IN THE SUPREME COURT OF FLORIDA

CASE NO: SC20-1480

GLENTON GILZEAN,

Petitioner,

v.

LAUREL M. LEE, in her official capacity as Secretary of State, State of Florida, and ELECTIONS CANVASSING COMMISSION OF THE STATE OF FLORIDA,

Respondents.

AMICUS CURIAE BRIEF OF ALL VOTERS VOTE, INC. IN OPPOSITION TO THE EMERGENCY PETITION

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IDENTITY AND INTEREST OF AMICUS CURIAE

All Voters Vote, Inc. is a registered Florida political committee and sponsor of Amendment 3 ("All Voters Vote in Primary Elections for Florida Legislature, Governor, and Cabinet") on the 2020 general election 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 (roughly 26%) of Florida's approximately 14.4 million registered voters are registered with no party affiliation ("NPA").[1] Those 3.7 million voters are barred – as a matter of law – from participating in Florida's closed party primaries which are conducted at public expense for the benefit of private political parties with plurality winners guaranteed ballot access in the general election. NPA voters, who are legally qualified and duly registered to vote, pay taxes that fund the process that excludes them. Confronted with the inherent problem with this arrangement, the two major political parties answer it with the suggestion that if NPA voters want to

[1] *See* Florida Divisions of Elections, 2020 General Election, County Voter Registration By Party By Race, available at https://dos.myflorida.com/media/703596/3-by-party-by-county-by-race.pdf (last visited Oct. 20, 2020) (showing over 3.7 million registered NPA voters). And when voters who are registered with a third party are included, *more than 27%* of the electorate are effectively excluded from the process. *See id.* (showing an additional over 200,000 third-party registered voters).

participate in meaningful elections, they should associate themselves with one party or the other – essentially compelling association for those seeking the right of meaningful participation in the democratic process.

Since 1990, registrations of NPAs have increased from 7% to 26% of Florida's electorate, with a corresponding decrease in major party registrations.[2] The increased exclusion of voters from closed party primaries 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, membership in those parties continues to shrink relative to the registered voter population, as does the share of the electorate that determines which candidates will appear on the general election ballot.[3] 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

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[2] *See* Florida Division of Elections, Voter Registration By Party Affiliation Archive, available at https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-reportsxlsx/voter-registration-by-party-affiliation/by-party-affiliation-archive (last visited Oct. 20, 2020) (showing historical party affiliation figures through 2016); Florida Division of Elections, 2020 General Election, County Voter Registration By Party By Race, available at https://dos.myflorida.com/media/703596/3-by-party-by-county-by-race.pdf (last visited Oct. 20, 2020) (showing 2020 party affiliation figures).

[3] Many members of the two major parties are effectively shut out of the process as well. That is so because, due to the way districts are drawn, major party members residing in districts where their party is in the minority have no say in the outcome because the result is dictated by the majority party in that district.

elective office – regardless of party affiliation. The parties will be free to conduct their own process to nominate candidates for election, and the legislature would determine how and whether such nominations would be reflected on the ballot.

Because of its demonstrated interest in ensuring all qualified registered voters can vote in primary elections, All Voters Vote sponsored the instant initiative and files this Amicus Curiae Brief in opposition to the Petition.

SUMMARY OF THE ARGUMENT

Voters, not courts, should decide elections. As the Court reads this, millions of Floridians will have already cast their ballots with mere days remaining until voting ends on Election Day. Petitioner asks this Court to wrest the decision on Amendment 3 from the electorate and, instead, supplant the Court's will for that of millions of voters. The Petition invites the most suspect form of judicial activism: stopping votes from being counted while ballots are still being cast. The Petition, backed by the same two political parties who previously tried, and failed, to keep Amendment 3 off the ballot,[4] is a thinly cloaked political stunt; worse, it is an abuse of the extraordinary mandamus writ—which this Court reserves for only "truly extraordinary cases."

[4] *See* The Florida Channel, 10/13/20 Press Conference on Florida's Proposed Constitutional Amendments, available at https://thefloridachannel.org/videos/10-13-20-press-conference-on-amendment-3/ (last visited Oct. 20, 2020).

Petitioner's eleventh hour challenge relies upon two so-called "reports," issued nearly three months ago, which characterize election results and voter turnout data from 2016 and 2018 – information publicly known and available well before the original advisory opinion approving Amendment 3 for the ballot was issued earlier this year. While Petitioner argues that the reports constitute new information establishing a new set of facts – which is plainly incorrect – he declined to make the reports themselves part of the record here, nor, of course, could the reports and their authors be cross-examined in this procedural context. The summary of the reports Petitioner provides repeats the original sin of closed party primaries: ignoring the over 3.7 million NPA voters, including approximately 1.5 million minority voters who are shut out of the process. The conclusions that Petitioner attempts to draw from those reports are deeply flawed in that they ignore, among other things, the impact of adding over 3.7 million voters to the primary process. An "analysis" of election results that ignores 26% of the electorate is neither credible nor reliable, and cannot serve as the basis to deny millions of Florida voters the opportunity to vote on Amendment 3.

Such flaws, and others, would be made clear by contrary testimony and reports by actual expert witnesses in appropriate evidentiary proceedings brought after Amendment 3 is adopted, such as in an as-applied challenge. But Florida law is clear that a writ of mandamus is not the proper mechanism to evaluate and weigh such

evidence. Rather, a pre-adoption mandamus challenge to a ballot measure is *only* appropriate when the challenged ballot language is flawed as a matter of law on its face and no findings of fact are necessary.

The Petitioner's summary of the two reports suggests that if Amendment 3 is adopted and all qualified registered Florida voters are allowed to vote in Florida primaries, certain minority candidates will have less of a chance of advancing to the general election. At its core, the Petition presents a premature and disguised Voting Rights Act claim, but without any of the necessary factual allegations to substantiate one. Were this claim properly brought before a court of general jurisdiction and as a cognizable cause of action, it would still be wildly speculative and premature. That is so because the state legislative districts that the Petition cites as potentially being affected are going to be redrawn in 2022 – two years before Amendment 3 would apply to primaries beginning in 2024.

In the end, the sole basis proffered for the writ is unfounded *speculation* about *potential* future electoral results should Amendment 3 be adopted; to wit: four years from now, *if* Amendment 3 is adopted and *after* Florida's legislative districts are redrawn, minority voting preference *might* somehow be diminished. In truth, the only way minority voting preference can be abridged is if the Florida legislature fails to follow the law when reapportioning the state in 2022 – and not by letting all voters

vote in primaries beginning in 2024. The Petition cannot rest upon the presumed illegality of a future legislative act.

In short, the Petition is a baseless, untimely attack on ballot language that this Court has already deemed valid on its face. Notably, the Court did so after the ballot measure was vigorously opposed by the Florida Attorney General, the Republican Party of Florida, and the Florida Democratic Party. Critically, in that prior ruling, this Court made clear that the ballot language's clearly-stated chief purpose is to do exactly what it says it does: allow all registered Florida voters to vote in Florida's primary elections regardless of their party affiliation.[5] In accomplishing that goal, Amendment 3 will enfranchise millions of already registered and qualified Florida voters in the primary elections, including nearly ***1.5 million*** minority voters whose voices are silenced in selecting the general election candidates because they are registered as NPA.[6] Unlike the Petition's unsubstantiated speculation about potential

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[5] *See All Voters Vote in Primary Elections for State Legislature, Governor, and Cabinet* ("*All Voters Vote*"), 291 So. 3d 901, 906 (Fla. 2020) ("The ballot summary clearly and unambiguously explains the chief purpose of the Initiative, which is to allow all registered voters to vote in primary elections in Florida for state legislature, governor, and cabinet. Further, the ballot summary explains the details of this change….").

[6] *See* Florida Division of Elections, 2020 General Election, County Voter Registration By Party By Race, available at https://dos.myflorida.com/media/703596/3-by-party-by-county-by-race.pdf (last visited Oct. 20, 2020) (showing over 1.4 million racial and ethnic minority voters who are registered as NPA, as well as another approximately 60,000 third party members who are minorities).

future impacts, *that* impact – expanding the franchise for millions of Floridians – is the clear and undeniable consequence of Amendment 3's plain language.

If Amendment 3 is adopted by the voters then, just as is already the case in hundreds of Florida county and municipal elections that use a top two run-off primary, voters will not be forced to associate with one of the two major political parties in order to have a say in which candidates advance to the general election for state legislative seats, governor, and the cabinet. Indeed, if the objection advanced by Petitioner had any validity, then every non-partisan local election in Florida would similarly violate the Voting Rights Act and the Florida Constitution.

While allowing all voters to equally participate in elections has made those who benefit from currently entrenched power structures uneasy, it is a move towards a more open and democratic voting system which benefits all Floridians.

ARGUMENT

I. Petitioner's Challenge is Barred by this Court's Prior Approval of Amendment 3 for the Ballot.

The ballot sufficiency of Amendment 3 has already been challenged and established in *All Voters Vote*, 291 So. 3d at 905-07. Petitioner, having failed to bring forth any challenge to Amendment 3's sufficiency during the original advisory opinion proceeding before this Court, attempts to skirt Florida procedural law by re-litigating that subject with the use of reports that, by Petitioner's own admission, were issued nearly three months ago, and which simply analyze publicly-available

past election results that could have been analyzed – by Petitioner or anyone else – before or during the original advisory proceeding. *See* Petition at 10-15. Petitioner is forced to draw an absurd distinction between the reports being "widely publicized" due to a press conference being held on September 8, and the fact that the reports were public as of July, not to mention that the information cited is taken from publicly-available election results and data. *See id.* at 13-15, 26, 41.

The bar for re-litigating the sufficiency of a proposed amendment is extraordinarily high. As this Court held in *Fla. League of Cities v. Smith*, 607 So. 2d 397 (Fla. 1992), "[r]enewed litigation" regarding alleged defects with a constitutional amendment "will be entertained only in *truly extraordinary cases*" such as where a "vital" issue is raised that was not previously addressed by the Court. *Id.* at 398 (emphasis added). Unsurprisingly, the Petitioner has not cited a single case in which advisory opinions have been reopened – through a writ of mandamus or otherwise – to allow for the untimely failure of a non-party to call the Court's attention to unauthenticated "evidence" that simply recasts long-available public information.

Instead, the Petitioner relies on the *Smith* case, where the Court entertained (but did *not* ultimately grant) a petition for writ of mandamus after advisory proceedings were concluded, because there was a new and serious issue raised regarding whether the language in the proposed amendment would directly repeal

another express constitutional provision. *See Smith*, 607 So. 2d at 398 ("Petitioners … note that article VII, subsection 6(d) of the Florida Constitution contains a provision that could be interpreted as repealing part of Florida's homestead exemption if the present amendment is approved by the voters in November."). The facts of *Smith* are far different from the situation here where, as discussed below, the Petition relies solely on speculative non-evidence to suggest some potential ramifications of the amendment. Well-settled Florida case law expressly prohibits entertaining such speculation in a mandamus proceeding, and this Court should decline to do so, especially where it is based upon a flawed, incomplete, and misleading analysis – as discussed below.

II. Mandamus is an Improper Vehicle for the Relief Sought by Petitioner.

Mandamus is a remedy to enforce an established legal right by compelling a public officer or agency to perform a ministerial duty required by law. Petitioner must establish (a) that he has a "clear legal right to the requested relief," (b) that the respondents have "an indisputable legal duty to perform the requested action," and (c) that the petitioner has "no other adequate remedy available." *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000).

As with advisory opinion proceedings, in a mandamus action challenging a proposed amendment's ballot summary, "no relief is possible unless the summary is *clearly and conclusively defective*." *Smith*, 607 So. 2d at 399 (emphasis added).

Moreover, a writ of mandamus may only be issued where no findings of fact are required:

> We find that mandamus is an appropriate remedy in this case. In our view, the situation presented here is similar to those presented in *Republican State Executive Committee v. Graham*, 388 So.2d 556 (Fla.1980), and *State ex rel. Citizens Proposition for Tax Relief v. Firestone*, 386 So.2d 561 (Fla.1980), which involved ***straightforward legal questions which did not require fact-finding***. The issue of whether the Citizens' Choice proposal violates the single-subject requirement of article XI, section 3 of the Florida Constitution is, in our view, strictly legal in nature. ***The resolution of this issue requires no findings of fact. It requires only a construction of the terms of the proposal***. Having concluded that only a legal issue is involved, we exercise our discretionary authority to decide the single-subject constitutional issue.

Fine v. Firestone, 448 So. 2d 984, 987 (Fla. 1984) (emphases added). This is the well-settled rule because a writ of mandamus, by definition, is appropriate only to require a government official – in this case the Secretary of State and/or the Elections Canvassing Commission (the "Respondents") – to perform a ministerial act that is plainly required as a matter of law. *See State ex rel. Clendinen v. Dekle*, 173 So. 2d 452, 456 (Fla. 1965) ("The writ of mandamus is granted by the courts to enforce the performance of a ministerial duty imposed by law where such duty has not been performed *as the law requires*. Such writ issues only when the law affords no other adequate remedy....") (emphasis in original).

Here, Petitioner asks the Court to force the Respondents to invalidate votes in favor of Amendment 3 *if* it finds that Amendment 3 *might* negatively affect the

chances of success of some minority-preferred candidates. *See* Petition at 27-29. Such a dispute, which necessarily requires extensive fact-finding and expert testimony, is not suited for a mandamus proceeding. This issue was explained clearly in *Detzner v. Anstead*, 256 So. 3d 820 (Fla. 2018), where the Court held that an extraordinary writ was not the appropriate vehicle for challenging the merits of an allegedly defective proposed constitutional amendment because "[t]he petition instead challenges the merits of the proposed amendments themselves, which is properly decided on a complaint for declaratory and injunctive relief." *Id.* at 823.

Notably, the Petitioner seems to recognize that this fact finding is not possible here, as he does not bother to attach the two reports that he relies on to his Petition. Instead, Petitioner simply characterizes or selectively quotes portions of those reports. In doing so, Petitioner asks the Court to make critical rulings that would undermine the democratic process based solely on hearsay reports that no court has received into evidence and that have not been subjected to the rigors of cross-examination and contrary reports by qualified experts. Indeed, All Voters Vote, Inc., the sponsor of the amendment, who would be in the best position to present such contrary evidence and expert opinion, is not a party to this proceeding.

III. The Petition's Challenge is Speculative and Not Ripe for Review by Any Court.

A. Speculation About Future Impacts Is Not a Valid Basis to Challenge a Proposed Amendment.

Even if the Petitioner were to instead bring a circuit court challenge to Amendment 3 for declaratory and/or injunctive relief and were to assert some valid cause of action, such a challenge would be speculative and not yet ripe.

It is well-settled by this Court that the speculated effects of a proposed constitutional amendment do *not* form a proper basis for any such challenge to it prior to its passage. There is a long line of such cases holding that it is inappropriate for the Court to speculate about potential future consequences of an amendment's effects. *See, e.g., Rights of Electricity Consumers Regarding Solar Energy Choice*, 188 So. 3d 822, 830–31 (Fla. 2016) ("[I]t would be premature to speculate as to how the amendment might interact with other portions of the Florida Constitution even though it is possible that, if passed, the amendment could have broad ramifications."); *English—The Official Language of Fla.*, 520 So. 2d 11, 13 (Fla.1988) (approving placement of proposed amendment on the ballot even where "the amendment could have broad ramifications" because, "on its face[,] it deals with only one subject"); *Standards For Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 181 (Fla. 2009) ("[S]peculation about possible impacts of a proposed amendment on other branches of government is premature when determining

whether a proposed amendment, *on its face*, meets the single-subject requirement.") (emphasis in original); *Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 899 (Fla. 2000) ("[S]ignificant detail regarding implementation and *speculative scenarios may be omitted* ... [from] ballot summaries.") (emphasis added); *Patients' Right To Know About Adverse Medical Incidents*, 880 So. 2d 617, 621 (Fla. 2004) (rejecting argument that proposed amendment regarding adverse medical incident reporting to patients would negatively affect the attorney-client privilege and the rule that provides protections for the work product of health care providers, and holding that "[a]ny effect on the rule or the privilege is purely speculative"); *Use of Marijuana for Certain Medical Conditions*, 132 So. 3d 786, 808–09 (Fla. 2014) (rejecting as "largely speculative" the claim that a ballot title and summary were misleading because it failed to disclose the amendment's effect on two existing provisions within the Florida Constitution's Declaration of Rights—the right of access to courts and the right of access to public records).

Here, the Petitioner attempts to masquerade his disagreement with the amendment's merits as an attack on the sufficiency of the ballot language. But this Court has already rejected a similar argument that other potential, speculative ramifications of Amendment 3 must be disclosed in the ballot language. *See Advisory Opinion re: All Voters Vote*, 291 So. 3d at 906-07 ("Regarding the opponents' complaint that the summary and title do not explain possible

ramifications of altering the current primary election process, or explicitly detail how party nominations will occur if the amendment passes, this Court has explained that 'an exhaustive explanation of the interpretation and future possible effects of [an] amendment [is] not required' in the ballot title and summary.") (citations omitted).[7] The Court should again reject such argument.

B. Before Amendment 3 Would Go Into Effect, Current Legislative Districts Will Have Been Redrawn by the Florida Legislature.

The Petition relies heavily on an assumption that minority-preferred candidates in certain current legislative districts in Florida would be adversely affected by a top-two election system. That assumption is speculative and misplaced. Under the Florida Constitution, the Florida Legislature has a duty to apportion districts in accordance with federal and state law. *See* Art. III, § 16(a), Fla. Const. ("The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States. . . ."). Additionally section 2(a) of the Voting Rights Act states that governments cannot adopt standards, practices, or procedures that "result[] in a denial or abridgement of the right of any citizen of the

[7] This aspect of the advisory opinion was unanimous. *See* 291 So. 3d at 916 (Muniz, J., dissenting) (noting that it is inappropriate for the Court to speculate "about what candidate nominating processes, if any, the political parties might adopt to replace state-run primary elections").

United States to vote on account of race or color." *See* 52 U.S.C. § 10301(a).[8] Accordingly, after the 2020 census, the Florida Legislature will be tasked in 2022 with re-drawing Florida's voting districts in accordance with state and federal law. Any legitimate challenge to Amendment 3's effect on those legislative districts only becomes ripe once the new districts are actually drawn and Amendment 3 goes into effect in 2024. In other words, Petitioner's backward-looking allegations are based on voting districts that will not exist in 2024 when Amendment 3 would go into effect, and assumes that the legislature will violate state and federal law in apportioning the districts.[9] A writ of mandamus cannot rest upon speculation that

[8] *Gonzalez v. City of Aurora, Illinois*, 535 F.3d 594, 598 (7th Cir. 2008) ("Section 2 requires an electoral process 'equally open' to all, not a process that favors one group over another. One cannot maximize Latino influence without minimizing some other group's influence. A map drawn to advantage Latino candidates at the expense of black (or white ethnic) candidates violates § 2 as surely as a map drawn to maximize the influence of those groups at the expense of Latinos. . . . [T]he Voting Rights Act protects the rights of individual voters, not the rights of groups.").

[9] Under federal voter protection laws, an assertion that official action has racially discriminatory results must be supported by evidence that "a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Thornburg v. Gingles,* 478 U.S. 30, 47 (1986). "Minority voters who contend that the multimember form of districting violates [the Voting Rights Act], must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates." *Id*. at 48. Courts must take into account many relevant facts in examining the totality of the circumstances, including the nature of the opportunities for the minority group to participate in the political process. *See, e.g., Johnson v. De Grandy,* 512 U.S. 997, 1011-12 (1994).

the legislature will act unlawfully. *See Yates v. Palmintiero*, 96 So. 2d 148, 152 (Fla. 1957) ("From the very nature of mandamus indulgence in conjecture cannot avail one who must show a clear legal right to such a writ in order to be awarded one.").

The reports underlying the Petition are further flawed and speculative because they purport to reflect how past elections might have resulted under Amendment 3 in order to predict future voter behavior. One fatal flaw, however, is that this ignores the impact of the 3.7 million NPA Floridians who were blocked from voting in the primary elections that the reports attempt to analyze. *See, e.g.*, Petition at 15. Speculating how past elections would have resulted under Amendment 3, while ignoring the 26% of the electorate who would be entitled to vote under the amendment, is not credible nor reliable, but is also of no probative value in determining how voters will vote after the legislative districts are re-drawn in 2022 and Amendment 3 is implemented in 2024 (if adopted). Of course, the only way to know with any degree of certainty how these voters will vote under a new system is to let all voters vote.

IV. Even if the Petition's Allegations Were Not Speculative, the Petition Presents No Constitutional Conflict Warranting Relief.

A. The Petition Does Not Identify any Actual Conflict Between Amendment 3 and any Other Constitutional Provision.

The Petition heaps further speculation upon its dubious assumptions and claims that there is a constitutional conflict between Amendment 3's potential

effects and certain provisions of the Florida Constitution that shield protected groups from discrimination. *See* Petition at 30-35 (claiming, *inter alia,* that Amendment 3 conflicts with Article I, Section 2, which provides that "[n]o person shall be deprived of any right because of race, religion, national origin, or physical disability").

In making that argument, the Petitioner attempts to analogize this Court's ruling in *Treating People Differently Based on Race in Public Education*, 778 So. 2d 888 (Fla. 2000). However, that case could not be more different than the instant matter. In that case, the proposed constitutional amendments were struck down because they conflicted directly with article I, sections 2 and 21 of the Florida Constitution. There, the proposed amendments would have, by their own express terms, *prohibited* any affirmative action or balancing programs that were designed to protect victims of racial discrimination in the area of public education. *Id*. at 895. Specifically, the Court noted that "the proposed amendments will bar school districts from sponsoring programs developed solely for the benefit of minorities, public universities from either maintaining educational programs tailored specifically for minority students or recruiting minorities with minority scholarships, and city governments from considering race when hiring and assigning police officers to various precincts and neighborhoods." *Id*. at 896. According to the Court, the ballot language at issue there "take[s] away the cloak of protection from victims of discrimination." *Id*. at 894. Further, because the proposed amendment language only

addressed some of the protected classes enumerated in article I, section 2 and not others, the Court held that "the proposed amendments create new distinctions between discrimination based on the enumerated classifications and discrimination based on religion and physical disability." *Id*. No fact finding was necessary to see that that was the clear and undeniable result of those proposed amendments.

The ballot language here, in stark contrast, does not conflict with any constitutional protections in place for protected classes. Rather, it simply requires that all qualified registered voters be allowed to vote in primary elections for the enumerated state elective offices—*including* the nearly 1.5 million minority voters who are currently not allowed to participate in those primaries because they are not registered with either major political party. And unlike the amendment in *Treating People Differently Based on Race in Public Education* which was flawed on its face, in this present case, the Petition would necessitate the introduction of contrary expert testimony in order to draw any meaningful conclusions about what effect the top-two primary structure might have on minority-preferred candidates in future legislative districts or statewide races.

In the event Amendment 3 is adopted, it must be read and given effect in harmony with the rest of the Florida Constitution – including the apportionment and districting provisions of Article III, sections 16 and 21. *See State v. Div. of Bond Fin. of Dept. of Gen. Services*, 278 So. 2d 614, 617-18 (Fla. 1973) ("It is a fundamental

rule of construction that, if possible, amendments to the Constitution should be construed so as to harmonize with other constitutional provisions…. [A]ll provisions of the Constitution bearing upon a particular subject matter are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument."). Should Amendment 3 be adopted, it will be incumbent upon the Florida legislature to apportion in a manner that allows all registered voters to vote in the primaries while ensuring that no district be drawn in a manner that would deny or abridge the equal opportunity of racial or language minorities the ability to participate in the political process or diminish their ability to elect candidates of their choice.

B. The Top-Two System is Already Used Successfully Throughout Florida in Local Elections.

Rather than evidence a constitutional conflict, and in an apparent attempt to stoke fear regarding the top-two system of voting, Petitioner falsely claims that a top-two system has "never been used in a state like Florida." *See* Petition at 16, 43. To the contrary, it is regularly used *throughout Florida*, without the results speculated by Petitioner. More than 400 municipal and dozens of county races throughout the state have long been decided using primary elections that are not used to select a party nominee but, rather, are used to select those candidates who will face off in the general election – just as Amendment 3 calls for. Some of those 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. *See, e.g.*, Jacksonville Municipal Code §§ 350.102(a), 350.116 (providing for partisan run-off election where ballot placement does not give preference to the party of the Governor); Leon County Charter § 2.2(1) ("Elections for all seven (7) members of the County Commission shall be non-partisan."); *id.* at § 3.2(1)(A) ("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(a) ("If two or more persons qualify as candidates … for any of the places to be filled, then a municipal primary election shall be held…."). These commonly-used procedures at the local level in Florida (and elsewhere around the country at the state and local level) simply do not have the feared impact on minority-preferred candidates that the Petitioner wants to speculate would occur here.

CONCLUSION

For all of the foregoing reasons, *amicus curiae* All Voters Vote, Inc. urges this Court to deny the Emergency Petition for Writ of Mandamus.

Respectfully submitted this 20th day of October, 2020.

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CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that the undersigned electronically filed the foregoing with the Clerk of the Courts on October 20, 2020 by using the E-Filing Portal, which will send a notice of electronic filings to all counsel of record.

I HEREBY CERTIFY that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the typeface requirements of Florida Rule of Appellate Procedure 9.210(a).

By: *s/ Glenn Burhans, Jr.*
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