

**SC19-1266, SC19-1601 (consolidated)**

---

---

**In the Supreme Court of Florida**

---

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

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

---

**ATTORNEY GENERAL'S INITIAL BRIEF**

---

ASHLEY MOODY  
*Attorney General*

Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399  
(850) 414-3681  
(850) 410-2672 (fax)

AMIT AGARWAL (FBN 125637)  
*Solicitor General*

JAMES H. PERCIVAL (FBN 1016188)  
*Deputy Solicitor General*

*Counsel for the Attorney General*

---

---

RECEIVED, 11/01/2019 06:38:30 PM, Clerk, Supreme Court

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii
INTRODUCTION .....	1
STATEMENT OF THE CASE AND FACTS .....	1
SUMMARY OF ARGUMENT .....	4
LEGAL STANDARDS .....	6
ARGUMENT .....	7
I.    The ballot summary fails to inform voters that the proposed amendment’s chief purpose is to ban virtually every semi-automatic long gun. ....	7
A.    Modern firearms technology allows virtually all semi-automatic long guns to hold more than ten rounds. ....	8
B.    The proposed amendment, by its plain terms, would prohibit firearms that hold more than ten rounds as a result of commercially available accessories. ....	10
C.    The ballot summary does not disclose this effect. ....	11
II.   The ballot summary is misleading because it suggests that a material sub-category of semi-automatic long guns would not be prohibited. ....	12
A.    The ballot summary, by negative implication, suggests that it is not a virtual ban. ....	12
B.    The fact that the ballot summary’s language tracks the proposed amendment’s language does not alter this conclusion. ....	14
III.  The ballot summary is misleading because it misstates the nature of the exemption for firearms that are currently lawfully possessed. ....	16
CONCLUSION .....	17
CERTIFICATE OF SERVICE .....	18
CERTIFICATE OF COMPLIANCE .....	23

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Advisory Op. to Att’y Gen. re 1.35% Property Tax Cap</i> 2 So. 3d 968 (Fla. 2009) .....	12
<i>Advisory Op. to Att’y Gen. re Amendment to Bar Gov’t from Treating People Differently Based on Race in Pub. Educ.</i> 778 So. 2d 888 (Fla. 2000) .....	12
<i>Advisory Op. to Att’y Gen. re Term Limits Pledge</i> 718 So. 2d 798 (Fla. 1998) .....	8
<i>Advisory Op. to Att’y Gen. re Voter Control of Gambling</i> 215 So. 3d 1209 (Fla. 2017) .....	15
<i>Advisory Op. to Att’y Gen.-Fee on the Everglades Sugar Prod.</i> 681 So. 2d 1124 (Fla. 1996) .....	7
<i>Armstrong v. Harris</i> 773 So. 2d 7 (Fla. 2000) .....	passim
<i>Askew v. Firestone</i> 421 So. 2d 151 (Fla. 1982) .....	7, 8, 11, 15
<i>Dep’t of State v. Holland</i> 256 So. 3d 1300 (Fla. 2018) .....	15
<i>Detzner v. League of Women Voters of Fla.</i> 256 So. 3d 803 (Fla. 2018) .....	8, 15
<i>Fla. Dep’t of State v. Fla. State Conference of NAACP Branches</i> 43 So. 3d 662 (Fla. 2010) .....	14, 15
<i>Fla. Dep’t of State v. Slough</i> 992 So. 2d 142 (Fla. 2008) .....	7
<i>Fla. Educ. Ass’n v. Fla. Dep’t of State</i> 48 So. 3d 694 (Fla. 2010) .....	7
<i>Pittman v. State</i> 25 Fla. 648 (Fla. 1889) .....	10, 11
<i>Smathers v. Smith</i> 338 So. 2d 825 (Fla. 1976) .....	8, 11
<i>Smith v. Am. Airlines, Inc.</i> 606 So. 2d 618 (Fla. 1992) .....	12

**Statutes and Constitutions**

8 U.S.C. § 922(o) .....1  
Article I, § 8, Florida Constitution.....2, 3  
Article IV, § 10, Florida Constitution.....4  
Article V, § 3(b)(10), Florida Constitution.....4  
Cal. Penal Code § 30515.....13  
N.Y. Penal Law § 265.00(22)(a).....13  
§ 101.161(1), Florida Statutes..... 6, 7, 14  
Wash. Rev. Code § 9.41.240.....13

**Other Authorities**

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal  
Texts* (2012) .....13  
S. 66, 116th Cong. § 2(a)(36) (2019).....13  
*Webster’s 3d New Int’l Dictionary* (2002) ..... 10, 14

## INTRODUCTION

The proposed amendment would prohibit virtually all semi-automatic rifles and shotguns. The ballot summary does not disclose this effect. Moreover, the ballot summary is affirmatively misleading because it suggests that the proposed amendment does not prohibit a material sub-category of semi-automatic rifles and shotguns, but that sub-category is a virtual null set. For these reasons, and those that follow, the proposed amendment should not be placed on the ballot.

## STATEMENT OF THE CASE AND FACTS

Modern firearms can be divided into (1) “handguns,” which can be fired with one hand and include pistols and revolvers; and (2) “long guns,” which are fired with two hands from the shoulder, or sometimes from the hip, and include rifles and shotguns. Affidavit of Stephen J. Barborini, Ex. 1, ¶ 4. Firearms can further be distinguished by their function. A firearm is generally (a) “automatic,” meaning it can fire multiple rounds without a separate trigger pull;<sup>1</sup> (b) “semi-automatic,” meaning a separate trigger pull is required each time it fires but no additional manual action is required to put a new round in the chamber between each trigger pull; or (c) “manual,” meaning some action is required between trigger pulls to put a new round in the chamber, such as a pumping motion. Ex. 1, ¶ 5. Finally, a firearm’s

---

<sup>1</sup> Automatic weapons are, in general, illegal under federal law. *See, e.g.*, 8 U.S.C. § 922(o).

magazine, which holds ammunition, is generally either (i) “fixed,” meaning the magazine is part of the gun and cannot be separated from it; or (ii) “detachable,” meaning the magazine is a separate component that is removed from the gun. Ex. 1, ¶ 11.

On June 26, 2019, the Secretary of State submitted an initiative petition entitled, “Prohibits possession of defined assault weapons.” If included on the ballot and approved by the electorate, the proposed amendment would amend Article I, Section 8 of the Florida Constitution to create a new subsection (e):

(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.

The ballot title for the proposed amendment is, “Prohibits possession of defined assault weapons.” The ballot summary for the proposed amendment states:

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.

Upon referral from the Secretary of State, the Attorney General initiated this action by submitting a petition for an advisory opinion on July 26, 2019, in accordance with Article IV, Section 10 of the Florida Constitution. This Court has jurisdiction under Article V, Section 3(b)(10) of the Florida Constitution.

### **SUMMARY OF ARGUMENT**

The proposed amendment should not be placed on the ballot because the ballot summary fails to disclose the chief purpose of the amendment and is misleading.

**I.** The proposed amendment is, in practical application, a ban on virtually all semi-automatic long guns. This is so because virtually all semi-automatic long guns—either off-the-shelf or by virtue of broadly available accessories—hold, or are



“capable of” holding, more than ten rounds of ammunition. The ballot summary does not disclose this effect, which Florida voters are unlikely to understand absent explanation.

**II.** The ballot summary is also affirmatively misleading because it suggests that the proposed amendment is only a ban on a sub-category of semi-automatic long guns when, in fact, it is virtually a blanket ban. In particular, the ballot summary purports to limit the prohibition to “semiautomatic rifles and shotguns *capable of holding more than 10 rounds.*” (emphasis added). The average voter is likely to draw the incorrect inference from this language that there is a material sub-category of semi-automatic long guns that are *not* “capable of holding more than 10 rounds.” The ballot summary exacerbates this problem by using the term “assault weapons.” This term, which is subject to wide-ranging and contradictory uses by different jurisdictions and groups, at a minimum implies that some semi-automatic long guns are *not* “assault weapons” within the meaning of the proposed amendment.

The fact that the ballot summary’s language largely tracks the proposed amendment’s language does not alter the conclusion that the ballot summary is legally deficient. There is no categorical rule that a misleading ballot summary must be excused just because it tracks similarly misleading language in the proposed amendment. In fact, such a categorical rule would be contrary to the plain text of Section 101.161(1), inconsistent with this Court’s precedent, and would lead to

absurd results.

**III.** The ballot summary is misleading for the additional reason that it misstates the nature of the exemption for firearms that are currently “lawfully possessed.” Specifically, the ballot summary states that the proposed amendment “[e]xempts and requires registration of assault weapons lawfully possessed” prior to the amendment’s effective date. The text of the proposed amendment, however, exempts only “the person’s”—meaning the current owner’s—possession of that firearm. In other words, the ballot summary creates the false impression that current owners who register their firearms would be able to lawfully transfer ownership of those firearms.

### **LEGAL STANDARDS**

Section 101.161(1), Florida Statutes, codifies the standard for reviewing ballot titles and summaries of proposed constitutional amendments. Any measure “submitted to the vote of the people” must 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 with an “explanatory statement, not exceeding 75 words in length,” explaining “the chief purpose of the measure.” § 101.161(1), Fla. Stat. “Implicit in this provision is the requirement that the proposed amendment be accurately represented on the ballot; otherwise, voter approval would be a nullity.” *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000).

The purpose of the ballot title and summary is “to provide fair notice of the content of the proposed amendment.” *Advisory Op. to Att’y Gen.-Fee on the Everglades Sugar Prod.*, 681 So. 2d 1124, 1127 (Fla. 1996). To satisfy Section 101.161, Florida Statutes, the title and summary must “state in clear and unambiguous language the chief purpose of the measure,” *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), so that the proposed amendment does not “fly under false colors” or “hide the ball” as to its legal or practical effect. *Armstrong*, 773 So. 2d at 16 (quotations 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)). Here, the ballot title fails to meet either prong.

## **ARGUMENT**

### **I. THE BALLOT SUMMARY FAILS TO INFORM VOTERS THAT THE PROPOSED AMENDMENT’S CHIEF PURPOSE IS TO BAN VIRTUALLY EVERY SEMI-AUTOMATIC LONG GUN.**

A ballot summary must state “the chief purpose of the measure” in language that is “clear and unambiguous.” § 101.161(1), Fla. Stat. To determine whether a ballot summary does so, this Court “look[s] to objective criteria, like the

amendment[’s] main effect.” *Detzner v. League of Women Voters of Fla.*, 256 So. 3d 803, 809 (Fla. 2018). A ballot summary does not disclose the chief purpose unless voters can “comprehend the sweep of each proposal” as “neither less nor more extensive than it appears to be.” *Askew*, 421 So. 2d at 155 (quoting *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976)). This requires an assessment of the proposed amendment’s “true meaning” and “ramifications.” *Armstrong*, 773 So. 2d at 16 (quoting *Askew*, 421 So. 2d at 156). When a ballot summary does not explain “important aspects of the proposed amendment,” this Court must strike it. *Advisory Op. to Att’y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (quotations omitted).

Here, the ballot summary does not explain or sufficiently inform the public that it would prohibit virtually every semi-automatic rifle and shotgun.

**A. Modern firearms technology allows virtually all semi-automatic long guns to hold more than ten rounds.**

Modern semi-automatic rifles can, in almost all cases, hold more than ten rounds. Ex. 1, ¶¶ 10–16. Most modern semi-automatic rifles come with detachable magazines. Ex. 1, ¶ 13. Because the magazine extends from and can be separated from the gun, there is no physical barrier that limits the practical size of the magazine. Ex. 1, ¶ 12. For example, the Ruger 10/22 rimfire rifle is a popular .22 caliber semi-automatic rifle in the United States. Ex. 1, ¶ 12. Because it is fairly low caliber, it is used for activities like small game hunting, teaching adults and children

to shoot, and target practice. Ex. 1, ¶ 12. While it is sold with a standard ten-round magazine, larger magazines are commercially available. Ex. 1, ¶ 12. Of the much smaller category of semi-automatic rifles manufactured with fixed magazines, almost all are exclusively manufactured with a capacity greater than ten rounds. Ex. 1, ¶ 13.

Even where a semi-automatic rifle with a fixed magazine is sold with a capacity of ten rounds or less, human ingenuity usually ensures that it will be capable of holding more than ten rounds. Ex. 1, ¶ 14. For example, a semi-automatic rifle called the SKS comes with a fixed magazine that holds ten rounds. However, kits are commercially available that will increase capacity to more than 30 rounds. Ex. 1, ¶ 14.

With respect to semi-automatic shotguns, the vast majority come with fixed magazines, and many come with a standard capacity of ten or less. Ex. 1, ¶ 16. But, for two reasons, these shotguns can still hold more than ten rounds.<sup>2</sup> First, a typical fixed magazine on a semi-automatic shotgun is a tube with an opening at the end. Ex. 1, ¶ 16. Extension tubes that attach to that opening and increase capacity are broadly commercially available. Ex. 1, ¶ 16. Second, a special type of shotgun rounds—called “mini-shells” or “mini-rounds”—are commercially available. Ex. 1,

---

<sup>2</sup> The much smaller category of semi-automatic shotguns that have detachable magazines can hold more than ten rounds for the same reason as semi-automatic rifles with detachable magazines. Ex. 1, ¶ 16.

¶ 16. Mini-shells are smaller than standard rounds and increase capacity by fitting more rounds in the same sized magazine. Ex. 1, ¶ 16.

For all these reasons, virtually any semi-automatic rifle, either off-the-shelf or with commercially available accessories, can hold more than ten rounds.

**B. The proposed amendment, by its plain terms, would prohibit firearms that hold more than ten rounds as a result of commercially available accessories.**

The plain text of the proposed amendment does not limit the prohibition to semi-automatic long guns that are sold by the manufacturer off-the-shelf with a capacity of more than ten rounds. Rather, the proposed amendment's use of the term "capable of" would prohibit any firearm that can hold more than ten rounds as a result of commercially available accessories.

"Capable of" means "constituted, situated, or characterized as susceptible or open to being affected." *Webster's 3d New Int'l Dictionary* 330 (2002).<sup>3</sup> Any firearm that, with commercially available accessories, can hold more than ten rounds is "susceptible or open" to holding more than ten rounds. This understanding of "capable of" is consistent with this Court's precedent. In *Pittman v. State*, 25 Fla. 648 (Fla. 1889), this Court found improper a jury instruction that defined as a "deadly weapon" any instrument "capable of producing death." *Id.* at 651. The Court

---

<sup>3</sup> Definition two of "capable" is most applicable because it expressly applies to the phrase "capable of." *See id.*

reasoned that “[a]ny weapon or instrument . . . is *capable of* producing death,” and held that the jury instead should have been instructed that a deadly weapon is an instrument “*likely*” to produce, not merely “capable of producing,” death. *Id.* (emphases added). In other words, this Court’s understanding of “capable of,” like the dictionary definition of that phrase, embraces not just what is likely, but what is possible. For this reason, the proposed amendment’s prohibition must account for commercially available accessories that make it possible for a firearm to hold more than ten rounds.

**C. The ballot summary does not disclose this effect.**

The ballot summary states that the prohibition applies to semi-automatic long guns “capable of holding more than 10 rounds of ammunition at once.” This language does not inform voters that the proposed amendment would ban virtually all semi-automatic long guns, nor is it common knowledge that modern semi-automatic long guns are virtually all capable of holding more than ten rounds. The problem, therefore, “lies not with what the summary says, but, rather, with what it does not say.” *Askew*, 421 So. 2d at 156. In other words, an evaluation of the amendment’s “true meaning, and ramifications,” *Armstrong*, 773 So. 2d at 16 (quoting *Askew*, 421 So. 2d at 156), reveals that the proposed amendment has a “sweep” that voters will not “be able to comprehend.” *Smathers*, 338 So. 2d at 829.

Consider, as an example, a semi-automatic shotgun with a fixed 6-round

magazine. Even “more educated voters” are unlikely to appreciate that the broad legal effect of the phrase “capable of” would apply to this firearm. *See Smith v. Am. Airlines, Inc.*, 606 So. 2d 618, 621 (Fla. 1992).

For these reasons, the ballot summary fails to disclose the chief purpose of the proposed amendment and is legally deficient.

**II. THE BALLOT SUMMARY IS MISLEADING BECAUSE IT SUGGESTS THAT A MATERIAL SUB-CATEGORY OF SEMI-AUTOMATIC LONG GUNS WOULD NOT BE PROHIBITED.**

The considerations discussed in Section I are a sufficient basis to find that the ballot summary is misleading, in addition to finding that it fails to disclose the chief purpose of the proposed amendment. As this Court has recognized, a “ballot summary may be defective if it omits material facts necessary to make the summary not misleading.” *Advisory Op. to Att’y Gen. re 1.35% Property Tax Cap*, 2 So. 3d 968, 976 (Fla. 2009) (quotations omitted). Here, however, the ballot summary doesn’t just “hide the ball,” *Armstrong*, 773 So. 2d at 16, it goes further by affirmatively suggesting that the proposed amendment is not a virtual ban.

**A. The ballot summary, by negative implication, suggests that it is not a virtual ban.**

A ballot summary is legally deficient where its language creates a “misleading negative implication.” *Advisory Op. to Att’y Gen. re Amendment to Bar Gov’t from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 898 (Fla. 2000). Here, the ballot summary states that the prohibition is limited to



“semiautomatic rifles and shotguns *capable of holding more than 10 rounds.*” (emphasis added). This language suggests that a material sub-category of both semi-automatic rifles and semi-automatic shotguns are *not* “capable of holding more than 10 rounds,” and would not be prohibited. *See, e.g.,* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 108 (2012) (“[L]isting some things that will cause a denial of service . . . implies that other things will not.”). As explained in Section I.A, this sub-category is a virtual null set.

The ballot summary’s use of the fraught term “assault weapons” exacerbates this misleading negative implication. The term “assault weapons,” which does not have an established definition and is used differently by different groups and jurisdictions,<sup>4</sup> at a minimum suggests that some semi-automatic long guns are *not* “assault weapons.” Otherwise, why not simply refer to the proposed amendment as a “semi-automatic long gun ban”? Moreover, the sponsors of the proposed amendment appear to recognize the negative implication created by their use of the term “assault weapons.” Their website, for example, suggests that the prohibition

---

<sup>4</sup> *See, e.g.,* N.Y. Penal Law § 265.00(22)(a) (defining an “assault weapon” to include semi-automatic rifles only where they “accept a detachable magazine” and have “one of” a number of other characteristics, such as a “telescop[e],” a “bayonet,” or a “grenade launcher”); Cal. Penal Code § 30515 (exempting, among others, rimfire rifles (as opposed to centerfire rifles) like the Ruger 10/22); S. 66, 116th Cong. § 2(a)(36)(A)–(B) (2019) (introduced in Senate on Jan. 9, 2019) (reflecting aspects of both the New York and California definitions); Wash. Rev. Code § 9.41.240 (exempting, among others, all shotguns).

would be limited to “assault weapons like AR-15s and other weapons of war.” Ex. 2.<sup>5</sup>

For these reasons, the ballot summary is affirmatively misleading.

**B. The fact that the ballot summary’s language tracks the proposed amendment’s language does not alter this conclusion.**

It is no answer to the above concerns that the ballot summary tracks much of the relevant language from the proposed amendment itself. There is no categorical rule that a ballot summary that tracks misleading language in the proposed amendment is not legally deficient. In fact, the plain text of Section 101.161(1), this Court’s precedent, and prudential considerations support the opposite conclusion.

Section 101.161(1), Florida Statutes, requires that the ballot summary include an “explanatory statement.” “Explanatory” means “serving or disposed to explain,” *Webster’s 3d New Int’l Dictionary* 801 (2002), and “explain” means to “make plain or clear.” *Id.* Assuming, as argued in the previous sections, that the proposed amendment’s language is unclear, no English speaker would consider a ballot summary that simply copied that unclear language to be “explanatory” in any meaningful sense of that word. This Court has recognized that principle, finding a ballot summary legally deficient because “neither *the text of the amendment* nor the explanatory statement” were sufficiently clear. *Fla. Dep’t of State v. Fla. State*

---

<sup>5</sup> See Ban Assault Weapons Now, <https://bawnfl.org/index.html> (last visited Nov. 1, 2019).

*Conference of NAACP Branches*, 43 So. 3d 662, 669 (Fla. 2010) (emphasis added); *accord Detzner*, 256 So. 3d at 810 (finding key issues “entirely unclear from both the *text of the amendment* and the ballot language” (emphasis added)); *see also Armstrong*, 773 So. 2d at 15 (“Although the ballot summary faithfully tracked the text of the proposed amendment, the summary failed to explain [key implications] . . . [and] was misleading.” (discussing *Askew*, 421 So. 2d at 155)). This rule makes sense. Any categorical rule that a ballot summary is not legally deficient because it copies unclear language in the proposed amendment itself would lead to the absurd result that amendment sponsors could intentionally mislead voters by using opaque language in the proposed amendment and copying it in the ballot summary.

This Court’s holding that an “ambiguous legal effect” in a proposed amendment does not categorically render a ballot summary misleading does not control here because the legal effect of the proposed amendment is not ambiguous. *See, e.g., Dep’t of State v. Holland*, 256 So. 3d 1300, 1311 (Fla. 2018); *Advisory Op. to Att’y Gen. re Voter Control of Gambling*, 215 So. 3d 1209, 1216 (Fla. 2017). Where a proposed amendment has an ambiguous legal effect, it must be interpreted “after the electorate approve[s] the amendment[.]” *Advisory Op. to Att’y Gen. re Voter Control of Gambling*, 215 So. 3d at 1216. As such, a ballot summary that reflects that ambiguity is accurate. In fact, a more detailed explanation is impossible

in that circumstance because attempting to predict how courts might resolve that ambiguity is likely to be misleading. Here, as discussed in Section I.B, the legal effect of the proposed amendment is clear. The ballot summary's failure to adequately explain that legal effect renders it misleading.

**III. THE BALLOT SUMMARY IS MISLEADING BECAUSE IT MISSTATES THE NATURE OF THE EXEMPTION FOR FIREARMS THAT ARE CURRENTLY LAWFULLY POSSESSED.**

The ballot summary states that the proposed amendment's prohibition "[e]xempts and requires registration of *assault weapons lawfully possessed* prior to this provision's effective date." (emphasis added). The proposed amendment, by contrast, states in subsection (2)(d) that "[i]f 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" so long as that person "register[s]" his firearm. (emphasis added). In other words, while the ballot summary purports to exempt firearms that are lawfully possessed prior to the proposed amendment's effective date and are registered, the proposed amendment does not categorically exempt the firearm, only the current owner's possession of that firearm.

Consider, again, the example from Section I.C, of a semi-automatic shotgun with a fixed 6-round magazine. As argued in Sections I–II, a lawful owner of that firearm is unlikely to understand that the proposed amendment would treat such a firearm as an "assault weapon." Even if that were clear, however, the ballot language

tells the owner that such a firearm would be “[e]xempt.” In reality, the plain text of the amendment’s prohibition would apply to this firearm, for example, by prohibiting the owner from transferring it within the State or from passing it on to his children when he dies.

For this additional reason, the ballot summary is legally deficient.

### **CONCLUSION**

For the foregoing reasons, the proposed amendment should not be placed on the ballot.

Respectfully submitted,

ASHLEY MOODY  
*Attorney General*

/s/ James H. Percival  
James H. Percival (FBN 1016188)  
DEPUTY SOLICITOR GENERAL  
Amit Agarwal (FBN 125637)  
SOLICITOR GENERAL  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 414-3681  
(850) 410-2672 (fax)  
*james.percival@myfloridalegal.com*  
*amit.agarwal@myfloridalegal.com*

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been furnished by e-mail or by electronic service through the Florida Courts E-Filing Portal on this 1st day of November, 2019, to the following:

Joe Jacquot, General Counsel  
EXECUTIVE OFFICE OF THE GOVERNOR  
The Capitol  
400 S. Monroe Street  
Tallahassee, Florida 32399-0001  
joe.jacquot@eog.myflorida.com

*General Counsel to Governor Ron  
DeSantis*

Brad McVay, General Counsel  
FLORIDA DEPARTMENT OF STATE  
R.A. Gray Building  
500 South Bronough Street  
Tallahassee, Florida 32399-0250  
brad.mcvay@dos.myflorida.com

*General Counsel to Secretary of State  
Laurel Lee*

J. Michael Maida, Deputy General Counsel  
FLORIDA HOUSE OF REPRESENTATIVES  
418 The Capitol  
402 South Monroe Street  
Tallahassee, Florida 32399-1300  
michael.maida@myfloridahouse.gov

*Deputy General Counsel to House  
Speaker Jose Oliva*

Jeremiah Hawkes, General Counsel  
THE FLORIDA SENATE  
409 The Capitol  
404 S. Monroe Street  
Tallahassee, Florida 32399-1100  
hawkes.jeremiah@flsenate.gov

*General Counsel to Senate President  
Bill Galvano*

Corey P. Gray  
Stuart H. Singer  
Jon L. Mills  
BOIES SCHILLER FLEXNER LLP  
401 E Las Olas Blvd., Suite 1200  
Fort Lauderdale, FL 33301  
100 S.E. 2nd Street, Suite 2800  
Miami, Florida 33131  
cgray@bsfllp.com  
ftleserve@bsfllp.com  
ssinger@bsfllp.com  
jmills@bsfllp.com  
Andrew M. Startling  
1655 Lake Shore Drive  
Orlando, Florida 32803  
amstarling@bethesdaterracemgmt.com

*Counsel to Ban Assault Weapons  
Now*

Jason Unger  
George T. Levesque  
Ashley H. Lukis  
Andy Bardos  
GRAYROBINSON, P.A.  
Post Office Box 11189  
Tallahassee, Florida 32302  
jason.unger@gray-robinson.com  
george.levesque@gray-robinson.com  
ashley.lukis@gray-robinson.com  
andy.bardos@gray-robinson.com  
teresa.barreiro@gray-robinson.com

*Counsel to the National Rifle  
Association*

Edward G. Guedes  
Jamie A. Cole  
Adam M. Hapner  
WEISS SEROTA HELFMAN COLE &  
BIERMAN, P.L.  
2525 Ponce de Leon Blvd., Ste. 700  
Coral Gables, Florida 33134  
eguedes@wsh-law.com  
jcole@wsh-law.com  
ahapner@wsh-law.com  
szavala@wsh-law.com  
msaraff@wsh-law.com

*Counsel to the City of Weston,  
et al.*



Matthew Triggs  
Lindsey Olson Collins  
Christina H. Kroll  
Nathaniel J. Miller  
Jonathan E. Lowy  
Kyle A. Casazza  
PROSKAUER ROSE LLP  
2255 Glades Road, Suite 421-Atrium  
Boca Raton, Florida, 33431  
mtriggs@proskauer.com  
lcollins@proskauer.com  
ckroll@proskauer.com  
nmiller@proskauer.com  
jlowy@proskauer.com  
kcasazza@proskauer.com  
florida.litigation@proskauer.com

*Counsel to the Brady Center to  
Prevent Gun Violence*

Jason Gonzalez  
Benjamin Gibson  
Daniel Nordby  
Amber Nunnally  
SHUTTS & BOWEN LLP  
215 South Monroe Street, Suite 804  
Tallahassee, Florida 32301  
850-241-1717  
bgibson@shutts.com  
jasongonzalez@shutts.com  
dnordby@shutts.com  
anunnally@shutts.com  
mpoppell@shutts.com

*Counsel to the National  
Shooting Sports Association*

Amy J. Baker, Coordinator  
FINANCIAL IMPACT ESTIMATING CONF.  
OFFICE OF ECONOMIC AND  
DEMOGRAPHIC RESEARCH  
111 West Madison Street, Suite 57  
Tallahassee, Florida 32399-6588  
baker.amy@leg.state.fl.us

Maria Matthews  
DIRECTOR, DIVISION OF ELECTIONS  
FLORIDA DEPARTMENT OF STATE  
R.A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250  
DivElections@dos.myflorida.com

/s/ *James H. Percival*  
James H. Percival

## **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.

*/s/ James H. Percival*

James H. Percival