Robert E. Long, Jr.

Application for Nomination to the Florida Supreme Court

This is a redacted application with portions redacted pursuant to F.S. 119.071(4)(d)(2)

APPLICATION FOR NOMINATION TO THE SUPREME COURT

Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Robert Edward Long, Jr. **Social Security No.:**

Florida Bar No.: 61275 **Date Admitted to Practice in Florida: 12/10/2008**

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

- Employer: State of Florida
- Title: Judge, First District Court of Appeal
- Address: 2000 Drayton Drive, Tallahassee, Florida 32311
- Phone: 850-717-8157

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number), and your preferred email address.

- Home Address:
- Duration at Residence: Since 2013
- Duration in Florida: I have been a Florida resident all my life. I have lived elsewhere while on active duty in the U.S. Navy but always remained a Florida resident.
- Personal Cell Phone:
- Personal Email Address: robertedwardlong@yahoo.com

3. State your birthdate and place of birth.

- Birthdate:
- Place of Birth: Tallahassee, Florida

4. Are you a registered voter in Florida (Y/N)?

Yes.

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of

admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

- Florida Bar: Admitted December 2008
- Northern District of Florida: Admitted March of 2013
- Middle District of Florida: Admitted November of 2013
- Certified Counsel for UCMJ Courts-Martial: Admitted December 2008

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

- I have often gone by the nickname Bobby. I have used this throughout my life.

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

- U.S. Navy Officer Development School
  - Graduated as the Class Honor Graduate for highest overall average in academics, military bearing, and physical fitness.
  - Attended and graduated in 2008

- University of Florida, College of Law
  - Top 25%
  - GPA 3.49
  - cum laude
  - Attended from 2005 to 2008
  - Graduated in 2008
  - Degree received: Juris Doctor

- Florida State University, College of Business
  - Top 15%
  - GPA 3.66
  - cum laude
  - Attended from 2002 to 2003
  - Graduated in 2003
  - Degree received: Bachelor of Science in Finance

- Tallahassee Community College
    - Attended the Law Enforcement Academy
    - Attended on Scholarship from the Florida Sheriff Explorer's Association
    - Attended from 1998 to 2001
    - Graduated with honors from the Honors Program
    - Degree received in 2001: Florida Law Enforcement Certification and Associate of Arts

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

- Federalist Society, UF Law School Chapter: 2005-2008
  President: 2007-2008
  Vice President: 2006-2007
- UF Law School Republicans: 2005-2008
- UF Law Student Bar Association: 2005-2008
- UF Law School Mentor Project: 2006-2008
- FSU College Republicans: 2002-2003
- Habitat for Humanity: 2000-2008
- Special Olympics Florida: 1998-2008
- Florida Sheriff Explorers: 1998-2001
- Intermural soccer, flag football, and softball: 2000-2003 and 2005-2008
- Trinity United Methodist Church: 1998-2008
- Wesley Foundation Campus Christian Ministry: 2000-2003

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

- Judge, First District Court of Appeal
    - Employer: State of Florida
    - Employer Address: 2000 Drayton Drive, Tallahassee, Florida 32311
    - Dates of Employment: July 2020 to Present
- Judge, Florida's Second Judicial Circuit Court
    - Employer: State of Florida
    - Employer Address: 301 South Monroe Street, Tallahassee, Florida 32301
    - Dates of Employment: July 2016 to June 2020

- General Counsel, Leon County Sheriff's Office
    - Employer: Leon County Sheriff's Office
    - Employer Address: 2825 Municipal Way, Tallahassee, Florida 32304
    - Dates of Employment: August 2014 to July 2016
- Attorney, Rumberger Kirk, P.A.
    - Employer: Rumberger Kirk, P.A.
    - Employer Address: 101 North Monroe Street, Suite 120, Tallahassee, Florida 32301
    - Dates of Employment: March 2013 to August 2014
- Judge Advocate, U.S. Navy
    - Employer: U.S. Navy
    - Employer Address: 1322 Patterson Avenue, Washington Navy Yard, DC 20374
    - Dates of Employment: December 2008 to March 2013
- Legal Intern, U.S. Attorney's Office, Northern District of Florida
    - Employer: U.S. Attorney's Office, Northern District of Florida
    - Employer Address: 111 North Adams Street, 4th Floor U.S. Courthouse, Tallahassee, Florida 32301
    - Dates of Internship: Spring 2008
- Certified Legal Intern, State Attorney's Office, Florida's Eighth Judicial Circuit
    - Employer: Eighth Judicial Circuit State Attorney
    - Employer Address: 120 West University Avenue, Gainesville, Florida 32601
    - Dates of Internship: Fall 2007
- Summer Associate, Rumberger Kirk, P.A.
    - Employer: Rumberger Kirk, P.A.
    - Employer Address: 101 North Monroe Street, Suite 120, Tallahassee, Florida 32301
    - Dates of Employment: Summer 2007
- Fellow, Blackstone Legal Fellowship
    - Employer: Blackstone Legal Fellowship
    - Employer Address: 15100 North 90th Street, Scottsdale, Arizona 85260
    - Dates of Fellowship: Summer 2006
- Deputy Sheriff, Leon County Sheriff's Office
    - Employer: Leon County Sheriff's Office
    - Employer Address: 2825 Municipal Way, Tallahassee, Florida 32304
    - Dates of Employment: 2002 to 2005
    - Position Description: Law Enforcement Officer. Worked primarily in Uniform Patrol.
    - Phone: 850-606-3300

10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you

are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

I was the General Counsel for the Leon County Sheriff's Office immediately preceding my appointment to the Circuit Court in 2016. In that capacity, I managed a case load of civil rights litigation, employment matters, and forfeiture filings. I was involved with the investigation of criminal matters with the review of search and arrest warrants and the evaluation of investigative strategies and techniques. I was the liaison with the judiciary, the State Attorney's Office, the Public Defender, and private defense counsel. I supervised the Internal Affairs Unit, Accretitation Staff, Jail Legal Services, and the agency's Training Unit. I conducted regular case law training updates for law enforcement personnel and was available 24/7 to answer real-time legal questions from the field. I was also the Sheriff's advisor for legislative, policy, and procedural matters.

In private practice at Rumberger Kirk, P.A., I focused primarily on defending law enforcement liability actions, employment law disputes, and premises and product liability cases.

Prior to that, I served on active duty in the U.S. Navy Jadge Advocate General's Corps. While on active duty I deployed to Afghanistan, supported the staff of the USS Blue Ridge, and focused on military justice criminal matters.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

The five years preceding my appointment to the circuit court was 2011 to 2016.

Court		Area of Practice	
Federal Appellate	____ %	Civil	35 %
Federal Trial	60 %	Criminal	55 %
Federal Other	10 %	Family	____ %
State Appellate	____ %	Probate	____ %
State Trial	30 %	Other	10 %
State Administrative	____ %		
State Other	____ %		
TOTAL	100 %	TOTAL	100 %

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation: N/A

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were: Best estimates provided.

Jury?	73	Non-jury?	55
Arbitration?		Administrative Bodies?	196
Appellate?	3,753		

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation: N/A.

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain full.

No.

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more*.

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

In the five years preceding my appointment to the court I averaged approximately 20 times per month. However, the month-to-month answer varies greatly depending on which period. There were times I had only a handful in a month, while other times I appeared nearly every day.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel: N/A

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants? N/A

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

1. *Estate of Deputy Christopher Smith v. Consolidated Dispatch Agency*, 15-CA-2884. This case was before Second Judicial Circuit Judge James Hankinson. This was a wrongful death claim from the estate of Deputy Chris Smith who was killed in the line of duty on November 22, 2014. Pursuant to an interlocal agreement, I was the counsel of record for the Consolidated Dispatch Agency for liability matters. I represented the CDA and the Sheriff in his capacity as a member of the CDA Board of Directors. I handled the case presuit, including presuit mediation. This matter was significant because it involved a complex governance structure, the balance of multiple entities and relationships, and a high profile and highly publicized law enforcement officer's death. The legal issues were myriad. Other attorneys involved were Matt Foster (Counsel for plaintiff, 850-222-2000, matt@tallahasseeattorneys.com), Herb Thiele (Leon County Attorney, 850-668-2917, nd318@aol.com), Lewis Shelley (Tallahassee City Attorney, 850-385-3685, leshelley44@gmail.com), Leonard Dietzen (CDA Counsel, 850-222-6550, ldietzen@rumberger.com), and Dominic MacKenzie (Counsel for Motorola, 407-960-7000, dmackenzie@fundingfla.org).

2. *Estate of Jason Owens v. The GEO Group, Inc.*, 12-CV-00107-RV. This case was a wrongful death and 42 U.S.C. 1983 claim filed on behalf of the estate of a Florida Department of Corrections inmate who was housed in the Graceville

Correctional Facility. The inmate was killed by another inmate inside the facility. I handled this matter before U.S. District Court Judge Roger Vinson through Summary Judgment. The court granted Summary Judgment on the federal claims and remanded the state law claim. This case is significant because of its complexity. It involved complex legal issues, expert and lay witnesses from around the state and country, and multiple witnesses that were still confined in state prisons. The other attorneys were Ralph Rogari (Counsel for plaintiff, 310-207-0059, roglaws@yahoo.com) and Leonard Dietzen (Co-counsel for GEO, 850-222-6550, ldietzen@rumberger.com).

3. *W.E. v. District School Board of Wakulla County*, 13-CV-00674. This matter was before the US District Court for the Northern District of Florida. It involved a 1st Amendment infringment claim by a student and his guardian against the School Board and employees for their use of a Bible in a public school classroom. This case was resolved. This case was significant because it involved contentious public policy issues, sometimes divisive constitutional matters, and the pressure of publicity. I represented the individual teacher. The other attorneys involved were Steven Maher (Counsel for Plaintiff, 407-839-0866, smaher@maherlawfirm.com) and Gwen Adkins (Counsel for School Board, 850-422-2420, gadkins@coppinsmonroe.com).

4. *United States v. Matthew McVeigh*. This was a murder case where Matthew McVeigh was charged with the murder of his own son. This was significant because it was a murder case involving a defendant who was a member of a Navy SEAL Delivery Team. The matter was aired in the local and national press, it involved over a dozen highly specialized medical experts, it was a "who-done-it" in the traditional sense, and it involved heavily litigated issues of law. I represented the Defendant, Matthew McVeigh. This matter was tried before Judge David Berger at a General Court-Martial. The other attorneys involed were James Toohey (Counsel for the United States, 619-738-9043) and David Norkin (Co-counsel for the Defendant, deceased).

5. *United States v. Virgilio Cristobal*. This was a child rape case where Virgilio Cristobal was charged with raping his step-daughter. This case was significant because the Defendant was a senior Navy veteran who was facing a life sentence, it involved a complex international investigation in Japan, and it required I personally spend time in Japan visiting embassies and interviewing diplomatic staff. This matter was before Judge Daniel Mori at a General Court-Martial. The other attorneys involed were James Toohey (Counsel for the United States, 619-738-9043) and Noel Tipon (Co-counsel for the Defendant, 808-777-0346).

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing

sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

1. *R.C. v. Dep't of Agric & Consumer Servs.,* 323 So. 3d 275 (Fla. 1st DCA 2021)
2. *Ash v. State*, No. 1D22-1163, 2025 WL 610937 (Fla. 1st DCA Feb. 26, 2025) (Long, J., dissenting) (withdrawn and replaced by *Ash v. State*, No. 1D22-1163, 2025 WL 1573182 (Fla. 1st DCA June 4, 2025))
3. *Byrd v. Black Voters Matter*, 375 So. 3d 335 (Fla. 1st DCA 2023) (Long, J., concurring)

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

Yes, I have held judicial office. I am currently a Judge on Florida's First District Court of Appeal. I was appointed in June of 2020 and have served continuously through the present. Prior to my appointment to the District Court, I was a Circuit Judge on Florida's Second Judicial Circuit Court. I was appointed in June 2016 and served through my appointment to the District Court. Prior to my appointment, I served as an Associate Judge on the First District Court of Appeal in 2018 and 2019. I also serve as a Military Trial Court Judge in the U.S. Navy. I preside over criminal matters related to military courts-martial. I have served in the preliminary hearing and trial judiciary unit since 2022.

Yes, I have been a candidate for judicial office. After my Circuit Court appointment, I was a candidate in 2018 to keep my seat. I was elected without opposition. I later stood for a 2022 retention vote for my current seat on the District Court and was retained for a term through January 2029.

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

- Second Circuit JNC – November 2015 (nominated) and March 2016 (appointed)
- Supreme Court JNC – October 2018 (not nominated) and June 2022 (nominated)
- First District JNC – July 2019 (nominated) and March 2020 (appointed)

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard: N/A.

26. If you have prior judicial or quasi-judicial experience, please list the following information:

(i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;

1. Daniel Nordby, 850-241-1725, 215 S. Monroe Street, Tallahassee, FL 32301
2. Lance Neff, 850-606-4311, 301 S. Monroe St, Tallahassee, FL 32301
3. Eric Trombley, 850-606-6144, 301 S. Monroe St, Tallahassee, FL 32301
4. Jeffrey Slanker, 850-205-1996, 123 N. Monroe Street, Tallahassee, FL 32301
5. David Welch, 321-213-2730, 107 West Gaines Street, Tallahassee, FL 32301
6. James Beville, 850-606-6048, 301 S. Monroe St, Tallahassee, FL 32301

(ii) the approximate number and nature of the cases you handled during your tenure;

As a circuit judge, I held permanent assignments in the Felony Division and Family Division. I primarily handled felony criminal cases, juvenile delinquency cases, and probate and guardianship cases. But I also handled cases from most of the circuit court's broad jurisdiction, including dependency, civil, and injunction proceedings. During this time, I presided over thousands of cases, approximately 120 trials that were tried to verdict, and hundreds of evidentiary hearings.

As a district court judge, we do not have divisions. I handle the whole of the district court's appellate jurisdiction. I have served on approximately 3,753 cases while on the court of appeal.

(iii) the citations of any published opinions; and

1. *Wall v. State*, 264 So. 3d 248 (Fla. 1st DCA 2019)
2. *Powell v. State*, 267 So. 3d 1093 (Fla. 1st DCA 2019)
3. *Hall v. Department of Health*, 274 So. 3d 1241 (Fla. 1st DCA 2019)
4. *Thomas v. Thomas*, 304 So. 3d 819 (Fla. 1st DCA 2020)
5. *Burnam v. State*, 305 So. 3d 771 (Fla. 1st DCA 2020)
6. *Woods v. State*, 306 So. 3d 1236 (Fla. 1st DCA 2020)
7. *Helweg v. Bugby o/b/o S.J.H.*, 306 So. 3d 1243 (Fla. 1st DCA 2020)
8. *Barber v. Bay Cnty. Sheriff's Off. Jail Facility*, 308 So. 3d 254 (Fla. 1st DCA 2020)

9. *Department of Agriculture and Consumer Services v. Henry and Rilla White Foundation, Inc.*, 317 So 3d 1168 (Fla. 1st DCA 2020)
10. *Morales v. State*, 308 So. 3d 1093 (Fla. 1st DCA 2020)
11. *Black Knight Servicing Techs., LLC v. PennyMac Loan Servs., LLC*, 310 So. 3d 1116 (Fla. 1st DCA 2021)
12. *D'Amico v. Connor*, 312 So. 3d 535 (Fla. 1st DCA 2021)
13. *State Farm Fla. Ins. Co. v. Nordin*, 312 So. 3d 200 (Fla. 1st DCA 2021)
14. *Fla. Carry, Inc. v. Thrasher*, 315 So. 3d 771 (Fla. 1st DCA 2021) (Long, J., concurring)
15. *Gilliam v. State*, 312 So. 3d 1280 (Fla. 1st DCA 2021)
16. *Lowery v. State*, 323 So. 3d 771 (Fla. 1st DCA 2021)
17. *Smith v. State*, 323 So. 3d 773 (Fla. 1st DCA 2021)
18. *Walls v. S. Owners Ins. Co.*, 321 So. 3d 856 (Fla. 1st DCA 2021)
19. *Owens v. Owens*, 315 So. 3d 163 (Fla. 1st DCA 2021)
20. *Gibson v. State*, 320 So. 3d 245 (Fla. 1st DCA 2021)
21. *Pendergrass v. State*, 316 So. 3d 807 (Fla. 1st DCA 2021)
22. *Green v. Alachua Cnty.*, 323 So. 3d 246 (Fla. 1st DCA 2021) (Long, J., concurring)
23. *C.H. v. State*, 322 So. 3d 202 (Fla. 1st DCA 2021)
24. *Smith v. Gadsden Cnty. Sch. Bd.*, 321 So. 3d 384 (Fla. 1st DCA 2021)
25. *Buchanan v. Dep't of Health*, 322 So. 3d 238 (Fla. 1st DCA 2021)
26. *Morris v. State*, 325 So. 3d 1009 (Fla. 1st DCA 2021)
27. *R.C. v. Dep't of Agric. & Consumer Servs., Div. of Licensing*, 323 So. 3d 275 (Fla. 1st DCA 2021)
28. *Walker v. State*, 324 So. 3d 60 (Fla. 1st DCA 2021)
29. *Owens v. State*, 323 So. 3d 857 (Fla. 1st DCA 2021)
30. *Washington v. State*, 325 So. 3d 306 (Fla. 1st DCA 2021) (Long, J., concurring)
31. *Dortch v. Alachua Cnty. Sch. Bd.*, 330 So. 3d 976 (Fla. 1st DCA 2021)

32. *Segura v. State*, 329 So. 3d 250 (Fla. 1st DCA 2021)
33. *First Fid. Tr. Servs., Inc. v. Shelter Cove Condo. Ass'n, Inc.*, 329 So. 3d 222 (Fla. 1st DCA 2021)
34. *Jackson v. Fla. Highway Patrol*, 332 So. 3d 541 (Fla. 1st DCA 2021)
35. *Byers v. State*, 330 So. 3d 1044 (Fla. 1st DCA 2021)
36. *Glover v. State*, 329 So. 3d 817 (Fla. 1st DCA 2021)
37. *Brown v. State*, 337 So. 3d 454 (Fla. 1st DCA 2022)
38. *State v. Kunkemoeller*, 333 So. 3d 335 (Fla. 1st DCA 2022)
39. *Running Cars, LLC v. Miller*, 333 So. 3d 1177 (Fla. 1st DCA 2022)
40. *Kelly Air Sys., LLC v. Kohlun*, 337 So. 3d 883 (Fla. 1st DCA 2022)
41. *Simmons v. State*, 337 So. 3d 470 (Fla. 1st DCA 2022)
42. *Stokes v. State*, 335 So. 3d 817 (Fla. 1st DCA 2022)
43. *Chambers v. State*, 335 So. 3d 815 (Fla. 1st DCA 2022)
44. *Patterson v. State*, 339 So. 3d 422 (Fla. 1st DCA 2022)
45. *State v. Bryant*, 342 So. 3d 279 (Fla. 1st DCA 2022) (Long, J., concurring)
46. *Preston v. State*, 339 So. 3d 503 (Fla. 1st DCA 2022)
47. *Webster v. Tallahassee Memorial Healthcare*, 342 So. 3d 861 (Fla. 1st DCA 2022)
48. *Khayrallah v. State*, 346 So. 3d 711 (Fla. 1st DCA 2022) (Long, J., concurring)
49. *Spann v. Payne*, 346 So. 3d 743 (Fla. 1st DCA 2022) (Long, J., concurring)
50. *Kunselman v. Offices of Governor*, 351 So. 3d 56 (Fla. 1st DCA 2022)
51. *Herring v. State*, 348 So. 3d 658 (Fla. 1st DCA 2022)
52. *Jordan v. State*, 350 So. 3d 103 (Fla. 1st DCA 2022)
53. *Atwood v. State*, 348 So. 3d 698 (Fla. 1st DCA 2022)
54. *Golden v. Tanzler*, 351 So. 3d 125 (Fla. 1st DCA 2022)
55. *Harris v. Plapp*, 386 So. 3d 185 (Fla. 1st DCA 2022)
56. *Bosshardt v. Drotos*, 351 So. 3d 257 (Fla. 1st DCA 2022) (Long, J., concurring)

57. *Luster v. State*, 354 So. 3d 580 (Fla. 1st DCA 2022)
58. *Susick v. State*, 354 So. 3d 1147 (Fla. 1st DCA 2023)
59. *Diaz v. Northwest Florida Water Management District*, 533 So. 3d 972 (Fla. 1st DCA 2023)
60. *Estremera v. Florida Commission on Offender Review*, 360 So. 3d 766 (Fla. 1st DCA 2023)
61. *McGhee v. State*, 357 So. 3d 797 (Fla. 1st DCA 2023)
62. *Shands v. Beylotte*, 357 So. 3d 307 (Fla. 1st DCA 2023)
63. *Emerald Coast Utilities Authority v. Thomas Home Corporation*, 359 So. 3d 1239 (Fla. 1st DCA 2023) (Long, J., concurring)
64. *Devil's Garden Investment v. South Florida Water Management District*, 367 So 3d 548 (Fla. 1st 2023)
65. *Malden v. State*, 359 So. 3d 442 (Fla. 1st DCA 2023)
66. *White v. Discovery Communications, LLC*, 365 So. 3d 379 (Fla. 1st DCA 2023) (Long, J., concurring)
67. *Edenfield v. State*, 379 So. 3d 5 (Fla. 1st DCA 2023) (Long, J., concurring in result)
68. *Fleming v. State*, 366 So. 3d 1179 (Fla. 1st DCA 2023)
69. *Storey Mountain v. Freestone Enterprise*, 368 So. 3d 473 (Fla. 1st DCA 2023)
70. *Strickland v. Strickland*, 371 So. 3d 1018 (Fla. 1st DCA 2023)
71. *Normandy Insurance Company v. Bouayad*, 371 So. 3d 671 (Fla. 1st DCA 2023) (Long, J., concurring)
72. *Freeman v. State*, 373 So. 3d 1255 (Fla. 1st DCA 2023) (Long, J., concurring)
73. *Smith v. Bright*, 371 So. 3d 1021 (Fla. 1st DCA 2023)
74. *Byrd v. Black Voters Matter*, 375 So. 3d 335 (Fla. 1st DCA 2023) (Long, J., concurring)
75. *Kuschnitzky v. Marasco*, 377 So. 3d 1205 (Fla. 1st DCA 2024)
76. *Pitts v. Neptune*, 396 So. 3d 619 (Fla. 1st DCA 2024)

77. *Agency for Health Care Administration v. Murciano*, 381 So. 3d 1283 (Fla. 1st DCA 2024)
78. *University of Florida Board of Trustees v. Browning*, 387 So. 3d 371 (Fla. 1st DCA 2024) (Long, J., concurring in part and dissenting in part)
79. *Atwood Owner LLC v. Lumzy*, 383 So. 3d 905 (Fla. 1st DCA 2024) (Long, J., concurring)
80. *Ford v. State*, 390 So. 3d 1238 (Fla. 1st DCA 2024)
81. *Goldsby v. State*, 390 So. 3d 1241 (Fla. 1st DCA 2024)
82. *Hale v. GEICO General Insurance Company*, 386 So. 3d 1052 (Fla. 1st DCA 2024)
83. *Detroit Tigers v. Sodders*, 390 So. 3d 1234 (Fla. 1st DCA 2024)
84. *North Shore Medical Center v. Navarro*, 389 So. 3d 785 (Fla. 1st DCA 2024)
85. *Eglin Federal Credit Union v. Baird*, 400 So. 3d 643 (Fla. 1st DCA 2024)
86. *Parker v. Florida Dept. of Corr*, 403 So. 3d 1020 (Fla. 1st DCA 2024)
87. *Vowell v. State*, 393 So. 3d 854 (Fla. 1st DCA 2024)
88. *Grigges v. State*, 395 So. 3d 242 (Fla. 1st DCA 2024)
89. *Pro Choice Remediation, Inc. v. Old Dominion Insurance Company*, 400 So. 3d 789 (Fla. 1st DCA 2024) (Long, J., dissenting)
90. *Harris v. State*, 397 So. 3d 833 (Fla. 1st DCA 2024)
91. *Oracle v. Florida Department of Revenue*, 397 So. 3d 819 (Fla. 1st DCA 2024)
92. *Anderson v. State*, 410 So. 3d 599 (Fla. 1st DCA 2024)
93. *Peterson v. State*, 399 So. 3d 394 (Fla. 1st DCA 2025)
94. *Swift Response, LLC v. Routt*, 401 So. 3d 640 (Fla. 1st DCA 2025) (Long, J., concurring in result)
95. *Ash v. State*, No. 1D22-1163, 2025 WL 610937 (Fla. 1st DCA Feb. 26, 2025) (Long, J., dissenting) (withdrawn and replaced by *Ash v. State*, No. 1D22-1163, 2025 WL 1573182 (Fla. 1st DCA June 4, 2025))

96. *James v. State*, 408 So. 3d 879 (Fla. 1st DCA 2025)

97. *Adelson v. State*, 412 So. 3d 880 (Fla. 1st DCA 2025)

98. *Ash v. State*, No. 1D22-1163, 2025 WL 1573182 (Fla. 1st DCA June 4, 2025)

99. *Palacios v. Agency for Health Care Administration*, 418 So. 3d 800 (Fla. 1st DCA 2025) (Long, J., concurring in result)

100. *AK Land Title v. Hurd*, No. 1D24-1319, 2025 WL 2327134 (Fla. 1st DCA Aug. 13, 2025)

101. *Andrews v. State*, No. 1D24-1106, 2025 WL 2792212 (Fla. 1st DCA Oct. 1, 2025)

102. *Dixon v. Brown*, No. 1D25-1237, 2025 WL 3084756 (Fla. 1st DCA Nov. 5, 2025) (Long, J., dissenting)

(iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

1. *Green v. Alachua Cnty.*, 323 So. 3d 246 (Fla. 1st DCA 2021). This case involved a challenge to an Alachua County mask mandate. It came to the court after the trial court denied Green's request for an emergency temporary injunction. We held the mask mandate was presumptively unconstitutional and remanded for further proceedings. I wrote a concurrence expounding on Florida's constitutional right of privacy and explaining my views for appropriate application of the constitutional text. The case was significant because it addressed a pressing high-profile government act (the mask mandate) that was widespread and ongoing around the state and country. My constitutional privacy analysis is also significant beyond the mask mandate issue. Some of the attorneys involved were Seldon Childers, J. Eric Hope, Jack Ross, Krista Collins, and Robert Swain.

2. *R.C. v. Dep't of Agric & Consumer Servs.,* 323 So. 3d 275 (Fla. 1st DCA 2021). This case involved a challenge to the Department of Agriculture's denial of a license application to carry a concealed firearm. We held the department cannot deny a concealed carry license without first having a formal hearing where it presents evidence of the applicant's licensure disqualification. This was an en banc proceeding. I wrote the majority en banc decision. The case was significant because it effected Second Amendment and state constitutional rights and the statewide concealed carry application process

which is designed to evince those rights. Some of the lawyers involved were Eric Friday, Noel Flasterstein, Steven Hall, and Tobey Schultz.

3. *Dortch v. Alachua Cnty. Sch. Bd.*, 330 So. 3d 976 (Fla. 1st DCA 2021). This case involved a petition for writ of mandamus seeking to compel the Alachua and Duval County Schoolboards to comply with state law requiring parents of school children be given the option to opt their children out of mandatory mask wearing in school. I wrote the opinion explaining that the schoolboards were required to follow the law and were not free to adopt their own preferred policy in conflict with state law. The writ petition was then transferred to the local circuit courts to address a single factual issue raised by the schoolboards—whether the petitioners were actually, as they claimed, parents of school children effected by the schoolboards' policies. The case was significant because it addressed ongoing and high-profile government coerced masking of children. Some of the lawyers involved were Nick Whitney, Seldon Childers, Natasha Mickens, David Delaney, Rita Mairs, Jon Phillips, Craig Feiser, and James Millard.

4. *State of Florida v. Jeterius Williams*, 2018CF3103. This was a murder case tried to verdict before a jury. It was a relatively high-profile shooting death in a Tallahassee neighborhood. It is a good example of the way in which a felony trial can become complex factually, legally, and logistically. The case involved expert witnesses, a multitude of evidentiary issues, complex familial relationships which sometimes made courtroom management difficult, and presented interesting disputed legal matters when the law was applied to the facts. This case, both in its trial and sentencing phase, was a good example of how the work of a judge can become a difficult balance of the rule of law, raw emotion, common sense, and human experience. This case was tried in 2020. The lawyers were James Beville and Ronald Thomas.

5. *Byrd v. Black Voters Matter*, 375 So. 3d 335 (Fla. 1st DCA 2023). This was an appeal addressing a challenge to newly drawn congressional districts. The case turned on the proper interpretation of Florida's so-called Fair Districts Amendment. It was a case of state-wide, even national, import. I wrote to suggest an alternative interpretation of the provisions—one that would prohibit the racial segregation of voters. It serves as an example of my general approach to constitutional interpretation.

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

According to Westlaw, while on the trial court I presided over 6,456 cases. My trial court rulings have been substantively reversed four times. The case cites with brief summaries are provided below:

1. *Harrison v. Leon Cnty. Clerk of Cir. Ct. & Comptroller*, No. 1D19-1381, 2021 WL 4771281 (Fla. 1st DCA 2021).
   This was a reversal in a criminal bond forfeiture and remission case involving a bail bondsman and the clerk of the court.
2. *Barr v. State*, 294 So. 3d 458 (Fla. 1st DCA 2020).
   This was a reversal after a jury trial where the jury found Barr guilty of, among other things, possession of cocaine with intent to sell. The majority reversed for insufficiency of the evidence supporting the intent element. The majority remanded for entry of a judgment for the lesser-included offense of possession of cocaine.
3. *Louro v. State*, 305 So. 3d 840 (Fla. 1st DCA 2020).
   This was a reversal after a jury trial where the jury found Louro guilty of, among other things, armed trespassing. The court reversed, holding judgment of acquittal should have been granted and remanded the case for entry of a judgment for the lesser-included offense of simple trespassing.
4. *Ashford-Cooper v. Ruff*, 230 So. 3d 1283 (Fla. 1st DCA 2017).
   This was a reversal of a stalking injunction on the grounds that the repeated calls and texts the petitioner received from the respondent did not rise to the level warranting an injunction because a woman who has an "affair with another woman's husband might well expect to hear the scorn of an angry wife." *Id*.

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

Depending on your perspective, most of my written opinions address constitutional issues in some form. However, below is a selection of fifteen cases with analysis on significant issues:

1. *Freeman v. State*, 373 So. 3d 1255 (Fla. 1st DCA 2023) (Long, J., concurring)
2. *Walker v. State*, 324 So. 3d 60 (Fla. 1st DCA 2021)
3. *R.C. v. Dep't of Agric & Consumer Servs.,* 323 So. 3d 275 (Fla. 1st DCA 2021)
4. *Helweg v. Bugby o/b/o S.J.H.*, 306 So. 3d 1243 (Fla. 1st DCA 2020)
5. *Morales v. State*, 308 So. 3d 1093 (Fla. 1st DCA 2020)
6. *Gilliam v. State*, 312 So. 3d 1280 (Fla. 1st DCA 2021)
7. *Green v. Alachua Cnty.*, 323 So. 3d 246 (Fla. 1st DCA 2021) (Long, J., concurring)

8. *Dortch v. Alachua Cnty. Sch. Bd.*, 330 So. 3d 976 (Fla. 1st DCA 2021)
9. *Byrd v. Black Voters Matter*, 375 So. 3d 335 (Fla. 1st DCA 2023)
10. *Ash v. State*, No. 1D22-1163, 2025 WL 610937 (Fla. 1st DCA Feb. 26, 2025) (Long, J., dissenting) (withdrawn and replaced by *Ash v. State*, No. 1D22-1163, 2025 WL 1573182 (Fla. 1st DCA June 4, 2025))
11. *White v. Discovery Communications, LLC*, 365 So. 3d 379 (Fla. 1st DCA 2023) (Long, J., concurring)
12. *Anderson v. State*, 410 So. 3d 599 (Fla. 1st DCA 2024)
13. *University of Florida Board of Trustees v. Browning*, 387 So. 3d 371 (Fla. 1st DCA 2024) (Long, J., concurring in part and dissenting in part)
14. *Eglin Federal Credit Union v. Baird*, 400 So. 3d 643 (Fla. 1st DCA 2024)
15. *Adelson v. State*, 412 So. 3d 880 (Fla. 1st DCA 2025)

29. Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

No.

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

No.

31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

No.

NON-LEGAL BUSINESS INVOLVEMENT

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

I am not an officer, director, or manager of any enterprise.

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

No.

POSSIBLE BIAS OR PREJUDICE

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

I know of no such conflicts. I recuse when required by the judicial canons.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

N/A

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

N/A

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

1. Search and Seizure Basics
   Delivered on multiple occassions to multiple Florida law enforcement agencies
2. Law Enforcement Discipline and the Officer Bill of Rights
   Delivered on multiple occassions to multiple Florida law enforcement agencies
3. Practicing with Professionalism
   Presented to newly admitted members of the Florida Bar
4. Solving Violent Crime - A Community Approach
   Presented at community events and civic clubs in the Tallahassee area
5. Military Justice 101
   Presented on multiple occassions to U.S. Navy personnel

6. Juvenile Justice and the Circuit Court
   Presented on multiple occassions to various civic groups in the Tallahassee area
7. Trial Practice Before the Circuit Court
   Presented at the FSU law school on multiple occassions
8. How to Conduct a Bench Trial
   Presented at the FSU law school on multiple occassions
9. Florida Construction Law
   Presented to construction industry at builder's symposiums
10. Remarks on Admission to the Florida Bar
    Remarks delivered on May 2, 2022, at the First District Court of Appeal
11. Judicial Education
    Panel discussion on April 14, 2022, before the UF Law Federalist Society
12. Remarks to Delegates of the Florida Sheriff Explorer Association
    Delivered on December 21, 2019, at Four Points by Sheraton Tallahassee
13. Making Winning Arguments
    Panel discussion on February 3, 2024, at the Federalist Society Florida Chapters Conference. Available at https://youtu.be/kNgfo1sumes
14. Appellate Clerkships
    Remarks delivered on October 23, 2025, before the Ave Maria School of Law Federalist Society

38. Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

N/A

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

1. Judicial Distinguished Service Award, FCCD - 2017.

2. Navy Commendation Medal - 2018.

3. Army Commendation Medal - 2012.

4. Navy Achievement Medal - 2012.

5. National Defense Service Medal - 2008.

6. Afghan Campaign Medal - 2012.

7. Global War on Terrorism Service Medal - 2008.

8. NATO ISAF Medal - 2012.

9. Expert Rifleman Medal - 2010.

10. Expert Pistol Medal - 2010.

11. Selected as the Honor Graduate for the highest overall averages in academics, military bearing, and physical fitness for Naval Officer Development School - 2008.

12. Selected as Managing Editor of the Journal of Law and Public Policy - 2007.

13. Selected as an Editor for the Harvard Journal of Law and Public Policy - 2007.

14. Selected as a Blackstone Fellow - 2006.

15. Honors Distinction for Legal Research and Writing – 2006

16. Dean's List – 2003

17. Phi Kappa Phi National Honor Society – 2003

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

No.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

1. Legal Aid Foundation
   Board of Directors – 2015 to 2016
2. Tallahassee Bar Association
   Current Member
3. William H. Stafford American Inn of Court
   President – 2021-2022
   Executive Committee – 2018-2022
4. Federalist Society
   President, Tallahassee Lawyer's Chapter – 2015 to 2016
   Steering Committee, Tallahassee Lawyers Chapter – 2013 to Present
   President, UF Law School Chapter – 2007 to 2008
   Vice President, UF Law School Chapter – 2006 to 2007
   Current Member
5. Florida Appellate Judicial Education Committee
   Current Member
6. First District Court Associate Judge Committee
   Current Member

7. Florida Supreme Court Judicial Security Workgroup
   Current Member
8. Commission for Florida Law Enforcement Accreditation
   Commissioner – 2023 to Present

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

1. St. John Paul II Catholic High School, School Advisory Council
   Chair – 2025 to Present
   Member – 2024 to Present
2. Leadership Tallahassee
   Class of 33
3. Economic Club of Florida
   Member
4. Rotary Club of Tallahassee
   Chair of Ethics in Business Award Program – 2021 to Present
   Chair of Open World International Delegations – 2019 to 2021
   Officer of the Board of Directors – 2015 to 2016
   Board of Directors – 2016 to 2018
   International Service Committee – 2019 to 2021
   Salvation Army Bell Ringing Captain – 2015
   Program Committee – 2014 to 2021
   Member
5. American Legion
   Member
6. Veterans of Foreign Wars
   Member
7. City of Tallahassee, Leon County Parks and Recreation, and Upward Basketball
   Youth Baseball Coach
   Youth Soccer Coach
   Youth Basketball Coach
   Youth Flag Football Coach
8. Capital Tiger Bay Club
   Member
9. Boy Scouts of America
   Pack Chairman, Cub Scout Pack 3 – 2020 to 2025
   Assistant Scoutmaster, Scout Troop 109 – 2021 to Present

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

I served on the Legal Aid Foundation Board of Directors from 2015 to 2016.

45. Please describe any hobbies or other vocational interests.

I enjoy reading, hunting, fishing, sailing, biking, and boating with my family. I enjoy writing and playing music. I also enjoy coaching, watching, and playing sports with my sons.

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

I currently serve in the U.S. Navy. I am an active drilling reservist. I served on active duty from 2008 to 2013 and received an Honorable Discharge from active service. I have been a reservist since I came off active duty. My current rank is Commander (O-5).

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

I do not maintain a social media presence.

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

Spouse Name:
Spouse Occupation: School Guidance Counselor
Spouse Employer:
Date of Marriage: July 28, 2007

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

1.
2.
3.
4.

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

No.

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

No.

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

No.

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No.

56. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, provide the particulars of each finding or investigation.

No.

57. To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No.

58. Are you currently the subject of an investigation which could result in civil, administrative, or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation, and the expected completion date of the investigation.

No.

59. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

No.

60. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No.

61. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I am in compliance with all tax obligations and have never had to pay a penalty or had a lien filed against me.

HEALTH

62. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No.

63. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

No.

64. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

No.

65. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No.

66. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, provide full details as to court, date, and circumstances.

No.

67. During the last ten years, have you unlawfully used controlled substances, narcotic drugs, or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or

distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal or State law provisions.)

No.

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action

No.

69. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal, and the reason why you refused to submit to such a test.

No.

70. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No.

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

In my previous role as the General Counsel to the Sheriff, I served as the liaison to the judiciary, the State Attorney's Office, the Public Defender, and other government agencies. As a result, I developed relationships with community leaders and worked together with a multitude of organizations to resolve mutual problems. This included working on pre-trial release and probation programs, pre-trial furlough matters, bond remission matters, mental health court programs, drug court programs, reentry programs, faith based programs, and juvenile diversion programs.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

My selection would bring a new professional perspective and valuable experience to the court. As a lawyer, I have tried major felonies and advised a Navy Admiral

on the Law of the Sea and Rules of Engagement. I have been a law enforcement officer and worked the ground level of our judicial system. I have managed complex and highly sensitive national security matters involving Taliban and al-Qaeda fighters and have worked as a civil litigator in state and federal proceedings. I have helped develop judicial programs and worked to successfully implement them. I have led in high profile litigation and criminal justice matters. As a trial judge, I have presided over nearly every major class of case that comes before the circuit court. I have presided over thousands of cases, including hundreds of contested family, civil, and criminal proceedings. I have spent the last 24 years of my life working through the great breadth of our justice system. My experience is not confined to one or two areas of the law and includes years of labor in the very-real daily work of those asked to breathe life into the opinions written by our appellate courts. This experience will be a great asset on the court. Putting a wide variety of experience on the court is important to maintaining a thoughtful and skilled judiciary.

The Supreme Court does not just resolve disputes. The opinions of the Court affect the lives of real people. The opinions help set the tone for the legal system and the Bar and can have consequences throughout the culture more broadly. And the Court's work is not limited to its opinions. The Court provides a tremendous opportunity to talk to lawyers and members of the public. In many respects it is an academic institution, teaching and leading the practice of law. My professional experience leaves me well prepared not only for the important daily work on the Court, but also to serve as an ambassador for the rule of law to the community.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

1. Judge Stephanie W. Ray
   Florida First District Court of Appeal
   2000 Drayton Drive
   Tallahassee, FL 32311
   Ph: 850-487-1000
   Email: rays@1dca.org

2. Judge Lori S. Rowe
   Florida First District Court of Appeal
   2000 Drayton Drive
   Tallahassee, FL 32311
   Ph: 850-487-1000
   Email: rowel@1dca.org

3. Chief Judge Timothy Osterhaus
Florida First District Court of Appeal
2000 Drayton Drive
Tallahassee, FL 32311
Ph: 850-487-1000
Email: osterhaust@1dca.org

4. Chief Judge Frank Allman
Florida Second Judicial Circuit Court
301 S. Monroe St
Tallahassee, FL 32301
Ph: 850-661-8532
Email: allmanf@leoncountyfl.gov

5. Judge Jonathan Sjostrom
Florida Second Judicial Circuit Court
301 S. Monroe St
Tallahassee, FL 32301
Ph: 850-606-4321
Email: sjostromj@leoncountyfl.gov

6. Sheriff Michael Wood (retired)
9823 Hawk Ridge Rd
Tallahassee, FL 32312
Ph: 850-528-8383
Email: wood.mike59@gmail.com

7. Mr. Leonard Dietzen
Rumberger Kirk, P.A.
101 N. Monroe Street, Suite 1050
Tallahassee, FL 32301
Ph: 850-222-6550
Email: ldietzen@rumberger.com

8. Judge Joseph L. Toth
U.S. Court of Appeals for Veterans Claims
625 Indiana Ave NW
Washington, DC 20004
Ph: 917-838-1500
Email: jtoth@uscourts.cavc.gov

9. Captain Dominic Antenucci
United States Navy
Judge Advocate General's Corps
408 Stone Ridge Dr
Ponte Vedra, FL 32081
Ph: 808-781-5329
Email: dominic.j.antenucci.mil@us.navy.mil

10. Professor M. Christopher Cox
Campbell University School of Law
225 Hillsborough Street
Raleigh, NC 27603
Ph: 858-699-0989
Email: mcox@campbell.edu

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 17th day of December 2025.

Robert E. Long, Jr.
Printed Name

Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . *The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

   Current Year-To-Date: $194,951.43

   Last Three Years: $236,034.54 $224,005.37 $208,345.06

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

   Current Year-To-Date: $194,951.43

   Last Three Years: $236,034.54 $224,005.37 $208,345.06

3. State the gross amount of income or loses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

   Current Year-To-Date: $0

   Last Three Years: $0 $0 $0

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

   Current Year-To-Date: $0

   Last Three Years: $0 $0 $0

5. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

   Current Year-To-Date: $0

   Last Three Years: $0 $0 $0

2024 Form 6 - Full and Public Disclosure of Financial Interests

Filed with COE: 06/13/2025

General Information

Name: Hon Robert Edward Long Jr

CONFIDENTIAL

PID 264135

AGENCY INFORMATION

Organization	Suborganization	Title
First District Court of Appeal	Elected Constitutional Officer	Appelate Judge

Net Worth

My Net Worth as of December 31, 2024 was $ 409,494.91.

Assets

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use, whether owned or leased.

The aggregate value of my household goods and personal effect is $ 70,000.00.

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

Description of Asset	Value of Asset
Home	$ 600,000.00
USAA Checking Account	$ 20,048.38
USAA Savings Account	$ 2,073.08

Filed with COE: 06/13/2025

Liabilities

LIABILITIES IN EXCESS OF $1,000:

Name of Creditor	Address of Creditor	Amount of Liability
USAA Home Mortgage	USAA Federal Savings Bank, 8950 Cypress Waters Blvd, Suite B, Coppell, TX 75019	$ 214,143.25
Discover Home Loans	1 Corporate Dr, Suite 360, Lake Zurich, IL 60047	$ 68,483.30

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

Name of Creditor	Address of Creditor	Amount of Liability
N/A		

Income

Identify each separate source and amount of income which exceeded $1,000 during the year, including secondary sources of income. Or attach a complete copy of your 2024 federal income tax return, including all W2s, schedules, and attachments. Please redact any social security or account numbers before attaching your returns, as the law requires these documents be posted to the Commission's website.

☐ I elect to file a copy of my 2024 federal income tax return and all W2s, schedules, and attachments.

PRIMARY SOURCES OF INCOME:

Name of Source of Income Exceeding $1,000	Address of Source of Income	Amount
State of Florida	200 E. Gaines St, Tallahassee, FL 32399	$ 207,117.96
Department of Defense, US Navy	1240 East 9th St, Cleveland, OH 44199	$ 28,916.58

SECONDARY SOURCES OF INCOME (Major customers, clients, etc. of businesses owned by reporting person):

Name of Business Entity	Name of Major Sources of Business' Income	Address of Source	Principal Business Activity of Source
N/A			

Filed with COE: 06/13/2025

Interests in Specified Businesses

Business Entity # 1
N/A

Training

Based on the office or position you hold, the certification of training required under Section 112.3142, F.S., is not applicable to you for this form year.

Signature of Reporting Official or Candidate

Under the penalties of perjury, I declare that I have read the foregoing Form 6 and that the facts stated in it are true.

Robert Edward Long Jr

Digitally signed: **06/13/2025**

Filed with COE: 06/13/2025

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: December 17, 2025

JNC Submitting To: Supreme Court

Name (please print): Robert E. Long, Jr.

Current Occupation: Judge

Telephone Number: 850-717-8157 Attorney No.: 61275

Gender (check one): [x] Male [ ] Female

Ethnic Origin (check one):
[x] White, non-Hispanic
[ ] Hispanic
[ ] Black
[ ] American Indian/Alaskan Native
[ ] Asian/Pacific Islander

County of Residence: Leon

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Robert E. Long, Jr.
Printed Name of Applicant

Signature of Applicant

Date: December 17, 2025

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2797

R.C.,

Appellant,

v.

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,
DIVISION OF LICENSING,

Appellee.

On appeal from the Department of Agriculture and Consumer Services, Division of Licensing.
Paul Pagano, Assistant Director.

June 16, 2021

ON HEARING EN BANC

LONG, J.

In 1969, R.C. was convicted of a felony for stealing an eight-track player in Charleston, Illinois. In 1971, his probation was terminated early and the Governor of Illinois restored his "Rights of Citizenship." He later applied for, and received, an Illinois Firearm Owner's Identification Card, an Illinois Concealed Carry License, and completed concealed carry firearms training. The

record suggests that after 1969, R.C. spent the next five decades without another criminal conviction.

When R.C. moved to Florida, he applied for a Florida license to carry a concealed weapon. Relying on a federal law that governs federally licensed firearm dealers, the Department of Agriculture and Consumer Services denied his application. Because the Department's findings of fact are not supported by competent, substantial evidence and its conclusions of law are erroneous, we reverse.

I. Statutory Framework

Florida has a "shall issue" concealed-carry law. § 790.06(2), Fla. Stat. (2020) ("The Department of Agriculture and Consumer Services *shall issue* a license if the applicant" meets the enumerated criteria) (emphasis added); *Norman v. State*, 215 So. 3d 18, 45 (Fla. 2017) (Canady, J., dissenting) (Florida's shall-issue concealed-carry law "broadly require[s] the issuance of concealed-carry permits subject to narrow exclusions."). The Department of Agriculture and Consumer Services is responsible for the issuance of concealed-carry licenses. § 790.06(1), Fla. Stat. ("The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section.").

This shall-issue statutory scheme means the Department is responsible for determining eligibility but has no discretion to deny an applicant that meets the statutory criteria. *Norman*, 215 So. 3d at 21 (plurality opinion) (finding section 790.06 "leaves no discretion to the licensing authority, the licensing authority must issue an applicant a concealed carry license, provided the applicant meets objective, statutory criteria.").

The Department is *exclusively* responsible for determining the eligibility of a concealed-carry license applicant. § 790.06(6)(d), Fla. Stat. ("[T]he Department of Agriculture and Consumer Services *shall determine eligibility* . . . .") (emphasis added). As a part of the eligibility evaluation, the statute requires the submission of the applicant's fingerprints and personal

information for a check against available criminal justice information. § 790.06(6), Fla. Stat. The Department must, within ninety days of receiving the applicant's information, issue the license, deny the license, or suspend the ninety-day period. § 790.06(6)(c), Fla. Stat. These provisions expressly contemplate the Department's evaluation of rights-restoration documents. § 790.06(6)(c)3., Fla. Stat. The suspension of the ninety-day period allows the Department more time to evaluate "proof of restoration of civil and firearm rights." *Id.* The Department may suspend the time limitation "until receipt" of the restoration documents. *Id.*

In addition to other statutory criteria, the Department must consider the final qualification in section 790.06(2). That section is a catch-all provision that states that the applicant must not be "prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law." § 790.06(2)(n), Fla. Stat.

If the eligibility evaluation results in an application denial, the Department must notify the applicant in writing, explain the reason for the denial, and inform the applicant of his right to a hearing under chapter 120. § 790.06(6)(c)2., Fla. Stat. An applicant is entitled to a formal hearing when his substantial interests are affected and there is a disputed issue of material fact. § 120.569(1), Fla. Stat. (2020).

II. Facts

R.C. sought a concealed carry license, submitted the proper paperwork, and paid the $119 fee. He was then informed by letter that the Department denied his application because "[i]nformation received by the Department indicates that you are prohibited under federal law from possessing a firearm pursuant to the National Instant Criminal Background check system," or NICS. This "information" was a search result that provided little—only that he is NICS ineligible for having a felony conviction. It is reproduced in its entirety here:

NICS INELIGIBLE INFORMATION

The following data was received from FDLE:

Submitted from DOACS	Results Delivered	TCN	Name Cnt	Applicant Name	FPP Determination	Reason Code
07/26/2018 12:38:54 AM	07/26/2018 10:59:29 AM	70ST360000020301	1	[redacted]	NICS INELIGIBLE	FELONY CONVICTION

R.C. expressly disputed the factual basis for the denial and invoked his right to a formal evidentiary hearing under chapter 120. He acknowledged that he was convicted of a felony in Illinois in 1969. But he explained, and provided proof, to the Department that Illinois restored his firearm rights and issued him an Illinois Firearm Owner's Identification Card and an Illinois Concealed Carry License. R.C. submitted a restoration of rights certificate from the Governor of Illinois and court documents reflecting the restoration. He argued that he can lawfully purchase and possess a firearm.

But the Department rejected the request for a formal hearing and referred him to an informal hearing. The Department refused the formal hearing because it argued the NICS result was binding as a matter of law and, unless R.C. was disputing the existence of the NICS result, there were no genuinely disputed issues of material fact.

At the informal hearing, the Department elected not to provide a representative and submitted *nothing*. The hearing officer reiterated that the denial of R.C.'s application hinged on the NICS results. R.C. challenged the Department for denying his application without producing any evidence. R.C. argued a formal hearing was required where he could dispute material facts and challenge the documents the Department relied on to deny his application. And he argued, repeatedly, that he is not disqualified under any federal or state law.

Following the hearing, the Department issued a final order. The Department made a finding of fact that "[t]he Department has received information . . . that [R.C.] is prohibited under Federal law from possessing a firearm pursuant to [NICS]." The Department acknowledged that R.C. timely requested a formal hearing and that he had submitted his rights-restoration paperwork. The Department claimed to have "made no

independent determination of [R.C.'s] ability to possess a firearm, but solely depended" on the NICS information. The Department then concluded as a matter of law that it correctly applied section 790.06(2)(n) when it determined that the NICS result prohibits R.C. from possessing a firearm under federal law.

III. Analysis

We have jurisdiction. Art. V, § 4(b)(2), Fla. Const. We review findings of fact for competent, substantial evidence. § 120.68(7)(b) Fla. Stat. (2020). We review statutory interpretations de novo. Art. V, § 21, Fla. Const. ("In interpreting a state statute or rule, a state court . . . may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo.").

A. National Instant Criminal Background Check System (NICS)

The Department denied R.C.'s application claiming that he was prohibited by NICS from possessing a firearm under federal law and that he therefore did not meet the statutory criteria. *See* § 790.06(2)(n), Fla. Stat. The question before the Court is whether the Department correctly relied on the NICS result to deny R.C.'s application.[1] The answer is no.

A NICS result does not mean an individual is prohibited from purchasing or possessing a firearm. Instead, the NICS provisions

[1] The dissent makes much of preservation. Despite our best efforts, sometimes opinions read like ships in the night—as if they are written on entirely different cases. As we have already set out in Part II of this opinion, the Department informed R.C. that his application was denied because of the NICS result. The dissent acknowledges that R.C. then repeatedly "disputed that the information [the Department] had received supported the legal conclusion that [R.C.] was disqualified." Dissenting op. at 48 (Kelsey, J.). This is the precise question we now decide. After the hearing, the Department's final order concluded that it "correctly applied Section 790.06(2)(n), Florida Statue [sic], as the Department has received information . . . that [R.C.] is prohibited under Federal law from possessing a firearm pursuant to [NICS]."

regulate the conduct of federally licensed firearm dealers through a background check system. A licensed dealer is required to attempt to run a customer's name through the NICS database before selling a firearm. If the check comes back with disqualifying information, the *dealer* cannot proceed with the sale. 18 U.S.C. § 922(t)(1). But this provision does not proscribe the individual customer's conduct. The United States Code governs this area: a "*licensed dealer* shall not transfer a firearm to any person" unless the dealer first complies with the NICS requirements. 18 U.S.C. § 922(t)(1) (emphasis added).

A different provision of federal law regulates an individual's conduct: "It shall be unlawful for *any person* . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess . . . any firearm . . . or to receive any firearm . . . ." 18 U.S.C. § 922(g)(1) (emphasis added). Congress specifically *excluded* individuals who have had their civil rights restored from the definition of "conviction." *See* 18 U.S.C. § 921(a)(20) ("Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter"). Florida law is the same. *See* § 790.23(2)(a), Fla. Stat. (2020) (providing exemption from the prohibition against possession or control of a firearm for persons

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The question was presented *and* passed upon by the lower tribunal. And then on appeal, a third of the argument in R.C.'s initial brief was devoted to discussion of this same question—including a section titled "A positive NICS check is not dispositive that an individual is a prohibited person." The question we answer today was preserved below, argued in the initial brief, and was properly before the Court *before* supplemental briefing was ordered. Along with a supermajority of this Court, I opposed the supplemental briefing order. But our internal rules permitted only five judges to issue the order over the objection of the majority. This opinion relies exclusively on the record and the original briefing.

"[c]onvicted of a felony whose civil rights and firearm authority have been restored").

The Department cited section 790.06(2)(n) to support its denial of R.C.'s application. That section states, "The Department of Agriculture and Consumer Services shall issue a license *if the applicant* . . . [i]s not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law." § 790.06(2)(n), Fla. Stat. And if R.C.'s firearm rights have been restored, he is not prohibited from possessing a firearm. *See* 18 U.S.C. § 921(a)(20); § 790.23(2)(a), Fla. Stat.[2]

The Department now raises a new argument to support its denial of R.C.'s application. It now claims the NICS result prohibits R.C. from *purchasing* a firearm under federal law. But again, this is not correct. The NICS provisions, discussed above,

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[2] We reject the notion that by applying this plain statutory language we somehow ignore or "expan[d] the statutorily-authorized process." Dissenting op. at 34 (Kelsey, J.). We simply apply the law as it is written. The dissent apparently favors the review process for the sale of firearms by federally licensed dealers over the application process the Legislature created for concealed-carry licenses. But the question is not which process we prefer. Perhaps the dissent is correct that the NICS appeal process provides an "adequate point of entry for applicants to challenge" their NICS results. Dissenting op. at 40 (Kelsey, J.). And if this case had anything to do with a federally licensed dealer's sale of a firearm, we might also discuss the adequacy of those provisions. But since this is a concealed-carry case we will leave that discussion for another day. Our only inquiry is what the concealed-carry law compels. There is not a single reference to NICS in the entire concealed-carry chapter. Its total absence from the controlling statute would be rather odd if it were the system that, as the Department and the dissent contend, serves as the mechanism for approval and appeal of concealed-carry licenses. If the Legislature wishes to make concealed-carry licenses contingent on the federal regulations for licensed-firearm sales, then the Legislature can say so. But it has not, and neither this Court nor the Department can change the law.

do not regulate an individual's ability to possess *or* purchase firearms but govern only their sale by federally licensed dealers. Because they do not regulate the individual customer, if a dealer proceeds with a sale despite the NICS result it is the dealer who violates the NICS provisions, not the customer.

The NICS result, therefore, is not dispositive in determining whether R.C. is prohibited from possessing or purchasing a firearm under federal or Florida law.[3] Because the Department relied exclusively upon the NICS result, it presented no evidence to support the denial. But now, because that core legal conclusion is incorrect, the Department's final order is left without competent, substantial evidence.

B. The Department's Policy Arguments

The Department advances several policy arguments for the denial of R.C.'s application. The Department points out that it is not provided with the underlying basis for NICS's conclusion that R.C. is "NICS ineligible" due to a "felony conviction." That is all the information it gets. So the Department contends that, because it does not know the basis for the result, it cannot effectively determine whether the restoration documents provided by an applicant apply to the NICS disqualification.

The Department asserts that, although R.C. has provided restoration documents from Illinois, there remains a possibility of

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[3] Though the Department has not disputed R.C.'s rights restoration, we reach no conclusion on the authenticity of the documents R.C. presented. *See Douglas v. Buford*, 9 So. 3d 636, 637 (Fla. 1st DCA 2009) (noting that the appellate court is "precluded from making factual findings ourselves in the first instance."). Nor do we conclude he is not prohibited from purchasing or possessing a firearm for a reason other than the Illinois felony conviction—a possibility the Department posits without having produced any evidence. But that determination is precisely why section 790.06 exists. It is the Department's statutory responsibility to determine whether R.C. is actually prohibited from possessing or purchasing a firearm.

some other disqualification from somewhere else. But the Department has no evidence of any other disqualification. And the possibility of an unknown disqualification exists in every concealed carry application. The denial of a constitutional right cannot stand on conjecture. *See* U.S. Const. amend. II; Art. I, § 8, Fla. Const; *Norman*, 215 So. 3d at 22 (plurality opinion) (concluding that Florida's concealed-carry statutory scheme is the channel through which "the right of Floridians to bear arms for self-defense outside of the home" is exercised).

The Department also argues that, if this Court applies the law as it is written, the Department "would be required to give a concealed weapons license to everyone who disputed their NICS disqualification . . . ." Quite the contrary, the law requires the Department to issue the license unless the applicant is prohibited by Florida or federal law. Determining an applicant's eligibility is the Department's responsibility. The Department must evaluate the evidence and reach a reasoned conclusion.

Policy arguments cannot free the Department from the written law. A felon flagged in NICS may be prohibited from possessing or purchasing a firearm—most probably are. But a NICS result is only a starting point in the inquiry into an applicant's eligibility.[4] It is not the NICS result that is a

[4] As a part of the Department's eligibility review process, it is to have an applicant "processed for any criminal justice information." § 790.06(6)(a), Fla. Stat. The dissent puts great weight on this provision and uses it as the entry point for insertion of several unrelated regulations into the concealed-carry statute. All of which we reject. Though it does not affect the outcome here, we note that it is not clear that the NICS result is "criminal justice information" in the first place. This is because criminal justice information "means information on individuals *collected or disseminated as a result of arrest, detention or the initiation of a criminal proceeding* . . . ." § 943.045(12), Fla. Stat. (2020) (emphasis added). For example, an arrest affidavit, an indictment, or a judgment and sentence, is "collected or disseminated" because of an arrest, detention, or criminal proceeding. But a NICS result is information that is solely created and "disseminated as a result of" a federally licensed firearm dealer seeking to sell a firearm.

prohibition on possession or purchase of a firearm. Rather, it is the conviction without a restoration of rights. The NICS result may be a sign that points toward prohibition, but it is not prohibition itself.

C. Entitlement to a Formal Hearing

Because of its misinterpretation of the substantive statutes, the Department deprived R.C. of his right to a formal evidentiary hearing. The denial of the hearing was premised entirely on the incorrect legal conclusion that the Department was bound to the NICS result.

But as we have seen, NICS is not dispositive. There is then a disputed issue of material fact affecting R.C.'s substantial interests. The Department contends he is prohibited from possessing or purchasing a firearm and R.C. has presented evidence that his rights have been restored. § 120.569(1), Fla. Stat. (entitling a party whose substantial interests have been determined by an agency to a hearing under section 120.57(1) "whenever the proceeding involves a disputed issue of material fact"). R.C. is therefore entitled to a formal hearing under section 120.57(1) where "[a]ll parties shall have an opportunity to respond, to present evidence and argument on all issues involved" and "[f]indings of fact shall be based upon a preponderance of the evidence . . . ." § 120.57(1)(b), (j), Fla. Stat.[5]

The formal hearing is the Department's opportunity to carry its burden by presenting evidence of disqualification. It is also

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And rather than the actual judgment and sentence itself, the NICS result is a third party's review of the underlying information and a reflection of the conclusions the third party has drawn from the actual criminal justice information. But we need not decide here whether the Department can properly use a NICS result in their application review process. We only conclude that it is not sufficient, by itself, to support a denial.

[5] We disagree that conducting a routine evidentiary hearing under the Administrative Procedure Act is a "novel creation of an evidentiary appeal." Dissenting op. at 41 (Kelsey, J.). And unlike

R.C.'s opportunity to present evidence challenging the basis of that disqualification. The Department erred in denying R.C.'s request for a formal hearing under section 120.57(1).

IV. Conclusion

The Department's finding of fact that R.C. is prohibited from possessing a firearm is not supported by competent, substantial evidence. The Department's legal conclusion that the NICS result required the denial of R.C.'s concealed carry application is erroneous. We reverse and remand for further proceedings.

RAY, C.J., and LEWIS, ROBERTS, ROWE, OSTERHAUS, JAY, M.K. THOMAS, NORDBY, and TANENBAUM, JJ., concur.

B.L. THOMAS, J., concurs with opinion, in which ROBERTS, JAY, M.K. THOMAS, and TANENBAUM, JJ., join, and in which LEWIS, ROWE, and WINOKUR, JJ., join in Part I.

WINOKUR, J., concurs with opinion, in which LEWIS, B.L. THOMAS, ROBERTS, ROWE, M.K. THOMAS, and TANENBAUM, JJ., join.

MAKAR, J., concurs in part and dissents in part with opinion, in which BILBREY and KELSEY, JJ., join in part.

KELSEY, J., dissents with opinion, in which BILBREY, J., joins, and in which MAKAR, J., joins in Part I.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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the NICS process, the APA process is expressly provided for in the concealed-carry licensing statute. § 790.06(6)(c)2., Fla. Stat.

ATTACHMENT TWO
Ash v. State, No. 1D22-1163, 2025 WL 610937 (Fla. 1st DCA Feb. 26, 2025) (Long, J., dissenting) (withdrawn and replaced by *Ash v. State*, No. 1D22-1163, 2025 WL 1573182 (Fla. 1st DCA June 4, 2025))

LONG, J., dissenting.

In support of its decision today, the majority has discovered a new constitutional principle hidden in the text of the 233-year-old Sixth Amendment. It then imposes this new principle without any discussion of the constitutional text, its original meaning, or its application in history and tradition. I must dissent.

I. The Faretta Landscape

Faretta held that criminal defendants have a right to self-representation. Today's decision extends *Faretta* to create a new amorphous legal principle that a court can "coerce" a defendant into waiving his right to self-representation, even while allowing him to self-represent. We have never said that, and that is not what *Faretta* says. The majority provides no guidance for where this new coercion principle will start and stop. It fails to explain how the principle will relate to existing law. And it gives no instruction on how it should be applied by trial courts. It simply makes a pronouncement and leaves the difficult work of making sense of it for later. But as we will see, this rubber-meets-the-road business will be difficult. Because not only is the new principle created from whole cloth, but it also conflicts with the existing *Faretta* landscape.

In *Faretta,* the trial court *prohibited* Faretta from representing himself. *Faretta v. California*, 422 U.S. 806, 809–11 (1975). In response, the Supreme Court pronounced that the Sixth Amendment implies a right to self-representation. *Id.* at 821. It found that the Sixth Amendment "when naturally read . . . implies

a right of self-representation" and that this was "reinforced by the Amendment's roots in English legal history." *Id*. There is dispute about how much support can be found for the right in history and tradition. But the right is undisputedly not found in the text of the Constitution. The Sixth Amendment says:

> *In all criminal prosecutions, the accused shall enjoy the right* to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and *to have the Assistance of Counsel for his defence*.

U.S. Const. amend. VI (emphasis supplied).[1] And so the Constitution contains an express right to counsel, but no express right to self-representation. As we embark on expanding this unenumerated right into new territory, the *Faretta* dissents offer words of caution:

> The most striking feature of the Court's opinion is that it devotes so little discussion to the matter which it concedes is the core of the decision, that is, discerning an independent basis in the Constitution for the supposed right to represent oneself in a criminal trial. Its ultimate assertion that such a right is tucked between the lines of the Sixth Amendment is contradicted by the Amendment's language and its consistent judicial interpretation.

Faretta, 422 U.S. at 837 (Burger, C.J., dissenting) (footnote omitted) (citations omitted). Justice Blackmun's dissent is also noteworthy: "I find no textual support for this conclusion in the language of the Sixth Amendment. I find the historical evidence

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[1] When adopted, the Sixth Amendment applied only to the federal government. I do not intend here to speak to the merits of the Incorporation Doctrine.

relied upon by the Court to be unpersuasive," and presciently, "I fear that the right to self-representation constitutionalized today frequently will cause procedural confusion without advancing any significant strategic interest of the defendant." *Id.* at 846 (Blackmun, J., dissenting).

There is nothing in the Sixth Amendment, *Faretta*, or the known history and tradition that suggests a trial court must limit the number of times a defendant is told about his rights. The decision today not only strays from the text of the Constitution, it stands in conflict with the broad body of *Faretta* jurisprudence. *Faretta* itself requires trial courts to (1) inform defendants about the right to counsel, (2) explain the "dangers and disadvantages of self-representation," and (3) ensure that the defendant "'knows what he is doing and his choice is made with eyes open.'" *Id.* at 835 (quoting *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 279 (1942)). The *Faretta* inquiry must be covered with a self-representing defendant at every "critical stage" of the prosecution. *Woodbury v. State*, 320 So. 3d 631, 650–51 (Fla. 2021); *Muehleman v. State*, 3 So. 3d 1149, 1156 (Fla. 2009) ("'[T]he waiver applies only to the present stage and must be renewed at each subsequent crucial stage where the defendant is unrepresented.'" (quoting *Traylor v. State*, 596 So. 2d 957, 968 (Fla. 1992))); *see also* Fla. R. Crim. P. 3.111(d)(5) ("If a waiver is accepted at any stage of the proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the defendant appears without counsel."). A critical stage is any hearing that could result in "significant consequences for the accused." *Bell v. Cone*, 535 U.S. 685, 696 (2002). This includes every time the trial court takes up a substantive motion that "may significantly affect the outcome of the proceedings." *Traylor*, 596 So. 2d at 968.

Nothing supports the proposition that engaging in the *Faretta* inquiry process too often or when it is not required can amount to reversible error. Similarly, nothing supports the proposition that a *Faretta* inquiry can be too thorough—so thorough, the majority contends, as to be an error of constitutional proportions. With no support for the central basis of reversal, our inquiry should end. But even if it were possible to unconstitutionally coerce a defendant into waiving self-representation by the quantity or

content of *Faretta* inquiries, reversal here would still not be warranted.

II. Application to Ash

The majority reverses by assembling the trial court's purported error into three categories: (1) unnecessary *Faretta* inquiries, (2) improper questions about Ash's technical competence, and (3) informing Ash that he lacked the technical competence for effective self-representation.

Before we consider these categories, let us first examine the circumstances that brought us here. Ash was a juvenile when he committed the crime but was charged and tried as an adult. He was seventeen at the beginning of the case and had turned twenty by its conclusion. In addition to being a teenager, Ash was a difficult pro se defendant. He was often uninformed, disruptive, and abusive. There is good reason to believe he was, at times, not proceeding in good faith. He repeatedly behaved badly in court, including speaking out of turn in front of the jury with statements like, "This shit is crazy." His behavior led the court to grant a mistrial in the first effort to try the case. He made preposterous and disruptive sovereign citizen claims. He submitted scores of frivolous filings, including frivolous writ petitions to this Court and the supreme court. This included, for example, vile filings repeatedly calling both presiding trial judges racists and saying the court "would rather see a monkey with a gold chain and a diamond ring [than] see a young black male with anything." Two judges handled the case because one recused after repeated personal attacks. Ultimately, Judge Leandra Johnson landed the plane. The record reflects that Judge Johnson was extremely patient with Ash. Ash repeatedly tried to subpoena her and call her as a witness in the trial. In open court, Ash called Judge Johnson evil, malicious, and vindictive. He repeatedly made baseless objections, disrupting the proceedings. Despite this abuse, Judge Johnson engaged with Ash in a respectful and dignified manner. And through all of Ash's bad behavior, the trial court *never* prevented him from representing himself. We will cover the other circumstances in more detail below, but it is the last that controls this case—Ash was never prevented from

representing himself. And you cannot violate *Faretta*'s right to self-representation except by prohibiting self-representation.

A. Necessity and Quantity of Inquiries

Despite Ash's nearly two years of self-representation, the majority concludes the trial court conducted "unnecessary" *Faretta* inquiries. The majority criticizes the proximity of the inquiries, noting, without discussion of the circumstances, that some were only days apart or within the same day. But, as we will see, the trial court simply conducted *Faretta* inquiries before each substantive hearing and at each critical stage of the prosecution. Rather than a coercive trial court, the quantity of inquiries flows from an extended, two-year pretrial period with multiple motion hearings and three attempts to try the case.

Because the majority seemingly relies on every inquiry to cumulatively establish an unconstitutional coercion, we will examine each in turn. A thorough review of the record shows that both trial judges provided inquiries before motion hearings, before important pretrial case managements, before selecting the juries (in both trials), before the presentation of evidence, and before sentencing. Not one was inappropriate.

The first *Faretta* inquiry was conducted on February 5, 2020, after a *Nelson*[2] hearing. Ash had filed a pro se motion that his appointed counsel refused to adopt. After the inquiry, Ash elected to represent himself. From then on, Ash proceeded pro se until he requested counsel in the midst of his first trial.

Before Ash's first trial, the trial court renewed the offer of counsel seven times at hearings on October 28, 2020, November 25, 2020, December 9, 2020, December 16, 2020, January 6, 2021,

[2] *See Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973) (prescribing that if a defendant seeks to discharge court-appointed counsel based on ineffectiveness, the trial court should inquire whether counsel is rendering ineffective assistance).

March 31, 2021, and April 8, 2021. These hearings covered a wide variety of, mostly frivolous, pro se filings, including writ petitions, motions to suppress, motions to dismiss, motions for adversarial preliminary hearings, discovery disputes, a motion "for reclassification of the offenses," a "notice of expiration," and a demand for copies of the oaths of office for the judges and prosecutor.

The majority criticizes the trial court for conducting two inquiries on April 12, 2021. But the circumstances fully justify both inquiries. Ash's first trial began that day. The trial court conducted the first inquiry just before jury selection. Ash then began interrupting the state's opening statement. He made several frivolous objections—for example, repeating that the court was not "showing equal protection" and arguing that the state could not discuss the expected evidence in opening because the evidence had not yet been presented. The court repeatedly overruled Ash and instructed him to stop repeating the same objections. He refused to comply and continued to disrupt the state's opening. He then, in the middle of the state's opening and in front of the jury, demanded he be appointed a lawyer. The trial court sent the jury out and conducted the second inquiry of the day. Ash then said he did not want the public defender and asked the court to appoint another attorney. The court, not for the first time, explained to Ash that while he could hire anyone he would like, he could not have his choice of appointed counsel. While the court attempted to explain this, Ash continued to interrupt. Ultimately, the court appointed the public defender. The public defender then explained that she was not prepared to try the case, and therefore, moved for a mistrial and a continuance. The trial court granted both.[3] So while the court conducted two inquiries on April 12, 2021, the record shows that both were appropriate.

The next inquiry was held on May 17, 2021, after Ash moved to discharge his newly appointed counsel. As a result, the court

[3] Whether Ash was entitled to a mistrial under these circumstances is not an issue in this appeal.

held another *Nelson* hearing and then another *Faretta* inquiry. At the conclusion, the trial court again discharged appointed counsel and again permitted Ash to represent himself. The next inquiry was held on June 14, 2021, when the court took up several more pro se motions.

The next inquiry was held on June 28, 2021, at a pretrial conference for the second trial set to begin on July 12, 2021. The trial court explained that because this was the last hearing before the second trial started, the court was again offering appointed counsel. During this inquiry, the trial court explained that it was appointing the public defender as standby counsel to avoid delay in the event that Ash were to again request counsel in the middle of the trial. Ash requested to have an untimely, frivolous motion heard. Because he did not have a copy of his motion, he wanted the trial court to give him the court's copy. The trial court accommodated Ash by hearing his untimely motion and having the bailiff take the court's copy of the motion to Ash at counsel's table. Ash then complained that the court "keep[s] holding me to the standards of an attorney, I did not go to law school." Ash then engaged in an argumentative motion hearing, repeatedly interrupting the court and disagreeing with the court's rulings, all while the court patiently walked through each issue, attempting to explain the proceedings to Ash.

On July 12, 2021, when everyone was present to select the jury for the second trial, Ash failed to appear. A capias was issued to take him into custody. He was not brought back into custody until September 2, 2021. At first appearance, the public defender was again appointed to represent him.

The next inquiry was held on November 29, 2021, during a hearing on Ash's "motion for nelson inquiry." He again complained that appointed counsel would not adopt his pro se filings. Counsel refused to adopt them because they lacked legal merit. Ash then requested to represent himself. The court conducted another *Faretta* inquiry. Counsel was then discharged, and Ash was again permitted to represent himself.

The next inquiry occurred on December 6, 2021, after Ash filed an abusively frivolous motion seeking a subpoena to require the trial judge to appear as a trial witness.

On December 20, 2021, Ash came to court, but refused to participate in any proceedings. He repeatedly interrupted the judge, refused to acknowledge the court and its jurisdiction, and demanded a discharge of the charges. He then filled pages and pages of transcript with absurd sovereign citizen claims that are not worthy of our time to repeat here. *See Barber v. Bay Cnty. Sheriff's Off. Jail Facility*, 308 So. 3d 254, 254 (Fla. 1st DCA 2020) (explaining that sovereign citizen theories are "preposterous argument[s that are] an abuse of the courts" with "no basis in the law, and parties that make [them] are in danger of court sanctions"). Again, the trial judge patiently dealt with Ash and attempted to explain that the court intended to follow Florida law rather than his fantastical sovereign citizen wishcasting. Ash said, "I don't understand the laws. I don't understand them." Ash demanded the judge state her name for the record, refused to answer her questions, and then left the podium and went into the gallery. The judge politely asked Ash to return to the podium so they could address his case. He refused and spoke to the court from the gallery. Ash then, from the gallery, said, "The matter is adjourned, Your Honor," and he left the courtroom.

Ash then failed to appear for his next court date on January 3, 2022, and another capias was issued for him. Ash was arrested on the second failure to appear capias on January 20, 2022. The trial court reset the case for trial; this time, scheduled to begin on March 21, 2022. The next inquiry occurred on Friday, March 18, 2022, at the last hearing before the trial set to begin the following Monday. The next inquiry came on March 21, 2022, as a final opportunity to elect counsel before jury selection began. Ash chose, and he was permitted, to keep representing himself.

This brings us to March 22, 2022. The majority makes much of the three inquiries conducted that day. But again, the record shows that all three were justified. The day before, Ash had filed a document claiming that "Judge Leandra G. Johnson is indeed prejudice to Isaaih Xazavier Ash," that she has "a mential attidue of biasisness & maliciousness," and requesting a change of venue.

Before the court took up this new filing, which manifests a gross deficiency in legal competence, the court engaged in a *Faretta* inquiry where Ash was informed that the court would still appoint counsel if he wished. Ash continued his self-representation.

The second inquiry of the day came after Ash filed a "writ of mandamus for order of recusal" and a "notice" claiming he had a conflict of interest with standby counsel. As noted above, the court had appointed standby counsel to prevent delay if Ash again requested counsel in the middle of trial. The court, again, explained that, for now, Ash was not represented by counsel and that standby counsel was not his lawyer, but was only there to step in if he changed his mind about self-representation. Ash then said that he had "a fundamental right to request counsel." The court agreed, and asked if he was requesting to have counsel appointed. He said that he was. The court confirmed by asking if he was waiving his right to represent himself. Ash said, "I am waiving my right and I want counsel appointed." The court then appointed the public defender. Ash then immediately asked to have counsel discharged because "our interests are conflicting toward my case." The remarkably patient trial judge then set to work conducting another *Nelson* hearing. Ash then filled pages of transcript with rambling, frivolous argument. The trial court eventually found there was no conflict and declined to appoint a different lawyer. Ash then raised his hand and said, "at this time I would like to represent myself again." Then, despite this overt abuse of the process, the trial judge, uncomplaining, conducted the second *Faretta* inquiry of the day.[4]

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[4] The supreme court has instructed that even where a criminal defendant deliberately uses his right to counsel to frustrate and delay his trial, the trial court still *must* conduct a *Faretta* inquiry before allowing a defendant to proceed without counsel. *State v. Young*, 626 So. 2d 655, 657 (Fla. 1993) (noting "the frustration of trial judges who are burdened with belligerent defendants who attempt to thwart the system in any way they can" but instructing that a trial court should still "confirm the waiver of assistance of counsel through a *Faretta* inquiry").

The next inquiry—which the majority condemns as the third of the day and holds to be a constitutional violation requiring reversal—came *after* the jury reached a verdict finding Ash guilty. Sentencing is a critical stage where another inquiry is typically required. *See Jackson v. State*, 983 So. 2d 562, 575 (Fla. 2008); *see also Gardner v. Florida*, 430 U.S. 349, 358 (1977) ("[S]entencing is a critical stage of the criminal proceeding."). The trial court explained to Ash that sentencing was a separate critical stage of the proceedings and that he was entitled to have counsel appointed to represent him for the next phase of the prosecution. Ash said he now wanted counsel appointed to represent him. The court appointed counsel for sentencing, set a sentencing date, and adjourned. While the majority holds this third inquiry of the day to be unconstitutional, conducting an inquiry that we have said is *required* cannot amount to a constitutional violation. *Henretty v. State*, 146 So. 3d 55, 56 (Fla. 1st DCA 2014) (holding that "[a] trial court *must* renew the offer of counsel at every critical stage of the proceedings, including . . . sentencing" (emphasis supplied)).

The final inquiry came on April 11, 2022. Seven days after his guilty verdict and having just requested that counsel be appointed for sentencing, Ash filed a "motion to discharge sentencing counsel." The court set the matter for hearing on April 11, 2022. At the hearing, the court sought to clarify whether Ash was claiming counsel was ineffective or if he wished to represent himself again. Ash said that he wanted to represent himself. Once again, the trial judge told Ash that he has "an absolute constitutional right" to self-representation. The judge then engaged in another routine *Faretta* inquiry. The court said that the purpose of the inquiry "is in no way to demean you or make you look bad." Instead, the court explained, "it's just that I'm required to point out to you that someone young of age, someone who does not have legal training is going to be at a disadvantage, in fact, at a great disadvantage at this other critical stage of the proceedings." After this final inquiry, Ash decided to keep appointed counsel.

This brings the inquiries to an end. The record reveals that each inquiry occurred before substantive hearings and important phases of the criminal prosecution. I agree that not all of them were legally required, but none amounted to reversible error. Each

informed the defendant both of his right to counsel and his "absolute constitutional right" to self-representation. After every inquiry, Ash was permitted to represent himself if he wished—even when his changing mind was disruptive and farcical. Despite all this, the majority opinion characterizes Ash as having "endured" "unnecessary" *Faretta* inquiries—as if Ash were victimized by the court telling him he had a right to a free lawyer. If anything, the record reflects that it was the trial court that endured Ash's abuse.

B. Technical Competence

The majority also objects to the content of the *Faretta* inquiries. In particular, the trial court's questions and comments about Ash's technical competence to represent himself. The majority provides no example of any court, anywhere, reversing because a *Faretta* inquiry was *too* substantive. To the contrary, the vast body of *Faretta* law stands in stark conflict to today's decision.

We must first remember that the substance of the inquiry is governed by *Faretta* itself. It is true, as the majority points out, that a defendant's technical competence (i.e. education, legal training, etc.) are irrelevant when evaluating whether a defendant will be *permitted* to self-represent. But *Faretta* also requires trial courts to explain the "dangers and disadvantages of self-representation," and ensure that the defendant "'knows what he is doing and his choice is made with eyes open.'" *Faretta*, 422 U.S. at 835. A discussion of the defendant's education and legal training is a natural part of that requirement. And trial courts have wide discretion to carry out this obligation. We discussed compliance with these requirements in *Hooks v. State*, 236 So. 3d 1122 (Fla. 1st DCA 2017).

Hooks approved the use of a written *Faretta* form covering the very topics the majority now finds "irrelevant and improper."[5] In *Hooks*, the defendant was provided a form, with more than thirty

[5] *Hooks* was later approved by the supreme court. *Hooks v. State*, 286 So. 3d 163 (Fla. 2019)

statements detailing the right to counsel and to self-representation and outlining their advantages and disadvantages. The defendant had to initial and sign the form. *Id.* at 1127–28. The form cautioned, for example, that lawyers will help "[m]ake sure the state follows the proper rules for picking a jury," to "[o]bject and argue to the judge if the state does not follow rules of evidence," and that "[s]elf-representation is almost always unwise because . . . [the defendant] will have to follow the rules of criminal procedure and evidence, even though it takes years for a lawyer to learn these laws and rules." *Id.* Today's decision turns this on its head and holds that covering these same topics amounts to a constitutional error. While all of these topics may not be *required* for an adequate inquiry, they no doubt speak to the "dangers and disadvantages of self-representation," and are, therefore, well within the scope of an appropriate *Faretta* inquiry.

Trial courts around the state will be justifiably confused when they read that the questions we approved in *Hooks* are now reversibly "irrelevant and improper." But more important than our internal inconsistency, the decision runs against supreme court *Faretta* instruction. The supreme court made clear that there is more than one way to conduct an adequate *Faretta* inquiry. And because the trial court's *Faretta* inquiry "turns primarily on an assessment of demeanor and credibility, its decision is entitled to great weight." *Potts v. State*, 718 So. 2d 757, 759 (Fla. 1998). The supreme court also explained that "the right of self-representation is best safeguarded not by an arcane maze of magic words and reversible error traps, but by reason and common sense." *Id.* at 760. And that an appropriate inquiry "will vary depending on circumstances related to the defendant that are known to the trial judge." *Hooks*, 286 So. 3d at 169–70. A trial court is on firm ground to use the questions *we approved* to discuss the dangers of self-representation with a teenager. Even if not required, it remains good trial practice to provide a renewed *Faretta* advisement at each new proceeding to make sure the defendant knows the court is still willing to appoint him counsel. And it is reasonable for the trial court to give robust *Faretta* warnings to an erratic pro se teenager that is rejecting his right to counsel in a serious felony trial.

The majority also concludes that, while conducting these brief inquiries, the trial court erred by pointing out that Ash lacked the technical competence to effectively try a criminal case. But this, of course, was true. The trial court correctly noted that Ash was young (remember he committed this offense as a juvenile), had not graduated from high school, was not a trained lawyer, was unaware of basic trial court procedures, knew little of the law, did not know how to select a jury, and was unfamiliar with the rules of evidence. There is an adage, often attributed to Abraham Lincoln, that a man who is his own lawyer has a fool for a client. This, of course, does not mean that Ash is a fool. But it does speak, colorfully so, to the great challenge faced when representing yourself. It is extremely difficult to objectively and effectively represent yourself at your own criminal trial—even for trained lawyers. This is, in part, why *Faretta* requires trial courts to inform defendants of the dangers and disadvantages of self-representation. Telling a defendant the truth is not a constitutional violation. A court cannot adequately convey the real dangers and disadvantages of self-representation nor ensure a defendant makes the decision with eyes wide open if the court cannot tell the defendant the truth. Ash was told the truth, and then he was permitted to make his own informed decision. This cannot amount to a constitutional violation.

To conclude our application of *Faretta* to Ash, I must note that the majority also misses the mark by using an improper standard of review. The supreme court has explained the proper appellate review of *Faretta* inquiries. It said, "A reviewing court will not 'focus' on the particular 'advice rendered by the trial court,' but instead will evaluate 'the defendant's general understanding of his or her rights.'" *Hooks*, 286 So. 3d at 168 (quoting *Potts*, 718 So. 2d at 760)).

This core principle cannot be squared with today's decision. The majority inverts the proper review by focusing on the advice rendered instead of the defendant's understanding of his rights. There is nothing in this record to suggest Ash did not understand his right to self-representation. To say so is comically obvious—he repeatedly elected self-representation for two years.

III. The Effect of Today's Decision

I agree with the majority's sentiment that appellate courts have often been heavy handed, reversing trial courts for purported failings in informing defendants of the dangers and disadvantages of self-representation. But that's no reason to err in the other direction. The majority cites no authority, from anywhere, to support its new constitutional principle. *Noetzel v. State*, 328 So. 3d 933 (Fla. 2021) and *Woodbury v. State*, 320 So. 3d 631 (Fla. 2021) are cited, but neither stand for the majority's proposition. Both say only that additional *Faretta* inquiries were not required. There is, of course, a sea of difference between "not legally required" and reversible error.

Today's decision effectively extends the *Faretta* doctrine into uncharted territory—not only must a court *permit* self-representation, the court also must not *discourage* it. But the trial court cannot do both. It cannot avoid discouraging self-representation while also complying with *Faretta*'s command to make the defendant "aware of the dangers and disadvantages of self-representation."

Woodbury illustrates this point. There were over a dozen *Faretta* inquiries conducted in that case. And Woodbury repeatedly expressed frustration with the number of inquiries conducted. Unlike Ash, Woodbury objected to the inquiries two times. During a pretrial hearing, the state asked the trial court to conduct new *Faretta* inquiries on each day of trial "to perfect the record." Woodbury objected. *Woodbury*, 320 So. 3d at 639. On the second day of trial, after the state rested, the trial court began another *Faretta* inquiry. *Id.* at 640. Woodbury again objected, and declared, "I have a constitutional right to represent myself, and this has rose to the level of harassment." *Id.* The trial court responded by saying that appellate courts are:

> not as worried about practicality as they are about structural integrity of the system. So I'm going to go through them relatively quickly, you can answer them yes or no. If at any point, though, you do have a question, please let me know. So, again, I'm going to do it relatively quickly.

Id. Despite Woodbury's objections "to having to endure so many inquiries," on appeal he claimed the trial court erred in permitting self-representation. *Id.* at 645. The supreme court affirmed and noted that not all of Woodbury's *Faretta* inquiries were "legally required," but that the trial court's actions were taken "to ensure that the offer of counsel was renewed at all critical stages of the proceedings." *Id.* at 647 n.7. Rather than providing support for today's decision, *Woodbury* contradicts it.

We should speak with clarity about exactly when a *Faretta* inquiry is required, and what its content should be. But this is not clarity. Today, we muddy the water further with more textless ambiguity. In the majority's zeal to push back on one overreach, it goes too far and, I fear, makes a new and even messier mistake. If self-representing for two years and the whole of a criminal jury trial can amount to coercion against self-representation, then consider what that means for the more routine *Faretta* cases. This decision will bring under attack the many cases in which a defendant requests self-representation and then changes his mind after an appropriate *Faretta* inquiry.

IV. Party Presentation and Anders Appeals

Finally, I must remark on the extraordinary circumstances here. This is an *Anders* appeal. The issue was neither preserved below, nor presented in the initial brief. Deciding cases this way undermines the ordinary appeal and briefing process. It also demonstrates why Florida's *Anders* procedure is at tension with our core neutral adjudicatory power. *See Anderson v. State*, 50 Fla. L. Weekly D26a (Fla. 1st DCA Dec. 18, 2024).

A. Preservation

"From the outset, even an *Anders* appellant must still properly preserve an issue for appellate review." *Id.* Except in cases of fundamental error, appellate courts cannot reverse on unpreserved issues. *See* § 924.051(3), Fla. Stat.; *see, e.g., Washington v. State*, 328 So. 3d 364, 367–68 (Fla. 1st DCA 2021) (ordering briefing on an issue not preserved in the trial court but affirming for lack of fundamental error).

"[P]roper preservation requires the following three steps from a party: (1) a timely, contemporaneous objection; (2) a legal ground for the objection; and (3) '[i]n order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below.'" *State v. Johnson*, 295 So. 3d 710, 714 (Fla. 2020) (alterations in original) (quoting *Fleitas v. State*, 3 So. 3d 351, 355 (Fla. 3d DCA 2008)). Ash never objected to the *Faretta* inquiries. He never asked that they not be conducted. He never asked the court to stop explaining the disadvantages of self-representation. He did no more than ask why the inquiries were repeated, and the trial court explained that the repetition was required at every crucial stage of trial. That is a far cry from an objection and preservation. We would not, and should not, hold that a lawyer's question about a legal process is sufficient to preserve an error for review and we should not treat this pro se defendant any differently.

If the unpreserved issue raised fundamental error, it may still be reviewed. *See D.H. v. Adept Cmty. Servs., Inc.*, 271 So. 3d 870, 880 (Fla. 2018). *Faretta* issues are ordinarily raised in the context of challenging the sufficiency of an inquiry, or lack thereof. In that context, the trial court's failure to conduct a proper *Faretta* inquiry is "per se reversible error." *Mosley v. State*, 349 So. 3d 861, 867 (Fla. 2022); *see also Tennis v. State*, 997 So. 2d 375, 379 (Fla. 2008) ("Under our clear precedent, and that of the district courts of appeal, the trial court's failure to hold a *Faretta* hearing in this case to determine whether [the defendant] could represent himself is per se reversible error."). But it is unclear why a violation of this newfound constitutional principle should be treated as per se or structural error. The Court's decision does not tell us. The majority makes little mention of preservation, the vehicle under which this appeal was brought, or the applicable standard of review. To the extent that the majority finds that this new principle falls within a category of per se, structural, or fundamental error, no constitutional provision, court decision, statute, or rule is cited to provide authority.

As framed by our supreme court, "[p]er se reversible errors are limited to those errors which are 'so basic to a fair trial that their infraction can never be treated as harmless error.' In other words, those errors which are *always* harmful." *State v. DiGuilio*, 491 So.

2d 1129, 1135 (Fla. 1986) (citation omitted). When considering whether fundamental error occurred, we are cautioned to exercise that discretion "very guardedly." *Ray v. State*, 403 So. 2d 956, 960 (Fla. 1981) (quoting *Sanford v. Rubin*, 237 So. 2d 134, 137 (Fla. 1970)). And "the doctrine of fundamental error should be applied only in the rare cases where a jurisdictional error appears or where the interests of justice present a compelling demand for its application." *Ray*, 403 So. 2d at 960. And if this new principle does not amount to fundamental error, the supreme court warned, "a defendant has no constitutional due process right to the correction of unpreserved error." *State v. Dortch*, 317 So. 3d 1074, 1081 (Fla. 2021). It noted, "'[n]o procedural principle is more familiar,' the Supreme Court has observed, 'than that a constitutional right, or a right of any other sort, may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.'" *Id.* (quoting *United States v. Olano*, 507 U.S. 725, 731 (1993)).

The issue was not properly preserved, and, absent fundamental error, preservation is a necessary precursor for appellate review. The majority fails to explain its departure from this core appellate principle.

B. Party Presentation

Setting the merits of today's decision aside, we can only reverse if we first depart from our neutral, objective role as judicial adjudicators. We recently certified a question to the supreme court, asking whether Florida's *Anders* procedure aligns with the fundamental principles of appellate review. *See Anderson*, 50 Fla. L. Weekly D26a. We asked this question because, "The supreme court has recently, and repeatedly, recommitted Florida courts to the fundamental appellate principle of party presentation." *Id*. The decision today demonstrates how Florida's *Anders* procedure conflicts with our duty to remain a neutral arbiter.

Appellate defense counsel did not identify this issue for the Court to review and adjudicate in the *Anders* brief. In fact, appellate defense counsel provided a detailed brief which individually identified every *Faretta* inquiry that occurred in the case. For each inquiry, counsel either commended it, discussed

how thorough it was, or said it raised no legal issues. The initial brief concluded that "The record on appeal contains numerous *Nelson* and *Faretta* inquiries,--and it appears the trial court appropriately conducted those inquiries." So not only did Ash not raise this issue, his initial brief argued it was *not error*. We also permitted Ash to file a pro se brief. But he, like his counsel, never mentioned any error related to the relinquishment of his right to self-representation.

Rather than addressing the issues raised by the parties, the Court, sua sponte, raised the issue on which it now reverses. The Court ordered appellate counsel to brief the issue. Yet, even when responding to our order for supplemental briefing, Ash still argued that "his every request to self-represent was granted, in accordance with *Faretta.*"

To accomplish today's reversal, the Court has to reject counsel's professional judgment, and step into the role of counsel and advocate. And this, we are told, we must not do. *See, e.g.*, *Pinellas Cnty. v. Joiner*, 389 So. 3d 1267, 1273 n.10 (Fla. 2024) (recognizing the Court's inability to raise issues not argued by the parties or considered by the court below because of "fundamental party-presentation principles"); *Trappman v. State*, 384 So. 3d 742, 751 n.4 (Fla. 2024) ("But [Appellant] never raised this . . . issue below or in his initial brief to this Court. We do not now consider this issue that was not properly preserved or presented."); *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (explaining that "[i]n our adversarial system of adjudication, we follow the principle of party presentation" and "'in both civil and criminal cases, in the first instance and on appeal . . . , we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present'" (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))).

As we said in *Anderson*, our *Anders* procedure sometimes leads appellate courts to "stray too far from the issues raised by the parties." *Anderson*, 50 Fla. L. Weekly D26a. The majority here has strayed too far, to the point of advocating its own basis for reversal against the professional judgment of Ash's counsel. *See D.H.*, 271 So. 3d at 888 (Canady, C.J., dissenting) ("This requirement of specific argument and briefing is one of the most

important concepts of the appellate process. Indeed, it is not the role of the appellate court to act as standby counsel for the parties."); *Rosier v. State*, 276 So. 3d 403, 406 (Fla. 1st DCA 2019) ("[A]n appellate court [cannot] 'depart from its dispassionate role and become an advocate by second guessing counsel and advancing for him theories and defenses which counsel either intentionally or unintentionally has chosen not to mention.'" (quoting *Polyglycoat Corp. v. Hirsch Distribs., Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983))).

Breaking from appellate fundamentals, the Court reverses on a purported *Faretta* violation, despite Ash's argument that the *Faretta* inquiries were appropriately conducted in accordance with current law. This is not how *Anders* should work, and it has the effect of turning the whole appellate adjudicatory process on its head.

* * *

Today's decision departs from the text, history, and tradition of the Constitution. It finds no support in the vast body of *Faretta* jurisprudence. And in the end, it will have to be corrected, by this Court or another.

Jessica J. Yeary, Public Defender, and David A. Henson and Megan Long, Assistant Public Defenders, Tallahassee, for Appellant.

James Uthmeier, Attorney General, and Virginia Harris, Assistant Attorney General, Tallahassee, for Appellee.

LONG, J., concurring.

I concur in the Court's decision but write separately to discuss an alternative interpretation of article III, section 20.

On November 2, 2010, Florida voters adopted a constitutional amendment to address congressional redistricting. Florida courts have only addressed the newly adopted provisions in a handful of cases. And none has addressed how the provisions should be read in light of existing equal protection requirements. We should take on that question and, as is our duty, construe the provision in harmony with existing constitutional requirements.

As adopted, the constitutional provision says:

> In establishing congressional district boundaries:

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[2] Article V, section 3(b)(4) gives the supreme court jurisdiction to review decisions certified by district courts of appeal to be of great public importance or to be in conflict with a decision of another district court of appeal.

> (a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
>
> (b) Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.
>
> (c) The order in which the standards within subsections (a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

Art. III, § 20, Fla. Const.

The constitutional amendment contains several new redistricting requirements. This case turns on the middle clause in subsection (a), which prohibits the drawing of congressional districts "with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice." On its face, this provision does two things. It ensures that racial and language minorities receive an equal opportunity to participate in the political process and to elect representatives of their choice. The federal courts often refer to these two concepts as dilution and retrogression. As we sort through what they mean in the context of the Florida Constitution, we will call them the process and weight requirements.

No Florida court has directly adjudicated a dispute on this part of the amendment, but our supreme court has spoken generally to the provision. *See In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 619 (Fla. 2012) (comparing the provision to similar language in the VRA). Though issued as a general discourse on the new constitutional provisions and not as an exercise of its judicial adjudicatory power (*i.e., obiter dictum*), the supreme court has suggested that interpretation of article III, section 20 be guided by federal VRA jurisprudence. *Id.* at 620 (noting that Florida's provision is "[c]onsistent with the goals of Sections 2 and 5 of the VRA").[1] In providing a general discussion about the process and weight requirements, the supreme court did not attempt to evaluate the provisions by considering their place and context in the broader Florida Constitution. Instead, it simply pointed out the similarities to the VRA. Presumably the supreme court did not engage in a deeper analysis on this question because the discussion was unrelated to the case before it. But now we have a live dispute before us and Appellants have argued that if we read the VRA provisions, along with all their federal court baggage, into article III, section 20, the result is a provision inconsistent with our equal protection guarantee.[2]

The supreme court understands our independent duty and, even while suggesting the use of the VRA's interpretive principles, also recognized that article III, section 20 is different from the VRA and other states' similar provisions. "Florida's

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[1] To the extent that the supreme court intended to fully adopt federal VRA jurisprudence, Chief Judge Osterhaus and Judges B.L. Thomas and Tanenbaum have thoughtfully explained why the trial court's final judgment should still be reversed.

[2] While Secretary Byrd points out that Florida has its own equal protection provision, the argument is primarily presented via federal equal protection. We can, however, fully resolve this case on Florida constitutional grounds.

provision is unique among the states in that it incorporates language from the VRA but does not explicitly reference the VRA." *Id.* That is to say that Florida law is different from federal law. And in interpreting Florida law, we keep in mind that "lockstepping [with federal law] disregards [the] state's particular history, linguistics, norms, and intratextual analysis." Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law*, 132 HARV. L. REV. 811, 818 (2018). Understanding this, the supreme court explained that we have an independent duty to interpret our own constitution.[3] *See In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d at 621 ("The Court nonetheless recognizes our independent constitutional obligation to interpret our own state constitutional provisions.").[4] Consistent with these principles, we should endeavor to interpret article III, section 20 faithfully and independently. This requires carefully reviewing its text and context. We must consider the original public meaning of the text and seek to read the provision harmoniously with article I, section 2.

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[3] "[A]n underappreciation of state constitutional law has hurt state *and* federal law and has undermined the appropriate balance between state *and* federal courts in protecting individual liberty." Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 6 (2018). "Nothing compels the state courts to imitate federal interpretations . . . when it comes to the rights guarantees found in their own constitutions, even guarantees that match the federal ones letter for letter." *Id.* at 16.

[4] It also reinforces the distinctiveness of federal law and Florida law that two cases are simultaneously proceeding at this very time regarding this same congressional redistricting. The federal courts will ultimately determine what the federal constitution and VRA require. Florida courts will determine what the Florida Constitution requires.

Harmonious Reading

We begin with article I, section 2. Article I sets out our Declaration of Rights. Article I, section 2 contains our "[b]asic rights" and says that "[a]ll natural persons . . . are equal before the law" and that "[n]o person shall be deprived of any right because of race." Quite simply, article I, section 2 requires that the law treat everyone equally regardless of race. This is a bedrock, fundamental tenet of our republic. It is our "basic right."

We see that article III, section 20 does not exist in a vacuum. It is found in a constitution that expressly prohibits race-based deprivations. Yet Appellees argue the provision requires racial balkanization. There is no indication *anywhere* to suggest that article III, section 20 was meant to undermine or limit our "basic rights" found in article I, section 2. And so it must be read and interpreted in light of article I, section 2 and the rest of the Florida Constitution.

The harmonious-reading canon states that the "provisions of a text should be interpreted in a way that renders them compatible, not contradictory." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 180 (2012). "[O]ne part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together." Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union* 58 (1868). "The imperative of harmony among provisions is more categorical than most other canons of construction because it is invariably true that intelligent drafters do not contradict themselves." Scalia & Garner, *supra*, at 180. We, of course, assume the people of Florida are intelligent and intentional in their adoption of constitutional amendments. Without any indication that article III, section 20 was meant to subvert our basic equal protection rights, we must read the two provisions harmoniously. And we need not contort the language to do so. As we have already pointed out, the provision is addressed to two subjects—equal process and equal weight—neither of which conflicts with equal protection.

Ordinary Meaning

Experienced election lawyers who have spent careers litigating the morass of the VRA may instinctively view article III, section 20 through the lens of federal law. But article III, section 20 was adopted by millions of ordinary Florida voters, not by highly specialized election lawyers. And so we must give the text its ordinary public meaning. That is our duty. "In interpreting this text, we are guided by the principle that '[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.'" *D.C. v. Heller*, 554 U.S. 570, 576 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)); *see also McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 828 (2010) (Thomas, J., concurring in part and concurring in judgment) ("When interpreting constitutional text, the goal is to discern the most likely public understanding of a particular provision at the time it was adopted."). "The ordinary-meaning rule is the most fundamental semantic rule of interpretation." Scalia & Garner, *supra*, at 69. "Interpreters should not be required to divine arcane nuances or to discover hidden meanings." *Id.*

> [E]very word employed in the constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it. Constitutions are not designed for metaphysical or logical subtleties, for niceties of expression, for critical propriety, for elaborate shades of meaning, or for the exercise of philosophical acuteness or judicial research. They are instruments of a practical nature, founded on the common business of human life, adapted to common wants, designed for common use, and fitted for common understandings.

Joseph Story, *Commentaries on the Constitution of the United States* 157–58 (1833). Below we will examine more closely the ordinary meaning of "political process" and "ability to elect representative of their choice." But before we do, we will look to the broader context.

Ballot language is a useful contextual tool when evaluating the original public meaning of constitutional language adopted by plebiscite. It was the vehicle used to explain the amendment to the voters who adopted it. Ballot language cannot be used to trick voters into adopting provisions with hidden meanings. And so we must ask whether a proposed interpretation aligns with a facial review of the ballot language. Here, we examine for any indication that the amendment would require Appellees' proposed race-based voter segregation. The ballot explained the constitutional amendment in this way:

> Congressional districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

See Advisory Opinion to Att'y Gen. re Standards For Establishing Legis. Dist. Boundaries, 2 So. 3d 175, 180 (Fla. 2009). We find nothing to support Appellees' proposed interpretation. The diligent voter that read the amendment's text, and the ballot language explaining it, would have no reason to suspect that it would lock in racial gerrymanders in perpetuity. There was nothing to suggest the amendment would require the legislature to focus on racial demographics and voting patterns or to carve up neighborhoods and communities to ensure one racial group prevails over another. The people could not have known all this because it is plainly not there. Appellees only find it by imposing "arcane nuances" and "hidden meanings" on the otherwise commonplace language.[5] Voters were asked if they wanted to

[5] Even assuming the phrases are taken from the VRA and have known meanings, we still must ask: known to whom? We are duty-bound to give the language its original public meaning. To the extent that VRA jurisprudence is coherent at all, the phrases might be known only to a handful of election lawyers around the state. The amendment process cannot be used to

amend their constitution to prohibit the drawing of districts that would "deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice." That's it.

As we see below, the original public meaning of the provision was a complement to the existing constitutional demand for equal protection under the law. Equal process and equal weight for all. Having made harmonious-reading and ordinary-meaning considerations, we now seek to faithfully interpret the provision in light of them.

The Process Requirement

The process requirement is the guarantee of "equal opportunity of racial or language minorities to participate in the political process." We consider what an ordinary voter would understand the word "process" to mean. Process is commonly defined as a "series of actions or steps taken in order to achieve a particular end." *Process*, NEW OXFORD AMERICAN DICTIONARY (3d ed. 2010); *see also Process*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003) (defining process as "a series of actions or operations conducing to an end"). There is no indication from the text or context that the language used was intended to mean something other than this ordinary definition. The original public meaning, therefore, of participation in the "political process" is the actions and operations associated with voting. It deals with the "methods for conducting a part of the voting process that might . . . be used to interfere with a citizen's ability to cast his vote." *Holder v. Hall*, 512 U.S. 874, 917–18 (1994) (Thomas, J., concurring in judgment). Such as "registration requirements, . . . the locations of polling places, the times polls are open, the use of paper ballots as opposed to voting machines, and other similar aspects of the voting process." *Id.* at 922. The process requirement "focuses on ballot access and counting." *Allen v. Milligan*, 599 U.S. 1, 46 (2023) (Thomas, J., dissenting). The process requirement guarantees equal

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hoodwink millions of Florida voters through bait-and-switch lawyer-speak.

treatment in all aspects of the voting process, from registration to ballot counting and everything in between.

The Weight Requirement

The weight requirement is the guarantee that a racial or language minority does not have a diminished "ability to elect representatives of their choice." There is no serious dispute about the meaning of the words used in this portion of the provision. Everyone agrees it cannot mean an individual has a right to elect his candidate of choice. This of course is impossible. But the language does not suggest that reading anyway. The provision, especially when viewed together with the ballot language and article I, section 2, guarantees an equal, that is, non-diminished, ability to elect your candidate of choice. This provision is Florida's version of one person, one vote. It constitutionalizes "the fundamental principle of representative government . . . of equal representation for equal numbers of people, without regard to race." *Reynolds v. Sims*, 377 U.S. 533, 560–61 (1964). It prohibits "[w]eighting the votes of citizens differently, by any method or means." *Id.* at 563. This could be violated where minority voters are packed into higher population districts while non-minority voters are drawn into lower population districts. In such a case, the minority voter's vote would have a diminished weight when compared to a non-minority counterpart. Equal process and equal weight.

Reading the provision this way is faithful to the text and to its place in the broader constitution. It reads article III, section 20 as a complement to article I, section 2, rather than in conflict. To guarantee racial and language minorities receive an equal opportunity to participate in the political process. And to ensure an equal ability (one that is not diminished as compared to non-racial and non-language minorities) to elect representatives of their choice.

Appellees argue we must construe the weight requirement as the federal courts have interpreted similar language in the VRA. They suggest the language prohibits redistricting that reduces the number of majority-minority racial districts. In effect, they argue the provision requires the continued racial segregation of

voters. But there is no evidence that the people of Florida intended to adopt "the sordid business of divvying us up by race." *Allen v. Milligan*, 599 U.S. 1, 86 (2023) (Thomas, J., dissenting) (internal quotations omitted). Appellees' proposed interpretation thwarts article I, section 2. So it must be rejected.

Along with its manifest conflict with article I, section 2, we pause here to discuss two other problems with Appellees' proposed construction. First, constitutional rights are individual rights. They are not rights conveyed to discrete racial or ethnic groups. The prohibition on the diminishment of racial minorities' ability to elect representatives of their choice is a protection for individual voters. Yet, without a basis in the text, Appellees' interpretation improperly treats minority voters as a monolith. No amount of clever legal-speak and rationalization can escape this. It steals the individual right of a minority voter to be protected from race-based disenfranchisement and exchanges it for race-based voter segregation. The provision must instead be read to convey a right of equal voting access to *individuals*.[6]

Second, the term "diminish" requires a point of reference—diminished as compared to what? Appellees' interpretation fails

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[6] No measure of black voting patterns has ever revealed 100% black voter solidarity on candidates. This puts the lie to Appellees' proposed interpretation. Even assuming 90% consistency in black voting patterns, it necessarily means that 10% of black voters have been intentionally deprived of the ability to elect a representative of their choice based on their race. Instead of their constitutional right to vote in a fair district made up of a broad swath of the greater community, they are swept into racially segregated districts and intentionally denied any meaningful chance to elect their representatives of choice. And it is only under Appellees' proposed interpretation that voters are disenfranchised based on their race. Under race-blind redistricting, voters never win or lose on account of their race. Any regime that racially marginalizes voters is unconstitutional and patently unjust. Treating citizens as individuals without regard for race is the only way to ensure full and equal participation in the political process.

here too because it requires a comparison to a previous district's racial makeup. This interpretation is stuck looking backwards and can never get to the central point of the provision—ensuring all voters are treated equally. Instead, it turns the provision on its head. It fails because it converts a race-based prohibition into a race-based requirement. The constitution cannot demand that all voters are treated equally without regard to race and at the same time demand that voters are treated differently based on race.

Rather than read incompatibility into the provision, it should be read as a companion. The districts cannot be drawn to diminish an individual racial-minority-voter's ability to elect a representative of choice *as compared to* an individual non-racial-minority-voter. This is ultimately accomplished by ensuring all voters are treated equally without regard to race.

The harmonious-reading and ordinary-meaning canons are our basic interpretive tools. Their use is our duty. We are guided by the text. We read the text in its broader context. In doing so, we consider its public meaning at the time it was adopted. The amendment was adopted based on its anodyne ballot language and constitutional text. Rather than use our foundational interpretive tools, Appellees ask us to open the secret trap door and unleash the highly controversial and hotly disputed federal VRA jurisprudence into the Florida Constitution. We should decline that invitation.

Conclusion

The Florida Constitution includes strong equal protection language and an express prohibition on the consideration of race. Article III, section 20 is a complement to that protection. A faithful reading requires us to "resolve these cases in a way that would not require the [Florida] Judiciary to decide the correct racial apportionment of [Florida's] congressional seats." *Allen v. Milligan*, 599 U.S. 1, 46 (2023) (Thomas, J., dissenting).

Article III, section 20 requires that racial and language minority voters receive an equal opportunity to participate in the political process and have a non-diminished ability to elect

representatives of their choice. The trial court erred in reading a racial segregation mandate into the constitutional provision. We are therefore correct to reverse the final order and remand to the trial court.

[1] We rarely see a suggestion for certification filed by a party. In my almost nine years on this court, this is the first time I recall receiving a joint suggestion for certification approved by all the parties to an appeal.