

SUPREME COURT OF FLORIDA

Case No. SC06-2505

FLORIDIANS FOR A LEVEL PLAYING
FIELD, et al,

Petitioners,

vs.

FLORIDIANS AGAINST EXPANDED GAMBLING,
THE HUMANE SOCIETY OF THE UNITED STATES,
and GREY2K USA, INC.,

Respondents.

ANSWER BRIEF ON JURISDICTION

Appeal from the First District Court of Appeal
(Limited to Conflict and Class of State Officers' Jurisdiction)

John H. Pelzer, Esq.
RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.
200 East Broward Boulevard, 15th floor
P.O. Box 1900
Fort Lauderdale, Florida 33302
(954) 764-6660, 527-2469

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SUMMARY OF ARGUMENT

In its second alternative holding, the district court cited *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), for the proposition that the mandatory provisions of the Constitution for placing proposed amendments on the ballot must be met. Contrary to the Petitioners' supposition, the district court was not applying or extending any of the discussion in *Armstrong* regarding fraudulent or misleading statements. Rather, the district court was merely pointing out that, regardless of how deficiencies in the procedures are concealed, constitutional procedures for placing amendments on the ballot must still be met.

The district court's Opinion does not affect a class of constitutional or state officers. Rather than telling such officers how to do their jobs, the Opinion merely allows relief in the event that these officers have been duped in the performance of their jobs.

ARGUMENT

I. THE OPINION OF THE DISTRICT COURT IS NOT IN EXPRESS AND DIRECT CONFLICT WITH *ARMSTRONG V. HARRIS*.

The Petitioners assert that the Opinion of the district court "misused *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000)." Petitioner's Jurisdictional Brief at 6. The discussion that follows in the Petitioner's jurisdictional brief centers on the second of the two "independent, alternative grounds" noted in the district court Opinion. App. at 5. The second ground for the district court's Opinion is that: "A determination of whether an amendment to the Constitution has been validly proposed 'depends upon the fact of substantial compliance or noncompliance with the mandatory provisions of the existing Constitution as to how such amendments shall be proposed.'" App.12, quoting *Armstrong*, 773 So. 2d at 14, in turn quoting *Crawford v. Gilchrist*, 63 Fla. 41, 50, 59 So. 963, 966 (Fla. 1912). The holding in this second, alternative ground for reversal was that, assuming the allegations of the Complaint to be true, the mandatory provisions of the Constitution for placing a proposed amendment on the ballot were not met.

Contrary to the implicit assumption in the Petitioners' argument, in citing *Armstrong* the district court did not conclude that voters were misled in the voting booth on election day. (The Respondents do not concede this argument; however, the district court did not expressly adopt it.) Indeed, in the same breath that it

quoted this Court's metaphor "[a] proposed amendment cannot fly under false colors," App. at 11 quoting *Armstrong*, 773 So. 2d at 16, the district court noted that it was doing so in the context of using "fraud to create the illusion of compliance with mandatory constitutional provisions." App. at 11. Thus, the district court was not relying on *Armstrong's* scenario of voting booth fraud, and could not have misread *Armstrong* by doing so.

The district court's discussion of *Armstrong* in its second alternative holding is in this context of compliance with mandatory constitutional provisions. In enforcing compliance with these mandatory provisions, the district court relied upon principles that have been recognized since *Crawford* in 1912. Whether the failure to comply with the mandatory provisions of the existing Constitution is concealed by fraud (as in this case) or by parliamentary vagary (as in *Crawford*) the fact remains that the mandatory requirements of the Constitution have not been met. That is the import of the district court's discussion of *Armstrong* in its second alternative holding, and that discussion is not a misapplication of *Armstrong*.

II. THE DISTRICT COURT'S DECISION DOES NOT EXPRESSLY AFFECT A CLASS OF CONSTITUTIONAL OR STATE OFFICERS.

Contrary to the Petitioners' assertion, the certification and validity determination processes of the various supervisors of elections are not implicated by the decision of the district court. Petitioners' Jurisdictional Brief at 8. Nothing in the Opinion directs or affects how the supervisors of elections are to perform their duties. Indeed, all of the discussion of the Opinion relates to matters which transpire after the supervisors have performed their duties, but have been victimized by fraud. Because the supervisors are not mentioned in the Opinion, the Opinion cannot "expressly" affect them. *School Board of Pinellas County v. District Court of Appeal*, 467 So. 2d 985, 986 (Fla. 1985).

Cases involving this species of jurisdiction in this Court address opinions which direct constitutional or state officers regarding what they must or must not do. *See e.g., Behr v. Bell*, 665 So. 2d 1055 (Fla. 1996) (whether a public defender can be required to serve as standby counsel); *Taylor v. Tampa Electric Co.*, 365 So. 2d 260 (Fla. 1978) (whether a court clerk may exact a commission on "quick taking" monies. These examples, like *Krivanek v. Take Back Tampa Political Committee*, 625 So. 2d 840 (Fla. 1993) (whether Supervisors of Elections must count voters who have been removed from the rolls for inactivity), are unlike the Opinion of the district court in this case because the instant Opinion does not tell a

constitutional or state officer what it can or cannot do. Accordingly, there is no jurisdiction on this basis.

In order to avoid this Court being misled, a disclosure must be made regarding the procedural history of this case that is not recited within the district court's Opinion. The supervisors of elections were all dismissed from this case by a final order dated December 7, 2004. This final order was not appealed. Thus, the supervisors of elections were not even nominal parties in the district court.

CONCLUSION

For the foregoing reasons, this Court should decline to accept jurisdiction on the basis of conflict or express effect on class of constitutional or state officers.

Respectfully submitted,

RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.
200 East Broward Boulevard, 15th floor (33301)
Post Office Box 1900
Fort Lauderdale, Florida 33302
(954)764-6660, 527-2469; Fax: (954)333-4069

By: _____
John H. Pelzer
john.pelzer@ruden.com
Florida Bar Number 376647

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to counsel of record as noted below, by U. S. Mail, on February 9, 2007.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that TIMES NEW ROMAN, 14 pt., is used in this brief.

RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.
200 East Broward Boulevard, 15th floor (33301)
Post Office Box 1900
Fort Lauderdale, Florida 33302
(954)764-6660, 527-2469; Fax: (954)333-4069

By: _____
John H. Pelzer
Florida Bar Number 376647

counsel of record:

Mark Herron, Esq., Thomas M. Findley, Esq.
Robert J. Telfer, III
Messer, Caparello & Self, P.A.
P.O. Box 1876
Tallahassee, FL 32301
Attorneys for Plaintiffs

Efrem M. Grail, Esq.
Kim M. Watterson, Esq.
Reed Smith LLP
435 Sixth Avenue
Pittsburgh, PA 15219
Attorneys for Plaintiffs

Wilbur E. Brewton, Esq.
Tana D. Storey, Esq.
Roetzel & Andress, L.P.A.
225 S. Adams Street – Suite 250
Tallahassee, FL 32301
Attorneys for FLPF

James A. Peters - Special Counsel
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
Attorneys for Glenda Hood in her official capacity
as Florida Secretary of State and the Florida
Department of State

Jack M. Skelding, Jr., Esq.
Skelding & Cox, P.A.
318 North Monroe Street
Tallahassee, FL 32301-7622
850/ 222-3730; fax 224-6422
co-counsel for FLPF

Bruce S. Rogow, Esq./Cynthia E. Gunther, Esq.
Bruce S. Rogow, P.A.
Broward Financial Centre, Suite 1930
500 East Broward Boulevard
Fort Lauderdale, Florida 33394
Attorneys for FLPF

John M. Hogan, Esq.
Holland & Knight, LLP
P.O. Box 015441
Miami, FL 33101
Attorneys for Floridians for a Level Playing Field
("LPF")

Ronald L. Book, Esq.
Ronald L. Book, P.A.
2999 Northeast 191st Street – PH 6
Aventura, FL 33180
Attorneys for Floridians for a Level Playing Field
("LPF")

Stephen H. Grimes, Esq.
Jerome W. Hoffman, Esq./ Susan L. Kelsey, Esq.
Holland & Knight, LLP
P.O. Box 810
Tallahassee, FL 32302-0810
Attorneys for FLPF

John H. Pelzer, Esq.
Ruden McClosky Smith Schuster & Russell PA
200 E. Broward Blvd., 15th floor (33301)
P.O. Box 1900
Fort Lauderdale, Florida 33302
Attorneys for Plaintiffs/ john.pelzer@ruden.com

Wilbur E. Brewton, Esq.
Tana D. Storey, Esq.
Roetzel & Andress, LPA
225 South Adams Street, Suite 250
Tallahassee, Florida 32301
Attorneys for FLPF

Thomas R. Julin, Esq.
Hunton & Williams
1111 Brickell Avenue, Suite 2500
Miami, Florida 33131
Attorneys for FLPF

Thomas D. Hall, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927
(850) 488-0125