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IN THE SUPREME COURT OF FLORIDA

LEAGUE OF WOMEN VOTERS
OF FLORIDA, *et al.*,

Appellants,

Case No.: SC14-1905
L.T. Nos.: 2012-CA-00412
2012-CA-00490

v.

KEN DETZNER, *et al.*,

Appellees.

REPLY BRIEF OF THE FLORIDA STATE CONFERENCE OF NAACP BRANCHES TO CROSS-APPELLANT'S INITIAL BRIEF

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Florida voters have a constitutionally-guaranteed right to amend their state constitution, even when those alterations may affect Congressional redistricting. Any argument to the contrary has been rejected by every federal court to consider the issue, including the United States Supreme Court. For the reasons explained below, this Court should reject any argument that the Elections Clause of the U.S. Constitution renders Amendment 6 invalid.

Contrary to Cross-Appellants' assertion, the Elections Clause case that the Supreme Court will hear this term is factually and legally distinguishable from the instant case, and the Court's decision will not have any impact on Cross-Appellants' position. In *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 997 F. Supp. 2d 1047 (D. Ariz.), appeal docketed, No. 13-1314 (2014), the Court is hearing a challenge to the law, established by voter referendum, creating a commission to draw new congressional districts. In that case, the Court accepted review to consider only the limited questions of whether the Elections Clause of the United States Constitution and 2 U. S. C. § 2a(c) permit Arizona's use of a commission to adopt congressional districts and whether the Arizona legislature has standing to bring the suit. 135 S. Ct. 46. First, if the Court finds the Arizona legislature lacks standing to bring the suit, Cross-Appellants would likewise lack standing to assert their Election Clause argument.

Second, even if the Court found that using commissions to draw congressional redistricting plans did violate the Elections Clause, such a ruling would have no impact on this case. In the Arizona case, appellants argue that the Elections Clause prevents the complete divestment of redistricting authority from the legislature. In contrast, Florida voters left the authority to draw congressional redistricting maps in legislative hands and only created, through Amendment 6, the guidelines by which the legislature should exercise that authority. Therefore, the issue of whether the Elections Clause prohibits the establishment of redistricting commissions is totally irrelevant to this instant case.

Moreover, the Eleventh Circuit's decision in *Brown v. Secretary of State of Florida*, 668 F.3d 1271 (11th Cir. 2012), is correct and directly dictated by Supreme Court precedent. The Eleventh Circuit was guided by the Court's decision in *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916). In Ohio, the state constitution guaranteed voters the right to veto any law enacted by the legislature via the referendum process. *Id*. at 566. The voters in Ohio exercised this authority to veto the legislatively-enacted congressional redistricting plan. The Supreme Court held that this use of the referendum power was constitutional under the Elections Clause. *Id*. at 570.

The Court unequivocally stated that, "so far as the state had the power to do it, the referendum constituted a part of the state Constitution and laws, and was

contained within the legislative power." *Id*. at 568. The Court rejected the argument that using this referendum power to veto a redistricting plan violated the Elections Clause or was in anyway an illegitimate use of that citizen-vested power. *Id*. at 569. Recognizing that the referendum was "in the scope of the legislative power," the Court also declared that a challenge to referendum power in the hands of voters is non-justiciable. *Id.* Likewise, in the instant case, the Florida Constitution guarantees its citizens the right to amend the state constitution through the initiative process. And the citizens' decision to use that power to proscribe rules for redistricting is indistinguishable from the case in *Hildebrandt*.

Thus, the Florida NAACP respectfully urges this Court to reject Cross-Appellants' claim that the Elections Clause renders Amendment 6 invalid and unenforceable.

DATED this 9th day of January, 2015.

Respectfully submitted,

_/s/ Allison J. Riggs____________

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing notice was served by electronic transmission on January 9, 2015, to the persons listed on the attached Service List.

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210.

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