

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

ANDY FORD, BEVERLY SLOUGH, JOSEPH
JOYNER, CHRISTI MOSS, RABBI MERRIL
SHAPIRO, and REVEREND HARRY
PARROT, JR.,

Plaintiff,

vs.

KURT BROWNING, in his official capacity as
Florida Secretary of State, et. al.

Defendants.

Case No.:2008-CA-001905

**TAXATION AND BUDGET REFORM MEMBERS' MOTION FOR SUMMARY
JUDGMENT IN FAVOR OF DEFENDANTS AND MEMORANDUM OF LAW IN
SUPPORT THEREOF AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

The Taxation and Budget Reform Commission Chair and select members (TBRC members) move this Court, pursuant to Rule 1.510, Florida Rules of Civil Procedure, to grant a Motion for Summary Judgment in favor of the Defendants on all counts, and to deny the Plaintiffs' Motion for Summary Judgment. In the interest of judicial economy, the TBRC members join and adopt the motions and memoranda of law in support of all Defendants' Motions for Summary Judgment, and the proposed final order filed by Defendant Secretary of State. The TBRC members move this Court for relief in favor of all Defendants upon the following legal grounds:

Plaintiffs' motion and memorandum in support of a temporary injunction is deemed a motion for summary judgment and is cited as PM

Matters for Resolution by the Court.

The Plaintiffs have filed a Declaratory Action pursuant to Chapter 86.011, and have requested that the Court determine that the TBRC's Proposed Ballot Amendments Seven (Seven) and Nine (Nine) are unconstitutional as not being within the scope of the TBRC's constitutional authority. Additionally, Plaintiffs allege that the ballot title and summary of Nine is legally deficient. Based upon these allegations, Plaintiffs urge this Court to order that these proposed amendments be removed from the ballot, and to thereby save Plaintiffs from having to spend money on a political campaign to defeat these amendments at the ballot box. PM¹ at 2.

The TBRC members maintain that Proposed Amendments Seven and Nine are fully within the TBRC's constitutional authority, and that Nine's ballot title and summary is not legally deficient. The TBRC members therefore petition this Court to grant Defendants' Motions for Summary Judgment, thereby allowing the voters to decide these proposed amendments. Plaintiffs should not be allowed to improperly accomplish, by way of the courts, what must be done, if at all, at the ballot box.

Standard of Review.

The Supreme Court has held that that great deference is due the Legislature when reviewing the constitutionality of its acts. The legal standard has been expressed as

[w]hen a legislative enactment is challenged the court should be liberal in its interpretation; every doubt should be resolved in favor of the constitutionality of the law, and the law should not be held invalid unless clearly unconstitutional beyond a reasonable doubt.

Taylor v. Dorsey, 19 So. 2d 876, 882 (Fla. 1944) (citations omitted). While the TBRC is not the Legislature, it is a constitutionally created deliberative body, and its acts should be afforded at

1

least the same, if not greater deference. Greater deference would be suggested since it meets only once every 20 years, and has no opportunity to visit the matters before it twice. See, Smith v. American Airlines, 606 So. 2d 618, 621 (Fla. 1992) (noting reluctance to remove a TBRC-proposed amendment “from a vote of the public,” even when the TBRC met every ten years). As Plaintiffs’ acknowledge, deference is also given to a contemporaneous agency interpretation of a statute, or in this case a constitutional provision, over which the agency has jurisdiction. *PM* at 11; PW. Ventures, Inc. v. Nichols, 533 So. 2d 281, 283(Fla. 1988) (noting it is well established that contemporaneous construction by an agency charged with interpretation and enforcement is entitled to great weight). See also Stuart v. Laird, 5 U.S. (1 Cranch) 299, 309 (1803) (noting historical meaning and practice regarding constitutional provision can be of great weight).

In the context of the challenge to Nine’s ballot title and summary, the Plaintiffs’ have to prove the proposal is clearly and conclusively defective. Advisory Opinion to the Attorney Gen. re: Protect People, Especially Youth, from Addiction, Disease, and Other Health Hazards of Using Tobacco, 926 So. 2d 1186, 1190-1191 (Fla. 2006); Courts must act with “extreme care, caution, and restraint” before removing a constitutional amendment from the vote of the people. Advisory Opinion to the Att’y Gen. re Fla. Marriage Protection Amendment, 926 So. 2d 1229, 1233 (Fla. 2006) (quoting Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982)).

Argument Section

The TBRC Has Broad Jurisdiction to Propose Constitutional Revisions.

The TBRC’s constitutional authority extends to all tax and budgetary matters. By its constitutional terms, it encompasses all constitutional limitations on expenditures. In interpreting a constitutional provision one must first look at the text of the constitutional

provision itself and attempt to interpret in such a way that it is consistent within itself and gives effect to every provision according to its reasonable interpretation. See, Physicians Healthcare Plans v. Pfeifler, 846 So. 2d 1129, 1134 (Fla. 2003) (noting that "constitutional provisions must be read 'to form [a] congruous whole so as to not render any language superfluous.'" (citation omitted). The textual interpretation alone is enough; one need look no further unless the provision is ambiguous. Florida Society of Ophthalmology v. Florida Optometric Association, 489 So. 2d 1118, 119 (Fla. 1986). While a court need go no further, the TBRC's contemporaneous understanding of its own authority, and the understanding of the Constitutional Revision Commission's authority, bolsters a broad interpretation of the TBRC's authority.

Looking at the text and context of Article XI, section 6 it is difficult to understand how Plaintiffs believe they have an argument that addressing constitutional limitations on expenditures such as those addressed by Seven and Nine, are outside the constitutional purview of the TBRC. This is so, even without considering that Plaintiffs would need to prove this beyond a reasonable doubt. The Constitution provides:

SECTION 6. Taxation and budget reform commission.--

(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:

- (1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.
- (2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at the time of appointment.
- (3) four non-voting ex officio members, all of whom shall be members of the legislature at the time of appointment. Two of these members, one of whom shall be a member of the minority

party in the house of representatives, shall be selected by the speaker of the house of representatives, and two of these members, one of whom shall be a member of the minority party in the senate, shall be selected by the president of the senate.

(b) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) At its initial meeting, the members of the commission shall elect a member who is not a member of the legislature to serve as chair and the commission shall adopt its rules of procedure. Thereafter, the commission shall convene at the call of the chair. An affirmative vote of two thirds of the full commission shall be necessary for any revision of this constitution or any part of it to be proposed by the commission.

(d) **The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a strategic decisionmaking process.**

(e) The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall issue a report of the results of the review carried out, and propose to the legislature any recommended statutory changes related to the taxation or budgetary laws of the state. Not later than one hundred eighty days prior to the general election in the second year following the year in which the commission is established, **the commission shall file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it dealing with taxation or the state budgetary process.** [emphasis added]

Reading this constitutional provision in its entirety, there is a natural reading that gives effect and meaning to all of section 6. Subsections (a) and (b) establish the time for the convening of the TBRC and the membership of the TBRC. Subsection (c) sets out what the TBRC shall do at its first organizational meeting and states that it requires a two-thirds vote to put any constitutional provision on the ballot. Subsection (d) then appears to talk about matters that are within the purview of the tax and budget reform commission - specific matters the TBRC must examine. While subsection (d) does not say that these are the only matters within the purview of the tax and budget reform commission, it clearly says that these are matters the tax and budget reform commission "shall" consider. Subsection (e) then deals with what happens after the commission has considered these matters; after all, this is not a "study" commission, but a "reform" commission. Subsection (e) addresses a report, and specifies that the two options for action items are proposed legislative actions and proposed constitutional revisions.

Read this way, this constitutional provision seems to be relatively straightforward. While by its terms the provision does not state that "taxation" means this and "budget" means that, it is not unreasonable to assume that taxation and budget have their normally understood meanings. Neither term is esoteric. Taxation and budget and budgetary process have a very broad meaning. A definition of taxation can easily encompass all means whereby revenue is raised, and the term budget, when combined and contrasted with taxation, would appear to encompass all means of expending revenues.²

It would also be reasonable to read subsection (d) as delineating items within the scope of taxation and budgetary reform. For purposes of this case it matters not if we read subsection (d) as delineating some or all of the items encompassed within the TBRC's authority. Among the

² See, American Heritage Dictionary, 4th Edition (2000), defining tax as a "contribution for the support of a government," and budget as "an itemized summary of estimated or intended expenditures."

many items listed in subsection (d) is the explicit provision that the TBRC shall "examine constitutional limitations on taxation and expenditures at the state and local level."

In subsection (e) the TBRC has the option of either proposing statutory reform to the legislature, or constitutional reform by way of the ballot amendment process. While many items in subsection (d) may be amenable to statutory or constitutional reform, an examination of constitutional limitations leaves only one logical method of address: constitutional amendment. This point appears so obvious it would normally not bear mentioning.

Plaintiffs, however, do not to even contemplate the above as a natural reading of the constitutional scope of the TBRC. They urge that section (e) must be read to allow proposed constitutional amendments only to the "budgetary process," which must not encompass constitutional limitations on expenditures since "budgetary process" is spelled out as a separate line in subsection (d).³ PM at 11-12. This interpretation is quite astounding. If believed, it would mean that the TBRC - meeting every 20 years, given a discrete process to propose constitutional amendments, and explicitly charged with reviewing constitutional limitations on expenditures - is powerless to propose to voters any constitutional solutions on a core matter it must examine.

Yet, the above is not the full measure of trouble caused by attempting to interpret this provision in accord with Plaintiffs' suggestion. While Plaintiffs are focused on trying to narrow the scope of "budgetary process," and not focused as much on "taxation," according to Plaintiffs' interpretation of subsection (e), they would have to logically concede that proposed constitutional amendments addressing tax matters are authorized by Subsection (e). So,

³ Plaintiffs also make much of the purported difference between "budgetary laws" and "budgetary process," PM 11-12, but since laws is used in reference to the Legislature, it would only seem to be reflecting that the Legislature deals with "laws," particularly in the context of the TBRC having its own ability to propose constitutional amendments.

Note that this rule was unchanged from TBRC 1 to TBRC 2. See SG tab4, a and b. revisiting the clause in (d) which talks about “examin[ing] constitutional limitations on taxation and expenditures at the state and local level,” this logically means that Plaintiffs’ interpretation would let the TBRC propose a constitutional change to constitutional limits on “taxation” after the examination called for in (d). Yet, the TBRC could not propose a change to constitutional limits on “expenditures,” even after performing the same review.

Plaintiffs say this interpretation is reasonable, for the TBRC is still free to propose statutory changes to the legislature. PM at 12. This is small comfort when dealing with constitutional limitations. It seems hard to square the voters’ intent to have a once in a generation commission with authority to propose constitutional amendments, but with that commission neutered in proposing constitutional amendments on a constitutional matter it is explicitly charged with examining.

Plaintiffs’ suggested interpretation is an unreasonable interpretation unsupported by the constitutional text and context. Nor is Plaintiffs’ interpretation of the scope of the TBRC’s authority supported by any other matters they reference. The Solicitor General has done an excellent rebuttal of the other arguments that have been made by Plaintiffs as to the scope of the TBRC’s authority, most of which it would serve no purpose to repeat here. SG Memo 12-25.⁴

Several matters do suggest themselves to the Court’s attention. The TBRC has broadly defined by rule the scope of its authority at both its first and current convening.

1.005 - Functions and Duties.⁵

The primary role of the Commission shall be to recommend statutory and constitutional changes dealing with taxation and the state budgetary process. "Taxation" means all public revenues and revenue raising laws at every level of government in the state. The "state budgetary process" means the manner in

⁴ Throughout this memorandum, the Solicitor General’s Memorandum is referred to as SG Memo, and the Solicitor General’s tabbed appendix is referred to SG tab. The Florida Catholic Conference Memorandum is referred to as FCC Memo.

which every level of government in the state expends funds, incurs debt, assesses needs, acquires financial information, and administers its fiscal affairs, and includes the legislative appropriation process and the budgetary practices and principles of all agencies and subdivisions of the state involved in financial planning, determining, implementing, administering, and reviewing governmental programs and services.

The scope of this rule directly contradicts the Plaintiffs' suggested interpretation of the TBRC's authority. And, as Plaintiffs propose in their memorandum, although not in reference to this rule, this rule is entitled to great deference as a contemporaneous interpretation of the scope of the TBRC's authority. PM at 15, citing Level 3 Communications, LLC v. Jacobs, 841 So 2d 447, 450 (Fla. 2003).

Finally, it is somewhat unclear how the Plaintiffs' citation to the Constitutional Revision Commission's (CRC) proceedings bolsters their argument for a narrow interpretation of the TBRC's authority. See PM. at 14 and N 12. However, the CRC's asking for the return of the tax and budget reform authority ceded to the TBRC out of concern about limitations on their authority, seems to support a very broad understanding of the TBRC's authority.⁶ A Sun-Sentinel editorial at the time of the proposed addition back of authority to the CRC eloquently set out the underlying rationale, and quoted the Florida League of Cities as stating that "[w]hoever is looking at the Constitution is kind of neutered if they can't look at tax and budget issues."⁷

The TBRC members would therefore ask this Court to hold, consistent with the text and context of the Constitution, and as bolstered by the historical and contemporaneous understanding of their authority, that the TBRC has a broad scope of authority to propose constitutional amendments. The TBRC's authority at least encompasses all of the areas

⁶ Although often hesitant to cite newspapers as persuasive sources, that practice has already been joined in this case, see PM at. N. 9.

⁷ SG tab 8a.

delineated in subsection (d), and consequently, would by definition encompass Proposed Amendments Seven and Nine.

Proposed Amendments Seven and Nine are Firmly Within the TBRC's Jurisdiction:

In one respect, Plaintiffs are right to protest so vehemently about the TBRC not having the authority to constitutionally address constitutional limitations on expenditures. PM at N. 6. They are wrong about the TBRC's authority, but must protest nonetheless, because Proposed Amendments Seven and Nine, without regard to the other ways they are within the TBRC's authority, are classic examples of addressing constitutional limitations on expenditures.

At the time of the first TBRC, it would not have been as clear as it is today that Article I section 3, and Article IX were significant constitutional restrictions on expenditures. Nevertheless, by the time the current TBRC met, it was evident that language in both Article I, section 3 and Article IX, section 1 had been interpreted as a constitutional limitation on the ability of the Legislature to create programs and expend money thereupon. The Florida Catholic Conference Intervenors have laid out in detail the specifics of how these provisions were interpreted to be limitations on expenditures. See FCC Memo 18-26.

Suffice it to say that Article I, section 3 was interpreted to not allow funding to go to a religious entity, even if it were pursuant to the independent choices of third parties and for a secular purpose such as education. Bush v. Holmes, 886 So. 2d 340, 353 (Fla. 1st DCA 2004), aff'd on other grounds, 919 So. 2d 392 (Fla. 2006). Article IX, section 1 was interpreted to bar the Legislature from funding educational programs not considered to be within the uniform system of public education. Bush v. Holmes, 919 So. 2d 392, 407-08 (Fla. 2006). It would be difficult to find clearer examples of constitutional limitations on

expenditures. In addition to addressing these existing constitutional limitations on funding, the TBRC proposed as part of amendment Nine, a new section of Article IX that imposed a new constitutional limitation on expenditures. This proposal required that at least 65% of school funding be spent on classrooms and not on administration.⁸

All three of these concepts, combined into two proposals, deal with changing the constitutional limitations on expenditures by removing existing limitations or imposing a new limitation. As the Solicitor General has more fully explained in his memorandum, the TBRC included these proposals after determining that there were sound budgetary reasons for proposing these amendments. SG Memo at 7-8. While these proposals touch upon numerous substantive areas, they touch these areas only by addressing specific constitutional limitations on expenditures. The substantive areas they touch upon do not detract from the TBRC's ability to propose these amendments. Plaintiffs claim that these amendments are not about budgetary matters, which is surprising, considering how hard the Plaintiffs have previously tried to argue that Article I and IX challenges are all about the money. See FCC Memo 17-25.

Plaintiffs also fail to note that TBRC I considered a number of topics that were strikingly similar to some of the proposals this time around. They considered limiting the amount of education funding that could be spent on administrative salaries to no more than 10%, very similar in purpose to 65% limiting the amount that could be spent outside of classroom instruction. Florida's Fiscal Future, SG tab 13, 45-46 They also considered ensuring that a

⁸ SECTION 8. Requiring sixty-five percent of school funding for classroom instruction. -- At least sixty-five percent of the school funding received by school districts shall be spent on classroom instruction, rather than on administration. Classroom instruction and administration shall be defined by law. The legislature may also address differences in administrative expenditures by district for necessary services, such as transportation and food services. Funds for capital outlay shall not be included in the calculation required by this section.

minimum amount of lottery funds were given directly to schools, and evening predicating the receipt of lottery funds on the availability of school choice. Id.

Furthermore, in the TBRC I report titled Florida's Fiscal Future, in the section titled Education Reform the TBRC discussed how the funding of education was of great concern to the members. Id. The TBRC noted that they were recommending the Legislature “explore the feasibility and merits of choice.” Id. Most presciently perhaps, they noted, after the above discussions, that “[t]he results of all these debates may hinge not only on the decisions of parents and legislators, but also with the courts.” Id.

As the above examples illustrate, TBRC I considered one of its core concerns to be proposals related to education matters. While historical examples such as this are not needed to prove the TBRC's broad authority, these examples fully support that conclusion. Proposed Amendments Seven and Nine are within the jurisdiction of the TBRC. There is no credible support, let alone support beyond a reasonable doubt, to hold that the proposed initiatives exceed the TBRC's constitutional authority. Both of the proposals address constitutional limitations on expenditures. The TBRC members would ask this Court to so hold, and to enable these provisions to be voted upon by granting the Defendants' Motions for Summary Judgment.

The Ballot Summary and Title for Proposed Amendment Nine is not Legally Deficient:

As a final argument, Plaintiffs allege that the ballot title and summary for Proposed Amendment Nine is legally insufficient, although as the Solicitor General notes, see SG Memo at 27, Plaintiffs' argument is really about the title. Without revisiting all of the arguments

supporting the legal sufficiency of the ballot title and summary, there are several points that the TBRC members believe need to be brought to the Court's attention

First, the Plaintiff's have alleged that the combining of the 65% provision and the expansion of educational funding options, was part of some scheme, citing that persuasive authority, the newspaper article. See PM. at n.7. While the TBRC's motivation is not really legally relevant, the TBRC transcript of the April 25th proceedings contains the answers given by the proponents of these provisions when questioned. SG tab 15, Vol II p 178- 179. The reasons given for the combining of these two provisions were that both of these provisions were proposed amendments to the same article of the Constitution, so that it made sense to combine proposals relating to the same constitutional article. Id. The ordering was done with the 65% provision listed first, since legislative bill drafting had suggested it was best to place the entirely new section before the amended section. Id. These are reasonable explanations, and, to the extent explanations are pertinent in considering the legal sufficiency of the ballot title and summary, they should be considered.⁹

Plaintiffs have demonstrated no legally sufficient basis to strike Proposed Amendment Nine because of a defective ballot summary, and the TBRC members would urge that this Court hold accordingly.

Additional Defense Raised as to Justiciability:

There is an additional defense that the TBRC members feel it is incumbent upon them to raise, but they note that the Court need not even consider this issue to grant Defendants' Motions

⁹ It is also worth noting that Proposed Amendment 5 has new language listed before amended existing language, (<http://election.dos.state.fl.us/initiatives/fulltext/pdf/12-6.pdf>) and that in addition to combining the education proposals, two environmental proposals were combined to make up Proposed Amendment 4. See (<http://election.dos.state.fl.us/initiatives/fulltext/pdf/12-5.pdf>). Last visited 7/18.

for Summary Judgment. The TBRC members are convinced that all Floridians have a right to have the opportunity to vote, yea or nay, on the proposed constitutional provisions.

Consequently, while confident that they have acted constitutionally and appropriately, the TBRC members believe there is a jurisdictional and justiciability question as to the judiciary's role in reviewing the ballot summary and title of constitutional amendments proposed by the TBRC. This is particularly so when the substance of the amendments is an attempt to give voters the ability to vote on a matter that the judiciary has by prior decision removed from the voters' purview.

The TBRC members are unaware of any case in Florida that, other than by implication, addresses the judiciary's role in evaluating the form of a proposed constitutional amendment, when the amendment is proposed by the Legislature or another constitutionally created entity such as the TBRC, and is intended to overturn the result of a prior judicial ruling. Justice Powell opined upon this issue in footnote 2 of his concurrence in Goldwater v. Carter, 100 S. Ct. 533, 536 (1979).

The proposed constitutional amendment at issue in *Coleman* would have overruled decisions of this Court. . . . Thus, judicial review of the legitimacy of a State's ratification would have compelled this Court to oversee the very constitutional process used to reverse Supreme Court decisions. In such circumstances it may be entirely appropriate for the Judicial Branch of Government to step aside. See Scharpf, Judicial Review and The Political Question: A Functional Analysis, 75 Yale L.J. 517, 589 (1966).

The discussion Justice Powell referenced from Scharpf is excerpted below:

But it is surely the most direct, the most weighty and the most legitimate manifestation of the democratic principle if the community undertakes to go through the cumbersome deliberative process of constitutional amendment in order to express its consensus about what ought to be. It is one thing for the Court to strike down the Child Labor Law as incompatible with its choice of constitutional values, and it is difficult enough to square this

with democratic principle, but it would seem to be quite a different matter if the Court could, by a narrow interpretation of the amendment procedures, prevent the ratification of the amendment which was intended to overrule *Hammer v. Dagenhart*[FN248] **Of course, the amendment process is itself governed by the Constitution, and it is by no means inconceivable that an amendment might be unconstitutional. But this seems to be one instance in which the Court cannot assume responsibility for saying “what the law is” without, at the same time, undermining the legitimacy of its power to say so. I do not find it paradoxical to insist that judicial review in a democracy remains defensible only to the extent that the Court itself will be defenseless against the processes through which the community may assert and enforce its own considered understanding of its basic code.[emphasis added]**

Id. at 589. These excerpts both express the rationale for why it perhaps should be beyond the province of the judiciary to rule on the form of a proposed amendment that is intended to reverse a prior judicial ruling.

A pragmatic understanding of what happened in and as a result of Armstrong v. Harris, 773 So. 2d 7 (Fla 2000), may further strengthen this argument. The Legislature proposed the amendment in Armstrong to ensure that that the Supreme Court would not be able to interpret Florida’s provision on cruel or unusual behavior in such a way that it was interpreted differently than the Federal prohibition on cruel and unusual punishment. Armstrong at 16. This was not done to reverse a court opinion, but it was predicated on some judicial concerns raised about how this language might apply to the death penalty. Id. at 17, FN26. The holding of Armstrong is that the Supreme Court struck the ballot summary and title as “hiding the ball, and “flying under false colors.” Id. at 22.

The Court however, did not do this until after the voters had adopted the amendment by a 72.8 percent margin. Id. at 31. So the Legislature went back and instead of doing a ballot summary and title, they put the whole amendment on the ballot, but did not change the

substance.¹⁰ This time it passed with a 69.7 percent margin.¹¹ Even though it passed with a lower margin the second time, due to higher overall voter turnout, over 400,000 more people voted for the amendment the second time around.¹²

Perhaps from the actual vote results in Armstrong, it is fair to question whether the voters really had trouble understanding the ballot title and summary, and voting accordingly either time. These results support every caution in removing a constitutional proposal from the ballot, and may very well support a change of course and a judicial withdrawal from reviewing proposed constitutional amendments. The TBRC members fully understand that this is not a decision that this Court could make, at this stage, in light of prior precedent.¹³

While Armstrong did not address a situation in which a proposal is intended to change a prior judicial decision, Justice Wells, in dissent, made the case that the Supreme Court does not have jurisdiction to review a legislatively enacted ballot summary and title to determine if it is misleading. Id. at 26 Justice Wells was discussing a legislative proposal, but the same analysis would apply to a proposal of the TBRC. In fact, it could be argued that it would be of even more import when the proposal is intended to address a judicial decision. See e.g., Goldwater, at 536.

In his basic argument for why the Court should not review a ballot summary and title, Justice Wells notes that there is no explicit accuracy requirement in the Constitution, or even a mention of a ballot summary. Armstrong at 27. He writes that the court has never really explained from whence it gets its authority to review, and never really explained the basis in the

¹⁰ (<https://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/5/2002&DATAMODE>) last visited 7/18/2008

¹¹ Id.

¹² Id.

¹³ The TBRC members are not challenging the application of the statutorily required ballot summary and title to a constitutional entity, because the Court has held in Armstrong that the required review for accuracy is rooted in the constitution, not the statutes. Armstrong at 12, so a challenge to the application of the statute would bring no relief.

first case to review, and strike a legislative summary, Askew v. Firestone. Id. Justice Wells cites to Smathers v. Smith, 338 So. 2d 825 (Fla. 1976), a case interpreting the same constitutional provision but predating Askew, in which the court declined to address the misleading issue. In Smathers it only considered whether the Legislature had met the explicit constitutionally established procedural hurdles. Id. He notes that a law review article discussing Smathers decried the lack of judicial review, but further notes that now, without any intervening change in the constitution, that review is being provided. Id. at 28 “If the legislature misled the voters, I conclude that the remedy is at the ballot box- not in the Court.” Id. at 29.

The TBRC members propose that a strong case can be made, as laid out with brevity above, that the voters, not the Judiciary, should be the final arbiter of whether a proposal on the ballot is considered misleading. This is true particularly when the proposal is intended to change prior judicial decisions. The TBRC members understand that this Court is not in a position to make this determination, but would urge that even for this Court, these considerations strengthen the argument for extreme judicial restraint in removing a matter from the ballot.

Conclusion

In conclusion, the TBRC members urge the Court to hold that proposed constitutional amendments Seven and Nine are within the TBRC’s constitutional mandate, and that the ballot title and summary of Nine is not legally deficient, and to accordingly grant the Defendants’ Motions for Summary Judgment.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 2008 a true and correct copy of the forgoing has been furnished by regular U.S. Mail, hand delivered, or electronically to Ronald G. Meyer, Esquire, and Jennifer Blohm, Esquire, at Meyer And Brooks, P.A. 2544 Blairstone Pines Drive, P.O. Box 1547, Tallahassee, Fl 32302; and Scott Makar, Esquire; Blaine Winship, Esquire; Tim Osterhaus, Esquire, at Office of the Attorney General, The Capitol, Tallahassee, FL 32399-1050; Stephen H. Grimes, Esquire; Jerome W. Hoffman, Esquire; Nathan A. Adams IV, Esquire, Holland and Knight, P.O. Drawer 810, Tallahassee, FL 32302

SIGNED ORIGINAL FILED
WITH THE COURT

DANIEL J. WOODRING
FLORIDA BAR No. 86850
WOODRING LAW FIRM
3030 Stillwood Court
Tallahassee, FL 32308
Office Location: 203 North
Gadsen St.
Suite 1-C
(850) 567-8445
(850) 254-2939 Fax
Daniel@WoodringLawFirm.
com