Supreme Court of Florida

No. SC10-1375

FLORIDA DEPARTMENT OF STATE, etc., et al.,
Appellants,

vs.

FLORIDA STATE CONFERENCE OF NAACP BRANCHES, et al.,
Appellees.

[August 31, 2010]

PER CURIAM.

The Florida Department of State, Dawn K. Roberts in her official capacity as the Secretary of State, the Florida Senate, and the Florida House of Representatives ("Roberts and the Legislature"), appealed to the First District Court of Appeal from a July 12, 2010, judgment of the circuit court striking a legislatively proposed constitutional amendment from the November 2010 general election ballot. The First District certified to this Court that the judgment is of great public importance and that the appeal requires immediate resolution by this Court under our jurisdiction set forth in article V, section 3(b)(5), of the Florida Constitution. We agreed and granted expedited review to decide the question of great public

importance—whether proposed Amendment 7, amending article III of the Florida Constitution, meets the requirements of Florida law for inclusion on the November 2010 ballot. As further explained below, we affirm the judgment of the circuit court striking proposed Amendment 7 from the ballot because the ballot language fails to inform the voter of the chief purpose and effect the amendment will have on existing, mandatory constitutional provisions in article III.

1. FACTS

On May 18, 2010, the Florida Legislature filed with the Florida Secretary of State a joint legislative resolution, Fla. H.J. Res. 7231 (2010) (HJR 7231), proposing an amendment to article III of the Florida Constitution. The amendment, designated Amendment 7 for the November 2010 general election ballot, would add section 20 to article III of the constitution as follows:

> **SECTION 20. Standards for establishing legislative and congressional district boundaries**.—In establishing congressional and legislative district boundaries or plans, the state shall apply federal requirements and balance and implement the standards in this 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 this article. Districts and plans are valid if the balancing and implementation of standards is rationally related to the standards contained in this constitution and is consistent with federal law.

Section 101.161, Florida Statutes (2009), provides that whenever a constitutional amendment is proposed for submission to a vote of the people, the substance of the

amendment shall be printed in clear and unambiguous language on the ballot.[1] See § 101.161(1), Fla. Stat. (2009). We have held that "[t]he purpose of section 101.161(1) is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). In HJR 7231, the Legislature adopted the following statement, which essentially mirrors the language contained in proposed Amendment 7, and resolved that it be placed on the ballot as follows:

> BE IT FURTHER RESOLVED that the following statement be placed on the ballot:
>
> CONSTITUTIONAL AMENDMENT
> ARTICLE III, SECTION 20
> **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.

On May 21, 2010, a complaint for declaratory and injunctive relief was filed in the circuit court seeking to prevent placement of proposed Amendment 7 on the

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1. Section 101.161(1) also provides that for amendments and ballot language not proposed by joint legislative resolution, the explanatory statement included on the ballot shall not exceed 75 words in length.

November ballot. The suit was filed against the Florida Department of State and Secretary of State Dawn K. Roberts by plaintiffs 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. After the complaint was filed, Governor Charlie Crist was allowed to intervene as amicus curiae in support of plaintiffs, and the Florida House of Representatives and the Florida Senate were allowed to intervene as defendants in the circuit court.

The complaint alleged, inter alia, that the ballot title and summary for Amendment 7 fail to inform the voters that the amendment (1) would limit the mandatory application of constitutional standards and allow the Legislature to subordinate existing standards in article III to permissive and vague standards in the amendment; (2) would allow the Legislature to consider but not implement specific protections for minority voters contained in proposed constitutional Amendments 5 and 6, also slated for the November ballot;[2] (3) would allow the Legislature to "balance" standards in such a way as to create districts favoring or disfavoring incumbents; and (4) is intended to require validation of any district or

2. See Advisory Op. to Att'y Gen. re Standards for Establishing Legislative District Boundaries, 2 So. 3d 175, 191 (Fla. 2009) (approving ballot title and summary); Advisory Op. to Att'y Gen. re Standards for Establishing Legislative District Boundaries (FIS), 24 So. 3d 1198, 1202 (Fla. 2009) (holding that the financial impact statements comply with statute).

plan that is related to nonmandatory standards in Amendment 7. The plaintiffs also alleged that the ballot title is misleading in that it purports to provide "standards" for redistricting while actually eliminating them.

The plaintiffs filed a motion for summary judgment seeking a judgment that the proposed amendment fails to advise voters of its chief purpose and true effect. Defendants Roberts and the Legislature filed cross motions for summary judgment. The parties agreed that there existed no disputed issues of material fact, and a final hearing was held on July 8, 2010. On July 12, 2010, the circuit court entered its order granting the plaintiffs' motion for summary final judgment and denying the defendants' motions for summary judgment. The circuit court's order found that the ballot language does not meet the requirements of section 101.161(1) in that it does not fairly advise the voters of the ramifications of the amendment. As a result, the circuit court enjoined the Department of State from placing Amendment 7 on the November 2010 ballot. In so ruling, the trial judge made the following pertinent findings:

> Apart from the number of districts to be drawn, the Florida Constitution currently contains only one requirement binding on the legislature when they meet every ten years to draw districts. That one mandatory requirement is that each district be contiguous. Amendment 7, if it were to pass, would make that one mandatory requirement aspirational only and would subordinate contiguity to the other aspirational goals or "standards" contained in Amendment 7.
>
> . . . .

> To be clear, there is nothing unlawful or improper about what the legislative proposal seeks to do. The wisdom of a proposed amendment is not a matter of concern for this Court. But to be legally entitled to a place on the ballot, the summary and title must be fair and must advise the voter sufficiently to enable the voter to intelligently vote for or against the amendment. . . . Requiring that all districts be contiguous is a valuable right afforded to all citizens of Florida. A citizen cannot, and should not, be asked to give up that right without being fully informed and making an intelligent decision to do so.
>
> Amendment 7, if passed, would allow this or any future legislature, if it chose to do so, to gerrymander districts guided by no mandatory requirements or standards and subject to no effective accountability so long as its decisions were rationally related to, and balanced with, the aspirational goals set out in Amendment 7 and the subordinate goal of contiguity.

Thus, the primary basis on which the circuit court invalidated the ballot language was that it failed to inform the voters that article III of the Florida Constitution currently contains a mandatory contiguity requirement which, if Amendment 7 is adopted, could be subordinated to the other considerations set forth in proposed Amendment 7.[3]

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3. Article III, section 16(a), of the Florida Constitution, titled "Senatorial and Representative Districts," requires that in the second year following each decennial census, the Legislature shall apportion the state in accordance with the constitutions of the State and the United States "into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory."

II. ANALYSIS

The standard of review of the validity of a proposed constitutional amendment is de novo. Armstrong v. Harris, 773 So. 2d 7, 11 (Fla. 2000). We are ever mindful that "[t]he Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). "A court may declare a proposed constitutional amendment invalid only if the record shows that the proposal is clearly and conclusively defective . . . ." Armstrong, 773 So. 2d at 11 (citing Askew, 421 So. 2d at 154).

A. Requirement that Ballot Language Inform Voters of Legal Effect and Ramifications of a Proposed Amendment

In reviewing the validity of ballot language submitted to the voters for a proposed constitutional amendment, we do not consider or review the substantive merits or the wisdom of the amendment. See Standards For Establishing Legislative District Boundaries, 2 So. 3d at 184; Fla. Dep't of State v. Slough, 992 So. 2d 142, 147 (Fla. 2008); In re Advisory Op. to Att'y Gen. re Med. Liab. Claimant's Comp. Amendment, 880 So. 2d 675, 677 (Fla. 2004); Askew, 421 So. 2d at 155. Our sole task is to determine whether the ballot language sets forth the substance of the amendment in a manner that satisfies the requirements of section 101.161, Florida Statutes (2009). Section 101.161(1) expressly requires that "[w]henever 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." § 101.161(1), Fla. Stat. "Section 101.161(1) is a codification of the accuracy requirement implicit in article XI, section 5 of the Florida Constitution." Advisory Op. to Att'y Gen. re Referenda Required for Adoption & Amendment of Local Government Comprehensive Land Use Plan, 902 So. 2d 763, 770 (Fla. 2005).

To conform to section 101.161(1), the ballot language "must state 'the chief purpose' of the proposed amendment. In evaluating an amendment's chief purpose, a court must look not to subjective criteria espoused by the amendment's sponsor but to objective criteria inherent in the amendment itself, such as the amendment's main effect." Armstrong, 773 So. 2d at 18 (footnote omitted). In this analysis, we consider two questions: "(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public." Standards for Establishing Legislative District Boundaries, 2 So. 3d at 184 (quoting Advisory Op. to Att'y Gen. re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo, 959 So. 2d 210, 213-14 (Fla. 2007)). This evaluation also includes consideration of the amendment's "true meaning, and ramifications." Armstrong, 773 So. 2d at 16 (quoting Askew, 421 So. 2d at 156). "In practice, the accuracy requirement in

article XI, section 5, functions as a kind of 'truth in packaging' law for the ballot." Armstrong, 773 So. 2d at 13. The proposed change in the constitution must "stand on its own merits and not be disguised as something else." Askew, 421 So. 2d at 156. "Reduced to colloquial terms, a ballot title and summary cannot 'fly under false colors' or 'hide the ball' with regard to the true effect of an amendment." Slough 992 So. 2d at 147; see also Armstrong, 773 So. 2d at 16.

Moreover, we have consistently adhered to the principle "that lawmakers who are asked to consider constitutional changes, and the people who are asked to approve them, must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be." Smathers v. Smith, 338 So. 2d 825, 829 (Fla. 1976). It is by these basic and longstanding principles that we must measure the ballot language presented to the voter for Amendment 7.

We do not ignore the fact that HJR 7231, proposing Amendment 7, was the product of a joint resolution passed by a three-fifths vote of the Legislature. While we traditionally accord a measure of deference to the Legislature, "[t]his deference . . . is not boundless, for the constitution imposes strict minimum requirements that apply across-the-board to all constitutional amendments, including those arising in the Legislature." Armstrong, 773 So. 2d at 14. We also recognize that section 101.161(1), which places strict requirements on ballot language presented for any

constitutional amendment or other public measure, is also a legislative enactment entitled to this Court's deference.[4]

B. The Ballot Language for Proposed Amendment 7

With these principles in mind, we turn to the question before the Court—whether the ballot language proposed for Amendment 7 comports with the requirements of section 101.161, the Florida Constitution, and our case law governing placement of proposed constitutional amendments on the ballot. The ballot language for proposed Amendment 7 states in pertinent part that in redistricting, "[t]he 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." See HJR 7231 (emphasis added).

4. Contrary to the suggestion in the dissent that we have overlooked important precedent on constitutional construction, we are not unmindful of the rule of construction that requires a court to interpret an ambiguous constitutional provision, if possible, in such a manner as to harmonize it with existing constitutional provisions. However, as the authority cited in the dissent demonstrates, this rule of construction applies to existing constitutional provisions, not to proposed amendments. Our duty under section 101.161(1), Florida Statutes, and article XI, section 5, of the Florida Constitution is to assure that the chief purpose and effect of proposed amendments be presented to the voter in clear and unambiguous language.

In this case, the circuit court struck Amendment 7 from the ballot because the court concluded the ballot language did not inform the voters that the amendment would allow the existing mandatory constitutional requirement in article III, section 16(a), requiring that districts be contiguous to be subordinated to the discretionary standards contained in Amendment 7. We agree with this finding. Under the text of Amendment 7, if the discretionary considerations in Amendment 7 are not to be subordinated to any other provisions of article III, then it must follow that other provisions of article III may be subordinated to the discretionary considerations in the balancing process set forth in Amendment 7. This clearly alters the nature of the contiguity requirement currently contained in article III, section 16(a), of the constitution. Unfortunately, neither the text of the amendment nor the explanatory statement proposed by the Legislature makes this fact clear. Nowhere does the ballot language inform the voter that there is currently a mandatory contiguity requirement in article III, and nowhere does the language inform the voter that the contiguity requirement could be diluted by Amendment 7.

In Armstrong we invalidated a constitutional amendment because the ballot language failed to inform the voters that the provision would alter an existing provision in the Florida Constitution. We stated:

> In the present case, as explained above, the main effect of the amendment is simple, clear-cut, and beyond dispute: The amendment

> will nullify the Cruel or Unusual Punishment Clause. This effect far outstrips the stated purpose (i.e., to "preserve" the death penalty), for the amendment will nullify a longstanding constitutional provision that applies to all criminal punishments, not just the death penalty. Nowhere in the summary, however, is this effect mentioned—or even hinted at. The main effect of the amendment is not stated anywhere on the ballot. (The voter is not even told on the ballot that the word "or" in the Cruel or Unusual Punishment Clause will be changed to "and"—a significant change by itself.)

Armstrong, 773 So. 2d at 18 (footnote omitted). In the present case, Amendment 7 would allow the Legislature to nullify the currently mandatory nature of the contiguity requirement, placing it on par with the other discretionary considerations in the redistricting process—considerations that are subject to discretionary balancing by the Legislature. This is a matter that should have been clearly and unambiguously stated in the ballot language. Failing this clear explanation, the voters will be unaware of the valuable right—the right to have districts composed of contiguous territory—which may be lost if the amendment is adopted. For all these reasons, we agree with the well-reasoned judgment of the circuit court and affirm the judgment striking proposed Amendment 7 from the ballot because the ballot language fails to inform the voter of the chief purpose of Amendment 7 and the effect it will have on the existing, mandatory constitutional provisions in article III.

Although the circuit court did not reach the question of whether the ballot title is invalid as being misleading, we also find that the ballot title is misleading

and precludes placement of Amendment 7 on the ballot. The ballot title states "Standards for Legislature to Follow in Legislative and Congressional Redistricting." While purporting to create and impose standards upon the Legislature in redistricting, the amendment actually eliminates actual standards and replaces them with discretionary considerations. Thus, we conclude that the title is misleading as to the true purpose and effect of the amendment.

III. CONCLUSION

Based upon the provisions of section 101.161(1), Florida Statutes, article XI, section 5, of the Florida Constitution, and our precedent, we hold that the ballot language setting forth the substance of Amendment 7 does not inform the voter of the true purpose and effect of the amendment on existing constitutional provisions and, further, is misleading. Accordingly, the judgment of the circuit court is affirmed and Amendment 7 may not be placed on the general election ballot for November 2010.

It is so ordered.

PARIENTE, LEWIS, QUINCE, LABARGA, and PERRY, JJ., concur.
PARIENTE, J., concurs with an opinion, in which PERRY, J., concurs.
CANADY, C.J., dissents with an opinion, in which POLSTON, J., concurs.

NO MOTION FOR REHEARING WILL BE ALLOWED.

PARIENTE, J., concurring.

While this Court is reluctant to interfere with the people's right to vote on a proposed constitutional amendment, the Court has an obligation to strike a ballot proposal that does not clearly and unambiguously inform the voter of the impact of the amendment. It should hardly be a controversial proposition that voters must be able to cast an intelligent and informed vote on the proposed constitutional amendment and understand whether the proposed amendment adds to their existing rights, alters existing rights, or dilutes existing rights provided to them by their constitution.

We must be always mindful that the "Constitution of Florida is a document of limitation by which the people of the state have restricted the forces of government in the exercise of dominion and power over their property, their rights and their lives." Smathers v. Smith, 338 So. 2d 825, 827 (Fla. 1976). Although the Florida Constitution sets forth the structure of state government, its essential purpose is to protect the rights of the people and to restrict the exercise of power by the government.

Of course, the people of this State also have a right to amend the constitution, and the voters have the right to decide to adopt a proposed amendment that provides the Legislature with greater authority, alters existing rights already guaranteed in the constitution, or restricts the effect of other

proposed amendments. The unifying principle for all proposed constitutional changes is that the voters "must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that is neither less nor more extensive than it appears to be." Smathers, 338 So. 2d at 829. The "accuracy requirement in Article XI, section 5, functions as a kind of 'truth in packaging' law for the ballot" and applies "across-the-board to all constitutional amendments." Armstrong v. Harris, 773 So. 2d 7, 13-14 (Fla. 2000).

The Legislature asserts that in proposing this amendment, it was motivated by its interest in providing our citizens with greater protection when it comes to redistricting. If in fact the Legislature's intent was to provide the citizens with additional rights concerning redistricting, that purpose is not clearly and unambiguously conveyed. The proposed amendment appears to actually have the opposite effect. In this case, because the ballot summary fails to explain its chief purpose and the title misleadingly sets forth that the amendment is creating "Standards for the Legislature to Follow," we are obligated to strike the initiative from the ballot.

PERRY, J., concurs.

CANADY, C.J., dissenting.

The basis for the majority's decision to preclude the people of Florida from voting on proposed amendment 7 is the assertion that the amendment is misleading

because it fails to disclose that it would nullify the contiguity requirement currently in the Florida Constitution. But nothing about amendment 7 is misleading. The amendment, by its own plain terms, does not nullify the contiguity requirement but mandates the implementation of that requirement. I therefore dissent from the majority's ruling that the text of amendment 7 and its ballot title are defective and from the decision to remove the amendment from the ballot.

Article III, section 16(a) of the Florida Constitution provides that the Legislature "shall apportion the state . . . into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory." Contrary to the majority's assertion, nothing in amendment 7 would nullify, dilute, or alter this provision of the Florida Constitution.

Amendment 7 provides that in establishing district boundaries or plans, "the state shall . . . balance and implement the standards in this constitution." H.J. Res. 7231, 2010 Leg. (Fla. 2010) (emphasis added). Amendment 7 further provides that "[t]he 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 this article." Id. (emphasis added). Finally, amendment 7 also states that "[d]istricts and plans are valid if the balancing and implementation of standards is rationally related to the standards contained in this constitution." Id. (emphasis added).

The majority's reading of the amendment fails to give full effect to these provisions. That reading is based on the inference that the references in the text of amendment 7 to "balance" and "balancing" and the "without subordination to" clause vest the Legislature with a wholly discretionary power to ignore the contiguity requirement of article III, section 16(a). But the inference relied on by the majority is rendered wholly untenable by the express requirement in the amendment that the State "balance and implement the standards in this constitution" and by the express provision that the "balancing and implementation of standards" must be "rationally related" to the constitutional standards. The majority's interpretation of amendment 7 effectively reads the words "and implement" together with "and implementation" out of the text of the amendment.

"Implement" means "to carry out: accomplish, fulfill." Webster's Third New Int'l Dictionary of the English Language, Unabridged 1134 (1993). More particularly, "implement" means "to give practical effect to and ensure of actual fulfillment by concrete measures." Id. It is impossible to implement a requirement

or standard if the requirement or standard is disregarded. A standard which must be implemented has not been nullified.

Contrary to the majority's suggestion, the standard at issue—contiguity—is not a standard that is subject to dilution.

> This Court has defined "contiguous" as "being in actual contact: touching along a boundary or at a point." A district lacks contiguity "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."

In re Constitutionality of House Joint Resolution 1987, 817 So. 2d 819, 827-28 (Fla. 2002) (citation omitted) (quoting In re Senate Joint Resolution 2G, 597 So. 2d 276, 279 (Fla. 1992)). A district either meets the contiguity requirement or fails to meet that requirement. Contiguity is thus a determinate requirement and not a vague standard that may be applied in varying degrees. In this respect, contiguity is like the constitutional requirement that there be between thirty and forty senatorial districts and between eighty and 120 representative districts.

The direction to "balance and implement" standards does not—as the majority contends—grant discretion to not implement the contiguity standard. If the Legislature adopted a plan with districts that did not meet the contiguity requirement, the Legislature would have failed to "balance and implement the standards of the constitution" and the "balancing and implementation of standards" would not be "rationally related" to the standards of the constitution. Under

amendment 7, the Legislature would have no more discretion to adopt a plan with districts not satisfying the contiguity requirement than it would have to adopt a plan with fifty senatorial districts and 150 representative districts. In short, the majority's reading of amendment 7 cannot be reconciled with the plain meaning of "implement."

Nor does the "without subordination to" clause justify the majority's conclusion that amendment 7 would nullify, dilute, or alter the contiguity requirement. Based on that clause, the majority reasons that the other requirements of the constitution "may be subordinated to the discretionary considerations in the balancing process set forth in Amendment 7." Majority op. at 11. The majority equates "without subordination to" with "superior to" or "without regard to." Id. In the full context of amendment 7, this interpretation is not plausible. The clause must be understood in conjunction with the provision that all of the constitutional standards must be implemented. H.J. Res. 7231, 2010 Leg. (Fla. 2010). In context, "without subordination to" can only mean "not inferior to." It cannot be understood to suggest that the Legislature can fail to implement the other constitutional standards of article III.

The majority's interpretation is not rescued by the assertion that the phrase "balance and implement the standards," the phrase "balancing and implementation of standards," and the "without subordination to" clause leave open the possibility

that not every standard must necessarily be implemented. The assertion springs from an inappropriate focus on the "without subordination to" clause and the references to "balance" and "balancing" in isolation from the full context of amendment 7. This assertion thus attempts to tease an ambiguity out of a text that unequivocally directs that "the state shall . . . balance and implement the standards in this constitution."

But even if disbelief could be suspended and the ambiguity could be found, the majority's position would nonetheless founder on the rule that "[a] construction that nullifies a specific clause will not be given to a constitution unless absolutely required by the context." Gray v. Bryant, 125 So. 2d 846, 858 (Fla. 1960). Since amendment 7 does not expressly repeal the contiguity requirement now in the constitution, any ambiguity in amendment 7 should be resolved to harmonize the amendment with the existing contiguity provision. See Jackson v. Consol. Gov't of Jacksonville, 225 So. 2d 497, 500-01 (Fla. 1969). The majority's analysis simply fails to take into account this cardinal rule of constitutional interpretation.[5]

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5. The majority's justification for this failure is not cogent. The majority asserts that the rule of construction does not apply to proposed constitutional amendments. This misses the point that the question here is the effect the proposed amendment, if adopted, would have on the existing constitutional provision. To decide if the proposal is defective because it fails to disclose to the voters that it would alter, nullify, or dilute the existing contiguity provision, the interplay of the proposal and the existing provision must be determined. The rule of constitutional construction obviously is relevant to that determination.

The chief purpose of amendment 7 is clearly articulated and presented to the voters in the ballot summary, which sets forth verbatim the operative text of the amendment. The text of the amendment speaks for itself, and it conceals nothing from the voters. There is nothing about the ballot title or the ballot summary that is inaccurate or misleading. Instead, the inaccuracy lies in the majority's unwarranted interpretation of amendment 7, an interpretation which cannot be reconciled with the amendment's plain meaning and which violates fundamental principles of constitutional interpretation. The people are thus denied the right to vote on amendment 7 based on an interpretation of the amendment which cannot withstand scrutiny.

The Constitution of Florida belongs to the people of Florida. Under our system of democratic governance, the people have the fundamental right to amend the constitution, which includes the right to consider constitutional amendments proposed to them by their representatives in the Legislature. The decision to remove amendment 7 from the ballot unjustifiably denies the people of Florida the opportunity to vote on this amendment to the constitution properly proposed to them by their elected representatives. The majority's decision unduly interferes with a process that is fundamental to our constitutional system of democratic governance.

POLSTON, J., concurs.

Certified Judgments of Trial Courts in and for Leon County – James Oliver Shelfer, Judge, Case No. 2010-CA-001803 – An Appeal from the District Court of Appeal, First District, Case No. 1D10-3676

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