

**IN THE SUPREME COURT
OF FLORIDA**

ANDY FORD, et. al.,

v.

CASE NO. SC 08-1529

KURT BROWNING, Secretary of State

**AMENDED AMICI BRIEF OF EILEEN F. ROY, SUSAN W. BOTTCHEER,
DAVID E. JONES, HANNA PETERSON AND
DAVID M CHALMERS, Citizens and Taxpayers of Florida IN SUPPORT
OF APPEAL OF ANDY FORD, et. al.**

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INTEREST OF AMICI

Amici are citizens, electors and taxpayers of Florida who seek to support the appeal of Appellants. Amici filed a separate independent action now pending in the second judicial circuit of Florida to remove proposed amendments Seven and Nine from the ballot. The circuit court has not yet ruled in that action, thus making this appeal the only viable means of bringing their arguments to the attention of this Court.

SUMMARY OF ARGUMENT

Amendment 7 and 9 must be removed from the ballot because the Taxation and Budget Reform Commission has no authority to propose them.

ARGUMENT

For reasons set forth below, Amici respectfully submit that the Religious Freedom Amendment and TRC's Education Proposal must be stricken from the ballot of the 2008 general election.

INTRODUCTION

The Secretary of State (Defendant Browning) has placed upon the ballot for the 2008 general election the following two amendments, among others, proposed by the Taxation and Budget Reform Commission (TRC):

RELIGIOUS FREEDOM AMENDMENT

Proposes to amend Article I §3 by adding underlined words and deleting the struck through words, as follows:

SECTION 3. Religious freedom.--There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public

morals, peace or safety. An individual or entity may not be barred from participating in any public program because of religion. ~~No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.~~

TRC'S EDUCATION PROPOSAL

Proposes to amend Article IX § 1 by adding underlined words and deleting struck through words, adding a new Article §8 (words underlined) and adding a new Article XII §28 (words underlined):

SECTION 1. Public funding of education.--(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. This duty shall be fulfilled, at a minimum and not exclusively, through adequate ~~Adequate provision shall be made~~ by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions higher learning and other public education programs that the needs of the people may require. Nothing in this subsection creates an entitlement to a publicly-financed private program.

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.

ARTICLE XII SCHEDULE

Section 28. Requiring sixty-five percent of school funding for classroom instruction.--The requirement that sixty-five percent of school funding

received by school districts be spent on classroom instruction in Section 8 of Article IX, and this section, shall first be applicable to school years commencing during the state fiscal year 2009-2010.

SOURCE OF TRC'S AUTHORITY

The TRC was created pursuant to Article XI §6 Florida Constitution and derives all of its authority from it. Although TRC promulgated certain rules to guide its proceedings, these rules¹ provide no authority to place measures on the

¹These rules include:

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1. Rule 1.005: It shall be the function and duty of the Commission to:
 - (13) File proposed revisions of the State Constitution dealing with taxation or the state budgetary process with the Secretary of State before May 4, 2008 for consideration in the 2008 General Election.
 2. Rule 2.004: (1)
Not later than one hundred eighty (180) 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 Secretary of State its proposals, if any, for a revision of the Florida Constitution or any part of it dealing with taxation or the state budgetary process.

-
3. Rule 1.005 defines “Taxation” as:
“Taxation” means all public revenues and revenue raising laws at every level of government in the state.
 4. Rule 1.005 defines “state budgetary process” as:
“state budgetary process” means the manner in 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.

ballot outside of Article XI §6(e), are valid only to the extent that Article XI §6(e) authorizes them, and cannot constitute an expansion of authority. In its entirety Article XI §6(e) Florida Constitution provides:

(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*.

(Italics added.) The text of Article XI §6(e) plainly indicates that TRC's authorities are limited to:

1. Hold public hearings and conduct the reviews prescribed in Article XI §6.
2. Propose statutory changes *related to taxation or budgetary laws of the state*.
3. Propose revisions of the constitution *dealing with taxation or the state budgetary process*.

The TRC possessed no authority to propose the Religious Freedom Amendment and TRC's Educational Proposal for placement on the 2008 general election ballot and Defendant Browning had no authority to assign them ballot placement. Accordingly, this Court must enter an order directing Browning to remove them from the ballot.

To avoid unnecessary briefing, Amici will focus on the misapprehensions of the law in the Summary Final Judgment for Defendant and Intervener, entered by the trial court on August 4, 2008.

A. Standard of Review. This case rests entirely on the limits of the constitutional authority of TRC. In short, it is a constitutional case and only a constitutional case. Since the United States Supreme Court decided *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803) the law has been settled that it is “emphatically” the function of the United States Supreme Court to say “what the law is” pertaining to the meaning of the federal constitution. Similarly, since this Court decided *Flint River Steam Boat Company v. Roberts, Allen & Co.*, 2 Fla. 102 (1848) the law has been settled that it is “emphatically” the function of

the Florida Supreme Court to say “what the law is” pertaining to the meaning of the Florida constitution. As this Court stated in *Flint River*:

The court feel the importance of the sacred trust confided to them, of preserving the Constitution of the State unimpaired, and at the same time the delicate duty it imposes of declaring null and void any act of the General Assembly believed to be subversive of any of its provisions.

Id., 2 Fla. at p.6.

The trial court went awry in deciding that it was required to give some deference to TRC in its decision pertaining to its own authority to place TRC's Religious Freedom and Education Proposals on the ballot. This is a constitutional question to be decided by the courts. Specifically, the trial court erred to rely upon *Level 3 Communications, LLC v. Jacobs*, 841 So.2d 447, 450 (Fla. 2003) to decide that TRC's decision as to its authority was entitled to some special weight. In particular, the trial court relied upon this statement as the basis of its decision:

This Court will not depart from the contemporaneous construction of a statute by a state agency charged with its enforcement unless the construction is “clearly unauthorized or erroneous.”

(Quoting from 841 So.2d at 450.) This rule has no applicability in determining TRC’s authority. *Level 3* concerned itself with the Public Service Commission’s construction of a statute that it was charged by law to administer. In administrative law courts do give deference to decisions of enforcement and regulatory agencies because those agencies become experts in the laws they administer and also

because their decisions are always subject to judicial review and legislative correction if they are erroneous. Moreover, the administrative decisions are made in quasi-judicial proceedings with due process afforded, including briefings and presentation of counsel in adversarial proceedings. A record is made for judicial review. Under those circumstances some judicial deference to administrative decisions as to the scope of an agency's *statutory* authority has been acknowledged.

In keeping with the teachings of *Marbury v. Madison* and *Flint River* the same is not true of decisions pertaining to scope of *constitutional* authority. Moreover, the circumstances pertaining to TRC are dramatically different. TRC is not an enforcement agency and not a regulatory agency. TRC is a political body appointed by political officials to make political decisions. Its members are not elected by the public, are largely unknown to the public, and are not politically accountable to the public or to the people who appoint them. TRC does not conduct quasi-judicial proceedings and enforces no statutes. TRC is a temporary,

infrequently recurring body of lay people who are not required to possess training or experience in law or constitutional interpretation. TRC has no expertise in construing the meaning of the Florida Constitution. For all of these reasons, TRC is not in the legal posture of an administrative agency that administers some body of law under the auspices of the legislative or executive departments. Consequently, any decision about the limits of TRC's constitutional authority is a pure question of constitutional law and must be subjected to *de novo* review by this court and all appellate courts. In short, because the scope of TRC's authority

requires an interpretation of the Florida constitution, it comes to this court for a *de novo* decision without deference to TRC's opinion. As this Court recently stated in *Crist v. Florida Ass'n of Criminal Defense Lawyers, Inc.*, 978 So.2d 134 (Fla. 2008):

Because the issue before the Court involves the determination of a statute's constitutionality and the interpretation of a provision of the Florida Constitution, it is a question of law subject to *de novo* review. *Id.*, 978 So.2d at 139. The law is also settled that the authority of agencies and commissions created by law must be narrowly construed and limited to those

expressly granted or necessarily implied. As stated by the Florida Supreme Court in *Southern Armored Service, Inc. v. Mason*, 167 So.2d 848 (Fla. 1964):

The Commission is a statutory body with special and limited powers. It can only exercise the power expressly or impliedly granted to it and any reasonable doubt of existence of any power must be resolved against the exercise thereof.

Id., 167 So.2d at 848. Without explicitly referring to it, this Court has applied this rule to constitutional commissions, notably the Judicial Qualifications

Commission. For example, *Inquiry Concerning Davey*, 645 So.2d 398 (Fla. 1994) rejected a recommendation of the Commission because the procedures the Commission applied were not in keeping with its constitutional authority. *Inquiry Concerning a Judge re Fletcher*, 664 So.2d 934 (Fla. 1995) is of similar import.

This Court's stringent review of claims of constitutional power even extends to the powers of the office of Governor, which is possessed of the "supreme executive power" of the state. Article IV §1. Most recently, *Florida House of Representatives v. Crist*, --- So.2d ----, 33 Fla. L. Weekly S437, (Fla. 2008) held

that the Governor's constitutional power to "transact all the necessary business with the officers of government," Article IV §1(a) Florida Constitution, did not authorize him unilaterally to enter into a compact with Indian tribes, despite federal law purporting to impose a duty to do so upon the state. Similarly, *Chiles v. Children A, B, C, D, E, and F*, 589 So.2d 260 (Fla. 1991), held that the Governor's constitutional duty and authority to "take care that the laws be faithfully executed" (Article IV §1(a)) and the obligation that state maintain a balanced budget (Article VII §1(a) Florida Constitution) provided him no authority to take unilateral

budgetary action to avoid a revenue shortfall in the state budget. This Court has also rejected the argument that the attorney general - a constitutional office elected by all the people of the state - has powers beyond those conferred by law. *State ex rel. Shevin v. Yarborough*, 257 So.2d 891 (Fla. 1972). As to powers beyond those plainly authorized, the Court said:

Public policy on the outer perimeter of his authority is therefore more a Legislative than Judicial question. We take judicial notice that the Legislature of Florida convenes in a few days and we defer to that August body the broader question of the outer limits of such authority.

Id., 257 So.2d at 894. All these cases demonstrate that, except for the Legislature, constitutional entities have only those authorities delegated to them by the constitution or by law and no inherent power to enlarge them.² They also implicitly acknowledge that the plenary political powers of the state are lodged in the Legislature. As stated by this Court:

²It is also true that courts as courts have possess the constitutional duty to protect the constitutional rights of the people, thus authorizing them to go beyond delegated powers in extreme case. *See e.g., Makemson v. Martin County*, 491 So.2d 1109 (Fla.1986). TRC can make no claim to such a power.

The Constitution of this state is not a grant of power to the Legislature, but a limitation only upon legislative power, and unless legislation be clearly contrary to some express or necessarily implied prohibition found in the Constitution, the courts are without authority to declare legislative Acts invalid. The Legislature may exercise any lawmaking power that is not forbidden by organic law.

Crist v. Florida Ass'n of Criminal Defense Lawyers, Inc., 978 So.2d 134, 141 (Fla. 2008), quoting *Chiles v. Phelps*, 714 So.2d 453, 458 (Fla.1998). Any attempt of TRC or any other agency of government to extend its authority beyond that

delegated by the constitution or law necessarily intrudes unconstitutionally upon the powers of the Legislature.

The Scope of TRC's Authority to Place Measures on the Ballot.

The trial court applied the rule that all subsections of Article XI §6 must be read *in pari materia* and came to the erroneous conclusion that it must give the term “state budgetary process” as used in §6(e) a broad interpretation. The trial court erred, in part, by giving §6(e) a scope beyond its actual terms, which state:

(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.*

(Italics added.)

Even a cursory reading of this measure discloses that TRC's role is to deal with two issues: those pertaining to the ability of the state to raise sufficient revenue to provide needed services, and those pertaining to the adequacy of the manner in which state budgets are created to promote effectiveness and efficiency in expending funds. This is entirely in keeping with the then-well known circumstances that lead to the creation of the TRC in the late 1980's. In short, it

was a combination of state budgetary crisis, the demise of Governor Martinez's service tax, and the failure of either the Legislature or the Constitution Revision Commission to produce taxation reforms that dealt with these issues comprehensively or effectively. This background is elaborated in *Blanton, The Taxation and Budget Reform Commission: Florida's Best Hope for the Future*,¹⁸ Fla. State L. Rev. 437, 438 (1990). The purpose of the reform is plainly stated in the West commentary to Article XI §2 Florida Constitution, as follows:

In 1988, section 2(c) was amended to remove matters relating to taxation or the state budgetary process from the jurisdiction of the constitution revision commission and place them under the purview of the newly created taxation and budget reform commission. The amendment to section 2(c) was part of a larger amendment creating an independent tax and budget reform commission (Article XI, section 6). *The purpose of the new commission was to provide a method to accomplish tax reform in a comprehensive and complete manner.*

Commentary to 1988, 1996 and 1998 Amendments. (Italics added.)

In the context of this background, the Florida Legislature proposed an amendment that took away from the Constitutional Revision Commission the power

to propose amendments “relating *directly* to taxation or the state budgetary process that are to be reviewed by the taxation and budget reform commission established in section 6” and transferred that authority to the TRC. H.J.R. 1616, Laws of Florida 1988. “That authority” is the authority to consider matters “relating *directly* to taxation or the state budgetary process.” In the view of the legislators who created the proposal, TRC’s authority was to “recommend fundamental changes to the tax structure that would allow the state to meet its revenue needs without constant tinkering by the Legislature.” *Blanton*, 18 Fla. State L. Rev. at 42. Thus, the people

of Florida voted upon the measure that created TRC with the understanding that TRC would consider matters *directly* relating to taxation and budgetary processes, and no more. Hence, TRC's authority is limited to revisions that address the state's ability to "meet its revenue needs" and does not include a general grant of authority to tinker with every provision of the constitution that might have some indirect or remote connection to revenue.

Finally, although TRC's own rules cannot expand its authority, they do provide insight at to its own conception of the scope of its authority at a time when

it considered the matter in the abstract prior to the introduction of a particular issue.

In that context, TRC adopted a rule that defined “state budgetary process” as:

“state budgetary process” means the manner in 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.

TRC Rule 1.005

The content of this rule makes it apparent that TRC did not envision that it possessed the power to make changes to substantive rights of individuals or

substantive powers of governmental entities, including the Legislature, in the guise of proposing a revision to the state budgetary process. TRC's rule is entirely in keeping with the meaning the Supreme Court has consistently given the term "state budget process." See, e.g., *Martinez v. Florida Legislature*, 542 So.2d 358, 359 n.2 (Fla. 1989)("Ch. 216, Fla. Stat. (Supp.1988), sets out the general state budget process. Under it state agencies submit budget requests to the legislature and to the Executive Office of the Governor by November 1 of each even-numbered year."); and, *Thompson v. Graham*, 481 So.2d 1212, 1214 (Fla. 1985)("Chapter 216, Florida

Statutes (1983), sets out the general state budget process.”). This meaning is also consistent with the meaning the first TRC gave to the term “state budgetary process” when it proposed the State Budgeting, Planning and Appropriation Processes Amendment in 1992. The people of Florida adopted that proposal and it now exists as Article III §19 Florida Constitution. Section (a)(1) of that amendment provides constitutional guidance as to the meaning of the term:

§ 19. State Budgeting, Planning and Appropriations Processes(a) Annual budgeting.--

(1) General law shall prescribe the adoption of annual state budgetary and planning processes and require that detail reflecting the annualized costs of the state budget and reflecting the nonrecurring costs of the budget requests shall accompany state department and agency legislative budget requests, the governor's recommended budget, and appropriation bills.

Article III §19(a)(1) Florida Constitution. This provision has to do only with process and not with substance.

It is in this context of TRC's specific and limited powers that the validity of TRC's Religious Freedom Amendment and TRC's Education Proposal must be adjudicated.

C. TRC Possessed No Authority to Propose the Religions Freedom Amendment.

As quoted above, in regard to making proposals, TRC has authority to:

4. "propose to the legislature any recommended statutory *changes related to the taxation or budgetary laws* of the state," and

5. 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*.

(Italics added.) The authority delegated in item 1 above is not at issue in this litigation. Similarly, neither of the proposed amendments considered herein purports to be “dealing with taxation.” That leaves only TRC’s authority to propose “a revision of this constitution or any part of it dealing with *taxation or the state budgetary process*” as a potential source of authority.

The Religious Freedom Amendment proposes to amend Article I §3 Florida Constitution, as follows:

SECTION 3. Religious freedom.--There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. An individual or entity may not be barred from participating in any public program because of religion. ~~No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.~~

(Underlining and strike out in the amendment.) Initially, one must observe that this measure is found in the Florida Declaration of Rights, and not in Article VII (Finance and Taxation), Article III §19 (State Budgeting, Planning and Appropriations Processes), Article VIII (Local Government) or Article XI (Education: which includes §6, State school fund).

On the face of things it is apparent that TRC has exceeded its authority in proposing a change to the Florida Declaration of Rights. This conclusion could be rebutted only by a showing that the proposal would strongly affect processes that

are available to Florida governments to permit them to create and implement budgets in an effective and efficient manner. This cannot be shown because the language the proposal seeks to add to Article I §3 - An individual or entity may not be barred from participating in any public program because of religion. - has no budgetary function whatsoever. It is plainly and only a religious freedom civil rights measure. Its function and effect are to expand this religious freedom measure that already exists in the Declaration of Rights:

No person shall be deprived of any right because of race, *religion*, national origin, or physical handicap.

Article I §2 Basic Rights. (Italics supplied.)

In short, if adopted, the TRC's Religious Freedom Amendment will add a second religious freedom provision to the Florida Declaration of Rights. This Court has often stated that added provisions to the Constitution must be given meaning. *City of Jacksonville v. Continental Can Co.*, 151 So. 488, 489-90 (1933) ("In construing provisions of the constitution, each provision must be given effect,

according to its plain and ordinary meaning.”); “*Smathers v. Smith*, 338 So.2d 825, 828 (Fla. 1976) (“We have consistently held that different words in amendatory articles of the Constitution must be read differently, and each given vitality.”) It necessarily follows that TRC’s Religious Freedom Amendment must have a primary civil rights purpose. By contrast, just as plainly, it has nothing to do with the budgetary process of the state. Accordingly, TRC plainly has no authority to propose this amendment and it must be removed from the ballot.

The second aspect of TRC's Religious Freedom Amendment proposal is to strike the following language from Article I§3:

~~No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.~~
(Strike through in proposal.) On the face of it, this language can be seen as the removal of a trivial (in terms of amounts of expenditures) limitation upon governments' power to spend money to aid religion. Even then, however, it is a minor fiscal matter and could not be seen as within TRC's authority to propose

revisions to restructure governments' power to fund the state's needs. More important, it does not purport to revise the *state budgetary process* either under the TRC Rule 1.005 definition of that term, quoted above, or under any reasonable definition of the term. The Legislature's power to make decisions which programs to fund and in what amounts is a *substantive* power and *not* a budgetary process. Consequently, TRC's Education Proposal is plainly a revision of the substantive powers of government and not of the processes through which the powers are

exercised. Accordingly, TRC had no power to propose the removal of the stuck through words from Article I §3 and it must be removed from the ballot.

D. TRC Possessed No Authority to Propose the Education Proposal.

TRC's Education Proposal is also beyond its powers. It proposes to amend Articles IX (Education) and Article XII (Schedule) in three sub-parts. First, the measure would revise Article IX §1, in part,³ as follows:

³The measure also proposes minor revisions in the designations within the Article IX Section I that need not be addressed.

ARTICLE IX SECTION 1. Public funding of education.--(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. This duty shall be fulfilled, at a minimum and not exclusively, through adequate ~~Adequate~~ provision ~~shall be made~~ by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions higher learning and other public education programs that the needs of the people may require. Nothing in this subsection creates an entitlement to a publicly-financed private program.

(Underlining and strike out in the proposal). In short, this proposal has no effect on constitutional powers to tax and nothing to do with the manner in which state budgets are created and administered, i.e., the “state budgetary process.” Instead, without any reference to taxation or budgetary processes, it purports to modify the substantive duty of the state in regard to funding education. It plainly is beyond TRC’s authority and must be removed from the ballot.

Second, TRC’s Education Proposal proposes to revise Article §IX (Education) by adding Section 8, as follows:

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.

(Underlining in proposal.) This measure purports to revise the *substantive power* of the Legislature to allocate funds among the various needs of the schools -i.e., At least sixty-five percent of the school funding received by school districts shall be

spent on classroom instruction, rather than on administration - and does not deal with the process by which the budgetary allocations are made. Hence, it constitutes an invasion upon the Legislature's power to make substantive decisions as to what measures to allocate funds among the needs of the education, but provides no revision of the processes by which budgets are created and administered. This measure is plainly beyond the constitutional authority of TRC to propose revisions to the *state budgetary process* and must be removed from the ballot.

Finally, TRC's Education Proposal proposes to revise Article XII (Schedule) by adding Section 28, as follows:

ARTICLE XII SCHEDULE

Section 28. Requiring sixty-five percent of school funding for classroom instruction.--The requirement that sixty-five percent of school funding received by school districts be spent on classroom instruction in Section 8 of Article IX, and this section, shall first be applicable to school years commencing during the state fiscal year 2009-2010.

(Underlining in the amendment.) This measure is beyond the power of TRC to place upon the ballot for the same reasons that the proposal it purports to implement

is beyond TRC's power. Accordingly, this proposal must also be removed from the ballot.

CONCLUSION

For reasons stated above, Amici respectfully submit that TRC had no authority to propose TRC's Religious Freedom Amendment and TRC's Education Proposal for placement on the 2008 general election ballot and Defendant Browning had no authority assign the measures ballot placement. Accordingly, Amici

respectfully submit that this Court should enter an order providing the relief sought in the complaint, namely:

- Holding that TRC has no authority to file the TRC Religious Freedom proposal with Browning for a revision of the Florida Constitution;
- Ordering Browning to strike and remove the TRC Religious Freedom proposal from the 2008 general election ballot;

- Enjoining Browning not to compile returns on the TRC Religious Freedom proposal in the event the measure is not removed from the 2008 general election ballot;
- Enjoining Browning not to incorporate the TRC Religious Freedom proposal into the official version of the Florida Constitution in the event it should be voted upon and approved by the voters prior to obtaining other relief requested herein;

- Ordering Browning to expunge the TRC Religious Freedom proposal from the official records of the state and from the Florida Constitution in the event it should be incorporated into the Florida Constitution prior to obtaining other relief requested herein;
- Providing other necessary or proper relief to prevent the TRC Religious Freedom proposal from becoming or remaining a part of the Florida Constitution; and
- Providing other necessary or proper relief.

CERTIFICATE OF SERVICE

I certify that a copy of this document was placed in the U.S. mail on August 21, 2008 addressed to Blaine H. Winship, Esq., Assistant Attorney General, Counsel for Kurt S. Browning, Secretary of State, The Capitol, 400 S. Monroe Street, Suite PL-01, Tallahassee, Florida, 32399-1050, Ronald G. Meyer, Esquire, Meyer and Brooks, P.A., Post Office Box 1547 (32302), 2544 Blairstone Pines Drive, Tallahassee, FL 32301, and Stephen H. Grimes, attorney or interveners, P. O. Box 810, Tallahassee, Fl. 32302-0810.

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