
No. SC18-1368

KENNETH J. DETZNER, etc.,
Appellant,

vs.

LEAGUE OF WOMEN VOTERS OF FLORIDA, et al.,
Appellees.

October 15, 2018

PER CURIAM.

Appellant, Kenneth Detzner, Secretary of the Florida Department of State, seeks review of *League of Women Voters of Florida, Inc. v. Detzner*, No. 2018-CA-001523 (Fla. 2d Cir. Aug. 20, 2018). The circuit court granted summary judgment in favor of the League of Women Voters (LWV) and enjoined Detzner from placing Revision 8 on the ballot for the November 2018 general election. Detzner appealed the decision to the First District Court of Appeal, which certified to this Court that the judgment is of great public importance and requires immediate resolution by this Court. We have jurisdiction. *See* art. V, § 3(b)(5), Fla. Const.

This Court considered this cause at oral argument on September 5, 2018, and on September 7, 2018, issued an order affirming the decision of the circuit court. This opinion provides the reasons for our decision.

Background

Article XI, section 2, of the Florida Constitution establishes the Constitution Revision Commission (CRC) to convene every twenty years to propose revisions to the Florida Constitution. *See* Art. XI, § 2, Fla. Const. Then, the proposed

> Art. XI, § 5(a), Fla. Const.

On March 21, 2018, the Constitution Revision Commission (CRC), approved Proposal 71, which would have made the following revision to Article IX, Section 4(b):

> (b) The school board shall operate, control, and supervise all free public schools established by ~~within~~ the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

The sponsor of the proposal stated during debate that the revision was intended to overrule *Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008), and to allow the power to authorize new charter schools to be assigned to any of a variety of potential public or private entities.

presumably intended to allude to Proposal 71[1] [but] a voter could easily believe . . . that it consists solely of a proposal to limit the term limits for school

circuit court also found the ballot summary affirmatively misleading,

circuit court found:

Beca

Adoption & Amendment Local Govât Comprehensive Land Use Plans, 902 So. 2d 763, 770 (Fla. 2005). Section 101.161(1) provides:

> 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, 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. In addition, for every (h)-3( )] TJETBT1 0 0 1

sufficiently to enable him intelligently to cast his ballot *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954)). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986). The ballot must, however, give the voter fair notice of the decision he or she must make. *Armstrong*, 773 So. 2d at 15

the proposed amendment, the summary failed to explain that the amendment would supersede an already existing constitutional provision . . . . The purpose of section 101.161 is to ensure that voters are advised of the

Advisory Op. to Attôy Gen. re Indep. Nonpartisan Commôn to Apportion Legislative & Cong. Dists. Which Replaces Apportionment by Legislature, 926 So. 2d 1218, 1228 (Fla. 2006).

> A court may declare a proposed constitutional amendment invalid only if the record shows that the proposal is clearly and conclusively defective; the standard of review [in such cases] is de novo. Proposed amendments to the Florida Constitution may originate in any of several sources, including the Legislature, revision commission, citizen initiative, or constitutional convention.

revision, who each give different meaning to the language of the revision, its title, and its summary. We therefore affirm the decision of the circuit court.

Since 199

be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education . . Art. IX, § 1(a), Fla. Const. Also since then, section 4 has provided:

> SECTION 4. School districts; school boards.
> (a) Each county shall constitute a school district; provided, two or

the statute. *Armstrong*, 773 So. 2d at 18

Further, the ballot summary fails to explain which public schools or categories of schools will be affected. Currently, in addition to the general provision for K-12 education in section 1003.02, Florida Statutes (2018), providing

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ide for five additional

text of the amendment and the ballot language which of these public schools, or categories of public schools, would be affected. Therefore, the

Askew, 421 So. 2d at 156. Because voters will simply not be able to understand the true meaning and ramifications of the revision, the ballot language is clearly and conclusively defective.

That the voters will not be informed as to the true meaning and ramifications of the revision is evinced by the varying explanations offered by the proponents. For example, Detzner argues that local school boards have no constitutional authority to establish or authorize public schools and asserts that the revision would not change the status quo. Meanwhile, the Florida Consortium of Public Charter Schools and Florida Charter School Alliance, as amici curiae, argue that the proposed revision would affect all public schools. Further, they argue that the

On the other hand, the Urban League of Miami and the Central Florida Urban League, amici curiae, argue that Revision 8 presents a much needed change by stripping the local school boards of their ability to continue their hostility towards public charter schools.

Because proponents of the proposed revision each give different meaning to

currently has that authority and that the Revision does not alter the status quo. Therefore, it appears that the circuit court correctly determined that the ballot title and summary fly under false colors. As stated by this Court in *Armstrong*, it is not sufficient for a ballot summary to faithfully track the text of a proposed amendment, *Armstrong*, 773 So. 2d at 15

Askew, 421 So. 2d at 156.

Armstrong, 773 So. 2d at 16.

As demonstrated by the arguments of the Revision 8 proponents, this language either does nothing or changes everything. Considered within the context of the Constitution as a whole, which provides for a State Board of Education that regulates public education at the state level, and the Florida Statutes, which provide five distinct types of public schools, the ballot title and summary to

ramifications, of [the] amendment *Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d at 490 (quoting *Askew*, 421 So. 2d at 156).

Conclusion

For the foregoing reasons, we previously affirmed the judgment of the circuit court enjoining Detzner from placing Revision 8 on the ballot for the November 2018 general election. No motion for rehearing will be entertained.

It is so ordered.

PARIENTE, LEWIS, QUINCE, and LABARGA, JJ., concur.
PARIENTE, J., concurs with an opinion, in which LEWIS, J., concurs.
LEWIS, J., concurs with an opinion.

Article IX, section 4(b), of the Florida Constitution presently empowers

Florida Statutes (2018), builds on this constituti

school boards must *establish*, organize, and operate their public K-

§ 1003.02, Fla. Stat. (2018) (emphasis added). Public K-12 schools in Florida include, for example, charter schools. *Id.* § 1002.33(1). Currently, a charter

See

Frequently Asked Questions, How Are Charter Schools Created, Organized, and Operated?, http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml (last visited Sept. 29, 2018).

supervise to only those public schools it *establishes*, a somewhat indirect but significant limitation is also placed on the authority of district school boards to *establish*, or approve the creation of, public schools within their districts. It is this significant but undisclosed effect of the amendment that had the fervent support of charter school advocates. *See* Br. of Amici Curiae the Urban League of Miami & the Cent. Fla. Urban League, at 7

Further, as CRC Commissioner Joyner argued in opposition to the bundling

Id. at 178.

Although the CRC is not bound by a single-subject requirement, at least

multiple issues into one amendment, which causes confusion and ambiguity as to the chief purpose of the proposal.

Revision 8 attempts to bundle three issues affecting the Florida public school system: (1) school board member term limits, (2) the L

ty to operate, control, and supervise public schools not established by the district school boards i.e., charter schools, *see* per curiam op. at 10-14. While all three of these matters concern the public school system on a general level, each targets and affects very specific and very different issues within that public school system, which only serves to confuse and distract and effect. In fact, at the March 20, 2018, Constitution Revision Commission (CRC) Session,

are going to get too many people in the state of Florida who are going to look at a ballot that says our children ought to be civically literate and say we are sure as

containing a widely popular issue to trick the voters is precisely the type of misleading language expr

This Court has from time immemorial warned against bundling multiple issues into one constitutional amendment due to the inherently misleading nature of combining multiple subjects and the problematic choice it requires voters to make. *See City of Coral Gables v. Gray* Yet, if required to vote upon the proposed amendment as presently framed the electors will be put to it to accept, or reject, all subject matters contained therein, in toto, without the opportunity for discrimination. . . . [T]he elector would be put in the position where, in order to aid in carrying a proposition which he considered good or wise, he would be obliged to vote for another which he would otherwise reject as bad or foolish. It would sanction the practice of combining meritorious and vicious legislation in one proposal, so that the former could not be secured without submitting to the latter. *see also Antuono v. City of Tampa*, 99 So. 324, 326 (Fla. 1924). Nevertheless, the constitutional scheme under which the Court operated when announcing these warnings was vastly different than the one under which the Court today operates.

Currently, the Florida Constitution describes four procedures through which the Constitution can be amended or revised: (1) a joint resolution by the Legislature, Art. XI, § 1, Fla. Const., (2) a proposal by a constitution revision

Fla. Const., and (4) the establishment of a constitutional convention, Art. XI, § 4,

Fla. Const. Ou

restriction that a proposed amendment be limited to one subject. Art. XI, § 3, Fla. Const. As this Court has explained,

> It is apparent that the authors of article XI realized that the initiative method did not provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision. The legislative, revision commission, and constitutional convention processes of sections 1, 2 and 4 all afford an opportunity for public hearing and debate not only on the proposal itself *but also in the drafting of any constitutional proposal. That opportunity for*

For the foregoing reasons, I would strike Revision 8 from the November 2018 general election ballot due to the improper bundling, in addition to the reasons expressed within the majority opinion.

CANADY, C.J., dissenting.

Because I conclude that the appellees have failed to show that the ballot summary for Revision 8 is clearly and conclusively defective, I dissent from the decision to strike this proposal from the ballot. The majority goes astray by invalidating the proposal on the basis of supposed deficiencies in the text of the proposed amendment itself. Under the standards required by our decisions, the ballot summary here correctly identifies the chief purpose of the proposed amendment. And the summary in no way either affirmatively misleads or misleads by omission. The people of Florida should have the opportunity to vote on this proposal to amend the Constitution.

The challenged portion of the ballot summary, which the majority declares to be defective, relates to a proposed change

proposed amendment, each board shall operate, control, and supervise all free public schools *established by the district school board* within the school

(Emphasis added.)

From this proposed change in the text of article IX, section 4(b), five unmistakable and interrelated points emerge. (1) Under the proposed amendment, constitutional room will exist not only for school-board-established schools but

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schools that is suggested by the majority opinion. Indeed, no such right currently exists under Florida law. *See* § 1002.33(6)(c)3.a., Fla. Stat. (2018) (providing process for appeal of school board denial of charter school application, authorizing State Board of Education to the application to the sponsor with its written decision that the sponsor [school board] approve or deny the and providing that the school board shall implement the decision of the State Board of *see also Sch. Bd. of Palm Beach Cty. v. Fla. Charter Educ. Found., Inc*., 213 So. 3d 356, 359 (Fla. 4th DCA 2017) (rejecting challenge to constitutionality of the charter school appeal provision based on school board argument that the statute the State Board, and not the School Board, to determine the creation of a charter The decision concerning the of charter schools thus ultimately rests in the State Board of Education. So the disclosure the majority says should be made concerning the current state of the law would itself be misleading. The summary cannot be judged defective for failing to include a misleading statement.

In sum, the

merits of the proposed amendment. I strongly dissent from the decision to remove this proposed amendment from the ballot.

POLSTON and LAWSON, JJ., concur.

Certified Judgments of Trial Courts in and for Leon County John C. Cooper, Judge - Case No. 372018CA001523XXXXXX An Appeal from the District Court of Appeal, First District, Case No. 1D18-3529

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the ballot summary misleads the voters conce *Id.* at S356. The Constitution contains an anti-

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