

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

**LEAGUE OF WOMEN VOTERS OF
FLORIDA, INC., PATRICIA BRIGHAM,**
individually, and as President of the League of
Women Voters of Florida, Inc., and
SHAWN BARTELT, individually, and as
Second Vice President of the League of
Women Voters of Florida, Inc.,

Plaintiffs,

vs.

Case No. _____

KEN DETZNER, in his official capacity
as Florida Secretary of State,

Defendant.

_____ /

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs bring this action to enjoin the placement on the November 2018 general election ballot of Revision 8 to the Florida Constitution proposed by the Florida Constitution Revision Commission (“CRC” or “Commission”). This proposed constitutional revision cannot lawfully be submitted to Florida voters because the CRC’s proposed ballot title and summary fail to inform voters of the chief purpose of the revision and are affirmatively misleading as to the true purpose and effect of the revision.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action for declaratory and injunctive relief pursuant to Article V, section 5(b), of the Florida Constitution and sections 26.012 and 86.011 of the Florida Statutes.

3. Venue is proper in Leon County pursuant to section 47.011 of the Florida Statutes because the office of the Florida Secretary of State is located in Leon County, Florida.

PARTIES

4. Plaintiff League of Women Voters of Florida, Inc. (“League”) is a statewide organization comprised of persons who are electors and taxpayers of the State of Florida. The League is a nonpartisan political organization encouraging informed and active participation in government. The League has particular interest in public education, has engaged in numerous activities over the years to advocate for that interest, and supports Florida’s constitutional requirements to make adequate provision for a system of free public schools for the education of all children in Florida that is “uniform, efficient, safe, secure and high quality” and is overseen by elected local school boards.

5. Plaintiff Patricia Brigham is a resident of Orlando, and an elector and taxpayer of Florida. Brigham is a registered voter in Orange County, Florida. She has regularly voted in Florida general elections and on ballot proposals presented at those elections, and intends to vote in the November 2018 general election. Plaintiff Brigham is President of the League. Plaintiff Brigham sues in her individual capacity as well as her official capacity as President of the League.

6. Plaintiff Shawn Bartelt is a resident of Orlando, and an elector and taxpayer of Florida. Bartelt is a registered voter in Orange County, Florida. She has regularly voted in Florida general elections and on ballot proposals presented at those elections, and intends to vote in the November 2018 general election. Plaintiff Bartelt is Second Vice President of the League. Plaintiff Bartelt sues in her individual capacity as well as her official capacity as Second Vice President of the League.

7. Defendant Ken Detzner is the Florida Secretary of State. As Secretary of State, Detzner is responsible for the operation of the Division of Elections, and has a ministerial duty to furnish to the supervisor of elections of each county the designated ballot number, title, and

summary of each proposed constitutional amendment that is to appear on the November 2018 general election ballot. Defendant Detzner is sued in his official capacity.

FACTUAL ALLEGATIONS

Background

8. Article XI, Section 2 of the Florida Constitution establishes a 37-member constitution revision commission to begin convening in 2017 and every twentieth year thereafter, which commission may place proposed revisions to any part of the Florida Constitution on the general election ballot. Pursuant to Article XI, Section 5(e) of the Florida Constitution, a vote of sixty percent (60%) of the voters is required for any such revision to be effective.

9. The 2017-18 CRC approved eight proposed constitutional revisions. The revision challenged herein was labeled by the CRC as “Revision 3” and designated by Defendant Detzner as ballot number 8 on the 2018 general election ballot (hereafter, “Revision 8”).

10. Since 1968, the Florida Constitution has obligated the State of Florida to provide a uniform, high quality system of public schools:

Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allow students to obtain a high quality education

Art. IX, § 1(a), Fla. Const.

11. Also since 1968, the Florida Constitution has conferred upon local elected school boards exclusive authority over the public schools within each school board’s respective school district:

The school board *shall operate, control, and supervise all free public schools 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.

Art. IX, § 4(b), Fla. Const. (emphasis added).

12. The Florida Constitution does not expressly state what entity is responsible for “establishing” public schools.

Initial CRC Debate on Proposal 71

13. On March 21, 2018, the CRC approved Proposal 71, which proposed the following revision to Article IX, Section 4(b) (proposed language appears in underlined type):

(b) The school board shall operate, control, and supervise all free public schools established by the district school board 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.

14. According to the sponsor of Proposal 71, Commissioner Donalds, one purpose of the proposal was to overrule *Duval County School Board v. State, Board of Education*, 998 So 2d 641 (Fla. 1st DCA 2008). In that case, the court invalidated a statewide commission created to authorize charter schools, holding that this commission, which permitted and encouraged “the creation of a parallel system of free public education escaping the operation and control of local elected school boards,” posed a “total and fatal conflict” with Article IX, Section 4 of the Florida Constitution. *Id.* at 643, 644.

15. However, Proposal 71 did not merely allow for what *Duval County School Board* prohibited (namely, a statewide commission to authorize charter schools). Instead, as Commissioner Donalds explained, she intentionally drafted Proposal 71 much more broadly in order to “allow the Legislature flexibility to create alternate processes to authorize the

establishment of public schools within our state.” (CRC Transcript, March 21, 2018, Volume 1 at 53.)

16. Proposal 71 did not affirmatively create any alternative methods of establishing or operating public schools. Instead, it purported to remove the mandate that all public schools within a district be “operated, controlled and supervised” exclusively by the elected local school boards. The language of Proposal 71 would therefore enable the legislature to devise a method of creating and operating new public schools with no input from or participation by the local school boards, school districts within whose borders the schools are located, or local electors.

17. Commissioner Donalds further explained that she intentionally did not specify in Proposal 71 a particular means by which new public schools would be established, operated, controlled, and supervised, as she wanted to leave that decision to the Florida Legislature.

18. Proposal 71 did not directly attempt to recreate the alternative regulatory structure for charter schools that was declared unconstitutional in *Duval County School Board*. Instead, per Commissioner Donalds, Proposal 71 was silent on the identity of the future authorizer and regulator because “in looking at what a quality authorizer is . . . it is not always a state board.” According to Commissioner Donalds, a recent study determined that the five top charter school authorizers in the country were “[a] non-profit, a state [u]niversity, a state board of education, a local school district, and a charter board.” (CRC Transcript March 21, 2018, Volume 1 at 58, 60.) Thus, Commissioner Donalds chose to “leave that to the Legislature to decide what is going to work for Florida based on their thorough vetting of the issue to see what is going to be the top quality solution.” (CRC Transcript March 21, 2018, Volume 1 at 62.)

19. During the debate over Proposal 71, supporters and opponents alike openly and repeatedly discussed it in terms of the effect it would have on public charter schools in Florida.

Commissioner Donalds acknowledged that “[w]hen [she] first brought the proposal it said the word ‘charter’” but that she had changed it to the final wording “because we don’t know what innovations are to occur in education over the next 20 years or over the next generation.” (CRC Transcript March 21, 2018, Volume 1 at 69-70.) The debate over Proposal 71 revealed an intention to create additional paths that would eliminate the role of local school boards in the establishment, operation, control, and supervision of newly-created charter schools and potentially other unspecified new public schools.

CRC Debate on Revision 3

20. The CRC approved Proposal 71 by a vote of 27 to 8, which resulted in it being sent to the Commission’s Style and Drafting Committee.

21. The Style and Drafting Committee combined Proposal 71 with two other proposals, Proposals 43 and 10, which had also been separately approved by the CRC. The combined proposals were labeled by the Commission as “Revision 3.”

22. Proposal 43, which was also sponsored by Commissioner Donalds, proposed to limit school board members to serving eight consecutive years. Commissioner Donalds noted that term limits received overwhelming support from the public and that recent polls had shown an approval rate as high as 82 percent (82%).

23. Proposal 10 would create a new section in the Florida Constitution to require “the promotion of civic literacy” for students enrolled in public education. Its sponsor, Commissioner Gaetz, stated that this proposal should not be a separate ballot item but should be combined with a grouping that deals with education. Commissioner Gaetz further stated: “it will help some of those other education issues pass. I don’t think you 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 heck against that.” (CRC Transcript March 20, 2018, Volume 3 at 464.)

24. Several commissioners objected to this combining of proposals. For instance, Commissioner Smith stated: “These are three separate issues that people have strong issues on. . . This one will be a little hard for voters to truly make their decision.” (CRC Transcript April 16, 2018, Volume 1 at 157-158.) Commissioner Schifino agreed, saying: “I voted yes on each of these proposals separately, but that’s different than when you analyze looking at these three together, because they are not related sufficiently to stay bundled, in my opinion . . . I think we owe it to the citizens of the state to allow them the opportunity to analyze 71 separate from the others.” (CRC Transcript April 16, 2018, Volume 1 at 159-160.) Similarly, Commissioner Joyner offered that: “The ultimate question that is posed [by combining the proposals] is if you want term limits and civic literacy, then you have to give up control of your local schools. And these are three distinct questions that should be dealt with separately. And I think that this is the true test for unbundling and that’s what we should do on this revision.” (CRC Transcript April 16, 2018, Volume 2 at 173.)

25. Despite these objections, the motion to “unbundle” the three proposed constitutional changes failed by a 13 to 22 vote (CRC Transcript April 16, 2018, Volume 2 at 179).

26. The CRC adopted the following title and ballot description for the three combined revisions:

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.

27. Some commissioners acknowledged that the above title and ballot summary were misleading. During the debate on the final passage of the title and ballot language, Commissioner Martinez moved to amend the title to reflect that the proposed revision to Article IX, Section 4(b) is a “big deal” and a “game-changer.” (CRC Transcript April 16, 2018, Volume 1 at 148.) He proposed to add the language “Alternative State Supervision of Certain Public Schools” to the revision title. Commissioner Martinez offered the following rationale for this request: “The title ... doesn’t sufficiently describe [the amendment]. . . . That’s why the proponents of the proposal want it, because they want to do a game-changer to the system. So I think it is important that the public be informed . . . that what they are voting for is something that is significant and it isn’t just about public schools, it’s something much more than that.” *Id.*

28. Commissioner Donalds opposed this title amendment as being too specific. According to Commissioner Donalds, the revision allows for “supervision of public schools by an alternative *overseen* by the state.” (emphasis added). Commissioner Martinez’s proposed title amendment failed. (CRC Transcript April 16, 2018, Volume 1 at 156.)

29. Commissioner Martinez also moved to unbundle Proposals 43, 71 and 10 from each other, urging the Commission to allow the issues to be presented to the voters separately. This motion failed.

30. A majority of the CRC voted to place Revision 3 on the ballot as a single revision (now Revision 8). The relevant text of Revision 8 provides:¹

Section 4 of Article IX of the State Constitution is amended, and a new article is added to that article, to read:

ARTICLE IX
EDUCATION

SECTION 4. School districts; school boards.--

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

(b) A person may not appear on the ballot for re-election to the office of school board if, by the end of the current term of office, the person would have served, or but for resignation would have served, in that office for eight consecutive years.

(c)(b) The school board shall operate, control, and supervise all free public schools established by the district school board 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.

Civic literacy.—As education is essential to the preservation of the rights and liberties of the people, the legislature shall provide by law for the promotion of civic literacy in order to ensure that students enrolled in public education understand and are prepared to exercise their rights and responsibilities as citizens of a constitutional republic.

¹ The portion of the revision revising Article XII as to the effective date of school board term limits is omitted.

Constitutional Accuracy Requirement

31. All constitutional amendments, whether proposed by the legislature, revision commission, initiative, or constitutional convention, must comport with an “accuracy requirement” implicit in Article XI, Section 5, of the Florida Constitution.

32. The constitutional accuracy requirement for amendments is codified in Section 101.161, Florida Statutes, which requires “an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.”

33. Section 101.161, Florida Statutes, also requires a ballot title which “shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.”

34. Together, the ballot title and summary required by section 101.161(1), Florida Statutes, must advise the electorate of the true meaning, and ramifications, of an amendment.

COUNT I FAILURE TO INFORM OF CHIEF PURPOSE AND EFFECT OF REVISION

35. The allegations in paragraphs 1 through 34 are realleged and incorporated herein by reference.

36. The ballot title and summary for Revision 8 do not, in clear and unambiguous language, fairly inform the voters of a chief purpose of the revision.

37. Revision 8 is comprised of three distinct, unrelated proposals logrolled into a single revision, two of which (Proposals 43 and 10) are known to be popular with voters and one of which (Proposal 71) was intentionally drafted to be vague.

38. The ballot title and summary for Revision 8 were deliberately crafted and sequenced so as to fail to inform voters that the revision actually consists of three distinct,

unrelated proposals, and to conceal from voters the chief purpose of the portion of Revision 8 pertaining to the authority of local elected school boards.

39. The ballot title and summary fail to inform voters that a chief purpose of the revision to Article IX, Section 4(b) is to eliminate the long-standing, exclusive authority of local elected school boards to operate, control, and supervise all public schools, including charter schools, in their respective school districts.

40. The ballot title and summary fail to inform voters that the effect of the elimination of the exclusive authority of local school boards over public schools would be to allow for the creation of brand new, unnamed additional path(s) for the authorization, operation, control, and supervision of newly-created charter schools and potentially other unspecified public schools.

41. The ballot title and summary fail to inform voters that the effect of the elimination of the exclusive authority of local school boards over public schools would be to allow any person or entity, public or private, to be designated as authorized to authorize, operate, control, and supervise newly-created charter schools and potentially other unspecified public schools.

42. Additionally, the reference in the ballot summary to public schools “established by the district school board” is ambiguous. The Florida Constitution does not specify how or by whom public schools are “established”; therefore, the effect of the proposal to limit school boards’ authority to schools “established by the school board” is unclear. Voters have no way of knowing or determining from this language which or how many schools will be affected by the revision.

43. For these reasons, Revision 8 may not lawfully be placed on the ballot for the 2018 general election.

44. Plaintiffs will suffer immediate and irreparable harm if Revision 8 is placed on the ballot for the November 2018 general election.

45. Plaintiffs have no adequate remedy at law, and it is in the public interest to ensure that Florida voters are accurately informed as to the true effect of proposed amendments to the Florida Constitution.

COUNT II
AFFIRMATIVELY MISLEADING

46. The allegations in paragraphs 1 through 34 are realleged and incorporated herein by reference.

47. The ballot summary declares that the revision “permits the state to operate, control, and supervise public schools not established by the school board.” However, the text of Revision 8 does no such thing.

48. The text of Revision 8 provides only that district school boards will *not* have the authority to operate, control, and supervise public schools they do *not* establish. The revision text is silent on who or what *will* have such authority.

49. It is clear from the text of Revision 8 as well as the discussion and debate of the CRC that, should Revision 8 pass, it will be an open question as to who or what may be assigned the authority to authorize, operate, control, and supervise certain newly-created charter schools and potentially other unspecified new public schools. According to the sponsor of the revision, examples of entities to whom this power may be given include a non-profit entity, a state university, a state board of education, a local school district, or a charter board.

50. By only telling voters that “the state” is permitted to operate, control, and supervise public schools not established by the elected district school boards, the ballot summary affirmatively misleads voters regarding the purpose and effect of the revision.

51. For this reason, Revision 8 may not lawfully be placed on the ballot for the 2018 general election.

52. Plaintiffs will suffer immediate and irreparable harm if Revision 8 is placed on the ballot for the November 2018 general election.

53. Plaintiffs have no adequate remedy at law, and it is in the public interest to ensure that Florida voters are accurately informed as to the true effect of proposed amendments to the Florida Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Declare that the ballot title and summary language accompanying Revision 8 do not accurately inform Florida voters of the true effect of the proposed revision, and affirmatively mislead voters, in violation of Article XI, section 5, of the Florida Constitution and § 101.161(1), Florida Statutes.
- b. Enjoin defendant Detzner and all persons and entities acting under his direction or in concert with him, from placing Revision 8 on the ballot for the November 2018 general election;
- c. Award to plaintiffs the attorneys' fees, expenses, and costs incurred in prosecuting this action; and
- d. Order such other and further relief as this Court may deem appropriate.

Respectfully submitted,



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*Motion to Appear Pro Hac Vice Pending

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