

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

FLORIDA STATE CONFERENCE
OF NAACP BRANCHES;
ADORA OBI NWEZE;
THE LEAGUE OF WOMEN
VOTERS OF FLORIDA, INC.;
DEIRDRE MACNAB;
ROBERT MILLIGAN;
NATHANIEL P. REED;
DEMOCRACIA AHORA;
and JORGE MURSULI;

Plaintiffs,

vs.

CASE NO.: 2010 CA 1803

DEPARTMENT OF STATE, an
agency of the State of Florida;
and DAWN K. ROBERTS,
in her official capacity as the
Secretary of State,

Defendants,

and

FLORIDA HOUSE OF REPRESENTATIVES
and FLORIDA SENATE,

Intervening Defendants.

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND
INCORPORATED MEMORANDUM OF LAW**

Plaintiffs, pursuant to Rule 1.510 of the Florida Rules of Civil Procedure and this Court's Scheduling Order, dated June 10, 2010, submit this Motion for Summary

Judgment and Incorporated Memorandum of Law. Plaintiffs seek a final judgment declaring that the ballot title and summary for Amendment 7 violate section 101.161(1), Florida Statutes, and removing the amendment from the ballot for the general election to be held November 2, 2010.

INTRODUCTION

Amendment 7 cannot lawfully be submitted to Florida voters because its ballot title and summary fail to advise the voters of the amendment's chief purpose and true effect; to the contrary, the ballot title and summary "hide the ball" and "fly under false colors." Despite its title purporting to establish "standards" for redistricting, the chief purpose and true effect of Amendment 7 is to free the Florida Legislature from any mandatory standards relating to drawing legislative and congressional district lines and to minimize the degree to which the redistricting plans must meet the standards in the Florida Constitution. Because the ballot title and summary fail to give voters notice of the true purpose and effect, the amendment must be stricken from the ballot.

BACKGROUND

Current Law

Currently, the only provision in the Florida Constitution imposing requirements upon how legislative districts are to be drawn provides that the legislature "shall apportion the state in accordance with the constitution of the state and of the United States into [specified numbers of senatorial and representative] districts of either contiguous, overlapping or identical territory." Art. III, § 16, Fla. Const. The Florida Constitution currently does not address how congressional districts are to be drawn.

Amendments 5 & 6

In January, 2010, two citizen initiatives related to redistricting were certified by the Department of State for placement on the 2010 general election ballot. (Exhibit 1) The proposed amendments are intended to curtail the practice of political gerrymandering and would add to the Florida Constitution specific, prioritized, mandatory standards for the legislature to follow in both legislative and congressional redistricting. The Department of State designated these initiatives as Amendment 5 (legislative redistricting standards) and Amendment 6 (congressional redistricting standards).

Amendment 5 would create Article III, Section 21, to read as follows:

In establishing Legislative district boundaries:

- (1) No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
- (2) Unless compliance with the standards of this subsection conflicts with the standards of subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where, feasible, utilize existing political and geographical boundaries.
- (3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over another within that subsection.

Amendment 6 would create Article III, Section 21, to read as follows:

In establishing Congressional district boundaries:

(1) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

(2) Unless compliance with the standards of this subsection conflicts with the standards of subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where, feasible, utilize existing political and geographical boundaries.

(3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over another within that subsection.

The Florida Supreme Court determined that Amendments 5 and 6 satisfied the single-subject requirement of Article XI, section 3 of the Florida Constitution, and that the ballot titles and summaries were accurate and not misleading as required by section 101.161(1), Florida Statutes. *Advisory Opinion to Attorney Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175 (Fla. 2009).

Amendment 7

On the last day of the 2010 legislative session (April 30, 2010), the Legislature passed by the constitutionally mandated two-thirds vote of each house, HJR 7231, a joint resolution relating to redistricting. The Department of State designated HJR 7231 as Amendment 7. (Exhibit 2)

The ballot summary for Amendment 7 provides as follows:

STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE AND CONGRESSIONAL REDISTRICTING. - In establishing congressional and legislative district boundaries or plans, the state shall apply federal requirements and balance and implement the standards in the State Constitution. The state shall take into consideration the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities of common interest other than political parties may be respected and promoted, both without subordination to any other provision of Article III of the State Constitution. Districts and plans are valid if the balancing and implementation of standards is rationally related to the standards contained in the State Constitution and is consistent with federal law.

The ballot summary is nearly identical to the full text of the amendment, with the addition of the ballot title and specific references to the Florida Constitution.

BALLOT SUMMARY REQUIREMENTS

Florida law imposes an "accuracy requirement" on all proposed constitutional amendments. *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000). This requirement flows from Article XI, section 5 of the Florida Constitution and is codified in Section 101.161(1), Florida Statutes:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot [T]he substance of the amendment or other public measure shall be an explanatory statement . . . of the chief purpose of the measure.

Constitutional amendments proposed by joint resolution of the Florida Legislature must comply with this accuracy requirement. *Armstrong*, 773 So. 2d at 16 (accuracy

requirement “applies across-the-board to all constitutional amendments, including those proposed by the Legislature”).

A ballot title and summary must provide a clear and unambiguous explanation of the measure’s chief purpose. *Askew v. Firestone*, 421 So. 2d 151, 155-56 (Fla. 1982). It must disclose substantial impacts to the Florida Constitution. *Advisory Opinion to the Attorney Gen. re Term Limits Pledge*, 718 So. 2d 798, 803-804 (Fla. 1998). The ballot title and summary cannot be misleading, either expressly or by omission. *Askew*, 421 So. 2d at 155-56. A ballot title and summary cannot “fly under false colors” or “hide the ball” as to the amendment’s true effect. *Armstrong*, 773 So. 2d at 16. Courts will strike proposed amendments from the ballot that are clearly and conclusively defective under these standards. *Askew*, 421 So. 2d at 154.

A ballot summary does not automatically satisfy the accuracy requirement by mirroring or closely tracking the full text of the amendment. The test is whether the title and summary “state in clear and unambiguous language the chief purpose of the measure” and “[advise the electorate] of the true meaning, and ramifications” of the amendment. *Askew*, 421 So. 2d at 154-55, 156. If the summary language placed on the ballot does not meet this standard, it is no defense that the summary is the same as the full text. *Wadhams v. Bd. of County Comm’rs*, 567 So. 2d 414, 416 (Fla. 1990) (invalidating amendment to county charter where full text of amendment was placed on ballot because the text did not inform the voter of the change to be accomplished); *see also Evans v. Bell*, 651 So. 2d 162, 166 (Fla. 1st DCA 1995) (invalidating amendment to city charter where full text was placed on ballot without a summary because “merely setting

forth the text of an amendment without explaining its legal effect on existing provisions can very likely be misleading, as it manifestly was in the instant case”).

ARGUMENT

As detailed below, the ballot title and summary for Amendment 7 fail to give voters notice of the amendment’s chief purpose which is to enable legislators to draw districts without compliance with any mandatory standards; to the contrary, the ballot title and summary affirmatively mislead the voters. Amendment 7 does not comply with the law and must be stricken.

I. AMENDMENT 7’s CHIEF PURPOSE AND EFFECT

The chief purpose and effect of Amendment 7 is to eliminate mandatory application of any existing or potential requirements related to redistricting in the Florida Constitution and to reduce the required level of compliance with existing and potential constitutional requirements to the lowest level recognized in the law.

The Florida Constitution currently provides only minimal specifications regarding the legislative districts that the legislature is to redraw every ten years: the legislature “shall apportion the state . . . into . . . consecutively numbered . . . districts of either contiguous, overlapping, or identical territory.” Art. III, § 16, Fla. Const. Amendment 7 would permit—but not require—the legislature to reference two additional factors when drawing legislative and congressional districts: one, “the ability of racial and language minorities to participate in the political process and elect candidates of their choice” is to be “*take{n} into consideration,*” and two, “communities of

common interest other than political parties *may be respected and promoted.*" (Emphasis added.) Although "*consideration*" of the specified interests of racial and language minorities is mandatory, action based upon these considerations is not. Therefore, it would be permissible under this provision for the legislature to consider the ability of a certain racial or language minority group to participate in the political process and elect a candidate of its choice but ultimately to decide, for any reason or for no reason at all, to decline to take these interests into account when drawing the districts. Treatment of "communities of common interest" is even more permissive: such communities "*may be respected and promoted.*" (Emphasis added.) Thus under Amendment 7 it would be permissible for the legislature to decide, for any reason or for no reason at all, to decline to consider communities of common interest when establishing legislative and congressional districts.

Notwithstanding the permissive nature of these considerations, Amendment 7 allows them to be followed "without subordination to any other provision of Article III of the State Constitution." Thus, Amendment 7 effectively nullifies the existing constitutional requirement that districts be contiguous. Additionally, even though passage of Amendments 5 and 6 would result in additional mandatory redistricting standards, Amendment 7's "without subordination to" language would effectively nullify these new standards and allow them to be trumped by the permissive interests identified in the amendment. The result is there will be no mandatory standards, and the legislature will have unfettered discretion to draw districts motivated by purely political interests.

Further, whereas the Florida Constitution currently requires redistricting to be conducted "in accordance with the constitution of the state," Article III, Section 16, Florida Constitution, under Amendment 7 the state is to "balance and implement" the state constitutional standards, and its districts and plans are valid if such balancing and implementation is "rationally related" to the standards in the state constitution. Thus Amendment 7 would render valid all but "irrational" districts and plans, even when the plans violate requirements of the Florida Constitution that are by their own terms mandatory.

II. THE BALLOT TITLE AND SUMMARY DO NOT FAIRLY INFORM VOTERS OF THE CHIEF PURPOSE OF THE AMENDMENT OR OF MATERIAL CHANGES TO THE CONSTITUTION; TO THE CONTRARY, THE BALLOT TITLE AND SUMMARY MISLEAD VOTERS.

A. The ballot title and summary mislead the public by suggesting that the amendment creates "standards," when it does not.

The ballot title of Amendment 7 is "Standards for Legislature to Follow in Legislative and Congressional Redistricting." This title is misleading and flies under false colors in that it purports to provide "standards" for redistricting, when in fact Amendment 7 has the purpose and intended effect of eliminating all existing and future mandatory standards for legislative and congressional redistricting under the Florida Constitution. Far from creating standards, Amendment 7 will give the Legislature discretion to draw districts to suit its political interests without adhering to any mandatory requirements.

Although the amendment identifies two interests not in the current constitution, it sets no standard of compliance with these interests. The ability of racial and language minorities to participate in the political process and elect candidates of their choice need only be “take[n] into consideration,” and “communities of common interest” (whatever they may be) “may be” (but don’t have to be) “respected and promoted.” These are not “standards.” At best, they are suggestions. By leading the ballot summary with a title that states otherwise, Amendment 7 misleads voters. See *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984) (statement that amendment would “establish” citizens rights in civil actions was misleading where amendment actually capped level of recoverable noneconomic damages); *People Against Tax Revenue Mismanagement, Inc. v. County of Leon*, 583 So. 2d 1373, 1376 (Fla. 1991) (ballot language especially defective if it “gives the appearance of creating new rights or protections, when the actual effect is to reduce or eliminate rights or protections already in existence”).

B. The ballot summary does not inform voters that Amendment 7 would eliminate the current mandatory requirement that districts be contiguous.

The Florida Constitution requires the legislature to “apportion the state in accordance with the constitution of the state and of the United States into . . . districts of either contiguous, overlapping or identical territory.” Art. III, § 16, Fla. Const. The Florida Supreme Court has interpreted “contiguous” in this section to apply only to the characteristics of any individual district, not to a district’s relationship with any other districts. *Advisory Opinion to the Attorney Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 190-91 (Fla. 2009) (citing *In re Apportionment Law Appearing*

as *Senate Joint Resolution No. 1E*, 414 So. 2d 1040, 1045, 1050 (Fla. 1982)). Thus this section imposes a constitutional requirement that each individual district be contiguous within itself, while allowing an individual district to overlap with, or be identical to, another individual district. *Id.* at 191. The Court defines “contiguous” to mean “being in actual contact: touching along a boundary or at a point.” *In re Constitutionality of House Joint Resolution 25E*, 863 So. 2d 1176, 1179 (Fla. 2003). A district fails to meet the contiguity requirement “when a part is isolated from the rest by the territory of another district or when the lands mutually touch only at a common corner or right angle.” *Id.* at 1179 (Fla. 2003) (internal quotations and citations omitted).

By allowing consideration of the interests of racial and language minorities and communities of common interest “without subordination to” any other provision of Article III of the constitution, Amendment 7 allows these interests to trump the existing mandatory requirement in Article III, Section 16, that districts be contiguous. The result is that an individual district no longer must be contiguous or “in actual contact” with itself; part of a district can be isolated from the rest by the territory of another district. This could result in districts with disconnected, polka dot style segments wholly disconnected from each other. Thus the only existing mandatory standard in the Florida Constitution would be “subordinated” to wholly permissive considerations which carry no requirement that the legislature apply them when establishing legislative and congressional districts.

This effect of the amendment is not described in the ballot summary. The statement that certain interests may be considered “without subordination to any other

provision of Article III of the State Constitution" falls far short of a "clear and unambiguous" explanation that Amendment 7 will allow the constitutionally-mandated contiguity requirement to be ignored. Failure to give voters actual notice of such an important effect upon the state constitution calls for removal from the ballot. *Askew*, 421 So. 2d at 156 (ballot summary was defective because it failed to disclose that amendment would eliminate constitutional prohibition against lobbying for two years after leaving public office); *Armstrong*, 773 So. 2d at 18 (ballot summary defective for failing to disclose that main effect of amendment was to nullify the Cruel or Unusual Punishment Clause in the Florida Constitution); *Advisory Opinion to the Attorney Gen. re Term Limits Pledge*, 718 So. 2d 798, 804 (Fla. 1998) (ballot summary stating that amendment "[a]ffects powers of the Secretary of State under Article IV" was defective where amendment would grant secretary of state significant discretionary powers concerning elections he did not presently possess). As in these cases, the problem with Amendment 7 "lies not with what the summary says, but, rather, with what it does not say." *Askew*, 421 So. 2d at 156; *Term Limits Pledge*, 718 So. 2d at 804.

Although the Court is "wary of interfering with the public's right to vote" on a proposed amendment, it is "equally cautious of approving the validity of a ballot summary that is not clearly understandable." *Advisory Opinion to the Attorney Gen.- Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1021 (Fla. 1994).

C. The ballot summary fails to inform voters of the meaning of the phrase “communities of common interest;” thus voters are left to guess at its meaning.

Amendment 7’s ballot summary and text both provide that “communities of common interest other than political parties may be respected and promoted . . . without subordination to any other provision of Article III of the State Constitution.” The phrase “communities of common interest” does not currently appear in the constitution and there is no definition or explanation of its meaning. This renders the amendment fatally ambiguous.

When a ballot summary uses a legal phrase, voters must be informed of its legal significance. *Advisory Opinion to the Attorney Gen. re Amendment to Bar Gov’t from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 889 (Fla. 2000) (striking proposed amendments relating to government discrimination because summary did not define “bona fide qualifications based on sex”). Otherwise, voters are left to guess at the term’s meaning and will rely upon their own conceptions to do so. *Id.* A summary that does not define important terms is vague and ambiguous and thus violates Section 101.161, Florida Statutes. *Id.*; see also *Advisory Opinion to the Attorney Gen. re People’s Prop. Rights Amendments Providing Compensation for Restricting Real Prop. Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1309 (Fla. 1997) (striking ballot summary that failed to define “common law nuisance” because it did not inform the voter what restrictions were compensable under the amendment).

Without any definition of “communities of common interest,” voters are left to guess at what this term means and will do so based upon their own conceptions and

experiences. Voters' perceptions of "communities of common interest" will range broadly, from immigrant communities to country club communities to communities of people with common physical characteristics. A common understanding of this term is especially important because Amendment 7 would allow such communities to be "respected and promoted" to the exclusion of every other redistricting standard in the constitution, both present and future. This means that respect and promotion of a community of common interest could permissibly be the sole justification for the shape of district. Failure to provide voters with a definition of this potentially dispositive term deprives them of fair notice of the effect of Amendment 7.

D. The ballot summary does not inform voters that Amendment 7 would permit redistricting plans to be scrutinized according to the lowest level of constitutional scrutiny recognized in the law.

Amendment 7 proposes to implement a new standard for judicial review of legislatively-apportioned districts and plans by declaring such districts and plans "valid if the balancing and implementation of standards is rationally related to the standards contained in the State Constitution."

The "rationally related" language appears to refer to a constitutional standard applicable to certain claims under the Equal Protection Clause. However, because it is a legal term for which voters are given no definition, this provision suffers from the same fatal defect as the undefined phrase "communities of common interest." See *Advisory Opinion to the Attorney Gen. re Amendment to Bar Govt. from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 889 (Fla. 2000); *Advisory Opinion to the*

Attorney General re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects, 699 So. 2d 1304, 1309.

In any event, a mere recitation of the legal definition of the "rational relationship" or "rational basis" constitutional test would be insufficient to satisfy the accuracy requirement in this context. The ballot summary must also reveal the manner in which the proposed test differs from the current constitutional standard. The Florida Supreme Court has not previously applied a rational basis test to evaluate a legislative redistricting plan; rather, it looks to whether the plan facially "violates" the Florida Constitution. See *In re Constitutionality of House Joint Resolution 1987*, 817 So. 2d 819, 825 (Fla. 2002) (*In re HJR 1987*). Furthermore, the Court's determination of the facial validity of an apportionment plan is without prejudice to subsequent "as applied" challenges based upon specific factual situations. *In re Apportionment Law Appearing as Senate Joint Resolution Number 1305*, 263 So. 2d 797, 808 (Fla. 1972); *In re HJR 1987*, 817 So. 2d at 829-31. The ballot summary fails to inform the voters whether the new "rational relationship" standard of review applies only to the facial review or to the as-applied challenges as well.

The "rational relationship" standard is the lowest constitutional standard applied to equal protection claims and is appropriately applied where the challenged legislative action does not affect a fundamental right or a suspect class. *E.g., B.S. v. State*, 862 So. 2d 15, 18 (Fla. 2003). The query under this test is "whether it is conceivable that the . . . classification bears some rational relationship to a legitimate state purpose." *Fla. High School Activities Ass'n v. Thomas*, 434 So. 2d 306, 308 (Fla. 1983).

Although it is not clear how an equal protection standard would be applied to specific constitutional standards, it is clear that the legislature intended to permit only the lowest level of constitutional review of its redistricting plans, and that the ballot summary does not inform voters of this chief purpose and effect. Accordingly, Amendment 7 must be stricken from the ballot.

E. The ballot summary does not inform voters that Amendment 7 would nullify Amendments 5 and 6, if approved by the voters.

Amendment 7 would not only eliminate the mandatory contiguity requirement currently in Article III, Section 16 of the Florida Constitution; it would also eliminate the additional standards that will be imposed by Amendments 5 and 6 (if passed) as well as any standards added in the future. Voters are not given fair notice of this purpose and effect.

Amendments 5 and 6, if approved by the voters, will add several mandatory standards to the congressional and legislative redistricting process. Under these amendments, legislative and congressional districts may not be drawn "with the intent to favor or disfavor a political party or incumbent" or "with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice," and "districts shall consist of contiguous territory." Furthermore, to the extent consistent with these mandatory standards and federal law, districts shall be "as nearly equal in population as is practicable; . . . compact; and . . . where feasible, utilize existing political and geographical boundaries." (Exhibit 2.)

Amendments 5 and 6 were approved by the Florida Supreme Court on January 29, 2009, and received sufficient signatures for placement on the ballot nearly a year later, on January 22, 2010.¹ Thus not only was the Florida Legislature cognizant when it proposed HJR 7231 (which became Amendment 7) that Amendments 5 and 6 would be on the 2010 general election ballot, the legislative history demonstrates that Amendment 7 was drafted with the express purpose of eliminating the mandatory application of the standards contained in Amendments 5 and 6.² See *House of Representatives Staff Analysis for HJR 7231* at 17-19 (April 20, 2010) (noting that Amendments 5 and 6 would limit the legislature's discretion in drawing districts and that the consideration of the interests set forth in HJR 7231 would be "of at least equal dignity with the standards contained in Subsection (1) of [Amendments 5 and 6] and would be superior to the standards contained in Subsection (2)" of these amendments.) (Exhibit 3).

Failure to give voters notice of this purpose and effect renders the proposal misleading and contrary to section 101.161(1), Florida Statutes. See *Kobrin v. Leahy*, 528 So. 2d 392, 393 (Fla. 3d DCA 1988), *rev. denied*, 523 So. 2d 577 (Fla. 1988). In *Kobrin*, a

¹ See Fla. Dept. of State, Div. of Elections, 2010 Proposed Constitutional Amendments, <http://election.dos.state.fl.us/initiatives/initiativelist.asp?year=2010&initstatus=ALL&MadeBallot=Y&lecType=GEN> (last visited June 9, 2010).

² Furthermore, to achieve ballot position immediately following Amendments 5 and 6, the legislature filed HJR 7231 with the Secretary of State ahead of other joint resolutions for proposed constitutional amendments passed earlier in the session. Compare HJR 7231, relating to redistricting (enrolled April 30, 2010, filed May 18, 2010, and designated as "Amendment 7") with SJR 2 relating to class size requirements (enrolled April 9, 2010, filed May 19, 2010, and designated as "Amendment 8") and HJR 37 relating to health care services (enrolled April 27, 2010, filed May 20, 2010, and designated as "Amendment 9"). See Fla. Dept. of State, Div. of Elections, 2010 Proposed Constitutional Amendments, <http://election.dos.state.fl.us/initiatives/initiativelist.asp?year=2010&initstatus=ALL&MadeBallot=Y&lecType=GEN> (last visited June 9, 2010).

race to elect members to a county fire and rescue district was scheduled to be on the ballot. *Id.* The county then proposed to place a proposition in the ballot that would eliminate the district entirely, notwithstanding the election of district members to take place in the same election. *Id.* The court struck the proposition because it made no specific reference to the “totally inconsistent, but simultaneously conducted election, nor even to the elimination of the board itself.” *Id.* The court concluded that “the apparent studied omission of such a reference and the consequent and just as obvious failure to dispel the confusion which must inevitably arise from this set of circumstances renders the language as framed fatally defective.” *Id.*

The same is true here: Amendment 7's failure to notify voters that it would effectively nullify the mandatory elements of Amendments 5 and 6 renders it fatally defective. Amendments 5 and 6 achieved ballot position on January 22, 2010. The legislature knew these amendments would be on the 2010 general election ballot, and intentionally drafted Amendment 7 to interfere with their effectiveness. Under these circumstances, the ballot summary must inform voters that a chief purpose and effect of the amendment is to eviscerate the mandatory standards contained in Amendments 5 and 6.³

³ Plaintiffs anticipate Defendants will contend this argument is foreclosed by *Advisory Opinion to the Attorney Gen. re Florida Growth Mgmt. Initiative Giving Citizens the Right to Decide Local Growth Mgmt. Plan Changes*, 2 So. 3d 118 (2008). But that advisory opinion comes nowhere close to standing for the proposition that a ballot summary for a legislatively-proposed constitutional amendment in an upcoming general election need never reveal its intended effect on a citizens initiative that has been placed on the ballot in the same election.

The inaccuracy of Amendment 7 is compounded by the fact that its ballot title mimics the titles of Amendments 5 and 6 in an apparent effort to confuse voters. Voters will see the following ballot titles:

Amendment 5: STANDARDS FOR LEGISLATURE TO FOLLOW IN
 LEGISLATIVE REDISTRICTING

Amendment 6 STANDARDS FOR LEGISLATURE TO FOLLOW IN
 CONGRESSIONAL REDISTRICTING

Amendment 7 STANDARDS FOR LEGISLATURE TO FOLLOW IN
 LEGISLATIVE AND CONGRESSIONAL REDISTRICTING

A voter would reasonably understand each of these amendments to impose standards for the legislature to follow when conducting the redistricting process under the Florida Constitution. But this is not the case; although Amendments 5 and 6 propose express, mandatory standards, Amendment 7 makes ambiguous suggestions regarding interests that may be considered and allows these suggestions to trump both current and future state constitutional standards. By placing Amendment 7 immediately after Amendment 5 and 6 and making its title indistinguishable from the titles of these amendments, Amendment 7 falsely entices voters into believing that all three amendments will impose standards for the legislature to follow in redistricting. This is not the case, and voters deserve to know the truth.

Worse yet, Amendment 7 uses language very similar to Amendments 5 and 6 relating to racial and language minorities, which will cause voters to think all three amendments benefit these groups when in fact Amendment 7 wholly eliminates the

protections that would be given to racial and language minorities by Amendments 5 and 6. Amendments 5 and 6 state unequivocally that:

districts *shall not be drawn* with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.

(Emphasis added.) This statement is unambiguous; it creates a mandatory standard which must be complied with in order for the legislature's redistricting plan to be valid.

Amendment 7, on the other hand, states:

The state shall *take into consideration* the ability of racial and language minorities to participate in the political process and elect candidates of their choice . . . without subordination to any other provision of Article III of the State Constitution.

(Emphasis added.)

The language in Amendment 7 relating to racial and language minorities is appealingly similar to that of Amendments 5 and 6, yet its effect is fatal to Amendments 5 and 6. Under Amendment 7 the legislature need only "take into consideration" the ability of racial and language minorities to participate in the political process and elect candidates of their choice. Once considered, the legislature is free to decline to take these interests into account when drawing districts. And because this "consideration" is superior to every other standard in the constitution, including those contained in Amendments 5 and 6, the legislature would remain free to draw a redistricting plan with the "intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice." Thus even though voters will believe they are

furthering the interests of racial and language minorities by voting “yes” for Amendments 5, 6, and 7, the reality is Amendment 7 destroys the very protections voters intended to create with their “yes” vote on Amendments 5 and 6. The ballot summary does not disclose this. Where a ballot summary is not written clearly enough for even the more educated voters to understand its chief purpose, the amendment must be stricken. *Smith v. Amer. Airlines*, 606 So. 2d 618, 621 (Fla. 1992).

CONCLUSION

“The voters of Florida deserve nothing less than clarity when faced with the decision of whether to amend our state constitution” *Fla. Dep’t of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008). Because the ballot title and summary of Amendment 7 clearly and conclusively fail to adequately inform the voter of the chief purposes and effects of the amendment, and are affirmatively misleading, placement of Amendment 7 on the ballot would violate Article XI, Section 5, Florida Constitution, and Section 101.161(1), Florida Statutes.

Plaintiffs respectfully request that this Court enter final judgment declaring that Amendment 7 violates section 101.161(1), Florida Statutes, and prohibiting Defendants from placing Amendment 7 on the ballot, and grant such further relief as the Court deems appropriate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by first class mail and electronic mail on this 11th day of June, 2010, to:

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