

SUPREME COURT OF FLORIDA

JIM SMITH, SECRETARY OF STATE,
ETC., ET AL.

Petitioner(s)

CASE NO. SC02-1624

Lower Tribunal Nos:

02-CA-1490

1D02-2939

vs.

COALITION TO REDUCE CLASS SIZE
AND PRE-K COMMITTEE, ETC.

Respondent(s)

REPLY BRIEF OF PETITIONER

FLORIDA DEPARTMENT OF STATE

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I. CHAPTER 02-390 OF THE LAWS OF FLORIDA ENSURES INTEGRITY OF THE BALLOT AND THE ELECTION PROCESS

Respondents erroneously assert in their brief that Petitioner is asking this Court to overrule prior precedents and adopt a different standard to determine whether legislation is reasonably designed to ensure ballot integrity. Contrary to Respondents' assertion, Petitioner maintains that Chapter 02-390 of the Laws of Florida is necessary to protect ballot integrity and the integrity of the election process under the current precedents of of this Court. *Askew v. Firestone*, 421 So. 2d 151(Fla. 1982); *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000); *Citizens Proposition For Tax Relief v. Firestone*, 386 So.2d 561 (Fla. 1980).

Respondents claim that in order for a measure to be necessary for ballot integrity, it must be necessary in the strictest sense of the word, that is, absolutely essential, vital, required or mandatory. However, there is nothing mandatory or required about many aspects of the legislative provisions designed to ensure ballot and election process integrity that this Court has found to be constitutional.

For instance, there is nothing mandatory or required in the constitution that a ballot summary should not exceed 75 words. As long as the requirement ensures that the ballot advises the voter sufficiently to enable him to intelligently cast his ballot, it is within the duties of the legislature to determine if 75 words (or 125 words or 50 words as the legislature may have prescribed) are necessary to put the

voter on notice as to the effect of the proposed amendment. Likewise, the legislature can determine that a fiscal impact statement will provide the voter with sufficient information to enable voters to know the effect of the proposed amendments and therefore ensures ballot integrity and the integrity of the election process. *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000). In fact, under *Armstrong*, omission of information may constitute inaccuracy.

This Court has consistently allowed the legislature, as the elected representatives of the people, to determine what is “necessary to ensure ballot integrity.” See, section I.A.1. of the Initial Brief. For this court to examine what the legislature has determined necessary for ballot integrity on the basis of whether it was wise or prudent would put the court in the position of exercising a legislative function. Of course, a court can, under its prior precedents, strike a ballot summary or fiscal impact statement that is misleading. *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000); *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982).

The legislation at issue here is clearly constitutional and within the scope of the legislature’s obligation to ensure integrity of the ballot and the election process. Unlike the situations in *Miami Heat Limited Partnership v. Leahy*, 682 So.2d 198, 202 (Fla. 3d DCA 1996) and *Kean v. Clark*, 56 F. Supp.2d 719 (S.D. Miss. 1999), where a legislative enactment changed the initiative process by placing new burdens on sponsors of proposed amendments, Chapter 02-390 does not in any

way limit the opportunity of initiative sponsors to place their measures before the people of the State of Florida. Therefore, there is no impact on Respondents' rights under Article XI, Section 3 of the Florida Constitution. The ballot title and summary of the proposed amendments will appear on the ballot in exactly the same format as approved by this Court.

II. THE FISCAL IMPACT STATEMENT IS A FACTUAL STATEMENT WITH NEUTRAL POLITICAL CONTENT

Respondents characterize the fiscal impact statement as an “uninvited commentary” on the proposed amendments. *See*, Respondents' Answer Brief at 12-13. As discussed in Section I.A. 2. of the Initial Brief, a fiscal impact statement is not a commentary on the merit of the proposed amendment. In any event, the legislature's requirement that additional language be added to protected speech has been upheld as a constitutional regulation of political activity. The legislature requires language to be added to added to political advertisements to identify the persons or organizations sponsoring the advertisement and who is paying for the advertisement. *See*, §106.143, F.S.

In construing whether Section 106.143 was unconstitutionally overbroad, the court observed that “the statutes are not censorial, i.e., they ‘are not directed at particular groups or viewpoints’ but rather seek ‘to regulate political activity in an even-handed and neutral manner.’ *Doe v. Mortham*, 708 So. 2d 929 (Fla.

1998)(quoting *Broadrick v. Oklahoma*, 413 U.S. 601 at 616 (1973)). Here, the legislature is regulating the election process in an even-handed manner

¹ designed to inform the voter and ensure the integrity of the ballot and the election process. In fact, to ensure a neutral analysis of the fiscal impact of these measures, the legislature assigned the analysis to the same body that evaluates the fiscal impact of all state budgetary options. The legislature's determination that addition of supplemental information is necessary to provide accuracy is consistent with prior rulings of this Court. *See, Armstrong v. Harris*, 773 So. 2d 7 at 22 (Fla. 2000)(proposed amendment's failure to advise voters of amendment's effect compromised integrity of election process).

Respectfully submitted,

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¹ To clarify a statement made in the Respondent's Answer Brief at page 2, the requirements of Chapter 02-390 apply to both legislatively proposed amendments and citizen initiatives. The only proposed amendments that will not include a fiscal impact statement on the ballot at the 2002 general election are the proposals certified for ballot position before the effective date of the law.

Counsel for Secretary of State Jim Smith

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on the following by U. S. Mail and by on August 20, 2002 to: Mark Heron, Thomas M. Findley, Messer, Caparello & Self, P.A., P. O. Box 1876, Tallahassee, FL 32301, Laurie Uustal Mathews, Hunton & Williams, 1111 Brickell Avenue, Suite 2500, Miami, FL 33131, Charles Canady, General Counsel, Simone Marsteller, Assistant General Counsel, Office of the Governor, Room 209, The Capitol, Tallahassee, FL 32399-0250, Benjamin H. Hill, III, Lynn C. Hearn, Mark J. Criser, Hill, Ward & Henderson, P.A., P. O. Box 2231, Tampa, Florida 33601

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the Respondent Jim Smith's Initial Brief is in compliance with the font requirements of Rules 9.100(1) and 9.210, Florida Rules of Appellate Procedure, in that it has been typed in the New Times roman 14-point font.