SC18-1344

In the Supreme Court of Florida

HARRY LEE ANSTEAD AND ROBERT BARNAS,
Petitioners,

v.

KEN DETZNER, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF FLORIDA, HEAD OF THE FLORIDA DEPARTMENT OF STATE, AND FLORIDA'S CHIEF ELECTION OFFICER,
Respondent.

RESPONDENT'S BRIEF

ON PETITION FOR A WRIT OF QUO WARRANTO
Case No. 18-1344

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STATEMENT OF THE CASE AND FACTS

I. LEGAL BACKGROUND

The Florida Constitution establishes four processes by which it may be amended: "through the legislature; through the Constitution Revision Commission ["CRC"]; through a petition initiative; and through a Constitutional Convention." *Charter Review Comm'n of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) (citing Art. XI, Fla. Const.). "Only proposals originating through a petition initiative are subject to [a] single-subject rule." *Id.* Of particular relevance here, "[n]o single-subject requirement is imposed" on proposals reported by the CRC "because this process embodies adequate safeguards to protect against logrolling and deception." *Id.* Indeed, the Florida Constitution affirmatively sanctions multi-subject revisions proposed by the CRC, granting the Commission authority not only to propose revisions to "any part of" the Florida Constitution on a piecemeal basis, but also to propose revisions to "this [c]onstitution" as a whole. *See* Art. XI, § 2(c), Fla. Const. (authorizing the CRC to propose "a revision of this constitution *or* any part of it" (emphasis added)).

A proposed amendment "originating through a petition initiative," *i.e.*, a petition drafted by private citizens and signed by the requisite number of Electors, is "subject to the single-subject rule," which limits amendments proposed by petition initiative to "one subject and matter directly connected therewith." *Charter Review*

Comm'n of Orange Cty., 647 So. 2d at 836-37 & n.2 (quoting Art. XI, § 3, Fla. Const.) (emphasis added). That limitation protects against potentially deceptive "logrolling, in which several separate issues are combined in a single initiative to attempt to secure approval of not only a popular issue but also an otherwise unpopular issue that is included in the same proposal." *In re Advisory Op. to Atty. Gen. re Limits or Prevents Barriers to Local Solar Elec. Supply*, 177 So. 3d 235, 242 (Fla. 2015) (citation and internal quotation marks omitted).

As this Court has explained, concern about "logrolling" is unique to proposals via petition initiative because "the public has had no representative interest in drafting" them. *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984). The other processes by which amendments may be proposed—"[t]he legislative, revision commission, and constitutional convention processes"—"all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal." *Id.* As for the CRC specifically, "[u]nder article XI, Florida Constitution, a thirty-seven member Constitution Revision Commission is required to convene, adopt rules of procedure, examine the constitution, hold public hearings, and prepare a report on proposed revisions. The report is published to the electorate prior to election." *Charter Review Comm'n of Orange Cty.*, 647 So. 2d at 837. "That opportunity for input in the drafting of a proposal is not present under the initiative process." *Fine*, 448 So. 2d at 988.

Because "the citizen's initiative process—as contrasted with . . . the constitutional revision commission process . . . —lacks the 'filtering' process for carefully considered drafting and the public hearing process," the single-subject requirement applies to amendments proposed by "citizen's initiative," and *only* to such amendments. *Limits or Prevents Barriers to Local Solar Elec. Supply*, 177 So. 3d at 242 (citing *In re Advisory Opinion to the Atty. Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994)). In other words, "the single-subject limitation exists because the citizen initiative process does not afford the same opportunity for public hearing and debate that accompanies the other constitutional proposal and drafting processes (*i.e.*, constitutional amendments proposed by the Legislature, by a constitutional revision commission, or by a constitutional convention)." *Advisory Op. To Atty Gen. re Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Districts Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1224 (Fla. 2006).

II. FACTUAL BACKGROUND

After more than a year of public meetings and deliberations, the 2017-2018 CRC approved eight proposed revisions to the Florida Constitution. On May 9, 2018, the CRC transmitted its final report to the Secretary of State, which included ballot titles and summaries of the proposed revisions for placement on the 2018 General Election ballot. *See Final Report*, Constitution Revision Commission 2017-2018

(May 9, 2018), available at http://flcrc.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/CRCFinalReport.pdf.

On May 17, 2018, just one week after the CRC issued its final report, litigants began filing challenges to the CRC's proposals. *See Fla. Greyhound Ass'n, Inc. v. Fla. Dep't of State*, No. 2018-CA-1114 (Leon Cty. Cir. Ct.) (Revision 8) (filed May 17, 2018); *Cty. of Volusia v. Detzner*, No. 2018-CA-001270 (Leon Cty. Cir. Ct.) (Revision 5) (filed June 15, 2018); *Hollander v. Fla. Dep't of State*, No. 2018-CA-001525 (Leon Cty. Cir. Ct.) (Revision 1) (filed July 12, 2018); *League of Women Voters v. Detzner*, No. 2018-CA-001523 (Leon. Cty. Cir. Ct.) (Revision 3) (filed July 12, 2018); *Knowles v. Fla. Dep't of State*, No. 2018-CA-001740 (Leon Cty. Cir. Ct.) (Revision 1) (filed August 3, 2018). All of those challenges were brought in circuit court as actions seeking declaratory and injunctive relief.

On August 14, 2018—more than three months after the CRC issued its final report—Petitioners filed this challenge. Unlike all the other CRC-related challenges that have been brought, including suits challenging some of the same revisions at issue here, Petitioners ask this Court to resolve their claims in the first instance. Also, unlike all the other CRC-related challenges, this case involves a petition for an extraordinary writ rather than an action seeking declaratory and injunctive relief. In particular, Petitioners seek a writ of quo warranto directed to the Secretary of State, along with an order barring the Secretary from submitting six of the CRC's eight

proposed revisions to the Electorate.

SUMMARY OF ARGUMENT

I. As a threshold matter, this Court should deny or dismiss the Petition because Petitioners have made no attempt to satisfy the standard for obtaining the extraordinary writ of quo warranto. As this Court has explained, the writ of quo warranto "historically has been used to determine whether a state officer or agency has improperly exercised a power or right derived from the State." *Fla. House of Representatives v. Christ*, 999 So. 2d 601, 607 (Fla. 2008) (quoting *Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989)). Petitioners do not and cannot allege that the only Respondent they have named, the Secretary of State, improperly exercised any power or right when he assigned ballot position to the challenged revisions. To the contrary, Petitioners expressly and unambiguously concede that the Secretary "has the *power and duty* to place proposals to amend the constitution on the 2018 general election ballot," Pet. 2 (emphasis added), and they do not claim that the Secretary had the power or duty to interfere with such ballot placement based on an independent assessment of the proposals reported by the Commission. Thus, it is undisputed that the Secretary did not improperly exercise any power or right.

In other words, the question posed by the Petition is not whether the Secretary improperly exercised his power to assign ballot position to the challenged CRC revisions, but whether those revisions comply with applicable legal requirements.

Consistent with every other CRC-related challenge that has been brought to date—including suits challenging some of the same revisions at issue here—the proper way to resolve that question is to file an action seeking declaratory and injunctive relief in circuit court, not to file a petition for an extraordinary writ directly in this Court.

II. Even if the claims alleged fell within the scope of the writ, this Court should exercise its discretion to deny or dismiss the Petition without adjudicating the merits of Petitioners' claims. Two considerations support that conclusion.

First, Petitioners do not and cannot justify their delay in filing. After more than a year of public hearings concerning the background and potential impact of the proposed revisions, the CRC transmitted its final report to the Secretary of State on May 9, 2018. Plaintiffs began filing challenges in Leon County Circuit Court the following week. Petitioners, too, could have filed their challenge at that time. Instead, they waited until August 14—more than three months after their claims became ripe, and just weeks before locally-elected Supervisors of Elections in each of Florida's 67 counties must print the ballots in question and mail them to overseas civilian and uniformed service voters.

Second, Petitioners have not offered any "compelling reason" for departing from the "general rule" that "a quo warranto proceeding should be commenced in circuit court." *See Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011) (citing *State ex rel. Vance v. Wellman*, 222 So. 2d 449, 449 (Fla. 2d DCA 1969)). The imminence

of the 2018 General Election does not constitute a compelling reason to depart from that general rule. As evidenced by the other CRC-related challenges now pending before this Court—cases that were timely filed in circuit court so that this Court would be afforded an adequate opportunity to exercise its power of discretionary review—the imminence of the general election is attributable to Petitioners' unjustified delay in instituting this action. Nor, because of that delay, should this Court be required to resolve, on an expedited basis, the varied and important issues raised by the Petition without recourse to well-established procedures conducive to sound judicial decision-making and the orderly administration of justice.

III. The First Amendment does not, as Petitioners contend, give citizens the right "to vote for or against specific independent and unrelated proposals to amend the constitution without paying the price of supporting a measure the voter opposes or opposing a measure the voter supports." Pet. 4 (emphasis omitted). The text of the First Amendment does not refer to any such right, and no case construing the First Amendment has ever recognized such a right. Moreover, longstanding historical practice, *i.e.*, the ratification of the United States Constitution and its amendments, including the First Amendment itself, militates against Petitioners' novel constitutional theory, and this Court's precedent requires that any residual doubt be resolved by declining Petitioners' request to interfere with the submission of the proposed revisions to the Electorate.

IV. The proposed revisions do not violate Florida law.

First, Florida law does not impose a single-subject requirement on revisions proposed by the CRC. To the contrary, the Florida Constitution affirmatively authorizes multi-subject revisions proposed by the CRC, granting the Commission authority not only to propose revisions to "any part of" the Florida Constitution on a piecemeal basis, but also to propose revisions to "this constitution" as a whole. *See* Art. XI, § 2(c), Fla. Const. (authorizing the CRC to propose "a revision of this constitution *or* any part of it" (emphasis added)).

Second, Petitioners claim that a proposed revision that covers multiple subjects cannot "be styled in such a manner that a 'yes' vote will indicate approval of the proposal and a 'no' vote will indicate rejection," as required by Florida law. § 101.161(1) Fla. Stat; *see* Pet. 9-10. This argument fails because it depends on the erroneous assumption that each "subject" is a separate "proposal," much like a compound question improperly posed to a witness during a deposition. To the contrary, while a witness cannot answer "yes" or "no" to a compound question because it will be impossible for the factfinder to ascertain the meaning of the witness's response, it is clear that a "yes" or "no" vote for or against a multi-subject revision to the Florida Constitution comprises approval or rejection of the entire package.

Third, Petitioners claim that the ballot summaries corresponding to the

proposed revisions violate Section 101.161(1) because they do not include an "explanatory statement" of "the chief purpose of the measure." Pet. 11. Petitioners' argument seems to be that a revision which covers multiple subjects simply cannot have a "chief purpose." Nothing in the statute suggests that each ballot summary must identify only a *single* chief purpose, and indeed such a reading would be entirely inconsistent with the fact that Florida law expressly authorizes the CRC to propose revisions that cover multiple subjects.

V. Petitioners claim that three of the ballot summaries that the CRC transmitted to the Secretary of State for submission to the Electorate—the summaries corresponding to Revisions 1, 3 and 6—are "deceptive and misleading." Pet. 12. Petitioners are incorrect.

In assessing a proposed amendment's ballot title and summary, this Court asks two questions: "First, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'" *Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 701 (Fla. 2010) (quoting *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008)). This Court's precedents require "extreme care, caution, and restraint" before removing a proposed amendment from the vote of the people. *In re Advisory Op. to Att'y Gen. re Authorizes Miami-Dade & Broward Cty. Voters to Approve Slot Machines in Parimutuel Facilities*, 880 So. 2d 522, 523 (Fla. 2004)

(quoting *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982)). If "any reasonable theory" exists supporting an amendment's placement on the ballot, it should be upheld. *Armstrong v. Harris*, 773 So. 2d 7, 14 (Fla. 2000) (quoting *Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956)) (internal quotation marks omitted). The courts are not to interfere with the amendment process "unless the laws governing the process have been 'clearly and conclusively' violated." *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab.*, 818 So. 2d 491, 499 (Fla. 2002).

Even setting aside this highly deferential standard, the challenged ballot summaries are entirely accurate and non-misleading. Accordingly, Florida's Constitution requires that they be submitted to the Electorate.

ARGUMENT

I. THIS COURT SHOULD DENY OR DISMISS THE PETITION BECAUSE PETITIONERS MAKE NO ATTEMPT TO SATISFY THE STANDARD FOR OBTAINING A WRIT OF QUO WARRANTO.

"The writ [of quo warranto] historically has been used to determine whether a state officer or agency has improperly exercised a power or right derived from the State." *Fla. House of Representatives v. Crist*, 999 So. 2d 601, 607 (Fla. 2008) (citing *Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989)). Petitioners do not dispute that the only party against whom they have filed suit, the Secretary of State, had the authority to take the sole action that forms the basis for his status as Respondent—*i.e.*, his decision "to assign ballot position to [certain] proposals to

amend the Florida Constitution," Pet. 1; *see id.* at 3 (arguing that this suit is ripe because "Respondent has already assigned ballot designation places to the proposals to amend the constitution submitted by the 2017-2018 Constitution Revision Commission"). To the contrary, Petitioners expressly and unambiguously concede that "Respondent has the *power and duty* to place proposals to amend the constitution on the 2018 general election ballot." Pet. 2 (emphasis added).[1] Notably, Petitioners do *not* claim that the Secretary had the power or duty to interfere with such ballot placement based on an independent assessment of the proposals reported by the Commission.

The Secretary has no role in formulating the revisions proposed by the CRC or the summaries of those revisions that ultimately appear on the ballot; he is involved in that process only with respect to amendments proposed by citizen initiative. *See* § 101.161(2), Fla. Stat. ("The ballot summary and ballot title of a constitutional amendment proposed by initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to s. 120.54."). Petitioners do not claim otherwise.

[1] In fact, it is not the Secretary of State who submits proposed revisions to the Electorate. As discussed below, after receiving proposed revisions from the CRC, the Secretary is required by law to designate each proposed revision with an identifying number for convenient reference, and then furnish the proposed revisions to each of Florida's sixty-seven supervisors of elections. It is the supervisors of elections who then print ballots and submit the revisions to the electorate. In discharging these limited duties, the Secretary wields no discretion.

Florida law supports Petitioners' concession that the Secretary has "the power and duty to place proposals to amend the constitution on the 2018 general election ballot," Pet. 2. The Florida Constitution provides that the CRC shall "file with the custodian of state records"—by statute, the Secretary of State—"its proposal, if any, of a revision of this constitution or any part of it." Art. XI, § 2(c), Fla. Const.; *see* § 20.10(1), Fla. Stat. ("The Secretary of State shall perform the functions conferred by the State Constitution upon the custodian of state records."). The Constitution further requires that such proposed revisions "*shall* be submitted to the electors at the next general election held more than ninety days after . . . it is filed with the" Secretary. Art. XI, § 5(a) (emphasis added). While the Constitution does not specify which state official must submit the CRC's revisions to the Electorate, the mandatory language—"shall"—"is reflective of an intentional policy choice" that the responsible official is required by law to do so. *Se. Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So. 3d 73, 79 (Fla. 2012).

The Legislature, in turn, has designated the Secretary of State as the responsible official, and provided that he "shall give each proposed constitutional amendment a designating number for convenient reference," "[t]his number designation shall appear on the ballot," and that the Secretary "shall furnish the designating number, the ballot title, and, unless otherwise specified in a joint resolution, the ballot summary of each amendment to the supervisor of elections of

each county in which such amendment is to be voted on." § 101.161(2), Fla. Stat.

In sum, Petitioners do not claim that the Secretary had the *power or duty* to refuse ballot placement based on an independent assessment of the proposals reported by the Commission; they properly concede that the Secretary "has the *power and duty* to place proposals to amend the constitution on the 2018 general election ballot," Pet. 2 (emphasis added); and Florida law supports that concession. Thus, it is undisputed that Petitioners have not satisfied—and, indeed, have made no attempt to satisfy—the standard for obtaining a writ of quo warranto as to the sole Respondent against whom they have filed suit.

In other words, the real question in this case is not whether the Secretary improperly exercised his power to assign ballot position to the challenged CRC revisions, but whether those revisions comply with applicable legal requirements. Consistent with every other CRC-related challenge that has been brought to date—including suits challenging some of the same revisions at issue here—the proper way to present that question is to file an action seeking declaratory and injunctive relief in circuit court, not to file a petition for an extraordinary writ directly in this Court.

II. IN THE ALTERNATIVE, THIS COURT SHOULD EXERCISE ITS DISCRETION TO DISMISS THE PETITION WITHOUT REACHING THE MERITS OF PETITIONERS' CLAIMS.

The issuance of a writ of quo warranto is discretionary, *see Fla. House of Representatives*, 999 So. 2d at 603, and the exercise of that discretion is informed

by equitable considerations, including undue delay in seeking the writ, *see, e.g.*, *City of Winter Haven v. State ex rel. Landis*, 170 So. 100, 105 (Fla. 1936) (explaining that the writ of quo warranto may "be refused on the ground of laches" (citation omitted)). *See also Walker v. David*, 876 So. 2d 729 (Fla. 4th DCA 2004) (per curiam) ("while there is no thirty-day time limit for challenging orders by the Parole Commission in extraordinary writ petitions, the question of timeliness may be raised by the affirmative defense of laches"). "As a general rule, unless there is a compelling reason for invoking the original jurisdiction of a higher court, a quo warranto proceeding should be commenced in circuit court." *Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011) (citing *State ex rel. Vance v. Wellman*, 222 So. 2d 449, 449 (Fla. 2d DCA 1969)).

Applying those principles here, this Court should dismiss the petition for an extraordinary writ without reaching the merits of Petitioners' claims.

First, Petitioners did not "act within reasonable temporal bounds" in bringing this suit. *Rice v. State*, 132 So. 3d 222 (Fla. 2013) (quoting *Brown v. State*, 885 So. 2d 391, 392 (Fla. 5th DCA 2004)); *see Landis*, 170 So. at 108. The Commission conducted its proceedings in full view of the public, which has known about the precise language, background, and effect of the challenged proposals since at least May 9 of this year, when the CRC transmitted its final report to the Secretary of State. *See Final Report*, Constitution Revision Commission 2017-2018 (May 9,

2018), *available at* http://flcrc.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/CRCFinalReport.pdf. Nevertheless, Petitioners did not file this action until August 14—more than three months after their claims became ripe, and just weeks before locally-elected Supervisors of Elections in each of Florida's 67 counties must print the ballots in question and mail them to overseas civilian and uniformed service voters. *See* 52 U.S.C. § 20302(a)(8)(A) (requiring each state to transmit a validly requested absentee ballot to absent uniformed services voter or overseas voter at least 45 days before an election for federal office); § 101.62(4)(a), Fla. Stat. (requiring supervisors of elections to send vote-by-mail ballots to absent uniformed services voters and overseas voters no later than 45 days before general election).

Petitioners offer no explanation for their delay in filing. Nor can they. Other challenges to the CRC's proposed revisions—including cases that have already made their way through the lower courts, that are currently pending before this Court, and that raise similar or overlapping claims—demonstrate that Petitioners' delay was altogether avoidable. For example, on May 17, 2018, just a week after the CRC issued its final report, plaintiffs filed suit in Leon County Circuit Court challenging the ballot summary corresponding to proposed Revision 8. *See Fla. Greyhound Ass'n, Inc. v. Fla. Dep't of State*, No. 2018-CA-1114 (Leon Cty. Cir. Ct.). Like Petitioners here, *see* Pet. 12-14, the plaintiffs alleged that the ballot

summary corresponding to Revision 8 is misleading. The Circuit Court agreed, and this Court granted review and is scheduled to hear argument next week. *See Fla. Dep't of State v. Fla. Greyhound Ass'n*, No. SC18-1287 (Fla. S. Ct.). Various litigants have filed numerous other timely challenges to the CRC's proposed revisions and their corresponding ballot summaries. *See Cty. of Volusia v. Detzner*, No. 2018-CA-001270 (Leon Cty. Cir. Ct.) (Revision 5) (filed June 15, 2018); *Hollander v. Fla. Dep't of State*, No. 2018-CA-001525 (Leon Cty. Cir. Ct.) (Revision 1) (filed July 12, 2018); *League of Women Voters v. Detzner*, No. 2018-CA-001523 (Leon. Cty. Cir. Ct.) (Revision 3) (filed July 12, 2018); *Knowles v. Fla. Dep't of State*, No. 2018-CA-001740 (Leon Cty. Cir. Ct.) (Revision 1) (filed August 3, 2018).

Under the circumstances present here, equitable considerations warrant dismissal. The CRC is convened just once every 20 years. After more than a year of public proceedings and three months of media coverage concerning the other pending challenges to the proposed revisions, Petitioners now belatedly seek—in one fell swoop—to invalidate six of the Commission's eight proposed revisions. *See* Pet. 1-2. Not only is the vast majority of the work of the 2017-2018 CRC at stake in this case, but also the work of every subsequent CRC. Petitioners' chief claim is that the proposed revisions are invalid because they cover more than one subject. In other words, Petitioners' theory, if accepted, would effectively invalidate the

Commission's constitutionally assigned duty to propose revisions to "this constitution" as a whole. *See* Art. XI, § 2(c), Fla. Const. (authorizing the CRC to propose "a revision of this constitution *or* any part of it" (emphasis added)). In addition, as discussed above, this case presents no question as to "whether a state officer or agency has improperly exercised a power or right derived from the State." *Fla. House of Representatives*, 999 So. 2d at 607. Thus, to proceed, the Court would have to reexamine the very scope of the writ of quo warranto—specifically, whether Petitioners may use the writ as a vehicle for routine challenges to allegedly unconstitutional provisions of law.

Moreover, because of Petitioners' delay, Respondent has been afforded just four business days in which to brief the varied and important questions at issue; and many interested non-parties who no doubt otherwise would have participated as amici or intervenors will not have an adequate opportunity to prepare briefs presenting their views to this Court, as they have in the other CRC cases noted above.

In short, Petitioners effectively ask this Court to nullify a constitutionally mandated enterprise that takes place only once every 20 years and which, in this case, labored in plain view for more than a year to craft the challenged proposals. *See* Art. XI, § 2(c), Fla. Const. A request seeking such drastic and extraordinary relief should not be based on mere days of briefing, particularly where, as here, Petitioners could easily have avoided the problem by timely filing their challenge.

Second, Petitioners offer no "compelling reason" for departing from the "general rule" that "a quo warranto proceeding should be commenced in circuit court." *See Whiley*, 79 So. 3d at 707. That rule serves a broad range of policies conducive to the proper administration of justice. For example, it affords this Court the benefit of at least one carefully considered lower court decision addressing the same issues; allows for the creation of a fully developed record facilitating this Court's review of that lower court decision; and ensures that Florida's highest judicial authority will not be tasked with resolving important questions of law until the issues presented have already been clarified and refined by multiple rounds of adversarial briefing, including briefing supplied by interested non-parties.

By leapfrogging the lower courts, Petitioners have needlessly deprived this Court of those and other benefits conducive to sound judicial decision-making. It is no answer that the "imminence" of the 2018 general election "justifies" Petitioners' demand for "direct and immediate resolution by this Court." Pet. 3. As the other CRC cases now pending before this Court demonstrate, that imminence is a self-inflicted wound entirely attributable to Petitioners' needless delay in filing. In those cases, the plaintiffs timely filed suit in circuit court and were granted expedited proceedings to ensure that this Court would have an adequate opportunity to consider any appeals. Petitioners could have done the same, and their failure to do so is not a

"compelling reason" to use the State's ultimate judicial authority as a court of first resort. *See Whiley*, 79 So. 3d at 707.

III. THE REVISIONS PROPOSED BY THE CRC DO NOT VIOLATE THE FIRST AMENDMENT.

The First Amendment does not give citizens the right "to vote for or against specific independent and unrelated proposals to amend the constitution without paying the price of supporting a measure the voter opposes or opposing a measure the voter supports." Pet. 4 (emphasis omitted). The text of the First Amendment does not refer to any such right, and no case construing the First Amendment has ever recognized such a right. Moreover, longstanding historical practice—*i.e.*, the ratification of the United States Constitution and its amendments, including the First Amendment itself—militates against Petitioners' novel constitutional theory, and this Court's precedent requires that any residual doubt be resolved by declining Petitioners' request to interfere with the submission of the proposed revisions to the Electorate.

The text of the First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Amend. I, U.S. Const. Nothing in that text even arguably suggests that voters have a right "to vote for or against specific independent and unrelated proposals to amend the [state]

constitution without paying the price of supporting a measure the voter opposes or opposing a measure the voter supports," Pet. 4 (emphasis omitted), and Petitioners do not argue otherwise.

Caselaw construing the First Amendment does not support Petitioners' novel constitutional theory. Petitioners cite just two cases in support of their First Amendment claim, *see* Pet. 4, both of which are wholly inapposite. Indeed, neither of those cases even addresses the First Amendment. One stands for the well-established but generic proposition that certain rights, including the First Amendment and the right to vote, are fundamental and infringements on those rights are subject to heightened scrutiny. *See In re Greenberg's Estate*, 390 So. 2d 40, 42-43 (Fla. 1980). The other correctly applies Florida's single-subject requirement to a constitutional amendment proposed by citizen initiative. *See Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982). But nothing in that case suggests that the First Amendment imposes a *federal* single-subject requirement, and, as discussed below, it is well-settled that *Florida's* single-subject requirement does not apply to revisions proposed by the CRC.

Petitioner's contention that the First Amendment entitles "the voter to vote for or against specific independent and unrelated proposals," Pet. 4 (emphasis omitted), is entirely inconsistent with our constitutional history—specifically, the process by which the people adopted the United States Constitution and amended that document

over the last two centuries. The Constitution covers a wide variety of subjects—not merely the structure of government, but myriad issues, including, *e.g.*, the definitions of "pirac[y]" (Art. I, § 8, U.S. Const.) and "[t]reason" (Art. III, § 3, U.S. Const.), the validity of the national debt (Art. VI, U.S. Const.), and the requirement that criminal trials be by jury (Art. III, § 2, U.S. Const.). Nevertheless, the Constitution was presented and ratified as a single, unified proposal. Florida's entire 1968 Constitution likewise was proposed to and ratified by the Electorate as a set of just three ballot amendments. *See* Open Letter from Brecht Heuchan, Chairman, CRC Style & Drafting Committee (May 1, 2018), *available at* https://www.flcrc.gov/Media/PressRelease/Show/1100.

Each of the many Amendments to the United States Constitution, too, was proposed and ratified as a single, unified proposal, and many of them cover multiple subjects. For example, the First Amendment—the very provision Petitioners invoke as the basis for their challenge—prohibits the "establishment of religion" *and* safeguards the right "to petition the Government for a redress of grievances." Amend. I, U.S. Const. If Petitioners' theory is sound, the process by which the First Amendment was ratified would have violated the First Amendment.

The Fourteenth Amendment likewise contains provisions addressing a wide variety of issues. For example, that amendment bars the States from depriving any person of life, liberty, or property without due process of law; requires equal

protection of the law; defines United States citizenship and guarantees the privileges and immunities to which citizens are entitled (Amend. XIV, § 1, U.S. Const.); requires that citizens be represented proportionately in Congress (*id.* § 2); sanctions criminal disenfranchisement by the states (*id.*); absent congressional approval, prohibits individuals from holding public office if they, "having previously taken an oath . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same" (*id.* § 3); and validates "the public debt of the United States," including debt incurred during the civil war (*id.* § 4).

The provisions of the First Amendment are, to be sure, related in certain respects. They protect certain individual rights and prevent the government from establishing religion. The provisions of the Fourteenth Amendment, too, protect various rights and were intended to address contemporary social problems. But the same could be said of the revisions proposed by the CRC. For example, Revision 1 modifies certain rules governing the courts by increasing the mandatory retirement age for judges and justices, abolishing judicial deference to agency interpretations of the statutes they administer, and establishing new victims' rights and procedures for enforcement of those rights in court. *See* Pet. App'x A1. Similarly, Revision 2 addresses the state college and university system; Revision 3 addresses the public school system; Revision 4 addresses environmental and health concerns; Revision 5 addresses the structure of state and local government; and Revision 6 removes

certain obsolete or discriminatory language from two existing constitutional provisions. *See generally* Pet. App'x. In short, our constitutional history is replete with examples of situations in which voters have been asked to vote up or down on bundled provisions addressing distinct rights and issues—including the ratification of the Constitution and the First and Fourteenth Amendments. That longstanding historical practice militates against the theory that the First Amendment requires arguably unrelated provisions to be adopted on a piecemeal basis. And it underscores the line-drawing problems that Plaintiffs' theory would generate: How "unrelated" must provisions be to trigger the First Amendment right Petitioners ask this Court to recognize for the first time in the history of American jurisprudence?

Moreover, even if the First Amendment included the right Petitioners' claim, the CRC had an entirely rational basis for bundling some of the amendments for inclusion on the 2018 General Election ballot. According to election officials, long ballots often *discourage* citizens from voting at all, and if the CRC had listed all the proposed amendments separately, there would appear *twenty-five* questions on the ballot this fall, rather than fifteen. *See* Open Letter from Brecht Heuchan, Chairman, CRC Style & Drafting Committee (May 1, 2018), *available at* https://www.flcrc.gov/Media/PressRelease/Show/1100. In other words, the CRC acted reasonably and with the proper intention of minimizing ballot fatigue when it decided to bundle proposed constitutional amendments.

Finally, this Court's precedent requires that any residual doubt regarding the validity of the proposed Revisions must be resolved in favor of allowing the voters to pass on the Commission's proposed revisions. The amendment process is "the most sanctified area in which a court can exercise power." *Pope v. Gray*, 104 So. 2d 841, 842 (Fla. 1958). Under the Florida Constitution, "[s]overeignty resides in the people," *id*.; *see also* Preamble, Fla. Const., and "the electors have a right to approve or reject a proposed amendment to the organic law of the State, limited *only* by those instances where there is an *entire* failure to comply with a *plain* and *essential* requirement of the organic law in proposing the amendment." *Pope*, 104 So. 2d at 842 (emphases added). Accordingly, courts must exercise "'extreme care, caution, and restraint'" before removing a proposed amendment from the vote of the people. *In re Advisory Op. to Att'y Gen. re Authorizes Miami-Dade & Broward Cty. Voters to Approve Slot Machines in Parimutuel Facilities*, 880 So. 2d 522, 523 (Fla. 2004) (quoting *Firestone*, 421 So. 2d at 156). If "'any reasonable theory'" exists supporting an amendment's placement on the ballot, it should be upheld. *Armstrong v. Harris*, 773 So. 2d 7, 14 (Fla. 2000) (quoting *Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956)). Compared to the deference owed legislative acts, this standard "is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval." *Id.* (internal quotation marks omitted). To that end, Florida courts are not to interfere with the amendment process "unless the

laws governing the process have been 'clearly and conclusively' violated." *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab.*, 818 So. 2d 491, 499 (Fla. 2002). Petitioners have not satisfied that demanding standard for undoing the work of a constitutionally mandated commission.

IV. THE PROPOSED REVISIONS DO NOT VIOLATE FLORIDA LAW.

Petitioners claim that Revisions 1-6 violate Section 101.161, Florida Statutes. Pet. 9-11. That contention fails for several reasons.

First, the Florida Constitution affirmatively authorize multi-subject revisions proposed by the CRC, granting the Commission authority not only to propose revisions to "any part of" the Florida Constitution on a piecemeal basis, but also to propose revisions to "this constitution" as a whole. *See* Art. XI, § 2(c), Fla. Const. (authorizing the CRC to propose "a revision of this constitution *or* any part of it" (emphasis added)). Petitioners indeed point to Article XI, Section 2(c) of the Florida Constitution and concede that

> the Constitution Revision Commission possesses power to propose a comprehensive revision of the entire constitution, such as transforming from the existing form of government to a parliamentary plan as in England and other foreign states. This would require related changes to many articles of the constitution and the voters could be requested to approve or reject the comprehensive whole and not bits and pieces of it.

Pet. 10. Petitioners offer no rationale for their assertion that, despite such broad authority, the CRC lacks the lesser power to propose a revision that would, if

adopted, amend just a few provisions of the Constitution. *Id.*

To the extent Petitioners rest their conclusion on the single-subject limitation that the Florida Constitution imposes on amendments proposed by *citizen initiative*, that limitation simply does not apply to revisions proposed by the CRC. This is clear not only from the Commission's mandate to propose "a revision of this constitution *or* any part of it," Art. XI, § 2(c), Fla. Const. (emphasis added), but also from the framers' decision to expressly impose a single-subject requirement on amendments proposed by citizen initiative while remaining silent as to amendments proposed by the CRC. *See Telli v. Broward Cty.*, 94 So. 3d 504, 507 (Fla. 2012) ("'By the constitution identifying the offices to which a term limit disqualification applies, we find that it necessarily follows that *the constitutionally authorized offices* not included in article VI, section 4(b), may not have a term limit disqualification imposed.'") (quoting *Cook v. City of Jacksonville*, 823 So. 2d 86, 93-94 (2002)).

The framers' decision not to impose a single-subject rule on the CRC makes perfect sense because the Commission reflects the tradition of the "great debates and compromises" of the conventions that produced the United States Constitution. *Clinton v. City of N.Y.*, 524 U.S. 417, 439-40 (1998). The CRC, moreover, affords the Electorate comprehensive procedural protections that the citizen initiative process does not and cannot: public hearings and a publicly visible drafting process. The public lacked such access even with respect to the venerated processes that

produced both the United States Constitution and the Bill of Rights. As this Court has observed, "'[t]he framers of the [United States] Constitution scrupulously maintained the secrecy of their deliberations in the convention of 1787.'" *Bassett v. Braddock*, 262 So. 2d 425, 426 n.4 (Fla. 1972) (quoting Paul A. Freund, *On Prior Restraint*, Harvard Law School Bulletin (Aug. 1971)); *see id* at 427 n.4 ("When the first Congress proposed the First Amendment, the Senate, it is worth remembering, sat in secrecy. For five years the Senate held its debates behind closed doors.").

Second, Petitioners claim that "each and every one of Constitutional Revision Committee's Revisions 1-6 violates the rights of voters protected by § 101.161(1) Fla. Stat." Pet. 9. The statute provides in pertinent part that:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection.

§ 101.161(1) Fla. Stat. In particular, Petitioners seem to suggest that a proposed revision that covers multiple subjects cannot "be styled in such a manner that a 'yes' vote will indicate approval of the proposal and a 'no' vote will indicate rejection." *Id.*; *see* Pet. 9-10.

This argument fails because the conclusion that citizens cannot vote "yes" or "no" to a revision that covers multiple subjects depends on the erroneous assumption

that each subject comprises a separate proposal, much like a compound question improperly posed to a witness during a deposition. To the contrary, while a witness cannot answer "yes" or "no" to a compound question because it will be impossible for the factfinder to ascertain the meaning of the witness's response, it is clear that a "yes" or "no" vote for or against a multi-subject revision to the Florida Constitution comprises approval or rejection of the entire package.

Third, Petitioners claim that the ballot summaries corresponding to the proposed revisions violate Section 101.161(1) because they do not include an "explanatory statement" of "the chief purpose of the measure." Pet. 11 (emphasis and internal quotation marks omitted). Petitioners' argument seems to be that a revision which covers multiple subjects simply cannot have a "chief purpose." Nothing in the statute suggests that each ballot summary must identify only a *single* chief purpose, and indeed such a reading would be entirely inconsistent with the fact that Florida law expressly authorizes the CRC to propose revisions that cover multiple subjects, as discussed more fully above.

V. THE BALLOT SUMMARIES DRAFTED BY THE CRC ARE NOT MISLEADING.

Petitioners claim that three of the ballot summaries that the CRC transmitted to the Secretary for submission to the voters—the summaries corresponding to Revisions 1, 3 and 6—are "misleading and deceptive." Pet. 12.

Section 101.161(1), Florida Statutes, codifies the standard for ballot titles and

summaries of proposed constitutional amendments. *See Advisory Op. to the Atty. Gen. re Standards for Establishing Legislative District Boundaries*, 2 So. 3d 175, 184 (Fla. 2009). Any such measure "submitted to the vote of the people" shall include a ballot title "not exceeding 15 words in length, by which the measure is commonly referred to or spoken of," and a ballot summary, "not exceeding 75 words in length," that must explain "the chief purpose of the measure." § 101.161(1), Fla. Stat.

The purpose of the ballot title and summary is "to provide fair notice of the content of the proposed amendment." *Advisory Op. to the Att'y Gen.—Fee on the Everglades Sugar Prod.*, 681 So. 2d 1124, 1127 (Fla. 1996). To satisfy section 101.161, Florida Statutes, they must "state in clear and unambiguous language the chief purpose of the measure," *Firestone*, 421 So. 2d at 154-55, so that the proposed amendment does not "fly under false colors" or "hide the ball" as to its effect, *Armstrong*, 773 So. 2d at 16 (internal quotation marks omitted).

In assessing a proposed amendment's ballot title and summary, this Court asks two questions: "First, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'" *Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 701 (Fla. 2010) (quoting *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008)). As discussed above, this Court's precedents require

"'extreme care, caution, and restraint'" before removing a proposed amendment from the vote of the people. *In re Advisory Op. to Att'y Gen. re Authorizes Miami-Dade & Broward Cty. Voters to Approve Slot Machines in Parimutuel Facilities*, 880 So. 2d at 523 (quoting *Firestone*, 421 So. 2d at 156). If "'any reasonable theory'" exists supporting an amendment's placement on the ballot, it should be upheld. *Armstrong*, 773 So. 2d at 14 (quoting *Gray*, 89 So. 2d at 790). The courts are not to interfere with the amendment process "unless the laws governing the process have been 'clearly and conclusively' violated." *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab.*, 818 So. 2d at 499.

A. Revision 1

If approved by the Electorate, Revision 1 would (1) increase the mandatory retirement age for judges and justices, (2) abolish judicial deference to agency interpretations of the statutes they administer, and (3) establish new victims' rights and procedures for enforcement of those rights in court. Pet. App'x A1.

Pursuant to Section 101.161(1), Florida Statutes, the CRC has approved the following title and summary for placement on the November 2018 General Election ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 16
ARTICLE V, SECTIONS 8, 21
ARTICLE XII, NEW SECTION
RIGHTS OF CRIME VICTIMS; JUDGES.—Creates constitutional rights for victims of crime; requires courts

> to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes. Requires judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency's interpretation. Raises mandatory retirement age of state justices and judges from seventy to seventy-five years; deletes authorization to complete judicial term if one-half of term has been served by retirement age.

Pet. App'x A9. Other litigants have challenged this ballot summary and title in Leon County Circuit Court. *See Hollander v. Fla. Dep't of State*, No. 2018-CA-001525 (Leon Cty. Cir. Ct.) (Revision 1) (filed July 12, 2018), and *Knowles v. Fla. Dep't of State*, No. 2018-CA-001740 (Leon Cty. Cir. Ct.) (Revision 1) (filed August 3, 2018).

Petitioners here claim the summary is misleading because it does not disclose that the revision "diminishes the rights of accused criminals" as well as "the rights of convicted persons" seeking post-conviction relief. Pet. 12. However, Petitioners offer no analysis to support that conclusory assertion, and the proposed amendment need not—and, particularly insofar as federally protected rights are concerned, should not—be construed to invade or diminish the legally protected rights of criminal defendants, before or after conviction.

The particular aspect of Revision 1 that Petitioners challenge creates a right for victims of crime to be "free from *unreasonable* delay" in proceedings "and to a prompt and final conclusion of the case and any related postjudgment proceedings." Pet. App'x A5 (emphasis added). The State Attorney may, in "good faith," invoke

that right to avoid "unreasonable delay." *Id.* The right to expeditious justice falls well within the chief purpose disclosed in the summary—creating new "victims' rights" that affect "criminal and juvenile justice processes" and "requir[ing] courts to facilitate victims' rights." *Id.* at A9.

Nor would this aspect of the Revision, effectively giving *victims* the right to a speedy trial, detract from *defendants'* existing right to a speedy trial. To the extent Petitioners contend that criminal defendants have a "right" to "unreasonable delay," they have none. And to the extent Petitioners contend that the summary must address more specifically the ways in which the Amendment may affect defendants' interests, that argument is foreclosed by Florida Supreme Court precedent. The summary "need not explain every detail or ramification of the proposed amendment." *Advisory Op. to the Att'y Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 974 (Fla. 2009); *see also Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982).

Petitioners also contend that the revision will diminish "the rights of convicted persons to seek post-conviction relief." Pet. 12. Petitioners are mistaken. The Revision would add a provision requiring that "[a]ll state-level appeals and collateral attacks on any judgment must be complete within two years from the date of appeal in non-capital cases and within five years from the date of appeal in capital cases, *unless* a court enters an order with specific findings as to why the court was unable

to comply with this subparagraph and the circumstances causing the delay." Pet. App'x A5 (emphasis added). This has no impact on prisoners' existing rights, because a prisoner has no "right" to insist—and, indeed, no interest in insisting—that a court take *longer* to resolve a collateral attack than the ordinary default periods prescribed by the proposal, even if there is no good reason "why the court was unable to comply" with the provision and avoid such a delay.

Finally, the ballot summary accurately discloses that the Amendment "[c]reates constitutional rights for victims of crime," Pet. App'x A9, and voters with the "common sense and knowledge" presumed by this Court's precedent will surely be aware that any new rights afforded to victims of crime may well affect the interests of criminal defendants, *see Advisory Op. to the Att'y 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," and terms must be "read with common sense and in context."); *see also Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 701 (Fla. 2010) (voters are presumed to have "a certain amount of common understanding and knowledge"). That is especially so where, as here, the summary also discloses that the Amendment "requires *courts to facilitate* victims' rights" and "authorizes *victims to enforce* their rights throughout *criminal and juvenile justice processes*." Pet. App'x A9 (emphases added). This language makes clear that the newly created rights specifically affect "criminal and juvenile justice

processes," and therefore may, in particular cases, affect the interests of criminal defendants subject to those same processes.

B. Revision 3

If approved by the Electorate, Revision 3 would amend Articles IX and XII of the Florida Constitution by (1) imposing term limits of "eight consecutive years" on school board members, and (2) requiring "the promotion of civic literacy in order to ensure that students enrolled in public education understand and are prepared to exercise their rights and responsibilities as citizens of a constitutional republic." Pet. App'x C1-C2. Revision 3 would also modify Article IX, Section 4(b) of the Florida Constitution as follows:

> The school board shall operate, control, and supervise all free public schools established by the district school board within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

Id. at C1-C2.[2]

Pursuant to Section 101.161(1), Florida Statutes, the CRC has approved the following title and summary for placement on the November 2018 General Election ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE IX, SECTION 4, NEW SECTION
ARTICLE XII, NEW SECTION

[2] Proposed additions to the current language of the Florida Constitution are underlined.

> SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS.—Creates a term limit of eight consecutive years for school board members and requires the legislature to provide for the promotion of civic literacy in public schools. Currently, district school boards have a constitutional duty to operate, control, and supervise all public schools. The amendment maintains a school board's duties to public schools it establishes, but permits the state to operate, control, and supervise public schools not established by the school board.

Pet. App'x C3. Other litigants have challenged this ballot summary and title in Leon County Circuit Court. *League of Women Voters v. Detzner*, No. 2018-CA-001523 (Leon. Cty. Cir. Ct.) (Revision 3) (filed July 12, 2018). Just this morning, the circuit court ruled for those plaintiffs and required that the revision not appear on the 2018 General Election ballot, and the Secretary promptly filed a notice of appeal.

The summary and title not only "'fairly inform[] the voter of the chief purpose of the amendment'" and does not "'mislead[] the public,'" *Fla. Educ. Ass'n*, 48 So. 3d at 701 (quoting *Slough*, 992 So. 2d at 147), but go much further, informing the public almost verbatim what the constitutional language currently says, how it would change, and what the practical effect of the Amendment would be.

Petitioners claim the "ballot language is clearly and deceptive misleading [sic] because it does not disclose to the voter that the proposed amendment to Article IX § 4(b), adding the language 'established by the district school board,' eliminates the constitutional requirement in Article IX § 1(a) that Florida have a *uniform . . . system of free public schools*." Pet. 13 (emphasis in original). In particular, Petitioners

contend, Revision 6 "seeks *sub silentio* to subvert decisions such as *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006)." *Id.*

In *Bush v. Holmes*, this Court rejected a system of school vouchers because it created a state-funded "private school alternative to the public school system" that failed to meet "the criterion of uniformity." 919 So. 2d. at 409. The statute at issue "provide[d] that a student who attends or is assigned to attend a failing public school may attend a higher performing public school or use a scholarship provided by the state to attend a participating private school." *See id.* at 400 (citing § 1002.38(2)(a), (3), Fla. Stat. (2005)). This Court found the program unconstitutional because it used state funds to send students to schools "the Legislature expressly state[d] that it does not intend 'to regulate, control, approve, or accredit,'" *id.* (quoting § 1002.42(2)(h), Fla. Stat. (2005)), and over which the State "'ha[d] no authority.'" *Id.* (quoting § 1001.21(1), Fla. Stat. (2005)).

Petitioners' argument—that Revision 3 would eliminate the uniformity requirement set forth in Article IX § 1(a) of the Florida Constitution and overrule *Bush v. Holmes*—thus depends on the erroneous assumption that the Revision would assign authority to operate certain schools to a private entity outside the supervision of the State. Revision 3 would do nothing of the sort. Article IX, Section 4(b) of the Florida Constitution currently provides, in pertinent part, that each local "school board shall operate, control and supervise all free public schools within the school

district." Revision 3 would revoke local school boards' operational authority with respect to certain schools, limiting their operational authority to only those schools the boards themselves "established." Pet. App'x C2. Revision 3 is silent as to what entity would operate *other* schools—*i.e.*, those established other than by local school boards—and certainly does not delegate such authority to a private entity. And to the extent Petitioners are concerned that the *Legislature* may later seek to delegate such authority in a manner proscribed by *Bush v. Holmes*, that argument is beyond the scope of pre-election review because it "concern[s] the ambiguous legal effect of the amendment's text rather than the clarity of the ballot title and summary." *Advisory Op. to the Atty. Gen. Re: Voter Control of Gambling*, 215 So. 3d at 1209, 1216 (Fla. 2017).

C. Revision 6

If approved by the Electorate, Revision 6 would eliminate certain obsolete or discriminatory language from two provisions of the Florida Constitution. Pet. App'x F1. Pursuant to Section 101.161(1), Florida Statutes, the CRC has approved the following title and summary for placement on the November 2018 General Election ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 2
ARTICLE X, SECTIONS 9, 19
PROPERTY RIGHTS; REMOVAL OF OBSOLETE PROVISION; CRIMINAL STATUTES.—Removes discriminatory language related to real property rights.

> Removes obsolete language repealed by voters. Deletes provision that amendment of a criminal statute will not affect prosecution or penalties for a crime committed before the amendment; retains current provision allowing prosecution of a crime committed before the repeal of a criminal statute.

Pet. App'x F3.

Petitioners claim that "[t]his ballot language is clearly and deceptive misleading [sic] because it does not disclose to the voter that" the proposal would "remove the power of the legislature to regulate or prohibit 'ownership, inheritance, disposition and possession of real property by *aliens ineligible for citizenship*.'" Pet. 13 (emphasis in original).

Revision 6 would amend Article I, Section 2 of the Florida Constitution as follows:

> Basic rights.—All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property~~; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law~~. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Pet. App'x F1-F2.[3]

[3] Proposed deletions are shown in strikethrough font.

As the ballot summary discloses verbatim, the revision would strike language that is "discriminatory" and "related to real property rights." Petitioners' argument seems to be that the ballot summary must also disclose precisely how the stricken language is discriminatory—*i.e.*, that it discriminates against aliens ineligible for United States citizenship. As this Court has repeatedly held, however, the summary "need not explain every detail or ramification of the proposed amendment." *Advisory Op. to the Att'y Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d at 974; *see also Grose*, 422 So. 2d at 305.

CONCLUSION

For the foregoing reasons, this Court should dismiss or deny the Petition for a Writ of Quo Warranto.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

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

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing brief has been furnished by electronic service through the Florida Courts E-Filing Portal on this 20th day of August, 2018, to the following counsel:

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