding the statute's "disallowance of that local authority" to "requir[e] the payment of a minimum wage higher than the State of Florida's"). Thus, as the circuit court recognized, "the only way for the City's minimum wage ordinance to be viable is if the City identifies a constitutional provision prohibiting the State from preempting" the Ordinance. R. 466. As explained below, the Amendment does no such thing.

B. The Amendment Does Not Limit the Legislature's Longstanding Preemption Authority Under Article VIII, Section 2(b).

1. In arguing that the Amendment removes the Legislature's well-established preemption authority, the City principally focuses on the Amendment's and the statute's supposed "impetus" and on their "policy statements," Initial Br. 18, 21, turning last to the Amendment's operative text, *id.* at 22. This prioritization

of "impetus" and policy over the constitutional text gets it backwards. Under this Court's precedent, the constitutional text is paramount. *See Graham*, 108 So. 3d at 603; *Benjamin*, 998 So. 2d at 570. And here, the Amendment's text unambiguously forecloses the City's argument.

The City's textual arguments focus only on subsection (f). Initial Br. 22. As an initial matter, the City repeatedly observes that in this subsection, the Amendment "explicitly states that *it* does not prohibit higher local minimum wage ordinances," Initial Br. 1 (emphasis added), and "*it* did not preempt" ordinances of the kind the City has enacted, *id.* at 11, 20 (emphasis added; emphasis removed). The State agrees with these observations, but they are beside the point. This case does not present the question whether the Ordinance is preempted by *the Amendment*. The parties agree that it is not. Rather, it presents the question whether the Ordinance is preempted by section 218.077 (it is), and whether *the statute* is abrogated by the Amendment (it isn't).

The only sentence in subsection (f) that discusses preemption, which the City mislabels an "Anti-Preemption Clause," *e.g.*, Initial Br. 7, 12, 20, 29–32, 38, does not limit the Legislature's preemption authority at all. Instead it counsels that *the Amendment*, in creating a constitutional statewide minimum wage, "shall not be construed" to prohibit the Legislature or any other government from enacting other

wage protections, including a minimum wage that exceeds the constitutional minimum wage. It provides:

> *This amendment* provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment.

Art. X, § 24(f), Fla. Const. (emphasis added). It is one thing to explain, as the Amendment does, that the Amendment itself does not preempt higher local minimum wages. It is another altogether to urge, as the City does, that it prevents the Legislature from doing so.

The circuit court recognized that the text's plain meaning "does not invalidate the Legislature's preemption powers recognized in Article VIII, § 2(b)"; all the text does is provide that "*the Amendment itself* shall not be construed as preempting a municipality from establishing a higher minimum wage." R. 467. The Third District unanimously agreed. 233 So. 3d at 1239.

This commonsense understanding, based on the ordinary meaning of the Amendment's text, was correct and comports with analogous precedent. This Court has already recognized that the phrase "[t]his law shall not be construed as" in a statute "merely concerns itself with the ambit of the" law and does not create "affirmative duties." *Fieldhouse v. Public Health Trust of Dade Cty.*, 374 So. 2d

476, 477–78 (Fla. 1979). In addition, this Court has made clear, when interpreting a voter-initiated amendment like the one here, that "when constitutional language is precise, its exact letter must be enforced." *Benjamin*, 998 So. 2d at 570. In *Benjamin*, this Court refused to subject nursing home records to article X, section 25's disclosure requirements for health care facilities and providers because the text did not apply to nursing homes. Under the amendment, "health care facility" and "health care provider" had "the meaning given in general law related to a patient's rights and responsibilities." *Id.* at 569 (quoting art. X, § 25(a), Fla. Const.). Following that instruction, this Court looked to the "Florida Patient's Bill of Rights and Responsibilities," section 381.06, Florida Statutes, which did not apply to nursing homes. *Id.* at 569–71 & n.2. Because "the exact letter" of "precise" constitutional language must control, this Court refused to subject nursing homes to the amendment's requirements. *See id.* at 570.

In her concurring opinion, Justice Pariente noted a further reason not to stretch the text to apply to nursing homes, explaining that the "drafters of this amendment could have provided a broad definition" encompassing nursing homes had they wanted to. That, however, "is not what occurred." *Id.* at 572 (Pariente, J., specially concurring). Although she acknowledged that there were "strong policy reasons" to extend the rules for health care providers and facilities to nursing

homes, Justice Pariente explained that the court's job was solely to "ascertain the meaning of the phrases and words used in a provision." *Id.*

Benjamin's rationale applies here. The only reference to preemption of higher minimum wages says nothing about the Legislature's article VIII, section 2(b) preemption authority. Rather, it counsels, using precise language, that *the Amendment itself* should not be construed to preempt higher minimum wages. Had they wanted to, the drafters could have responded to the Legislature's decision to preempt local minimum wages with an amendment eliminating legislative preemption of local minimum wages. But those are not the words the drafters chose. Consistent with *Benjamin*, that choice should be respected, not displaced.

The City repeatedly relies on *Florida Hospital Waterman, Inc. v. Buster*, 984 So. 2d 478 (Fla. 2008), which construed the same amendment that *Benjamin* did. *See* Initial Br. 16 n.16, 24 & n.25, 30–31. In so doing, the City advances various points the State does not and need not dispute. Yes, Florida voters possess the power to change the law through the initiative process, even when statutory law has long provided for a different rule and even if the Legislature and the courts might see that policy choice as unwise. *Id.* at 24, 30–31. Yes, the Legislature cannot, by statute, negate that policy choice. *Id.* at 24, 30–31. And yes, the Legislature cannot "restrict[ ]" rights conferred by a self-executing constitutional

amendment. *Id.* at 24. None of that, however, occurred here.

The sole issue here is the Amendment's scope, and on that issue, *Buster* supports the lower courts' conclusion. *Buster* closely examined an amendment's text, confirmed it by reference to the ballot summary, and then held invalid only statutes that "conflict with the provisions of [the] amendment." *Buster*, 984 So. 2d at 492–93. Accordingly, *Buster* is consistent with *Benjamin*'s rule that, "when constitutional language is precise, its exact letter must be enforced." *Benjamin*, 998 So. 2d at 570. Indeed, *Benjamin* was issued just months after *Buster*, and the unanimous *Benjamin* court never suggested any tension with *Buster*'s analysis.

Still less persuasive is the City's reliance upon language in a decades-old Attorney General opinion unrelated to the issue here. *See* Initial Br. 33–34. That opinion did not interpret instructions that a provision "shall not be construed to" achieve a particular result to prevent some other constitutional provision, statute, or ordinance from achieving the same result. *See* Op. Att'y Gen. Fla. 74-11 (1974). Therefore, it provides no basis for disregarding the text's plain meaning. The same holds true for the City's reliance on *Martin v. State*, 207 So. 3d 310, 318 (Fla. 5th DCA 2016). Nowhere did *Martin* hold or imply that one statute's "shall not be construed to preclude" clause prevents another statute from precluding the thing that the first statute did not.

In sum, under ordinary usage, subsection (f)'s explanation that "[t]his amendment . . . shall not be construed to preempt or otherwise limit" the Legislature's and other public bodies' authority to require higher minimum wages does not affect the Legislature's preexisting article VIII, section 2(b) authority to preempt local minimum wages.

2. The City's principal textual argument is that "the lower court's interpretation renders [subsection (f)], which recognizes the authority of the Legislature and 'other public bodies' to legislate in the minimum wage arena, impermissibly redundant if only the authority of the Legislature was intended to be preserved." Initial Br. 32. The City finds it significant that the Amendment refers to public bodies' "authority" with no modifier, rather than "potential authority," "contingent authority" or "authority, if any is ever restored." *Id.* at 31. But the Amendment does not say "absolute authority," either. The issue, then, is the nature of the "authority" the Amendment preserves.

For municipalities, the pertinent constitutional source of authority is article VIII, section 2(b) of the Florida Constitution, which confers "governmental, corporate and proprietary powers" that may be exercised for "municipal purposes *except as otherwise provided by law*." While this provision creates a default rule giving municipalities an authority to legislate across a broad range of issues,

municipal home rule authority is neither "absolute" nor "supreme to that of the legislature." *Thomas v. State*, 614 So. 2d 468, 472 (Fla. 1993). As explained above, *supra* 18–19, the Legislature retains the power to preempt municipal ordinances, and "municipal ordinances must yield to state statutes." *Masone*, 147 So. 3d at 495.

The City observes that the Amendment "says *it* does not limit the authority of any public body"—including municipalities—"to pass any more generous wage law." Initial Br. 31–32 (emphasis added; emphases omitted). That observation, while true, avails the City nothing. *The Amendment* does not limit municipalities' authority to pass minimum-wage regulations, but the *statute* does, and the Amendment says nothing that calls into question the validity of the statute. In other words, the Amendment does not contract any authority that municipalities otherwise might have to enact more generous wage regulations; but it also does not *expand* that authority to make it superior to the Legislature's well-established power to preempt.

Even though the reference to other public bodies' authority does not limit the Legislature's preemption authority, it is not hard to see why the drafters included it. Although state law then, as now, prohibited local minimum wages, a future Legislature could decide that the better policy is to allow local governments to enact their own higher minimum wages. The reference to higher minimum

wages enacted by "any other public body" ensures that, if the Legislature changes its mind, *the Amendment* will "not be construed to preempt" local minimum wages. The Constitution is "not easily amended," *Coastal Fla. Police Benevolent Ass'n*, 838 So. 2d at 549, so it made good sense for drafters to be clear about the Amendment's effect on other laws and avoid any need for subsequent clarifying amendments.

The City is therefore incorrect to say that the circuit court's interpretation renders the reference to other public bodies' authority "impermissibly redundant." Initial Br. 32. As the circuit court explained, the "more accurate description is to say that the Amendment's language is extraneous to the issue presented in this declaratory action." R. 467. It continued, "[i]f the question in this case were 'whether the Amendment prohibits a municipality from enacting a local minimum wage,' the answer would clearly be 'no.' But that is not the question before the court. The question here is whether the Constitutional Amendment preempted the State statute." R. 467–68. That the text on which the City relies is irrelevant in this case does not render that text redundant.

3. The City makes much of the fact that the Amendment is "self-implementing." Initial Br. 23–26. The State doesn't dispute that observation. That the Amendment requires no implementing legislation, however, does not mean it

"was intended to replace the minimum wage legislation previously on the books and to stand alone" as Florida's sole law dealing with minimum wage policy. *Id.* at 25. The City provides no legal support for the sweeping proposition that self-implementing amendments occupy their fields and repeal prior enactments addressing the same policy area, even without a conflict. And accepting it could call into doubt any number of statutes that touch on areas that the Constitution's many self-implementing provisions address. *See, e.g.*, art. I, § 24(c), Fla. Const.; *id.* art. I, § 26(a); *id.* art. VII, § 6(e); *id.* art. X, § 16(f); *id.* art. X, § 21(e). To the extent the City urges this Court to apply a field-preemption analysis rather than a conflict-preemption one, its argument is inconsistent with its repeated invitations to apply conflict preemption, *see* Initial Br. 11–12, 17, and its repeated arguments that the Amendment and the statute conflict, *id.* at 18–37.

Indeed, applying field preemption would contravene over a century of this Court's precedent. *See, e.g.*, *Armistead v. State ex rel. Smyth*, 41 So. 2d 879, 882 (Fla. 1949) ("It is established law that the law-making power of the Legislature of the State of Florida is subject only to the limitations provided in our Constitution and no statute should be declared inoperative on the ground that it violates organic law, unless it clearly appears beyond all reasonable doubt that there is a positive conflict."); *Bd. of Comm'rs of Escambia Cty. v. Bd. of Pilot Comm'rs of Port of*

Pensacola, 42 So. 697, 702 (Fla. 1906) (if a statute "is not clearly in conflict with the Constitution, or if there is a well-founded or reasonable doubt as to the constitutionality of the provision, the legislative will as expressed therein should be sustained"). To the extent the City asks this Court to depart from this longstanding precedent, it should refuse the invitation.

4. The City also argues that, because the Amendment "enumerates a specific list of actions that the legislature may take" and omits mention of the Legislature's preemption power, the Legislature lacks the power to preempt minimum wages. Initial Br. 28–29. This argument—repeated by amici, *see* Fla. League of Cities Br. 10 & n.2—conflates federal constitutional law with state constitutional law. Whereas "[t]he Federal Government is acknowledged by all to be one of enumerated powers" that may exercise "only the powers granted to it," *Nat'l Fed. of Indep. Bus. v. Sebelius*, 567 U.S. 519, 534 (2012), Florida's Legislature "may exercise any lawmaking power" that is not "clearly contrary to some express or necessarily implied prohibition found in the Constitution," *Abdool*, 141 So. 3d at 541. Thus, the Florida Constitution speaks in clear language when it limits Legislative authority. *E.g.*, art. III, § 11(a), Fla. Const. ("There shall be no special law or general law of local application pertaining to . . . .").

This Court has consistently rejected the notion that enumerating some

authority impliedly limits Legislative authority. *E.g.*, *Nichols v. State ex rel. Bolon*, 177 So. 2d 467, 469 (Fla. 1965); *Taylor v. Dorsey*, 19 So. 2d 876, 881 (Fla. 1944); *State ex rel. Moodie v. Bryan*, 39 So. 929, 956 (Fla. 1905); *see also Hous. Opportunities Project v. SPV Realty, LC*, 212 So. 3d 419, 422 n.5 (Fla. 3d DCA 2016) (cautioning against the "often . . . dangerously over-expansive" use of the *expressio unius* canon in state constitutional interpretation). The City's observation that subsection (f) does not enumerate legislative authority to preempt local minimum wages is thus beside the point, particularly when another constitutional provision, article VIII, section 2(b), already recognizes the Legislature's authority to limit municipal authority.

The observation that the Legislature must comply with constitutional limitations when a provision "has prescribed the manner in which [a] thing shall be done," Initial Br. 28 (quotation marks omitted), is similarly unhelpful, as is the City's and amici's analogy to *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), Initial Br. 26–29; Fla. League of Cities Br. 9–10. A provision directing that "adequate provision for the education of all children . . . . shall be made" through a "uniform . . . system of free public schools," *Holmes*, 919 So. 2d at 403, is wholly unlike subsection (f). Subsection (f) does not "prescribe" the method for doing anything. Instead, it clarifies that the Legislature "may by statute" enact employee

protections beyond those provided by the Amendment and "adopt any measures appropriate for the implementation of this amendment." Art. X, § 24(f), Fla. Const. The drafters likely included this language to ensure that the Legislature and the courts did not read subsection (f) to preclude additional legislation. But whatever the reason for its inclusion, this language, like the rest of the Amendment, does not amount to a withdrawal of the Legislature's article VIII, section 2(b) preemption authority.

5. In advocating its broad reading of the Amendment, the City also relies, in significant part, on an assertion of conflict between the Amendment's policy statement and the Legislature's "whereas" clauses in Ch. 2003-87, Laws of Fla. Initial Br. at 21–22. The City notes that while the Legislature, in enacting the statute, recited that "economic growth and prosperity depend[ ] upon maintaining a stable business climate," Ch. 2003-87, Laws of Fla., the Amendment declares "[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families . . . and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship," art. X, § 24(a), Fla. Const. *See* Initial Br. 21–22. The City argues that the Amendment conflicts with the statute because, in their policy declarations and recitals, the Amendment "prioritizes the welfare of the worker

over business stability," while the statute "prioritized stability over wage sufficiency." *Id.* at 22.

This argument fails for several reasons. First, the Amendment's policy statement does not even purport to address the question at issue here—whether the Legislature may exercise its well-established authority to preserve the uniformity of state law. Second, the City fails to explain how a uniform statewide minimum wage is inconsistent with the purposes announced in the Amendment's policy statement, none of which relate to uniformity. Third, the Amendment's policy statement is merely a declaration. It lacks any legal effect because it contains no operative "rule," *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960), or "mandate," *Holmes*, 919 So. 2d at 405. Similarly, the Legislature's "whereas" recitals are not part of the statute that it enacted. *Compare* Ch. 2003-87, Laws of Fla. *with* § 218.077, Fla. Stat.; *see Advisory Op. to Att'y Gen. re: Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 166 n.2 (Fla. 2002); *Advisory Op. to Att'y Gen. re: Protect People from the Health Hazards of Second-Hand Smoke*, 814 So. 2d 415, 422 n.8 (Fla. 2002). Because they lack any legal effect, even if the Amendment's policy statement and the Legislature's "whereas" clauses both purported to address the issue in this case, any conflict between them would not provide a basis for holding the statute invalid.

6. Contrary to the City's argument, *see* Initial Br. at 34–37, the Amendment's instruction that "case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment," art. X, § 24(f), Fla. Const., further undermines the City's position. That is because the FLSA, like the Amendment, does not affect states' authority to prohibit local minimum wages and preserve the uniformity of state law.

In arguing that the FLSA supports its position, the City identifies the relevant FLSA provision and acknowledges that it is "strikingly similar" to the portion of the Amendment on which it relies. *See* Initial Br. 36.[5] Under 29 U.S.C. § 218(a), "[n]o provision of [the FLSA] shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under [the FLSA]." All section 218(a) does is "establish[ ] that the FLSA does not displace more protective state minimum wage and overtime laws." *Calderone v. Scott*, 838 F.3d 1101, 1105 (11th Cir. 2016). Like the Amendment here, the FLSA speaks only to its own reach; it does not

[5] It is unclear what the City intends by claiming that this Court has "interpreted the Amendment's FLSA incorporation broadly." Initial Br. 35. The case it cites narrowed the class of employees entitled to the minimum wage. *Advisory Op. to Att'y Gen. re Fla. Minimum Wage Amendment*, 880 So. 2d 636, 641–42 (Fla. 2004).

prohibit states from exercising their authority over their own political subdivisions by prohibiting local minimum wages. The Kentucky Supreme Court has already recognized that section 218(a) allows state legislatures to preempt local minimum wages. Faced with an argument similar to the City's, it explained that a "facial reading" shows that Congress intended "to preclude *federal* preemption of" higher minimum wages, not to preclude "state preemption, which is squarely a matter of state law." *Ky. Rest. Ass'n v. Louisville/Jefferson Cty. Metro. Gov't*, 501 S.W.3d 425, 430–31 (Ky. 2016) (emphasis in original).

7. For all the reasons given above, the Amendment unambiguously does not curtail the Legislature's well-established authority to preempt local minimum-wage regulations under article VIII, section 2(b). But even if the Amendment's text were ambiguous on the matter, the City still cannot prevail. In "all constitutional challenges," statutes enjoy a "presumption of correctness and all reasonable doubts about the statute's validity are to be resolved in favor of constitutionality." *Am. Bus. USA Corp.*, 191 So. 3d at 911. In other words, a court is "without authority" to hold a law unconstitutional unless it is "clearly contrary to some express or necessarily implied prohibition found in the Constitution." *Abdool*, 141 So. 3d at 541.

This principle carries particular force when nullifying a statute would

necessarily require a court to declare that one constitutional provision has modified another:

> [I]t 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.

Jackson v. Consol. Gov't of City of Jacksonville, 225 So. 2d 497, 500–01 (Fla. 1969). The Amendment does not expressly purport to modify article VIII, section 2(b). Nor does it place any limitation on the Legislature that would have the effect of imposing such a modification. Those facts alone suffice to resolve this case against the City.

III. THE CIRCUMSTANCES SURROUNDING THE AMENDMENT'S APPROVAL STRONGLY WEIGH AGAINST THE CITY'S ATEXTUAL INTERPRETATION.

As set out above, article VIII, section 2(b) recognizes the Legislature's authority to preempt municipal law, and the Amendment does not take that authority away. Thus, this case may be resolved exclusively on the constitutional text. To the extent this Court looks beyond the text, the circumstances surrounding the Amendment's adoption confirm the lower courts' interpretation.

A. If the Amendment Were Meant to Eliminate the Legislature's Preemption Authority and Abrogate Section 218.077, It Would Have Said So.

Although the Amendment was a response to section 218.077, Florida Statutes, *see* Initial Br. 3, 20–21, the City draws the wrong inference from that circumstance. The statute principally did two things: cap the statewide minimum wage at the level of the federal minimum wage, and preempt localities from enacting their own higher minimum wages. Very easily, "[t]he drafters of this amendment could have" targeted both portions of the statute; "[h]owever, that is not what occurred." *Benjamin*, 998 So. 2d at 572 (Pariente, J., specially concurring). With full knowledge of both portions of the statute, the drafter chose language that displaced only the first. That choice represents a deliberate one, *id.*, and should not be disturbed.

B. The Ballot Summary Says Nothing About Legislative Preemption Authority or Local Minimum Wages.

The ballot summary's silence on local minimum wages and legislative preemption further underscores that the Amendment does not affect either of them. Ballot summaries are "indicative of voter intent," *Graham*, 108 So. 3d at 605 (citing *Benjamin*, 998 So. 2d at 570 n.3), for the ballot summary, not the text of the proposed amendment, appears on voters' ballots, *Armstrong v. Harris*, 773 So. 2d 7, 12–13 (Fla. 2000). When, as here, neither the text of an amendment nor its ballot

summary indicates that the amendment removes legislative authority, courts should conclude that the amendment does not. *Graham*, 108 So. 3d at 604–08 (rejecting argument that constitutional provision transferred "control over every aspect of universities" where neither constitutional text nor ballot summary clearly indicated such a transfer).

The Amendment's ballot summary identified no limitation on the Legislature's authority to preempt local minimum wages:

> This amendment creates a Florida minimum wage covering all employees in the state covered by the federal minimum wage. The state minimum wage will start at $6.15 per hour six months after enactment, and thereafter be indexed to inflation each year. It provides for enforcement, including double damages for unpaid wages, attorney's fees, and fines by the state. It forbids retaliation against employees for exercising this right.

R. 261. Although the summary disclosed that the Amendment would set a statewide minimum wage, provide an enforcement regime, and prohibit retaliation, it said nothing about providing local governments *carte blanche* to set minimum wages above the statewide minimum wage. Indeed, the summary does not mention local minimum wages at all. Rather, it identifies only a single "Florida minimum wage *covering all employees in the state*," regardless where they work. *Id.* (emphasis added). The summary lacks any indication that the Amendment would enable a checkerboard of local wage regulations. Thus, the ballot summary

reinforces the lower courts' textual analyses.

C. The Amendment's Sponsor Disclaimed Any Effect on Any Existing Constitutional Provision and Characterized Its Purpose as Only Creating a Statewide Minimum Wage.

The ballot-language proceedings before this Court similarly indicate that the Amendment was not intended to limit the Legislature's preemption authority.[6] In these proceedings, the court must consider whether a citizen-initiated proposed amendment satisfies the single-subject requirement and whether the ballot summary is misleading. *Advisory Op. to Att'y Gen. re Fla. Minimum Wage Amendment*, 880 So. 2d 636, 639 (Fla. 2004). The Amendment's sponsor, Floridians for All, Inc., submitted a brief explaining how the Amendment satisfied these criteria. Like the ballot summary, that brief underscores that the Amendment was intended only to create a statewide minimum wage and enforcement mechanisms, not to remove the Legislature's preemption authority. Like the ballot summary, the sponsor's brief nowhere references legislative preemption or local minimum wages.

[6] These proceedings may aid an amendment's interpretation. *Graham*, 108 So. 3d at 605–06; *accord* Initial Br. 35 (faulting the lower courts for purportedly "failing to give these words the meaning attributed to them by this Court" in the ballot-language proceedings).

To show that the Amendment did not logroll,[7] the sponsor told the Supreme Court that it had but "one unified purpose of creating a state minimum wage," with each section of the amendment contributing to a "functionally unified plan to create a state minimum wage." Corr. Initial Br. of Sponsor Floridians for All PAC, *In re Advisory Op. to Att'y Gen. re Fla. Minimum Wage Amendment*, No. SC04-943, 2004 WL 7081309, at *5, **12–14 (Fla. June 18, 2004) ("FFA Br.") (distinguishing *Save Our Everglades*). The sponsor described subsection (f), on which the City relies, as containing "guidelines for construing the amendment," not as creating an exemption to legislative preemption. *Id.* at *13.

The sponsor also touted the Amendment's limited reach to assure this Court that the ballot summary was not misleading. Ballot summaries "must identify those constitutional provisions that are substantially affected by the proposed amendments," *Advisory Op. to Att'y Gen. re Amendment to Bar Gov't from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 893 (Fla. 2000), and under this rule, this Court has blocked a proposed amendment

[7] The single-subject requirement is designed to protect against "logrolling"; that is, joining a "politically fashionable" proposal with a "more problematic" one. *In re Advisory Op. to Att'y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994). The goal is to avoid using a popular issue to "secure approval of an otherwise unpopular issue" by forcing voters into an "all or nothing" choice. *Id.* at 1339, 1341.

whose summary failed to advise voters that it "strip[ped] the legislature of its exclusive power to regulate" a particular subject, *Advisory Op. to Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1355 (Fla. 1998). To clear this hurdle, the sponsor told this Court that the "[t]he Amendment has *no effect* on *any provisions* in the current Florida Constitution" (necessarily including article VIII, section 2(b)), reiterating that the "intent of the Amendment [is] to create a state minimum wage for employees covered by the federal minimum wage." FFA Br., 2004 WL 7081309, at *28.

Like the ballot summary, the sponsor's argument to this Court discloses no intent to remove the Legislature's preemption authority. On the contrary, it disclaims any effect on any constitutional provision, further indicating that the Amendment does not withdraw the Legislature's article VIII, section 2(b) preemption authority.

D. The City's Proffered Post-Hoc, Hearsay Testimony by a Supporter of Its Ordinance Is Entitled to No Weight, Cannot Alter the Amendment's Text, and Cannot Overcome Clear Contemporaneous Evidence.

1. At a public hearing before the Miami Beach City Commission in 2016, an employee of the National Employment Law Project who was "very excited to be here to support" the proposed ordinance testified that one of her colleagues had been the Amendment's "lead drafter" and that he had "intended as part of that

constitutional amendment to give cities like the City of Miami Beach the right to enact [a] local minimum wage." R. 86. The purported "lead drafter" never testified to the City Commission, and the City never introduced any testimony from him in this proceeding. In addition, there is nothing in the record—hearsay or otherwise—suggesting the "lead drafter" shared this secret intent with anyone before the 2004 election. Nevertheless, the City believes this post-hoc, hearsay testimony is relevant. *See* Initial Br. 4. The City is wrong.

The speaker did not claim any contemporaneous personal knowledge of her colleague's intent when he drafted the Amendment, nor did she explain the basis of her claim that he was a drafter. That is reason enough to disregard her assertions. *Capello v. Flea Mkt. U.S.A., Inc.*, 625 So. 2d 474, 474 (Fla. 3d DCA 1993); *Airborne Freight Corp. v. Fleming Int'l Airways, Inc.*, 423 So. 2d 921, 923 (Fla. 3d DCA 1982). In addition, there is no evidence that this "lead drafter" ever disclosed his intent to anyone before the 2004 election. "[T]he polestar of constitutional construction" is not undisclosed drafter intent, but "voter intent." *Benjamin*, 998 So. 2d at 570. If not even the sponsor was privy to this intent, one can hardly expect that the voters were. *See Kehrlein v. City of Oakland*, 172 Cal. Rptr. 111, 115 (Cal. Ct. App. 1981) (amendment drafter's testimony "reflects merely the personal view of one of the drafters rather than the understanding of the voters").

Moreover, that this claimed intent came to light only a decade after the Amendment's approval through a speaker supporting the Ordinance renders it all the more inconsequential. *Cf. Blanchette v. Conn. Gen. Ins. Corp.*, 419 U.S. 102, 132 (1974) ("[P]ost-passage remarks of legislators, however explicit, cannot serve to change the legislative intent of Congress expressed before the Act's passage.").

2. The amicus brief of Paul K. Sonn improperly attempts to bolster the City's post hoc, hearsay testimony through what is essentially new, unsworn testimony appearing nowhere in the record. This Court should not countenance, much less credit, the brief's eleventh-hour attempt to inject extra-record, unsworn testimony into the case on a factual matter that the City sought to place at issue. *Banerjee v. Bd. of Trustees of Smith Coll.*, 648 F.2d 61, 65 n.9 (1st Cir. 1981) ("While, presumably, an amicus' position on the legal issues coincides with one of the parties, this does not mean that it is to engage in assisting that party with its evidentiary claims."). But even disregarding the impropriety of the brief, its assertions are irrelevant.

Mr. Sonn asserts that he was "the principal drafter of the constitutional amendment at issue in this case" and his "intent in drafting" the Amendment "was to affirmatively ensure that the state legislature, cities, and other public bodies retained the power to" adopt minimum wages that exceed the amendment's

minimum wage. Paul K. Sonn Br. 1–2. What "Mr. Sonn wanted to" do, *id.* at 4, however, is irrelevant. *Benjamin*, 998 So. 2d at 570 (the "polestar of constitutional construction" is "voter intent," not undisclosed drafter intent). Mr. Sonn does not assert that he conveyed his private drafting intent to anyone before filing his amicus brief. And the best evidence of voter intent is the language of the Amendment and the language of the ballot summary—neither of which made any mention whatsoever of local minimum wages or the Legislature's preemption authority. *See supra* 20–21, 36–37.

Similarly, that "Mr. Sonn reports that it did not appear appropriate or necessary to him to reference § 218.077" or the Legislature's preemption power, Paul K. Sonn Br. 5, is immaterial. A court may not "rewrite" the text or "ignore the words chosen by the" drafter. *Knowles*, 898 So. 2d at 7. If Mr. Sonn had wished to craft an amendment for the voters' consideration that would have curtailed the Legislature's preexisting preemption authority, he could and should have drafted one that did so.

Mr. Sonn also asks this Court to consider a poll that the National Employment Law Project (NELP) commissioned in January 2018. That poll asked "574 Florida voters"—based on a terse summary of the Amendment, rather than its text, and without mention of article VIII, section 2(b) or section 218.077—a poorly

framed version of the legal question at issue in this case: whether, given the Amendment, local governments "have the right to adopt a local minimum wage higher than the state minimum wage, or not?" Paul K. Sonn Br. 12–13. The question is poorly crafted because local governments do have such a "right," but that "right" is qualified and subject to the Legislature's preemption authority, which it has chosen to exercise in section 218.077, *see supra* 18–19, 25–26—a statute that the poll failed to disclose to its respondents. The poll is questionable for the additional (and perhaps related) reason that "NELP has worked with many . . . cities in the United States that have adopted higher minimum wages," Paul K. Sonn Br. 1, and thus cannot credibly claim neutrality on the policy issue of local minimum wages. The poll also, by Mr. Sonn's own admission, "cannot confirm what voters in 2004 understood with regards to local authority when they voted on the 2004 Constitutional Amendment." *Id.* at 13. And even ignoring all the aforementioned flaws, the task of interpreting the Florida Constitution and resolving the legal question at issue in this case falls to this Court, not 574 randomly selected poll respondents.

* * *

The circumstances leading to the Amendment's adoption further demonstrate that the Amendment does not affect the Legislature's authority to

preempt local minimum wages. The ballot summary said nothing about preemption or local minimum wages, and the sponsor's brief to this Court disclaimed any effect on any other constitutional provision. The mischaracterized, after-the-fact, hearsay assertion about drafter intent cannot overcome this clear pre-adoption history, much less alter the Amendment's unambiguous text.

CONCLUSION

Article X, section 24 of the Florida Constitution does not remove the Legislature's authority to preempt municipal minimum-wage ordinances under article VIII, section 2(b). The Third District's judgment should be affirmed.

Respectfully Submitted,

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I certify that this brief was prepared in Times New Roman 14-point font in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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