

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

FLORIDA GREYHOUND ASSOCIATION, INC.,  
A Florida corporation, and  
JAMES BLANCHARD, individually,

*Plaintiffs,*

v.

Case No. 2018 CA 1114

DEPARTMENT OF STATE, an agency of  
the State of Florida, and  
KEN DETZNER, in his official  
Capacity as Secretary of State of  
the State of Florida.

*Defendants.*

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**FINAL JUDGEMENT**

THIS CAUSE came before the Court for final hearing on cross motions for final summary judgment and, if necessary, for trial on any genuine issues of material fact remaining in dispute on July 27, 2018.

This case involves proposed Constitutional Amendment 13 for this year's general election ballot, a measure the 2017-2018 Florida Constitution Revision Commission ["CRC"] sponsored, approved and recommended for inclusion by a 27 - 10 vote at its final meeting in May, 2018.

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RECEIVED, 8/3/2018 1:35 PM, Kristina Samuels, First District Court of Appeal

Counsel were present for the associational and individual plaintiffs, the defendant executive branch department and Secretary, and the three amici curiae supporting the defense position.<sup>1</sup>

The parties stipulated there were no genuine disputes of material fact, and the Court did not identify any issues of material fact in dispute. As a result the Court took no testimony, the parties offered no evidence and the Court has decided the case on the cross motions for summary judgment, the parties and amici's memoranda, arguments, and on the controlling case law.

#### OVERVIEW

Proposed amendments to Florida's Constitution can come from the Florida Legislature, The Florida Taxation and Budget Revision Commission, The Florida Constitution Revision Commission or citizen initiatives. The general rules regarding pre-election

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<sup>1</sup>The Committee to Protect Dogs and the Animal Law Section of the Florida Bar submitted briefs in support of keeping the proposed amendment on the ballot; the Animal Legal Defense Fund adopted the brief of the Florida Bar Animal Law Section.

review are the same regardless of origin: Florida voters must be given fair and accurate information in the ballot title and summary as to the intended effect of the chief purpose(s) of the proposed amendment. The voters have a right to be told if there are existing constitutional or legal authorities that will be affected if the voters pass the proposed amendment after being given the accurate, complete information consistent with what some of the controlling cases refer to as "truth in packaging." Regardless of the proposer of an amendment, voters will not be able to vote on the proposed amendment if the proposer chooses a ballot title and summary that "hide the ball"<sup>2</sup> or are analogous to the amendment "flying under false colors"<sup>3</sup>. [The text of the proposed amendment is not on the ballot; the voter is limited to only the title and summary.]

As set forth more fully herein, Amendment 13 is clearly and conclusively defective. The two chief

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<sup>2</sup> *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000).

<sup>3</sup> *Id.*

purposes of the amendment - establishing a constitutionally recognized fundamental value humane treatment of animals, and changing the existing constitutionally mandated connection between greyhound racing and eligibility to operate slot machines and casinos - are not accurately addressed in the title or summary. The failure to disclose the existence of the three present constitutional sections relating to the requisite coupling of pari-mutuel racing and slot machines is a material omission; the omission from the title and summary of any mention of the amendment's first sentence ["the humane treatment of animals is a fundamental value of the people of the State of Florida"] is another material omission. Further neither the title and summary considered separately, or together, are accurate; both are misleading.

Contrary to the words presented for consideration by the voters, the amendment would not end dog racing, nor would it eliminate wagering on dog racing.

In short, proposed amendment 13 is misleading and inaccurate and incomplete, while adding up to a "hide the ball", "fly a false flag" and outright "trickery". If the CRC wanted Florida voters to be able to rethink the relationship between live animal racing and the operation of slot machines, or to be able to adopt as a constitutional fundamental value the humane treatment of animals, the CRC could have included the appropriate language in the ballot and summary.<sup>4</sup> That the CRC majority chose to ignore the controlling requirements results in this Court's ruling that Amendment 13 may not be included on the 2018 general election ballot.

#### The Ballot Language

The CRC approved the following language as the ballot title and summary for what is now referred to as proposed Amendment 13:

CONSTITUTIONAL AMENDMENT  
ARTICLE X, NEW SECTION  
ARTICLE XII, NEW SECTION

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<sup>4</sup> The CRC also could have more accurately adopted a title and summary, as they had previously considered and adopted prior to the amendment of the inaccurate information at their last meeting.

ENDS DOG RACING.-Phases out commercial dog racing in connection with wagering by 2020. Other gaming activities are not affected.

The Proposed Amendment

The CRC considered and adopted this ballot language as the ballot title and summary for proposed Amendment 13. The ballot title and summary are intended to appear on the ballot to inform the voters of the chief purposes of the related proposed revision, known to the CRC as its proposed Revision 8:

REVISION 8

A proposal to revise the State Constitution by the Constitution Revision Commission of Florida.

A proposed revision relating to ending dog racing; creating new sections in Article X and Article XII of the State constitution to prohibit the racing of, and wagering on, greyhounds and other dogs after a specified date.

Be It Proposed by the Constitution Revisions Commission of Florida:

A new section is added to Article X of the State Constitution to read:

ARTICLE X  
MISCELLANEOUS

Prohibition on racing of and wagering on greyhounds or other dogs.-The humane treatment of animals is a fundamental value of the people of the State of Florida. After December 31, 2020, a person authorized to conduct gaming or pari-mutuel operations may not race greyhounds or any member of the *Canis Familiaris* subspecies in connection with any wager for money or any other thing of value in this state, and persons in this state may not wager money or any other thing of value on the outcome of a live dog race occurring in this state. The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.

A new section is added to Article XII of the State Constitution to read:

#### ARTICLE XII

##### SCHEDULE

Prohibition on racing of or wagering on greyhounds or other dogs.-The amendment to Article X, which prohibits the racing of or wagering on greyhound and other dogs, and the creation of this section, shall take effect upon the approval of the electors.

BE IT FURTHER PROPOSED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE X, NEW SECTION

ARTICLE XII, NEW SECTION

ENDS DOG RACING.-Phases out commercial dog racing in connection with wagering by 2020. Other gaming activities are not affected.

Constitution Revision Commission 2017-2018 Final Report May 9, 2018; Exhibit B to the plaintiff's motion for summary judgment, D.E. 37, pp. 47-48. [The plaintiffs also attached to their motion [as Exhibits C and D] the transcripts of the respective April and May CRC meetings preceding the publication of the CRC Final Report].

**The Pleadings, Motions and Responses**

In their complaint and related exhibit [D.E. 2 and 3], as well as in their consolidated filings for summary judgment [D.E.37, 43 and 44], the plaintiffs ask the Court to declare the ballot title and summary language regarding Amendment 13 to be "misleading and inaccurate, and do not inform voters of the true effect and impact of the proposed amendment, in violation of



Article XI, section 5, of the Florida Constitution and Section 101.161(1), Florida Statutes". [D.E.2, p.14] The plaintiff also asks that the Court enjoin the defendants from placing Amendment 13 on the ballot for the November 2018 General Election, and provide such other relief as the Court deems appropriate.

In their answer and consolidated papers [D.E.34, 38, 39, 40, 41 and 45] opposing the plaintiffs' motion for summary judgment and asking for the entry of judgment in their favor, the defendants, and their supporting amici curiae, ask that the Court deny declaratory and injunctive relief because the ballot title and summary for Amendment 13 are "accurate, they are not misleading, and they fairly inform the voters of the chief purpose of Amendment 13 [D.E.34, p.11].

#### **The Statute**

Section 101.161(1) applies to all proposed constitutional amendments, whether the proposed amendment is a citizen initiative, a legislative

resolution or from the CRC or Tax and Budget Reform Commission. The statute provides:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot. . . .

Section 101.161(1), Florida Statutes.

### **The Standard and Rules of Review**

The burden for removal of a proposed constitutional amendment from the ballot is a high one under Florida precedent. Removal of a proposed constitutional amendment from the ballot requires the uncontested facts to clearly and convincingly establish that the proposed ballot title and summary are misleading and defective, not providing the voters with the "truth in packaging" to which they are entitled.

Any proposed constitutional amendment must be accurately represented on the ballot; otherwise voter approval would be a nullity. A ballot title and summary cannot "fly under false colors" or "hide the ball" with regard to the true effect of the amendment.

*Armstrong v. Harris*, 773 So.2d 7, 12, 16 (Fla. 2000)

(holding that the proposed amendment's ballot summary

violated the accuracy requirement of the Florida constitution where the chief purpose and main effect of the proposed amendment was the nullification of a longstanding constitutional provision and where this chief purpose was omitted from the ballot title and summary). A ballot title and summary can "fly under false colors" or "hide the ball" by failing to disclose a chief purpose of the amendment or misleading the voter as to what the main effect of the amendment is.

To conform to section 101.161(1), a ballot summary must state "the chief purpose" of the proposed amendment. In evaluating an amendment's chief purpose, a court must look not to subjective criteria espoused by the amendment's sponsor but to objective criteria inherent in the amendment itself, such as the amendment's main effect.

*Id.*, at 18 (footnote omitted).

In this analysis, we consider two questions: (1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public.

*Florida Department of State v. Florida State Conference of NAACP Branches*, 43 So. 3d 662, 667 (Fla. 2010)

(quotation omitted).

This evaluation also includes consideration of the amendment's true meaning and ramifications. In practice, the accuracy requirement in Article XI, Section 5, functions as a kind of truth in packaging law for the ballot.

*Id.*, at 668 (citing to *Armstrong*, *supra* at 13, 16).

The law requires that the ballot language be fair and sufficiently advise the voter of the affects of proposed change to enable him [or her] to intelligently to cast his [or her] ballot.

*Florida Department of State v. Slough*, 992 So.2df 142, 146 (Fla. 2008).

Upon a determination that the ballot title and summary do not advise the voter of the main effects of the proposed amendment the Court must strike the misleading summary from the ballot and remove the proposed amendment from the electoral ballot.

[I]n the context of a ballot summary review, we have not severed defective language from a ballot summary that contains misleading or ambiguous language. Instead, we have stricken

the misleading summary from the ballot, thereby removing the proposed amendment from a vote of the electorate.

*Florida Department of State v. Mangat*, 43 So.3d 642, 650 (Fla. 2010) (citing *Askew v. Firestone*, 421 So.2d 151, 156 (Fla. 1982) (striking from the ballot a proposed constitutional amendment regarding the ban on lobbying by former legislators based on the misleading ballot summary in the joint resolution); *Advisory Opinion to Attorney General Re 1.35% Property Tax Cap, Unless Voter Approved*, 2 So.3d 968, 977 (Fla. 2009) (striking from the ballot a misleading ballot summary in a citizens' initiative petition relating to property tax cap)). No other remedy is available.

Our role in this process is as a reviewer of constitutional validity, not as an editor or author. For example, in *Smith v. American Airlines, Inc.*, 606 So. 2d 618 (Fla. 1992), where we found the ballot summary for an amendment proposed by the Taxation and Budget Reform Commission to be fatally defective, we specifically state that the Court has no "authority to independently rewrite the ballot summary to conform to the [requirements of section 101.161(1), Florida Statutes]. *Id.* at 621. Rather than fixing the problem with the ballot summary, we struck the amendment

proposed by the Commission from the general election ballot. *Id.* at 622.

*Mangat, supra* at 651.

Further, as elucidated by Justice Canady in his dissent in *Mangat*, "[o]rdinarily, the text of a proposed amendment will necessarily contain the most direct and accurate expression of the substance and effect of the amendment. The text itself may, however, be inadequate to sufficiently inform the voters if the text does not disclose that it will effect the repeal of an existing constitutional provision". *Mangat, supra* at 654 (Canady, J., dissenting).

#### **The Challenges**

The plaintiffs contend that the proposed ballot language, the title and summary, fail to live up to Florida's constitutional "truth in packaging" requirement for two reasons.

First, plaintiffs contend the ballot title and ballot summary fail because the statements therein are inaccurate and misleading, this is because the

Amendment's effect will not be to end dog racing, and will not end wagering on dog racing in Florida. The plaintiffs are correct in these contentions, as set forth in more detail herein.

Second, the plaintiffs contend the ballot title and summary are clearly and conclusively defective, in that the text fails to explicitly advise the voters of the two chief purposes of the amendment, namely the "fundamental value" and "decoupling." One of the chief purposes of Proposed Amendment 13 is the adoption in the constitution of a new "fundamental value" of humane treatment of animals. Plaintiffs point out that nothing in the ballot title or summary informs the voters of this effect. The second chief purpose of proposed Amendment 13 is the significant decoupling of other forms of gaming from pari-mutuel wagering on greyhound racing. Plaintiffs point out the decoupling effect is also absent from the ballot language, contrary to Supreme Court requirements. Further, nothing in the title and summary advise the voter of any impact of the

new proposed amendment on existing sections of the constitution related to gaming. The plaintiffs are correct in these contentions as well, as set forth in more detail herein.

**Misleading Language in the Ballot Title and Summary of Proposed Amendment 13**

The ballot title and summary are misleading because they imply that passage of proposed Amendment 13 "ends dog racing," and ends wagering on the outcome of dog races, neither of which would be accomplished by proposed Amendment 13.

While the ballot title of proposed Amendment 13 reads: "ENDS DOG RACING", the actual text of the Amendment does not go so far. The Amendment only prohibits persons authorized to conduct gaming or pari-mutuel operations from the racing of greyhounds, or any other dog, in connection with wagering on the outcome of said race. As a result a voter may be misled into believing that the Amendment prohibits more activity than it, in fact, does.



Additionally, the language of the proposed ballot summary does not make clear that wagering on the outcome of dog races which take place outside the State of Florida will not be affected. In describing the effect of the proposed Amendment the ballot summary simply states that the amendment "[p]hases out commercial dog racing in connection with wagering by 2020." It is unclear, based upon the title and summary alone, that wagering in Florida on dog races taking place outside of the Florida will continue unaffected.

#### **The Chief Purposes of Amendment 13**

Review of the text of proposed amendment 13 as well as the April and May discussions of the CRC regarding their proposed revision 8, which became proposed amendment 13, makes clear there are two chief purposes of this amendment: the "fundamental value" of animal rights, and the "decoupling" of other forms of gaming from pari-mutuel wagering on greyhound races. Neither of the two chief purposes of the proposed amendment are mentioned in the ballot title or summary, and as a

result the proposed ballot language "hides the ball" from the voter and flies under a "false flag".

**First Chief Purpose - "Fundamental Value"**

First, it is clear the CRC majority intended to propose language, in a constitutional statement of fundamental values, to protect dogs from what the CRC majority viewed as inhumane treatment associated with dog racing. See, e.g., April 2018 transcript, Exhibit C to the plaintiffs' motion for summary judgment, at pages 467 (really at the core - issue of humanity or inhumanity and the injuries and deaths), 470 (inhumane activity, time to ban), 514 (extraordinary amount of cruelty), 516 (industry that is cruel and inhumane), 526 (this is about the safety of animals), 527 (this is about saving these dogs) and 534 (inhumane treatment of animals). See, also, May 2018 transcript, Exhibit D to plaintiffs' motion for summary judgment, at pages 342 (changes primarily done to further protect the animals), 351 (the humane proposal simply protects greyhounds), 353 (to protect cruel and inhumane

treatment of these dogs), 360 (preventing cruelty to animals and abuse and neglect and horror), and 377 (love for animals). This "fundamental value" recognition language is clearly intended to be a chief purpose of proposed Amendment 13.

However, while the statements of the CRC proposed revision are consistent with the statement of fundamental values the CRC put in the very first sentence of the proposed amendment, the CRC did not alert the voters to this chief purpose of proposed amendment 13 by putting this crucial information in the ballot title or summary. Therefore the Court finds that the proposed ballot title and summary is misleading and defective, not providing the voters with the "truth in packaging" to which they are entitled.

#### **Second Chief Purpose - "Decoupling"**

Apart from the first chief purpose, protection of greyhounds and other dogs as evidenced by the first sentence in the text of the proposed constitutional section, it is clear from the CRC transcripts that a

second chief purpose of proposed amendment 13 is the decoupling of live greyhound racing from other gaming activities, namely the present constitutional requirements regarding slot machines. Indeed, this effect is obscured by the last sentence of the ballot summary: "Other gaming activities are not affected."

Three existing provisions of the Florida constitution deal explicitly with gaming and the prerequisites for obtaining a license to conduct certain gaming activities. Article VII, Section 7, Florida Constitution, addresses allocation of pari-mutuel taxes. Existing Article X, Section 7, Florida Constitution, reflects the state mandate that lotteries are prohibited, other than where permitted in conjunction with pari-mutuel activities (such as live greyhound racing). Existing Article X, Section 23, Florida Constitution, addresses the requirements for slot machines in Miami-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. Presently these constitutional articles, especially Article X, Section 23's coupling requirement, create part of the legal framework which authorizes and regulates the restricted gaming activities in the State of Florida.

Review of CRC transcripts from April and May 2018 reveals extensive discussions by the members of the CRC about their desire to decouple slot machines from the presently mandated greyhound racing. See, e.g., April transcript, Exhibit C to plaintiffs' motion for summary judgment, pp. 473-474 (three existing constitutional sections provide nexus for the issue, appropriate to address in constitution), 477 (dogs get held hostage for coupling requirement), 478 (coupling requirement, run full schedule of live racing), 479 (decoupling alone would not be enough [to accomplish humane purpose]), 487 (different than pregnant pig situation, unlike with greyhounds where there are multiple constitutional references, there were no mentions of

pregnant pigs in constitution before), 488 (three places in constitution with nexus to greyhound racing, unlike pregnant pigs), 497 (discussion of legislative history regarding decoupling attempts), 501 (gives legislative authority regarding expanding gambling if no full schedule run), 503 (parimutuels not impacted in future by ban of racing activity), 511 (why this is a constitutional issue, nexus, three sections), 512 (dog racing exists because constitutionally necessary for parimutuels), 513 (constitution mandates dog racing exist), 517 (discussion of decoupling), 521 (coupling required since 1996), 522 (state mandates greyhounds to be run), and 529 (there is established nexus to the issue in the constitution). See, also, the May 2018 transcript, Exhibit D to the plaintiffs' motion for summary judgment, at pp. 347-349 (parimutuels will be the same, without gambling on dog racing), 348 (discussion of 2018 proposed amendment 3 requiring voter, not legislative approval regarding casino changes), 353-354 (don't abolish wagering on out of

state dog racing viewed in state), 373 (legislative history regarding decoupling), 375-376 (no option except constitutional) and 377 (decoupling should be legislative, not constitutional).

The text of the proposed ballot summary does not fairly inform the voters of the proposed Amendment's effects on the requirements for maintaining other gaming licenses. The text of proposed Amendment 13 clearly reflects that the proposed Amendment will "decouple" the ongoing licensing requirements for other gaming activities from the presently existing requirement that those gaming activities take place in a facility which currently conducts greyhound racing or wagering or greyhound racing. Contrary to the contentions of the defendants this is an actual effect on other gaming activities because it changes the presently existing requirement that those other gaming activities take place at licensed pari-mutuel facilities.

In contradiction to the clearly stated effects on other gaming activities in the text of proposed Amendment 13, the ballot summary itself incorrectly states "[o]ther gaming activities are not affected." This portion of the ballot summary is misleading and does not fairly inform the voters that approval of proposed Amendment 13 will alter the existing requirements for conducting other gaming activities. Thus, the proposed ballot title and summary is misleading and defective, not providing the voters with the "truth in packaging" to which they are entitled.

#### **CONCLUSION**

This case does not involve weighing the merits of proposed Amendment 13, but instead requires assessment of whether the CRC has properly provided Florida's voters with the requisite information in the ballot title and summary to allow them to make an informed decision based on correct information. Here, the CRC misstates certain facts as to what the Amendment will do, and neglects to give voters crucial information



about the actual chief effects of what the CRC was trying to accomplish, thus violating the Constitutional and statutory "truth in packaging" requirements.

Based on the foregoing, and the Court being otherwise fully advised in the premises, it is

ORDERED and ADJUDGED as follows:

1. The record supports the plaintiffs' motion for summary judgment and requested removal of this Amendment from the ballot as clearly and conclusively defective, and does not support the defendants' motion for summary judgment, joined in by the three amici, to leave the Amendment on the ballot.

2. The Court enjoins Defendant Department of State, an agency of the State of Florida, and Defendant Ken Detzner, in his official capacity of Secretary of State for the State of Florida from placing this Amendment on the ballot for the November 2018 General Election.

ORDERED this 1st day of August, 2018 in  
Tallahassee, Leon County, Florida.



KAREN GIEVERS  
Circuit Judge

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A Certified Copy  
Attest:

**Gwendolyn Marshall**  
Clerk & Comptroller  
Leon County, Florida



By \_\_\_\_\_  
Deputy Clerk