

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC19-1266; SC19-1601 (Combined)

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

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**BRIEF OF SPONSOR ON THE MERITS
BAN ASSAULT WEAPONS NOW
IN SUPPORT OF THE INITIATIVE**

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STATEMENT OF THE CASE AND FACTS

This matter comes before the Court upon a petition for an advisory opinion on the validity of the initiative petition to prohibit the possession of defined assault weapons, which was submitted by the Attorney General on July 26, 2019, pursuant to article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes. In an order dated September 23, 2019, this Court directed interested parties to file briefs in opposition and support to the initiative petition. Ban Assault Weapons Now, as Sponsor of a constitutional initiative entitled “Prohibits possession of defined assault weapons” (hereinafter the “Proposed Amendment” or the “Proposal”), submits this brief in support of the Proposed Amendment.

The ballot title of the Proposed Amendment is “Prohibits possession of defined assault weapons.” The ballot summary reads as follows:

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 Proposed Amendment would amend article I, section 8 of the Florida Constitution as follows:

Full Text of the Proposed Amendment:

ARTICLE I, SECTION 8. Right to Bear Arms.—

(a) 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.

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, “purchase” means the transfer of money or other valuable consideration to the retailer, and “handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

(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.

SPONSOR'S STATEMENT OF INTENT

The Proposed Amendment has a single purpose: to restrict the possession of defined assault weapons in Florida. The subject of firearm possession and limitation is already governed by article I, section 8 of the Florida Constitution. This Proposal defines and restricts possession of firearms that pose the greatest threat of mass shootings based on specific lethal characteristics. Those characteristics are as follows: (1) the firearm is a rifle or shotgun; (2) the firearm is semiautomatic; and (3) the firearm is capable of holding more than ten rounds of ammunition at once. The intent is to restrict the possession of firearms that may be used in mass shootings and mass killings. Both by its terms and as a matter of law, the Proposed Amendment cannot diminish the constitutional right to bear arms.

Supporters of the measure include family and friends of victims of the attack at Marjory Stoneman Douglas High School that occurred on February 14, 2018. On that day, seventeen students and staff members were killed, and seventeen more were severely wounded by an assailant armed with an assault weapon. Supporters of the measure also include family and friends of victims of the attack at Pulse nightclub that occurred on June 12, 2016. On that night, an assailant armed with an assault weapon killed forty-nine people and severely injured fifty-three others. The intent of the Sponsor and supporters, which include law enforcement and military veterans, is to prevent future tragedies by restricting the possession of the most lethal firearms

that may be used to commit mass killings. The Proposal specifically targets semiautomatic rifles and shotguns that are capable of accepting more than ten rounds at once, and does not include any firearms that do not meet the definition of an assault weapon.

SUMMARY OF THE ARGUMENT

The purpose of this Court’s review of initiatives is to ensure that voters are presented with adequate notice of a unified question. Specifically, the proposal must present a single subject, and the title and summary must fairly and accurately describe the proposal. Here, the single subject is the restriction on the possession of “assault weapons,” defined as semiautomatic rifles and shotguns capable of holding more than ten rounds of ammunition at one time. The ballot title and summary must comply with section 101.161, Florida Statutes, which ensures they communicate the Proposal’s chief purpose and are not misleading. The chief purpose, to “prohibit possession of defined assault weapons,” is clear from the ballot title. The ballot summary expressly explains each substantive component of the Proposed Amendment. They also use plain language that is consistent across both the summary and the Proposal to give fair notice of the Proposal’s content. As this Court has long held, it is the duty of this Court to uphold a proposed amendment unless it is clearly and conclusively defective, which is not the case here.

The term “assault weapon” is commonly used in statutes and policies to describe prohibited firearms. It is, not as Opponents suggest, mere “political rhetoric.” The Proposal defines assault weapons by two of the most lethal characteristics of rifles and shotguns used in mass shootings: (1) semiautomatic capability, and (2) the capacity to hold more than ten rounds at once. This definition, is explicit, unambiguous, and contains no rhetoric.¹

Opponents argue that the ballot title and summary is misleading *because* the Proposal will ban “virtually all” semiautomatic rifles and shotguns. By including the definition of which assault weapons are banned in the summary, the scope of firearms affected and the type of firearms affected by the Proposal is apparent to voters.² Whatever the total number of weapons affected, the voters are explicitly informed of the actual effect of the Proposal. Additionally, Opponents argue any

¹ “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.” *In re to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1342 (1994) (quoting *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984)).

² *Water & Land Conservation--Dedicates Funds to Acquire & Restore Fla. Conservation & Recreation Lands*, 123 So. 3d at 50 (Fla. 2013) (“Both the title and summary state that the proposed amendment will dedicate documentary tax revenue to the Land Acquisition Trust Fund. The title includes the language ‘Dedicates Funds to Acquire and Restore Florida Conservation and Recreation Lands,’ and the summary begins with the clause ‘Funds the Land Acquisition Trust Fund,’ describes the uses of the Fund, and explains that the funds will be obtained ‘by dedicating 33 percent of net revenues from the existing excise tax on documents for 20 years.’ The title and summary are straightforward and accurate.”)

semiautomatic rifle or shotgun that can be *modified* to become an assault weapon is currently an assault weapon and that a failure to inform voters of this alleged fact is misleading. However, the ballot language and the Proposed Amendment describe the term “assault weapons” solely by the current capability to hold more than ten rounds of ammunition at one time. The National Rifle Association’s (hereinafter, the “NRA”) argument that “capable of” means “likely” is contrary to common English language usage. American dictionaries are unified on this unremarkable point that “capable of” means current ability.

The lawful possession exemption exempts individuals who lawfully possess assault weapons prior to the Proposal’s effective date and register them within one year. Opponents argue the summary is misleading because it does not expressly state that such weapons cannot subsequently be sold or given to others. There is nothing, however, in the summary that suggests the rights of possession go beyond those of the registrant. Opponents’ argument that the exemption goes to the weapon rather than the possessor is inconsistent with the summary, which addresses possession by individuals.

The NRA’s argument that the Proposal fails to identify a preexisting Florida constitutional provision misconstrues the cases it cites. These cases concern the potential for individual initiative proposals to amend multiple sections of the Florida

Constitution.³ Here, the Proposed Amendment only affects a single provision—article I, section 8. Furthermore, the change to the regulation of firearms is logically consistent and has a singularity of purpose with a constitutional provision that already explicitly restricts the purchase and possession of certain firearms.

The Proposed Amendment complies with the single subject rule of article XI, section 3, of the Florida Constitution. The Proposal’s prohibition, exception, and penalty framework represents a logical and singular policy that is directly connected to the subject of prohibiting the possession of assault weapons. Because the Proposed Amendment meets both the statutory ballot language requirements and Florida’s constitutional single-subject requirement, it should be permitted on the ballot to be considered by Florida voters.

ARGUMENT

I. THE BALLOT TITLE AND SUMMARY OBJECTIVELY AND EXPLICITLY DESCRIBE THE PROPOSAL’S RESTRICTIONS ON POSSESSION OF ASSAULT WEAPONS IN COMPLIANCE WITH § 101.161, FLORIDA STATUTES

A. The ballot title and summary, when read together, inform the voter that the proposal’s chief purpose and true effect prohibits the possession of “assault weapons” as defined in the proposal.

The fundamental standard for Supreme Court review of constitutional proposals is to ensure that voters are fairly presented with a clear question. The Court is not tasked with judging the wisdom of a proposal. As this Court has repeatedly

³ See *Fine*, 448 So. 2d at 989.

explained, it is “obligated to uphold a proposed amendment unless it is ‘clearly and conclusively defective.’” *In re Advisory Op. to Att’y Gen. re Use of Marijuana for Debilitating Med. Conditions*, 181 So. 3d 471, 476 (Fla. 2015) (quoting *In re Advisory Op. to Att’y Gen. re Florida’s Amend. to Reduce Class Size*, 816 So. 2d 580, 582 (Fla. 2002); see also *In re Advisory Op. to Att’y Gen. re Med. Liability Claimant’s Comp. Amend.*, 880 So. 2d 675, 676 (Fla. 2004) (“In order for the Court to invalidate a proposed amendment, the record must show that the proposal is clearly and conclusively defective....” (quoting *Advisory Op. to Att’y Gen. re Amend. to Bar Gov’t from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 891 (Fla. 2000))).

The question presented to the voters is clear and unambiguous: does the voter want to ban the possession of defined assault weapons that have certain specific lethal characteristics?

This Court’s evaluation of a proposed constitutional initiative’s compliance with Section 101.161, Florida Statutes, consists of two inquiries: (1) whether the ballot title and summary “fairly inform the voter of the chief purpose of the amendment[;]” and (2) “whether the language of the title and summary, as written, misleads the public.” *Use of Marijuana for Debilitating Med. Conditions*, 181 So. 3d at 476. The ballot summary must also “describe the scope of the text of the amendment,” *Advisory Op. to Att’y Gen. re Term Limits Pledge*, 718 So. 2d 798,

804 (Fla. 1998), and cannot deceive the voter by “fly[ing] under false colors” or “hid[ing] the ball” as to the true effect of the Proposed Amendment. *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000). Simply stated, when read together, the title and summary must give voters “fair notice of the content of the proposed amendment.” *Advisory Op. to the Att’y Gen. re Stop Early Release of Prisoners*, 661 So. 2d 1204, 1206 (Fla. 1995).

The purpose of these requirements is to ensure that the voter “can cast an intelligent and informed ballot.” *Advisory Op. to the Att’y Gen. Re: Voting Restoration Amend.*, SC16-1785, 2017 WL 1409671, *1207 (Fla. Apr. 20, 2017). Accordingly, “it is not necessary to explain every ramification of a Proposed Amendment, only the chief purpose.” *Advisory Op. to the Att’y Gen. re Right to Treatment & Rehab. for Non-Violent Drug Offenses*, 818 So. 2d 491, 497 (Fla. 2002) (citation omitted). In recognition of the fifteen-word limit on ballot titles and the seventy-five-word limit on ballot summaries, it is unnecessary “to include and explain all possible effects and ramifications.” *Advisory Op. to the Att’y Gen. re Physician Shall Charge the Same Fee for the Same Health Care Service to Every Patient*, 880 So. 2d 659, 663-66 (Fla. 2004).

This standard, and the reasoning of this Court’s precedent, is sound. And this standard is important in evaluating the Opponents’ numerous arguments that the ballot title and summary are misleading, unclear, or confusing because they do not

indicate each and every possible ramification of the Proposal. *Right to Treatment & Rehab. For Non-Violent Drug Offenses*, 818 So. 2d at 497 (“[c]ertainly, if a ballot title and summary were required to include all possible ramifications, it is arguable that no proposed amendment would ever be approved within the current parameters”). The Proposal here is straightforward and clear in describing limitations on specific firearms that have lethal characteristics that enable weapons to have a high rate of fire—specifically, semiautomatic weapons with the capability of accepting more than ten rounds at once.

The Proposed Amendment’s ballot title and summary comply with section 101.161, Florida Statutes. First, the language meets the statutory word limit requirements. The ballot title consists of six (6) words by which the Proposal is commonly referred to, “Prohibits possession of defined assault weapons.” And the Proposal’s summary consists of 72 words, which describe the scope and true effect of the Proposed Amendment—to prohibit the possession of assault weapons, as defined in the Proposal, in the state of Florida.

The ballot title and summary explicitly identify and define the term “assault weapons” and describe the proposed limits on their possession, thereby defining the chief purpose of the Proposed Amendment for voters. *See Physician Shall Charge the Same Fee for the Same Health Care Service to Every Patient*, 880 So. 2d at 663-

66 (Fla. 2004); *Right to Treatment & Rehab. For Non-Violent Drug Offenses*, 818 So. 2d at 498.

B. The ballot title and summary identify and define the term “assault weapon” in a manner that expressly tells the voter the legal effect of the proposed amendment with no editorializing or political rhetoric.

The ballot title and summary fairly inform the voter that the initiative is a limitation on the possession of certain weapons. The term “assault weapon” is a commonly used term that in and of itself is not pejorative. Its use is descriptive, and not editorial. The Proposal specifically defines the term “assault weapon” since it is commonly used in different policy contexts. Even Opponents acknowledge that, “[t]he term ‘assault weapons,’ [...] does not have an established definition and is used differently by different groups and jurisdictions[.]” (AG Brief at 13) (citing N.Y. Penal Law § 265.00(22)(a); Cal. Penal Code § 30515; S. 66, 116th Cong. § 2(a)(36)(A)–(B) (2019); Wash. Rev. Code § 9.41.240)). Various dictionaries also have divergent definitions of “assault weapon.” For example, *Merriam-Webster Dictionary* defines “assault weapon” as “any of various automatic or semiautomatic firearms.”⁴ None of these definitions suggest the term “assault weapon” is political

⁴ *Assault Weapon*, MERRIAM-WEBSTER DICTIONARY: Assault Weapon. *available at* <https://www.merriam-webster.com/dictionary/assault%20weapon>. Further, *American Heritage Dictionary* defines “assault weapon” somewhat differently, “any of various automatic or semiautomatic firearms with detachable magazines and often other features such as a pistol grip or a collapsible stock, designed for individual use.”⁴

rhetoric or misleading. It is, however, clear that an “assault weapon” is a kind of semiautomatic firearm that must be further defined to be explicit. That is exactly what the Proposal has done.

The Proposal expressly and precisely defined the term in the first sentence of the ballot summary with no editorial comment or political rhetoric. Furthermore, the ballot summary uses language identical to the language in the Proposed Amendment. *Advisory Op. to Att’y General re Fla. Marriage Prot. Amendment*, 926 So. 2d 1299, 1239 (Fla. 2006) (rejecting political rhetoric argument because ballot title and summary “did not use emotional terms. . . in the ballot title and summary while employing more docile terminology. . . in the amendment text”); *cf. Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984) (finding proposal defective where “[t]he summary for that same subsection, after describing the legal effect of summary judgment, ends with the editorial comment, ‘thus avoiding unnecessary costs.’”). The definition has two objective conditions: (1) semiautomatic rifles and shotguns (2) capable of holding more than ten rounds of ammunition at once, either in fixed or detachable magazine, or any other ammunition-feeding device. There is no advocacy in this wording. The ballot title and summary do not argue that the ban of assault weapons is a necessary policy. There is only a description of firearms categorized as “assault weapons.”

The definition is derived objectively from the core lethality of weapons used in mass shootings: (1) the capability to rapidly fire a high volume of rounds by (2) successive trigger pulls.⁵ There are other logical and objective reasons the definition identifies these two capabilities. For example, a definition based on a specific list of weapons may be incomplete or circumvented, and physical characteristics, such as a flash suppressor does not directly affect a firearm's lethality.

The Proposed Amendment's capability-specific definition of assault weapons also serves three important long-term rational purposes. First, it provides notice that a weapon may become an assault weapon if modified to meet the conditions. It also provides notice that a person may modify an assault weapon so that it no longer has the two capabilities. Third, it provides notice to gun manufacturers, which enables them to sell state-compliant semiautomatic rifles and shotguns in Florida, as in other jurisdictions such as California, New York, and New Jersey. Indeed, manufacturers

⁵ "High-capacity magazines allow a shooter to fire more rounds without pausing to reload. The more rounds a shooter can fire consecutively, the more gunshot wounds they can inflict during an attack. . . . In total, at least 40 mass shootings involved high-capacity magazines, which resulted in 399 people killed and 688 people wounded. Of those 40 mass shootings that involved high-capacity magazines, nearly three-fourths occurred in public places. As a whole, the mass shootings we know involved the use of high-capacity magazines resulted in nearly five times as many people shot on average as those that did not." Ten Years of Mass Shootings in the United States, An Everytown for Gun Safety Support Fund Analysis, *available at*, <https://everytownresearch.org/massshootingsreports/mass-shootings-in-america-2009-2019/> (last visited November 11, 2019).

have already begun to move into the jurisdiction-compliant semiautomatic rifle and shotgun market space.⁶ (Lindley Affidavit ¶¶ 15–18.)

This Court applies the plain-meaning doctrine to determine whether a proposal complies with statutory requirements. Language, such as that used in the Proposed Amendment, which defines a firearm’s capacity or capability to hold ammunition, has been held to be straightforward and specific. *Cincinnati v. Langan*, 640 N.E.2d 200, 206-07 (Ohio Ct. App. 1994) (finding a definition prohibiting specific firearms, which included firearms capable of holding “a fixed or detachable magazine of more than ten rounds *or* a semiautomatic rifle which *has* a fixed or detachable magazine with a capacity of more than ten rounds,” was permissible) (emphasis added). Courts in other jurisdictions have concluded that even less specific language is permissible. *See, e.g., Wilson v. County of Cook*, 2012 IL 112026, ¶ 26 (finding the definition of “assault weapon” that included the term “semiautomatic rifle that has the capacity to accept large capacity magazine[,] detachable or otherwise,” permissible); *State v. Kalman*, 887 A.2d 950, 955–57 (Conn. App. Ct. 2006) (holding the term “Avtomat Kalashnikov AK–47 type” provided notice that all semiautomatic weapons modeled after an AK–47 were

⁶ Ruger AR-556 State Compliant.

<https://www.ruger.com/products/ar556/specSheets/8502.html>; Dark Storm Industries, Dark Storm DS-15 MOE Fixed Magazine 5.56 Rifle. <https://www.dark-storm.com/>; Smith&Wesson, “State Compliance,” Type, semiautomatic “Modern Sporting” rifles, available at <https://www.smith-wesson.com/state-compliance>.

prohibited.) The language here does not limit the possession of “all assault weapons,” “assault type weapons,” or “military style weapons.” Rather the Proposal defines specifically the type of assault weapon addressed based on specific capabilities.

The ballot summary uses plain words that are understandable to voters to describe and define assault weapons. It also uses plain words to identify excluded firearms and exemptions. The plain meaning of the definition is that a semiautomatic weapon would qualify as an “assault weapon” *only* if the weapon is capable of holding more than ten rounds. Therefore, if a semiautomatic weapon is not capable of holding more than ten rounds, that weapon (1) would not qualify as an “assault weapon” and (2) would not be unlawful. A reasonable voter would understand that all manual-action rifles and shotguns are excluded.⁷ Similarly, a reasonable voter would understand that handguns are excluded. Most importantly, a reasonable voter would understand that the exemption to the ban on possession of assault weapons would apply to an individual who had lawful possession of the weapon prior to the effective date, and registers such possession within one year after the effective date.

The National Shooting Sports Foundation’s characterization of the term “assault weapons” as “pejorative” and “[a]dding to the confusion” has no merit.

⁷ Manual-action firearms require a separate manual action to place a round into the chamber of a firearm after each trigger pull, such as a pump-action shotgun, a lever-action rifle, or a bolt-action rifle.

(NSSF Brief at 7.) Numerous jurisdictions have codified assault weapons restrictions into law using definitions and language similar to the ballot summary and the Proposed Amendment.⁸ The term “assault weapon” is therefore a generally used term in defining certain types of weapons by policy makers.

C. The ballot summary and the text of the proposed amendment describe and define “assault weapons” within the context of their current capability.

⁸ See, e.g., Cal. Penal Code § 30605 (“Any person who, within this state, possesses any assault weapon, except as provided in this chapter, shall be punished by imprisonment in a county jail for a period not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.”); CT Gen Stat § 53-202a- 53-202k ((1) “Assault weapon” means: (A) (i) Any selective-fire firearm capable of fully automatic, semiautomatic or burst fire at the option of the user or any of the following specified semiautomatic firearms. . . . “); Md. Code Ann., Crim. Law § 4-303 (“In general. -- Except as provided in subsection (b) of this section, a person may not: (1) transport an assault weapon into the State; or (2) possess, sell, offer to sell, transfer, purchase, or receive an assault weapon.”); Mass. Gen. Laws ch. 140, § 131M (“No person shall sell, offer for sale, transfer or possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994.”); Minn. Stat. § 624.712(7) (“Semiautomatic military-style assault weapon. “Semiautomatic military-style assault weapon” means: (1) any of the following firearms. . . .”); N.J. Stat. Ann. § 2C:39-1(w)(1), (2) (defining “assault firearm”); N.Y. Penal Law §§ 265.02(7), 265.10. (“A person is guilty of criminal possession of a weapon in the third degree when. . . (7) Such person possesses an assault weapon; or (8) Such person possesses a large capacity ammunition feeding device.”); D.C. Code Ann. § 7-2502.02(a)(6) (“(a) A registration certificate shall not be issued for a. . . (6) An assault weapon. . . .”); Va. Code Ann. § 18.2-308.2:2(G) (“Assault firearm” means any semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.”).

The ballot summary and the text of the Proposed Amendment both describe and define “assault weapons” within the context of the present tense of the word “capable.” When analyzing proposed constitutional initiatives, “this Court looks to dictionary definitions of the terms because we recognize that, in general, a dictionary may provide the popular and common-sense meaning of terms presented to the voters.” *In re Advisory Op. to Att’y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 800 (Fla. 2014) (quotes and citation omitted). Below are five dictionary definitions of “capable”:

- *A Dictionary of Modern Legal Usage* defines “capable of” as “**having** capacity, ability, or intelligence.”⁹
- *New Oxford American Dictionary* defines “capable” as “**having** the ability, fitness, or quality necessary to do or achieve a specified thing.”¹⁰
- *Merriam-Webster Dictionary* defines “capable” as “**having** attributes (such as physical or mental power) required for performance or accomplishment.”¹¹
- *American Heritage Dictionary of the English Language* defines “capable” as: “**having** the ability required for a specific task or accomplishment.”¹²

⁹ *Capable of*, *A Dictionary of Modern Legal Usage* (2d Ed., 1995).

¹⁰ *Capable*, *New Oxford American Dictionary* (2d Ed., 2005).

¹¹ *Capable*, *Merriam-Webster Dictionary*, 2019, available at <https://www.merriam-webster.com/dictionary/capable>.

¹² *Capable*, *American Heritage Dictionary of the English Language*, 2019, <https://www.ahdictionary.com/word/search.html?q=capable>.

- *Dictionary.com* defines “capable” as “**having** power and ability.”¹³
- *Cambridge Dictionary Online* defines “capable” as “**having** the ability, power, or qualities to be able to do something.”¹⁴

Each definition contains the word “having,” which is the *present* participle of “have.” A participle is a form of a verb that—without additional words—makes the verb function as an adjective: i.e., a word that modifies a noun or noun-substitute.¹⁵

The *present* participle applies in the present.

No dictionary defines the word “capable” in the context of a future ability or future attribute. Instead, through the present participle “having,” those dictionaries define “capable” as signifying abilities or attributes that are *possessed* in the present moment. If something is “capable of” doing something, it has the present ability to do it. Thus, according to common grammatical principles discussed in this section, the definition’s text signifies that a semiautomatic rifle or shotgun that cannot hold more than ten rounds as of the Proposal’s effective date *would not* qualify as an

¹³ *Capable*, Dictionary.com, 2012, available at <https://www.dictionary.com/browse/capable?s=t>.

¹⁴ *Capable*, Cambridge Dictionary, 2019, available at <https://dictionary.cambridge.org/us/dictionary/english/capable>.

¹⁵ Deborah Cupples and Margaret Temple-Smith, *Grammar, Punctuation & Style: A Quick Guide for Lawyers and Other Writers*, 11 (West, 2013); “Participle,” *New Oxford American Dictionary* (2d Ed., 2005). For example, the verb “work” (an action) can become an adjective when “ing” is added:

- The woman works. (verb).
- The working woman (present participle functioning as adjective describing “woman”).

“assault weapon.” That the effect of the Proposed Amendment will prohibit the possession of many semiautomatic rifles and shotguns is not hidden—it is the Proposal’s stated chief purpose.

Opponents argue that “[a]ny firearm that, with commercially available accessories, can hold more than ten rounds is ‘susceptible or open’ to holding more than ten rounds.” (AG Brief at 10.) First, the Proposed Amendment does not apply to any firearm but only to expressly identified “semiautomatic rifles and shotguns.” Second, when an accessory requires a modification of the weapon, that weapon is not an assault weapon under the proposed definition until it is *actually modified*. Of course, many weapons could be modified to become assault weapons, but they do not fall under the definition in their current conditions. Here, the rifle or shotgun must be both semiautomatic and currently capable of accepting more than ten rounds.

Opponents’ reliance on *Pittman v. State*, 25 Fla. 648 (Fla. 1889), for the proposition that “capable of” means “not just what is likely, but what is possible” is not persuasive. Opponents argue that this “Court’s understanding of ‘capable of,’ like the dictionary definition of that phrase, embraces not just what is likely, but what is possible.” (AG Brief at 11.) But this Court did not take that position in *Pittman*. In fact, this Court did not discuss the meaning of the term “capable of” at all. Instead, in *Pittman*, this Court discussed the legal sufficiency of a charge under

the term “deadly weapon.” There, this Court clarified that “[a] deadly weapon is one ‘likely’ to produce death” and held that “[t]he evidence shows that the assault was made with a deadly weapon—a weapon likely to produce death—and the plaintiff in error has no cause to complain at this part of the charge.” *Id.* at 651.

Further, this Court’s reasoning for narrowing the scope of the term “deadly weapon” in *Pittman* is consistent with the ordinary meaning of “capable of,” a testament to why its ruling in that case has stood undisturbed for over one hundred thirty years. As this Court noted, “[a]ny weapon or instrument, such as a needle or pin, is *capable of* producing death, but it is not likely to do so. A deadly weapon is one ‘likely’ to produce death.” *Id.* (emphasis added). This Court did not opine on “accessories” or any other modification because “a needle or pin” has the current ability to produce death. That is plain common sense.

Opponents’ reliance on *Smith v. Am. Airlines, Inc.*, 606 So. 2d 618, 621 (Fla. 1992), is off base. They rely on that case for the proposition that “even ‘more educated voters’ are unlikely to appreciate the broad legal effect of the phrase ‘capable of’ would apply to this firearm equally.” (AG Brief at 12.) In *Smith*, this Court held the ballot summary was deficient, in relevant part, because it relied on an *undefined term*, “ad valorem,” that did not indicate a change in taxation from the intangible personal property rate to the real property rate for certain properties. *Id.* at 620. And although this Court “agree[d] that voters may be presumed to have the

ability to reason and to draw logical conclusions,” it “d[id] not believe that the ballot summary [was] written clearly enough for even the more educated voters to understand its chief purpose.” *Id.* at 621. This was because the ballot summary relied on the term “Ad valorem” to refer to the change in millage rates, which “t[old] the voter nothing about the actual change to be effected because it applies to both real and personal property.” *Id.* at 620. Here the term “assault weapons” is expressly defined in the same sentence as the Proposal’s stated chief purpose: “Prohibits possession of assault weapons, defined as semiautomatic rifles and shotguns capable of holding more than ten rounds of ammunition at once.” Only the possession of expressly defined firearms would be prohibited.

A voter would understand—**regardless of** a weapon’s hypothetically possible or future abilities—a semiautomatic rifle or shotgun to be either (a) lawful because it cannot currently hold more than ten rounds or (b) unlawful because it can currently hold more than ten rounds. In common parlance, it would be inaccurate to say that an ordinary car is “capable of” going 200 miles per hour if the car had to be modified with a larger engine to do so. Accordingly, it would be inaccurate to say that a weapon is “capable of” holding more than ten rounds if the weapon would have to be modified to do so, through the use of accessories such as “extension tubes” or “kits.” (Lindley Affidavit ¶¶ 9–15.); *cf.* (AG Brief, 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.”). Similarly, it would be inaccurate to say a pickup truck is “capable of” driving 200 miles on a tank of gas without modification because “human ingenuity,” by way of future commercial inventions, ensures the pickup truck will be capable of driving 200 miles on a single tank of gas. (AG Br. at 9.)

Opponents’ argument that commercially sold non-standard “mini-rounds” that are currently sold will transform a semiautomatic shotgun into an assault weapon is misleading. (Lindley Affidavit ¶¶ 20–24.); *cf.* (AG Brief, Ex. 1 ¶ 16) In fact, an official publication of the NRA, *Shooting Illustrated*, rejects Opponents’ argument:

Now before we get in to the details of the Minishell’s performance, **let me give you one caveat**—certain shotguns just won’t feed these shotshells. Of course, they’ll be fine in single-barrel and double-barrel guns, but **I haven’t found a single semiautomatic which will cycle properly with the Minishells, other than a purpose-built model like the SRM Arms 1228 reviewed here. . . The Mossberg 500 and 590 will feed these little guys, providing you use an adapter**, and I have used the simple OPSol Mini-Clip 2.0 with great effect.

NRA: *Shooting Illustrated*, *Review: Aguila Minishells*, by Philip Massaro, Wednesday, October 23, 2019 (emphasis added).¹⁶ Of note, both the Mossberg 500 and 590 are pump-action shotguns; each requiring an adaptor to fire “mini rounds.”¹⁷

¹⁶ Available at <https://www.shootingillustrated.com/articles/2019/10/23/review-aguila-minishells/> (last visited November 21, 2019).

¹⁷ Mossbert: Arm Yourself., available at <https://www.mossberg.com/firearms/shotguns/> (Pump-action shotguns).

Opponents' argument that even semiautomatic shotguns with fixed magazines fall within the assault weapons definition because they have an "opening in the end" fails. To begin, Opponents admit the "vast majority" come with fixed magazines not capable of holding more than ten rounds. (AG Brief, Ex. 1 ¶ 14, 16.) Yet, they argue such firearms fall within the scope of the Proposal because the "opening at the end" of the tube allows for an "extension tube" to be affixed, increasing the amount of ammunition it can hold. Affixing an extension tube requires a modification. Therefore, it falls outside the scope of the ordinary use of the term "capable of."

The Proposed Amendment's title and summary clearly define and clearly express that limitations are based on a particular assault weapon's actual current capabilities. If a rifle or shotgun is currently semiautomatic and capable of accepting more than ten rounds, it falls under the definition in the Proposal. If such a firearm is not capable of accepting more than ten rounds, it does not fall under the definition in the Proposal. If a weapon is modified to meet the definition, then at that point the weapon becomes an assault weapon. Likewise, if a person decides to modify a weapon so that it no longer meets the definition, then that weapon is no longer an assault weapon.

D. The ballot title and summary articulate that the scope and effect of the proposal is to prohibit the possession of assault weapons.

The core issue for the Court is whether the title and summary accurately explain the impact of the proposal without misleading voters. Opponents suggest

that the ballot “language does not inform voters that the Propose Amendment would ban virtually all semi-automatic long guns[.]” (AG Brief at 11.) Opponents themselves misleadingly exaggerate the scope of the proposal.

This entire argument is based on suggesting that the Proposed Amendment affects some large unknown number of semi-automatic weapons—“virtually all.” The actual test is not about quantity but rather about specificity. Whether the definition encompasses all or most semi-automatic weapons is not the test. The test is whether the title and summary describe the actual impact. The definition is so explicit that any reasonable Florida voter can easily determine whether it applies to any specific weapon. Is the weapon semi-automatic? Is it capable of holding more than ten rounds at once? Again, the issue is a voter’s clarity as to which particular firearms would be affected by the Proposed Amendment. And though experts may disagree on whether the Proposal prohibits the possession of virtually all semiautomatic rifles and shotguns,¹⁸ they cannot disagree that the Proposal clearly defines which semiautomatic rifles and shotguns it restricts the possession of.

¹⁸ *Compare* Affidavit of Stephen J. Barborini ¶ 10 (“In my expert opinion, for the reasons described below, **the proposed amendment would prohibit virtually all semi-automatic long guns.**”) (emphasis added) with Lindley Affidavit ¶ 8, 10 (“**I disagree with this assertion.** Mr. Barborini’s errant conclusion is based on a misreading of the proposed amendment’s scope and an incomplete understanding of the weapons that would not be subject to the ban. There are many commercially available semiautomatic long guns that—without modification—are capable of holding only ten or fewer rounds of ammunition.”) (citations omitted) (emphasis added).

Simply put, defining the precise number of weapons affected is not the issue before this Court. Furthermore, restricting the possession of semiautomatic rifles and shotguns that are capable of holding more than ten rounds of ammunition at one time is not a unique restriction, it and has been implemented in other jurisdictions throughout this country.¹⁹

Opponents suggest the scope is too large. That issue is a matter of policy, not a matter of clarity. The Proposal defines weapons with the most lethal characteristics. That purpose is clear and explicit to the voters. A reasonable voter can determine whether the possession of particular weapon is prohibited or whether that particular weapon is exempt under the Proposal. Further, the speculation about how many weapons will be banned ignores the exemption for currently possessed assault weapons that are registered.

Opponents cite cases demonstrating that the Court will only strike initiatives that are clearly and conclusively misleading. We agree with this proposition.

¹⁹ California prohibits possession of semiautomatic centerfire rifles with fixed magazines over ten rounds. Cal. Pn. Code §§ 30510; 30515; Connecticut prohibits possession of semiautomatic centerfire rifles with fixed magazines over ten rounds. Conn. Ge. Stat § 53-202a; Maryland prohibits possession of semiautomatic centerfire rifles with fixed magazines over ten rounds. Md. CRIMINAL LAW Code Ann. § 4-301; Massachusetts prohibits possession of semiautomatic shotguns that have at least two of the following features including a fixed magazine capable of holding more than five rounds of ammunition and an ability to accept a detachable magazine. ALM GL ch. § 121; New Jersey prohibits the possession of semiautomatic shotguns with either a magazine capacity exceeding six rounds, a folding stock, or a pistol grip. N.J.A.C. 13:54-1.2.

In *Askew v. Firestone*, the ballot summary only disclosed that financial statements would be required for former public officials who sought to lobby the government within a certain period of time after serving in office. 421 So. 2d 151 (Fla. 1982). However, the summary did not reveal that the Proposed Amendment would repeal a more stringent requirement on lobbying. There, the effect, relaxing restrictions, was in conflict with the chief purpose, which was to create more stringent conflict of interest protections. Here, the ballot summary and the Proposal's chief purpose are unified. Using plain words, the ballot summary precisely describes and explains firearm restrictions.

Like *Askew*, Opponents' reliance on *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), actually demonstrates how misleadingly defective a title and ballot summary must be to be removed from the ballot. There, this Court found the ballot summary to be defective because, in part, the effect of the Proposed Amendment was "the exact opposite" of its stated intent. There, the ballot summary changed an "and" to "or," which restricted freedoms while promoting the impression that the amendment's chief purpose was to secure more freedoms. *Id* at 18. Further, the effect of the Proposed Amendment "far outstrip[ped] the stated purpose (i.e. to 'preserve' the death penalty), for the amendment [would] nullify a longstanding constitutional provision that applies to all criminal punishments, not just the death penalty."

Unlike in *Armstrong*, the Proposal has no effect on any other type of firearm. Furthermore, the text of the ballot summary unambiguously explains to the voter that the chief purpose is to prohibit the possession of “semi-automatic shotguns and rifles capable of holding more than ten rounds of ammunition at once.”

Opponents argue that the definition of assault weapons is misleading because the Proposal would apply to .22-caliber semiautomatic rifles. Opponents are correct that nothing in the ballot title and summary indicate that certain caliber semiautomatic rifles or shotguns *capable of holding more than ten rounds at one time* are excluded from the Proposal. Caliber is not a factor in the definition, and for good reason. Small caliber rounds fired in high volume are lethal. Tragically, on September 23, 2016, an assailant armed with a .22-caliber “plinking rifle” with a 25-round magazine shot five people dead at the Cascade Mall in Washington State.²⁰

²⁰ See *Arcan Cetin, Man Accused of Killing 5 in Cascade Mall Shooting, Dies in Jail*, Originally published April 17, 2017, <https://www.seattletimes.com/seattle-news/crime/accused-cascade-mall-shooter-dies-in-snohomish-county-jail/#:~:targetText=Cetin%20is%20accused%20of%20opening,with%20a%2025%2Dround%20magazine> (last visited November 13, 2019); see also *Ex Postal Worker Kills 3 and Wounds 6 in Michigan*, by Doran P. Levin, November 15, 1991 (noting assailant “walked into a regional postal center Thursday morning and opened fire with a sawed-off .22-caliber rifle, killing three workers and wounding six, before fatally wounding himself”), available at <https://www.nytimes.com/1991/11/15/us/ex-postal-worker-kills-3-and-wounds-6-in-michigan.html> (last visited December 5, 2019); Texas Mom behind apparent murder-suicide that left Husband, Three Kids Dead, Report Says, September 24, 2014 (“Police say a .22 caliber semiautomatic rifle used in the incident.”) available at <https://www.cbsnews.com/news/texas-mom-behind-apparent-murder-suicide-that-left-husband-three-kids-dead-report-says/>

Therefore, a .22 caliber rifle that is semiautomatic and capable of accepting more than ten rounds is an assault weapon under the Proposal's definition. If a .22 caliber rifle is not semiautomatic or is not capable of accepting more than ten rounds at once, it is not an assault weapon.

The ballot title and summary accurately represent the scope and effect of the Proposed Amendment. The Court does not consider the desirability of a Proposed Amendment's impact. That is the role of the voters. However, what the Court does consider is whether the drafters fulfilled their primary duty to accurately inform Florida voters of the Proposed Amendment's contents and chief purpose. *Term Limits Pledge*, 718 So. 2d at 803; *Stop Early Release of Prisoners*, 661 So. 2d 1at 1206. Here, the ballot summary discloses in near-exact verbiage the substantive definition from the underlying text. Thus, the summary neither underrepresents nor over represents exactly what type of weapons are defined as assault weapons.

E. The ballot summary informs a reasonable voter that acquiring possession of assault weapons after the effective date would be prohibited and that assault weapons themselves are not exempt.

Opponents suggest that voters will be misled by the title and summary to believe that the exemption applying to lawful possession actually exempts weapons rather than people. They argue the title and summary mislead voters into believing that semi-automatic rifles and shotguns lawfully possessed before the effective date

(last visited November 13, 2019).

will “remain lawful for *all purposes* and *available in perpetuity* for sale, purchase, and possession by transferees.” (NRA Br. at 5, 15–17.); (NSSF Br. at 4, 12, 16–17.) (emphasis added). There is no basis for such a reading; nothing in the summary proposal says that weapons once registered by one person will nonetheless be able to sold or assigned. Allowing such a loophole would undermine the purpose of the proposal as it would allow a person to purchase 10,000 assault weapons before the effective date of the amendment and then sell them over time. That absurd result is not supported by the plain meaning of the title and summary.

Courts determine the meaning of text by looking “not only to the words themselves but also to the context in which the language lies.” *Horowitz v. Plantation Gen. Hosp. Ltd. P’ship*, 959 So. 2d 176, 182 (Fla. 2007) (quotations omitted). Indeed, this Court has determined it is axiomatic that “[e]very statute must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts.” *Fla. Dep’t of Env. Pro. v. Contract Point Fla. Parks, LLC*, 968 So. 2d 1260, 1265 (Fla. 2008) (citations and quotations omitted); *Jones v. ETS of New Orleans, Inc.*, 793 So. 2d 912, 914–15 (Fla. 2001) (“A statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts.”) (citations omitted). Opponents mischaracterized of the ballot summary based on isolating text and

ignoring the context in which that text appears, and ignore well-established principles.²¹

Opponents' ballot summary reconstruction is itself misleading. Opponents attack the fourth sentence of the ballot summary, which provides: "Exempts and requires registration of assault weapons lawfully possessed prior to this provision's effective date." Severing this sentence from its ballot summary context, this interpretation not only ignores the context of the ballot summary as a whole, it also contorts the sentence's meaning.

As a threshold matter, assault weapons cannot possess themselves—even if they were "perpetual[ly]" exempt. Further, the Proposed Amendment does not create a prohibition on any firearm in and of itself. It creates a prohibition on the lawful possession of certain firearms. Thus, the registration of an assault weapon is exempting the registrant from the prohibition on lawful possession. The weapon itself cannot possibly be permitted possessory rights—only a registrant can. By the same accord, a manufacturer would be prohibited from making and transporting assault weapons after the effective date because manufacturing and transporting

²¹ Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012) ("Perhaps no interpretative fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.").

requires possession. Furthermore, neither the ballot summary nor the Proposal identify any lawful possession exemption for new possessors after the effective date.

Opponents' error is to read this exemption out of context to reach an absurd result contrary to the plain meaning of the exemption. This error not only imports a logical defect that produces nonsensical outcomes, it also fatally frustrates the Proposal's chief purpose. As stated above, under the Opponent's view an individual could purchase 10,000 assault weapons and register them prior to the effective date. Then, after the effective date, that individual could sell the weapons to anyone since the weapons themselves are exempt. This Court is tasked with assuring that the title and summary convey fairly the chief purpose. It is not the Court's duty to import illogical or absurd interpretations and conclude that logical voters would believe an absurd interpretation in direct conflict with the overall purpose of the proposal.

When restored to its proper context, the issues Opponents raise about the fourth sentence are resolved. The ballot summary, for example, explains that members of law enforcement and the military may lawfully possess assault weapons, so long as they are "in their official duties." Similarly, the ballot summary explains that assault weapons may be lawfully possessed by others, so long as the assault weapons are "lawfully possessed prior to the effective date" and "regist[ered]." The registration period extends either up to one year of the Proposed Amendment's effective date, or later so long as the individuals register with the Florida Department

of Law Enforcement. Considering the ballot summary as a whole, the unambiguous language shows that the fourth sentence describes an exemption for the possession of assault weapons that are lawfully possessed prior to the effective date and are registered.

F. The proposed amendment expressly discloses the proposed amendment's effect on the state constitution.

The NRA alleges that the ballot title and summary fail to identify the effect of the Proposed Amendment on existing constitutional provisions. (NRA Brief at 12-13.) However, the cases cited do not support Opponent's argument. First, these cases deal with single-subject compliance, which, as discussed below, is not a concern here. *See Fine v. Firestone*, 448 So. 2d 984, 989 (Fla. 1984). In fact, the ballot title and summary were unchallenged in *Fine*. In *Fine*, the Court addressed whether an initiative could amend multiple different sections of the Florida Constitution. So long as the initiative contains a single subject, the Court ruled that it could indeed amend multiple provisions at once. 448 So. 2d at 989. However, when *multiple* articles or subsections are "substantially affected," such provisions must be identified *within the proposal*. *Id.* (emphasis added). The problem in *Fine* was the content of the underlying amendment—not the content of the ballot summary.

As a threshold matter, the Proposed Amendment affects a single provision—article I, section 8, of the Florida Constitution. Thus, there are not multiple affected provisions necessary to identify. Furthermore, the Proposed Amendment's effect has

the “logical and natural oneness of purpose” this Court has used in assessing single subject compliance. *See id.* at 990. The NRA has attempted to read the “substantial impact of effect” standard from *Fine* into the Court’s analysis of ballot language clarity. This is a new albeit faulty reading of the precedent.²² In *Advisory Opinion to the Attorney General re Tax Limitation*, the analysis of substantial impacts on preexisting constitutional provisions is within the context of the *single subject rule*. 644 So. 2d 486, 493-94 (Fla. 1994) (emphasis added). There, the Court struck an initiative creating a new subsection to article VII, section 1 of the Florida Constitution. *Id.* at 494. However, the proposal substantially affected article VII, sections 1(a), 1(b), 2, 5, 7, and 9. *Id.* at 493-94. Thus, the new subsection was substantially affecting other preexisting constitutional provisions without identification. Consistent with the single-subject standard for the ballot language requirement of section 101.161, Florida Statutes, the Proposed Amendment affects just one constitutional provision—that which it is amending. There is not some other article or section being substantially affected by the Proposed Amendment.

²² “A ballot summary should not be held clearly and conclusively defective merely because it does not describe an existing provision of the Constitution that will be affected by the proposed amendment. Imposing such a requirement to educate the voters about the constitutional status quo would unduly burden the initiative process.” *Advisory Op. to the Att’y Gen. re 1.35% Property Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 979 (Fla. 2009) (Canady, J., dissenting).

Opponent also confuses the Court’s interpretation in *Advisory Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers*, where the Court removed an initiative for violating the single-subject and ballot-language requirements. 705 So. 2d 563, 566 (Fla. 1998). However, there the initiative failed the single-subject requirement for logrolling, or combining two disparate issues into a single proposal. *Id.* And it failed the ballot language clarity requirement for misleading voters that the proposal applied to citizens, when the underlying amendment in fact applied to all natural persons. *Id.*

In *Armstrong v. Harris*, the Court invalidated a legislative initiative post-election. 773 So. 2d 7, 22 (Fla. 2000). Opponent alleged the amendment was struck because it did not disclose the nullification of a longstanding constitutional provision. (NRA Brief at 13.) The critical flaw, however, was that the ballot language claimed the chief purpose as “preserv[ing]” the death penalty, when in fact the true effect was much more expansive. *Id.* at 18. Rather than applying only to the death penalty, the legislative initiative nullified a constitutional standard that applied to all criminal punishments. *Id.* In short, the fatal problem was not in failing to disclose the constitutional section being amended, but rather in affirmatively misleading the voter as to the measure’s chief purpose. Again, the Proposed Amendment contains no such flaw, and adequately informs the electorate of its chief purpose—to prohibit possession of defined assault weapons.

Finally, an Opponent claims that the electorate will not realize the Proposed Amendment modifies article I, section 8 of the Florida Constitution. (NRA Brief at 13). This is erroneous. The uniform design of election ballots is mandated in the State of Florida. *See* Fla. Admin. Code r. 1S-2.032. For constitutional amendments, the contest title must appear as follows: “No. __ Constitutional Amendment, Article ___, Section ___.” Fla. Admin. Code r. 1S-2.032(6) making clear what section is being amended. Furthermore, this Court has long presumed that the electorate has “a certain amount of common sense and knowledge” *Advisory Op. to the Att’y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996). Given the explicit disclosure of the article and section on the ballot, it is illogical to claim that a reasonable voter will be unaware of the location and effect of the Proposed Amendment.

Opponents rely on *Rinzler v. Carson*, 262 So. 2d 661 (1972), to assert that “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” and argue that the proposal does not disclose that the “Amendment would abridge the existing constitutional right to keep and bear arms.” (NRA Brief at 15.) *Rinzler*, however, is a case about a “machine gun.” The issue of prohibiting the possession of semiautomatic shotguns and rifles was not before this Court. Opponents focus on the Court’s note of the “historic constitutional right of the people to keep and bear arms[,]” “such as semi-automatic shotguns, semi-automatic pistols and rifles.” *Id.* at

665. However, they ignore the court’s substantive analysis on restricting the possession of certain weapons, which is instructive:

Although [*sic*] the Legislature may not entirely prohibit the right of the people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen. We have specifically held that the Legislature can regulate the use and the manner of bearing certain specific weapons.

...

In each of the four cited cases there is inherent in the holding of this Court the proposition that the right to keep and bear arms is not an absolute right, but is one which is subject to the right of the people through their legislature to enact valid police regulations to promote the health, morals, safety and general welfare of the people. It seems to us to be significant that the type of firearms, the possession of which is outlawed by Section 790.221, Florida Statutes, F.S.A., is that [a] weapon which is too dangerous to be kept in a settled community by individuals, and one which, in times of peace, finds its use by a criminal.

Rinzler, 262 So. 2d at 665–666 (citing *Nelson v. State*, 195 So. 2d 853 Fla. (1967) (holding Florida statute restricting specific firearm possession for convicted felons was constitutional) (alteration); *Davis v. State*, 146 So. 2d 892 Fla. (1962) (holding Florida statute restricting specific firearm possession without a license from the county commissioners was constitutional.); *Carlton v. State*, 63 Fla. 1, 58 So. 486 Fla. (1912) (holding Florida statute restricting concealed carry firearms was constitutional.”) Concluding there was no infringement on an existing right, the *Rinzler* Court noted, “[t]he Supreme Court of the United States has held, in construing that amendment, that the right of the people to keep and bear arms is not

infringed by the prohibition of state statutes which make it unlawful to possess certain kinds of firearms.” *Rinzler*, 262 So. 2d at 667. The Proposed Amendment seeks only to prohibit the possession of certain firearms. It does not include semiautomatic handguns, manual-action shotguns and rifles, or semiautomatic rifles and shotguns not capable of holding more than ten rounds. Accordingly, this Proposed Amendment does not abridge any existing Florida constitutional right, rather it proposes a defined limitation relating to specific weapons.

II. THE PROPOSED AMENDMENT PRESENTS A SINGLE UNIFIED QUESTION TO VOTERS: WHETHER TO PROHIBIT POSSESSION OF DEFINED ASSAULT WEAPONS IN FLORIDA

This Court’s constitutional inquiry is limited to whether the Proposed Amendment complies with the single-subject requirement of article XI, section 3, Florida Constitution. *See Advisory Op. to the Attorney Gen. re Water & Land Conservation--Dedicates Funds to Acquire & Restore Fla. Conservation & Recreation Lands*, 123 So. 3d 47, 50 (Fla. 2013) (citing *Advisory Op. to the Attorney Gen. re Protect People, Especially Youth, from Addiction, Disease & Other Health Hazards of Using Tobacco*, 926 So. 2d 1186, 1190 (Fla. 2006)). “The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment ... shall embrace but one subject and matter directly connected therewith.” Art. XI, § 3, Fla. Const. When considering an amendment under article XI, section 3, Florida

Constitution, the Court has focused on whether the Proposal has a “logical and natural oneness of purpose.” *Advisory Op. to the Attorney Gen. re Extending Existing Sales Tax to Non-Taxed Services Where Exclusion Fails to Serve Public Purpose*, 953 So. 2d 471, 478 (Fla. 2007) (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)). The Court should find that the Proposed Amendment complies with the single-subject requirement because its change to the constitutional regulation of firearms has a logical and natural oneness of purpose with a provision that already explicitly restricts the purchase and possession of certain firearms. The Proposed Amendment simply gives voters the option to restrict additional types of firearms.

The single subject rule is violated when an initiative engages in either one of two practices: “(a) logrolling; or (b) substantially altering or performing the functions of multiple branches of state government.” *Water & Land Conservation - -Dedicates Funds to Acquire & Restore Fla. Conservation & Recreation Lands*, 123 So. 3d at 50-51.

First, the Proposed Amendment does not logroll. Florida voters are not forced to “accept part of an initiative Proposal which they oppose in order to obtain a change in the constitution which they support.” *Advisory Op. to the Attorney Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 180 (Fla. 2009) (quoting *Amendment to Bar Gov’t From Treating People Differently Based*

on Race in Pub. Educ., 778 So. 2d 888, 891 (Fla. 2000)). Because the Proposed Amendment does not contain extraneous provisions unrelated to the single effect of restricting the possession of assault weapons, it does not engage in logrolling. *See Water & Land Conservation--Dedicates Funds to Acquire & Restore Fla. Conservation & Recreation Lands*, 123 So. 3d at 50-51.

Second, the Proposed Amendment also does not substantially perform, alter, or affect the functions of multiple branches of Florida's government. An initiative that "affects several branches of government will not automatically fail; rather, it is when a Proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test." *Treating People Differently Based on Race*, 778 So. 2d at 892 (quoting *Advisory Op. to the Attorney General re Fish and Wildlife Conservation Commission*, 705 So. 2d 1351, 1353-54 (Fla. 1998)). The Proposed Amendment would make one policy change—restrict the possession of assault weapons—which does not substantially alter or perform the function of any branch of government.

Enforcement of firearms laws is an existing function of state and local government. The proposed restriction on assault weapons does not add a new function, only the responsibility to enforce a broader restriction. The Florida Department of Law Enforcement would be required to register those firearms over

the period of one year. After that period, there will be no further need to register such firearms because there will be no new purchases.

CONCLUSION

The Proposed Amendment presents a single, unified subject to the voters: the prohibition on possession of certain assault weapons. Accordingly, this Court should affirm that the Proposed Amendment complies with the single-subject requirement of Article XI, Section 3, Florida Constitution.

Likewise, the ballot title and summary comply with the requirements of Section 101.161, Florida Statutes, by explaining the initiative's chief purpose in plain unambiguous language. Both the title and summary are accurate, and avoid the use of emotional sloganeering. As a result, the Proposed Amendment is neither more nor less than it promises to be.

For these reasons, this Court should uphold the Proposed Amendment and permit its placement on the ballot for the consideration of Florida voters.

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Respectfully submitted,

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I certify that a true copy of the foregoing was filed on this 6th day of December, 2019, through the Florida Courts e-Filing Portal to:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210(a), Florida Rules of Appellate Procedure.

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