

IN THE SUPREME COURT OF FLORIDA

HARRY LEE ANSTEAD and
ROBERT J. BARNAS,

Petitioners

v.

Case No.: SC18-

KEN DETZNER, in His Official Capacity as
Secretary of State of Florida,
Head of the Florida Department of State, and
Florida's Chief Election Officer,

Respondent.

PETITION FOR WRIT OF QUO WARRANTO

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PETITION FOR WRIT OF QUO WARRANTO

Petitioners respectfully request this Court to issue a writ of *Quo Warranto* to Ken Detzner, in his official capacity as Secretary of State of Florida, head of the Florida Department of State, and Florida's Chief Election Officer, to justify its authority to assign ballot position to the following proposals to amend the Florida Constitution submitted by the 2017-2018 Constitution Revision Commission:

- Revision 1, Rights of Crime Victims: Judges, which Respondent has assigned ballot designation No. 6. (Appendix A1.)
- Revision 2. First Responder and Military Member Survivor Benefits; Public Colleges and Universities, which Respondent has assigned ballot designation No. 7. (Appendix B1.)
- Revision 3. School Board Term Limits and Duties; Public Schools, which Respondent has assigned ballot designation No. 8. (Appendix C1.)
- Revision 4. Prohibits Offshore Oil and Gas Drilling; Prohibits Vaping in Enclosed Indoor Workplaces, which Respondent has assigned ballot designation No. 9. (Appendix D1.)
- Revision 5. State and Local Government Structure and Operation, which Respondent has assigned ballot designation No. 10. (Appendix E1.)

- Revision 6. Property Rights; Removal of Obsolete Provision; Criminal Statutes, which Respondent has assigned ballot designation No. 11.

(Appendix F1.)

PARTIES

Petitioner Harry Lee Anstead is a citizen, taxpayer and elector of Florida residing in Tallahassee, Florida.

Petitioner Robert J. Barnas is a citizen, taxpayer and elector of Florida residing in High Springs, Florida.

Respondent Ken Detzner, in his official capacity as Secretary of State of Florida, is the head of the Florida Department of State and is Florida's Chief Election Officer. As such, Respondent has the power and duty to place proposals to amend the constitution on the 2018 general election ballot and to certify the results of elections.

JURISDICTION

This Court has original jurisdiction to issue writs of *quo warranto* to state officers. Article V §3(b)(8) Florida Constitution. Petitioners as citizens, taxpayers and voters of Florida have standing to file this petition pertaining to amendments of the Florida Constitution, which is a matter of great public interest. *Whiley v. Scott*, 79 So. 3d 702, 706, n 4 (Fla. 2011).

RELIEF SOUGHT

Petitioners petition this Court to issue a writ to Respondent to justify his actions of designating Revisions 1-6 submitted by the 2017-2018 Constitution Revision Commission for ballot positions on the 2018 general election ballot and upon failing to do so ordering said Respondent not to place the measures on the ballot or to remove them from the ballot if possible or to not count the ballots or to not certify the election as to those measures.

RIPENESS

Respondent has already assigned ballot designation places to the proposals to amend the constitution submitted by the 2017-2018 Constitution Revision Commission. There are no material facts in controversy and because the matter pertains to the 2018 general election, its imminence justifies direct and immediate resolution by this Court.

ARGUMENT

A. VIOLATION OF VOTERS' FIRST AMENDMENT RIGHTS NOT TO BE REQUIRED TO PAY A PRICE FOR THE RIGHT TO VOTE FOR OR AGAINST SPECIFIC PROPOSALS

Although in determining the adequacy of ballot language this Court may not consider the substantive constitutionality of a measure that is the subject of a vote,

Grose v. Firestone, 422 So. 2d 303 (Fla. 1982), it must consider whether the nature of the method of voting violates the First Amendment. That is what Petitioners challenge herein.

Petitioners submit herein that each and every one of the foregoing proposed revisions bundles *independent and unrelated* proposals in a single ballot question in a manner that requires a voter to vote “yes” for a proposal that the voter *opposes* in order to vote “yes” for an independent and unrelated proposal the voter *supports* and to vote “no” for a proposal the voter *supports* in order to vote “no” for an independent and unrelated proposal the voter *opposes*. This is logrolling and a form of issue gerrymandering that violates the First Amendment right of the voter to vote for or against specific *independent and unrelated* proposals to amend the constitution without paying the price of supporting a measure the voter opposes or opposing a measure the voter supports. This Court has acknowledged that the right to vote is a fundamental right that may not be abridged in the absence of a compelling and narrowly drawn state interest. *In re Greenberg's Estate*, 390 So. 2d 40, 42 (Fla. 1980), abrogated on other grounds by *Shriners Hosps. for Crippled Children v. Zrillic*, 563 So. 2d 64 (Fla. 1990). This Court has long acknowledged that a ballot question that requires a voter to vote “no” to support a measure the voter approves cannot remain on the ballot. *Askew v. Firestone*, 421 So. 2d 151

(Fla. 1982).

REVISION 1 (Appendix A) unconstitutionally bundles

- an extremely long and wordy proposal to add a subsection (b) “to preserve and protect the right of crime victims” to Article I §16 with

-a proposal to amend Article V §8 to increase the mandatory retirement age of justices and judges from 70 years to 75 years with

-a proposal to amend Article V by adding a new section 21 to require judges and justices to interpret state statutes and rules *de novo* without deference to interpretations of non-judicial officers.

A single ballot question *might* include a functionally related comprehensive plan to revise the whole of the constitution, or of an article of it, that could be considered as a unit to approve or disapprove as a whole without violating a voter’s right to vote. Nevertheless, bundling a ballot question with *functionally independent and unrelated proposals* for a single vote, some of which a voter would approve and others of which a voter would reject, constitutes an unreasonable infringement upon a voter’s First Amendment rights to vote for or against a proposition without paying the price of voting for (or against) an unrelated proposition. No sufficiently important state interest justifies such an infringement upon the right to vote. The measures bundled in Revision 1 are

functionally independent and unrelated, do not constitute a comprehensive plan of revision and cannot be imposed upon the voters as a unit.

REVISION 2 (Appendix B) unconstitutionally bundles

-a proposal to add a section (c) to Article IX §7 to require university boards of trustees and the university board of governors to approve any proposal or action “to raise, impose, or authorize any fee, as authorized by law” by a designated minimum number of members with

-a proposal to add section 8 to Article IX to create single state college system comprised of all public community and state colleges with

-a proposal to add a new section to Article X to provide death benefits for survivors of first responders and military members.

The measures bundled in Revision 2 are functionally independent and unrelated, do not constitute a comprehensive plan of revision and cannot be imposed upon the voters as a unit.

REVISION 3 (Appendix C) unconstitutionally bundles

-a proposal to amend Article IX § 4 to impose term limits on elected school board members with

-a proposal to amend Article IX by adding a new section to impose the duty upon the legislature to “provide by law for the promotion of civic literacy.”

The measures bundled in Revision 3 are functionally independent and unrelated, do not constitute a comprehensive plan of revision and cannot be imposed upon the voters as a unit.

REVISION 4 (Appendix D) unconstitutionally bundles

-a proposal to amend Article II § 7 to add subsection (c) to prohibit drilling for exploration or extraction of oil or natural gas in certain lands beneath all state waters with

-a proposal to amend Article X § 20 to prohibit use of vapor-generating electronic devices in enclosed indoor workplaces.

The measures bundled in Revision 4 are functionally independent and unrelated, do not constitute a comprehensive plan of revision and cannot be imposed upon the voters as a unit.

REVISION 5 (Appendix E) unconstitutionally bundles

-a proposal to amend Article III §3(b) to change the opening day of regular sessions of the legislature in each even-numbered year with

-a proposal to amend Article IV (g) to create the Office of Domestic Security and Counterterrorism within the Department of Law Enforcement with

-a proposal to amend Article IV §11 to mandate, rather than authorize, the legislature to provide for a Department of Veteran's Affairs and to designate the

governor and cabinet as the head of the department with

-a proposal to amend Article VIII §1(d) to eliminate the capacity of a county charter to abolish the offices of stated county officers and assign their duties elsewhere, to change the length of their terms of office, or to change the mode of selection except by election.

The measures bundled in Revision 5 are functionally independent and unrelated, do not constitute a comprehensive plan of revision and cannot be imposed upon the voters as a unit.

REVISION 6 (Appendix F) unconstitutionally bundles

-a proposal to amend Article I §2 to eliminate the language “except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law” with

-a proposal to amend Article X § 9 to change the wording pertaining to the effect of repealing a criminal statute on the prosecution of crimes committed before repeal with

-a proposal to amend Article X §19 to strike out the wording of an amendment that was earlier repealed by vote of the electors.

The measures bundled in Revision 6 are functionally independent and unrelated, do not constitute a comprehensive plan of revision and cannot be

imposed upon the voters as a unit.

Because these proposed revisions infringe the First Amendment right of voters, including Petitioners, without a narrowly tailored compelling state interest, this Court should order the relief requested herein.

B. VIOLATION OF VOTERS' RIGHTS PROTECTED BY §101.161 FLA. STAT.

In addition to violating the First Amendment rights of voters as described in Part B, each and every one of Constitutional Revision Committee's Revisions 1-6 violates the rights of voters protected by §101.161(1) Fla. Stat., which provides, in relevant part:

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate **approval of the proposal** and a "no" vote will **indicate rejection**. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the **chief purpose** of the measure.The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. This subsection does not apply to constitutional amendments or revisions proposed by joint resolution.

§ 101.161(1) Fla. Stat. (Bold added.)

This provision may be read *in pari materia* with the authority the constitution bestows upon the Constitution Revision Commission. It is:

(c) Each constitution revision commission shall convene at the call of its chair, adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the custodian of state records its proposal, if any, of a **revision of this constitution or any part of it.**

Article XI, § 2(c) Florida Constitution. (Bold added.) It is plain that the Constitution Revision Commission possesses power to propose a comprehensive revision of the entire constitution, such as transforming from the existing form of government to a parliamentary plan as in England and other foreign states. This would require related changes to many articles of the constitution and the voters could be requested to approve or reject the comprehensive whole and not bits and pieces of it. Similarly, a comprehensive revision of a single article, such as local government or education, could be submitted to a yes or no vote of the comprehensive whole. None of the proposed 2018 proposed revisions is of this character. The Constitution Revision Commission also possesses the power to propose a revision to “any part of” the constitution, which would require approval or rejection of each discrete proposal. What power the Constitution Revision Commission does not possess is the power to make revisions to a number of independent and unrelated discrete “parts” of the constitution and bundle them

together in a single ballot question, which is exactly what the Constitutional Revision Commission has done in regard to its Revisions 1-6.

Ballot statements for Revisions 1, 3 and 6 are presented in part C, *infra*, and statements for Revisions 2,¹ 4² and 5³ are presented in the endnotes hereto. All are beyond the power the Constitution has bestowed upon the Constitutional Revision Commission and must be removed from the ballot.

In addition, each and every one of Revisions 1-6 violates the §101.161 Fla. Stat. requirement that the ballot statement “shall be an explanatory statement..... of the **chief purpose** of the measure.” (Bold added.) This Court has long held that ballot language that fails to inform the voter of the *chief purpose* of the measure to be voted upon cannot remain on the ballot. *Askew v. Firestone, supra*. None of the ballot statements of Revisions 1-6 contains an “explanatory statement” of the “*chief purpose*” of the proposed amendment. Indeed, none of them has a “*chief purpose*” unless it be to require voters to vote to approve proposals they disapprove or to reject proposals they approve in order to vote for or against an independent unrelated proposal. As noted above, bundling deprives the voter of the authority to assess the “chief purpose” of each unrelated and independent proposal and constitutes logrolling outlawed not only by the First Amendment but also by §101.161 Fla. Stat.

C. MISLEADING AND DECEPTIVE BALLOT LANGUAGE

Revision 1

The ballot language for Revision 1 (Appendix A9) (ballot designation 6) is:

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 16
ARTICLE V, SECTIONS 8, 21
ARTICLE XII, NEW SECTION
RIGHTS OF CRIME VICTIMS; JUDGES.—Creates constitutional rights for victims of crime; requires courts to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes. Requires judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency's interpretation. Raises mandatory retirement age of state justices and judges from seventy to seventy-five years; deletes authorization to complete judicial term if one-half of term has been served by retirement age.

This ballot language is clearly and deceptive misleading because it does not disclose to the voter that subsection (b)(10) of the proposal to amend Article I § 16 diminishes the rights of accused criminals to have influence in the timing of trials and the rights of convicted persons to seek post-conviction relief. Subsection (b)(10) is attached as an endnote hereto.⁴ Provisions in this subsection plainly infringe rights of those accused of crime and are hidden from the voters.

Revision 3

The ballot language for Revision 3 (Appendix C3)(ballot designation 8) is:

CONSTITUTIONAL AMENDMENT

ARTICLE IX, SECTION 4, NEW SECTION
ARTICLE XII, NEW SECTION
SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS.—
Creates a term limit of eight consecutive years for school board members and requires the legislature to provide for the promotion of civic literacy in public schools. Currently, district school boards have a constitutional duty to operate, control, and supervise all public schools. The amendment maintains a school board’s duties to public schools it establishes, but permits the state to operate, control, and supervise public schools not established by the school board.

This ballot language is clearly and deceptively misleading because it does not disclose to the voter that the proposed amendment to Article IX § 4(b), adding the language “established by the district school board,” eliminates the constitutional requirement in Article IX § 1(a) that Florida have a *uniform ...system of free public schools*, which has been a continuous constitutional imperative in Florida beginning with the Constitution of 1868.¹ This measure seeks *sub silentio* to subvert decisions such as *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006). This subterfuge must not be perpetuated upon Florida voters.

¹Article VIII § 2 1868 Constitution
Sec. 2. The Legislature shall provide a uniform system of common schools, and a university, and shall provide for the liberal maintenance of the same. Instruction shall be free.

Article XII §1 1885 Constitution
Section 1. The Legislature shall provide for a uniform system of public free schools, and shall provide for their liberal maintenance of the same.

Revision 6

The ballot language for Revision 6 (Appendix F3) (ballot designation 11) is:

CONSTITUTIONAL AMENDMENT

ARTICLE I, SECTION 2

ARTICLE X, SECTIONS 9, 19

PROPERTY RIGHTS; REMOVAL OF OBSOLETE PROVISION;
CRIMINAL

STATUTES.—Removes discriminatory language related to real property rights. Removes obsolete language repealed by voters. Deletes provision that amendment of a criminal statute will not affect prosecution or penalties for a crime committed before the amendment; retains current provision allowing prosecution of a crime committed before the repeal of a criminal statute.

This ballot language is clearly and deceptive misleading because it does not disclose to the voter that the proposal to Article I § 2 is to remove the power of the legislature to regulate or prohibit “ownership, inheritance, disposition and possession of real property by *aliens ineligible for citizenship*.”² (Added.) While the existing language is discriminatory against *aliens ineligible for citizenship*. and potentially unconstitutional under the United States Constitution, voters are entitled to know the effect of their votes, which the ballot language hides from

²All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; *except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law*. No person shall be deprived of any right because of race, religion, national origin, or physical disability. Article I §2 (Italics added.)

them.

CONCLUSION

For reasons stated herein Revisions 1, 3 and 6 proposed by the Constitutional Revision Commission must be removed from the ballot (or other appropriate remedy provided) because the ballot language is positively misleading and deceptive by failing to inform the voters of critical consequences of approval. In addition, Revisions 1-6 must be removed from the ballot because the bundling of independent and unrelated measures infringes the voters' First Amendment rights and those guaranteed by §101.161 Fla. Stat. to vote without paying a price of voting for a measure one opposes in order to vote for a measure one supports or of voting against a measure one supports in order to vote against a measure one supports. No narrowly tailored compelling state interest justifies such an infringement. Finally, Revisions 1-6 must be removed from the ballot because the Constitution Revision Commission has no power to bundle independent and unrelated proposals in a single ballot question and because each of the 6 ballot questions fails to inform the voter of *the chief purpose* of the measure as required by §101.161 Fla. Stat.

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1. BALLOT LANGUAGE CRC Revision 2 (Appendix B10)

CONSTITUTIONAL AMENDMENT

ARTICLE IX, SECTIONS 7, 8

ARTICLE X, NEW SECTION

FIRST RESPONDER AND MILITARY MEMBER SURVIVOR BENEFITS; PUBLIC COLLEGES AND UNIVERSITIES.—Grants mandatory payment of death benefits and waiver of certain educational expenses to qualifying survivors of certain first responders and military members who die performing official duties. Requires supermajority votes by university trustees and state university system board of governors to raise or impose all legislatively authorized fees if law requires approval by those bodies. Establishes existing state college system as constitutional entity; provides governance structure.

2.

BALLOT LANGUAGE CRC Revision 4 (Appendix D6,7)

CONSTITUTIONAL AMENDMENT

ARTICLE II, SECTION 7

ARTICLE X, SECTION 20

PROHIBITS OFFSHORE OIL AND GAS DRILLING; PROHIBITS VAPING IN ENCLOSED INDOOR WORKPLACES.—Prohibits drilling for the exploration or extraction of oil and natural gas beneath all state-owned waters between the mean high water line and the state's outermost territorial boundaries. Adds use of vapor generating electronic devices to current prohibition of tobacco smoking in enclosed indoor workplaces with exceptions; permits more restrictive local vapor ordinances.