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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ANSWER BRIEF OF THE SPONSOR ALL VOTERS VOTE, INC.

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SUMMARY OF ARGUMENT

All Voters Vote, Inc., submits this single Answer Brief in response to the Initial Briefs filed, respectively, by the opponents Attorney General Ashley Moody, the Republican Party of Florida ("RPOF"), and the Florida Democratic Party ("FDP") (collectively, "Opponents").

Much of the Opponents' three briefs are devoted to a political argument that the current system for electing State legislators and executive officers is preferable to one in which all voters choose from among all candidates, regardless of political party affiliation. If more than 40% of Florida's electors agree with that argument, the proposed amendment will fail. If more than 60% of Florida's electors support the simple concept that all voters should participate in a process to choose leaders from among all candidates, the proposed amendment will be adopted. Of course, the Florida Constitution provides that this Court's role is not to make that decision for the voters, but rather, to determine whether the proposed amendment covers a single subject matter and has a ballot title and summary that fairly informs voters of what the amendment accomplishes if adopted. What becomes clear from the arguments against the proposal is the necessity to express a political view because the legal arguments are so plainly wanting.

It is an understatement of substantial dimension to note that the Opponents fail to demonstrate that the proposal is "clearly and conclusively" defective.

The All Voters Vote amendment satisfies the single-subject requirement because it has a logical and natural oneness of purpose: participation by all registered voters and all qualified candidates in elections for the Florida legislature, Governor, and Cabinet regardless of political party affiliation. Notably, the Attorney General concedes as much by failing to raise a single-subject challenge to the proposal. And, while both major parties attempt to invent a more than a single subject matter argument, those contentions fail as the proposal does not force voters to choose between dissimilar or disparate provisions.

The ballot title and summary clearly inform voters of the proposed amendment's chief purpose: to conduct elections for the Florida Legislature, Governor, and Cabinet that will allow all voters to participate, regardless of the voters' and candidates' political affiliation.[1] Read in context in its entirety and ascribing the words their plain meaning, the ballot language clearly and unambiguously informs voters of this chief purpose.

To conjure up an argument that does not exist, the Opponents ignore the plain language of the proposal and, instead, use different words than those actually written, and contort the law governing ballot placement. For the reasons described

[1] The proposed amendment reserves for the legislature to determine whether and how party affiliation would be identified on the ballot and to the private political parties the manner of selecting their respective candidates nominated for each position.

below, as well as in the Sponsor's Initial Brief,[2] the All Voters Vote Amendment should be approved for submission to the voters, allowing the electors to decide whether the growing number of voters abandoning political parties will be able to meaningfully participate in the election of state officers and legislators.

ARGUMENT

At bottom, the Opponents' real objection to the All Voters Vote Amendment is as a matter of policy. They posit that the proposed amendment is a bad idea because doing away with the current closed party primary system "would strip party members of … protection by eliminating the state-operated nomination process entirely and vesting exclusive control of the nomination process in the parties themselves." *AG IB*, p. 13. As such, "parties would be free to adopt nomination processes that make it difficult or impossible for party members to participate…." *Id*., p. 14; *see also RPOF IB*, p. 20 (evoking a "behind closed-doors … smoke-filled room" selection process); *FDP IB*, p. 10 (describing "cataclysmic and precipitous change" wrought by switching from closed party primaries that select party candidates to the All Voters Vote system). This is, of course, a merits argument that is beyond the Court's review here. *Rights of Electricity Consumers*, 188 So. 3d 822,

[2] All Voters Vote, Inc. filed its Initial Brief in support of the proposal on October 1, 2019 [Filing #96581801]. Rather than repeat the arguments made there, All Voters Vote adopts and incorporates them by reference. This Answer Brief will address certain of the arguments raised in the Opponents' Initial Briefs. Initial Briefs are cited as "[*Party Name*] *IB*." Unless otherwise noted, emphasis is added in citations.

827 (Fla. 2016). And it is a poor one because it assumes that the political parties will mistreat their own members by somehow disenfranchising them in future candidate selection processes. That the political parties might act to the detriment of their own members does not render the proposal here infirm under this Court's ballot placement jurisprudence. Regardless, and as relevant to this Court's review, the ballot summary makes clear that "party nominated candidates" will appear on the All Voters Vote primary ballot. This is significant because it clearly advises voters that party nominated candidates can be chosen by the party prior to and separate from the All Voters Voter primary and, thus, not eliminate parties' and their members' ability to select their own candidates for office.

I. The Ballot Title and Summary Clearly Disclose the Proposed Amendment's Chief Purpose and Do Not Mislead Voters.

a. The Ballot Title and Summary Clearly Advise Voters that Elections for State Legislature, Governor and Cabinet Will Be Different Under the All Voters Vote Amendment.

The Opponents' primary complaint with the All Voters Vote proposal is that the ballot title and summary purportedly fail to disclose their mischaracterization of the proposed amendment's chief purpose: abolishing party primaries and, with them,

the political parties' or their members' ability to choose their own candidates.[3] *See, e.g.*, *RPOF IB*, p. 14; *FDP IB*, pp. 15, 22;[4] *AG IB*, p. 13-14.

Opponents ignore that the proposed amendment changes the primary process for the affected offices in that those primaries will no longer determine party candidates. In doing so, they engage in semantics. The ballot title and summary need not be drafted in a manner or using verbiage that the Opponents prefer (*e.g.*, use the phrase "abolishes party primaries."). Instead, the ballot language must "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). The ballot title and summary "need not explain every detail or ramification of the proposed

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[3] As an initial matter, the proposed amendment is limited to the designated offices (State Legislature, Governor, and Cabinet); it does not apply to other partisan elections such as those for federal office and constitutional county officers. For those unaffected offices, the closed party primary process remains unchanged. As to the elections for the affected offices, however, the ballot title and summary clearly disclose that they will be conducted differently.

[4] FDP concedes that the ballot summary discloses that certain primaries—as they are currently conducted—will be eliminated; but the party seems to take issue that that fact is not disclosed until the ballot summary as if it should have been stated first in the ballot title. *See FDP IB*, p. 22 ("Eliminating certain primaries—**revealed for the first time in the ballot summary**—is not germane to or properly connected with voting in primaries."). There is no such requirement and, indeed, the ballot title is limited to 15 words. The FDP's position is inconsistent with its own argument and at odds with the cases it cites. *Id.*, p. 21 ("[T]he ballot title and summary may not be read in isolation, but must be read together….") (*quoting Universal Pre-K Educ.*, 824 So. 2d 161, 166 (Fla. 2002)).

amendment." *Id*. (quoting *Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 974 (Fla. 2009)). Here, the ballot title and summary clearly advise voters that the process for electing members of the State Legislature, Governor, and Cabinet will be conducted differently than it has been in the past and explains precisely how that will occur:

> **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.

See also, All Voter's Vote IB, pp. 13-14 (chart comparing proposed amendment text and ballot language). A plain reading of that text reveals that elections for the affected offices will be conducted differently than the current system, and that text describes precisely how the new process will work.[5]

[5] FDP's comparison to Washington State initiative "I-872" is disingenuous. *See FDP IB*, p. 14. That was an initiative that enacted new and amended existing statutory provisions (18 sections in total). The provision cherry-picked by the FDP was part of an eight page initiative, and is but one of several sections that ushered in numerous statutory changes to the Washington State primary system. *See* https://www.sos.wa.gov//elections/initiatives/text/i872.pdf. That document cited by the FDP clearly was not designed to, nor could comport with Florida's ballot requirements for constitutional amendments proposed by citizen initiative. Moreover, it is not clear from what the FDP cited whether that text appeared on the

b. The Proposal Does Not Mislead Voters Into Believing That Non-party Affiliated Voters Can Participate in Political Party Nominating Contests.

The Attorney General and RPOF make similar claims to the effect that, under the proposal, voters will be misled into believing that the political party candidate selection process will be opened to all voters regardless of political party affiliation. *See, e.g.*, *AG IB*, p. 9 ("… the ballot language misleads voters by suggesting that, if the amendment is approved, **it will guarantee them participation in the process which political parties select their candidates**, regardless of their political party affiliation."); *RPOF IB*, p. 15 ("…even a well-informed voter would misunderstand the proposal to be **opening the existing party primary system** to all registered voters, regardless of party affiliation.").[6] This argument is flawed. The ballot language describes how the elections will be conducted going forward and specifies that "party nominated candidates" will appear on the ballot and that the legislature can establish a methodology for identifying the party affiliation status of candidates. This provision discloses to voters that party nominated candidates are to be chosen

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ballot because, in Washington, the Attorney General prepares a ballot title of no more than 10, and a ballot summary of no more than 30, words. Office of the Wash. Sec'y of State, *Initiatives & Referenda in Washington State*, p. 6, available at: https://www.sos.wa.gov/_assets/elections/initiatives/initiative%20and%20referenda%20handbook%202017%20.pdf (last accessed 10/16/19).

[6] *See also RPOF IB*, at p. 16 (stating that the "ballot title and summary falsely suggest to voters that the Proposed Amendment would **allow all voters to vote in Florida's current party primary** system.").

by the respective parties prior to and separate from the All Voters Vote primary elections. A party conducted nominating process must occur prior to the All Voters Vote primary in order for the party nominated candidates to appear on that primary ballot. There is nothing in the ballot language that suggests that non-party members can participate in those pre-primary closed party candidate selection processes.

The FDP makes a similar argument, concerning the phrase "including party nominated candidates," to the effect that voters will be misled into "conclud[ing] that political parties will somehow nominate candidates for primary elections." *FDP IB*, p. 23. Signaling the possibility that parties may nominate candidates for the primary is precisely the point of that provision in the summary, and it does so out of recognition that nothing in the proposed amendment "shall prohibit a political party from nominating a candidate to run for office under" the amendment. *Proposed Am.*, subsec. (c)(4). Regardless, the FDP claims that this is misleading because the party "itself does not nominate a candidate for primary election… Instead, since at least 1913, the party has nominated general election candidates through the closed primary system. Thus, the ballot title suggests something that never happened." *Id*. The FDP loses the forest for the trees.

The ballot title and summary clearly describe how the new elections will work under the All Voters Vote Amendment; a key feature of which is to preserve the parties' First Amendment associational rights to choose their own candidates. The

referenced provision relating to party nominated candidates appearing on the ballot merely makes clear to voters that the parties retain the ability to do so. Whether the FDP ultimately chooses to implement a pre-primary process under the new system to select their own candidates for the affected offices is entirely the party's choice. That the party has never done so before does not, however, render the ballot title and summary misleading.

c. Use of the Terms "Primary," "Primary Election," and "Party Nominated Candidates" Is Not Confusing.

The Attorney General and RPOF contend that voters will be misled by the proposal's use of the terms "primary," "primary election," and "party nominated candidates." *See AG IB*, p. 11-12; *RPOF IB*, p. 18. Both Opponents labor under the misconception that "primary" or "primary election" only mean the selection of party nominees. This is not so. For example, non-partisan county commission or municipal races have primary elections that are not used to select a party nominee but, rather, select those candidates who will face off in the general election.[7] *See, e.g.*, § 100.081, Fla. Stat. ("The **primary election** shall provide for the nomination of county commissioners by the qualified electors of such county at the time and place set for voter on other county officers."); Leon County Code § 2.2 ("Elections

[7] Some of those non-partisan races can be determined in the primary if a candidate wins a majority of the votes cast. In other contests, or in those cases where no majority is obtained, the two candidates receiving the highest vote totals will advance to the general election.

for all seven (7) members of the County Commission shall be non-partisan."); *id*. § 3.2 ("Non-Partisan Election Procedures. If three or more candidates … qualify for such office, the names of those candidates shall be placed on a non-partisan ballot at the first **primary election**…."); City of Tallahassee Code § 7-6 ("If two or more persons qualify as candidates … for any of the places to be filled, then a municipal **primary election** shall be held…."). Those primaries are held on the same day as the other state's other primary elections. *See, e.g.*, City of Tallahassee Code § 7-4 ("The municipal primary election … shall be held on the same date as the state's primary election.").[8] Thus, Florida law recognizes that the terms "primary" and "primary election" are not reserved exclusively to denote the selection of political party nominees. More importantly, and contrary to the Opponents' claims, Florida voters commonly understand and regularly participate in primary elections that do not determine party nominees.[9] *See Protect People from Health Hazards of Second-Hand Smoke*, 814 So. 2d 415, 419 (Fla. 2002) (explaining that this Court's precedent

[8] The Florida Election Code applies to those municipal primaries. § 100.3605, Fla. Stat.; *see also* City of Tallahassee Code § 7-1 ("All municipal primary elections … shall be held and conducted according to the laws of the state ….").

9 Thus, the FDP's fear that voters will be confused by this "fourth type of election process" creating a "confusing mixture of election methods[,]" FDP IB, pp. 15-16, is unfounded as voters are already understand and are experienced with those similar primaries.

"presumes that the average voter has a certain amount of common understanding and knowledge" based on their practical experience).

The arguments posed by the Attorney General and RPOF fail for a more fundamental reason: the plain text of the ballot language makes clear that the primary elections conducted under the All Voters Vote Amendment will not be used to select party nominees. This is seen in the first two sentences of the ballot summary. First, it states that the amendment "allows all registered voters to vote in primaries for the affected offices, regardless of political party affiliation." Second, it states that "[a]ll candidates for an office, including party nominated candidates, appear on the same ballot." Reading these sentences together, as we must, it is clear that these primaries are not being used to select party candidates nor to inject non-party members into the party candidate selection process. This is so because all voters can vote, all candidates for the affected office appear on the same ballot, and that same ballot includes "party nominated candidates." That last term, "party nominated candidates," is significant because it tells voters that there is a separate process by which political parties can nominate their own candidates for the All Voters Vote primary. That party nomination process must necessarily occur separate from and prior to the All Voters Voter primary in order for such party nominated candidates to appear on the primary ballot with the other candidates.

The Attorney General's and RPOF's claimed confusion over the term "party nominated candidates" is of no moment. That phrase is not statutorily defined nor is it a legal term of art. Rather it merely means what the plain language indicates: candidates that are nominated by a party. It means no more and no less. The term is not qualified as to how that nomination is to be effected because the proposed amendment text does not attempt to tell parties how they are to select their own candidates.[10]

d. The RPOF's Remaining Arguments Regarding the Ballot Title and Summary Are of No Avail.

The RPOF also advances a handful of arguments that are unsupported by or contort the law, and either ignore the ballot language's plain text or otherwise selectively parse the language to suit their contentions. Those arguments, appearing at pages 21-30 of the party's submission, are briefly addressed below.

The RPOF makes the novel assertion that the ballot title is misleading because it is "not a 'caption … by which the measure is commonly referred to or spoken of ' as required by §101.161(1), Fla. Stat." Tellingly, the party fails to identify a single case to support its claim—because no such case exists. The RPOF grasps at parsing the statute and impermissibly divorces that ballot title and summary in violation of

[10] Any suggestion that the ballot summary should contain definitions of terms that can readily be discerned by the plain text is not well-founded for the additional reason that the summary is limited to 75 words.

the entire body of this Court's jurisprudence. The title serves to inform as to how the measure is presented to voters by the sponsor through a public campaign and the ballot language in Florida. It matters not what a particular primary system might be called in other states. Here, the measure before this Court is commonly referred to as "All Voters Vote" as has been regularly reflected in public media accounts. Regardless, the RPOF's contortion violates this Court's consistent admonition that "the ballot title and summary may not be read in isolation, but must be read together…." *Universal Pre-K Educ.*, 824 So. 2d 161, 166 (Fla. 2002)); *see also Dep't of State v. Fla. Greyhound Ass'n, Inc.*, 253 So. 3d 513, 520 (Fla. 2018) ("We read the ballot title and summary as a single text to determine what a reasonable voter would understand it to say.") (*citing Reduce Class Size*, 816 So. 2d 580, 585 (Fla. 2002)). As discussed above, the plain text of the ballot title and summary clearly advise voters of the proposed amendment's chief purpose as required by this Court's review under §101.161(1).

Next, the RPOF claims that the ballot title and summary "fail to disclose significant impacts on rights of voters, candidates, and political parties." *RPOF IB*, p. 24. First, the party posits the false notion that the proposed amendment somehow burdens the right to associate with a particular political party. Nothing in the amendment prohibits free association. People remain free to join political parties and those parties remain free to nominate, endorse, or otherwise support candidates.

Proposed Am., subsec. (c)(4). Indeed, for federal and local constitutional offices, the existing system for electing office holders, including partisan primaries that exclude nearly 30% of Florida's electors, will continue. In any event, as the U.S. Supreme Court has consistently held, such rights are not absolute and can be regulated by the state. *See, e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) ("It does not follow, however, that the right to vote in any manner and the right to associate for political purposes through the ballot are absolute.").[11] As relevant here, and described above, a RPOF nominated candidate for one of the affected offices must compete in the All Voters Vote primary and, if she is one of the top two vote getters, will advance to the general election. The ballot title and summary clearly inform voters as to how such elections for State Legislature, Governor, and Cabinet will be regulated should the All Voters Vote Amendment be adopted.

The RPOF incorrectly claims that the "Proposed Amendment also fails to disclose that a voter will have no way of knowing that a candidate has been party nominated or endorsed—information the voter has today on the face of the ballot." *RPOF IB*, p. 27. That argument assumes that this is how the legislature would want ballot disclosure to be as the proposed amendment does not change the ability to

[11] In *Burdick*, the U.S. Supreme Court upheld Hawaii's prohibition on write-in candidates, noting that the "mere fact that a State's system creates barriers ... tending to limit the field of candidates from which voters might choose ... does not itself compel close scrutiny." *Burdick*, 504 U.S. at 433 (internal quotation omitted).

appropriately and accurately advise voters of such information. The proposed amendment's plain text provides that a "candidate's affiliation with a political party may appear on the ballot as provided by law." *Proposed Am.*, subsec. (c)(4). The word "affiliation" means "a connection with a political party."[12] The operative phrase— a "candidate's affiliation with a political party may appear on the ballot as provided by law"—is purposefully and appropriately broad enough to encompass both a party's nomination and endorsement. This is bolstered by its placement immediately following the text providing that nothing in the amendment shall prohibit a political party from nominating a candidate to run for office under this subsection nor prohibit a political party from otherwise endorsing or supporting a candidate.[13] Thus, the RPOF's premise does not hold up. More importantly, in the end, the ballot summary clearly conveys that provision of the proposed amendment

[12] Cambridge Dictionary, available at: https://dictionary.cambridge.org/us/dictionary/english/affiliation.

[13] The RPOF equates party affiliation with party nomination and party endorsement when it argues: "Under the Proposed Amendment, any candidate can hijack a party's name without being endorsed or nominated by the members of that party ('A candidate's affiliation with a political party may appear on the ballot **as provided by law**.')." *RPOF IB*, p. 26. This fear is unreasonable and unfounded because, as the party notes, a candidate's nomination or endorsement by a party will only appear on the ballot "**as provided by law**." Thus, it is for the Legislature to determine how such designations can be made, by whom, and under what circumstances. As the legislative and executive branches of government are controlled by members of the major parties, it strains credulity that those officials would enact a scheme that would permit such "hijacking" of their parties' names.

to voters. *See* Ballot Summary ("Candidate's party affiliation may appear on ballot as provided by law."). Condensing the concepts of party nomination and endorsement into "party affiliation" is reasonable and necessary given the ballot summary's 75 word limit.

Last, the RPOF claims: "Without notice to the voter, the Proposed Amendment also diminishes the rights of NPA, minor party, and write-in candidates to appear on the general election ballot by throwing them into the 'jungle primary' and limiting the general election to only the top two candidates." *RPOF IB*, p. 27. This argument is make-weight as it is the exact opposite of what the proposed amendment does. All candidates will be on the ballot to be considered by all voters, regardless of party affiliation. A NPA candidate will be on a primary ballot that counts and, if preferred by enough voters, will advance to the general election. The ballot summary is abundantly clear: "all candidates for an office … appear on the same primary ballot" and only the "[t]wo highest vote getters advance to the general election." There can be no misunderstanding that only the top two highest vote getters will advance to the general election, regardless of whether they are a major party, minor party, NPA, or write-in candidate.

Deflecting from this clear disclosure, the party casts the issue as one of ballot access that disadvantages NPA, minor party, or write-in candidates. However, there is no constitutionally guaranteed right of any party or candidate to automatically

appear on the general election ballot. *Burdick*, 504 U.S. at 433; *see also Wash. State Republican Party v. Wash. State Grange*, 676 F.3d 784 (Wash. 9th Cir. 2012) (finding that a top two primary system did not impose a severe burden on minor party's fundamental right of access to the ballot because the system gave major- and minor-party candidates equal access to the primary and general election ballots). Indeed, "[t]he First Amendment does not give political parties a right to have their nominees designated as such on the ballot." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 453, n.7 (2008) (citations omitted). Ultimately, the Opponents' contentions are irrelevant because the ballot summary makes clear that only the top two vote getters in the primary will advance to the general election—regardless of whether they are major, minor, NPA, or write-in candidates.

e. The FDP's Remaining Arguments Regarding the Ballot Title and Summary Are of No Avail.

The FDP claims that the ballot summary contains "an irreconcilable contradiction that will mislead and confuse voters" to wit: the first sentence states "Allows all registered voters to vote in primaries…" while "three sentences later" it states that, if only two candidates qualify, "no primary is held and winner is determined in general election." *FDP IB*, p. 25. The FDP then concludes: "So, all registered voters are not actually allowed to vote in primaries for state legislature, governor, and cabinet because, depending on the number of candidates who qualify, there may not even be a primary for one of those offices." *FDP IB*, p. 25. Spinning

the cited provisions as misleading and irreconcilably contradictory defies logic. The provision that no primary will be held where only two candidates qualify for a particular race merely describes the process *when only two candidates qualify*. Put another way, and taken together, the reasonable and correct interpretation of those provisions is that all voters will vote in those primaries that are held, and no primary will be held in the event only two candidates qualify for an affected office. This, of course, is clearly disclosed in the summary.

The FDP similarly claims that the "no primary held" sentence conflicts with Article VI, Section 5(b). *FDP IB*, p. 25. It does not. The proposed amendment specifically and exclusively governs all elections for the Florida legislature, governor, and cabinet, and it affects no other offices. More importantly, the summary clearly describes how those affected elections will be conducted.[14]

[14] The FDP's position makes less sense when one considers that Article VI, Section 5(b) and proposed Section 5(c) would have similar effects on primaries for different elective offices. Under Section 5(b), closed party primaries are opened to all voters, regardless of party affiliation, if the only qualified primary candidates are in the same party and the winner will face no opposition in the general election. Under the proposed Section 5(c), all voters can voter in primaries for the affected offices, regardless of party affiliation. A key difference, of course, is that write-in candidates cannot be used to close out primaries under proposed Section 5(c) as they do under Section (5)(b)'s "write-in loophole." *See, e.g.*, *Brinkmann v. Francois*, 184 So. 3d 504, 506 (Fla. 2016) (holding that a non-district resident write-in candidate closed the primary under Section 5(b)); *Matthews v. Steinberg*, 153 So. 3d 295, 296 (Fla. 1st DCA 2014), *aff'd*, SC14-2202, 2016 WL 3419207 (Fla. June 22, 2016) (same).

The FDP also posits three purported ambiguities that prohibit ballot placement. First, the party argues that non-party affiliated voters are excluded from the All Voters Vote primary because the phrase "regardless of party affiliation" is limited to those voters actually affiliated with a political party. In support, FDP claims that "a partisan could vote for the amendment, reasonably concluding that the amendment opened certain primaries only to fellow partisans, regardless of party affiliation; and unaffiliated voters could oppose the amendment, reasonably thinking that it continued to exclude them from political primaries." *FDP IB*, pp. 27-28. This is both nonsensical and contrary to the ballot summary's plain text, which makes clear that all registered voters can vote in the affected primaries, all candidates for the affected office appear on the same ballot, and that same ballot includes "party nominated candidates." Again, that last term, "party nominated candidates," is significant because it tells voters that there is a separate pre-primary process by which political parties can nominate their own candidates for the All Voters Vote primary. There is nothing in the text to suggest that non-party affiliated voters are precluded from that group of "all voters" who can participate in the new primary regardless of party affiliation, nor is there anything to suggest that partisans can cross

party lines to participate in another party's pre-primary candidate selection process.[15]

Next, the FDP argues that "[t]he first sentence of the ballot title summary implies that the proposed initiative will result in all voters voting in each and every state legislative election, not just their local district." *FDP IB*, p. 28. Thus, the party argues that "a reasonable voter could conclude the proposed amendment opens legislative elections to all voters statewide." *Id*. That a major political party would proffer such an argument is astounding. The provision pertains to "all registered voters." A registered voter—as a matter of Florida law—"is not permitted to vote in any election precinct or district other than the one in which the person has his or her legal residence and in which the person is registered." § 101.045, Fla. Stat. Beyond this clear legal prohibition, common voter experience—and common sense—tell us that that registered voters can only vote in, and receive ballots for, their local races.

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[15] The FDP attempts to read the phrase "regardless of party affiliation" too narrowly and in isolation. However, and as the party concedes, "a fair understanding of the first sentence of the ballot summary is that the proposed amendment allows registered voters to vote in primaries for [the affected offices] **despite or whatever any political affiliation**." *FDP IB*, p. 26. This necessarily includes a lack of party affiliation, particularly when read—not in isolation—but in context of the entirety of the ballot title and full summary. *Dep't of State v. Fla. Greyhound Ass'n, Inc.*, and *Universal Pre-K Educ.*, above. Further, the ballot summary must be judged upon its face, and FDP cannot use the proposed amendment's text (which is not provided to voters in the ballot box) to attempt to create an ambiguity in the ballot summary.

Last, the FDP argues that reference in the summary's second sentence to "[a]ll candidates for an office" is misleading because a "reasonable voter could be confused as to whether offices in addition to the three listed are affected by the amendment." *FDP IB*, p. 28. This again strains credulity and impermissibly plucks sentence fragments in isolation for the purpose of conjuring voter confusion. The ballot title and first sentence of the ballot summary both specify that the affected offices are "state legislature, governor, and cabinet." The challenged second sentence immediately follows, and clearly relates to, the title and first sentence. There is no need, particularly in a summary limited to 75 words, to repeat those affected offices.

Moreover, reference to candidates for "an office" is a deliberate choice to avoid the potential confusion of the FDP's preferred reference to "candidates for 'those offices.'" *Id*. The challenged sentence pertains to the candidates' placement on the ballot ("All candidates for an office ... appear on the same primary ballot."). Had the sponsor used "those offices" instead of "an office" voters might be confused to think that all candidates for all of the affected offices would appear on one jumbled primary ballot. Regardless, the ballot summary need not be the best or preferred expression the proposed amendment's provisions, rather, it must clearly state the proposal's chief purpose—as it does here. The FDP's repeated parsing of isolated snippets of the summary in order to conjure voter confusion should be rejected.

II. The Ballot Title and Summary Satisfy the Single-Subject Requirement.

The All Voters Vote Amendment embraces a single subject: conducting primary elections for the specified state elective office regardless of party affiliation. To achieve this singular purpose, the proposed amendment provides that all 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, including nomination or endorsement, may appear on the ballot as provided by law.[16]

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 235, 243 (Fla. 2015). 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

[16] 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.

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 proposal infirm. *Limits or Prevents Barriers*, 177 So. 3d at 244 (*quoting Medical Marijuana I*, 132 So. 3d 786, 796 (Fla. 2014)).

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 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.

Although the RPOF and FDP recite the blackletter law on logrolling, neither party points to a single case on point that would support a finding of logrolling here. That is because the All Voters Vote Amendment does not engage in logrolling and 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).

a. The RPOF's Single-Subject Claims Fail.

The RPOF claims that the proposed amendment lacks a logical and natural oneness of purpose because it makes "three distinct changes" to the elections for the affected offices:

> 1) it abolishes party primary elections in favor of a single primary for all candidates for those offices; 2) it opens up the primary election for those offices to all registered voters regardless of party affiliation; and 3) it provides that only two candidates for those offices may advance to the general election.

RPOF IB, p. 32. This argument fails because the first and second points are essentially the same thing—the proposal changes the nature of the primaries by allowing all voters to vote, regardless of party affiliation; that necessarily requires combining all candidates for the affected office on the same primary ballot. Similarly, the purpose of the primary is to select, or winnow down, primary candidates for the general election. The top two requirement is merely a requisite and natural and logical consequence of the primary. Otherwise, if all primary candidates advanced to the general election, the primary would be meaningless.

The RPOF posits three scenarios that, it claims, constitute impermissible logrolling. The central failing of each is that they do not present disparate or unrelated issues that force voters to accept an unfavorable provision to gain a favored one. *Rights of Electricity Consumers*, 188 So. 3d at 828-29; *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 first scenario, wherein the hypothetical voter "may favor a single nonpartisan primary for the governor or cabinet officers, but not for the members of the legislature" misstates the amendment as it does not create a "nonpartisan" primary. Regardless, the offices are clearly *related* and not disparate as they are all state elective offices. *Limits or Prevents Barriers*, 177 So. 3d at 243 (holding 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**."). Moreover, this Court rejected a similar challenge in *Limited Political Terms*, 592 So. 2d 225 (Fla. 1991). There, the proposed amendment provided term limits for state and federal elective offices, *e.g.*, Florida Legislature, Florida Governor, Florida Cabinet, and United States

Representative and Senator. *Id*., 592 So. 2d at 226. Approving the measure for the ballot, the Court held:

> We find that the proposed amendment meets the single-subject requirement. The sole subject of the proposed amendment is limiting the number of consecutive terms that certain elected officials may serve. Although the proposed amendment affects officeholders in three different branches of government, that fact alone is not sufficient to invalidate the proposed amendment.

Id., 592 So. 2d at 227. Here, too, the proposed amendment has a sole subject that does not logroll: conducting primary elections for state elective office regardless of political party affiliation.[17]

The RPOF next claims that "[a]nother voter may generally prefer the concept of allowing all registered voters to vote in primaries regardless of political affiliation while opposing the elimination of the existing party primary system." *RPOF IB*, p.

[17] Justice Kogan expressed concern with applying a "vague and malleable" standard of "oneness." 592 So. 2d at 231-32 (Kogan, J., concurring in part, dissenting in part). He opined that voters should not be forced to accept an all-or-nothing choice with respect to imposing term limits upon public officers at many different levels of government—distinguishing between state and federal offices, in particular. *Id*. ("Those voters who might desire, for example, to limit the terms of state legislators but not members of Congress have no meaningful way to make this choice, even though there are many valid reasons for taking such a position."). Such concerns have no purchase here, however, because the All Voters Vote Amendment requires no application of a "vague and malleable" standard—it has a clearly discernable and discrete single-subject: conducting primaries for state elective office without regard to party affiliation. Moreover, the proposed amendment here does not apply to federal primary elections nor force an all-or-nothing choice upon voters that will impact multiple levels of government. Rather, it determines how elections for discrete state elective offices will be conducted.

33. This fails for two reasons: first, one cannot have a primary that allows all registered voters to vote for the affected offices without changing the existing closed party primary system for those offices; the two cannot co-exist. Further, to the extent the party means to suggest the hypothetical voter would not want the parties to lose the ability to select their own candidates for the affected offices, the proposed amendment expressly provides for preserving same (as is disclosed in the summary, discussed above).

Last, the RPOF suggests that "another voter may prefer opening up primaries to all registered voters while opposing having only two candidates in the general election ballot, which dramatically reduces the likelihood of a third-party or NPA candidate appearing on the general election ballot." *RPOF IB*, p. 33. Again, it is not merely enough to speculate that a voter might prefer one aspect of a proposal but dislike another. The provisions must be disparate, forcing the aggregation of dissimilar provisions upon the voters. *Rights of Consumers*, *Firestone*, above. To the contrary, and as detailed above, these provisions—opening primaries to all registered voters regardless of party affiliation and advancing the top two vote getters to the general election—are directly connected to the proposed amendment's purpose, its dominant plan or scheme. "[T]hus, the proposed amendment does not engage in impermissible logrolling." *Limits or Prevents Barriers*, 177 So. 3d at 243.

b. The FDP's Logrolling Claim Fails.

The FDP claims that the proposed amendment engages in logrolling because the "creation of nonpartisan blanket primaries is not logically related to the elimination of primary elections in other circumstances." *FDP IB*, p. 17. As an initial matter, this makes no sense as the All Voters Vote proposal applies only to the affected races and does not eliminate primaries "in other circumstances." Despite, this, the party claims that the "reasonable voter, therefore, faces a quandary: how to vote to keep primary elections that decide the ultimate winner because all the candidates are from the same party with no general election opposition (as provided by existing Section 5(b)), while simultaneously opening primaries to 'all voters.'" *Id*., p. 19.[18] There is no such quandary and the proposed amendment does not force an all-or-nothing choice between disparate subjects. Put another way, if a voter wishes to allow all voters to vote, it would not reasonably matter whether such elections are decided in the primary or the general election.[19]

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[18] The FDP suggests that the voter cannot make this choice because the initiative does not make "singular changes" in the functions of government. *FDP IB*, p. 19. Notwithstanding that this seems to conflate logrolling with the prohibition on altering or performing the functions of multiple branches of government, FDP fails to identify any such multiple functions that are being altered or performed under the new initiative.

[19] The FDP's argument rests on a slender reed because open primaries under Section 5(b) are virtually non-existent due to the abuse of the write-in loophole, which enables write-in candidates, even those that do not live in the district, to close the primaries. *See* Note 14 and cases cited. This write-in loophole has long been criticized as a "scam," "trickery," "rigged," and in need of reform. *See, e.g.*, Gomes, T., *State Attorney Calls Florida's Write-In Loophole a Scam*, Public News Service,

CONCLUSION

For all of the foregoing reasons, the initiative should be approved for placement on the ballot.

Respectfully submitted this 16th day of October, 2019.

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01/15/18 (available at: https://www.publicnewsservice.org/2018-01-15/civic-engagement/state-attorney-calls-floridas-write-in-loophole-a-scam/a61026-1)l; Editorial Board, *Write-in Loophole Creates Election Trickery Once Again*, Sun-Sentinel, 07/02/18 (available at: http://www.sun-sentinel.com/opinion/fl-op-editorialwrite-in-candidate-20180702-story.html); Maxwell, S., *Rigged Write-In Elections Show Need for Open Primaries in Florida Elections*, Orlando Sentinel, 7/24/18(available at: http://www.orlandosentinel.com/opinion/os-florida-open-primaries-write-in-scott-maxwell-20180723-story.html); Owens, P., *Write-in Loophole Reform: Don't Let Tallahassee Have the Last Word*, Orlando Sentinel, 04/26/17 (available at: http://www.orlandosentinel.com/opinion/os-ed-write-in-loophole-reform-20170424-story.html).

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 16th day of October, 2019 and served on the list below:

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