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IN THE SUPREME COURT OF FLORIDA
CASE NO: SC19-1267; SC19-1505 (CONSOLIDATED)

**ADVISORY OPINION TO THE ATTORNEY GENERAL RE:
ALL VOTERS VOTE IN PRIMARY ELECTIONS FOR STATE
LEGISLATURE, GOVERNOR, AND CABINET**

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LEGISLATURE, GOVERNOR, AND CABINET (FIS)**

**INITIAL BRIEF OF THE SPONSOR
ALL VOTERS VOTE, INC.**

GLENN BURHANS, JR.
FLORIDA BAR NO. 605867
**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**
HIGHPOINT CENTER
106 EAST COLLEGE AVENUE - SUITE 700
TALLAHASSEE, FL 32301
TELEPHONE: (850) 329-4850
GBURHANS@STEARNSWEAVER.COM

EUGENE E. STEARNS
FLORIDA BAR NO. 0149335
**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**
MUSEUM TOWER
150 WEST FLAGLER STREET - SUITE 2200
MIAMI, FLORIDA 33130
TELEPHONE: (305) 789-3200
ESTEARNS@STEARNSWEAVER.COM

Counsel for All Voters Vote, Inc.

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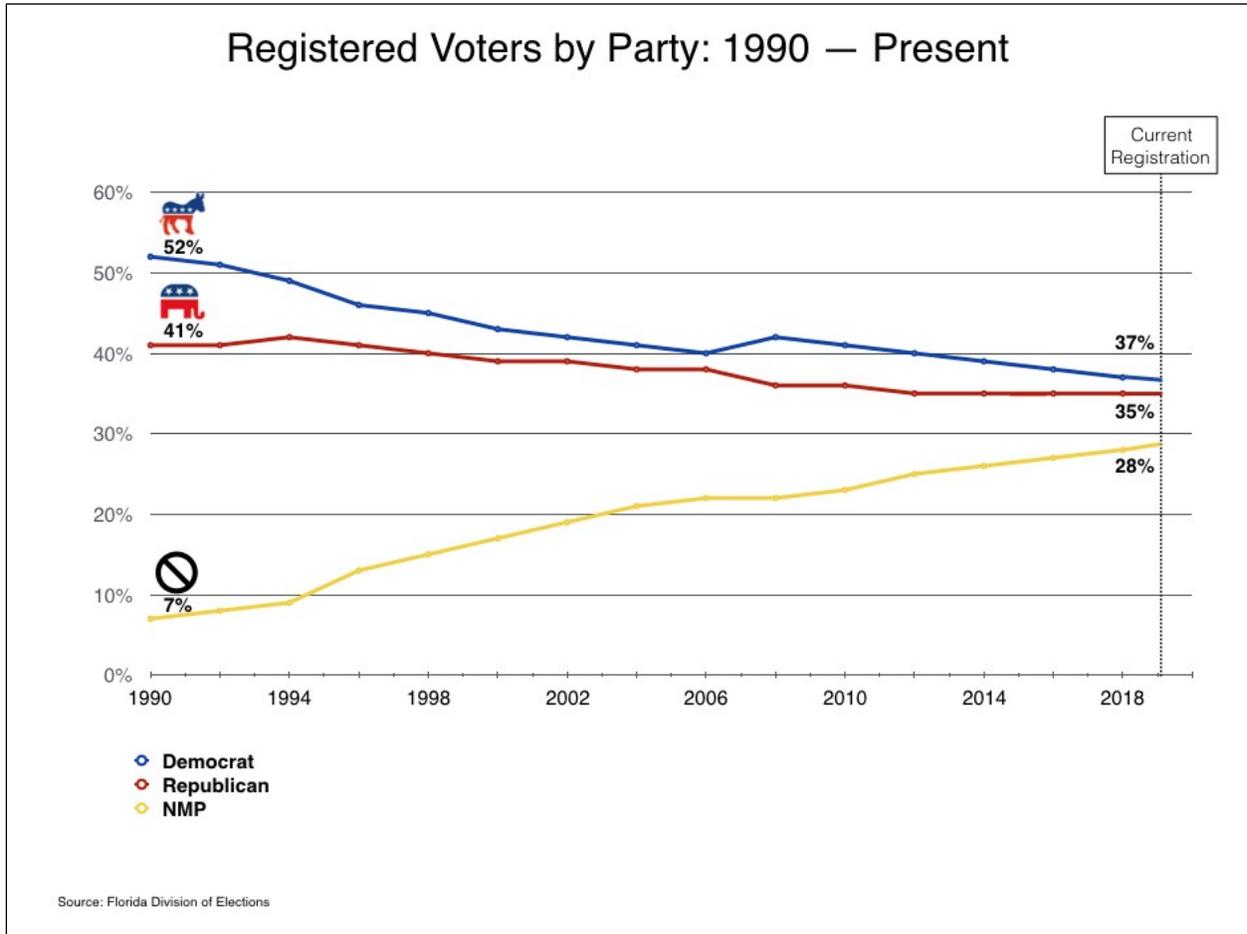
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IDENTITY AND INTEREST OF THE SPONSOR ALL VOTERS VOTE, INC.

All Voters Vote, Inc. is a registered Florida political committee and sponsor of the subject citizen initiative “All Voters Vote in Primary Elections for Florida Legislature, Governor, and Cabinet” for placement on the 2020 ballot. All Voters Vote was founded by a group of like-minded Florida registered voters who are dissatisfied with the political rhetoric from the extreme wings of both major political parties and the divisiveness it has caused our society. That divisiveness is causing voters to reject membership in the two major political parties at startling rates. Today, more than 3.7 million (approximately 28%) of Florida’s 13.4 million registered voters are registered with no party affiliation (“NPA”) or a minor party.¹ The price for rejecting the major parties is steep because those 3.7 million voters are barred—as a matter of law—from participating in Florida’s closed party primaries. NPA voters pay taxes for the privilege of being excluded from closed party primaries.

¹ NPA voters number more than 3.6 million. Voter registration data by party affiliation can be found on the Division of Elections website at: <https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-monthly-reports/>.

The following chart tracks voter registration in Florida since 1990 and highlights the interest of All Voters Vote in ensuring that all qualified registered voters can participate in primary elections for state elective office.



As more voters reject membership in either major party, the membership in the major parties continues to shrink relative to the registered voter population. As a result, an increasing number of voters cannot participate in primary elections—allowing a shrinking share of the electorate to determine which candidates will appear on the general election ballot. As this cycle continues, the extreme wings of

each major party appear to become more dominant in primary elections where incumbents fear being “primaried.”

Often, the primary election will decide the general election result in legislative races—making primary elections of paramount importance. But, rather than compel a voter to associate with a party merely to vote in a primary, All Voters Vote believes all qualified registered voters should be allowed to vote in primary elections for state elective office—regardless of party affiliation. For this reason, All Voters Vote sponsored the instant initiative and files this Initial Brief in support of placing the proposed amendment on the 2020 ballot.

STATEMENT OF THE CASE AND FACTS

On July 26, 2019, the Attorney General petitioned this Court for an advisory opinion as to the validity of the initiative petition entitled “All Voters Vote in Primary Elections for State Legislature, Governor, and Cabinet” (“Petition”). The Petition proposes to add a new subsection (c) to Art. VI, § 5, Fla. Const., the effect of which would be to allow all qualified registered voters to vote in primary elections for Florida Legislature, Governor, and Cabinet (“All Voters Vote Amendment”). This Court has jurisdiction. Art. V, § 3(b)(10).² The Attorney General also

² Unless otherwise noted, all constitution and statutory citations and references are to the Florida Constitution and the Florida Statutes (2019), respectively.

petitioned the Court for an advisory opinion as to the initiative's Financial Impact Statement in Case No. SC19-1505 (consolidated here by order dated Sept. 11, 2019).

Ballot Title, Ballot Summary, and Full Text of Proposed Amendment

TITLE: All Voters Vote in Primary Elections for State Legislature, Governor, and Cabinet

SUMMARY: Allows all registered voters to vote in primaries for state legislature, governor, and cabinet regardless of political party affiliation. All candidates for an office, including party nominated candidates, appear on the same primary ballot. Two highest vote getters advance to general election. If only two candidates qualify, no primary is held and winner is determined in general election. Candidate's party affiliation may appear on ballot as provided by law. Effective January 1, 2024.

FULL TEXT OF PROPOSED AMENDMENT: The Proposed Amendment would add subsection (c) to Art. VI, § 5 as follows:

ARTICLE VI, SECTION 5. Primary, general, and special elections.-

(c) All elections for the Florida legislature, governor and cabinet shall be held as follows:

(1) A single primary election shall be held for each office. All electors registered to vote for the office being filled shall be allowed to vote in the primary election for said office regardless of the voter's, or any candidate's, political party affiliation or lack of same.

(2) All candidates qualifying for election to the office shall be placed on the same ballot for the primary election regardless of any candidate's political party affiliation or lack of same.

(3) The two candidates receiving the highest number of votes cast in the primary election shall advance to the general election. For elections in which only two candidates qualify for the same office, no primary will be held and the winner will be determined in the general election.

(4) Nothing in this subsection shall prohibit a political party from nominating a candidate to run for office under this subsection. Nothing

in this subsection shall prohibit a party from endorsing or otherwise supporting a candidate as provided by law. A candidate's affiliation with a political party may appear on the ballot as provided by law.

(5) This amendment is self-executing and shall be effective January 1, 2024.

SUMMARY OF ARGUMENT

The All Voters Vote Amendment should be approved for submission to Florida voters because it satisfies both requirements for ballot placement. *First*, it satisfies Art. XI, § 3 because it embraces but one subject: conducting primary elections for Florida Legislature, Governor, and Cabinet (“state elective office”) regardless of the political party affiliation of voters or candidates. To achieve this singular purpose, the proposed amendment provides that all qualified registered voters can vote in such primaries regardless of party affiliation, that candidates qualifying for a particular office appear on the same ballot regardless of their party affiliation, and that the two candidates receiving the highest number of votes advance to the general election. Because it is possible that candidates from numerous political parties may appear on the same primary ballot, the proposed amendment provides that a candidate's party affiliation may appear on the ballot as provided by law. This allows the Legislature, if it so chooses, to provide that the ballot identify a candidate's party affiliation, nomination, or endorsement. Each of the proposed amendment's provisions are logically viewed as component parts of a single dominant plan or scheme.

Second, the proposal satisfies the requirements of § 101.161(1). The ballot title and summary fall within the numerical word limits. The ballot title and summary also clearly and unambiguously inform voters of its chief, and sole, purpose: conducting primary elections for state elective office without regard to the party affiliation of voters and candidates.

For these reasons, as more detailed below, the All Voters Vote Amendment should be approved for placement on the ballot.

ARGUMENT

I. Standard of Review.

“One of the most important rights enjoyed by the people of Florida under our constitution is the right to vote on constitutional amendments through the initiative process.” *Medical Marijuana I*, 132 So. 3d 786, 819 (Fla. 2014) (Canady, J., dissenting). Determining ballot placement of a citizen initiative “is the most sanctified area in which a court can exercise power.” *Right to Treatment & Rehab.*, 818 So. 2d 491, 494 (Fla. 2002) (quoting *Pope v. Gray*, 104 So. 2d 841, 842 (Fla. 1958)). As such, this Court has often noted that:

we abide by the principle that sovereignty resides in the people and the electors have a right to approve or reject a proposed amendment to the organic law of this State, limited only by those instances where there is an entire failure to comply with a plain and essential requirement.

Limits or Prevents Barriers, 177 So. 3d 235, 241-42 (2015) (internal quotations and citations omitted). Accordingly, this “Court has traditionally applied a deferential

standard of review to the validity of a citizen initiative petition and has been reluctant to interfere with the right of self-determination for all Florida citizens to formulate their own organic law.” *Rights of Electricity Consumers*, 188 So. 3d 822, 827 (Fla. 2016) (internal quotations and citations omitted). This deferential standard sets a “high threshold” for invalidating a ballot initiative. *Limits or Prevents Barriers*, 177 So. 3d at 246.

The “Court does not consider or address the merits or wisdom of the proposed amendment and must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people.” *Rights of Electricity Consumers*, 188 So. 3d at 827 (internal quotations and citations omitted). The Court has thus recognized its “duty to uphold a proposal unless it can be shown to be clearly and conclusively defective.” *Id.*; *see also, e.g., Limits or Prevents Barriers*, 177 So. 3d at 246 (holding same); *Medical Marijuana II*, 181 So. 3d 471, 477 (Fla. 2015) (holding same); *Reduce Class Size*, 816 So. 2d 580, 582 (Fla. 2002) (holding same).

The limited inquiry here is whether: (1) the proposed amendment satisfies the single-subject requirement of Art. XI, § 3; and (2) the ballot title and summary satisfy the clarity requirements of § 101.161(1). *Medical Marijuana I*, 132 So. 3d at 795. The All Voters Vote proposal satisfies both elements and should be approved for the ballot.

II. The All Voters Vote Amendment Satisfies the Single-Subject Requirement of Article XI, Section 3.

An amendment proposed by citizen initiative “shall embrace but one subject and matter directly connected therewith.” Art. XI, § 3. This single-subject requirement “is a rule of restraint designed to insulate Florida’s organic law from precipitous and cataclysmic change” to state government. *Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (citing *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984)). Allowing all qualified registered voters to vote in primary elections regardless of party affiliation is neither precipitous nor cataclysmic; rather, it is the hallmark of a true representative democracy.

A. The All Voters Vote Amendment Has A Logical and Natural Oneness of Purpose and Does Not Engage in Logrolling.

“In evaluating whether a proposed amendment violates the single-subject requirement, the Court must determine whether it has a logical and natural oneness of purpose.” *Rights of Electricity Consumers*, 188 So. 3d at 827 (quoting *Medical Marijuana II*, 181 So. 3d at 477). The single-subject requirement prevents an amendment from (i) engaging in logrolling; or (ii) substantially altering or performing the functions of multiple branches of government. *Id.*; *Water & Land Conservation*, 123 So. 2d 47, 50 (Fla. 2013). Applying “careful scrutiny” of the proposal, *Limits or Prevents Barriers*, 177 So. 3d at 242, it is clear that the All Voters Vote Amendment satisfies the single-subject requirement as demonstrated below.

The All Voters Vote Amendment embraces a single subject: conducting primary elections for state elective office regardless of party affiliation. To achieve this singular purpose, the proposed amendment provides that all qualified registered voters can vote in such primaries regardless of party affiliation, that candidates qualifying for a particular office appear on the same ballot regardless of their party affiliation, and that the two candidates receiving the highest number of votes advance to the general election. Because it is possible that candidates from numerous political parties may appear on the same primary ballot, the proposed amendment provides that a candidate's party affiliation, nomination, or endorsement may appear on the ballot as provided by law.³

Each of the proposed amendment's provisions are "logically viewed as component parts or aspects of a single dominant plan or scheme." *Limits or Prevents Barriers*, 177 So. 3d at 243. The proposed amendment (i) establishes that primaries for state elective office are to be held regardless of party affiliation, and (ii) provides the mechanism for how that will be effectuated; they are "two sides of the same coin." *Rights of Electricity Consumers*, 188 So. 3d at 828 (citation omitted). The mere enumeration of various elements to accomplish the plan do not render the

³ The proposed amendment leaves it to the Legislature to determine whether and how a candidate's party affiliation is to be reflected on the primary ballot. Because political parties remain free to nominate or endorse their own candidates for the primary (proposed subsec. (4)), the Legislature is also free to determine whether and how such nomination or endorsement will appear on the ballot.

proposal infirm. *Limits or Prevents Barriers*, 177 So. 3d at 244 (quoting *Medical Marijuana I*, 132 So. 3d at 796).

Here, the “various provisions are all directly connected to the amendment’s purpose—and its dominant plan or scheme [of conducting primary elections for state elective office regardless of party affiliation]—and, thus, the proposed amendment does not engage in impermissible logrolling.” *Limits or Prevents Barriers*, 177 So. 3d at 243. “The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed.” *Voting Restoration*, 215 So. 3d 1202, 1206 (Fla. 2017) (quoting *Rights of Electricity Consumers*, 188 So. 3d at 827); *see also Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984) (describing logrolling in the legislative context as prohibiting “the aggregation of dissimilar provisions in one law to attract the support of diverse groups to assure its passage.”). The proposed amendment does not combine disparate topics nor does it force voters to accept an undesirable provision in order to gain approval of a desirable one. *Rights of Electricity Consumers*, 188 So. 3d at 828-29.

The All Voters Vote Amendment does not “enfold[] disparate subjects within the cloak of broad generality.” *Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994) (citation omitted). Rather, it is far narrower in scope and simpler in application than many proposed amendments approved by this Court.

See, e.g., Rights of Electricity Consumers, 188 So. 3d at 825-27; *Medical Marijuana II*, 181 So. 3d at 473-76; *Limits or Prevents Barriers*, 177 So. 3d at 240-41; *Medical Marijuana I*, 132 So. 3d at 791-94; *Health Hazards of Using Tobacco*, 926 So. 2d 1186 (Fla 2006).

The All Voters Vote Amendment is readily distinguishable from those circumstances where this Court rejected proposed amendments for impermissible logrolling. *See, e.g., Nonpartisan Comm’n*, 926 So. 2d 1218 (Fla. 2006) (combining (i) creation of new redistricting commission; and (ii) changing the standards applicable to the districts created by the commission); *Fairness Initiative*, 880 So. 2d 630, 634 (Fla. 2004) (combining (i) Legislative review of existing sales tax exemptions; (ii) creation of new sales tax on services; and (iii) limitations on Legislature’s ability to create or continue sales tax exemptions and exceptions); *Save Our Everglades*, 636 So. 2d at 1341-42 (combining (i) establishment of a trust to restore the Everglades; and (ii) imposition of a fee on raw sugar to fund the trust). In contrast from these cases and others like them, the All Voters Vote Amendment has a logical and natural oneness of purpose and does not engage in logrolling.

B. The All Voters Vote Amendment Does Not Substantially Alter or Perform the Function of Multiple Branches of Government.

As this Court has often noted, “it [is] difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent.” *Limited Casinos*, 644 So. 2d 71, 74 (Fla. 1994). To satisfy the single-subject

requirement, however, a proposed amendment may not substantially alter or perform the functions of multiple branches of government. *See, e.g., Rights of Electricity Consumers*, 188 So. 3d at 827 (citation omitted). Here, the All Voters Vote Amendment requires that the primary elections for state elective office be conducted without regard to the political party affiliation of the electors and candidates. This will necessarily require that the county supervisors of elections use a different form of ballot; however, it will not alter the supervisors' functions—they will continue to conduct elections as they always have. To the extent that a change in ballot format could be said to be an alteration of the supervisors' functions, it is hardly substantial. While the All Voters Vote Amendment affects the conduct of primary elections for certain state offices, it does not alter or perform the functions of any such office—let alone substantially so.

The All Voters Vote Amendment has far less impact on government than other amendments approved by this Court. *See, e.g., Medical Marijuana II*, 181 So. 3d at 473-76; *Limits or Prevents Barriers*, 177 So. 3d at 240-41; *Medical Marijuana I*, 132 So. 3d at 791-94; *Health Hazards of Using Tobacco*, 926 So. 2d at 1186; *Limited Marine Net Fishing*, 620 So. 2d 997 (Fla. 1993).

From the above, it is clear that the All Voters Vote Amendment satisfies the single-subject requirement for ballot placement.

III. The Ballot Title and Summary Clearly Inform Voters of the Amendment’s Chief Purpose and Are Not Misleading, Thereby Satisfying Section 101.161(1).

Section 101.161(1) states that “a ballot summary of [a proposed] amendment ... shall be printed in clear and unambiguous language.” § 101.161(1). The purpose of § 101.161(1) is “to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot.” *Rights of Electricity Consumers*, 188 So. 3d at 831 (quotation omitted).⁴ Accordingly, this Court asks: (i) whether the ballot title and summary fairly inform the voter of the chief purpose of the amendment; and (ii) whether the language of the ballot title and summary misleads the public. *Id.* (citation omitted). “While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment.” *Id.* (quoting *Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 974 (Fla. 2009)).

The ballot title and summary of the All Voters Vote Amendment clearly and unambiguously inform voters of its chief, and sole, purpose: allowing all qualified registered voters to vote in primary elections for state elective office without regard

⁴ Section 101.161(1) also limits the ballot title to 15 words and the ballot summary to 75 words. The ballot title (12 words) and ballot summary (73 words) here satisfy the respective numerical limits.

to the party affiliation of voters and candidates. The following chart compares the plain language of the amendment text and ballot title and summary:

Proposed Amendment Text	Ballot Title / Summary
<p>(c) All elections for the Florida legislature, governor and cabinet shall be held as follows:</p> <p>(1) A single primary election shall be held for each office. All electors registered to vote for the office being filled shall be allowed to vote in the primary election for said office regardless of the voter's, or any candidate's, political party affiliation or lack of same.</p>	<p>All Voters Vote in Primary Elections for Florida Legislature, Governor, and Cabinet</p> <p>Allows all registered voters to vote in primaries for state legislature, governor, and cabinet regardless of political party affiliation.</p>
<p>(2) All candidates qualifying for election to the office shall be placed on the same ballot for the primary election regardless of any candidate's political party affiliation or lack of same.</p>	<p>All candidates for an office, including party nominated candidates, appear on the same primary ballot.</p>
<p>(3) The two candidates receiving the highest number of votes cast in the primary election shall advance to the general election. For elections in which only two candidates qualify for the same office, no primary will be held and the winner will be determined in the general election.</p>	<p>Two highest vote getters advance to general election. If only two candidates qualify, no primary is held and winner is determined in general election.</p>
<p>(4) Nothing in this subsection shall prohibit a political party from nominating a candidate to run for office under this subsection. Nothing in this subsection shall prohibit a party</p>	<p>All candidates for an office, including party nominated candidates, appear on the same primary ballot. <i>[from above]</i></p>

<p>from endorsing or otherwise supporting a candidate as provided by law. A candidate’s affiliation with a political party may appear on the ballot as provided by law.</p>	<p>Candidate’s party affiliation may appear on ballot as provided by law.</p>
<p>(5) This amendment is self-executing and shall be effective January 1, 2024.</p>	<p>Effective January 1, 2024.</p>

The ballot title and summary—in clear and unambiguous language—fully inform voters of the proposed amendment’s chief purpose, do not hide the ball, and are not misleading. When presented with the ballot title and summary in the voting booth, a voter knows exactly what they are being asked to approve and can thus cast an informed and intelligent ballot.

IV. The Financial Impact Statement Is Unclear, Ambiguous, and Misleading In Violation of § 100.371(13) and Should Be Remanded to the FIEC.

It is reasonable to assume that a proposal intended to allow millions of Floridians to participate in elections currently unavailable to them could require greater expenditure than reflected in current budgets—more participation can be expected to result in greater costs. What that additional cost might be can only be achieved by estimating increased voter participation under the proposed amendment,

something the various county election supervisors did in reaching wildly inconsistent conclusions.

That inconsistency notwithstanding, the Legislature, by general law, must make “provision for a statement to the public regarding the probable financial impact of” a citizen initiative. Art. XI, § 5(c). Thus,

the Financial Impact Estimating Conference [“FIEC”] shall complete an analysis and financial impact statement [“FIS”] to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments, estimated economic impact on the state and local economy, and the overall impact to the state budget resulting from the proposed initiative.

§ 100.371(13)(a).⁵ In addition to the FIS, the FIEC “shall draft an initiative financial information statement” which “should describe in greater detail than the [FIS] any projected increase or decrease in revenues or costs that the state or local governments would likely experience...” § 100.371(13)(e)3. “The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to

⁵ Section 100.371 was amended in 2019 to, among other things, require a statement as to the economic impact of the proposed amendment, increase the word limit from 75 to 150 words, and require that any increase in costs, decrease in revenues, or negative impact on the state or local economy appear on the ballot in bold font. § 3, Ch. 2019-64, Laws of Florida. Those changes are reflected in section 100.371(13).

develop the financial impacts, workpapers, and any other information deemed relevant by the [FIEC]. *Id.*⁶

The Court’s review of the FIS is narrow and only addresses whether the statement is clear, unambiguous, is no more than the statutory word limit, and is limited to the statutory topic matter. *Limits or Prevents Barriers*, 177 So. 3d at 246-47 (quotation omitted). “In addressing whether the [FIS] is clear and unambiguous, we review whether the statement of potential impact is misleading, vague, or confusing.” *Comprehensive Land Use Plans*, 14 So. 3d 224, 226 (Fla. 2006). A clear and unambiguous FIS is critical to ensuring that no part of the ballot is misleading and voters can cast an informed and intelligent ballot. *See, e.g., Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 161, 164 (Fla. 2009) (quoting *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (“[T]he voter should not be misled.... *What the law requires is that the ballot should be fair and advise the voter sufficiently to enable him to intelligently cast his ballot.*”) (alteration in

⁶ Here, the Financial Information Statement (dated August 23, 2019), the 500 word Financial Information Statement Summary (“Information Summary”), and the FIS were transmitted to the Court with the Attorney General’s Request for Advisory Opinion dated Sept. 5, 2019, in the consolidated case SC19-1505 [Filing #95399823]. While the FIS, once approved, will appear on the ballot, the Information Summary does not. Instead, the Information Summary is made publicly available at the main offices of the county supervisors of elections and at each polling place. § 100.371(13)(e)4. The complete financial information statement is made available on the Internet by the Secretary of State and the Office of Economic and Demographic Research. *Id.*, (13)(e)5.

original)). This is particularly so as the newly revised statute requires that any estimates of increased costs must appear on the ballot in **bold font**, giving it greater prominence. § 100.371(13)(d).

The FIS here is unclear, ambiguous, and misleading; it provides:

It is probable that the proposed amendment will result in additional local government costs to conduct elections in Florida. The Financial Impact Estimating Conference projects that the combined costs across counties will range from \$5.2 million to \$5.8 million for each of the first three election cycles occurring in even-numbered years after the amendment's effective date, with the costs for each of the intervening years dropping to less than \$450,000. With respect to state costs for oversight, the additional costs for administering elections are expected to be minimal. Further, there are no revenues linked to voting in Florida. Since there is no impact on state costs or revenues, there will be no impact on the state's budget. While the proposed amendment will result in an increase in local expenditures, this change is expected to be below the threshold that would produce a statewide economic impact.

FIS (emphasis added). The FIS is fatally flawed for several reasons and must be remanded to the FIEC for redrafting. § 100.371(c)2., and (e)1.

First, the statement should acknowledge that the cause of any increased cost would be a higher level of voter participation, allowing voters considering the amendment to judge for themselves the likelihood and desirability of that result.

Second, the first and last sentences of the FIS are diametrically opposed, creating an irreconcilable and misleading ambiguity: “**It is probable** that the proposed amendment will result in additional local government costs to conduct elections in Florida.... While the **proposed amendment will result** in an increase

in local expenditures....” “Probable” is defined as: “likely to be true or likely to happen.” Cambridge Dictionary.⁷ By contrast, “will result” is conclusive. Because the plain language of both statements stand in direct conflict, they render the FIS unclear and ambiguous, and misleading to voters.

Third, and equally confusing, ambiguous and misleading is the sentence “The Financial Impact Estimating Conference projects that **the combined costs across counties will range from \$5.2 million to \$5.8 million** for each of the first three election cycles occurring in even-numbered years after the amendment’s effective date, with the costs for each of the intervening years dropping to less than \$450,000.” This statement is confusing and ambiguous because, in context of the entire statement, it can reasonably be read to mean that the estimated costs will be incurred by all counties or just some counties. In fact, (i) only 15 counties indicated an expectation of any additional costs, (ii) the language fails to identify those counties, and (iii) the language fails to identify the anticipated increased costs with respect to those particular counties.⁸ Similarly, the FIS fails to identify whether and which

⁷ Available at: <https://dictionary.cambridge.org/us/dictionary/english/probable>, last accessed 9/30/2019; *see also* Merriam-Webster.com (“likely to be or become true or real”), available at: <https://www.merriam-webster.com/dictionary/probable>, last accessed 9/30/19.

⁸ FIEC staff conducted a survey of the county supervisors of elections in order to determine projected costs or savings at the local level. *Financial Information Statement*, p.4. Only 33 of the 67 county supervisors of elections responded to the FIEC survey. *Id.*, p. 5. The responses widely ranged as to projected costs and cost

counties indicated that they anticipated \$0 in additional costs to implement the proposed amendment, as well as those that indicated potential cost savings. Any increased costs will be borne, and cost savings realized, at the county level. For this reason, voters will most likely be concerned with—and will vote based upon—the impact or lack of impact upon their particular county of residence. Ambiguously stating that “the combined costs across counties will range from \$5.2 million to \$5.8 million” while failing to inform the voter as to the potential impact or lack of impact upon their own county is misleading.

Last, the FIS is misleading for an additional reason. The Financial Information Statement Summary (“Information Summary”) clearly states that some

savings. Of those responding, only 15 stated that they anticipated implementation costs to be a specific amount greater than \$0—one of which (Broward) was excluded from the analysis as an outlier that would distort the result. *Id.*, p. 5. Of the remaining respondents, 6 stated that anticipated implementation costs would be \$0, and 11 stated implementation costs were unknown. *Id.* The anticipated average cost increase was calculated over 6 fiscal years. The FIEC divided the counties into 5 groups, multiplied the average cost amount for each group by the number of counties in that group, and then totaled the averages for each of the groups. *Id.*, pp. 5-7. Thus, the FIEC inexplicably projected additional costs for counties that indicated that they either expected to incur \$0 (and/or potentially save money) or could not estimate such potential costs.

The Financial Information Statement does not contain the survey responses. Rather, summaries of the responses from 22 of the 33 respondents are provided—yet, none of those summaries provide any cost information. *Financial Information Statement*, pp. 9-11. The cost data is similarly not included in the EDR Notebook relied upon by the FIEC conferees when approving the statement at the formal conference. *See EDR Notebook* (8/23/19), available at: <http://edr.state.fl.us/Content/constitutional-amendments/2020Ballot/AllVotersVoteAdditionalInformation.cfm>.

county supervisors of elections “expected **no additional costs**” while others “identified the **potential for savings** from new efficiencies.” Although the FIEC could not quantify the amount of savings, it recognized that, “[t]o the extent that any savings materialize, **they would reduce or eliminate additional costs.**” *Information Summary* (emphasis added). The \$5.2 - \$5.8 million cost estimate in the FIS is written in a manner to imply a degree of precision that the Financial Information Statement and the Information Summary cannot, and do not, support. Providing such a misleading sense of precision may keep voters who currently vote in primaries from supporting the amendment. Yet, those same voters could find comfort and support the proposed amendment if they know whether potential cost savings may reduce or eliminate the additional costs—regardless of whether such potential savings were calculated by the FIEC. They will, however, be misled by the failure of the FIS to apprise them of same. *Compare Limits or Prevents Barriers*, 177 So. 3d at 247 (finding FIS “clearly and unambiguously states that there will be [undeterminable] decreased revenues for state and local governments and that the [undetermined] fees may offset a portion of any increased costs.”).

The more accurate and unambiguous portrayal of the facts in the FIS would be to state that there are likely projected additional costs and potential costs savings that cannot be determined across all counties. Regardless, because the FIS is unclear, confusing, ambiguous, and misleading, voters will be prevented from

casting an informed and intelligent ballot. *Comprehensive Land Use Plans*, 14 So. 3d at 226.

Accordingly, the FIS should be remanded to the FIEC for redrafting pursuant to § 100.371 (c)2. and subsection (e)1. *See, e.g., Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 161, 164 (Fla. 2009) (striking financial impact statement that was inaccurate and misleading).

CONCLUSION

For all of the foregoing reasons, the initiative should be approved for placement on the ballot so that Florida's voters can determine whether to let all voters vote in primaries for Florida Legislature, Governor, and Cabinet. Conversely, the FIS should be remanded to the FIEC for redrafting.

Respectfully submitted this 1st day of October, 2019.

s/ Glenn Burhans, Jr.

GLENN BURHANS, JR.
FLORIDA BAR NO. 605867
**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**
HIGHPOINT CENTER
106 EAST COLLEGE AVENUE - SUITE 700
TALLAHASSEE, FL 32301
TELEPHONE: (850) 329-4850
GBURHANS@STEARNSWEAVER.COM
CABBUHL@STEARNSWEAVER.COM
PTASSINARI@STEARNSWEAVER.COM

EUGENE E. STEARNS
FLORIDA BAR NO. 0149335
**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**
MUSEUM TOWER
150 WEST FLAGLER STREET - SUITE 2200
MIAMI, FLORIDA 33130
TELEPHONE: (305) 789-3200
ESTEARN@STEARNSWEAVER.COM
JAYBAR@STEARNSWEAVER.COM

CERTIFICATE OF SERVICE AND 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, and that a true copy of the foregoing was filed via the Florida e-filing Portal this 1st day of October, 2019 and served on the list below:

Ashley Moody
Attorney General of Florida
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
citizenservices@myfloridalegal.com

s/ Glenn Burhans, Jr.