DEFENDING *HARRIS v. MOORE*: THE COURT WAS CORRECT

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Having represented the Secretary of State in the matter, I felt compelled to respond to Debra Tuomey's case comment[1] on *Harris v. Moore*.[2] The comment indicates that, unless every aspect of the proposed changes to a county charter is clear to the average voter, the citizens of the jurisdiction should be prevented from voting on the matter at all.[3] I believe that the appropriate emphasis is on allowing members of the electorate to decide the matter for themselves, unless the ballot summary is misleading in some significant manner.

What most disturbs me about the case comment is the assertion that the ballot summary failed to explain adequately the effect of the amendment, as required by *Grose v. Firestone*,[4] and that the ballot summary did not make obvious to the average voter that the county manager would be replaced by a veto-wielding, strong mayor.[5]

The ballot summary at issue, which never appeared in the case comment, stated as follows:

> COUNTY TO BE GOVERNED BY COMMISSIONERS ELECTED FROM SINGLE-MEMBER DISTRICTS AND ELECTED EXECUTIVE MAYOR
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> Broward County shall be governed by commissioners and elected Mayor. The legislative branch of Broward County shall consist of seven (7) county commissioners elected from single-member districts. The Mayor shall be its chief executive officer with the right of veto over legislative acts. A professional

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1. Debra Belniak Tuomey, Student Author, *Recent Developments*, 30 Stetson L. Rev. 1110 (2001) (discussing *Harris v. Moore*, 752 S.2d 1240 (Fla. Dist. App. 4th 2000)).

2. 752 S.2d 1240, 1241 (Fla. Dist. App. 4th 2000).

3. Tuomey, *supra* n. 1, at 1112.

4. 422 S.2d 303, 305 (Fla. 1982).

5. *Id*.

> County Administrator shall be the chief operating officer of the county.
>
> Subsequent to 2002, nine (9) county commissioners shall be elected from single-member districts.
>
> YES _____
> NO _____[6]

This ballot summary expressly informed the electorate that the Mayor shall be the chief executive officer of the county and would have the right of veto over legislative acts.[7] Thus, the confusion alleged in the comment evidently refers to the fact that the summary did not inform the voters that the current chief executive officer of the county is the county manager, who is appointed by the county commission. The author of the comment implies that courts, in passing on the language of ballot summaries, may not assume that the average voter understands how the county of which he or she is a citizen is currently governed. This seems presumptuous.

The Florida Supreme Court was eminently correct, in terms of both the law and public policy, when it said that "a court may interfere with the right of the people to vote on referendum issues only if the language in the proposal is clearly and conclusively defective."[8]

The comment author's primary concern was that the court "was focusing on the ballot's general purpose without considering whether the voter was made aware of the questions, ramifications, consequences, or effects" of the charter changes concerned.[9] It seems that asking a ballot summary to make the voter aware of all of these concerns is asking a lot of a summary that cannot, by law, exceed seventy-five words.[10] Indeed, the Florida Supreme Court has noted that "the seventy-five word limit placed on the ballot summary by statute does not lend itself to an explanation of all of a proposed amendment's details."[11]

The comment author also stated that the ballot language must "assure that the electorate is advised of the meaning and

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6. *Harris*, 752 S.2d at 1242.

7. *Id*. The Charter Amendment also provided for the power to override a Mayor's veto by a two-thirds vote of the Commissioners present at the next regularly scheduled meeting of the Commission. Fla. H. 1559, 1999 Leg., Reg. Sess. 9 (Mar. 9, 1999).

8. *Askew v. Firestone*, 421 S.2d 151, 154 (Fla. 1982).

9. Tuomey, *supra* n. 1, at 1112.

10. Fla. Stat. § 101.161 (2001).

11. *Advisory Op. to Atty. Gen. re Ltd. Casinos*, 644 S.2d 71, 75 (Fla. 1994).

ramifications of the amendment,"[12] as required by *Grose*. Although this is certainly a valid concern, *Grose* approved a ballot summary that was attacked on the grounds that it gave an insufficient explanation of the effect of the amendment requiring that Article I, Section 12 of the Florida Constitution be read in conformity with the Fourth Amendment to the United States Constitution.[13] The court in *Grose* cited *Askew v. Firestone*,[14] noting that the purpose of Section 101.161 is to assure that the electorate is advised of the meaning and ramifications of the amendment.[15] The *Grose* court held that the ballot summary was not defective because, "[s]imply put, the ballot must give the voter fair notice of the decision he must make."[16] Therefore, it seems clear that *Grose* was never intended to require that all ramifications of the amendment be explained in the ballot summary, so long as the ballot summary is reasonably fair and not misleading.

In *Smathers v. Smith*,[17] the Florida Supreme Court explained its rationale in approving a ballot summary facing a similar challenge, stating as follows:

> Another thing we should keep in mind is that we are dealing with a constitutional democracy in which sovereignty resides in the people. It is *their* Constitution that we are construing. The people have a right to change, abrogate, or modify it in any manner they see fit, so long as they keep within the confines of the Federal Constitution.[18]

The legislature that approved and submitted the proposed amendment took the same oath to protect and defend the Florida Constitution that we as lawyers did, and our first duty is to uphold its action if there is any reasonable theory under which it can be done.[19] This is the first rule that must be observed when reviewing acts of the legislature, and it is even more compelling

12. Tuomey, *supra* n. 1, at 1111 (quoting *Grose*, 422 S.2d at 305).
13. *Grose*, 422 S.2d at 303–304.
14. 421 S.2d 151 (Fla. 1982).
15. *Grose*, 422 S.2d at 305.
16. *Id*.
17. 338 S.2d 825, 826–827 (Fla. 1976).
18. *Id*. (quoting *Gray v. Golden*, 89 S.2d 785, 790 (Fla. 1956) (emphasis added)).
19. Fla. B., Ctr. for Professionalism, *Oath of Admission to the Florida Bar* <http://www.flabar.org/newflabar/professionalsm/oath.html> (last updated Aug. 2001) ("I do solemnly swear: I will support the Constitution of the United States and the Constitution of the State of Florida.").

when considering a proposed constitutional amendment, which goes to the people for their approval or disapproval.[20] The same policy should apply to county-charter amendments.

The comment author was sincerely and properly concerned that the members of the electorate should be informed of the ramifications and effects of a charter change before voting on it, so that they could cast their ballots intelligently. The *Harris* court correctly held, however, that, so long as voters are generally informed of the purpose of the change they are considering and are not misled regarding its effects, the voice of the citizenry should be permitted to be heard.

20. *Smathers*, 338 S.2d at 826–827.