

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

CORRINE BROWN and MARIO DIAZ-BALART,

Plaintiffs, and

FLORIDA HOUSE OF REPRESENTATIVES and
FLORIDA SENATE

Intervening Plaintiffs,

vs.

Case No.: 2010 CA 1824

DAWN K. ROBERTS, in her capacity as Interim
Secretary of State of the State of Florida,

Defendant.

**REPLY BY BOB GRAHAM TO PLAINTIFFS' RESPONSES TO
GRAHAM'S MOTION TO INTERVENE**

BOB GRAHAM files this reply to the responses by Plaintiffs Brown and Diaz-Balart, Intervening Plaintiff the Florida House of Representatives and Intervening Plaintiff the Florida Senate (collectively, "Plaintiffs") to the Motion of Bob Graham to Intervene as a Defendant.

As demonstrated below, Bob Graham is entitled to intervention. Graham has a legally cognizable interest in this proceeding, and this Court should permit him to intervene.

I. GRAHAM HAS A LEGALLY COGNIZABLE INTEREST IN THIS ACTION

Bob Graham is a Florida citizen and registered voter who supports Amendments 5 and 6 and wishes to be able to vote in favor of these citizens' initiatives in the upcoming general election.¹ Were Plaintiffs to obtain the relief they seek in this action, Amendments 5 and 6 will be removed from the ballot and Graham will be unable to vote for their adoption. Conversely, if judgment is entered in favor of the defendant, Amendments 5 and 6 will remain on the ballot and Graham will be able to vote in favor of them. This is an interest "of such a direct and immediate character that [he] will either gain or lose by the direct legal operation and effect of the judgment." *Miracle House Corp. v. Haige*, 96 So. 2d 417, 418 (Fla. 1957).

It is well-settled in Florida that a voter has standing to participate in litigation regarding whether a proposed constitutional amendment satisfies constitutional and statutory requirements for placement on the ballot. In *Crawford v. Gilchrist*, 59 So. 963 (Fla. 1912), the Governor sued to prohibit the Secretary of State from placing constitutional amendments proposed by the legislature on the ballot because the legislature had not met certain procedural requirements in passing the joint resolutions. The Court held the Governor, who sued as "Governor and also a citizen, taxpayer and elector, [was clearly] a proper party to these injunction proceedings." *Id.* at 967. Likewise, in *City of Hialeah v. Delgado*, 963 So. 2d 754 (Fla. 3d DCA 2007), *rev. dismissed*, 970 So. 2d 824 (Fla. 2007), the appellate court found the trial court was "entirely correct"

¹ The initial complaint in this action challenged only Amendment 6. Subsequent to the filing of Bob Graham's motion to intervene, the Senate filed a complaint challenging Amendment 5. Bob Graham has actively supported both amendments and wishes to vote in favor of them in the general election.

in ruling that the plaintiff had standing as a citizen and voter to challenge whether ballot language complied with subsection 101.161(1), Florida Statutes. *Id.* at 756.

Having standing to sue means having a “legitimate or sufficient interest at stake in the controversy that will be affected by the outcome of the litigation.” *Equity Resources, Inc. v. County of Leon*, 643 So. 2d 1112, 1117 (Fla. 1st DCA 1994), *rev. denied*, 651 So. 2d 1194 (Fla. 1995). This interest is virtually identical to the interest necessary for intervention, i.e., an “interest . . . of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.” *Morgareidge v. Howey*, 78 So. 14, 15 (Fla. 1918). Thus if a citizen and voter has sufficient interest to *sue* regarding the placement of a proposed constitutional amendment on the ballot, he necessarily must also have sufficient interest to intervene to *defend* a citizens’ initiative against removal from the ballot. Graham has just such an interest.

Contrary to Plaintiffs’ assertion, Graham need not assert an interest above and beyond the interests of other Florida voters to be eligible for intervention; this argument “misapprehends the difference between taxpayer standing and standing in election law cases.” *City of Hialeah*, 963 So. 2d at 756. Graham’s interest is indeed the same as other voters who wish to amend their constitution by voting in favor of Amendment 6; all such voters have a direct and immediate interest in this litigation in that they will gain

or lose—i.e., be able to vote for constitutional amendments they support, or not—by direct legal operation and effect of the judgment in this case.²

But this hardly means, as Plaintiffs assert, that the Court must permit intervention by “all supporters and opponents, and there will be no logical end to interventions,” causing the litigation to become “inefficient, cumbersome, or impracticable.” (House Response at 2-3). This fantastical parade of horrors ignores the Court’s obligation to exercise “sound discretion to determine whether to permit intervention,” by considering “a number of factors, including the derivation of the interest, . . . the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance.” *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 507 (Fla. 1992). If an unwieldy number of voters were to seek to intervene in this action, it certainly would be appropriate for the Court to exercise its discretion to deny intervention to prevent the litigation from becoming unmanageable. But Graham is the only voter who has sought intervention and Plaintiffs have not asserted his intervention will delay or disrupt the proceedings or prejudice Plaintiffs in any way; nor will it. Under such circumstances, intervention should be granted. *Bay Park Towers Condo. Ass’n v. H.J. Ross & Assocs.*, 503 So. 2d 1333, 1335 (Fla. 3d DCA 1987).

² To the extent Plaintiffs contend that Graham must identify an interest beyond that of other Florida voters who support Amendments 5 and 6, Plaintiffs themselves have identified such an interest by noting that Graham is an Honorary Co-Chairman of Fair Districts. (House Response at 3; Senate Response at 4).

II. GRAHAM'S INTERESTS IN THIS ACTION EXTEND BEYOND THE INTERESTS OF THE DEFENDANT SECRETARY OF STATE.

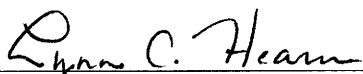
The Secretary of State's role with regard to placing on the ballot constitutional amendments proposed by initiative petition is purely ministerial; the Secretary determines whether the requisite number of petitions have been submitted by the appropriate date, assigns ballot position, submits the amendments for publication, and submits them to the counties for ballot printing. Art. XI, § 3, Fla. Const.; §§ 100.371, 101.161(2), Fla. Stat.; Rule 1S-2.0011, Fla. Admin. Code. The Secretary has an overriding interest in ensuring these processes occur timely, uniformly, and without disruption.

Because this action directly threatens to disrupt these processes for Amendments 5 and 6, the Secretary has a substantial interest in actively defending this action. It is clearly in the Secretary's interest to preserve the finality of the Florida Supreme Court's decision approving these proposed citizen initiatives for placement on the ballot. *Advisory Opinion to the Attorney Gen. re Stds. for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175 (Fla. 2009). Indeed the absence of jurisdiction of this Court to second guess the determination by the Florida Supreme Court that Amendments 5 and 6 are entitled to ballot placement is precisely the type of issue in which the Secretary has a distinct interest. It is likewise in the Secretary's interest to block a challenge regarding the effect of a proposed amendment before the election, as such a challenge flies in the face of the constitutionally-mandated approval process and carefully constructed election deadlines and procedures.

Graham shares the Secretary's interests in preventing relitigation of issues already decided by the Florida Supreme Court and preventing disruptive, pre-election litigation of the effect of proposed amendments. However, in the event this Court rejects these threshold arguments and permits this case to venture into issues already decided by the Florida Supreme Court or entertains Plaintiffs' arguments regarding the post-election effects of these amendments, the Secretary's interests will no longer be co-extensive with Graham's. Graham, as an active supporter of Amendments 5 and 6, has an interest not only in the smooth operation of the election processes, but also in defending the ultimate merits of the amendments to accomplish true redistricting reform. It is anticipated the Secretary, a ministerial state officer, will have little interest in engaging in complicated legal arguments regarding whether, for example, these citizen-initiated amendments can be implemented consistent with the federal Voting Rights Act. Graham's interests are therefore broader than those of the Secretary. Where an intervenor's interests will not be fully protected by the existing party in litigation, it is an abuse of discretion to deny intervention. *Southland Life Ins. Co. v. Ablove*, 556 So. 2d 805, 806 (Fla. 5th DCA 1990) (insurer should have been permitted to intervene in insured's action against tortfeasor, because insurer's interests would not be fully protected by insured's suit); *Bay Park Towers*, 503 So. 2d at 1334-35 (condo association should have been permitted to intervene in action by individual owner regarding defective plumbing system, because the association's interests regarding the common elements would not be protected by the individual owner's suit).

WHEREFORE, Bob Graham respectfully requests that this Court enter an order permitting him to intervene as a defendant in this action and award such further relief as the Court deems appropriate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy has been provided to the following by United States Postal Service and by electronic mail on this 21st day of June, 2010 to:

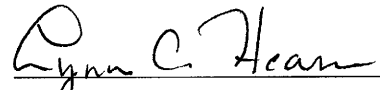
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