

IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF STATE, etc., et al.,

Appellant,

Case No. SC18-1287

v.

L.T. Case No. 1D18-3260

Circ. Ct. 2018-CA-1114

**FLORIDA GREYHOUND ASSOCIATION,
INC., et al,**

Appellee.

**AMICUS BRIEF OF COMMITTEE TO PROTECT DOGS
IN SUPPORT OF APPELLANTS**

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Identity and Interest of the Amicus

The Committee to Protect Dogs (“Committee”), a Florida Political Committee, is Amicus Curiae in support of Appellants. The Committee worked with the CRC sponsors of Amendment 13, supplied supporting evidence, statistics, images, and legal memoranda, and provided CRC with a petition of citizen support with some 256,148 signatures. The Committee is concerned that on average a greyhound associated with pari-mutuel racing dies every three days. Racing greyhounds commonly die at the age of two or three, whereas the typical greyhound life span is 12-14 years. The humane treatment of animals demands the end of dog racing in connection with wagering. Forty states have already outlawed dog racing. Florida is only one of six states that have active dog racing tracks. Eleven of 17 existing dog tracks in the United States are in Florida. Commercial dog racing is a dying industry that costs the State more to regulate than its handle revenues produce. The public has a right to decide the long debated issue of whether dog racing in connection with wagering should end.

ARGUMENT

THE PUBLIC SHOULD VOTE ON AMENDMENT 13

“The Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people.” *Advisory Op. to Atty. Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply*, 177 So.

3d 235, 242 (Fla. 2015). The Court is “obligated to uphold the proposed amendment unless it is ‘clearly and conclusively defective.’” *Advisory Op. to Atty. Gen. re Voting Restoration Amendment*, 215 So. 3d 1202, 1205 (Fla. 2017).

Florida Statute § 101.161(1) requires that:

A ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language.... The ballot summary of the amendment or other public measure shall be explanatory statement of the chief purpose of the measure.

Section 101.161(1) was amended in 2011 to delete the word “substance” and to substitute the word “ballot summary.” Laws of Florida, Ch. 2011-40, § 29. Since the adoption of this 2011 amendment, we are unable to find a case in this Court ruling that the ballot title and summary of a proposed amendment is clearly and conclusively defective.

The 2011 amendment makes clear that the ballot summary must only describe the “chief purpose” of a proposed constitutional amendment, not its substance. The chief purpose is properly stated no more or less expansively than necessary, and “need not explain every detail or ramification of the proposed amendment.” *Fla. Educ. Ass’n v. Florida Dept. of State*, 48 So. 3d 694, 700 (Fla. 2010); *Voting Restoration Amendment*, 215 So. 3d at 1205. *See also, Limits or Prevents Barriers to Local Solar Electricity Supply*, 177 So. 3d at 245 (not required to explain amendment’s complete terms at a great and undue length). Only the legal effect of

the proposed amendment is required to be explained as the chief purpose, nothing else. *See In re Advisory Op. to Atty. Gen. re Patients' Right to Know About Adverse Medical Incidents*, 880 So. 2d 617, 622 (Fla. 2004). *See also Askew v. Firestone*, 421 So. 2d 151, 158 (Fla. 1982) (dissenting Op. Atkins) (noting requirement is only that the chief purpose be explained even if there are multiple purposes).

Here, Amendment 13's ballot title and summary, read together as they must be, *see, e.g., Voting Restoration Amendment*, 215 So. 3d at 1208, clearly explain its chief purpose to phase out and end commercial dog racing in connection with wagering without affecting other gaming activities.

The ballot title and summary should be approved, and Amendment 13 voted on. Although the first State to legalize dog racing, Florida should not be the last to outlaw it.

*THE CIRCUIT COURT'S REASONS FOR
DISAPPROVAL WERE INCORRECT*

The Circuit Court incorrectly determined that the ballot title and summary misleads voters to believe the Amendment did something it did not do, i.e. outlaw dog racing everywhere

The Circuit Court determined that the ballot summary explaining the Amendment ends dog racing in connection with wagering misleads voters to believe that the six dog tracks outside Florida would end dog racing when they would not because Amendment 13 does not apply outside Florida. But this is based on a false

assumption that the voter is deceived if not expressly told that the proposed Amendment applies only in Florida. The voters do not need to be told this. It is the Florida Constitution that is being amended. The voter knows that this State's constitution does not apply to other states. *E.g. Advisory Op. to Atty. Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996) ("The voter must be presumed to have a certain amount of common sense and knowledge."). *See* R 360 (Commissioner Bondi - wish we could abolish greyhound racing elsewhere than Florida).

It is likewise unfounded that the ballot title "ends dog racing" misleads voters to think that wagering on simulcast races run out of state is prohibited. In drafting Amendment 13, CRC had the goal of not impairing any other currently authorized permit activities at pari-mutuel facilities, particularly simulcasting. R 310. There was never any intention to draft a proposal that would ban simulcasting; activities that pari-mutuels presently engaged in were not to be impaired by banning dog racing. R 312-13. The text of the Amendment so provides, and the ballot summary makes this clear. While commercial dog racing in connection with wagering will end, other gaming activities (which include betting on the results of races that may be run elsewhere) are unaffected.

Accordingly, the Circuit Court's first reason fails. The ballot title and summary are not misleading that dog racing outside Florida is prohibited by the

Amendment, or that simulcast wagering on the outcome of such dog races as a gaming activity in Florida is prohibited.

The Circuit Court incorrectly determined that the ballot title and summary did not disclose that the chief purpose of the proposed amendment was to adopt a new fundamental value of kindness to animals

The Circuit Court determined that kindness to animals was the reason that proposed Amendment 13 was advanced at the CRC and stated in the first sentence of the text: “The humane treatment of animals is a fundamental value of the people of the State of Florida.” But a reason for support of a proposed amendment, or prefatory statement of such motivating reason, is not its “chief purpose” required to be expressed in the ballot summary.

“Purpose” can be defined as a reason for which something is done, *or* as the intended result, end, aim or goal. *See* definition, *Dictionary.Com*. It is in the latter sense that § 101.161(1) requires explanatory statement of the “chief purpose” of a proposed amendment, *i.e.* its main legal effect. The “chief purpose” of Amendment 13, in terms of its legal effect, is to prohibit dog racing for wagering, exactly as recited by the proposed Amendment revision (R 16), and manifested by the text: “A person may not race greyhounds in connection with any wager, or wager on the outcome of a live dog race occurring in the state.” (R 610).

Humane treatment of animals is a basic value that the Amendment fosters, and a motivating reason for the proposal. R 336 (Commissioner Bondi — This is

about safety to animals... There is a reason that 40 states have banned greyhound racing); R 345 (Commissioner Lee — people want to get rid of this inhumane activity in our state); R 350 (Commissioner Bondi — describing treatment of dogs in the industry; “this is a black-eye in our state”); R 280 (Commissioner Lee — “we should follow the lead of most other states....it is time to ban this inhumane activity.”); R 277 (Commissioner Lee — at the core of this is the issue of inhumanity and the injuries and deaths that have been reported in this industry).

However, no general right to humane treatment of animals is created by the proposed amendment. There is simply no material legal effect to the fundamental value prefatory text language. *See Bush v. Holmes*, 919 So. 2d 392, 403-04 (Fla. 2006) (contrasting a fundamental right with the fundamental value language that creates no liability with respect to state education system; recognizing that fundamental value language in the education amendment was taken from Justice Anstead’s opinion in *Coalition for Adequacy and Fairness in School Funding Inc. v. Chiles*, 680 So. 2d 400, 410 (Fla. 1996) (“Surely all would agree that education is a fundamental value in our society. * * * The people recognized the fundamental value of education by making express provision for education in our constitution.”)).

Kindness to animals is an age-old value of all advanced societies: “Whoever is righteous has regard for the life of his beast...” Proverbs 12:10.

Humane treatment of animals is recited by the first sentence of Amendment 13 as a motivating reason for phasing-out commercial dog racing in connection with wagering. This prefatory or explanatory value statement is analogous to expression in a “whereas” clause in a legislative resolution, or the introductory part of a general law. The Amendment’s ban on dog racing should be implemented in recognition of this value. But that does not make the basis value of humane treatment of animals the chief purpose of the Amendment in the sense of its legal effect.

This Court has previously approved a proposed amendment with similar prefatory value text language that was *not* explained (*i.e.* not expressed at all) in the ballot summary. In *Advisory Op. to Atty. Gen. – Limited Marine Net Fishing*, 620 So. 2d 997 (Fla. 1993), the initiative petition amendment text began with a statement: “The marine resources of the State of Florida belong to all of the people of the State and should be conserved and managed for the benefit of the State, the people, and future generations. To this end, the people hereby enact limitations on marine net fishing in Florida waters to protect ... marine animals from unnecessary killing, overfishing, and waste.” *Id.* at 998. None of this was in the approved ballot summary that stated the chief purpose of the proposal as: “Limits the use of nets for catching marine animals by prohibiting use of gill and other entangling nets in all Florida waters....” *Id.* at 999. The Court unanimously held the ballot summary “met the legal requirements of § 101.161(1).” *Id.*

Hence, this Court has unequivocally recognized that a text statement of motivating reason for the proposed amendment is not its “chief purpose” to be stated in ballot summary.

Indeed, inclusion in the ballot summary of emotional policy reasons for a proposed amendment is not a required “neutral” or “objective” chief purpose statement of legal effect, and may render the ballot summary invalid. *See Advisory Op. to Atty. Gen. re Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans*, 902 So. 2d 763 (Fla. 2005). There, the ballot summary of the proposed amendment provided, *id.* at 771:

Public participation in local government comprehensive land use planning benefits Florida’s natural resources, scenic beauty, and citizens. Establishes that before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, the proposed plan or amendment shall be subject to vote of the electors of the local governmental by referendum, following preparation by the local planning agency, consideration by the governing body and notice.

The first sentence of the above quoted ballot summary in *Referenda* paralleled the first sentence of the text of the proposed amendment in that case. 902 So. 2d at 764. That first sentence reflected the reason for putting the proposed amendment into effect, just as the prefatory first sentence in the text of proposed Amendment 13 explains that the basic value of humane treatment of animals as reason for putting an end to dog racing in connection with wagering.

In holding the ballot summary defective in *Referenda for Amendment of Local Government Comprehensive Land Use Plans*, the Court emphatically stated: “In fact, *the first sentence of the summary does nothing to explain the chief purpose of the proposed amendment*, which is to require referenda on all comprehensive land use plan adoptions or amendments.” (e.s.) 902 So. 2d at 771. While benefitting Florida’s scenic beauty and natural resources “*may be the sponsors’ reason for promoting the amendment, the chief purpose of the amendment itself* is to require referenda before there can be any changes to or adoption of comprehensive land use plans.” (e.s.) *Id.*

The *Referenda* Court noted its prior approval of *Limited Marine Net Fishing*, 620 So. 2d 997, where a similar policy statement appeared in the initiative amendment text but was *not* in the ballot summary. 902 So. 2d at 771-72. In other words, including in the ballot summary an emotional policy reason that is expressed in the amendment text would tend to make the ballot summary defective, rather than compliant with § 101.061(1).

The majority in *Referenda*, 902 So. 2d at 771, also noted two other cases that it had approved, *In re Advisory Op. to Atty. Gen. ex rel. Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy*, 815 So. 2d 597 (Fla. 2002), and *Advisory Op. to Atty. Gen. re Protect People from Health Hazards of Second-Hand Smoke*, 814 So. 2d 415 (Fla. 2002). In the first case, the ballot summary provided

that: “inhumane treatment of animals is of concern to Florida citizens;” in the second, to “protect people from the hazards of second hand tobacco smoke, the amendment prohibits tobacco smoking in enclosed indoor work places.” 902 So. 2d at 771. The majority opinion distinguished approval of the ballot summaries in these cases from the ballot summary it was disapproving because “(a)ddressing the inhumane treatment of animals and the hazards of second-hand smoke were not only the sponsors’ reasons for advancing these amendments but were also the chief purposes of the amendments themselves.”

Here, the fundamental value of humane treatment of animals is the reason for Amendment 13, not its chief legal effect. Amendment 13 bans a form of gambling and prohibits a business activity for the reason that it has caused inhumane treatment of animals. The Amendment does not itself advance any specific goal or condition that alleviates inhumane treatment of animals, or proscribe any particular treatment of animals in that regard.

The dissenting opinion by Justice Lewis in *Referenda*, with concurrence of Justices Anstead and Quince in substance, considered inclusion of the statement “inhumane treatment of animals is a concern of Florida citizens,” in the ballot summary in *Confinement of Pigs During Pregnancy* as “an editorial type comment” and “an introductory phrase,” and noted that this type of comment was in the text

of the amendment in *Limited Marine Net Fishing*, but not expressed in the approved ballot summary there. 902 So. 2d at 772.

Hence, Amendment 13's statement of the fundamental value of humane treatment of animals, like the marine resources policy statement in *Limited Marine Net Fishing*, and the natural resources and scenic beauty policy statement in *Referenda*, is a prefatory reason or introductory explanation for the amendment, not its chief purpose, and is not required to be stated in the ballot summary. The Circuit Court's contrary determination was error, and should not preclude the public from voting on Amendment 13.

The Circuit Court incorrectly determined that the ballot summary did not disclose the chief purpose to decouple live greyhound racing from other gaming activities

The Circuit Court determined that “decoupling live greyhound racing from other gaming activities, namely the present constitutional requirements regulating slot machines,” was a chief purpose of Amendment 13 not disclosed by the ballot summary. R 624. The Circuit Court also indicated that the ballot summary did not disclose that Amendment 13 affected a change to existing Article X, § 23 of the Constitution regarding “requirements for slot machines in Dade and Broward Counties, notably including the fact that slot machines were limited to those already existing locations where pari-mutuel activities, such as greyhound racing, were then being run.” R 624-25.

However, to the contrary, the chief purpose is to end dog racing in connection with wagering. There was no undisclosed chief purpose to decouple other gaming activities from dog racing, and no requirement of Article X, § 23 for slot machines was changed. While an incidental consequence of ending dog racing is to allow other gaming activities to continue to be held in licensed pari-mutuels facilities without dog racing, this was neither a chief purpose nor a change in allowed slot machine gaming. Regardless, the absence of change was explained by ballot summary statement that “other gaming activities are not affected.” The public is informed that after the end of dog racing, other gaming activities will continue as before.

Amendment 13 prohibits a person authorized to conduct gaming or pari-mutuel operations from racing greyhounds or other dogs in connection with any wagering. The text then provides that: “The failure to conduct greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming license held by a person who is a licensed greyhound permit holder on January 1, 2018, and does not affect the eligibility of such permit holder, or such permit holder’s facility, to conduct other pari-mutuel activities authorized by general law.”

The effect of this latter part of Amendment 13 is made clear by the ballot summary statement that “other gaming activities *are not affected*,” i.e. phasing out

and ending commercial dog racing will not cause any other gaming activity to be discontinued.

The CRC members understood that decoupling dog racing from other gaming activities of a licensed pari-mutuel facility was not the chief purpose, or even a reason for Amendment 13. While they appreciated that the Legislature had required coupling of scheduled live racing with other gaming activities, they also explicitly acknowledged that Amendment 13 served to eliminate dog racing. R 288. As for slot machines authorized in South Florida at pari-mutuel facilities, CRC understood these were gaming activities that would continue at the existing pari-mutuel facilities which would not lose their pari-mutuel licenses because dog racing was discontinued. R 281-83. The CRC recognized that Amendment 13, as being drafted, would not expand or impair other permit activities currently authorized, or that might be authorized, at existing pari-mutuel facilities, and those facilities would remain licensed. R 310-11.

This absence of consequential effect of ending dog racing is specifically provided for by the Amendment text, and is accurately described in the ballot summary by the statement that “other gaming activities are not affected.” The public is thus informed by the ballot summary that ending dog racing will not discontinue other gaming activities now authorized, or that may be authorized, at licensed pari-mutuel facilities.

Decision after decision of this Court has advised that the voter need only be apprised of the chief purpose of a proposed amendment, not the details concerning the status of pre-existing programs. *Advisory Op. to Atty. Gen. re Right to Treatment and Rehabilitation*, 818 So. 2d 491, 498 (Fla. 2002). While present statutory law might require a licensed pari-mutuel facility to conduct dog racing in order to conduct other gaming activities at the facility, *see* R 627, the ballot summary does not need to disclose the effect of the proposed amendment on existing statutory law. *In re Advisory Op. to Atty. Gen. ex rel. Local Trustees*, 819 So. 2d 725, 731 (Fla. 2002). Nor is an explanation of all future possible effects of a proposed amendment required; some onus falls upon voters to educate themselves about the substance of the proposed amendment. *Advisory Op. to Atty. Gen. re Voter Control of Gambling*, 215 So. 3d 1209, 1217 (Fla. 2017).

Here, the ballot title and summary explain the primary effect (chief purpose) of the proposed amendment to discontinue dog racing in connection with wagering. It also advises as part of that chief purpose that other gaming activities would not be affected, thus informing that the Amendment would have no significant consequence in that regard. This ballot summary fairly represents the true meaning and primary effect of the proposed amendment. *See Voter Control of Gambling*, 215 So. 3d at 1216. There is no failure to disclose its chief purpose.

With the exception of wagering on dog racing conducted in Florida, Amendment 13 will not add or subtract any gaming opportunities, facilities, or devices anywhere in the State.

The Circuit Court also ruled that Amendment 13 affected the requirements of Article X, § 23 of the Florida Constitution, to maintain slot machine gaming activity where dog racing takes place, but the ballot title and summary did not adequately so inform, and hence were misleading.

This is incorrect. Proposed Amendment 13 does not affect “a repeal of an existing Florida constitutional provision, specifically” (Article X, § 23), *see Advisory Op. to Atty. Gen. re 1.35% Property Tax Cap*, 2 So. 3d 968, 976 (Fla. 2009), and as Justice Canady, joined by Justice Polston, noted in dissent in that case, *id.* at 979:

A ballot summary should not be held clearly and conclusively defective merely because it does not describe an existing provision of the Constitution that will be affected by the proposed amendment. Imposing such a requirement to educate voters about the constitutional status quo would unduly burden the initiative process. We have recognized that ‘the voter must be presumed to have certain amount of common sense and knowledge.’

The following year, in 2010, the Court unanimously approved the ballot title and summary for proposed amendment to the existing class size provision of the constitution. *Fla. Educ. Ass’n v. Florida Dept. of State*, 48 So. 3d 694 (Fla. 2010). The Court there distinguished early cases (relied on by the Circuit Court in this case)

where there was failure to disclose that the proposed amendment “would diminish an existing constitutional right.” *Id.* at 703. Further, the Court found that although the dollar amount of class size funding would be reduced, “the effect flows naturally from the chief purpose – to revise and relax class sizes.....;” and further that the voter could draw a “common sense conclusion” from the ballot summary that funding for revised class sizes would be reduced. *Id.* Finally, harkening to the language of Justice Canady’s opinion in *Property Tax Cap*, 2 So. 3d at 979, the Court held the ballot summary was *not* misleading for failing to mention that the constitution currently mandates the legislature to provide funding to reduce class size, 48 So. 3d at 704:

Although there are cases where the Court has held that a ballot summary was defective for failing to mention an existing constitutional obligation (citing, *Armstrong* and *NAACP* cases), we conclude that here, *failure to mention* the Legislature’s existing finding obligation does not render Amendment 8’s ballot summary defective. (e.s.)

Amendment 13 does not diminish any constitutional right or limitation, and the ballot summary is not defective for failure to mention that Art. X, § 23 will be affected by the proposed Amendment (assuming that were true).

Regardless, the Circuit Court’s predicate ruling that “the requirements of Art. X, § 23 of the Constitution for slot machines in Dade and Broward Counties to be located in already existing pari-mutuel facilities” were changed by Amendment 13 was incorrect. Art. X, § 23 serves to limit “the Legislature’s authority to prohibit

slot machine gaming in certain facilities in two counties.” *Fla. Gaming Centers, Inc. v. Fla. DBPR*, 71 So. 3d 226, 229 (Fla. 1st DCA 2011). Per Art. X, § 23, if voters in Dade and Broward Counties by referendum authorize slot machines “within existing, licensed pari-mutuel facilities” that have conducted live racing or games within two years before its adoption (2003 or 2004), and if voters approve the referendum, “slot machines shall be authorized in such pari-mutuel facilities.”

Art. X, § 23 does not require continued dog racing in order for previously licensed facilities to conduct slot machine gaming approved by referenda in Dade or Broward Counties. *See* Florida Statute § 551.102(4) (2017) (a facility eligible to conduct slot machine gaming per § 551.104 is any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of § 23, Art. X of the State Constitution that has conducted live racing or games during the calendar years 2002 and 2003, and been approved in a county wide referendum to have slot machines at such facilities).

Under Amendment 13, slot machines will continue to be authorized in licensed pari-mutuel facilities that had conducted live racing or games in the two years preceding adoption of Art. X, § 23. The text explicitly provides that the pari-mutuel facility license of such facilities will remain in effect when greyhound racing is no longer conducted, and that the eligibility of such facilities to conduct other authorized gaming activities is not affected. After dog racing is discontinued, slot

machine gaming activity will be conducted in the same licensed pari-mutuel facilities that conducted live racing in 2002-2003, because those facilities will continue to be licensed pari-mutuel facilities under proposed Amendment 13. Thus, in discontinuing dog racing, Amendment 13 does not alter or affect that constitutional provision. This is exactly what the ballot summary discloses in stating “other gaming activities are unaffected.”

In short, Amendment 13 does not change any right given by the Constitution or create any new limitation contrary to the Constitution, and is thus distinguished from the proposed amendments in *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000) and *Askew v. Firestone*, 421 So. 2d 151 (Fla 1982), relied on by the Circuit Court, where the ballot summary failed to disclose that a constitutional right would be substantially diminished. There is no requirement here for the ballot summary to explain the sweep of any constitutional change because there is none.

CONCLUSION

Advisory Op. to Atty. Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply, 177 So. 3d at 246 held:

As we have said many times, our duty is to uphold the proposal unless it can be shown to be “clear and conclusively defective.” (citation omitted). We conclude that this high threshold has not been met. The proposal has not been shown to be “clearly and conclusively defective in any respect. For these reasons, the ballot title and summary are approved for placement on the ballot.

Because the Circuit Court did not apply this standard to the ballot title and summary for Amendment 13, its judgment should be reversed, and Amendment 13 should be approved for placement on the ballot.

Respectfully submitted this 20th day of August, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed through the Florida Courts E-Filing Portal, and a true and correct copy served by E-Mail on the parties listed below, this 20th day of August, 2018.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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