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SC19-548, SC19-736

In the Supreme Court of Florida

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: RAISING FLORIDA'S MINIMUM WAGE,

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: RAISING FLORIDA'S MINIMUM WAGE (FIS)

ATTORNEY GENERAL'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

On March 8, 2019, the Attorney General received a letter from the Secretary of State advising that the initiative petition titled "Raising Florida's Minimum Wage" had met the registration, submission, and signature criteria in section 15.21, Florida Statutes. Pursuant to Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, the Attorney General petitioned this Court for a written opinion as to the validity of that initiative petition. Then, on April 22, 2019, and in accordance with section 100.371(5)(a), Florida Statutes, the Financial Impact Estimating Conference ("FIEC") forwarded to the Attorney General a financial impact statement on that initiative petition. Again pursuant to Article IV, section 10, Florida Constitution, and section 16.061, the Attorney General petitioned this Court for a written opinion as to the validity of the financial impact statement.

Although the Court issued a briefing schedule in this case, no party submitted a brief in support of or in opposition to the initiative petition's validity; the Court therefore dispensed with oral argument and submitted the case. The Court has not yet issued an opinion.

Shortly after the case was submitted, the Attorney General filed as supplemental authority Chapter 2019-64, Laws of Florida, which had been signed by the Governor on June 7, 2019. That statute amended section 100.371, Florida Statutes, in two potentially relevant ways. First, the statute expanded the time within

which the FIEC must complete a financial impact statement from 45 days to 75 days; that time period is also tolled when the Legislature is in session. Ch. 2019-64, § 3, Laws of Fla. Second, the financial impact statement must now also include the proposed initiative's "estimated economic impact on the state and local economy, and the overall impact to the state budget." *Id.*

"Except as otherwise expressly provided" in Chapter 2019-64, that act "t[ook] effect upon becoming a law." Ch. 2019-64, § 7, Laws of Fla. Section 6 of Chapter 2019-64, in turn, provides that:

> The provisions of this act apply to all revisions or amendments to the State Constitution by initiative that are proposed for the 2020 election ballot and each ballot thereafter; provided, however, that nothing in this act affects the validity of any petition form gathered before the effective date of this act or any contract entered into before the effective date of this act.

Thus, the Attorney General flagged the question whether the FIEC must submit an amended financial impact statement that includes the proposed initiative's "estimated economic impact on the state and local economy, and the overall impact to the state budget" and, if so, whether the Court should permit the FIEC an extension of time to file an amended financial impact statement. The Court treated the Attorney General's notice of supplemental authority in part as a motion to allow the FIEC to amend the financial impact statement, and granted that motion, allowing the FIEC thirty days to do so. Subsequently, however, the Attorney General notified the Court

that the FIEC "decided not to submit [an] amended Financial Impact Statemen[t]" for this initiative petition.

On October 24, 2019, the Court directed the Attorney General to file a brief "specifically addressing whether th[e] Court has jurisdiction to issue an advisory opinion regarding the validity of a financial impact statement." This brief follows.

SUMMARY OF ARGUMENT

The Court correctly held in *Advisory Opinion to Attorney General re Referenda Required for Adoption*, 963 So. 2d 210 (Fla. 2007), that Florida's Constitution allows the Legislature to set forth, in general law, the matters on which the Court may issue an advisory opinion to the Attorney General relating to initiative petitions. The Legislature reasonably determined that one such matter is the validity of financial impact statements, which exist only with reference to initiative petitions themselves. Thus, this Court has jurisdiction.

What is more, stare decisis principles counsel in favor of adhering to *Referenda Required for Adoption*. It has not proven unworkable in practice; on the contrary, the Court has settled on an eminently workable standard of review. Although receding from that case might not cause serious injustice, it would upend the Legislature's statutory scheme for presenting financial impact statements to the public. Finally, the passage of Chapter 2019-64, Laws of Florida, did not drastically

undermine the basis for this Court's jurisdiction, let alone leave the Court's justification for its jurisdiction utterly without legal justification.

ARGUMENT

THE COURT HAS JURISDICTION TO ISSUE AN ADVISORY OPINION REGARDING THE VALIDITY OF A FINANCIAL IMPACT STATEMENT.

A. Constitutional and statutory background

Florida's Constitution sets forth several procedures through which this Court may issue advisory opinions. At issue here are advisory opinions to the Attorney General. Article V, section 3(b)(10) provides that the Court:

> Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

In turn, Article IV, section 10 provides:

> Attorney General.—The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI.

Taken together, these two provisions establish the Court's jurisdiction to issue an advisory opinion to the Attorney General. The question raised by the Court in its briefing order is the scope of that jurisdiction.

In particular, the Court raised the question whether it has jurisdiction to issue an advisory opinion regarding the validity of a financial impact statement. The Constitution requires the Legislature to:

> provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

Article XI, section 5(c), Fla. Const. To carry out this command, the Legislature amended section 100.371 to detail how the FIEC must prepare a financial impact statement, and as amended, section 100.371 contemplates this Court's review of that statement for compliance with the requirements in that section.

B. This Court holds that it has jurisdiction to review the validity of financial impact statements.

In 2007, the Court considered and answered the question posed in its briefing order. After changes to the Constitution caused the financial impact statement review to occur after other ballot initiative matters have been resolved, the Court "review[ed] [its] jurisdiction" to issue advisory opinions regarding financial impact statements "anew" in *Advisory Opinion to Atty. Gen. re Referenda Required for Adoption*, 963 So. 2d 210 (Fla. 2007). There, the Court read Article V, section 3(b)(10) and Article IV, section 10 together to conclude that "initiative petitions, including the requirement for financial impact statements as they relate to initiative

petitions, are one of the rare instances where this Court's constitutional jurisdiction incorporates the provisions set forth by general law." *Id.* at 211.

In other words, "[t]he Constitution mandates that this Court review all issues relating to initiative petitions as provided by general law," and section 100.371 "clearly mandates that one of the areas to be reviewed by this Court is the financial impact statement." *Id.* at 213. After all, "[i]n three separate places, section 100.371 refers to this Court performing a judicial review of the statement to ensure its conformity with statutory requirements." *Id.* "Section 101.161(1) also provides guidance, demonstrating that the financial impact statement is simply another aspect of the initiative process, the same as the ballot summary and the ballot title." *Id.* As a result, the Court held that it "has jurisdiction": "Based on these provisions of general law, the Florida Constitution mandates that the advisory opinion address the financial impact statement portion of the initiative process." *Id.* at 213, 214.

Justice Bell, joined by Justice Cantero, dissented. He pointed out that "initiative petition," as defined in section 15.21(2), Florida Statutes, does not include the financial impact statement. *Id.* at 218 n.6. Thus, in his view, the Court's jurisdiction was limited to reviewing the validity of the initiative petition itself. Because the validity of the initiative petition does not depend on the validity of the financial impact statement, he opined, the validity of the financial impact statement was outside of the scope of the Court's review. *Id.* at 215. And, he reasoned, because

the Legislature cannot expand the Court's constitutional jurisdiction, section 100.371 cannot provide a basis for the Court to review the validity of financial impact statements. Justice Bell "agree[d] with the majority that general law establishes this Court's jurisdiction in 'rare instances,'" but was of the view that "this is true only when expressly provided by the constitution." *Id.* at 215 n.3. "In this case, based on the specific issue and the particular constitutional provisions involved," he did not agree "that this case presents one of those rare instances." *Id.*[1]

[1] Justice Bell had previewed these arguments in a pair of dissents a few months earlier. In a pair of cases decided on the same day, *Advisory Opinion to Attorney Gen. re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo*, 959 So. 2d 210, 215 (Fla. 2007) (Bell, J., concurring in part and dissenting in part), and *Advisory Opinion to Attorney Gen. re Funding of Embryonic Stem Cell Research*, 959 So. 2d 195, 203 (Fla. 2007) (Bell, J., concurring in part and dissenting in part), he concluded (in identical opinions) that the Court "do[es] not have jurisdiction to render advisory opinions concerning the validity of financial impact statements." *Funding of Embryonic Stem Cell Research*, 959 So. 2d at 203 (Bell, J., dissenting). He expressed the view that the Court's jurisdiction "is limited to the initiative petition itself and does not encompass the separate financial impact statement." *Id.* Justice Cantero concurred with Justice Bell's opinions. After *Referenda Required for Adoption*, Justice Bell reiterated his position and further opined that the Court's limited review was not an adequate mechanism for reviewing financial impact statements. *In re Advisory Opinion to The Attorney Gen. re Referenda Required for Adoption & Amendment of Local Gov't Comprehensive Land Use Plans*, 992 So. 2d 190, 195 (Fla. 2008) (Bell, J., dissenting).

Consistent with *Referenda Required for Adoption*, and including that case, this Court has issued 23 reported decisions assessing the validity of financial impact statements (9 before and 13 after). *See* App'x 1-3.

C. Analysis

The principle of stare decisis "counsels [the Court] to follow [its] precedents unless there has been 'a significant change in circumstances after the adoption of the legal rule, or . . . an error in legal analysis.'" *Valdes v. State*, 3 So. 3d 1067, 1076 (Fla. 2009) (quoting *Rotemi Realty, Inc. v. Act Realty Co.*, 911 So. 2d 1181, 1188 (Fla. 2005)). Even if the prior decision resulted from an error in legal analysis, "[t]he presumption in favor of stare decisis can only be overcome upon consideration of the following factors:

> (1) Has the prior decision proved unworkable due to reliance on an impractical legal "fiction"? (2) Can the rule of law announced in the decision be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law? And (3) have the factual premises underlying the decision changed so drastically as to leave the decision's central holding utterly without legal justification?

Id. at 1077 (quoting *Strand v. Escambia Cty.*, 992 So. 2d 150, 159 (Fla. 2008)). The Court should adhere to *Referenda Required for Adoption* because it was correctly decided and, on balance, the stare decisis factors weigh against overruling it.

i. *Referenda Required for Adoption* was correctly decided.

"[T]o depart from stare decisis for an error in legal analysis, the 'gravity of the error and the impact of departing from precedent must be carefully assessed.'" *Robertson v. State*, 143 So. 3d 907, 910 (Fla. 2014) (quoting *Brown v. Nagelhout*, 84 So. 3d 304, 309 (Fla. 2012)). This Court has "recognized sufficient gravity where the prior decision is 'unsound in principle' or 'unworkable in practice.'" *Id.* (quoting *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 547 (1985)). The Court did not err in *Referenda Required for Adoption*—that decision is sound in principle.

To begin with, the Court has repeatedly held that the references to "general law" allow the Legislature to delineate the scope of the Court's review of initiative petitions. For example, in *Advisory Opinion to Attorney General re Term Limits Pledge*, the Court explained that the Constitution requires it to render an advisory opinion "addressing issues *as provided by general law*." 718 So. 2d 798, 801 (Fla. 1998). And "[p]ursuant to general law, section 16.061(1)," the Court explained, the Attorney General must seek an advisory opinion regarding the petition's compliance *both* with the single-subject rule in Article XI, section 3, *and* the ballot title and summary requirements in section 101.161. *Id.*; *see Roberts v. Brown*, 43 So. 3d 673, 678 (Fla. 2010) (same). In short, therefore, the Court's jurisdiction is not limited to the constitutionally mandated single-subject rule but also includes "issues as provided by general law." Art. V, § 3(b)(10), Fla. Const.

As the Court correctly identified in *Referenda Required for Adoption*, general law—in particular, section 100.371—"clearly mandates that one of the areas to be reviewed by this Court is the financial impact statement." 963 So. 2d at 213. Indeed, "[i]n three separate places, section 100.371 refers to this Court performing a judicial review of the statement to ensure its conformity with statutory requirements"; section 100.371 more clearly contemplates judicial review than does section 101.161 regarding the ballot title and summary. *Id.* at 213. As a result, because general law provides that one of the issues regarding initiative petitions to be reviewed is the financial impact statement's conformity with section 100.371, this is indeed one of the "rare instances where this Court's constitutional jurisdiction incorporates the provisions set forth by general law." *Id.* at 211.

Justice Bell argued that the Court's review was strictly "limited to those issues concerning the validity of the initiative petition itself." *Id.* at 215 (Bell, J., dissenting). Because the validity of the initiative petition was not, in his view, "dependent upon the validity of the financial impact statement," the Court lacked jurisdiction. *Id.* But the Constitution provides that this Court "[s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices addressing issues *as provided by general law*." Art. V, § 3(b)(10), Fla. Const. (emphasis added). Section 10 of Article IV, in turn, provides that "[t]he attorney general shall, *as directed by general law*,

request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI." (emphasis added).

Those two provisions give the Legislature the authority to determine "by general law" the "issues" to be addressed by the Court in connection with an initiative petition. The Legislature reasonably determined here that the propriety of the financial impact statement, like the propriety of the accompanying ballot summary under section 101.161, bears a sufficient nexus to any request made by the Attorney General, "pursuant to the provisions of Section 10 of Article IV," to be included in the list of "issues" that the Court "[s]hall" address in acting on that request. *See* Art. V, § 3(b)(10), Fla. Const. Indeed, financial impact statements, unlike the requirements of section 101.161 relating to the accuracy of a ballot summary, are mandated by the Constitution itself. *See* Article XI, § 5(c), Fla. Const.

Justice Bell next pointed to section 15.21(2)'s definition of "initiative petition" as not including the financial impact statement. *Referenda Required for Adoption*, 963 So. 2d at 218 n.6 (Bell, J., dissenting). True, so far as it goes. But the Legislature determined, pursuant to Article V, section 3(b)(10), that the financial impact statement's validity was an "issu[e]" for the Court to address in considering the validity of an initiative petition, even if that statement is not part of the initiative petition itself. Given that the financial impact statement—which is constitutionally

required by Article XI, section 5(c)—exists only with reference to the initiative petition itself, that determination was within the Legislature's purview to make.

Moreover, Justice Bell's position that the Court's jurisdiction "is limited to those issues concerning the validity of the initiative petition itself," and that the Court's jurisdiction "cannot be expanded by general law to address issues which the constitution, by its plain language, has expressly limited," would appear to preclude this Court's review of an initiative petition's ballot title and summary pursuant to section 101.161. *Id.* at 219 (Bell, J., dissenting). After all, the Constitution mentions only one issue as to an initiative petition's validity: Proposed amendments, "except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const.

Indeed, Justice Bell appeared to recognize this implication of his position. He asserted that "this Court's only duty is to look to the substance of the initiative petition and determine whether the revision or amendment proposed by initiative 'embrace[s] but one subject and matter directly connected therewith,' with an exception for provisions that limit the 'power of government to raise revenue.'" *Id.* at 217 (quoting Art. XI, § 3, Fla. Const.). *But see Term Limits Pledge*, 718 So. 2d at 801; *Roberts*, 43 So. 3d at 678. Yet directly thereafter Justice Bell cited *Advisory Opinion to Attorney General re Protect People, Especially Youth, from Addiction, Disease, & Other Health Hazards of Using Tobacco*, for the conflicting proposition

that the Court's review was *not* limited to the single-subject rule but also included review of a requirement emanating from general law: "whether the ballot titles and summaries are printed in clear and unambiguous language pursuant to section 101.161." 926 So. 2d 1186, 1190 (Fla. 2006).

In any event, the clear implication of the position that the Court may review only the requirements set forth in the Constitution itself is that the Court lacks jurisdiction to ensure compliance with section 101.161's requirements. Put another way, rejecting the majority's view that the Court's "constitutional jurisdiction incorporates the provisions set forth by general law," *Referenda Required for Adoption*, 963 So. 2d at 211, would necessarily erase the Court's longstanding jurisdiction to review ballot titles and summaries. As the majority recognized, "[e]ven section 101.161 is not so explicit" as section 100.371's reference to judicial review of financial impact statements "with regard to the judicial review over the other portions relating to the validity of the initiative petitions," such as whether the ballot title and summary are clear and unambiguous. *Id.* at 213. Because section 100.371 more expressly contemplates judicial review of financial impact statements than section 101.161 contemplates review of ballot titles and summaries, and because financial impact statements are expressly mandated by the Constitution, this Court's jurisdiction to review financial impact statements rests on even stronger footing than its jurisdiction to review ballot titles and summaries.

In sum, the Court correctly concluded that it has jurisdiction to review financial impact statements because, as the Constitution contemplates, the Legislature provided by general law that their validity is an issue for this Court to address. Concluding otherwise, moreover, may well imperil this Court's jurisdiction to review ballot titles and summaries for compliance with section 101.161.

ii. *Referenda Required for Adoption* has not proven unworkable.

Along with being correctly decided, *Referenda Required for Adoption* has not proven to be unworkable. The Court has issued 23 reported decisions assessing the validity of financial impact statements. *See* App'x 1-3. In 17 of those cases, the Court found the financial impact statements to be in accordance with section 100.371(5). *See id.* That includes *10 out of the last 10* cases. *See* App'x 2-3. By contrast, the Court has remanded to the FIEC in only 6 cases, or 26%. *See* App'x 1-2. Moreover, each of the financial impact statements found to be invalid were eventually cured: 4 were found invalid and the redrafted statements were found to be valid later that same year; the statement at issue in the other 2 cases related to the same initiative petition and, upon a second redrafting, was found to be valid. *See id.* Put another way, the statutory procedure has worked—whenever a financial impact statement has been found to be invalid, the FIEC has redrafted it to this Court's satisfaction. And the Court has upheld the validity of the 10 most recent financial impact statements, meaning that it has not rejected a financial impact statement since 2009.

The evolution of this Court's jurisprudence regarding its review of financial impact statements also makes clear that *Referenda Required for Adoption* has not proven unworkable. Although the Justices have sometimes disagreed on the scope of the Court's review, those disagreements have largely been resolved or have faded. In 2004, during the first year of the Court's review of financial impact statements, the Justices disagreed on a few aspects of the Court's review. For example, a disagreement arose over whether "the phrase 'range of financial impacts' in section 100.371(6)(a) must relate to the phrase 'probable financial impact' set forth in the Constitution." *In re Advisory Opinion to the Atty. Gen. re Pub. Prot. from Repeated Med. Malpractice*, 880 So. 2d 686, 687 (Fla. 2004); *see id.* at 687-88 (Lewis, J., specially concurring); *id.* at 689 (Quince, J., dissenting). The Court's resolution of that question—the phrase "range of financial impacts" must indeed relate to the phrase "probable financial impact"—appears to have settled the issue, as the issue has not recurred since 2004. *See In re Advisory Opinion to the Atty. Gen. re Authorizes Miami-Dade & Broward Cty. Voters To Approve Slot Machines In Parimutuel Facilities*, 880 So. 2d 689 (Fla. 2004).

A disagreement, flagged by Justice Wells, also arose over whether the Court's review could encompass anything other than whether the financial impact statement was clear and unambiguous and no more than 75 words in length. *See id.* at 688-89 (Wells, J., dissenting). That disagreement, however, was resolved by 2006, in

Protect People, Especially Youth, from Addiction, Disease, & Other Health Hazards of Using Tobacco, 926 So. 2d at 1195. There, in an opinion joined by Justice Wells, the Court assessed not only whether the financial impact statement was clear and unambiguous and no more than 75 words in length, but also whether the statement was "limited to address the estimated increase or decrease in any revenues or costs to the state or local governments." *Referenda Required for Adoption*, 963 So. 2d at 214 (citing *Protect People, Especially Youth, from Addiction, Disease, & Other Health Hazards of Using Tobacco*, 926 So. 2d at 1194). The Court has used that precise formulation of the standard of review in every subsequent case.

Since the Court settled on the standard of review, Justices have dissented from the Court's determination regarding the validity of a financial impact statement in only three cases. Justice Wells dissented in two cases, contending in both that the majority, in rejecting financial impact statements as misleading, had simply rejected the FIEC's conclusions and substituted their own judgment for the FIEC's.[2] Tellingly, in both dissents, Justice Wells restated the settled standard discussed

[2] *See In re Advisory Opinion to The Attorney Gen. re Referenda Required for Adoption & Amendment of Local Gov't Comprehensive Land Use Plans*, 992 So. 2d 190, 193 (Fla. 2008) (Wells, J., dissenting); *Advisory Opinion to Attorney Gen. re Standards For Establishing Legislative Dist. Boundaries*, 2 So. 3d 161, 166 (Fla. 2009) (Wells, J., dissenting).

above; instead of quarreling with the standard or contending that it was unworkable, he maintained that the Court was misapplying it.

The only other dissent from an assessment of the validity of a financial impact statement since the Court settled on the standard of review came in *Advisory Opinion to Attorney Gen. re Standards For Establishing Legislative Dist. Boundaries (FIS)*, 24 So. 3d 1198, 1202 (Fla. 2009) (Quince, J., dissenting). Justice Quince would have rejected a financial impact statement as misleading but, like Justice Wells, Justice Quince did not contend that the Court's standard of review was unworkable.

In the ten years since those dissents, no Justice has dissented from a determination of a financial impact statement's validity. The Court has unanimously concluded in the ten cases during those years that the financial impact statements drafted by the FIEC were clear and unambiguous, not more than 75 words, and limited to addressing the estimated increase or decrease in revenues or costs to the state or local governments. *See* App'x 2-3. Those cases include statements where the FIEC stated a precise impact, where the FIEC stated an indeterminate impact, and where the FIEC stated a variable impact—because each of the statements in those cases were limited to addressing the estimated increase or decrease in state and local government revenues and expenditures, they were valid.[3] In other words, the FIEC

[3] *E.g.*, *Advisory Opinion to Attorney Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968 (Fla. 2009) (precise impact); *In re Advisory Opinion to Atty.*

has not struggled to draft financial impact statements that meet section 100.371's requirements, and the Court has not struggled in assessing those statements' validity.

By settling on the standard of review, the Court also vitiated "pragmatic concerns" raised by Justice Bell that, he believed, "limit[ed] [the Court's] ability to fully and fairly review the validity of such statements." *In re Advisory Opinion to The Attorney Gen. re Referenda Required for Adoption & Amendment of Local Gov't Comprehensive Land Use Plans*, 992 So. 2d 190, 196 (Fla. 2008) (Bell, J., dissenting). In that case, Justice Bell opined that the "Court's limited review simply does not provide an adequate mechanism for reviewing financial impact statements." *Id.* In his view, the limited record and the lack of adversarial testing through "the presentation of evidence and arguments" deprived the Court of the ability to conduct "fair judicial review." *Id.*

Subsequently, however, in *Standards For Establishing Legislative Dist. Boundaries*, Justice Wells argued that the limited record and lack of adversarial testing supplied additional reasons "why the Court should not involve itself in attempting to determine the accuracy of the [FIEC's] conclusions." 2 So. 3d at 166 & n.5 (Wells, J., dissenting). Under section 100.371, it is the FIEC's role, not this

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Gen. re Use of Marijuana for Debilitating Med. Conditions, 181 So. 3d 471 (Fla. 2015) (indeterminate impact); *Advisory Opinion to Atty. Gen. re Rights of Elec. Consumers regarding Solar Energy Choice*, 188 So. 3d 822 (Fla. 2016) (no impact).

Court's role, to reach the conclusions set forth in the financial impact statement. The Court need only review the financial impact statement itself to determine whether the FIEC included only the statutorily required information. In other words, because the Court reviews only whether the statement clearly and unambiguously addresses certain topics—not whether the statement is *accurate*—the pragmatic concerns identified by Justice Bell do not support receding from this Court's precedent.

In sum, far from proving unworkable, *Referenda Required for Adoption* has caused the FIEC to submit financial impact statements that comply with section 100.371(5) in every instance since 2009. Moreover, the Court's jurisprudence regarding the standard of review for the validity of financial impact statements has become well-settled, and has effectively resolved certain practical concerns that might otherwise have arisen from this Court's review.

iii. Reversal would not lead to serious injustice, although it would disrupt the current statutory framework for providing financial impact statements to the public.

The second stare decisis factor does not weigh heavily for or against overruling *Referenda Required for Adoption*. The decision likely could be reversed "without serious injustice to those who have relied on it." *See Valdes*, 3 So. 3d at 1077. It is not clear that any private entity has relied on the Court's holding in *Referenda Required for Adoption*. Certain governmental entities—including the

FIEC and this Court—have proceeded on the understanding that the Court does have jurisdiction, but they would not suffer serious injustice from a reversal.

Even so, receding from *Referenda Required for Adoption* would disrupt the current statutory framework for providing financial impact statements to the public. In that sense, overruling this Court's precedent might well disrupt the stability of the law. *See id.* As explained above, financial impact statements must comply with section 100.371's requirements before being placed on the ballot. If the Court lacks jurisdiction to review such statements, the Legislature may find it necessary to enact some other procedure for review.

Whether it would ultimately prove necessary to create a new review procedure is an open question. As Justice Bell pointed out in his dissent in *Referenda Required for Adoption*, concluding that this Court does not have jurisdiction here "does not mean that a financial statement cannot be reviewed by a court of original jurisdiction to ensure its compliance with general law." *Referenda Required for Adoption,* 963 So. 2d at 219 n.8 (Bell, J., dissenting). Noting that section 100.371(5)(c)(2) refers to "a court" finding a financial impact statement to be invalid, it "seem[ed]" to Justice Bell "that a court of original jurisdiction," such as a circuit court, may review a

financial impact statement's validity, perhaps through a declaratory judgment action. *Id.* (citing Art. V, §§ 5-6, Fla. Const.; § 26.012, Fla. Stat.).[4]

On the other hand, other subsections in section 100.371(5) refer to this Court, rather than to "a court." For example, section 100.371(5)(c)(3) provides that if the FIEC is unable to agree on a statement or if "the Supreme Court has rejected" it and "no redraft has been approved by the Supreme Court" before the statutory deadline, a statement that the financial impact "cannot be reasonably determined at this time" will appear on the ballot. Likewise, section 100.371(5)(e) provides for a remand to the FIEC if "the Supreme Court finds [a financial impact statement] not to be in accordance with this subsection" and, if "the Supreme Court has not issued an advisory opinion" on its validity before the statutory deadline, it "shall be deemed approved for placement on the ballot." It is therefore unclear as to how a court of original jurisdiction's rejection or failure to issue a timely opinion would be treated under section 100.371 in light of the explicit references to this Court in those scenarios. And in this Court's view, "since the whole construction of the statute contemplates this Court's review of financial impact statements, the entire provision

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[4] Although the Court has held that it has "exclusive jurisdiction to consider the validity of citizen-initiative petitions," if the Court held that it did not have jurisdiction to review financial impact statements, it necessarily would not have "exclusive" jurisdiction to review such statements. *Roberts v. Brown*, 43 So. 3d 673, 679 (Fla. 2010).

[would] becom[e] a nullity if [the Court] construe[d] the statute contrary to its clear and plain intent." *Referenda Required for Adoption*, 963 So. 2d at 214.

Even if this Court lacked jurisdiction and a court of original jurisdiction could *not* review the validity of financial impact statements, judicial review may not otherwise be necessary. After all, the Constitution commands only that the Legislature "provide by general law . . . for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3." Article XI, section 5(c), Fla. Const. Put differently, Article XI, section 5(c) does not, standing alone, *require* judicial review of a financial statement. Instead, it requires that the Legislature ensure that the public be provided with such a statement. So while the Legislature's current procedures for the review of financial impact statements would be upended if the Court were to hold that it lacked jurisdiction, the constitutional provision requiring financial impact statements would not necessarily be frustrated by the absence of judicial review.[5]

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[5] The Court has eventually approved each financial impact statement it has reviewed (although in several instances, as discussed above, it did so only after remanding for redrafting). In other words, the Court's review has never prevented a initiative petition from ultimately appearing on the ballot. And of the initiatives associated with the remanded financial impact statements, only one was not approved by the voters—the petition associated with *Referenda Required for Adoption*. *See* Florida Division of Elections, https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=37681&seqnum=2. The Court's review of financial impact statements thus has not served as a barrier to the passage of initiative petitions.

In sum, although few reliance interests appear to weigh against overruling *Referenda Required for Adoption*, doing so would disrupt the current statutory framework for carrying out the Constitution's command that financial impact statements be provided to the public. The second factor thus appears to weigh neither for nor against overruling *Referenda Required for Adoption*.

iv. The factual premises underlying *Referenda Required for Adoption* have not drastically changed.

In holding that this Court has jurisdiction to review financial impact statements, *Referenda Required for Adoption* relied on two premises: first, that "[t]he Constitution mandates that this Court review all issues relating to initiative petitions as provided by general law"; and second, that "Section 100.371 clearly mandates that one of the areas to be reviewed by this Court is the financial impact statement." 963 So. 2d at 213. Neither premise has changed.

The most relevant change to the context in which *Referenda Required for Adoption* was decided is the passage of Chapter 2019-64, Laws of Florida. That statute (1) expands the time within which the FIEC must complete a financial impact statement, and (2) requires the financial impact statement to include the proposed initiative's "estimated economic impact on the state and local economy, and the overall impact to the state budget." Ch. 2019-64, § 3, Laws of Fla. But neither change implicates the premises underlying *Referenda Required for Adoption*. Still less do

those changes "leav[e] the decision's central holding utterly without legal justification." *Valdes*, 3 So. 3d at 1077 (quoting *Strand*, 992 So. 2d at 159).

Chapter 2019-64 did not change the constitutional framework governing advisory opinions. Nor did it change the provisions of section 100.371 that contemplate this Court's review of financial impact statements.

Moreover, although Chapter 2019-64 will affect this Court's review of financial impact statements, it does not drastically change the considerations on which this Court's decision was based. *See Valdes*, 3 So. 3d at 1077. For example, expanding the time within which the FIEC must complete a financial impact statement could cut into the time for this Court's review. At this point, however, it is far from clear that the amended statute does not afford sufficient time for review. And, even if the Court, in some circumstances, would not have time to complete its review, the result would not be unworkable: In the absence of a timely opinion from the Court, a financial impact statement is deemed approved. § 100.371(13)(e)(2), Fla. Stat.

Even with Chapter 2019-64's other change—the addition of the initiative's estimated economic impact on state and local economies and the state budget—the scope of the Court's review will effectively remain unchanged. When reviewing financial impact statements in the future, the Court need only add to its review an assessment of whether the statement is limited to addressing the estimated economic

impact on state and local economies and the impact on the state budget, and whether the statement is clear and unambiguous regarding those matters. As with the effect on state and local government revenues or expenditures, the statute does not require the Court to review the FIEC's conclusions for accuracy; it requires the Court to review only whether the financial impact statement is limited to the matters set forth in the statute. As a result, this additional review should not prove unworkable.

* * *

This Court should adhere to its holding in *Referenda Required for Adoption* because it was correctly decided; it has not proven unworkable; reversal would disrupt the current statutory scheme for providing financial impact statements; and the factual premises underlying that decision have not changed so drastically as to leave its central holding utterly without legal justification.

CONCLUSION

For the foregoing reasons, the Court has jurisdiction to review the validity of financial impact statements.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing brief has been furnished by electronic service through the Florida Courts E-Filing Portal on this 7th day of November, 2019, to all parties required to be served.

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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