IN THE SUPREME COURT OF FLORIDA

Case No. SC19-1341

ADVISORY OPINION TO GOVERNOR RE: IMPLEMENTATION OF AMENDMENT 4, THE VOTING RESTORATION AMENDMENT
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REPLY BRIEF OF INTERESTED PARTY ADAM RICHARDSON

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"COMPLETION OF ALL TERMS OF SERVICE" IN AMENDMENT 4 ENCOMPASSES ONLY FINES AUTHORIZED BY FLORIDA STATUTES § 775.083 IN CASES OF IMPRISONMENT AND SPLIT SENTENCES, AND IN CASES OF ONLY PROBATION AND COMMUNITY CONTROL, NO FINANCIAL OBLIGATIONS.

A. "[T]erms" within the meaning of Amendment 4 are those found within the four corners of the sentencing order, and a contrary interpretation would lead to an absurd result.

The Governor confirms that he understands "terms" within the meaning of Amendment 4's "all terms of sentence" are those "contained in the four corners of the sentencing document." Gov. DeSantis Br. at 8-10, 20-21, 23, 25-27. Yet, inconsistent with his acknowledgment, the Governor points to the other forms relating to sentence. *See id.* at 25.

Limitation to the four corners of the sentencing order is important. "[A]n interpretation of a constitutional provision which will lead to an absurd result will not be adopted when the provision is fairly subject to another construction which will accomplish the manifest intent and purpose of the people." *Plante v. Smathers*, 372 So. 2d 933, 936 (Fla. 1979) (citing *City of Miami v. Romfh*, 63 So. 440 (Fla. 1913)) (interpreting an amendment that was the result of a citizen-backed initiative).

It would be absurd to require a search of materials beyond the actual sentencing order to determine, in each case, what "all terms of the sentence" are. A cursory

review of a docket in a criminal case shows multiple orders entered at the completion of the case. To determine whether he has completed all terms of his sentence under the view advanced by the Governor (and other government parties) would require a convicted felon to gather all of these documents to piece together those terms. It might even require the convicted felon to locate the transcript of the sentencing hearing. It is well known that the various orders entered do not always conform to the trial court's oral pronouncements, which the Court has held are the controlling disposition. *See, e.g.*, *Williams v. State*, 957 So. 2d 600, 605 (Fla. 2007) (explaining that, "[a]lthough obviously important and controlling, sentencing proceedings are not always transcribed and placed in written form in the trial court record, while the written formal judgment and sentence, often entered later, is filed in the record like other court orders").

While locating the sentencing order might still be difficult—particularly for criminal cases concluded before electronic dockets made orders publicly available online—construing Amendment 4 to require more than that would pose a burden on convicted felons that voters could not possibly have intended. Effecting the manifest intent and purpose of the voters requires a common-sense and easily-workable interpretation: that "all terms of sentence" are found in the sentencing order.

B. The limits on what materials the Court can consider.

Secretary Lee relies in her brief on an opinion piece, a news article, press releases, websites, and a voting guide to determine what the voters understood when they approved Amendment 4.[1] *See* Sec. Lee Br. at 6-8, 13. Secretary Lee's reference to contemporaneous sources is improper.

The Court has stated that "we may look to the explanatory materials available to the people as a predicate for their decision as persuasive of their intent." *Plante v. Smathers*, 372 So. 2d 933, 936 (Fla. 1979) (citing *Williams v. Smith*, 360 So. 2d 417 (Fla. 1978); *In re Advisory Opinion to the Governor Request of Nov. 19, 1976 (Const. Revision Comm'n)*, 343 So. 2d 17 (Fla. 1977)).

"Explanatory materials" obviously means the ballot summary. *See* Fla. Stat. § 101.161(1) ("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." (emphasis added)). In one landmark case from this Court holding that a citizen-backed amendment was retroactive, both the majority and dissent limited themselves to the ballot summary and amendment when interpreting the

[1] Also, the Governor has relied on the oral argument in the ballot-placement proceeding. *See* DeSantis Br. at 21-23. I and others have already addressed such reliance. *See, e.g.*, Richardson Br. at 10-11; ACLU of Fla., et al., Br. at 47-49; Raysor, et al., Br. at 46-48.

amendment—and the dissent cogently explained why it did so.[2] *See Fla. Hosp. Waterman v. Buster*, 984 So. 2d 478 (Fla. 2008).

It is true that lawyers and judges are competent to perform the historical inquiries necessary to establish the original public meaning of constitutional language. *See, e.g.*, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 399 (2012). And the Supreme Court of the United States has often consulted contemporaneous sources to determine how a constitutional provision was understood at the time of ratification. *See, e.g., N.L.R.B. v. Noel Canning*, 573 U.S. 513, 527-28 (2014).

Resort to contemporaneous sources in this instance would be inappropriate. The only thing we know for certain that voters saw is the ballot summary. *See Buster*, 984 So. 2d at 499 (Wells, J., concurring in part and dissenting in part). And considering other sources would set a dangerous precedent. Knowing that resort to such

[2] *See Buster*, 984 So. 2d at 489 ("[B]ased on the express language of the ballot summary and the amendment, we find that the plain language of amendment 7 provides for its application to existing records."); *id.* at 499 (Wells, J., concurring in part and dissenting in part) ("Because this constitutional amendment was passed by initiative, in determining the intent behind the constitutional amendment, this Court must look to the information before the voters and whether the voters of the constitutional amendment meant for this amendment to apply retroactively. However, the only information immediately available to the voters when casting their ballots is the ballot title or summary. This becomes very important when viewed in light of this Court's precedent, which emphasizes that whether a drafter intended a certain effect does not matter nearly as much as the probable intent of the voters as evidenced by the materials they had available." (citations omitted)).

sources could affect interpretation, opponents of a citizen-backed initiative could prepare the field by introducing into pre-passage discourse statements that are contrary to the actual meaning of the amendment, to be cherry-picked later when the matter winds up in court. The same danger is not present when interpreting, for example, provisions in the United States Constitution as ratified in 1787, or as amended by the Reconstruction Amendments. The universe of contemporaneous sources is closed; there is no room for mischief.

C. The 2019 amendments to the Court's forms did not alter the material portions of the forms in effect when the voters approved Amendment 4.

Like I did in my initial brief, the Governor turns to this Court's mandated forms. *See* Gov. DeSantis Br. at 25. In doing so, the Governor relies on the 2019 forms. While the Court issued its rules decision on October 4, 2018, and the amendments to the forms did not become effective until January 1, 2019—after the mid-term election—there were no changes to form 3.986(g), the sentencing order. *See In re Amendments to Fla. R. Crim. P.—2018 Regular Cycle Report*, 265 So. 3d 494, 539 (Fla. 2018) (mem.).

I must note here that in my initial brief I too relied on the 2019 versions of the forms. There were changes to the forms for the charges, costs, and fees order (3.986(c)), the probation order (3.986(e)), the community-control order (3.986(f)), and the restitution order (3.986(g)). But my analysis remains unchanged because the form for the sentencing order was not amended. And the forms as they were before

the amendments only bolster my analysis. For instance, the charges, costs, and fees order had included a line for "Restitution in accordance with attached order," confirming that restitution is not a term included in the sentencing order.

To the extent there are any material changes going forward, either in the Court's forms or in statutes, the original meaning of Amendment 4 was fixed on November 6, 2018. *See In re Advisory Opinion of Governor Request of Nov. 19, 1976 (Const. Revision Comm'n)*, 343 So. 2d 17, 22 (Fla. 1977) ("The touchstone for determining the intent of a constitutional provision has always been the intent of the people at the time the document was adopted." (footnote omitted)); *Advisory Opinion to Governor*, 22 So. 2d 398, 399 (Fla. 1945) ("Our view is that we must give effect to the constitution according to what we deem to be its plain meaning and what the people must have understood it to mean at the time they adopted it.").

D. The Court may interpret statutes in an advisory opinion when, as here, they directly affect the Governor's duties under the Constitution.

The House of Representatives writes that the Court's "analysis should be limited to the question asked by the Governor," which is limited to interpretation of the Constitution and not the validity of statutes. House Br. at 4-5. Though the House does not say so, this likely is an allusion to Florida Statutes § 98.0751. But the Governor's question to the Court sets up a potential conflict between Amendment 4 and the statute.

In *In re Advisory Opinion to the Governor*, 9 So. 2d 172 (Fla. 1942)—which the House cites but introduces with a "*but cf.*" signal—the Court had earlier rendered an advisory opinion to the Governor. But he sent a request for another opinion because he remained in doubt about the interaction of a statute and a constitutional provision. *Id.* at 73-74. The Court wrote in the first paragraph of its advisory opinion:

> Advisory opinions to the Governor are authorized by the Constitution and are therein limited to the interpretation of any portion of the Constitution upon any question affecting the executive powers and duties of the Governor. ***Statutes may be so interpreted in such advisory opinions only when and as they directly affect the executive powers and duties of the Governor under the Constitution.***

Id. at 174 (emphasis added).[3] The Court continued that, in the prior opinion, and "[i]n view of the express limitations upon such advisory opinions," the justices "in effect advised" on the interpretation of a statute. *Id.* The Court then said: "Such

[3] The constitutional provision authorizing the Governor to ask the Court for an advisory opinion was materially the same in 1942 as it is now. *Compare* Fla. Const. art. IV, § 13 (1885) ("The Governor may, at any time, require the opinion of the Justices of the Supreme Court, as to the interpretation of any portion of this Constitution upon any question affecting his Executive powers and duties, and the Justices shall render such an opinion in writing."), *with* Fla. Const. art. IV, § 1(c) (1968) ("The governor may request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting the governor's executive powers and duties. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion not earlier than ten days from the filing and docketing of the request, unless in their judgment the delay would cause public injury.").

statute was not interpreted beyond its relation to the executive powers and duties of the Governor under the Constitution." *Id.*

Here, the Governor wrote in his letter: "I, as Governor of Florida, want to ensure the proper implementation of Article VI, section 4[,] of the Florida Constitution and, if applicable, chapter 2019-162, Laws of Florida." Letter from Ron DeSantis, Governor of Florida, to Charles T. Canady, Chief Justice of the Supreme Court of Florida 4 (Aug. 9, 2019). As contemplated by *In re Advisory Opinion to the Governor*, and as implicitly admitted by Governor DeSantis, it may become necessary to interpret § 98.0751 because it directly affects the Governor's duties under Amendment 4. I explained in my initial brief that Amendment 4 is self-executing and § 98.0751 is improper supplementing legislation which must give way to the amendment's plain language. *See* Richardson Br. at 11-16.

The Senate recognizes, though in a misguided argument, how important § 98.0751 is to the resolution in this proceeding. *See* Senate Br. at 17-18. And though misguided, the Senate's argument bears comment. The Senate relies on § 98.0751 as a contemporaneous legislative construction, should the Court find Amendment 4 ambiguous. It argues that the construction it has placed on the constitutional language should be presumed correct. First, there is no ambiguity. More importantly, the Court should not indulge the Senate's argument because it would allow a Legislature hostile to a citizen-backed amendment to force a particular interpretation by

passing legislation in a cynical attempt to do just that. The whole reason there is a presumption that constitutional provisions are self-executing is that, "in the absence of such presumption[,] the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people." *See Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960).

CONCLUSION

The Governor's question is "whether 'completion of all terms of sentence' encompasses financial obligations, such as fines, fees[,] and restitution … imposed by the court in the sentencing order." For the above reasons and those in my initial brief, I respectfully submit to the Court that, in cases of imprisonment or split sentences, "all terms of sentence" means, as to financial obligations, only those fines authorized by § 775.083; and in cases of only probation or community control, there are no financial obligations that are a "term[] of sentence."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished to all counsel of record via the Florida Courts E-Filing Portal on October 3, 2019.

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CERTIFICATE OF TYPE SIZE & STYLE

I hereby certify that the type size and style of the Reply Brief of Interested Party Adam Richardson is Times New Roman 14pt.

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