

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

LEE HOLLANDER,

Plaintiff,

v.

CASE NO: 2018-CA-1525

DEPARTMENT OF STATE, etc., et al.,

Defendants.

AMY KNOWLES,

Plaintiff,

v.

CASE NO: 2018-CA-1740

DEPARTMENT OF STATE, et al.,

Defendants.

FINAL JUDGEMENT

Thirty years ago¹, Florida voters adopted a proposed victims rights proposal relating to criminal proceedings.²

¹ November 1988.

² Senate Joint Resolution [SJR] 135.

The 1988 ballot title and text voters saw, and approved were:

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 16

Rights of Victims of Crime. Proposing an amendment
To the State Constitution to grant victims of crime, and
the next of kin of homicide victims, **the qualified right
to be informed, to be present, and to be heard at all crucial stages
of criminal proceedings.**

[Emphasis supplied], SJR 135 (1988).

The actual text of the 1988 amendment, to be added as Article I, Section
16b, [existing Article I, Section 16 became 16a] provided:

Victims of crime or their lawful representatives, including the next of
kin of homicide victims, are entitled to the right to be informed, to be
present, and to be heard when relevant, at all crucial stages of criminal
proceedings, **to the extent that these rights do not interfere with
the constitutional rights of the accused.**

[Emphasis supplied], Article I, Section 166, Florida Constitution.

THE PRESENT CAUSE came before the Court on August 24, 2018, on
cross motions for summary judgement, nearly thirty years after Floridians added
the qualified victims rights to the Florida Constitution . Plaintiffs Hollander,
Brigham and the League of Women Voters ³ and Plaintiff Amy Knowles⁴, seek the

³ Co-Plaintiffs in Case No: 2018-CA-1525

⁴ Plaintiff in Case No: 2018-CA-1740, transferred to Leon County from Monroe County.

removal of the Constitution Revision Commission [CRC] proposed “Rights of Crime Victims; Judges” from the 2018 ballot.

Defendants Detzner, the Department of State and case no: 2018-CA-1525 intervener Marsy’s Law of Florida seek to have the title and summary of the proposal’s 191 lines left on the ballot for assessment and determination by the voters.

As set forth more fully herein, because the title and summary do not meet the requirements of Florida laws including Section 101.161(1) in fully, fairly and accurately telling voters the chief purpose of the proposed amendment, and because the title and summary are, in addition, misleading, the CRC’s proposal [now known as Revision 6] does not meet “truth in packaging” requirement for submission to the voters and must be removed from the ballot.

Controlling Rules

Courts should use extreme care, caution and restraint before removing a proposal from the voters’ consideration. *Advisory opinion to the Attorney General re: Authorizes Miami-Dade and Broward County voters to approve slot machines.* 880 So.2d 522, 523 (Fla. 2004) quoting *Askew v. Firestone*, 421 So.2d 151, 156 (Fla. 1982). A proposal should be left to the voters’ consideration unless the laws have been “clearly and conclusively violated”. *Advisory Opinion Re: Right to Treatment Rehab.*, 818 So.2d 491, 499 (Fla. 2002).

It is, of course, imperative that the ballot title and summary provide fair notice to the voters so the voters will not be misled and can cast an informed, intelligent ballot, *Advisory Opinion to the AG Re: Voting Restoration*, 215 So.3d 1202, 1207 (Fla. 2017); the voters see only the title and summary on the ballot not the text of the proposed amendment. Section 101.161(1) Florida Statutes 2017. The title and summary must state in “clear and unambiguous language” the “chief purpose of the amendment” *Firestone, supra* at 154-155, so that the proposed amendment “does not fly under false colors or hide the ball as to its effect”. *Armstrong v. Harris*, 773 So.2d 7, 16 (Fla. 2000). The loss or restriction of an independent fundamental state right must be made known. *Harris, supra* at 12; quoting *Traylor v. State*, 596 So.2d 957, 962 (Fla. 1992). The voters are entitled to “truth in packaging”. *Harris, supra* p.13.

Where the purpose of an amendment is to remove constitutional language but the purpose is not mentioned in the ballot summary, the problem lies not in what is said but what was not said. *Firestone, supra* at 156. The information in the ballot title and summary must be adequate and not misleading *Florida Department of State v. Slough*, 992 So.2d 142, 147 (Fla. 2008). Here, the CRC has not mentioned crucial language in the Title and Summary; there is no reference to the repeal of the 1988 qualified rights in Article I, Section 16b, and no mention of the impact of the 2018 language on the right of those accused.

No Factual Disputes

All parties in the two cases agree there are no disputes as to genuine issues of material fact that require fact finding; all parties agree the issues in dispute involve questions of law for the Court's determination.

Analysis

The plaintiffs in these two cases raise essentially the same inadequacies in the ballot title and summary; plaintiff Knowles also separately contends that the log rolling/bundling nature of the proposals here improperly interferes with the claimed right of a voters to consider each proposal.⁵

The ballot language pertinent here is set forth at page 9 of the CRC final report, in the record as an exhibit to the Hollander plaintiffs' motion for summary judgement:

**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

⁵ Knowles does acknowledge that the single subject requirement does not explicitly apply to CRC-sponsored proposals, but does not want to concede that the presence of multiple proposals may – if the voter has different opinions as to the proposals – keep a fair, informed vote from being cast.

authorization to complete judicial term if one-half of term has been served by retirement age.

CRC report, p. 9 of 9.

The plaintiffs contend the two subject, five word title [“Rights of Crime Victims; Judges”] is incomplete and misleading relative to the three subjects [crime victims rights, de novo review and non-deference to agency interpretation of statutes and rules, and mandatory judicial retirement age], given the lack of any title mention at all in the change from the so-called **Chevron** doctrine⁶. The CRC’s decision to omit the de novo review in the title is unexplained in the relevant record.

The most significant issue, however, is the complete omission from the title and summary of the fourth subject involved in this CRC proposed revision: The rights of an accused in a criminal or delinquency proceeding. Additionally, neither the title nor summary mentions the 1988 constitutional protection Floridians provided crime victims’ right to be informed, be present and be heard at crucial stages of criminal proceedings.

Neither the title nor summary mentions that the victims rights provided in 1988 were qualified and subject to the constitutional rights of the accused.

⁶ *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.*, 467 U.S. 837 (1984) .

Neither the title nor summary mentions that adoption of the CRC proposal expressly repeals the 30 year old existing constitutional provision in Section 1(b), nor any effect on an accused.

The August 24 hearing included questions about the effects of the multiple proposed changes (in the more than five pages, 146 lines of new text) to Florida's existing criminal justice system and juvenile justice system. Counsel for the defendants repeatedly pointed out that this case is not about any ambiguities and those in the text itself, as those will be left to be litigated in later cases.⁷ The issue is raised not to debate the merits of the amendment text, of course, but to indicate the lack of accuracy and completeness of the 2018 title and summary.

In addition to the CRC neglecting to mention or choosing not to mention the repeal of the previously adopted qualified victims rights adopted in 1988, the 2018 title and summary are incomplete and misleading in other ways:

1. The repeal of existing Section 16(b) combines with language in the introductory portion of the new Section 16(b) to

Ensure that crime victims rights and interests are respected and protected by law in a manner **no less vigorous than protections afforded to criminal defendants and juvenile delinquents.**

CRL final report p. 2 of 9, lines 43-46.

⁷ Like a mystery box being sold at a charity auction or, packages like a bill of goods or a pig in a poke, as far as the voters are concerned.

2. Neither the title nor summary reveals that the 2018 revision 6 expands the scope of Article I, Section 16(b) beyond criminal proceedings to include the delinquency system.

3. Florida's present criminal justice system is different from the federal criminal justice system. The revision 6 ballot language does not disclose that the chief purpose of revision 6 is to take away or reduce the protection the present Florida system provides an accused in criminal proceedings.

4. Existing Article I, Section 14 addresses pretrial release on reasonable conditions. Revision 6 contains language that modifies the existing pretrial release section, with neither the title or summary disclosing the impact on Article I, Section 14 to voters. CRC report pp. 2-3 lines 58-61.

5. Existing Article I, Section 15(b) provides a system of justice for children to be "charged with a violation of law as an act of delinquency instead of crime". Revision 6 contains language that expands victims rights previously applicable only in criminal cases to delinquency cases, and does not disclose that to voters that revision 6 will impact the existing article I, section 15(b) CRC final rpt, p. 2, line 42.

6. Florida's existing criminal justice and juvenile justice systems are based on State constitutional provisions statutes and rules. Revision 6 does not tell voters that years of settled law and provisions that comprise the criminal justice system

and the juvenile justice system will be significantly changed. These omissions are contrary to *Askew v. Firestone, supra* and are misleading.

Conclusion

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

FOUND, ORDERED and ADJUDGED as follows:

1. The 2018 title and summary are incomplete and inaccurate, leaving out reference to existing constitutional provisions that would be impacted if revision 6 were passed.
2. Without justification, the 2018 title and summary omit any reference to the rights of the accused, a material omission.
3. The 2018 title and summary are clearly and conclusively defective by not telling voters the chief purpose of revision 6 is to repeal the qualified crime victims rights voters adopted in 1988 and to significantly change the existing Florida Criminal Justice System and the Florida Juvenile Justice System.
4. The 2018 title and summary mislead voters by not disclosing that revision 6 is a substantial removal and modification of the rights of those accused in a criminal proceeding and of children accused in a juvenile justice proceeding.
5. The 2018 revision 6 title and summary mislead voters by not telling them

the chief purpose is a major revamping of the settled Florida's criminal justice and juvenile justice systems in a way that appears likely [based on comments of the proponents] to lead to years of litigation to address the resulting uncertainty resulting from the CRC proposal.

6. Because the 2018 Revision 6 title and summary are misleading, not a fair and accurate summary and do not provide voters with the truth in packaging to which they are entitled, revision 6 must be removed from the ballot.

7. Secretary Detzner is enjoined from action to place CRC revision 1 current revision 6 titled "Rights of Crime Victims; Judges" on the 2018 ballot and shall make sure revision 6 is not submitted to the voters.

8. The Court reserves jurisdiction to consider timely motion to tax costs.

ORDERED this 27th day of August, 2018 in Tallahassee, Leon County, Florida.



KAREN GIEVERS
Circuit Judge

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