Nos. SC19-1266, SC19-1601

In the Supreme Court of Florida

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: PROHIBITS POSSESSION OF DEFINED ASSAULT WEAPONS

THE NATIONAL RIFLE ASSOCIATION'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

On July 26, 2019, the Attorney General petitioned this Court to review a proposed constitutional amendment that aims to modify article I, section 8 of the Florida Constitution to define the term "assault weapons" and to prohibit their possession in Florida (the "Amendment"). Because its ballot title and ballot summary are inaccurate and misleading, the Amendment should be stricken from the ballot.

I. IDENTITY AND INTEREST OF THE NATIONAL RIFLE ASSOCIATION.

The National Rifle Association (the "NRA") is the Nation's oldest and largest organization dedicated to the fundamental, inalienable right of all Americans to bear arms for self-protection without fear of unjust prosecution. The NRA has nearly five million members nationwide, including approximately 300,000 in Florida. In accordance with this Court's Order of September 23, 2019, the NRA files this brief in opposition to the Amendment for its failure to comply with section 101.161 of the Florida Statutes and article XI, section 3 of the Florida Constitution.

II. BALLOT TITLE AND SUMMARY AND AMENDMENT TEXT.

The Amendment's ballot title and summary provide:

> Prohibits possession of defined assault weapons
>
> Prohibits possession of assault weapons, defined as semiautomatic rifles and shotguns capable of holding more than 10 rounds of

ammunition at once, either in fixed or detachable magazine, or any other ammunition feeding device. Possession of handguns is not prohibited. Exempts military and law enforcement personnel in their official duties. Exempts and requires registration of assault weapons lawfully possessed prior to this provision's effective date. Creates criminal penalties for violations of this amendment.

The Amendment proposes to add new subsection (e) to article I, section 8, as follows:

(e) The possession of an assault weapon, as that term is defined in this subsection, is prohibited in Florida except as provided in this subsection. This subsection shall be construed in conformity with the Second Amendment to the United States Constitution as interpreted by the United States Supreme Court.

1) Definitions – a) Assault Weapons – For purposes of this subsection, any semiautomatic rifle or shotgun capable of holding more than ten (10) rounds of ammunition at once, either in a fixed or detachable magazine, or any other ammunition-feeding device. This subsection does not apply to handguns.

b) Semiautomatic – For purposes of this subsection, any weapon which fires a single projectile or a number of ball shots through a rifled or smooth bore for each single function of the trigger without further manual action required.

c) Ammunition-feeding device – For purposes of this subsection, any magazine, belt, drum, feed strip, or similar device for a firearm.

2) Limitations – a) This subsection shall not apply to military or law enforcement use, or use by federal personnel, in conduct of their duties, or to an assault weapon being imported for sale and delivery to a federal, state or local governmental agency for use by employees of such agencies to perform official duties.

b) This subsection does not apply to any firearm that is not semiautomatic, as defined in this subsection.

c) This subsection does not apply to handguns, as defined in Article I, Section 8(b), Florida Constitution.

d) If a person had lawful possession of an assault weapon prior to the effective date of this subsection, the person's possession of that assault weapon is not unlawful (1) during the first year after the effective date of this subsection, or (2) after the person has registered with the Florida Department of Law Enforcement or a successor agency, within one year of the effective date of this subsection, by providing a sworn or attested statement, that the weapon was lawfully in his or her possession prior to the effective date of this subsection and by identifying the weapon by make, model, and serial number. The agency must provide and the person must retain proof of registration in order for possession to remain lawful under this subsection. Registration records shall be available on a permanent basis to local, state and federal law enforcement agencies for valid law enforcement purposes but shall otherwise be confidential.

3) Criminal Penalties – Violation of this subsection is a third-degree felony. The legislature may designate greater, but not lesser, penalties for violations.

4) Self-executing – This provision shall be self-executing except where legislative action is authorized in subsection (3) to designate a more severe penalty for violation of this subsection. No legislative or administrative action may conflict with, diminish or delay the requirements of this subsection.

5) Severability – The provisions of this subsection are severable. If any clause, sentence, paragraph, section or subsection of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction, other provisions shall continue to be in effect to the fullest extent possible.

6) Effective date – The effective date of this amendment shall be thirty days after its passage by the voters.

SUMMARY OF ARGUMENT

The Amendment hides behind political rhetoric and a misleading ballot summary to coax voters into abridging their existing right under the Florida Constitution to keep and bear arms and criminalizing the most commonly owned rifles and shotguns in America. The Amendment violates section 101.161 of the Florida Statutes and article XI, section 3 of the Florida Constitution in multiple ways, and should be stricken from the ballot as a consequence.

First, the term "assault weapons," which appears prominently in both the ballot title and the ballot summary, is not an industry term but political rhetoric and an appeal to emotion calculated to sway votes rather than inform the electorate. This Court has routinely held that the ballot is no place for campaign buzzwords or words of advocacy designed to inflame emotions, rather than dispassionately advise voters of an Amendment's legal effect. The term "assault weapons" adds nothing to the ballot summary's description of the Amendment's legal effect and is precisely the type of emotionally charged, inflammatory language that this Court has rightly condemned.

Second, the ballot language does not disclose to voters that the Amendment abridges Floridians' existing right under the Florida Constitution to possess the very firearms that the Amendment proposes to outlaw. In *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972), this Court recognized that article I, section 8 of the Florida

Constitution protects the right to possess semi-automatic rifles and shotguns. By failing to inform voters that the Amendment abridges an existing constitutional right, the ballot title and summary violate this Court's precedents, which require the disclosure of a proposed amendment's effect on existing state constitutional provisions.

Third, the ballot summary's description of the Amendment's grandfather provision is materially misleading. The ballot summary states that the Amendment exempts "assault weapons" lawfully possessed before the Amendment's effective date. But it doesn't. The Amendment exempts only the *current lawful possessor's* continued possession of the firearm, even if the firearm is registered. Thus, while the ballot summary leads voters to believe that semi-automatic rifles and shotguns lawfully possessed before the Amendment's effective date will be unaffected, and remain lawful for all purposes and available in perpetuity for sale, purchase, and possession by transferees, in fact those firearms are not exempt; may not be sold, gifted, devised, inhered, or purchased within Florida; and will eventually come within the Amendment's embargo.

Fourth, the ballot language fails to disclose that the Amendment proscribes not only the personal possession of most semi-automatic long-guns, but also their manufacture and export in Florida, and thus prohibits an entire industry in this State. This prohibition, coupled with the Amendment's prohibition on the sale or

transfer of outlawed firearms, will have significant repercussions for Florida's firearms manufacturers and their employees. Yet the ballot language suggests to voters only the Amendment's ban on the personal possession of firearms, and makes no mention of the concomitant prohibition on manufacturing, exporting, and transporting. Because it fails to inform voters of one of the Amendment's chief purposes and consequences, the ballot title and summary are fatally misleading.

Fifth, the term "assault weapons" in the ballot title and ballot summary is confusing and misleading because it evokes deceptive imagery of military-grade, combat-style weaponry, while the Amendment actually interdicts a much broader spectrum of firearms that includes virtually every semi-automatic rifle and shotgun on the market today. The gaping inconsistency between the everyday meaning of "assault weapons" and the much broader legal definition that the Amendment and ballot summary attribute to that term obscures the true breadth of the Amendment, which is especially intolerable in light of the felony criminal penalties imposed by the Amendment.

ARGUMENT

I. THE TERM "ASSAULT WEAPONS" IS A CLASSIC EXAMPLE OF IMPERMISSIBLE POLITICAL RHETORIC.

The term "assault weapons"—which appears prominently in both the ballot title and ballot summary—is a classic example of impermissible political rhetoric. Coined by anti-gun activists as a derogatory and pejorative term, its prime function

is not to inform and describe in a clear, neutral, and objective way, but to deliver rhetorical impact and evoke emotion and condemnation. Words such as "assault weapons" that inflame and advocate have no place on the State's official ballot.

This Court has routinely forbidden the use of "political rhetoric" on the ballot. "The ballot summary should tell the voter the legal effect of the amendment, and no more. The political motivation behind a given change must be propounded outside the voting booth." *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984). A ballot summary must be coolly objective and may not editorialize or employ political rhetoric calculated to elicit an emotional response. *Fla. Dep't of State v. Mangat*, 43 So. 3d 642, 648 (Fla. 2010); *Evans*, 457 So. 2d at 1355. The ballot summary must "accurately convey the effect of the amendment's text in an informative and straightforward manner," without deceptive "wordsmithing." *Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 814–15 (Fla. 2014) (Polston, J., dissenting).

Contrary to these settled rules, the term "assault weapon" is a politically charged term that editorializes instead of informs, and evokes an "emotional response from the voters as opposed to providing only a synopsis" of the Amendment. *Advisory Op. to Att'y Gen. re Fla. Marriage Prot. Amendment*, 926 So. 2d 1229, 1238 (Fla. 2006). It belongs on mailers and television commercials, and not on the State's official ballot.

"Assault weapons" is not a term of art in the firearms industry. It does not facilitate a neutral and dispassionate explanation of the legal effect of the Amendment. Instead, it is a term of advocacy calculated to inflame emotions and sway votes. Justice Thomas stated as much in his dissent in *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000), when he cited the term "assault weapons" as an example of language that expressed a "political moral judgment." As Justice Thomas explained, "[p]rior to 1989, the term 'assault weapon' did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists to expand the category of 'assault rifles' so as to allow an attack on as many additional firearms as possible on the basis of undefined 'evil' appearance." *Id.* (quoting Symposium, *In re 101 California Street: A Legal and Economic Analysis of Strict Liability for the Manufacture and Sale of "Assault Weapons,"* 8 STAN. L. & POL'Y REV. 41, 43 (1997)); *see also Heller v. Dist. of Columbia*, 670 F.3d 1244, 1290 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (describing the term "assault weapons" as a "rhetorical term").

The term "assault weapons" is a potent rhetorical term because both of its components—"assault" and "weapons"—connote offensive, aggressive use, or criminality. "Assault" means a "physical attack," and a "weapon" is a "thing designed or used for inflicting bodily harm or physical damage." OXFORD ENGLISH DICTIONARY, *available at* https://www.oed.com. Neither "assault" nor

"weapons"—nor the two words in combination—communicates the neutral and objective ideas that millions of peaceable, law-abiding Americans who lawfully own semi-automatic rifles or semi-automatic shotguns for self-defense and other lawful purposes associate with their firearms. Rather, these words conjure up images of violence that all voters oppose, and elicit an instantaneous, powerful emotional response from voters of every stripe. In addition to being infinitely less precise and less descriptive than such proper names as "semi-automatic rifle" or "semi-automatic shotgun," the propagandizing term "assault weapons" delivers a rhetorical punch that neutral industry parlance cannot.

And it does so by design. The term "assault weapons" has little historical pedigree and no technical precision; its intended use from the outset was to serve as a blunt tool of advocacy. Popularized in 1988 by the Violence Policy Center's study entitled *Assault Weapons and Accessories in America*, the term was specially crafted by gun-control activists as a rhetorical instrument in the gun-control debate. Noting that "assault weapons" are "associated with drug traffickers, paramilitary extremists, and survivalists," the Violence Policy Center concluded that a focus on "assault weapons" would revitalize the languishing cause of handgun restriction. VIOLENCE POLICY CENTER, ASSAULT WEAPONS AND ACCESSORIES IN AMERICA (1988), *available at* http://vpc.org/publications/assault-weapons-and-accessories-in-america/assault-weapons-and-accessories-in-america-conclusion (last visited

October 9, 2019). In support of its new gun-control strategy, the Violence Policy Center pointed to the dark imagery associated with "assault weapons" and public confusion over the distinction between semi-automatic weapons and machine guns:

> Assault weapons—just like armor-piercing bullets, machine guns, and plastic firearms—are a new topic. The weapons' menacing looks, coupled with the public's confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is assumed to be a machine gun—can only increase the chance of public support for restrictions on these weapons.

Id. Thus, the term "assault weapons" is popular as a rhetorical device precisely because of its emotive appeal and its exploitation of public confusion—the very attributes that this Court has banished from the State's official ballot.

Survey data confirms the rhetorical force of the term "assault weapons." A Quinnipiac University survey of 1,122 voters nationwide conducted in March 2018 revealed that 61 percent of respondents supported a ban on "assault weapons." QUINNIPIAC UNIVERSITY, https://poll.qu.edu/images/polling/us/us03062018_ugbt36.pdf. The same survey asked the same respondents whether they supported a ban on "all semi-automatic rifles," but only 48 percent of respondents expressed support for such a ban. *Id*. With all other factors remaining constant, the politically charged term "assault weapons" caused a 13-percent swing in support. These results reveal that the true utility of the term "assault weapons" is as a rhetorical device to appeal to emotion and distract from the Amendment's true meaning and effect.

This Court has stricken far more benign language than "assault weapons" as improper political rhetoric. For example, in *Advisory Opinion to Attorney General re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653–54 (Fla. 2004), this Court condemned using the phrase "provides property tax relief" in a ballot summary, reasoning that it was not only misleading, but "clearly constitute[d] political rhetoric" and invited "an emotional response from the voter." This Court delivered the same admonition in *Mangat*, and held that the phrase "mandates that don't work" was "the type of political rhetoric that this Court has condemned in other cases." 43 So. 3d at 648; *see also Advisory Op. to the Att'y Gen.*, 656 So. 2d 466, 469 (Fla. 1995) (holding that the phrase "[t]his amendment prohibits casinos unless approved by the voters" was misleading and constituted "political rhetoric"); *In re Advisory Op. to the Att'y Gen.–Save Our Everglades*, 636 So. 2d 1136, 1341–42 (Fla. 1994) (describing the phrases "which polluted the Everglades" and "to help to pay to clean up" were misleading and "more closely resemble[d] political rhetoric than . . . an accurate and informative synopsis of the meaning and effect of the proposed amendment"); *Evans*, 457 So. 2d at 1355 (describing the phrase "thus avoiding unnecessary costs" as improper "editorial comment" in a ballot summary).

The Court should reach the same result here. Simply put, the loaded term "assault weapons" is anything but the neutral, objective, informative description that deserves a place on the official ballot. Whether in fundraising emails or on the ballot, it intentionally evokes an emotional response in order to garner support. A term that serves rhetorical or editorializing purposes rather than an informational function has no place on the ballot, and the Amendment should be stricken as a consequence.

II. THE BALLOT TITLE AND BALLOT SUMMARY DO NOT DISCLOSE THE AMENDMENT'S ABRIDGEMENT OF A PRE-EXISTING CONSTITUTIONAL RIGHT.

When a proposed amendment substantially affects a preexisting provision of the Florida Constitution, the ballot summary must identify that provision and alert voters of that effect. Here, the Amendment abridges the existing right of Floridians under article I, section 8 of the Florida Constitution to possess semi-automatic rifles and shotguns. Indeed, it transforms a constitutionally protected, fundamental right into a third-degree felony. The ballot summary fails, however, to inform voters of the Amendment's curtailment of the rights that article I, section 8 affords.

"[I]t is imperative that an initiative identify the provisions of the constitution substantially affected by the proposed amendment in order for the public to fully comprehend the contemplated changes and to ensure that the initiative's effect on other unnamed provisions is not left unresolved and open to various

interpretations." *Advisory Op. to the Att'y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 565–66 (Fla. 1998). The "omission of such material information is misleading and precludes voters from being able to cast their ballots intelligently." *Id.*; *accord Armstrong v. Harris*, 773 So. 2d 7, 18 (Fla. 2000) (striking proposed amendment from ballot because the ballot summary did not disclose that "the amendment will nullify a longstanding constitutional provision"); *Advisory Op. to the Att'y Gen. re Tax Limitation*, 644 So. 2d 486, 493–94 (Fla. 1994) (concluding that a proposed amendment violated "the principle we clearly established in [*Fine v. Firestone*, 448 So. 2d 984, 989 (Fla. 1984),] that the electorate must be advised of the effect a proposal has on existing sections of the constitution").

The Amendment's ballot summary does not disclose that it modifies, let alone constricts, an existing constitutional right to own semi-automatic firearms. The Declaration of Rights in Florida's Constitution provides that the "right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Art. I, § 8, Fla. Const. This Court has acknowledged that article I, section 8 confers on Floridians a constitutional right to possess semi-automatic rifles and shotguns—precisely the firearms that the Amendment proposes to criminalize. In *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972), this Court construed

a statute that purported to prohibit "machine guns." The statute defined the term "machine guns" to mean not only fully automatic firearms, such as the plaintiff's, but any firearm that "shoots, or is designed to shoot, automatically or semi-automatically, more than one shot without manually reloading, by a single function of the trigger." *Id*. at 665. This Court explained that, consistent with article I, section 8, the statute could not be construed to prohibit firearms that, "although designed to shoot more than one shot semi-automatically, are commonly kept and used by law-abiding people for hunting purposes or for the protection of their persons and property, *such as semi-automatic shotguns*, *semi-automatic pistols and rifles*." *Id*. at 666 (emphasis added). In reaching this conclusion, the Court explained that interpreting a statute to prohibit those firearms "might run counter to the historic constitutional right of the people to keep and bear arms," and that the Legislature could not have intended to "deny such right." *Id.*; *cf. Heller*, 670 F.3d at 1286–87 (Kavanaugh, J., dissenting) (concluding that semi-automatic rifles are protected by the Second Amendment because they "have not traditionally been banned and are in common use by law-abiding citizens," and finding no "constitutional distinction" between semi-automatic rifles and the semi-automatic handguns that the Supreme Court found to be constitutionally protected in *District of Columbia v. Heller*, 554 U.S. 570 (2008)).

As *Rinzler* makes clear, article I, section 8 currently protects the right of law-abiding citizens to own semi-automatic rifles and shotguns for the protection of their persons and property. These are precisely the firearms that the Amendment proposes to outlaw. The Amendment would abridge the existing constitutional right to keep and bear arms by criminalizing the possession of firearms that Floridians currently have a constitutional right to possess. Because the ballot summary does not identify article I, section 8 or disclose the Amendment's significant abridgment of the existing constitutional right to keep and bear arms, its summary is misleading.

III. THE BALLOT SUMMARY'S DESCRIPTION OF THE AMENDMENT'S GRANDFATHER PROVISION IS MATERIALLY MISLEADING.

Ballot summaries that inaccurately describe proposed amendments are misleading and must be stricken. In describing the Amendment's grandfather provision, the ballot summary fatally conflicts with the text of the Amendment, and therefore deprives voters of the opportunity to intelligently cast their ballots.

The ballot summary contemplates the complete exemption of all "assault weapons" lawfully possessed before the Amendment's effective date, provided they are registered. But the Amendment's text contemplates only the exemption of *the current possessor's continued possession* of those firearms. Thus, while the ballot summary tells voters that the firearm itself is exempt—which would allow all existing, lawfully possessed firearms to remain in permanent circulation; to be

freely sold, gifted, devised, inhered, or purchased; and to be possessed by different owners at different times—the Amendment exempts only a single person's possession of that firearm.

Specifically, the ballot summary states categorically that the Amendment "[e]xempts . . . assault weapons lawfully possessed" before the Amendment's effective date. In reality, the Amendment exempts only one person's continued possession: "*If a person had lawful possession* of an assault weapon prior to the effective date of this subsection, *the person's possession of that assault weapon is not unlawful* . . . after the person has registered . . . ." (emphases added). The summary suggests that only the possession of an unregistered, grandfathered firearm will be criminalized; in reality, the Amendment criminalizes possession by an unregistered person—even if the firearm itself was lawfully possessed before the Amendment's effective date. The Amendment precludes any market for the intrastate sale or purchase of firearms that the ballot summary claims are exempt, and contemplates the eventual criminalization of all "assault weapons" that leave the possession of the original registered owner.

The ballot summary's assertion that existing, lawfully possessed "assault weapons" are exempt leads voters to believe that each and every semi-automatic rifle and firearm in Florida today will continue to be lawful, just as though the Amendment had never been adopted. It suggests to voters that existing, lawfully

possessed “assault weapons” will be available for purchase and that a vote for the Amendment will therefore not prevent their own acquisition of semi-automatic rifles and shotguns. The Amendment, however, allows only the current possessor to possess the firearm, and therefore does not exempt the firearm itself—only one person’s possession. The Amendment does not envision any scenario in which a registered firearm can lawfully be transferred within Florida to any person. Current possessors may not sell, gift, or devise their firearms to any purchaser for possession in Florida, and prospective purchasers or heirs may not purchase or inherit those grandfathered firearms for possession in Florida. All of the supposedly grandfathered “assault weapons” will eventually become illegal in Florida, even though the ballot language claims they are wholly exempt.

If an individual registers and attests to lawful possession of a firearm, and then lends or gifts that firearm to a family member, then that family member would be in criminal violation of the Amendment—a felony offense. However, the ballot summary states that the registered firearm is exempt from the Amendment’s scope altogether. Such a significant divergence between the ballot summary and the text of a proposed amendment is even more problematic because the Amendment attaches criminal penalties to its violation. *Cf. Simmons v. State*, 944 So. 2d 317, 324 (Fla. 2006) (explaining that “the need for definiteness is even greater when [a law] imposes criminal penalties on individual behavior or when it implicates

constitutionally protected rights"). Because any violation of the Amendment is a third-degree felony, the ballot summary must be held to an exacting standard of clarity.

This Court has found far less significant divergences between the text of an amendment and its ballot summary to violate section 101.161. In *Save Our Everglades*, this Court held that a ballot summary was misleading when it stated that the sugarcane industry would "help to pay" the cost of Everglades cleanup, while the text of the amendment imposed the cost exclusively on the sugarcane industry. 636 So. 2d at 1341. Similarly, in *Right of Citizens to Choose Health Care Providers*, the Court found significant the distinction between the word "citizens" in the ballot summary and the term "natural person" in the amendment text, explaining that the distinction was "material and misleading." 705 So. 2d at 566.

Here too, the ballot summary paints a materially inaccurate picture. It tells voters that the Amendment does not apply to "assault weapons" that were lawfully possessed before the Amendment's effective date—in other words, that each and every semi-automatic rifle and firearm lawfully possessed in Florida before the Amendment's effective date is grandfathered in, permanently and completely. That is quite clearly untrue. The wide difference between a complete exemption for firearms lawfully possessed before the Amendment's effective date and a narrow dispensation for the current possessor's continued possession of a specific firearm

renders the ballot summary misleading and requires the Amendment to be stricken from the ballot.

IV. THE BALLOT TITLE AND BALLOT SUMMARY DO NOT DISCLOSE THAT THE AMENDMENT OUTLAWS THE MANUFACTURE, EXPORT, AND TRANSPORT OF MOST SEMI-AUTOMATIC RIFLES AND SHOTGUNS IN FLORIDA.

The ballot title and ballot summary fail to disclose that the Amendment not only prohibits the personal possession of so-called "assault weapons," but also criminalizes the manufacture, sale, export, and transport of those firearms in Florida. Without informing the voters, the Amendment criminalizes an entire industry.

This omission violates the long-standing requirement that ballot summaries disclose the chief consequences of proposed amendments. *Detzner v. Anstead*, 256 So. 3d 820, 824 (Fla. 2018) (explaining that a ballot summary must "accurately represent the main legal effect and ramifications of a proposed amendment"); *Detzner v. League of Women Voters of Fla.*, 256 So. 3d 803, 808 (Fla. 2018) (explaining that ballot language must be "informative" and assure that the "electorate is advised of the true meaning, and ramifications, of an amendment"). Where, as here, a ballot summary fails to inform voters of one of the main effects of a proposed amendment, the amendment should be stricken from the ballot.

A significant purpose of this Amendment is to outlaw the manufacture, sale, export, and transport of most semi-automatic rifles and shotguns in Florida, whether for personal use, to fulfill defense contracts, or for any other purpose. The Amendment specifically exempts the *import* of semi-automatic rifles or shotguns for sale and delivery to government agencies for use in their official duties, but it does not exempt—and therefore criminalizes—the manufacture, sale, transport, or export of those firearms in or from Florida. Without the benefit of an exemption, every business in Florida that manufactures, transports, exports, or sells semi-automatic rifles or shotguns capable of holding more than ten rounds of ammunition (which includes all semi-automatic rifles or shotguns that can accept a detachable magazine)—even those that supply law enforcement and the United States Armed Forces—would be in criminal violation of Florida's Constitution. As to this draconian consequence, the ballot summary is silent.

To fairly inform voters of the primary consequences of the Amendment, the ballot summary must disclose that the Amendment does more than prohibit the personal possession of certain semi-automatic rifles and shotguns: it shutters a massive segment of the firearms industry in Florida, without exception. Because it does not advise voters of these effects, the ballot title and summary are deficient, and the Amendment should be stricken.

V. THE BALLOT TITLE AND BALLOT SUMMARY ARE MISLEADING BECAUSE THE EVERYDAY MEANING OF "ASSAULT WEAPONS" DIFFERS DRASTICALLY FROM THE LEGAL DEFINITION PROVIDED BY THE BALLOT SUMMARY.

The ballot title and ballot summary inform voters that the Amendment bans "assault weapons"—a term that ordinarily connotes a narrow class of military-grade, combat-style weapons. The ballot summary, however, confusingly defines the term "assault weapons" to encompass virtually all semi-automatic long-guns on the market today. By defining the term "assault weapons" in a manner so incongruous with its everyday meaning, and presenting both the narrow term and its ill-fitting definition, the ballot summary causes confusion and misleads voters as to the Amendment's true scope and effect.

Ballot language must be "clear and unambiguous." § 101.161(1), Fla. Stat. A ballot summary that fails to "specify exactly what was being changed, thereby confusing voters," is defective. *People Against Tax Revenue Mismanagement, Inc. v. Cty. of Leon*, 583 So. 2d 1373, 1376 (Fla. 1991); *accord Fla. Dep't of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008) ("Therefore, voters would likely be misled or confused with regard to the actual impact of proposed Amendment 5."). The ballot description "cannot 'fly under false colors' or 'hide the ball' with regard to the true effect of an amendment." *Dep't of State v. Hollander*, 256 So. 3d 1300, 1307 (Fla. 2018) (quoting *Slough*, 992 So. 2d at 147). "When the summary of a proposed amendment does not accurately describe the scope of the text of the

amendment, it fails in its purpose and must be stricken." *Advisory Op. to the Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 804 (Fla. 1998).

The ballot summary sends mixed messages regarding the Amendment's true scope. It advises voters that the Amendment prohibits "assault weapons," which conjures up images of fully automatic, military-grade weapons. But then it provides a technical definition that captures a broad range of firearms that voters would never consider "assault weapons," including virtually all semi-automatic rifles and shotguns in Florida. Any rifle or shotgun that can accept a detachable magazine can be fitted with a magazine with a capacity in excess of ten rounds and therefore qualifies as an "assault weapon" under the Amendment—no matter how dissimilar the rifle or shotgun might be to the common image of an "assault weapon." The ballot summary assigns to the term "assault weapons" a definition wholly incompatible with common usage and leaves voters conflicted between their understanding of the term "assault weapons" and the far more expansive definition offered by the ballot summary. This glaring mismatch between a term's common usage and its assigned definition creates confusion as to the true breadth of the Amendment's prohibition.

For example, the Amendment prohibits not only semi-automatic AK-47 rifles, but also .22-caliber plinking rifles used by Boy Scouts to earn rifle-shooting

merit badges. BOY SCOUTS OF AM., RIFLE SHOOTING: MERIT BADGE SERIES 204, https://filestore.scouting.org/filestore/merit_badge_reqandres/rifle_shooting.pdf.

Semiautomatic AK-47

Semiautomatic AR-556®

Semiautomatic Ruger 10/22® Compact

Semiautomatic Ruger 10/22 Carbine ®

Under any fair reading of the Amendment, virtually all .22-caliber semi-automatic rifles with standard magazines—like the Ruger 10/22 rifles pictured above—would qualify as "assault weapons" because they can accept detachable magazines, thus increasing their capacity beyond the Amendment's ten-round limit. These .22-caliber rifles are among the most popular firearms on the market, and are most commonly used not in combat, or to suppress riots, but for small-game hunting and informal, recreational target shooting. In fact, the Ruger 10/22 is available with a youth-sized stock—not exactly the military-grade weapon of war that the term "assault weapons" connotes. But because they are semi-automatic and can accept detachable magazines, these ordinary firearms aptly suited for plinking would be banned from Florida as "assault weapons." The ballot summary suggests

otherwise, however. The term "assault weapons" misleadingly suggests that the Amendment prohibits only a fraction of semi-automatic rifles and shotguns, when in fact it bans virtually all of them.

The sponsor embraced the term "assault weapons" but then assigned it a definition that is much broader than the common conception of that term. It chose a label that does not match what the label describes. It is patently misleading to define a term in a manner so inconsistent with its popular meaning. Because the term "assault weapons" misleads voters to believe that the Amendment's ban is much narrower than it is, the ballot language is confusing and misleading, and the Amendment should be stricken.

CONCLUSION

In light of the significant deficiencies in the Amendment's ballot title and summary, the NRA respectfully requests that this Court strike the Amendment from the ballot.

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