



proposed Ballot Initiatives to Appellee Secretary of State – styled by the Secretary as Ballot Initiative No. 7 and Ballot Initiative No. 9 – for placement on the November 2008 general election ballot; and (2) that the ballot title and summary language which would appear on the general election ballot for Ballot Initiative No. 9 sufficiently informs voters of the chief purpose of the Ballot Initiative, and is, therefore, in compliance with section 101.161(1) of the Florida Statutes. (A conformed copy of the Circuit Court Judgment is appended hereto.)

This Judgment fully and finally disposes of all issues requiring action by the Circuit Court. Pursuant to Article V, Section 3(b)(5), of the Florida Constitution and Rule 9.125 of the Florida Rules of Appellate Procedure, Appellants Andy Ford *et al.*, respectfully suggest that this Court certify this appeal to the Florida Supreme Court for immediate resolution by that Court.

In support of this suggestion, Appellants state as follows:

1. **This Appeal Presents an Issue of Great Public Importance.** A fundamental principle of law is at issue in this appeal – *viz.*, the right of the citizens of Florida “to amend their Constitution, and . . . [their] right to require proposed amendments to be agreed to and submitted for adoption in the manner prescribed by the existing Constitution, which is the fundamental law.” *Crawford v. Gilchrist*, 59 So. 963, 968 (Fla. 1912); *see also Armstrong v. Harris*, 773 So. 2d 7, 12 n.15 (Fla. 2000) (quoting *Gilchrist*).

The TBRC is a constitutionally established entity that is authorized by Article XI, section 6, of the Florida Constitution to, among other things, propose amendments to the Constitution “dealing with taxation or the state budgetary process.” Art. XI, § 6(e), Fla. Const. On April 28, 2008, the TBRC transmitted, *inter alia*, Ballot Initiatives Nos. 7 and 9 to Appellee for placement on the November 2008 general election ballot. Contrary to the finding of the Circuit Court, the proposed constitutional amendments embodied in these Ballot Initiatives have nothing to do with either “taxation” or the “state budgetary process.” Rather, they deal with the separation of church and state, Florida’s obligation to provide for the education of its children through a system of free public schools, and expenditures by local school districts.

There is a second problem with respect to Ballot Initiative No. 9. Contrary to the finding of the Circuit Court, the ballot title and summary language proposed by the TBRC – which is all that would appear on the actual ballot – is misleading as to the true effect of the proposed amendment. *See generally, Smith v. American Airlines*, 606 So.2d 618 (Fla. 1992) (striking a TBRC-proposed ballot initiative amendment due to defective summary language); *Advisory Op. to Att’y Gen. re Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994) (finding both the ballot title and summary language misleading).

For the foregoing reasons, placing these Ballot Initiatives on the general election ballot would both “ignore[] . . . essential mandatory provisions of the organic law,” and violate the right of the people to amend the Constitution only “in the manner prescribed by the existing Constitution.” *Gilchrist*, 59 So. at 968.

2. **The Issue Presented by This Appeal Warrants Immediate Resolution by the Florida Supreme Court.** Because of the importance of the issue presented by this appeal, there can be no doubt that it must – and ultimately will – be resolved by the Florida Supreme Court. There is also a clear and pressing need for immediate resolution. The general election will be held on November 4, 2008, and early voting will begin on October 20, 2008. *See* 101.657(1)(d), Fla. Stat. (“Early voting shall begin on the 15th day before an election.”) Further, absentee ballots must be printed and mailed to overseas voters no later than September 20, 2008, in order to conform to the provisions of section 101.62(4), Fla. Stat.

If – in light of these deadlines – the issue presented by this appeal is to be resolved in timely fashion, “there is insufficient time for this court to provide a first-tier review prior to the issues being heard by the Supreme Court of Florida.” *American Civil Liberties Union of Florida, Inc. v. Hood*, 881 So. 2d 664, 666 (Fla. 1st DCA 2004) (certifying an appeal for immediate resolution by the Florida Supreme Court, where the case involved a challenge to ballot initiatives proposing

amendments to the Florida Constitution). To be sure, the issue presented conceivably could be resolved after the election. But this would require Appellants, as well as other individuals and organizations who support or oppose the Ballot Initiatives, to spend vast amounts of time and money to campaign for or against the proposals, and would require Appellee, as well as local election officials, to expend resources printing ballots, counting ballots, and possibly even recounting ballots – all for two Ballot Initiatives which it may ultimately turn out were unlawfully placed on the ballot. Simply stated: a prompt and final resolution of the issue presented by this appeal will minimize the impact upon the election process.

3. Counsel for Appellants has contacted counsel for Appellee and Intervenor/Appellees, and has been advised that they oppose this suggestion for certification.

### **CERTIFICATE OF COUNSEL**

I express a belief, based on a reasoned and studied professional judgment, that the issue presented by this appeal is of great public importance and requires immediate resolution by the Florida Supreme Court.

Respectfully submitted,

  
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Dated: August 8, 2008

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by facsimile and U.S. Mail on this 8th day of August, 2008, to:

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