

SC24-1098

---

---

**In the Supreme Court of Florida**

---

FLORIDIANS PROTECTING  
FREEDOM, INC., ET AL.,  
*Petitioners,*

*v.*

KATHLEEN C. PASSIDOMO, ET AL.,  
*Respondents.*

---

ON PETITION FOR A WRIT OF QUO WARRANTO

---

**APPENDIX TO RESPONSE TO  
PETITION FOR A  
WRIT OF QUO WARRANTO**

---

ASHLEY MOODY  
*Attorney General*

Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399  
*daniel.bell@myfloridalegal.com*

HENRY C. WHITAKER (FBN1031175)  
*Solicitor General*

DANIEL W. BELL (FBN1008587)  
*Chief Deputy Solicitor General*

DAVID M. COSTELLO (FBN1004952)  
*Deputy Solicitor General*

MYLES SEAN LYNCH (FBN1054083)  
*Assistant Solicitor General*

*Counsel for Respondents*

*(Additional counsel on signature  
page)*

August 2, 2024

---

---

**Index**

<b>Document</b>	<b>Page(s)</b>
Defendants’/Respondents’ Consolidated Opposition to Plaintiffs’ Summary Judgment Motion, Response to Order to Show Cause, and Motion to Dismiss, May 28, 2024, .....	3
Notice of Appeal, June 10, 2024, .....	27
Opinion, 1D2024-1485, July 22, 2024, .....	31
Notice to Invoke Discretionary Jurisdiction, July 24, 2024, .....	35
Petitioners’ Notice of Voluntary Dismissal, July 31, 2024, .....	41
Appellee’s Expedited Motion to Relinquish Jurisdiction, July 17, 2024, .....	43
Appellants’ Emergency Motion to Reinstate Automatic Stay and Request for Administrative Stay, June 11, 2024, .....	54
Appellees’ Response to Order to Show Cause and to Appellants’ Emergency Motion to Reinstate Automatic Stay, June 14, 2024 .....	100

**IN THE SECOND JUDICIAL CIRCUIT COURT  
IN AND FOR LEON COUNTY, FLORIDA**

**FLORIDIANS PROTECTING FREEDOM,  
INC., and SARA LATSHAW,**

*Plaintiffs/Petitioners,*

v.

**FINANCIAL IMPACT ESTIMATING  
CONFERENCE, et al.,**

*Defendants/Respondents.*

Case No. 2024-CA-558

**DEFENDANTS'/RESPONDENTS'<sup>1</sup> CONSOLIDATED OPPOSITION TO PLAINTIFFS'  
SUMMARY JUDGMENT MOTION, RESPONSE TO ORDER TO SHOW CAUSE, AND  
MOTION TO DISMISS**

**INTRODUCTION**

Plaintiffs contend that the financial impact statement approved by the Financial Impact Estimating Conference is unlawful and ask the Court to remand it to the conference for redrafting and to enjoin it from appearing on the ballot. That contention, reflected in Counts I–III of the amended complaint, should be dismissed as moot and fails in any event because the Court has no power to grant any such relief. Florida law provides that “[i]f, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the . . . financial impact statement,” it “shall be deemed approved for placement on the ballot.” § 100.371(13)(e)2., Fla. Stat. Because the Florida Supreme Court no longer issues an “advisory opinion” regarding a financial impact statement, it is an irrefutable fact today that the statement will be deemed approved by operation of law at “5 p.m. on the 75th day before the election.” *Id.*; *see Advisory Op.*

---

<sup>1</sup> The Attorney General represents all defendants and respondents except for the 67 supervisors of elections.

to the Att’y Gen. *re Raising Florida’s Minimum Wage*, 285 So. 3d 1273, 1277 (Fla. 2019). The First District recently held as much, refusing “to rewrite” the statute to account for the Supreme Court’s decision to do away with advisory opinions in this area. *Fla. Fin. Impact Estimating Conf. v. All Voters Vote, Inc.*, 328 So. 3d 1149, 1150 (Fla. 1st DCA 2021). Accordingly, any relief granted by the Court would not “have any operative effect.” *Id.*

Regardless, nothing in the relevant statutes gives Plaintiffs a cause of action in circuit court to challenge a financial impact statement. To the contrary, the statutes contemplate just one review process—a unitary request for an advisory opinion sought by the Attorney General in the Florida Supreme Court. *See generally* § 100.371(13), Fla. Stat.

Plaintiffs also petition for a writ of mandamus, claiming that Respondents have a clear legal duty to place certain design features on the ballot between the ballot summary and the financial impact statement, such as a “subtitle or introductory signal.” Pet. at 18, 27. But the statute just requires the financial-impact statement to be “separately contained,” § 100.371(13)(d), Fla. Stat., and it is, because it is contained in a separate paragraph following the ballot summary. The discretionary choice among the many possible ways to “separately contain” a statement is not the proper subject of mandamus relief.

## STATEMENT OF THE CASE AND FACTS

### A. Legal background

Amendments to the Florida Constitution may be proposed by joint resolution of the Legislature, by the Constitution Revision Commission, by constitutional convention, by the Taxation and Budget Reform Commission, or by citizen’s initiative. *See* Art. XI, §§ 1–6, Fla. Const. Regardless of how an amendment is proposed, it is effective only upon ratification by the Electorate. *See id.* Art. XI, § 5. But citizens’ initiatives are unique in several ways.

First, before a citizens' initiative can go for a vote, the summary of the amendment that will appear on the ballot is subject to judicial review to ensure, among other things, that its "chief purpose" is "clear and unambiguous." § 101.161(1), Fla. Stat. The Constitution provides a single avenue of review of "the validity of [the] initiative petition": "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." Art. IV, § 10, Fla. Const. And the Florida Supreme Court has original jurisdiction, "when requested by the attorney general pursuant to the provisions of Section 10 of Article IV," to "render an advisory opinion of the justices, addressing issues as provided by general law." *Id.* Art. V, § 3(b)(10). That jurisdiction is "exclusive." *Roberts v. Brown*, 43 So. 3d 673, 678 (Fla. 2010).

Second, for citizens' initiatives—and them alone—"[t]he legislature shall 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." Art. XI, § 5(c), Fla. Const. In compliance with that constitutional directive, the Legislature has established a "Financial Impact Estimating Conference" ("FIEC"), which "may be appointed for each initiative." § 100.371(13)(c)1., Fla. Stat. The FIEC must "complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments and the overall impact to the state budget resulting from the proposed initiative." *Id.* § 100.371(13)(a). "The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1)." *Id.* § 100.371(13)(d).

Like the summary of the proposed amendment, the financial impact statement must be "clear and unambiguous." *Id.* § 100.371(13)(c)2. For years, the Florida Supreme Court reviewed

the clarity of an initiative’s financial impact statement through the same process as its ballot summary—as an exercise of the Court’s original jurisdiction to issue an advisory opinion under Art. V, § 3(b)(1). See *Advisory Op. to the Att’y Gen. re Referenda Required for Adoption*, 963 So. 2d 210, 210 (Fla. 2007). In 2019, however, the Court overruled those decisions and held that it lacks jurisdiction to issue an advisory opinion about the financial impact statement. *Advisory Op. to the Att’y Gen. re Raising Florida’s Minimum Wage*, 285 So. 3d 1273, 1277 (Fla. 2019). Because the “issue [wa]s not before” the Court, it left for another day the possibility of “a challenge to a financial impact statement in circuit or county court, by declaratory judgment action under current law.” *Id.* at 1281 n.4.

The Legislature, too, had long assumed that the Supreme Court’s jurisdiction to issue an advisory opinion regarding the “validity of any initiative petition,” Art. IV, § 10, Fla. Const., extended to the financial impact statement. Accordingly, the relevant statutes required the FIEC to “submit the [financial impact] statement to the Attorney General,” § 100.371(13)(c)2., Fla. Stat., who is responsible for requesting an “advisory opinion” of the Supreme Court as to the validity of the initiative petition, *id.* § 16.061(1). And in the context of that advisory opinion proceeding before the Supreme Court, the statute provided that “the court” could remand the financial impact statement if it found the statement to be invalid. *Id.* § 16.061(3)

The statutory scheme addressed in detail the Supreme Court’s review of the statement. The statement would be judicially approved for ballot placement if the Supreme Court issued an “advisory opinion” approving it or if the Supreme Court failed to issue an advisory opinion by 75 days before the election. § 100.371(13)(e)2., Fla. Stat. A redraft following the Supreme Court’s rejection of an initial statement could likewise be approved by an advisory opinion of the Supreme Court by 75 days before the election. § 100.371(13)(c)3., Fla. Stat. And if the Supreme Court did

not timely approve a redraft after rejecting the statement, a statement that “[t]he impact of this measure, if any, has not been determined at this time” would replace it on the ballot. *Id.* In sum, Section 100.371(13) set forth what happened to a financial impact statement following every possible outcome flowing from Supreme Court review: approval, no timely approval, rejection and approval of a redraft, and no timely approval of a redraft after rejection.

Those statutory provisions continue to contemplate just one means of judicial review for a financial impact statement—an advisory opinion of the Florida Supreme Court. And although the Florida Supreme Court has since decided that it does not have jurisdiction to issue such advisory opinions, the statute continues to dictate that, “[i]f, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference . . . , the financial impact statement shall be deemed approved for placement on the ballot.” *Id.* § 100.371(13)(e)2.

In 2020, a citizens’ initiative sponsor tested the question left open in *Minimum Wage* by challenging a financial impact statement in circuit court. The circuit court granted the sponsor’s motion for summary judgment, “holding that the . . . statement was unclear and was ambiguous,” and remanded it to the FIEC. *See Fla. Fin. Impact Estimating Conf. v. All Voters Vote, Inc.*, 328 So. 3d 1149, 1149 (Fla. 1st DCA 2021). The First District, however, vacated that judgment and remanded to the circuit court with instructions to dismiss the complaint as moot. *Id.* at 1150. The court explained that the financial impact statement approved by the FIEC had been “automatically . . . approved for placement on the ballot” because the Supreme Court had not issued (and would not issue, in light of *Minimum Wage*) an advisory opinion by 75 days before the election. *Id.* (quotations omitted). As a result, “[t]he trial court’s judgment no longer [could] have any operative effect, so the case [wa]s moot.” *Id.* The Court also expressed “considerable doubt

about the trial court’s authority to grant the relief it did in the first place,” citing a case dismissing a declaratory judgment action that sought an improper advisory opinion. *Id.* at 1150 n.1.

**B. Factual background**

Floridians Protecting Freedom, Inc. (“FPF”) sponsored a citizens’ initiative titled “Amendment to Limit Government Interference with Abortion.” The amendment, if passed, would add the following language to Florida’s Constitution:

Limiting government interference with abortion.—Except as provided in Article X, Section 22, no law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient’s health, as determined by the patient’s healthcare provider.

The Secretary of State submitted the amendment to the Attorney General and to the FIEC on September 7, 2023; in turn, the Attorney General petitioned the Florida Supreme Court for an advisory opinion regarding the validity of the initiative petition, and the FIEC began its analysis.

While the FIEC was analyzing the financial impact of the proposed amendment in fall 2023, the Florida Supreme Court was considering the constitutionality of chapter 2022-69, § 4, Laws of Fla. (codified at § 390.0111(1), Fla. Stat. (2022)), which prohibits most abortions from being performed if the gestational age of the child is more than 15 weeks. *Planned Parenthood of Sw. & Cent. Fla. v. State*, No. SC2022-1050, --- So. 3d ---, 2024 WL 1363525, at \*1 (Fla. Apr. 1, 2024). Because of chapter 2023-21, §§ 4, 9, Laws of Fla. (codified at § 390.0111(1), Fla. Stat. (2023)), if the Supreme Court upheld that statute in *Planned Parenthood*, Florida law would prohibit most abortions from being performed if the gestational age of the child were more than 6 weeks. Before the Supreme Court decided that case, the FIEC timely issued a financial impact statement on November 16, 2023, or seventy days after receiving the initiative from the Secretary of State. As a result of the pending litigation, the FIEC concluded that the financial impact of the

proposed amendment could not be determined, and issued the following financial impact statement:

The proposed amendment was analyzed late in the 2023 calendar year. At that time, litigation was pending before the Florida Supreme Court challenging the Legislature's 2022 enactment of a prohibition on most abortions being performed if the gestational age of the fetus is more than 15 weeks. If the Court upholds the 2022 law, a 2023 law further reducing the 15 weeks to 6 weeks will take effect 30 days later. This could lead to additional litigation. In order to measure the proposed amendment's impact on state and local government revenues and costs, a reasonable expectation of what the state of the law will be at the time of the election is required. Because there are several possible outcomes related to this litigation that differ widely in their effects, the impact of the proposed amendment on state and local government revenues and costs, if any, cannot be determined.

On April 1, 2024, the Supreme Court approved the initiative petition for ballot placement; it also upheld the constitutionality of chapter 2022-69, § 4. *Advisory Op. to Att'y Gen. Re: Limiting Gov't Interference with Abortion*, No. SC2023-1392, --- So. 3d ---, 2024 WL 1363899, at \*1 (Fla. Apr. 1, 2024); *Planned Parenthood*, 2024 WL 1363525, at \*1.

### **C. Procedural history**

FPF sued in this Court, asserting that the financial impact statement violates Section 100.371 and Article XI, Section 5 of the Florida Constitution. FPF requested a declaration to the same effect; requested that the Court remand the statement to the FIEC for redrafting; and requested that the Court enjoin the Secretary of State from allowing the statement to appear on the ballot. FPF then moved for summary judgment on those claims, and the Court set a summary judgment hearing for June 5, 2024.

Plaintiffs then filed an amended complaint, adding both a plaintiff and dozens of new defendants (Florida's supervisors of elections), and a request for a declaratory judgment that Florida's formatting of the ballot summary and financial impact statement violates Section 100.371(13)(d). Plaintiffs did not move for summary judgment on this new claim. Plaintiffs also

seek a writ of mandamus requiring the Secretary to change the format of the ballot summary and financial impact statement. The Court issued an order to show cause why mandamus should not issue and set a hearing on the mandamus petition for the same date as the summary judgment hearing.

## **LEGAL STANDARDS**

Florida has adopted the federal summary judgment standard. *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d 72, 74 (Fla. 2021). “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fla. R. Civ. P. 1.510(a).

“In order to be entitled to a writ of mandamus the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.” *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000).

### **I. THIS COURT LACKS AUTHORITY TO GRANT ANY OF THE RELIEF PLAINTIFFS SEEK.**

The First District recently indicated its “considerable doubt about [a circuit] court’s authority” to order that a financial impact statement be remanded for revision by the FIEC. *Fla. Fin. Impact Estimating Conf. v. All Voters Vote, Inc.*, 328 So. 3d 1149, 1150 n.1 (Fla. 1st DCA 2021). The First District’s doubt is well-founded, and Plaintiffs’ arguments that this Court has the authority to grant the relief they seek are meritless. The Court should dismiss Plaintiffs’ complaint because this case is moot and because the Court lacks the authority to remand to the FIEC; to enjoin the statement from appearing on the ballot; or to issue a declaratory judgment.

#### **A. This case is moot.**

If a “trial court’s judgment no longer can have any operative effect, . . . the case is moot and must be dismissed.” *Id.* at 1150. This case is moot for a very simple reason: The Court cannot

grant Plaintiffs any effectual relief. If “the Supreme Court has not issued an advisory opinion on the initial financial impact statement” by the 75-day deadline, “the financial impact statement shall be deemed approved for placement on the ballot.” § 100.371(13)(e)2., Fla. Stat. Because the Florida Supreme Court held in *Minimum Wage* that it lacks jurisdiction to issue an advisory opinion regarding the validity of a financial impact statement, the Court will never issue an advisory opinion on the statement, let alone before the 75-day deadline. “By operation of the Legislature’s directive, then, the [financial impact statement] automatically is ‘approved for placement on the ballot’” after the 75-day deadline. *All Voters Vote*, 328 So. 3d at 1150. That is precisely why the First District vacated a circuit court’s remand to the FIEC just three years ago. *Id.*

So “[a]t this point, a judicial determination by this Court would not grant any effectual relief.” *Roe v. Dep’t of Health*, 312 So. 3d 175, 177 (Fla. 1st DCA 2021). Even if the Court remanded to the FIEC or enjoined the Secretary from placing the statement on the ballot, the financial impact statement will automatically be approved for ballot placement by operation of statute, superseding the Court’s order. In other words, any attempt by a court other than the Supreme Court to reject or approve a financial impact statement, as the First District held in *All Voters Vote*, is *automatically* overridden by statute, rendering this Court’s review and any remand a nullity. § 100.371(13)(e)2., Fla. Stat.

Plaintiffs might contend that this case is not yet moot because the 75-day mark has not been reached. But the Court cannot grant any effectual relief in the meantime. *State Farm Fla. Ins. Co. v. Bellamy*, 302 So. 3d 1081, 1082 (Fla. 1st DCA 2020) (“Because this Court is unable to grant any effectual relief, this case is moot.”). Regardless of any order of this Court, the Supreme Court has already made clear it will not issue an “advisory opinion” about the statement, so it is beyond

dispute today that the statement will be deemed approved at the 75-day mark. *See All Voters Vote*, 328 So. 3d at 1150.

**B. This Court lacks jurisdiction to review the financial impact statement, let alone remand the statement to the FIEC.**

Plaintiffs ask the Court to remand the financial impact statement to the FIEC for redrafting. MSJ at 1. But the statutes relating to financial impact statements do not give any court other than the Florida Supreme Court the authority to review a financial impact statement, much less to remand one to the FIEC. Nothing in the statutes creates a private cause of action to sue in any court, let alone specifically in the circuit courts. That was a conscious choice. The statutes are clear that a financial impact statement should be reviewed under the Supreme Court’s advisory opinion jurisdiction for citizens’ initiatives, and—when the statutes were drafted—the Supreme Court had long held that such review was “exclusively within [its] authority” and that “there [wa]s no jurisdiction in any circuit court to” opine on an initiative petition “in the form of a declaratory judgment.” *Roberts v. Brown*, 43 So. 3d 673, 680 (Fla. 2010); *id.* at 679 (citing cases about the Court’s exclusive jurisdiction going back to 1994).

Consistent with that background, nothing in the statutes related to the financial impact statement creates a judicial review process at all. Instead, the statutes simply take it as given that the Supreme Court will review the financial impact statement as part of the independently existing review process for citizens’ initiatives, which the Court had already determined was exclusive of any other review, including by a circuit court. Thus, when the Attorney General receives an initiative petition from the Secretary of State, the Attorney General is required by Article IV, Section 10 of the Florida Constitution to request an advisory opinion from the Florida Supreme Court. Section 16.061(1) likewise requires the Attorney General to make such a request to “the Supreme Court,” and “[a]ny fiscal impact statement that *the court* finds not to be in accordance

with s. 100.371” shall be remanded to the FIEC. § 16.061(3), Fla. Stat. (emphasis added). Section 100.371, in turn, provides that if *the Florida Supreme Court* concludes that the financial impact statement is defective, it must remand to the FIEC for redrafting. *Id.* § 100.371(13)(e)1. (“Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the [FIEC] for redrafting, provided the court’s advisory opinion is rendered at least 75 days before the election . . . .”). But if “*the Supreme Court* has not issued an advisory opinion on the initial financial impact statement” by the 75-day deadline, the statement “shall be deemed approved for placement on the ballot.” *Id.* § 100.371(13)(e)2. (emphasis added). And if “*the Supreme Court* has rejected the initial submission by the [FIEC] and no redraft has been approved by *the Supreme Court*” by the 75-day deadline, only a statement that the impact cannot be determined appears on the ballot. *Id.* § 100.371(13)(c)3. (emphasis added).

That combination of constitutional provisions and statutory requirements sends financial impact statements to the Florida Supreme Court alone. No part of this reticulated review process authorizes any court other than the Florida Supreme Court to review the statement, much less remand the statement to the FIEC.

Section 100.371 clearly and conclusively delineates the fate of a financial impact statement in every scenario—and none of them includes a remand or other relief by a circuit court. *First*, the financial impact statement can be approved: if the Supreme Court approves it for placement by way of an advisory opinion; if the Supreme Court does not issue an advisory opinion by 75 days before the election (in which case the statement is approved by operation of law); or if the Supreme Court remands the statement and approves a redraft by that time. § 100.371(13)(c)3., Fla. Stat.; *id.* § 100.371(13)(e)2. *Second*, if the Supreme Court remands a financial impact statement prepared

by the FIEC and does not approve a redraft by 75 days before the election, it can be replaced by a statement that the impact has not been determined. *Id.* § 100.371(13)(c)3. After *Minimum Wage*, of course, the statement is automatically approved once the 75-day mark is hit because the Supreme Court will no longer issue advisory opinions on financial impact statements.

The Legislature, in short, followed the Supreme Court’s lead in leaving review exclusively in the hands of that Court, while putting forth a decision tree mandating the outcome in every scenario (Supreme Court approval, no Supreme Court advisory opinion, Supreme Court remand with approval of a redraft, Supreme Court remand with no approval of a redraft). A circuit court cannot inject itself into this reticulated scheme by remanding a purportedly inadequate financial impact statement. Neither this Court nor the First District “has the authority to rewrite a component of the Legislature’s integrated scheme set out in [Section 100.371(13)] to reflect” the Supreme Court’s determination that it lacks original jurisdiction by picking up the slack. *All Voters Vote*, 328 So. 3d at 1150.

At bottom, Plaintiffs’ assertion of jurisdiction rests on the thinnest of reeds: Section 100.371(13)(c)2. provides that “[a]ny financial impact statement that ‘a court’ finds not to be in accordance with this section shall be remanded solely to the [FIEC] for redrafting.” But that language plainly does not create a cause of action. Rather, it anticipates that judicial review is provided for elsewhere (as believed at the time, in the constitutional provisions establishing the advisory opinion process), and it limits any available remedies to a “reman[d] solely to the” FIEC. *Id.*

The singular use of the indefinite article on which Plaintiffs hang their hat is smack in the middle of Section 100.371(13)’s comprehensive process for review by the Florida Supreme Court. That includes language in the *same subparagraph* about submission of the statement to the

Attorney General, whose only role in the process is to submit the statement to the Florida Supreme Court). *See* § 100.371(13)(c)2., Fla. Stat. (requiring the FIEC to immediately submit the statement to the Attorney General); *id.* § 16.061(3) (indicating that the Attorney General would submit the statement to the Supreme Court). And it is followed immediately thereafter by a subparagraph explaining what happens when a financial impact statement is remanded to the FIEC: “If the *Supreme Court* has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the *Supreme Court*” by the 75-day deadline, the statutory language of indeterminacy appears on the ballot. *Id.* § 100.371(13)(c)3. (emphases added). In other words, Section 100.371(13)(c)3. provides crucial context for the “a court” language, establishing both which court remands to the FIEC and which court approves a redraft: the Supreme Court. Underscoring the point, Section § 16.061(3) provides that, after the Attorney General petitions the Supreme Court for an advisory opinion on a citizen initiative, “[a]ny fiscal impact statement that *the court* finds” unlawful “shall be remanded” to the FIEC (emphasis added). In context, the reference to “a court” can only mean the Supreme Court. *See Advisory Op. to Governor re Implementation of Amend. 4*, 288 So. 3d 1070, 1079 (Fla. 2020) (“It is a fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.”) (cleaned up).

Plaintiffs also point to the Supreme Court’s opinion in *Minimum Wage*, where in footnotes the Court stated that it was “not clear . . . that the Legislature contemplated that this Court’s review authority be exclusive” and that its decision did not “preclude” a challenge in circuit court. 285 So. 3d at 1279 n.2; 1281 n.4. But in making those observations, the Court relied solely on the “a court” language in Section 100.371(c)2. And in any event, the Court “note[d] that that issue is not before us and [we] express no definite opinion on the validity of such an action.” *Id.* at 1281 n.4.

*Minimum Wage* thus sheds no light on the issue other than to say that “the Legislature has the authority to revise the statutes to provide for review in a court not constrained by [the Court’s] constitutionally limited original jurisdiction.” *Id.* at 1280–81. The Legislature has not exercised that authority.

**C. This Court lacks the authority to issue a declaratory judgment or injunction.**

Finally, Plaintiffs request a declaratory judgment that the financial impact statement violates Section 100.371 and the Florida Constitution and an injunction precluding the statement from appearing on the ballot. Those forms of relief, too, would be ineffectual under *All Voters Vote*, *see supra* pp. 8–10, and foreclosed in any event by the “exclusive” review contemplated by the relevant statute, *see supra* pp. 10–13.

In addition, a claim that the government has not complied with its own statutory requirements—here the requirement of a “clear and unambiguous statement”—is not justiciable unless the “[t]he Legislature has . . . provided a cause of action in the statute to afford [Plaintiffs] a judicial remedy.” *Moon-Vileno v. Fla. Ass’n of Court Clerks, Inc.*, 383 So. 3d 128, 131 (Fla. 1st DCA 2024). Here, as discussed above, the Legislature has not done that—it instead drafted a statutory scheme premised on the Florida Supreme Court’s having original jurisdiction to issue an advisory opinion on the validity of such statements. The absence of a private cause of action challenging the financial impact statement was deliberate; the sole mechanism of review is the advisory opinion process initiated by the Attorney General. When the Legislature intended to create a private cause of action, it knew how to do so. *See* § 100.371(3)(b), Fla. Stat. (“A citizen may challenge a petition circulator’s registration under this section by filing a petition in circuit court.”).

Plaintiffs’ request for a declaratory judgment is no substitute for a proper cause of action. As the First District has explained, when “[t]he Legislature has not provided a cause of action in

the statute,” the Declaratory Judgments Act does not supply one. *Moon-Vileno*, 383 So. 3d at 131–32. In other words, the Act does not allow “an individual [to] sue for declaratory relief alleging a violation of any statute under which he has no private right of action to enforce its provisions.” *MacNeil v. Crestview Hosp. Corp.*, 292 So. 3d 840, 843 (Fla. 1st DCA 2020). Rather, Plaintiffs seeking a declaratory judgment must plead some “other cause of action . . . that would show that a justiciable controversy exists on which to predicate a declaratory judgment claim.” *Id.* at 845. In the absence of such other cause of action, a declaratory judgment would be an “improper advisory opinion.” *Id.* In *All Voters Vote*, the First District pointed to this principle in expressing its “considerable doubt” that the trial court had the power to grant declaratory and injunctive relief regarding a financial impact statement “in the first place.” 328 So. 3d at 1150 n.1.

In short, “[a]bsent a showing of at least a colorable right which would be affected by the requested declaration, dismissal is required.” *Webster v. Inch*, 286 So. 3d 847, 848 (Fla. 1st DCA 2019). Plaintiffs have no cognizable injury on which to base their request for a declaratory judgment, so it must be rejected.

The Court lacks the power to grant the relief requested for another reason—“when challenging governmental action, the Florida Supreme Court has repeatedly held that citizens and taxpayers lack standing to challenge a governmental action unless they demonstrate either a special injury, different from the injuries to other citizens and taxpayers, or unless the claim is based on the violation of a provision of the Constitution that governs the taxing and spending powers.” *Liebman v. City of Miami*, 279 So. 3d 747, 751–52 (Fla. 3d DCA 2019) (quotation omitted). Plaintiffs have asserted no special injury that is distinct from the injuries to other citizens and taxpayers who have an interest in the financial impact statement’s validity. Nor could they: Plaintiffs assert that an invalid financial impact statement could somehow thwart the amendment’s

passage, but the sponsor of an amendment has no more legal interest in an amendment's passage than any other voter. That is why the Supreme Court's review of the ballot title and summary results in an advisory opinion, even though it can block ballot placement altogether. And any effect that the financial impact statement might have on a voter's decision is purely speculative.

Plaintiffs therefore seek an "improper advisory opinion" for that reason as well. *MacNeil*, 292 So. 3d at 845. As the Supreme Court explained, "[o]f necessity, a pre-election challenge to a citizen initiative proposed constitutional amendment is always in the nature and form of requesting an advisory opinion." *Roberts*, 43 So. 3d at 680. Litigation over a proposed constitutional amendment addresses "merely the possibility of legal injury based on purely hypothetical facts which have not arisen and are only contingent, uncertain and rest entirely on future possible facts." *Id.* But Plaintiffs cannot obtain an advisory opinion simply by styling it as a request for a declaratory judgment. *MacNeil*, 292 So. 3d at 845. That was also the Supreme Court's view when it reviewed the financial impact statement as part of its advisory opinion process. *See Roberts*, 43 So. 3d at 680. It is all the more true now that it is certain the financial impact statement will be approved for ballot placement 75 days before the election. *All Voters Vote*, 328 So. 3d at 1150.<sup>2</sup>

## **II. MANDAMUS RELIEF IS UNAVAILABLE.**

The petition for a writ of mandamus should likewise be denied. Petitioners contend that the financial impact statement is not "separately contained" as required by Section 100.371(13)(d).

---

<sup>2</sup> To the extent Plaintiffs contend that "the FIS violates the Florida Constitution," MSJ at 6, their claim is not cognizable. When the Supreme Court did review the validity of a financial impact statement, the Court was always clear that the scope of its review was whether "the financial impact statement . . . compl[ies] with section 100.371(6), Florida Statutes." *E.g., Advisory Opinion To Atty. Gen. Re Repeal Of High Speed Rail Amend.*, 880 So. 2d 628, 629 (Fla. 2004). The Constitution delegates to the "legislature" to "provide by general law . . . for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative." Art. XI, § 5(c), Fla. Const. The Constitution does not require that the statement appear on the ballot at all, let alone in any particular form. In any event, for the reasons discussed above, this Court has no authority to review the statement.

But the financial impact statement is indeed “separately contained”—it is contained in a separate paragraph following the ballot summary. Section 100.371 does not direct any particular method of separately containing the statement. As a result, Petitioners really request that the Court issue a writ of mandamus requiring the Secretary of State to separate the ballot summary and financial impact statement in some other way and offer the Court options from which it can choose—“through italics, asterisks, headings, and/or other devices.” Pet. 32. Petitioners’ request offering the Court choices unbound from any statutory text exemplifies the lack of any “indisputable legal duty” or “clear legal right.”

“In order to be entitled to a writ of mandamus the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.” *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000). Yet the Secretary of State does not have any legal duty—let alone an indisputable legal duty—to perform the action Petitioners request. Petitioners also have adequate alternative remedies to obtain the relief they seek.

A. At bottom, Petitioners are asserting that the Secretary of State has a clear legal duty to format ballots in the way that Petitioners prefer—or rather, in one of the many alternative ways that they suggest. But nothing in Section 100.371(13) or in any judicial precedent establishes any such duty to “separately contain” the statement in any particular way and certainly not by any of the methods Petitioners request. The financial impact statement is in fact “separately contained” exactly as required by Section 100.371(13). Moreover, it is Section 101.161(1) that more specifically governs how the ballot must look. And nothing in that statute dictates that the financial impact statement be separated “through italics, asterisks, headings, and/or other devices.” Pet. 32.

Historically, “[i]f the discharge of the duty requires the exercise of judgment or discretion the act is not ministerial and mandamus will not lie.” *City of Coral Gables v. State ex rel. Worley*, 44 So. 2d 298, 300 (Fla. 1950). That is because “[m]andamus lies to enforce a ministerial act. A ministerial act is distinguished from a judicial act in that in the former the duty is clearly prescribed by law, the discharge of which can be performed without the exercise of discretion.” *Worley*, 44 So. 2d at 300; *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996) (“A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.”). As the U.S. Supreme Court has explained, a ministerial act “is a precise course accurately marked out by law.” *Marbury v. Madison*, 5 U.S. 137, 158 (1803). To be clearly and precisely prescribed by law, the duty must be “specific, clearly defined, and peremptory in nature.” *Williams v. Schulman, on Behalf of Sch. Bd. of Palm Beach Cty.*, 721 So. 2d 1244, 1245 (Fla. 4th DCA 1998) (citing *Sandegren v. State ex rel. Sarasota Cty. Pub. Hosp. Bd.*, 397 So. 2d 657 (Fla. 1981)).

The petition itself shows that how Respondents carry out Section 100.371(13)(d)’s command is discretionary not ministerial. As Petitioners’ own brief reflects, there are countless ways in which one body of text could be “separately contained” from another. *See* Pet. 32 (suggesting “italics, asterisks, headings, and/or other devices”); *see also* Pet. 27 (suggesting “graphic elements, such as short lines, a box, or rows of asterisks”). The statute does not require that Respondents choose any particular method. Nor does the statute foreclose the method Respondents have employed for many years—containing the financial impact statement in a paragraph separate from the ballot summary. Petitioners never explain why this method of separation by white space is impermissible; they rely only on their *ipse dixit* that this constitutes “no separation or containment” while implicitly acknowledging that the two texts *are* separately

contained in further stating that “[t]he only thing separating a financial impact statement from the [ballot summary] is a paragraph break.” Pet. 26. The text of the statute simply does not speak to the method of separation Respondents must employ, so Respondents must as a result exercise discretion in how to comply with it.

By not requiring any specific formatting method and by granting the Secretary of State rulemaking authority over ballot formatting, Section 100.371 establishes without a doubt that how the financial impact statement must be “separately contained” is discretionary and thus mandamus is inappropriate. *See City of Miami Beach v. Mr. Samuel’s, Inc.*, 351 So. 2d 719, 722 (Fla. 1977) (“Because the representatives of the City must exercise some discretion in determining whether to grant or deny the conditional use application, mandamus does not lie.”).

Plaintiffs miss the point in stressing that the statute creates a mandatory duty to separately contain the financial impact statement. Pet. 29–30. But as in *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009), that duty does not eliminate the discretion that Respondents must exercise in carrying it out. There, the Florida Supreme Court acknowledged that the Governor had a “duty to *make* [a judicial] appointment within the mandated time frame from the certified list of nominees.” *Id.* It did not, however, “direct the Governor’s discretionary decision as to the actual appointment to fill the judicial vacancy”; the Court recognized that “the Governor has discretion in his selection of a nominee from the list.” *Id.* So while the general duty to appoint someone from the list within the specified time was mandatory, *how* to carry out that duty—which candidate to select—was purely discretionary. So too here. Here, Respondents have satisfied their general duty to separately contain the financial impact statement. But *how* to carry that duty out—which method of separation

to choose (white space, asterisks, lines, quotation marks, boxes, italics, headings, etc.)—is purely discretionary. Mandamus therefore will not lie.<sup>3</sup>

**B.** Petitioners also lack a clear legal right to the relief requested because they have not established standing. “To establish a clear legal right to the performance of an act, a petitioner must establish standing.” *Chandler v. City Of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014); *see Pace v. Singletary*, 633 So. 2d 516, 517 (Fla. 1st DCA 1994) (reversing grant of mandamus and explaining that the trial court “did not specifically address the [petitioner’s] standing, or his clear legal right, to seek mandamus”); *State ex rel. Szabo Food Servs., Inc. of N. Carolina v. Dickinson*, 286 So. 2d 529, 532 (Fla. 1973) (holding that mandamus would not lie where petitioner did not have any “loss or injury, and accordingly, would not have standing”).

In an abbreviated nod (Pet. 31) to the requirement that they establish standing, Petitioners point to *Pleus* and *Chiles v. Phelps*, 714 So. 2d 453, 456 (Fla. 1998). Neither case helps them. In *Pleus*, the Florida Supreme Court held that citizens and taxpayers had standing to seek a writ to force the Governor to comply with his *constitutional* duty to make a judicial nominee within a certain time frame. 14 So. 3d at 945. And *Chiles* was “challenge to the authority of the Speaker of the House and the Senate President to allow their respective bodies to vote on vetoed bills at a regular session even though a previous special session had been held after the Governor had vetoed the bills.” *West Flagler Assoc. v. DeSantis*, 382 So. 3d 1284, 1287 (Fla. 2024) (citing *Chiles*, 714 So. 2d at 457). But the issues here are statutory, and far afield of the constitutional separation-of-

---

<sup>3</sup> Plaintiffs did not move for summary judgment on Count 3 of their amended complaint, in which they request a declaratory judgment against the Secretary that “Florida’s ballot formatting violates section 100.371” (Am. Compl. 23)—the same “separately contained” requirement in Section 100.371(13)(d) that is the subject of their mandamus petition. The Court should dismiss that Count for failing to state a claim: As a matter of law, and as discussed above, Florida’s longstanding ballot formatting is fully consistent with Section 100.371(13)(d).

powers issue at stake in *Chiles*. See *supra* n.2. So although citizens and taxpayers may have standing in certain circumstances to require the performance of a constitutional duty or to challenge unconstitutional acts, nothing in *Pleus* or *Chiles* suggests that citizens or taxpayers have standing to dictate the executive branch’s compliance with every jot and tittle of the Florida Statutes.

Petitioners also maintain that, as the ballot initiative’s sponsors, they have a heightened interest in ensuring that the ballot is formatted in a way that they prefer. But Petitioners cite no authority for the proposition that the sponsor has a unique injury distinguishing them from any other citizen or taxpayer—all voters “have a right to have [the] initiative presented to the voters in compliance with Florida law.” Pet. 31. That does not mean that the right is judicially enforceable absent some individualized showing of injury. As a result, Petitioners have not met their burden to establish standing.

C. A writ of mandamus is not available when the petitioner has an adequate legal remedy. *Huffman*, 813 So. 2d at 11; see also *Anthony v. State*, 277 So. 3d 223, 225 (Fla. 2d DCA 2019) (“To be facially sufficient, a petition for writ of mandamus must also show the petitioner has no adequate remedy at law.”). Here, Petitioners are not entitled to a writ of mandamus because they have an adequate legal remedy: A rule challenge under Florida’s Administrative Procedure Act.

As Petitioners acknowledge (Am. Compl. 9), the Department of State is authorized to “adopt rules in accordance with s. 120.54 to carry out the provisions of subsections (1)-(14).” § 100.371(14), Fla. Stat. As relevant here, the Department has promulgated Rule 1S-2.032, Uniform Design for Election Ballots, which “prescribes a uniform ballot design for primary and general elections for each type of certified voting system.” That rule establishes the “[g]raphic depiction of ballots” and provides that the “ballot used in an election shall be substantially in accordance with” the forms promulgated in the rule. Fla. Admin. Code R. 1S-2.032(15)(a). One of

those forms, DS-DE 207 (set forth at Rule 1S-2.032(15)8.), shows how ballot initiatives must be represented on the ballot and depicts the financial impact statement as being separately contained from the ballot summary through white space (i.e., in a separate paragraph).

Under Section 120.56, if Petitioners are “substantially affected” by this rule, they “may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.” § 120.56(1)(a), Fla. Stat. In other words, to the extent Petitioners believe that the Rule—which requires separation by setting forth the financial impact statement in a separate paragraph—is inconsistent with Section 100.371(13)(d), they can challenge that rule administratively. Mandamus is thus unavailable. *See Point Conversions, LLC v. Pfeiffer & Marin Holdings, LLC*, 305 So. 3d 609, 610 n.1 (Fla. 3d DCA 2020) (“Mandamus is appropriate only if a petitioner does not have any adequate administrative or legal remedies.” (citing Philip J. Padovano, Fla. App. Prac. § 30:2 (2019 ed.))).

### **CONCLUSION**

For the foregoing reasons, the Court should deny Plaintiffs’ motion for summary judgment, dismiss Counts 1, 2, and 3, and deny the petition for a writ of mandamus.

Respectfully submitted.

ASHLEY MOODY  
Attorney General

JAMES H. PERCIVAL (FBN 1016188)  
*Chief of Staff*

HENRY C. WHITAKER (FBN 1031175)  
*Solicitor General*

/s/ Daniel W. Bell  
DANIEL W. BELL (FBN 1008587)  
*Chief Deputy Solicitor General*

OFFICE OF THE ATTORNEY GENERAL  
The Capitol, PL-01  
Tallahassee, FL 322399  
(850) 414-3300  
*henry.whitaker@myfloridalegal.com*  
*daniel.bell@myfloridalegal.com*

*Counsel for the Secretary of State, the Financial  
Impact Estimating Conference, and the members of  
the Financial Impact Estimating Conference*

JOSEPH S. VAN DE BOGART (FBN 84764)  
*General Counsel*

/s/ Ashley E. Davis  
ASHLEY E. DAVIS (FBN 48032)  
*Chief Deputy General Counsel*

FLORIDA DEPARTMENT OF STATE  
R.A. Gray Building, Suite 100  
500 South Bronough Street  
Tallahassee, Florida 32399-0250  
(850) 245-6536  
*joseph.vandebogart@dofl.gov*  
*ashley.davis@dofl.gov*  
*jenna.mclanahan@dofl.gov*

*Co-counsel for the Secretary of State*

/s/ David Axelman  
DAVID Axelman (FBN 90872)  
*General Counsel*

HANNAH DUSHANE (FBN 1030886)  
*Deputy General Counsel*

THE FLORIDA HOUSE OF  
REPRESENTATIVES  
317 The Capitol  
402 South Monroe Street  
Tallahassee, Florida 32399-1300  
(850) 717-5500  
*David.Axelman@myfloridahouse.gov*  
*Hannah.Dushane@myfloridahouse.gov*

*Co-counsel for Vince Aldridge*

/s/ Carlos Rey  
CARLOS REY (FBN 11648)  
*General Counsel*  
FLORIDA SENATE  
404 South Monroe Street  
Tallahassee, Florida 32399  
(850) 487-5855  
*Rey.Carlos@flsenate.gov*

*Co-counsel for Azhar Khan*

### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document has been furnished via the E-Filing Portal on this 28th day of May, 2024, on all parties required to be served.

/s/ Daniel W. Bell  
DANIEL W. BELL

Filing # 200235045 E-Filed 06/10/2024 06:01:08 PM

**IN THE SECOND JUDICIAL CIRCUIT COURT  
IN AND FOR LEON COUNTY, FLORIDA**

**FLORIDIANS PROTECTING FREEDOM,  
INC., and SARA LATSHAW,**

*Plaintiffs/Petitioners,*

v.

**FINANCIAL IMPACT ESTIMATING  
CONFERENCE, et al.,**

*Defendants/Respondents.*

Case No. 2024-CA-558

**NOTICE OF APPEAL**

NOTICE IS GIVEN that Defendants Financial Impact Estimating Conference, Amy Baker, Vince Aldridge, Azhar Khan, Brea Gelin, and the Secretary of State appeal to the First District Court of Appeal the order of this Court rendered June 10, 2024. The nature of the order is a final order granting Plaintiffs' motion for summary judgment. Pursuant to Florida Rule of Appellate Procedure 9.310(b)(2), the filing of this notice results in an automatic stay of the Court's order.

Respectfully submitted,

ASHLEY MOODY  
*Attorney General*

HENRY C. WHITAKER (FBN 1031175)  
*Solicitor General*

/s/ Daniel W. Bell  
DANIEL W. BELL (1008587)  
*Chief Deputy Solicitor General*

OFFICE OF THE ATTORNEY GENERAL  
The Capitol, PL-01  
Tallahassee, FL 322399  
(850) 414-3300  
henry.whitaker@myfloridalegal.com  
daniel.bell@myfloridalegal.com

*Counsel for the Secretary of State, the Financial  
Impact Estimating Conference, and the members of  
the Financial Impact Estimating Conference*

/s/ Ashley E. Davis  
ASHLEY E. DAVIS (FBN 48032)  
*Chief Deputy General Counsel*

FLORIDA DEPARTMENT OF STATE  
R.A. Gray Building, Suite 100  
500 South Bronough Street  
Tallahassee, Florida 32399-0250  
(850) 245-6536  
joseph.vandebogart@dos.fl.gov  
ashley.davis@dos.fl.gov  
jenna.mclanahan@dos.fl.gov

*Co-counsel for the Secretary of State*

/s/ David Axelman  
DAVID AXELMAN (FBN 90872)  
*General Counsel*

HANNAH DUSHANE (FBN 1030886)  
*Deputy General Counsel*

THE FLORIDA HOUSE OF  
REPRESENTATIVES  
317 The Capitol  
402 South Monroe Street  
Tallahassee, Florida 32399-1300  
Tel: (850) 717-5500  
*David.Axelman@myfloridahouse.gov*  
*Hannah.Dushane@myfloridahouse.gov*

*Counsel for Vince Aldridge*

*/s/ Carlos Rey*  
CARLOS REY (FBN 11648)  
*General Counsel*

FLORIDA SENATE  
404 South Monroe Street  
Tallahassee, Florida 32399  
(850) 487-5855  
*Rey.Carlos@flsenate.gov*

*Co-counsel for Azhar Khan*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document has been furnished via the E-Filing Portal on this 10th day of June, 2024, on all parties required to be served.

/s/ Daniel W. Bell  
DANIEL W. BELL (1008587)

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

---

No. 1D2024-1485

---

FINANCIAL IMPACT ESTIMATING  
CONFERENCE, AMY BAKER,  
VINCE ALDRIDGE, AZHAR KHAN,  
BREA GELIN, and the SECRETARY  
OF STATE,

Appellants,

v.

FLORIDIANS PROTECTING  
FREEDOM, INC., and SARA  
LATSHAW, et al.,

Appellees.

---

On appeal from the Circuit Court for Leon County.  
John C. Cooper, Judge.

July 22, 2024

ON ORDER TO SHOW CAUSE REGARDING MOOTNESS

PER CURIAM.

This appeal concerns the financial impact statement associated with the proposed citizen initiative amendment to the Florida Constitution titled “Amendment to Limit Government Interference with Abortion.” The financial impact statement at issue below and on appeal was issued on November 16, 2023. Appellants—the Financial Impact Estimating Conference

(“FIEC”), members of the Conference, and the Secretary of State—challenge the circuit court’s final order finding the financial impact statement to be inaccurate, ambiguous, misleading, unclear, and confusing in violation of the Florida Constitution and Florida Statutes. In that order, the circuit court directed the FIEC to redraft the financial impact statement within fifteen days.

While this appeal was pending, the President of the Florida Senate and the Speaker of the House directed the FIEC to consider revisions to the financial impact statement. The FIEC met on July 1, 8, and 15, 2024. Those meetings were voluntary, not pursuant to the circuit court’s order. At the conclusion of those meetings, the FIEC withdrew the initial financial impact statement that was the subject of the circuit court’s order and issued a revised statement.

After the FIEC issued the revised financial impact statement, we directed the parties to show cause why the appeal should not be dismissed as moot. *See Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992) (“A moot case generally will be dismissed.”).

“A case is ‘moot’ when it presents no actual controversy or when the issues have ceased to exist.” *Waters v. Dep’t of Corr.*, 306 So. 3d 1264, 1266 (Fla. 1st DCA 2020). As the Florida Supreme Court has explained,

Article V, section 1 of the Florida Constitution vests “[t]he judicial power” in Florida’s courts, and Florida’s courts, including its appellate courts, reserve the exercise of judicial power for cases involving actual controversies. *Sarasota-Fruitville Drainage Dist. v. Certain Lands Within Said Dist.*, 80 So. 2d 335, 336 (Fla. 1955); *see Dep’t of Revenue v. Kuhnlein*, 646 So. 2d 717, 720–21 (Fla. 1994) (explaining that the only exception to the general requirement that cases must involve a real controversy is where the Florida Constitution otherwise authorizes advisory opinions). This limitation on the exercise of judicial power to justiciable controversies is rooted in judicial adherence to the doctrine of separation of powers. *See Ervin v. City of N. Mia. Beach*, 66 So. 2d 235, 236 (Fla. 1953) (“Judicial adherence to the doctrine of separation

of powers preserves the courts for the decision of issues between litigants capable of effective determination.” (emphasis omitted) (quoting 1 Walter H. Anderson, *Actions for Declaratory Judgments* 66 (2d ed. 1951)); see also art. II, § 3, Fla. Const.

*Casiano v. State*, 310 So. 3d 910, 913 (Fla. 2021). It follows then that “[a] case becomes moot, for purposes of appeal, where, by a change of circumstances prior to the appellate decision, an intervening event makes it impossible for the court to grant a party any effectual relief.” *Montgomery v. Dep’t of Health & Rehab. Servs.*, 468 So. 2d 1014, 1016 (Fla. 1st DCA 1985).

Here, the order on review is based on a financial impact statement that is no longer operative. No judicial determination or action remains for the circuit court based on the complaint before it. See *Harbor Bay Condos., Ins. v. Basabe*, 856 So. 2d 1067, 1069 (Fla. 3d DCA 2003) (“A trial court does not retain the authority to amend or modify a final judgment, absent a rule or statute providing otherwise.” (citing *Frumkes v. Frumkes*, 328 So. 2d 34, 35 (Fla. 3d DCA 1976)); see also *Vargas v. Deutsche Bank Nat’l Tr. Co.*, 104 So. 3d 1156, 1165–66 (Fla. 3d DCA 2012). To the extent that Appellees may wish to raise new claims about the revised financial impact statement, they may do so in a separate proceeding. Appellants can again raise their arguments concerning the circuit court’s lack of jurisdiction in a case where there is an actual controversy presented.

For these reasons, we decline to exercise our jurisdiction to decide a moot question. This appeal is therefore dismissed. Any motion under rules 9.330(a)(2) or 9.331(d), Florida Rules of Appellate Procedure, must be filed by noon on Wednesday, July 24, 2024; and any response must be filed by noon on Friday, July 26, 2024. No replies will be permitted.

RAY, BILBREY, and KELSEY, JJ., concur.

---

***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

---

Ashley Moody, Attorney General, Henry C. Whitaker, Solicitor General, Daniel W. Bell, Chief Deputy Solicitor General, Office of the Attorney General, Tallahassee; Ashley E. Davis, Chief Deputy General Counsel, Florida Department of State, Tallahassee; David Axelman, General Counsel, Hannah DuShane, Deputy General Counsel, The Florida House of Representatives, Tallahassee; Carlos Rey, General Counsel, Tallahassee, for Appellants.

Daniel B. Tilley, Samantha J. Past, and Michelle Morton of ACLU Foundation of Florida, Miami; Nicholas L.V. Warren of ACLU Foundation of Florida, Jacksonville; Margaret Good of Margaret Good Law, PLLC, Sarasota; Joseph T. Eagleton of Brannock Berman & Seider, Tampa, for Appellees.

**IN THE FIRST DISTRICT COURT OF APPEAL  
FOR THE STATE OF FLORIDA**

FINANCIAL IMPACT ESTIMATING  
CONFERENCE, *et al.*,

*Appellants,*

v.

Case No.: 1D24-1485  
L.T. No.: 2024-CA-558

FLORIDIANS PROTECTING  
FREEDOM, INC., *et al.*,

*Appellees.*

\_\_\_\_\_ /

**NOTICE TO INVOKE  
DISCRETIONARY JURISDICTION**

Notice is given that Appellees Floridians Protecting Freedom, Inc., and Sara Latshaw, under Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), invoke the discretionary jurisdiction of the Florida Supreme Court to review a decision of this Court, rendered on July 22, 2024 (attached). The decision expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. See Art. V, § 3(b)(3), Fla. Const.

Respectfully submitted July 24, 2024,

/s/ Nicholas L.V. Warren

Michelle Morton, FBN 81975  
Daniel B. Tilley, FBN 102882

Margaret Good, FBN 97931  
**Margaret Good Law, PLLC**

Samantha J. Past, FBN 1054519  
**ACLU Foundation of Florida**  
4343 West Flagler St., Ste. 400  
Miami, FL 33134  
(786) 363-2714  
mmorton@aclufl.org  
dtilley@aclufl.org  
spast@aclufl.org

P.O. Box 5083  
Sarasota, FL 34277  
(941) 313-7485  
margaret@margaretgoodlaw.com

Nicholas L.V. Warren,  
FBN 1019018  
**ACLU Foundation of Florida**  
1809 Art Museum Dr., Ste. 203  
Jacksonville, FL 32207  
(786) 363-1769  
nwarren@aclufl.org

*Counsel for Appellees*

### **CERTIFICATE OF SERVICE**

I certify that this document has been furnished to counsel for all parties by email via the e-Filing Portal.

/s/ Nicholas L.V. Warren  
Nicholas L.V. Warren  
*Counsel for Appellees*

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

---

No. 1D2024-1485

---

FINANCIAL IMPACT ESTIMATING  
CONFERENCE, AMY BAKER,  
VINCE ALDRIDGE, AZHAR KHAN,  
BREA GELIN, and the SECRETARY  
OF STATE,

Appellants,

v.

FLORIDIANS PROTECTING  
FREEDOM, INC., and SARA  
LATSHAW, et al.,

Appellees.

---

On appeal from the Circuit Court for Leon County.  
John C. Cooper, Judge.

July 22, 2024

ON ORDER TO SHOW CAUSE REGARDING MOOTNESS

PER CURIAM.

This appeal concerns the financial impact statement associated with the proposed citizen initiative amendment to the Florida Constitution titled “Amendment to Limit Government Interference with Abortion.” The financial impact statement at issue below and on appeal was issued on November 16, 2023. Appellants—the Financial Impact Estimating Conference

(“FIEC”), members of the Conference, and the Secretary of State—challenge the circuit court’s final order finding the financial impact statement to be inaccurate, ambiguous, misleading, unclear, and confusing in violation of the Florida Constitution and Florida Statutes. In that order, the circuit court directed the FIEC to redraft the financial impact statement within fifteen days.

While this appeal was pending, the President of the Florida Senate and the Speaker of the House directed the FIEC to consider revisions to the financial impact statement. The FIEC met on July 1, 8, and 15, 2024. Those meetings were voluntary, not pursuant to the circuit court’s order. At the conclusion of those meetings, the FIEC withdrew the initial financial impact statement that was the subject of the circuit court’s order and issued a revised statement.

After the FIEC issued the revised financial impact statement, we directed the parties to show cause why the appeal should not be dismissed as moot. *See Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992) (“A moot case generally will be dismissed.”).

“A case is ‘moot’ when it presents no actual controversy or when the issues have ceased to exist.” *Waters v. Dep’t of Corr.*, 306 So. 3d 1264, 1266 (Fla. 1st DCA 2020). As the Florida Supreme Court has explained,

Article V, section 1 of the Florida Constitution vests “[t]he judicial power” in Florida’s courts, and Florida’s courts, including its appellate courts, reserve the exercise of judicial power for cases involving actual controversies. *Sarasota-Fruitville Drainage Dist. v. Certain Lands Within Said Dist.*, 80 So. 2d 335, 336 (Fla. 1955); *see Dep’t of Revenue v. Kuhnlein*, 646 So. 2d 717, 720–21 (Fla. 1994) (explaining that the only exception to the general requirement that cases must involve a real controversy is where the Florida Constitution otherwise authorizes advisory opinions). This limitation on the exercise of judicial power to justiciable controversies is rooted in judicial adherence to the doctrine of separation of powers. *See Ervin v. City of N. Mia. Beach*, 66 So. 2d 235, 236 (Fla. 1953) (“Judicial adherence to the doctrine of separation

of powers preserves the courts for the decision of issues between litigants capable of effective determination.” (emphasis omitted) (quoting 1 Walter H. Anderson, *Actions for Declaratory Judgments* 66 (2d ed. 1951)); see also art. II, § 3, Fla. Const.

*Casiano v. State*, 310 So. 3d 910, 913 (Fla. 2021). It follows then that “[a] case becomes moot, for purposes of appeal, where, by a change of circumstances prior to the appellate decision, an intervening event makes it impossible for the court to grant a party any effectual relief.” *Montgomery v. Dep’t of Health & Rehab. Servs.*, 468 So. 2d 1014, 1016 (Fla. 1st DCA 1985).

Here, the order on review is based on a financial impact statement that is no longer operative. No judicial determination or action remains for the circuit court based on the complaint before it. See *Harbor Bay Condos., Ins. v. Basabe*, 856 So. 2d 1067, 1069 (Fla. 3d DCA 2003) (“A trial court does not retain the authority to amend or modify a final judgment, absent a rule or statute providing otherwise.” (citing *Frumkes v. Frumkes*, 328 So. 2d 34, 35 (Fla. 3d DCA 1976)); see also *Vargas v. Deutsche Bank Nat’l Tr. Co.*, 104 So. 3d 1156, 1165–66 (Fla. 3d DCA 2012). To the extent that Appellees may wish to raise new claims about the revised financial impact statement, they may do so in a separate proceeding. Appellants can again raise their arguments concerning the circuit court’s lack of jurisdiction in a case where there is an actual controversy presented.

For these reasons, we decline to exercise our jurisdiction to decide a moot question. This appeal is therefore dismissed. Any motion under rules 9.330(a)(2) or 9.331(d), Florida Rules of Appellate Procedure, must be filed by noon on Wednesday, July 24, 2024; and any response must be filed by noon on Friday, July 26, 2024. No replies will be permitted.

RAY, BILBREY, and KELSEY, JJ., concur.

---

***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

---

Ashley Moody, Attorney General, Henry C. Whitaker, Solicitor General, Daniel W. Bell, Chief Deputy Solicitor General, Office of the Attorney General, Tallahassee; Ashley E. Davis, Chief Deputy General Counsel, Florida Department of State, Tallahassee; David Axelman, General Counsel, Hannah DuShane, Deputy General Counsel, The Florida House of Representatives, Tallahassee; Carlos Rey, General Counsel, Tallahassee, for Appellants.

Daniel B. Tilley, Samantha J. Past, and Michelle Morton of ACLU Foundation of Florida, Miami; Nicholas L.V. Warren of ACLU Foundation of Florida, Jacksonville; Margaret Good of Margaret Good Law, PLLC, Sarasota; Joseph T. Eagleton of Brannock Berman & Seider, Tampa, for Appellees.

**IN THE SUPREME COURT OF FLORIDA**

FLORIDIANS PROTECTING  
FREEDOM, INC., *et al.*,

*Petitioners,*

Case No.: SC24-1103

v.

L.T. Nos.: 1D24-1485  
2024-CA-558

FINANCIAL IMPACT ESTIMATING  
CONFERENCE, *et al.*,

*Respondents.*

\_\_\_\_\_ /

**PETITIONERS' NOTICE OF VOLUNTARY DISMISSAL**

In accordance with Fla. R. App. P. 9.350(b), Petitioners Floridians Protecting Freedom, Inc., and Sara Latshaw notice their dismissal of this cause.

Upon further review and given the specific facts of this case, Petitioners do not believe the decision below expressly and directly conflicts with a decision of another district court of appeal or of this Court on the same question of law, because the conflicts do not appear “within the four corners” of the decision. *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).

Respectfully submitted July 31, 2024,

*/s/ Nicholas L.V. Warren*

Michelle Morton, FBN 81975  
Daniel B. Tilley, FBN 102882  
Samantha J. Past, FBN 1054519  
**ACLU Foundation of Florida**  
4343 West Flagler St., Ste. 400  
Miami, FL 33134  
(786) 363-2714  
mmorton@aclufl.org  
dtilley@aclufl.org  
spast@aclufl.org

Margaret Good, FBN 97931  
**Margaret Good Law, PLLC**  
P.O. Box 5083  
Sarasota, FL 34277  
(941) 313-7485  
margaret@margaretgoodlaw.com

Nicholas L.V. Warren,  
FBN 1019018  
**ACLU Foundation of Florida**  
1809 Art Museum Dr., Ste. 203  
Jacksonville, FL 32207  
(786) 363-1769  
nwarren@aclufl.org

*Counsel for Petitioners*

### **CERTIFICATE OF SERVICE**

I certify that this document has been furnished to counsel for all parties by email via the e-Filing Portal.

/s/ Nicholas L.V. Warren  
Nicholas L.V. Warren  
*Counsel for Petitioners*

**IN THE FIRST DISTRICT COURT OF APPEAL  
FOR THE STATE OF FLORIDA**

FINANCIAL IMPACT ESTIMATING  
CONFERENCE, *et al.*,

Appellants,

v.

FLORIDIANS PROTECTING  
FREEDOM, INC.,

Appellee.

Case No.: 1D24-1485

L.T. No.: 2024-CA-558

---

**APPELLEE'S EXPEDITED  
MOTION TO RELINQUISH JURISDICTION**

---

**Daniel B. Tilley** FBN 102882  
**Michelle Morton** FBN 81975  
**Samantha J. Past** FBN 1054519  
**ACLU Foundation of Florida**  
4343 West Flagler Street  
Suite 400  
Miami, FL 33134  
(786) 363-2714  
dtilley@aclufl.org  
spast@aclufl.org  
mmorton@aclufl.org

**Nicholas L.V. Warren**  
FBN 1019018  
**ACLU Foundation of Florida**  
1809 Art Museum Drive  
Suite 203  
Jacksonville, FL 32207  
(786) 363-1769  
nwarren@aclufl.org

**Margaret Good**  
FBN 97931  
**Margaret Good Law, PLLC**  
P.O. Box 5083  
Sarasota, FL 34277  
(941) 313-7485  
margaret@margaretgoodlaw.com

**Joseph T. Eagleton**  
FBN 98492  
**Brannock Berman & Seider**  
1111 West Cass Street  
Suite 200  
Tampa, FL 33606  
(813) 223-4300  
jeagleton@bbsappeals.com

Appellee Floridians Protecting Freedom, Inc., the Sponsor of a citizen initiative known as Amendment 4, moves under Florida Rule of Appellate Procedure 9.600(b) for this Court to temporarily relinquish jurisdiction on an expedited basis so that the circuit court may rule on the legality of the new Financial Impact Statement, adopted by Appellant Financial Impact Estimating Conference, that will accompany Amendment 4 on the November ballot. Relinquishment is appropriate because the new Statement adopted by the Conference—entirely outside the process contemplated by Florida law or mandated by the circuit court—contains many of the same legal defects as the original Statement.

Because the new Statement remains as noncompliant as the first, and because the circuit court retains post-judgment jurisdiction to enforce its order and ensure the legality of the Statement to be read by millions of Floridians, this Court should temporarily relinquish jurisdiction over this case to allow the circuit court to rule on the validity of the new Statement. Absent agreement from the Sponsor—as the plaintiff below—that the Statement complies with Florida law, or a ruling from this Court that the judiciary is powerless

to determine whether the Statement complies with the law, this dispute remains an active case and controversy and is not moot.<sup>1</sup>

## **I. Background**

This case is about whether the Financial Impact Statement accompanying a citizen initiative on the 2024 general election ballot complies with the Florida Constitution and Florida statutory law. The Sponsor sued to challenge the Statement, asserting that it violated section 100.371 of the Florida Statutes and Article XI, Section 5, of the Florida Constitution. (App'x to Answer Br. at 4). The Sponsor argued that its right to a fair up-or-down vote on Amendment 4 is being violated by the unlawful Statement.

The circuit court agreed with the Sponsor, finding the facts undisputed and the Statement legally defective on several grounds. Specifically, the court found that the Statement (1) was inaccurate and presented outdated information; (2) was not limited to summarizing Amendment 4's probable impact to state and local government revenues or costs and to the state budget, as required by

---

<sup>1</sup> Given the current procedural posture, the Sponsor does not object to a stay remaining in place during the temporary relinquishment and final expedited decision from this Court.

law; and (3) was inaccurate, ambiguous, misleading, unclear, and confusing, in violation of section 100.371. (App'x to Answer Br. at 90).

The court noted that parts of the Statement referencing “additional litigation” were affirmatively misleading, speculative, and inaccurate. (App'x to Answer Br. at 91). It said that “[t]he potential of future litigation impacting state and local government revenues and expenses outside of the amendment’s effects is not appropriate for inclusion in the Statement,” and that the Statement was “further inaccurate, ambiguous, misleading, unclear, and confusing because it does not clearly announce its purpose” and was not “limited to addressing the estimated increase or decrease in revenue or costs to state or local governments.” (App'x to Answer Br. at 91).

The circuit court retained jurisdiction to enforce its order and contemplated further proceedings, if necessary, to review the redrafted Statement. (App'x to Answer Br. at 91) (“Amendment 4’s Complete Financial Information Statement makes clear that whether the Amendment is enacted while a 15- or 6-week prohibition on abortion is in place, ‘it is probable that there would be a cost savings’ to the state, with the magnitude of such savings depending on which

law is in place. If the FIEC’s redrafted FIS does not reflect this analysis that it already completed, it must justify to this Court the departure from its prior determination.”).

The State appealed, resulting in an automatic stay of the circuit court’s order. This Court upheld the stay and declined to pass the case through to the Florida Supreme Court, but expedited the briefing. The last of those briefs was filed more than two weeks ago, on July 1. The sole issue on appeal is whether a circuit court has jurisdiction to review the validity of a financial impact statement—an important issue that affects not just this Statement, but every financial impact statement for every citizen initiative. As explained in the Answer Brief, the clear answer is yes. Courts have a duty to ensure compliance with the Constitution and the laws enacted by the Legislature, sponsors of citizen-initiative ballot amendments have a right to a clear and accurate presentation of their proposed amendment to voters, and Floridians have a right to cast a ballot based on clear, unambiguous, factually accurate information, without a thumb on the scale in favor of any one outcome.

Contemporaneous with the final stages of the expedited proceedings below, but separate from it, the State independently

convened the Conference to consider revisions to the Statement. It is unclear what legal authority the State had to take this step, apart from the circuit court's order (which is stayed, and which the State in any event contends cannot have legal effect on anyone). The statute does not contemplate the State unilaterally deciding to reconvene the Conference. *See* § 100.371(13), Fla. Stat.<sup>2</sup>

Even still, the newly reconstituted Conference met three times, ultimately settling on a revised Statement by a 3-1 vote. The revised Statement provides:

---

<sup>2</sup> The statute says that “[a]ny financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.” § 100.371(13)(c)1., Fla. Stat. However, the State specifically rejects that this provision has any applicability in this proceeding and instead asserts that no court has any ability to review financial impact statements in any way. And the State certainly could not now contend that it was following the circuit court's order when the new Statement was not completed until 35 days after the circuit court ordered it to be done in 15 days (the time required by the statute), and after the State characterized the Conference's meetings as “voluntary” to this Court. (Initial Br. at 3, 22 n.5) & (Appellants' Emergency Motion to Reinstate Automatic Stay and Request for Administrative Stay at 18) (“The FIEC intends that revision process to move forward even if the circuit court's order is reversed on jurisdictional grounds.”).

The proposed amendment would result in significantly more abortions and fewer live births per year in Florida. The increase in abortions could be even greater if the amendment invalidates laws requiring parental consent before minors undergo abortions and those ensuring only licensed physicians perform abortions. There is also uncertainty about whether the amendment will require the state to subsidize abortions with public funds. Litigation to resolve those and other uncertainties will result in additional costs to the state government and state courts that will negatively impact the state budget. An increase in abortions may negatively affect the growth of state and local revenues over time. Because the fiscal impact of increased abortions on state and local revenues and costs cannot be estimated with precision, the total impact of the proposed amendment is indeterminate.

<http://edr.state.fl.us/Content/constitutional-amendments/index.cfm> (navigate to “Financial Impact Statement (7/15/24)”).<sup>3</sup>

Although this redrafted Statement removes the outdated and confusing language that plagued the original Statement, it does little to cure any of the other legal defects the circuit court identified. Among its numerous problems, this redrafted Statement recalls the

---

<sup>3</sup> See [http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbortionFinancial%20Impact%20Statement\\_Second%20Series.pdf](http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbortionFinancial%20Impact%20Statement_Second%20Series.pdf).

circuit court's concerns that the Statement is by law "limited to summarizing Amendment 4's probable impact to state and local government revenues and costs and to the state budget"; that it not be "inaccurate, ambiguous, misleading, unclear, and confusing"; that it not "highlight[] the potential of future litigation, which is speculative"; and that it must "clearly announce its purpose." (App'x to Answer Br. at 90–91).

In short, we are now weeks closer to the election yet no closer to a lawful Statement. The circuit court should have the opportunity to address this continued violation of the Sponsor's rights.

## **II. Discussion**

This Court has authority to temporarily relinquish jurisdiction to the circuit court during an appeal. *See Fla. R. App. P. 9.600(b)* ("If the jurisdiction of the lower tribunal has been divested by an appeal from a final order, the court by order may permit the lower tribunal to proceed with specifically stated matters during the pendency of the appeal."). Relinquishment is appropriate here for *three* reasons.

*First*, the circuit court should have the opportunity to rule on the validity of the new Statement. Although the Conference revised the Statement, the new Statement remains in violation of Florida law,

as explained in part above. And as explained in the Answer Brief, circuit courts have the power—and the responsibility—to remedy such violations. The circuit court should therefore have the opportunity to consider whether the revised Statement complies with its order and the law. That was the whole basis for the Sponsor’s lawsuit in the first place. A revised but still unlawful Statement is no remedy at all.

*Second*, the State cannot have its cake and eat it too. The State’s decision to independently reconvene the Conference while also obtaining a stay of a court order requiring that very result has caused substantial prejudice to the Sponsor. Rather than revise the Statement within 15 days, as mandated by statute and the circuit court’s order, it took the Conference more than twice as long to approve a new Statement on its own terms. And that new Statement does not at all comply with the circuit court’s order—because the State made no effort to comply with it. This Court should allow the circuit court to decide whether the new Statement complies with its order and the law.<sup>4</sup>

---

<sup>4</sup> When moving to reinstate the automatic stay, the State argued that “[n]o harm would befall [the Sponsor]” because, if the Sponsor

*Finally*, time remains of the essence—more so now than ever. The Sponsor filed this lawsuit in April and moved expeditiously. Three months have passed, and the Sponsor’s right to a fair up-or-down vote on Amendment 4 remains as elusive today as it did when the litigation began. To bring this case closer to conclusion, this Court should immediately invite the circuit court to decide whether the new Statement is lawful.

### **III. Conclusion**

In accordance with Rule 9.600(b), this Court should relinquish jurisdiction for the circuit court to consider and rule, on an expedited basis, on the legality of the revised Financial Impact Statement.

---

prevailed in this appeal, it would have the benefit of the Conference’s redrafting and subsequent circuit court review of the revised Statement. (Appellants’ Emergency Mot. to Reinstate Automatic Stay at 17). The State cannot reap the advantage of a stay—and oppose relinquishment for the circuit court to review the revised Statement on an expedited basis—when it obtained the stay by arguing that the Sponsor would have the benefit of, and plenty of time for, court review of a revised Statement once the stay was lifted.

Respectfully submitted on July 17, 2024,

/s/ Joseph T. Eagleton

**Daniel B. Tilley** FBN 102882

**Michelle Morton** FBN 81975

**Samantha J. Past** FBN 1054519

**ACLU Foundation of Florida**

4343 West Flagler Street, Suite 400 Sarasota, FL 34277

Miami, FL 33134

(786) 363-2714

dtilley@aclufl.org

mmorton@aclufl.org

spast@aclufl.org

**Nicholas L.V. Warren**

FBN 1019018

**ACLU Foundation of Florida**

1809 Art Museum Drive, Suite 203 Jacksonville, FL 32207

(786) 363-1769

nwarren@aclufl.org

**Margaret Good**

FBN 97931

**Margaret Good Law, PLLC**

P.O. Box 5083

Sarasota, FL 34277

(941) 313-7485

margaret@margaretgoodlaw.com

**Joseph T. Eagleton**

FBN 98492

**Brannock Berman & Seider**

1111 West Cass Street, Ste. 200

Tampa, FL 33606

(813)223-4300

jeagleton@bbsappeals.com

*Counsel for Appellee*

### **CERTIFICATE OF SERVICE**

I certify that this document has been furnished to counsel for all parties by email via the e-Filing Portal.

/s/ Joseph T. Eagleton

Joseph T. Eagleton

*Counsel for Appellee*

**IN THE FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA**

FINANCIAL IMPACT ESTIMATING  
CONFERENCE, ET AL.,

*Defendants/Appellants,*

v.

FLORIDIANS PROTECTING FREEDOM,  
INC., AND SARA LATSHAW,

*Plaintiffs/Appellees.*

**Case No. 1D24-1485**

**APPELLANTS' EMERGENCY MOTION TO REINSTATE  
AUTOMATIC STAY AND REQUEST FOR ADMINISTRATIVE STAY**

The circuit court has unlawfully injected itself into the citizen initiative process by ordering the Financial Impact Estimating Conference, within 15 days, to redraft the financial impact statement that will accompany the proposed amendment respecting abortion that the people will vote on in this fall's election. Rather than allow the appellate process to proceed in the ordinary course—and even though nearly 11 weeks remain before the ballot must be finalized—the circuit court vacated the automatic stay, which gives the Conference less than 15 days to comply with the court's order to redraft the statement.

The circuit court's order flouts controlling precedent of this Court establishing that a circuit court cannot grant any effectual relief when a plaintiff challenges a financial impact statement as invalid. As this Court has explained, the relevant statutes provide for the financial impact statement to be automatically approved by operation of law 75 days before the election if the Florida Supreme Court has not issued an advisory opinion on the subject, which it will never do because that Court has determined that it lacks jurisdiction to review financial impact statements. *See Fla. Fin. Impact Estimating Conf. v. All Voters Vote, Inc.*, 328 So. 3d 1149, 1150–51 (Fla. 1st DCA 2021). That provision does not give the circuit court a say in the matter. *See id.* The circuit court therefore abused its discretion in vacating the automatic stay.

Defendants also request that the Court immediately reinstate the automatic stay while it considers this motion to reinstate the stay for the duration of the appeal. Granting that temporary administrative relief is necessary to preserve this Court's jurisdiction over the matter given the exceedingly short timeline for redrafting established by the circuit court's order. *See* Art. V, § 4(b)(3), Fla.

Const. (providing that district courts of appeal may issue “other writs necessary to the complete exercise of its jurisdiction”); *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1075 (Fla. 1st DCA 2022) (noting that all-writs jurisdiction is available to preserve the status quo); Order at 1, *Lee v. Black Voters Matter Capacity Bldg. Inst., Inc.*, No. 1D22-1470 (1st DCA May 20, 2022) (temporarily reinstating the stay while the Court considered the motion to reinstate the stay).

The Court should immediately reinstate the stay, and Plaintiffs should be ordered to respond to Defendants’ motion to reinstate the stay for the duration of the appeal on or before 11:59 pm on June 13, 2024.

## **STATEMENT OF THE CASE AND FACTS**

### **A. Legal background**

Amendments to the Florida Constitution may be proposed by joint resolution of the Legislature, by the Constitution Revision Commission, by constitutional convention, by the Taxation and Budget Reform Commission, or by citizen’s initiative. See Art. XI, §§ 1-6, Fla. Const. Regardless of how an amendment is proposed, it

is effective only upon ratification by the Electorate. *See id.* Art. XI, § 5. But citizens’ initiatives are unique in several ways.

First, before a citizens’ initiative can go for a vote, the summary of the amendment that would appear on the ballot is subject to judicial review to ensure, among other things, that its “chief purpose” is “clear and unambiguous.” § 101.161, Fla. Stat. The Constitution provides a single avenue of review of the “validity of [the] initiative petition”: “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.” Art. IV, § 10, Fla. Const. And the Florida Supreme Court has original jurisdiction, “when requested by the attorney general pursuant to the provisions of Section 10 of Article IV,” to “render an advisory opinion of the justices, addressing issues as provided by general law.” *Id.* Art. V, § 3(b)(1). That jurisdiction is “exclusiv[e].” *Roberts v. Brown*, 43 So. 3d 673, 680 (Fla. 2010).

Second, for citizens’ initiatives—and them alone—“[t]he legislature shall 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.” Art. XI, § 5(c), Fla. Const. Pursuant to that constitutionally conferred discretion, the Legislature has established a “Financial Impact Estimating Conference” (“FIEC”), which “may be appointed for each initiative.” § 100.371(13)(c)1., Fla. Stat. The FIEC must “complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments and the overall impact to the state budget resulting from the proposed initiative.” *Id.* § 100.371(13)(a).

Like the summary of the proposed amendment, the financial impact statement must be “clear and unambiguous.” § 100.371(13)(c)2., Fla. Stat. For years, the Florida Supreme Court reviewed the clarity of an initiative’s financial impact statement through the same process as its ballot summary—as an exercise of the Court’s original jurisdiction to issue an advisory opinion under Art. V, § 3(b)(1). *See Advisory Opinion to the Attorney General re Referenda Required for Adoption*, 963 So. 2d 210, 210 (Fla. 2007). In 2019, however, the Court receded from those decisions and held that

it lacked jurisdiction to issue an advisory opinion about the financial impact statement. *Advisory Opinion to the Att’y Gen. re Raising Florida’s Minimum Wage*, 285 So. 3d 1273, 1277 (Fla. 2019). Because “the issue [wa]s not before” the Court, it “express[ed] no definite opinion” on the “validity” of “a challenge to a financial impact statement in circuit or county court, by declaratory judgment action under current law.” *Id.* at 1281 n.4.

The Legislature too had long assumed that the Supreme Court’s jurisdiction to issue an advisory opinion regarding the “validity of any initiative petition,” Art. V, § 3(b)(10), Fla. Const., extended to the financial impact statement. Accordingly, the relevant statutes required the FIEC to “submit the [financial impact] statement to the Attorney General,” § 100.371(13)(c)2., Fla. Stat., who is responsible for requesting an “advisory opinion” of the Supreme Court as to the validity of the initiative petition, *id.* § 16.061. And in the context of that advisory opinion proceeding before the Supreme Court, the statute provided that “the court” could remand the financial impact statement if it found the statement to be noncompliant with Section 100.371. *Id.* § 16.061(3).

The statutory scheme addressed in detail the Supreme Court’s review of the statement. The statement would be judicially approved for ballot placement if the Supreme Court issued an “advisory opinion” approving it or if the Supreme Court failed to issue an advisory opinion by 75 days before the election. § 100.371(13)(e)2., Fla. Stat. A redraft following the Supreme Court’s rejection of an initial statement could likewise be approved by an advisory opinion of the Supreme Court by 75 days before the election. § 100.371(13)(c)3., Fla. Stat. And if the Supreme Court did not timely approve a redraft after rejecting the statement, a statement that “[t]he impact of this measure, if any, has not been determined at this time” would replace it on the ballot. § 100.371(13)(c)3., Fla. Stat. In sum, Section 100.371(13) set forth what happened to a financial impact statement following every possible outcome flowing from Supreme Court review: approval, no timely approval, rejection and approval of a redraft, and no timely approval of a redraft after rejection.

Those statutory provisions continue to contemplate just one means of judicial review for a financial impact statement—an advisory opinion of the Florida Supreme Court. And although the

Florida Supreme Court has since decided that it does not have jurisdiction to issue such advisory opinions, the statute continues to dictate that, “[i]f, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference . . . , the financial impact statement shall be deemed approved for placement on the ballot.” § 100.371(13)(e)2., Fla. Stat.

In 2020, a citizens’ initiative sponsor tested the question left open in *Minimum Wage* by challenging a financial impact statement in circuit court. The circuit court granted the sponsor’s motion for summary judgment, holding that the statement was unclear and ambiguous, and remanded it to the FIEC for redrafting. *See Fla. Fin. Impact Estimating Conf. v. All Voters Vote, Inc.*, 328 So. 3d 1149, 1149 (Fla. 1st DCA 2021). This Court, however, vacated that judgment and remanded to the circuit court with instructions to dismiss the complaint as moot. *Id.* at 1150. The Court explained that the financial impact statement approved by the FIEC had been “automatically . . . approved for placement on the ballot” because the

Supreme Court had not issued (and would not issue, in light of *Minimum Wage*) an advisory opinion by 75 days before the election. *Id.* As a result, “the trial court’s judgment no longer [could] have any operative effect, so the case [wa]s moot.” *Id.* The Court also expressed “considerable doubt about the trial court’s authority to grant the relief it did in the first place,” citing a case dismissing a declaratory judgment action that sought an improper advisory opinion. *Id.* at 1150 n.1.

## **B. Factual background**

Floridians Protecting Freedom, Inc. (“FPF”) sponsored a citizens’ initiative titled “Amendment to Limit Government Interference with Abortion.” The amendment, if passed, would add the following language to Florida’s Constitution:

Limiting government interference with abortion.— Except as provided in Article X, Section 22, no law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient’s health, as determined by the patient’s healthcare provider.

The Secretary of State submitted the amendment to the Attorney General and to the FIEC on September 7, 2023; in turn, the Attorney General petitioned the Florida Supreme Court for an

advisory opinion regarding the validity of the initiative petition, and the FIEC began its analysis.

While the FIEC was analyzing the financial impact of the proposed amendment in fall 2023, the Florida Supreme Court was considering the constitutionality of chapter 2022-69, § 4, Laws of Fla. (codified at § 390.0111(1), Fla. Stat. (2022)), which prohibits most abortions from being performed if the gestational age of the child is more than 15 weeks. *Planned Parenthood of Sw. & Cent. Fla. v. State*, No. SC2022-1050, --- So. 3d ---, 2024 WL 1363525 (Fla. Apr. 1, 2024). Because of chapter 2023-21, §§ 4, 9, Laws of Fla. (codified at § 390.0111(1), Fla. Stat. (2023)), if the Supreme Court upheld that statute in *Planned Parenthood*, Florida law would prohibit most abortions from being performed if the gestational age of the child were more than 6 weeks. Before the Supreme Court decided that case, the FIEC timely issued a financial impact statement on November 16, 2023, or seventy days after receiving the initiative from the Secretary of State. As a result of the pending litigation, the FIEC concluded that the financial impact of the proposed amendment could not be determined, and issued the following financial impact statement:

The proposed amendment was analyzed late in the 2023 calendar year. At that time, litigation was pending before the Florida Supreme Court challenging the Legislature's 2022 enactment of a prohibition on most abortions being performed if the gestational age of the fetus is more than 15 weeks. If the Court upholds the 2022 law, a 2023 law further reducing the 15 weeks to 6 weeks will take effect 30 days later. This could lead to additional litigation. In order to measure the proposed amendment's impact on state and local government revenues and costs, a reasonable expectation of what the state of the law will be at the time of the election is required. Because there are several possible outcomes related to this litigation that differ widely in their effects, the impact of the proposed amendment on state and local government revenues and costs, if any, cannot be determined.

On April 1, 2024, the Supreme Court approved the initiative petition for ballot placement; it also upheld the constitutionality of chapter 2022-69, § 4. *Advisory Op. to Att'y Gen. Re: Limiting Gov't Interference with Abortion*, No. SC2023-1392, 2024 WL 1363899 (Fla. Apr. 1, 2024); *Planned Parenthood*, 2024 WL 1363525.

### **C. Procedural history**

On April 5, 2024, FPF sued in Leon County Circuit Court, asserting that the financial impact statement violates Section 100.371 and Article XI, Section 5 of Florida's Constitution. FPF requested a declaration to the same effect; requested that the court

remand the statement to the FIEC for redrafting; and requested that the court enjoin the Secretary of State from allowing the statement to appear on the ballot. FPF moved for summary judgment on those claims. Plaintiffs then filed an amended complaint, adding a plaintiff and dozens of new defendants (Florida’s supervisors of elections).<sup>1</sup>

At a scheduling conference, the circuit court expressed the view that this case would ultimately be resolved on appeal. As a result, the court expedited the proceedings, setting the deadline for Plaintiffs’ summary judgment motion for April 25—the earliest that it could be filed under Florida Rule of Civil Procedure 1.510(b)—and held a summary judgment hearing on June 5, 2024. At that hearing, the court indicated that it would grant Plaintiffs summary judgment on the counts relating to the accuracy of the financial impact statement.

---

<sup>1</sup> Plaintiffs also added a request for a declaratory judgment that Florida’s formatting of the ballot summary and financial impact statement violates Section 100.371(13)(d) and sought a writ of mandamus to that effect. The court issued an order to show cause and held a hearing on those counts as well, but ultimately dismissed the declaratory judgment request as to the ballot formatting and denied the petition for a writ of mandamus.

On June 10, 2024, the court issued its order on summary judgment. The court first rejected Defendants’ arguments that it lacked the authority to grant Plaintiffs’ requested relief, relying primarily on two footnotes in *Advisory Opinion to Attorney General re Raising Florida’s Minimum Wage*, 285 So. 3d 1273 (Fla. 2019). In the court’s view, the Florida Supreme Court “invit[ed] . . . a plaintiff to bring a declaratory judgment action in county or circuit court when alleging that a financial impact statement violates the law.” App’x at 10. The court also concluded that it “has jurisdiction to compel F[IE]C to comply with the law and halt its deprivation of a constitutional right.” App’x at 10–11.

Next, the court concluded that unlike in *All Voters Vote*, “this case is not moot” because the 75-day deadline after which the financial impact statement will be deemed approved by statute has not yet been reached. App’x at 11. As a result, the court held, “here, FIEC has sufficient time to redraft the [financial impact statement].” *Id.* The court also distinguished *All Voters Vote* on the basis that “Plaintiff’s Count II seeks relief directly under article XI, section 5 [of Florida’s Constitution]—not just under section 100.371, as the *All*

*Voters Vote* plaintiff did.” *Id.* The court concluded that “[r]egardless of the First District’s interpretation of section 100.371, this Court has independent jurisdiction over Plaintiff’s claim to enforce the constitutional mandate that the [financial impact statement] be clear and unambiguous.” *Id.*

After concluding that it had the authority to review the financial impact statement, the court found that the statement “violates the Florida Constitution and section 100.371(13) of the Florida Statutes and therefore should not be placed on the ballot.” *Id.* As a result, the court granted Plaintiffs’ motion for summary judgment, denied Defendants’ motion to dismiss, and issued an order stating that the financial impact statement “violates both article XI, section 5 of the Florida Constitution and section 100.371 of the Florida Statutes.” App’x at 15. The court also ordered the financial impact statement to be “remanded to the FIEC for redrafting,” which according to the court “must be completed within 15 days of this Court’s order.” *Id.*

Defendants appealed the court’s order the same day it was issued. App’x at 3. As a result, the order was automatically stayed pursuant to Florida Rule of Appellate Procedure 9.310(b)(2). While

the stay was in place, the FIEC also noticed two public hearings for July 2024 on revising the financial impact statement.<sup>2</sup>

Plaintiffs then moved to vacate the automatic stay, and on June 11, 2024, approximately 20 hours after Plaintiffs filed the motion and just 3 hours after noticing a hearing on the motion, the court vacated the automatic stay. App'x at 30.

### **STANDARD OF REVIEW**

A circuit court abuses its discretion by vacating an automatic stay triggered under Rule 9.310(b)(2) when the party seeking to vacate the stay below fails to meet its burden to show that “(1) the equities are overwhelmingly tilted against maintaining the automatic stay, (2) it will suffer irreparable harm if the automatic stay is maintained, and (3) it is likely to prevail on the merits of the appeal.” *Dep’t of Agric. & Consumer Servs. v. Henry & Rilla White Found., Inc.*, 317 So. 3d 1168, 1170 (Fla. 1st DCA 2020) (quotations omitted). The party seeking to vacate the automatic stay must meet its burden as

---

<sup>2</sup> [http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbotionNoticeofWorkshopsandConference\\_SecondSeries.pdf](http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbotionNoticeofWorkshopsandConference_SecondSeries.pdf).

to all three factors. *Id.*; see also *DeSantis v. Fla. Educ. Ass’n*, 325 So. 3d 145, 151 (Fla. 1st DCA 2020).

## **ARGUMENT**

The circuit court erred in vacating the automatic stay. Plaintiffs will not suffer irreparable harm; the equities favor maintaining the automatic stay; and Defendants are likely to prevail on appeal.

**I. PLAINTIFFS HAVE NOT SHOWN THAT THE AUTOMATIC STAY WILL CAUSE THEM TO SUFFER IRREPARABLE HARM OR THAT THE EQUITIES OVERWHELMINGLY TILT AGAINST THE AUTOMATIC STAY.**

The party seeking to set aside an automatic stay must show that “it will suffer irreparable harm if the automatic stay is maintained.” *Henry & Rilla White Found.*, 317 So. 3d at 1170. Plaintiffs did not and cannot make that showing here.

In their motion to vacate the stay below, Plaintiffs claimed that unless the stay were lifted, there would be insufficient “time available for the [financial impact statement] to be redrafted in time to be printed on Florida’s general election ballots.” App’x at 19. Yet Plaintiffs acknowledge that ballots need not be finalized before “the canvassing of the primary election on August 29, 2024,” meaning that is the earliest day on which their alleged harm—the placement

of a misleading statement on the ballot—can occur. *Id.* That is nearly 11 weeks from now, so there is no existing, ongoing harm that could warrant lifting the stay. As the circuit court’s summary judgment order recognizes, moreover, any court-ordered redraft would have to be completed in just 15 days. No harm would befall Plaintiffs by allowing an expedited appellate process to play out during the other 9 weeks that remain before August 29. And should it come down to the wire, this Court and the Florida Supreme Court have the authority to lift the automatic stay.

During the circuit court’s hearing on the motion to vacate the stay, Plaintiffs argued in the alternative that irreparable harm would flow from the statement’s presence on the Secretary of State’s website until the statement is redrafted. But the circuit court never ordered the Secretary of State or anyone else to alter any website, so any harm flowing from the website cannot be attributable to the stay. Such harm is also rank speculation—premised on the idea that voters will read the website in the meantime and be misled—and would be remedied by an eventual redraft that appears on the ballot regardless.

Any claim of irreparable harm is further undercut by the fact that the FIEC has scheduled meetings for July 2024 to “consider potential revisions to the financial impact statement.”<sup>3</sup> The FIEC intends that revision process to move forward even if the circuit court’s order is reversed on jurisdictional grounds.

By contrast, lifting the stay would irreparably harm Defendants by requiring them to redraft the statement under the circuit court’s supervision without definitive judicial resolution of whether the circuit court had any authority whatsoever to do so. Accordingly, Plaintiffs have also not come close to showing that the equities are “overwhelmingly tilted against maintaining the automatic stay.” *Henry & Rilla White Found.*, 317 So. 3d at 1170.

## **II. DEFENDANTS ARE LIKELY TO PREVAIL ON THE MERITS IN THIS APPEAL.**

Reinstating the automatic stay is also warranted because Defendants are likely to prevail on appeal. Only three years ago, this Court indicated its “considerable doubt about [a circuit] court’s

---

<sup>3</sup> [http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbotionNoticeofWorkshopsandConference\\_SecondSeries.pdf](http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbotionNoticeofWorkshopsandConference_SecondSeries.pdf).

authority” to order that a financial impact statement be remanded for revision by the FIEC. *Fla. Fin. Impact Estimating Conf. v. All Voters Vote, Inc.*, 328 So. 3d 1149, 1150 n.1 (Fla. 1st DCA 2021). The Court’s doubt was well-founded, and indeed the Court’s holding—that the circuit court could not grant effectual relief, *see id.* at 1150–51—decides this case as well.

**A. This matter is not justiciable because the circuit court lacked authority to order any effectual relief.**

If “a trial court’s judgment no longer can have any operative effect, . . . the case is moot and must be dismissed.” *All Voters Vote*, 328 So. 3d at 1150. Whether framed as mootness or standing, a plaintiff must demonstrate “that the relief sought will remedy the alleged injury.” *Cmty. Power Network Corp. v. JEA*, 327 So. 3d 412, 415 (Fla. 1st DCA 2021). Here, the circuit court could not grant any effectual relief for a very simple reason: Florida law provides that, if “the Supreme Court has not issued an advisory opinion on the initial financial impact statement” by the 75-day deadline, “the financial impact statement shall be deemed approved for placement on the ballot.” § 100.371(13)(e)2., Fla. Stat. Because the Florida Supreme

Court held in *Minimum Wage* that it lacks jurisdiction to issue an advisory opinion regarding the validity of a financial impact statement, the Court will never issue an advisory opinion on the statement, let alone before the 75-day deadline. “By operation of the Legislature’s directive, then, the [financial impact statement] automatically is ‘approved for placement on the ballot’” after the 75-day deadline. *All Voters Vote*, 328 So. 3d at 1150. That is precisely why this Court vacated a circuit court’s remand to the FIEC just three years ago, clarifying that the change of circumstances from the Supreme Court’s determination in *Minimum Wage* gave “neither the trial court nor this court . . . the authority to rewrite a component of the Legislature’s integrated scheme set out in subsection 13 to reflect that determination.” *Id.* at 1150.

So “[a]t this point, a judicial determination by [the circuit court] would not grant any effectual relief.” *Roe v. Dep’t of Health*, 312 So. 3d 175, 177 (Fla. 1st DCA 2021). Despite the circuit court’s order, the financial impact statement will automatically be approved for ballot placement by operation of statute, superseding the circuit

court's order as a matter of law. *See All Voters Vote*, 328 So. 3d at 1150; § 100.371(13)(e)2., Fla. Stat.

Plaintiffs contended below, and the circuit court agreed, that this case is not yet moot because the 75-day mark has not been reached. But whether the “FIEC has sufficient time to redraft the [financial impact statement]” (App’x at 11) makes no difference—the current statement will be approved at the 75-day mark. *All Voters Vote*, 328 So. 3d at 1150. And although the circuit court attempted to distinguish *All Voters Vote* by repackaging Plaintiffs’ statutory claim that the financial impact statement is misleading as one brought “directly under article XI, section 5” (App’x at 11), that relabeling exercise does not change the fact that the Legislature provided that the statement will be deemed approved absent a Florida Supreme Court advisory opinion—which is not forthcoming.

Moreover, the sole provision of the Constitution that speaks to the financial impact statement at all says only that the Legislature “shall provide by general law” for a financial impact statement, which it unquestionably did here. Art. XI, § 5(c), Fla. Const. That provision is not “self-executing” and therefore does not contain any judicially

enforceable private right. *See St. John v. Gutman*, 721 So. 2d 717, 718 (Fla. 1998).

**B. The circuit court lacked authority to review the financial impact statement, let alone remand the statement to the FIEC.**

The circuit court’s order purports to remand the financial impact statement to the FIEC for redrafting. But the statutes relating to financial impact statements do not give any court other than the Florida Supreme Court the authority to review a financial impact statement, much less to remand one to the FIEC. Instead, the statutes assume that the Supreme Court will review the financial impact statement as part of its “exclusive” jurisdiction over the legality of citizens’ initiatives. *Roberts v. Brown*, 43 So. 3d 673, 680 (Fla. 2010) (citing cases going back to 1994).

When the Attorney General receives an initiative petition from the Secretary of State, the Attorney General is required by Article IV, Section 10 of Florida’s Constitution to request an advisory opinion from the Florida Supreme Court. Section 16.061(1) likewise requires the Attorney General to make such a request to “the Supreme Court,” and “[a]ny fiscal impact statement that *the court* finds not to be in

accordance with s. 100.371” shall be remanded to the FIEC. § 16.061(3), Fla. Stat. (emphasis added).

Section 100.371, in turn, provides that if *the Florida Supreme Court* concludes that the financial impact statement is defective, it must remand to the FIEC for redrafting. § 100.371(13)(e)1., Fla. Stat. (“Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the [FIEC] for redrafting, provided the court’s advisory opinion is rendered at least 75 days before the election . . . .”). But if “*the Supreme Court* has not issued an advisory opinion on the initial financial impact statement” by the 75-day deadline, the statement “shall be deemed approved for placement on the ballot.” § 100.371(13)(e)2., Fla. Stat. (emphasis added). And if “*the Supreme Court* has rejected the initial submission by the [FIEC] and no redraft has been approved by *the Supreme Court*” by the 75-day deadline, only a statement that the impact cannot be determined appears on the ballot. § 100.371(13)(c)3., Fla. Stat. (emphasis added).

That combination of constitutional provisions and statutory requirements sends financial impact statements to the Florida

Supreme Court alone, precisely as intended. No part of this reticulated review process authorizes any court other than the Florida Supreme Court to review the statement, much less remand the statement to the FIEC. Indeed, the Supreme Court itself readily concluded that the Legislature had “expressly contemplated” that Court’s review. *Minimum Wage*, 285 So. 3d at 1279.

The Legislature, in short, followed the Supreme Court’s lead in leaving review exclusively in the hands of that Court, while putting forth a decision tree mandating the outcome in every scenario (Supreme Court approval, no Supreme Court advisory opinion, Supreme Court remand with approval of a redraft, Supreme Court remand with no approval of a redraft). A circuit court cannot inject itself into this reticulated scheme by remanding a purportedly inadequate financial impact statement. Neither the circuit court nor this Court “has the authority to rewrite a component of the Legislature’s integrated scheme set out in [Section 100.371(13)] to reflect” the Supreme Court’s determination that it lacks original jurisdiction by picking up the slack. *All Voters Vote*, 328 So. 3d at 1150.

Below, Plaintiffs’ assertion of jurisdiction rested on the thinnest of reeds: Section 100.371(13)(c)2. provides that “[a]ny financial impact statement that ‘a court’ finds not to be in accordance with this section shall be remanded solely to the [FIEC] for redrafting.” Viewing that language—“a court” rather than “the court”—in isolation, the Supreme Court understandably thought it was “not clear” whether relief might be available in another court, leaving that question for another day. *See Minimum Wage*, 285 So. 3d at 1279 n.2. But the “a court” language plainly does not create a right of action of any kind. Rather, it anticipates that judicial review might be provided for elsewhere, and merely limits any available remedies to a “reman[d] solely to the” FIEC. *Id.* And such review is provided for elsewhere—in the Florida Supreme Court. That the Court in *Minimum Wage* did not survey the entire statutory scheme to determine whether circuit court review might be available reflects, as the Court said, “that that issue [wa]s not before” it. *Minimum Wage*, 285 So. 3d at 1281 n.4. Nothing in that dicta reflects—as the circuit court believed here—a “clear invitation in footnotes 2 and 4 for a plaintiff

to bring a declaratory-judgment action in county or circuit court” (App’x at 10) regarding the validity of a financial impact statement.

As the Supreme Court has explained, “[i]t is a fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *Advisory Op. to Governor re Implementation of Amend. 4*, 288 So. 3d 1070, 1079 (Fla. 2020) (cleaned up). Here, the singular use of the indefinite article on which Plaintiffs hang their hat is smack in the middle of Section 100.371(13)’s comprehensive process for review by the Florida Supreme Court. That includes language in the *same subparagraph* about submission to the Attorney General (who must submit it to the Florida Supreme Court). *See* § 100.371(13)(c)2., Fla. Stat. (requiring the FIEC to immediately submit the statement to the Attorney General); § 16.061(3), Fla. Stat. (indicating that the Attorney General would submit the statement to the Supreme Court). And it is followed immediately thereafter by a subsection explaining what happens when a financial impact statement is remanded to the FIEC: “If the *Supreme Court* has rejected the initial submission by the Financial

Impact Estimating Conference and no redraft has been approved by the *Supreme Court*” by the 75-day deadline, the statutory language of indeterminacy appears on the ballot. § 100.371(13)(c)3., Fla. Stat. (emphases added).

Put another way, Section 100.371(13)(c)3. provides crucial context for the “a court” language, establishing both which court remands to the FIEC and which court approves a redraft: the Supreme Court. Underscoring the point, Section 16.061(3) provides that, after the Attorney General petitions the Supreme Court for an advisory opinion on a citizen initiative, “[a]ny fiscal impact that *the court* finds” unlawful “shall be remanded” to the FIEC. That is consistent with the Supreme Court’s own explanation that the advisory opinion process to which the Legislature sent the financial impact statement is itself “exclusive” of circuit court jurisdiction. *Roberts*, 43 So. 3d at 680.

In sum, *Minimum Wage* sheds no light on the question of circuit court jurisdiction other than to say that “the Legislature has the authority to revise the statutes to provide for review in a court not constrained by [the Court’s] constitutionally limited original

jurisdiction.” *Id.* at 1280–81. In concluding otherwise, the circuit court elevated tentative, nonbinding dicta over this Court’s subsequent, definitive ruling in *All Voters Vote* that a circuit court lacks authority to remand a financial impact statement for redrafting. *See* 328 So. 3d at 1150–51.

**C. The circuit court lacked the authority to issue a declaratory judgment regarding the validity of the financial impact statement.**

Finally, the circuit court issued a declaratory judgment that the financial impact statement violates Section 100.371 and Florida’s Constitution. That form of relief, too, is ineffectual under *All Voters Vote*, *see supra* pp. 19–21, and foreclosed in any event by the “exclusive” review contemplated by the relevant statute, *see supra* pp. 22–28.

A claim that the government has not complied with its own statutory requirements—here the requirement of a “clear and unambiguous statement”—is not justiciable unless the “[t]he Legislature has . . . provided a cause of action in the statute to afford [Plaintiffs] a judicial remedy.” *Moon-Vileno v. Fla. Ass’n of Court Clerks, Inc.*, --- So. 3d ---, 2024 WL 252546 (Fla. 1st DCA Jan. 23,

2024). Here, the absence of a private cause of action challenging the financial impact statement was deliberate; the sole mechanism of review is the advisory opinion process initiated by the Attorney General. When the Legislature intended to create a private cause of action, it knew how to do so. See § 100.371(3)(b), Fla. Stat. (“A citizen may challenge a petition circulator’s registration under this section by filing a petition in circuit court.”).

Plaintiffs’ request for a declaratory judgment was no substitute for a proper cause of action. As this Court has explained, when “[t]he Legislature has not provided a cause of action in the statute,” the Declaratory Judgments Act does not supply one. *Moon-Vileno*, --- So. 3d ---, 2024 WL 252546 at \*3. In other words, the Act does not allow “an individual [to] sue for declaratory relief alleging a violation of any statute under which he has no private right of action to enforce its provisions.” *MacNeil v. Crestview Hosp. Corp.*, 292 So. 3d 840, 843 (Fla. 1st DCA 2020). Rather, Plaintiffs seeking a declaratory judgment must plead some “other cause of action . . . that would show that a justiciable controversy exists on which to predicate a declaratory judgment claim.” *Id.* at 845. In the absence of such other

cause of action, a declaratory judgment would be an “improper advisory opinion.” *Id.* That is why in *All Voters Vote*, this Court pointed to this principle in expressing its “considerable doubt” that the trial court had the power to grant declaratory relief regarding a financial impact statement “in the first place.” *All Voters Vote*, 328 So. 3d at 1151 n.1.). In short, “[a]bsent a showing of at least a colorable right which would be affected by the requested declaration, dismissal is required.” *Webster v. Inch*, 286 So. 3d 847, 848 (Fla. 1st DCA 2019).

The circuit court lacked the power to grant the relief requested for another reason—“when challenging governmental action, the Florida Supreme Court has repeatedly held that citizens and taxpayers lack standing to challenge a governmental action unless they demonstrate either a special injury, different from the injuries to other citizens and taxpayers, or unless the claim is based on the violation of a provision of the Constitution that governs the taxing and spending powers.” *Liebman v. City of Miami*, 279 So. 3d 747, 751–52 (Fla. 3d DCA 2019) (quotation omitted). Plaintiffs have asserted no special injury that is distinct from the injuries to other

citizens and taxpayers who have an interest in the financial impact statement's compliance with the relevant statutes. After all, the sponsor of an amendment has no more legal interest in an amendment's passage than any other voter. That is why the Supreme Court's review of the ballot title and summary results in an advisory opinion, even though it can block ballot placement altogether.

Moreover, any effect that the financial impact statement might have on a voter's decision is purely speculative. Plaintiffs therefore sought an "improper advisory opinion" for that reason as well. *MacNeil*, 292 So. 3d at 845. As the Supreme Court explained, "[o]f necessity, a pre-election challenge to a citizen initiative proposed constitutional amendment is always in the nature and form of requesting an advisory opinion." *Roberts*, 43 So. 3d at 680. Litigation over a proposed constitutional amendment addresses "merely the possibility of legal injury based on purely hypothetical facts which have not arisen and are only contingent, uncertain and rest entirely on future possible facts." *Id.* But "Plaintiffs cannot obtain an advisory opinion simply by styling it as a request for a declaratory judgment." *MacNeil*, 292 So. 3d at 845. That was also the Supreme Court's view

when it reviewed the financial impact statement as part of its advisory opinion process. *See Roberts*, 43 So. 3d at 680. It is all the more true now that it is certain the financial impact statement will be approved for ballot placement 75 days before the election. *All Voters Vote*, 328 So. 3d at 1150.

**III. THIS COURT SHOULD ADMINISTRATIVELY STAY THE CIRCUIT COURT’S ORDER VACATING THE AUTOMATIC STAY WHILE IT CONSIDERS THE MOTION TO REINSTATE.**

This Court has the inherent authority to issue “writs necessary to the complete exercise of its jurisdiction.” Art. V, § 4(b)(3), Fla. Const. The purpose of such writs is “to preserv[e] jurisdiction that has already been invoked or protect[] jurisdiction that likely will be invoked in the future.” *State v. Jackson*, 306 So. 3d 936, 940 (Fla. 2020) (citing *Roberts v. Brown*, 43 So. 3d 673, 677 (Fla. 2010)). Here, the Court should temporarily reinstate the stay while it considers the motion to reinstate the automatic stay for the duration of the appeal. Because the circuit court ordered the FIEC to redraft the financial impact statement within 15 days, that administrative relief is necessary to avoid the issue mooting out before this Court can render a decision. Granting such relief would preserve the status quo. *See*

*Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1075 (Fla. 1st DCA 2022) (noting that all-writs jurisdiction is available to preserve the status quo).

### **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court reverse the circuit court's decision and reinstate the automatic stay provided under Rule 9.310(b)(2). Defendants also respectfully request an immediate administrative stay of the circuit court's order vacating the automatic stay while the Court considers the motion to reinstate.

Respectfully submitted,

ASHLEY MOODY  
*Attorney General*

HENRY C. WHITAKER (FBN 1031175)  
*Solicitor General*

/s/ Daniel W. Bell  
DANIEL W. BELL (1008587)  
*Chief Deputy Solicitor General*

OFFICE OF THE ATTORNEY GENERAL  
The Capitol, PL-01  
Tallahassee, FL 322399  
(850) 414-3300

*henry.whitaker@myfloridalegal.com*  
*daniel.bell@myfloridalegal.com*

*Counsel for the Secretary of State, the  
Financial Impact Estimating Conference,  
and the members of the Financial Impact  
Estimating Conference*

*/s/ Ashley E. Davis*  
ASHLEY E. DAVIS (FBN 48032)  
*Chief Deputy General Counsel*

FLORIDA DEPARTMENT OF STATE  
R.A. Gray Building, Suite 100  
500 South Bronough Street  
Tallahassee, Florida 32399-0250  
(850) 245-6536  
*joseph.vandebogart@dos.fl.gov*  
*ashley.davis@dos.fl.gov*  
*jenna.mclanahan@dos.fl.gov*

*Co-counsel for the Secretary of State*

*/s/ David Axelman*  
DAVID AXELMAN (FBN 90872)  
*General Counsel*

HANNAH DUSHANE (FBN 1030886)  
*Deputy General Counsel*

THE FLORIDA HOUSE OF  
REPRESENTATIVES  
317 The Capitol  
402 South Monroe Street  
Tallahassee, Florida 32399-1300  
Tel: (850) 717-5500  
*David.Axelman@myfloridahouse.gov*

*Hannah.Dushane@myfloridahouse.gov*

*Co-Counsel for Vince Aldridge in his official capacity*

*/s/ Carlos Rey*

CARLOS REY (FBN 11648)  
*General Counsel*

THE FLORIDA SENATE  
404 South Monroe Street  
Tallahassee, Florida 32399  
(850) 487-5855  
*Rey.Carlos@flsenate.gov*

*Co-Counsel for Azhar Khan in his official capacity*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing brief has been furnished via the E-Filing Portal on this 11th day of June, 2024, on the following:

<p>Michelle Morton Daniel B. Tilley <b>ACLU Foundation of Florida</b> 4343 West Flagler Street, Suite 400 Miami, FL 33134 (786) 363 2714 mmorton@aclufl.org dtilly@aclufl.org  <i>Counsel for Plaintiffs Floridians</i></p>	<p>Bradley R. McVay <b>Florida Department of State</b> 500 South Bronough Street Tallahassee, FL 32399-0250 (850) 556-1731 Brad.mcvay@dos.myflorida.gov  <i>Co-Counsel for Defendant Cord Byrd in his official capacity as</i></p>
---	--

<p><i>Protecting Freedom, Inc., and Sara Latshaw</i></p>	<p><i>Florida Secretary of State</i></p>
<p>Nicholas L.V. Warren  <b>ACLU Foundation of Florida</b>  1809 Art Museum Drive, Suite 203  Jacksonville, FL 32207  (786) 363-1769  nwarren@aclufl.org</p> <p><i>Counsel for Plaintiffs Floridians  Protecting Freedom, Inc., and Sara Latshaw</i></p>	<p>David Axelman  <b>Florida House of Representatives</b>  317 The Capitol  Tallahassee, FL 32399-1300  (850) 717-5500  david.axelman@myfloridahouse.gov  debi.robbins@myfloridahouse.gov</p> <p><i>Co-Counsel for Defendant Vince Aldridge, in his official capacity as Principal of the Financial Impact Estimating Conference</i></p>
<p>Margaret Good  <b>Margaret Good Law, PLLC</b>  P.O. Box 5083  Sarasota, FL 34277  (941) 313-7485  margaret@margaretgoodlaw.com</p> <p><i>Counsel for Plaintiffs Floridians  Protecting Freedom, Inc., and Sara Latshaw</i></p>	<p>Corbin Hanson  Robert Swain  <b>Alachua County Attorney's Office</b>  12 Southeast 1<sup>st</sup> Street  Gainesville, FL 32601  (352) 374-5218  cfhanson@alachuacounty.us  bswain@alachuacounty.us  CAO@alachuacounty.us</p> <p><i>Counsel for Defendant Kim A. Barton, as Supervisor of Elections for Alachua County</i></p>

<p>Benjamin James Stevenson  <b>Stevenson Legal, PLLC</b>  919 Panferio Drive  Pensacola, FL 32561  (702) 306-6708  bjs@stevenson-legal.com</p> <p><i>Co-Counsel for Plaintiff  Floridians Protecting Freedom,  Inc.</i></p>	<p>Nicholas A. Shannin  <b>Shannin Law Firm, P.A.</b>  214 South Lucerne Circle East,  Suite 200  Orlando, FL 32801  (407) 985-2222  service@shanninlaw.com</p> <p><i>Counsel for Defendant Glen  Gilzean Supervisor of Elections for  Orange County</i></p>
<p>Joseph K. Jarone  Adam Katzman  Devona A. Reynolds Perez  <b>Broward County Attorney's  Office</b>  115 South Andrews Avenue,  Suite 423  Fort Lauderdale, FL 3301  (954) 357-7600  jkjarone@broward.org  akatzman@broward.org  dreynoldsperez@broward.org  mwburke@broward.org</p> <p><i>Counsel for Defendant Joe  Scott as Supervisor of Elections  for Broward County</i></p>	<p>Joel F. Foreman  <b>Law Office of Joel F. Foreman</b>  P.O. Box 550  Lake City, FL 32056  (386) 752-8420  joel@foreman.law  michelle@foreman.law</p> <p><i>Counsel for Defendants Tome  Stinson Brown as Supervisor of  Elections for Columbia County  and Jennifer Musgrove Kinsey as  Supervisor of Elections for  Suwannee County</i></p>
<p>Dale A. Scott  <b>Roper, Townsend &amp; Sutphen,  P.A.</b></p>	<p>Craig D. Feiser  Tiffany D. Pinkstaff  <b>Office of General Counsel</b></p>

<p>255 S. Orange Avenue, Suite 750  Orlando, FL 32801  (407) 897-5150  dscott@roperpa.com  ehemphill@roperpa.com</p> <p><i>Counsel for Defendant Maureen “Mo” Baird as Supervisor of Elections for Citrus County</i></p>	<p>117 W. Duval Street, Suite 480  Jacksonville, FL 32202  (904) 255-5072  cfeiser@coj.net  tpinkstaff@coj.net</p> <p><i>Counsel for Defendant Jerry Holland as Supervisor of Elections for Duval County</i></p>
<p>Michael S. Burke  <b>BURKE BLUE</b>  16215 Panama City Beach Parkway  Panama City Beach, FL 32413  (850) 236-4444  mburke@burkeblue.com  neubanks@burkeblue.com  pleadings@burkeblue.com</p> <p><i>Co-Counsel for Defendant Mark Andersen as Supervisor of Elections for Bay County</i></p>	<p>Jon A. Jouben  <b>Hernando County Attorney’s Office</b>  20 North Main Street, Suite 462  Brooksville, FL 34601  (352) 754-4122  jjouben@co.hernando.fl.us  cao@co.hernando.fl.us  phare@co.hernando.fl.us</p> <p><i>Counsel for Defendant Shirley Anderson as Supervisor of Elections for Hernando County</i></p>
<p>Christi J. Hankins  <b>Escambia County Attorney’s Office</b></p>	<p>Stephen M. Todd  <b>Hillsborough County State Attorney’s Office</b></p>

<p>221 Palafox Place, Suite 430 Pensacola, FL 32502 (850) 595-4970 cjhankins@myescambia.com cmwhite@myescambia.com</p> <p><i>Counsel for Defendant Robert Bender as Supervisor of Elections for Escambia County</i></p>	<p>P.O. Box 1110 Tampa, FL 33601-1110 (813) 272-5670 todds@hcfl.gov henryka@hcfl.gov pages@hcfl.gov</p> <p><i>Counsel for Defendant Craig Latimer as Supervisor of Elections for Hillsborough County</i></p>
<p>Mark Herron <b>MESSER CAPARELLO, P.A.</b> P.O. Box 15579 Tallahassee, FL 32317 (850) 222-0720 mherron@lawfla.com clowell@lawfla.com statecourtpleadings@lawfla.com</p> <p><i>Counsel for Defendant Mark S. Earley as Supervisor of Elections for Leon County</i></p>	<p>Michael B. Valdes <b>Miami-Dade County Attorney's Office</b> Stephen P. Clark Center 111 N.W. 1<sup>st</sup> Street, Suite 2810 Miami, FL 33128 (305) 375-5151 mbv@miamidade.gov mora@miamidade.gov</p> <p><i>Counsel for Defendant Christina White as Supervisor of Elections for Miami-Dade County</i></p>
<p>Leonard M. Collins <b>GrayRobinson, P.A.</b> 301 South Bronough Street, Suite 600</p>	<p>Morgan R. Bentley <b>BENTLEY GOODRICH KISON, P.A.</b> 783 S. Orange Avenue, Suite 300</p>

<p>Tallahassee, FL 32301  (850) 577-9090  leonard.collins@gray-robinson.com  lanessa.reichel@gray-robinson.com</p> <p><i>Counsel for Defendant Janet H. Adkins as Supervisor of Elections for Nassau County</i></p>	<p>Sarasota, FL 34236  (941) 556-9030  mbentley@bgk.law  vengel@bgk.law</p> <p><i>Counsel for Defendant Ron Turner as Supervisor of Elections for Sarasota County</i></p>
<p>Jared D. Kahn  <b>Pinellas County Attorney's Office</b>  315 Court Street, Sixth Floor  Clearwater, FL 33756  (727) 464-3354  jkahn@pinellas.gov  eservice@pinellas.gov</p> <p><i>Counsel for Defendant Julie Marcus as Supervisor of Elections for Pinellas County</i></p>	<p>Gregory T. Stewart  Matthew R. Shaud  <b>Nabors, Giblin &amp; Nickerson, P.A.</b>  1500 Mahan Drive, Suite 200  P. O. Box 11008  Tallahassee, FL 32302  (850) 224-4070  gstewart@ngnlaw.com  mshaud@ngnlaw.com  legal-admin@ngnlaw.com</p> <p><i>Counsel for Defendant Paul A. Lux as Supervisor of Elections for Okaloosa County</i></p>
<p>Kevin Bledsoe  Sarah Jonas  <b>Volusia County Attorney's Office</b>  123 W. Indiana Avenue  DeLand, FL 32720  (386) 736-5950  sjonas@volusia.org  mefird@volusia.org</p> <p><i>Counsel for Defendant Lisa</i></p>	<p>Kevin A. Forsthoefel  <b>Ausley McMullen</b>  123 South Calhoun Street  Tallahassee, FL 32301  (850) 224-9115  kforsthoefel@ausley.com</p> <p><i>Counsel for Defendant Joseph Morgan as Supervisor of Elections</i></p>

<p><i>Lewis as Supervisor of Elections for Volusia County</i></p>	<p><i>for Wakulla County</i></p>
<p>Clay B. Adkinson  <b>Adkinson Law Firm, LLC</b>  P.O. Box 1207  DeFuniak Springs, FL 32435  (850) 892-5195  clay@adkinsonlaw.com</p> <p><i>Counsel for Defendant Ryan Messer as Supervisor of Elections for Walton County</i></p>	
<p>John T. LaVia, III  <b>Gardner, Bist, Bowden, Dee, LaVia, Wright, Perry &amp; Harper, P.A.</b>  1300 Thomaswood Drive  Tallahassee, FL 32308  (850) 385-0070  jlavia@gbwlegal.com</p> <p>Ronald A. Labasky  P.O. Box 350  Tallahassee, FL 32302  ronlabasky@gmail.com</p> <p><i>Counsel for Defendants Chris Chambless as Supervisor of Elections for Clay County, Vicki Davis as Supervisor of Elections of Martin County, Mary Jane Arrington as Supervisor of Elections for Osceola County, Wendy Link as Supervisor of Elections for Palm Beach County, Lori</i></p>	<p>Frank M. Mari  <b>Roper, Townsend &amp; Sutphen, P.A.</b>  255 S. Orange Avenue, Suite 750  Orlando, FL 32801  (407) 897-5150  fmari@roperpa.com  <u><a href="mailto:ihaines@roperpa.com">ihaines@roperpa.com</a></u></p> <p><i>Counsel for Defendants Tim Bobanic as Supervisor of Elections for Brevard County, Mark Negley as Supervisor of Elections for DeSoto County, Kaiti Lenhart as Supervisor of Elections for Flagler County, Connie Sanchez as Supervisor of Elections for Gilchrist County, Karen Healy as Supervisor of Elections for</i></p>

<p><i>Edwards as Supervisor of Elections for Polk County, and Gertrude Walker as Supervisor of Elections for St. Lucie County</i></p>	<p><i>Highlands County, Michelle Milligan as Supervisor of Elections for Jefferson County, and Heath Driggers as Supervisor of Elections for Madison County</i></p>
<p>Andy Bardos  Ashley H. Lukis  <b>GrayRobinson, P.A.</b>  301 South Bronough Street,  Suite 600  Tallahassee, FL 32301  (850) 577-9090  andy.bardos@gray-  robinson.com  ashley.lukis@gray-</p>	<p>Geraldo F. Olivo, III  <b>HENDERSON, FRANKLIN,  STARNES &amp; HOLT, P.A.</b>  P.O. Box 280  1715 Monroe Street  Fort Myers, FL 33902-0280  (239) 344-1181  jerry.olivo@henlaw.com  sarah.howie@henlaw.com</p>

robinson.com

*Counsel for Defendants Leah Valenti as Supervisor of Elections for Charlotte County, Melissa Blazier as Supervisor of Elections for Collier County, Leslie Rossway Swan as Supervisor of Elections for Indian River, Allen Hays as Supervisor of Elections for Lake County, Tommy Doyle as Supervisor of Elections for Lee County, James Satcher as Supervisor of Elections for Manatee County, Wesley Wilcox as Supervisor of Elections for Marion County, Joyce Griffin as Supervisor of Elections for Monroe County, Brian E. Corley as Supervisor of Election for Pasco County, and Chris Anderson as Supervisor of Elections for Seminole County*

*Counsel for Defendants Aletris Farnam as Supervisor of Elections for Glades County, Diane Smith as Supervisor of Elections for Hardee County, Sherry Taylor as Supervisor of Elections for Hendry County, Russell Williams as Supervisor of Elections for Holmes County, Tammy Jones as Supervisor of Elections for Levy County, and Melissa Arnold as Supervisor of Elections for Okeechobee County*

<p>Susan S. Erdelyi  <b>MARKS GRAY, P.A.</b>  1200 Riverplace Blvd., Suite 800  Jacksonville, FL 32207  (904) 398-0900  serdelyi@marksgray.com  jmcduffie@marksgray.com</p> <p><i>Counsel for Defendants Chris Milton as Supervisor of Elections for Baker County, Mark Andersen as Supervisor of Elections for Bay County, Amanda Seyfang as Supervisor of Elections for Bradford County, Sharon Chason as Supervisor of Elections for Calhoun County, Starlet Cannon as Supervisor of Elections for Dixie County, Shirley G. Knight as Supervisor of Elections for Gadsden County, John M. Hanlon as Supervisor of Elections for Gulf</i></p>	<p>Geraldo F. Olivo, III  <b>HENDERSON, FRANKLIN, STARNES &amp; HOLT, P.A.</b>  P.O. Box 280  1715 Monroe Street  Fort Myers, FL 33902-0280  (239) 344-1181  jerry.olivo@henlaw.com  sarah.howie@henlaw.com</p> <p><i>Counsel for Defendants Aletris Farnam as Supervisor of Elections for Glades County, Diane Smith as Supervisor of Elections for Hardee County, Sherry Taylor as Supervisor of Elections for Hendry County, Russell Williams as Supervisor of Elections for Holmes County, Tammy Jones as Supervisor of Elections for Levy County, and Melissa Arnold as Supervisor of Elections for Okeechobee County</i></p>

*County, Laura Hutto as Supervisor of Elections for Hamilton County, Carol A. Dunaway as Supervisor of Elections for Jackson County, Travis Hart as Supervisor of Elections for Lafayette County, Grant Conyers as Supervisor of Elections for Liberty County, Charles Overturf as Supervisor of Elections for Putnam County, Tappie A. Villane as Supervisor of Elections for Santa Rosa County, Vicky Oakes as Supervisor of Elections for St. Johns County, William Keen as Supervisor of Elections for Sumter County, Dana Southerland as Supervisor of Elections for Taylor County, Deborah K. Osborne as Supervisor of Elections for Union County, and Deidra Pettis as Supervisor of Elections for Washington County*

*/s/ Daniel W. Bell*

Daniel W. Bell (FBN 1008587)

**CERTIFICATE OF COMPLIANCE**

I certify that this motion was prepared in Bookman Old Style, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure.

/s/ Daniel W. Bell

Daniel W. Bell (FBN 1008587)

**IN THE FIRST DISTRICT COURT OF APPEAL  
FOR THE STATE OF FLORIDA**

FINANCIAL IMPACT ESTIMATING  
CONFERENCE, *et al.*,

*Appellants,*

v.

Case No. 1D2024-1485  
L.T. No. 2024-CA-558

FLORIDIANS PROTECTING  
FREEDOM, INC.,

*Appellee.*

---

**APPELLEES' RESPONSE TO ORDER TO SHOW CAUSE AND TO  
APPELLANTS' EMERGENCY MOTION TO REINSTATE  
AUTOMATIC STAY**

---

Daniel B. Tilley (FBN 102882)  
Samantha J. Past (FBN 1054519)  
Michelle Morton (FBN 81975)  
**ACLU Foundation of Florida**  
4343 West Flagler Street, Ste. 400  
Miami, FL 33134  
(786) 363-2714  
dtilley@aclufl.org  
spast@aclufl.org  
mmorton@aclufl.org

Nicholas L.V. Warren  
(FBN 1019018)  
**ACLU Foundation of Florida**  
1809 Art Museum Drive, Ste. 203  
Jacksonville, FL 32207  
(786) 363-1769  
nwarren@aclufl.org

Margaret Good (FBN 97931)  
**Margaret Good Law, PLLC**  
P.O. Box 5083  
Sarasota, FL 34277  
(941) 313-7485  
margaret@margaretgoodlaw.com

Joseph T. Eagleton (FBN 98492)  
**Brannock Berman & Seider**  
1111 West Cass Street, Ste. 200  
Tampa, FL 33606  
(813) 223-4300  
jeagleton@bbsappeals.com

**Table of Contents**

INTRODUCTION ..... 3

BACKGROUND..... 9

    I. Factual Background..... 9

    II. Procedural History..... 11

STANDARD OF REVIEW..... 17

ARGUMENT ..... 18

    I. FPF is irreparably harmed by a stay, and the equities  
    overwhelming tilt in FPF’s favor. .... 18

    II. FPF is likely to prevail on the merits..... 22

        a. Jurisdiction ..... 22

            1. *Minimum Wage* contemplates a declaratory-judgment  
            action to challenge a misleading FIS. .... 22

            2. The Court has authority to protect constitutional  
            rights and demand compliance with the law..... 26

            3. A private right of action exists but is not required. ... 29

            4. The State’s statutory interpretation requires rewriting  
            the statutory language. .... 31

        b. Merits ..... 33

    III. Conclusion ..... 36

CERTIFICATE OF SERVICE..... 37

CERTIFICATE OF COMPLIANCE ..... 37

In accordance with this Court’s order to show cause of June 12, 2024, Plaintiff-Appellee Floridians Protecting Freedom, Inc. (“FPF”) files this response to Defendants-Appellants’ Emergency Motion to Reinstate Automatic Stay and Request for Administrative Stay (“Motion”), and states as follows:

### **INTRODUCTION**

Nearly one million Floridians have exercised the right granted to them by Article XI, section 3 of the Florida Constitution to amend the Constitution by petitioning the State of Florida for the opportunity to vote on the proposed “Amendment to Limit Government Interference with Abortion” (known as “Amendment 4”).<sup>1</sup> The Florida Constitution requires a fair and accurate presentation of the proposed amendment on the ballot. *Detzner v. League of Women Voters of Fla.*, 256 So. 3d 803, 807 (Fla. 2018). Amendment 4’s sponsor—Appellee FPF—met its obligations to propose a clear and unambiguous ballot summary, as the Florida Supreme Court recognized when it permitted the proposed amendment to proceed to November’s ballot. *Advisory Op. to Att’y Gen. re Limiting Gov’t*

---

<sup>1</sup> <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=83927&seqnum=1>.

*Interference with Abortion*, --- So. 3d ----, 2024 WL 1363899 (Fla. Apr. 1, 2024). But the State of Florida has not met its own obligation to ensure the Financial Impact Statement (“FIS”) that is required to be appended to the ballot summary is itself clear and unambiguous. See *Advisory Op. to Att’y Gen. re Standards For Establishing Legis. Dist. Boundaries*, 2 So. 3d 161, 164 (Fla. 2009) (“[W]hen we review a financial impact statement for compliance with section 100.371, we address whether the statement is clear, unambiguous,” does not exceed the word limit, “and is limited to addressing the estimated increase or decrease in any revenues or costs to the state or local governments.”) (quotations omitted).

Here, as the trial court found in its order granting FPF summary judgment (“Order”), the FIS is not clear and unambiguous but instead is unlawfully inaccurate, ambiguous, misleading, unclear, and confusing, and no Appellant—including the Financial Impact Estimating Conference (“FIEC”) itself—has contested this. App’x at 90-91. Instead, the FIEC, the four FIEC principals, and the Secretary of State (together, the “State”) have argued that courts do not have authority to review an FIS, no matter how inaccurate or misleading. The State solely contests jurisdiction to review the FIEC’s

demonstrably inaccurate FIS. App'x at 87. The State's jurisdictional arguments are wrong, as the trial court correctly concluded. App'x at 87-88.

Consistent with the courts' constitutional obligation to ensure the accuracy of ballot language, and as contemplated by the relevant Florida statute, for years the legality of an FIS has been the subject of judicial review. Although the Florida Supreme Court no longer expresses "advisory opinions" on the legality of a proposed FIS, it unanimously stated that its decision not to do so "[o]bviously . . . does not preclude a challenge to a financial impact statement in circuit or county court, by declaratory judgment action under current law." *Advisory Op. to Att'y Gen. re Raising Fla.'s Minimum Wage*, 285 So. 3d 1273, 1279 n.4 (Fla. 2019).

The impact of adopting the State's contrary legal conclusion will be that when Florida's 13 million registered voters go to the polls in November, they will see a ballot presentation that *all parties to this litigation recognize is unlawful*. Rather than accept that absurd and unlawful result—which will deprive FPF of a fair up-or-down vote on the proposed amendment, and which in the meantime creates confusion for voters trying to understand the proposal—this Court

should deny the State’s request to reinstate the stay for the duration of the appeal.

This issue is not resolved by the FIEC beginning the process<sup>2</sup> to “consider potential revisions” to the FIS. Without the backstop of a court’s review, neither FPF nor any ballot initiative sponsor has a remedy to correct an unlawful FIS, no matter how inaccurate or misleading (including where the State itself has not disputed its inaccuracy). At this moment, the process has not yet begun, and even if the FIEC ultimately does redraft the FIS, it is uncertain that the State will provide an accurate and unambiguous FIS on the ballot.

However, in reliance on the State’s declaration in its Motion that the FIEC will hold “two public hearings for July 2024 on revising the financial impact statement,” App’x at 141, FPF does not oppose a

---

<sup>2</sup> The FIEC meetings were noticed on June 10, the day before the trial court set and held an emergency hearing on FPF’s motion to vacate the stay. Off. of Econ. & Demographic Rsch., <http://edr.state.fl.us/Content/>. FPF learned of this from the State’s motion in this Court to reinstate the automatic stay. The hearing notice may be found here: [http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbotionNoticeofWorkshopsandConference\\_SecondSeries.pdf](http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbotionNoticeofWorkshopsandConference_SecondSeries.pdf).

*temporary* reinstatement of the automatic stay until July 1, 2024.<sup>3</sup>

Beyond those dates, however, FPF strongly opposes an extension of any stay. Allowing the stay to continue would mean that FPF would be required to expend unnecessary time, energy, and resources educating voters about the inaccuracies of the FIS that everyone agrees is unlawfully misleading. The unlawful FIS is part of the public record, and voters seeking to educate themselves on the amendment are, and will be, reading it in the time leading up to the election. The only way to remedy this harm is by immediately redrafting the FIS, making it publicly available, and using the newly drafted FIS (assuming it is clear and not misleading) on the general election ballot.

Continuing the stay would also needlessly jeopardize the FIEC's ability to implement a remedy should this Court or the Florida Supreme Court ultimately uphold the lower court's Order. In such a

---

<sup>3</sup> The trial court's Order requires redrafting within 15 days, in accordance with section 100.371(13)(c)12. If the stay is lifted on July 1, the FIEC would have until July 15, 2024, to publish a new FIS. Because all meetings of the FIEC are public, § 100.371(13)(c), Fla. Stat., FPF assumes that the new FIS will be finalized during one of the FIEC's noticed meetings (July 1 and 8), giving the FIEC plenty of time to comply with the Order and the statute.

scenario, forcing Florida’s voters to cast their ballots with an inaccurate and misleading FIS would cause irreparable harm. While FPF appreciates that the FIEC has taken steps to begin the redrafting process, that process has not yet begun, and if the stay is reinstated, there will be no means of ensuring that the FIEC timely redrafts an accurate, non-misleading, lawful FIS.<sup>4</sup>

By contrast, requiring the FIEC to redraft the FIS while this appeal proceeds on an expedited schedule causes the State no harm. If this Court reverses the trial court’s Order, all that will have happened is that the FIEC did what it is apparently already planning to do—redraft the FIS. Likewise, from the State’s perspective, if this case is not resolved by the time of ballot printing and the stay is not in place, the “worst” thing that would occur is that an updated FIS appears on the ballot—which cannot be deemed to harm the State given that it is a State-approved document. In these circumstances, the State cannot possibly explain how the lack of a stay causes any

---

<sup>4</sup> In addition, because the State’s apparent position in this litigation is that the original FIS is automatically placed on the ballot because a purported 75-day deadline for Supreme Court review will never be satisfied, *see* App’x at 148-150, it is not yet clear that the State will agree to adhere to whatever FIS comes out of this new process.

harm, and thus “the equities overwhelmingly tilt in favor” of denying Appellant’s Motion to Reinstate the Automatic Stay. *Dep’t of Agric. & Consumer Servs. v. Henry & Rilla White Found., Inc.*, 317 So. 3d 1168, 1170 (Fla. 1st DCA 2020).

## **BACKGROUND**

### **I. Factual Background**

Some background is helpful for understanding how this issue arrived here. As the State summarized in its trial-court brief, FPF is sponsoring a citizens’ initiative entitled “Amendment to Limit Government Interference with Abortion” (Amendment 4). If approved by the voters, Amendment 4 would add the following language to Florida’s Constitution:

Limiting government interference with abortion.— Except as provided in Article X, Section 22, no law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient’s health, as determined by the patient’s healthcare provider.

The Secretary of State submitted the amendment to the Attorney General and to the FIEC on September 7, 2023; in turn, the Attorney General petitioned the Florida Supreme Court for an advisory opinion regarding the validity of the initiative petition, and

the FIEC began its analysis.

While the FIEC was analyzing the proposed amendment's financial impact in fall 2023, the Florida Supreme Court was considering the constitutionality of chapter 2022-69, § 4, Laws of Fla. (codified at § 390.0111(1), Fla. Stat. (2022)), which prohibited most abortions if the pregnancy is more than 15 weeks gestation. *Planned Parenthood of Sw. & Cent. Fla. v. State*, Nos. SC2022-1050, SC2022-1127, --- So. 3d ---, 2024 WL 1363525, at \*1 (Fla. Apr. 1, 2024). By operation of a subsequently passed law, ch. 2023-21, §§ 4, 9, Laws of Fla. (codified at § 390.0111(1), Fla. Stat. (2023)), the Florida Supreme Court upholding the 15-week ban in *Planned Parenthood* would trigger a more restrictive law prohibiting most abortions if the pregnancy were more than 6 weeks gestation. Before the Supreme Court decided *Planned Parenthood*, on November 16, 2023, the FIEC issued a financial impact statement. The FIEC concluded that the proposed amendment's financial impact could not be determined due to then-pending proceedings before the Florida Supreme Court in *Planned Parenthood* and potential future litigation, and issued the following financial impact statement:

The proposed amendment was analyzed late in

the 2023 calendar year. At that time, litigation was pending before the Florida Supreme Court challenging the Legislature's 2022 enactment of a prohibition on most abortions being performed if the gestational age of the fetus is more than 15 weeks. If the Court upholds the 2022 law, a 2023 law further reducing the 15 weeks to 6 weeks will take effect 30 days later. This could lead to additional litigation. In order to measure the proposed amendment's impact on state and local government revenues and costs, a reasonable expectation of what the state of the law will be at the time of the election is required. Because there are several possible outcomes related to this litigation that differ widely in their effects, the impact of the proposed amendment on state and local government revenues and costs, if any, cannot be determined.

Amendment 4 was approved for placement on the ballot by the Florida Supreme Court on April 1, 2024. *See Advisory Op. to Att'y Gen. Re: Limiting Gov't Interference with Abortion*, No. SC2023-1392, 2024 WL 1363899 (Fla. Apr. 1, 2024). On that same day, the Supreme Court upheld the 15-week ban in *Planned Parenthood*, thus triggering the 6-week ban, which went into effect on May 1, 2024.

## **II. Procedural History**

On April 5, 2024, four days after the Florida Supreme Court approved Amendment 4 for placement on the ballot, FPF sued the FIEC and the Secretary of State in circuit court, asserting that the

FIS drafted by the FIEC violated section 100.371 of the Florida Statutes and Article XI, Section 5 of the Florida Constitution. App'x at 4. FPF requested (1) a declaration to the same effect; (2) that the Court remand the statement to the FIEC for redrafting within 15 days of the Court's declaration; and (3) an injunction prohibiting the Secretary of State from allowing the statement to appear on the ballot. App'x at 19.

On the earliest date permitted under Florida Rule of Civil Procedure 1.510 (April 25, 2024), FPF moved for summary judgment on those claims. App'x at 40. In its motion, FPF alleged that the FIS drafted by the FIEC was unlawfully inaccurate, ambiguous, misleading, unclear, and confusing. App'x at 53-56. On May 28, 2024, the State responded in opposition to the summary judgment motion and moved to dismiss FPF's claims. App'x at 60. The State did not contest FPF's claims on the merits; the State's argument was based solely on justiciability. App'x at 67-81. On June 5, 2024, the earliest date permitted under Rule 1.510 (the State refused to waive the rule), the trial court held a hearing on the summary-judgment motion and the motion to dismiss, where the State once again did not contest FPF's claims on the merits, explicitly declining the circuit

court's invitation to do so. App'x at 111. (“[The State] did not dispute that the FIS was inaccurate or unfair in its filings. At the hearing, Defendants did not argue that the FIS complied with the law, and when this Court asked at the hearing whether anyone wanted to be heard in defense of the FIS, no one accepted the invitation.”); *see also* App'x at 333-34 (Trial court during the hearing on the emergency motion to vacate the stay: “We were at a summary judgment hearing. The plaintiff put forth arguments that [the FIS] was inaccurate and misleading, and you were given . . . explicit opportunity to rebut that. You did not do that. And so, therefore, I do not think there can be argument made that now, after the fact, when the final judgment has been entered, that somehow your client takes the position that it is accurate when it clearly is not.”). On June 10, 2024, the court issued the Order denying the State's motion to dismiss and granting FPF's motion for summary judgment, requiring the FIEC to redraft the FIS within the statutorily prescribed 15-day time period. App'x at 84; § 100.371(13)9c)2., Fla. Stat. (“Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for

redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.”).<sup>5</sup>

In its Order, the court found it had jurisdiction “pursuant to section 86.011 of the Florida Statutes and *Advisory Opinion to Attorney General re Raising Florida’s Minimum Wage*, 285 So. 3d 1273, 1279 n.2, 1281 n.4 (Fla. 2019).” App’x at 86-87. It further found “footnotes 2 and 4 in *Minimum Wage* persuasive and that “*All Voters Vote* does not conflict with this Court’s ruling because *All Voters Vote* is factually distinguishable and the court there did not address the Florida Supreme Court’s clear (‘obvious[],’ *Minimum Wage*, 285 So. 3d at 1279, n.4) invitation in footnotes 2 and 4 for a plaintiff to bring a declaratory judgment action in county or circuit court when alleging that a financial impact statement violates the law.” App’x at 87.

Although the court found that *All Voters Vote* did not conflict with *Minimum Wage*, it also found it had “independent jurisdiction

---

<sup>5</sup> Although the State laments what it calls “the exceedingly short timeline for redrafting established by the circuit court’s order,” App’x at 128, the 15 days was not based on the trial court’s whim but rather the explicit statutory text, which mandates that the period be 15 days. See § 100.371(13)9c)2., Fla. Stat.

over Plaintiffs claim to enforce the constitutional mandate that the FIS be clear and unambiguous.” App’x at 88. The court recognized it had “jurisdiction to compel [FIEC] to comply with the law and halt its deprivation of a constitutional right.” App’x at 87. As the court noted, “[e]very Floridian has a constitutional right to propose an amendment to their constitution through a citizen ballot initiative. Art. XI, § 3, Fla. Const.” App’x at 87-88. Because “[t]he Florida Constitution vests circuit courts with jurisdiction to prevent unconstitutional or illegal acts,” the court had the authority to rule on the case. App’x at 88 (citing Art. V, § 5(b), Fla. Const.). The court found the facts undisputed and found that the FIS (1) is inaccurate and presents outdated information; (2) is not limited to summarizing Amendment 4’s probable impact to state and local government revenues or costs and to the state budget; and (3) is ambiguous, vague, confusing, and misleading. The court noted that “[e]ven at the time of drafting, the statements in the FIS that ‘[i]f the Court upholds the 2022 law, a 2023 law further reducing the 15 weeks to 6 weeks will take effect 30 days later’; ‘[t]his could lead to additional litigation’; and ‘because there are several possible outcomes related to this litigation that differ widely in their effects, the impact . . . cannot be determined’

inaccurately imply that the amendment's purpose could be thwarted, and a 15- or 6- week prohibition could be in place, regardless of the amendment's passage." App'x at 91. Further, "[t]he FIS statement that 'This could lead to additional litigation' is inaccurate, misleading, and ambiguous. It is unclear whether 'this' refers to 'the Court upholds the 2022 law,' 'the 2023 law further reducing the 15 weeks to 6 weeks will take effect 30 days later,' or Amendment 4 itself." App'x at 91. It also found that "[t]he potential of future litigation impacting state and local government revenues and expenses outside of the amendment's effects is not appropriate for inclusion in the FIS." App'x at 91.

After the Court entered the Order at 11:28 a.m. on June 10, 2024, App'x at 84, the State filed its notice of appeal at 6:01 p.m., App'x at 93, and FPF filed its emergency motion to vacate the stay at 6:05 p.m., App'x at 106. The State responded the following morning (June 11), App'x at 114, and the trial court set a hearing for 1:00 p.m. that same day and issued an order vacating the stay shortly thereafter, App'x at 120. The State filed its motion to reinstate the stay in this Court late that evening. App'x at 127.

The next day, June 12, this Court expedited the appeal; granted

an administrative stay pending review of the motion to reinstate the automatic stay; directed FPF to show cause by Friday, June 14 at 5:00 p.m. why the motion to reinstate the automatic stay should not be granted; and ordered the parties to propose an expedited briefing schedule. Later on June 12, FPF submitted to this Court a suggestion that the order on appeal be certified as requiring immediate resolution by the Florida Supreme Court, App'x at 173, which this Court has ordered the State to respond to by Monday, June 17 at noon.

### **STANDARD OF REVIEW**

A circuit court's order vacating the automatic-stay provision of Florida Rule of Appellate Procedure 9.310(b)(2) is reviewed for an abuse of discretion. *See Fla. Dep't of Health v. People United for Med. Marijuana*, 250 So. 3d 825, 829 (Fla. 1st DCA 2018) ("Upon consideration of the State's motion for review, we hold that it was an abuse of discretion for the circuit court to vacate the automatic stay."); *accord DeSantis v. Fla. Educ. Ass'n*, 325 So. 3d 145, 151 (Fla. 1st DCA 2020) ("A trial court abuses its discretion by vacating an automatic stay when the party seeking to vacate the stay does not make the necessary showing of compelling circumstances, when the

government is likely to succeed on appeal, or when reinstatement of the stay is unlikely to cause irreparable harm.”); *see also Dep’t of Agric. & Consumer Servs. v. Henry & Rilla White Found., Inc.*, 317 So. 3d 1168, 1170–71 (Fla. 1st DCA 2020) (discussing “compelling circumstances” prong in context of whether “the equities overwhelmingly tilt in favor of vacating the stay”).

### **ARGUMENT**

The trial court did not abuse its discretion when it vacated the automatic stay because FPF is irreparably harmed by the current misleading FIS staying in place and because FPF is likely to succeed on the merits of this appeal—the circuit court had the authority to remand the misleading FIS to the FIEC for redrafting.

#### **I. FPF is irreparably harmed by a stay, and the equities overwhelmingly tilt in FPF’s favor.**

A necessary implication of the trial court’s grant of summary judgment in FPF’s favor is that FPF will suffer irreparable harm absent a revision of the current FIS. As the trial court detailed in its Order, the FIS is constitutionally and statutorily inaccurate, ambiguous, misleading, unclear, and confusing, and is not limited, as required by statute, to addressing the estimated increase or

decrease in revenue or costs to state or local governments. App'x at 123. Allowing the current FIS to appear on the ballot will confuse and deceive voters while also inhibiting FPF's ability to present the voters with a clear and unambiguous ballot initiative, impeding its right to propose an amendment to the constitution under Article XI, section 3.

These harms cannot be remedied if this FIS remains in place because it would constitute an unlawful ballot presentation that is impossible to cure after-the-fact. These criteria are "substantially identical" to the criteria the trial court was required to consider when granting FPF's motion for summary judgment. *See Tampa Sports Auth. v. Johnston*, 914 So. 2d 1076, 1079 (Fla. 2d DCA 2005). If the stay is reinstated, the protection against the constitutional and statutory violations secured by the trial court's order will be lost, and irreparable harm to FPF and, in turn, a confused and misled electorate, will result.

In its Motion, the State contends that (1) FPF cannot be harmed until after the primary election on August 29, App'x at 142; (2) "should it come down to the wire, this Court and the Florida Supreme Court have the authority to lift the automatic stay," App'x at 143; (3)

the demonstrably inaccurate, ambiguous, misleading, unclear, and confusing FIS posted on the Secretary of State's website harms no one, App'x at 143; and (4) any claim of irreparable harm is undercut by the FIEC's newly noticed meetings, App'x at 144. FPF addresses each argument in turn.

First, FPF is harmed well before August 29, because any delay before the FIS is redrafted threatens to render FPF ultimately unable to secure an FIS that is not demonstrably inaccurate and misleading. It is no answer to say that this Court or the Florida Supreme Court can step in "if it comes down to the wire." App'x at 143. That is not the standard here. In any event, ballot-printing deadlines are already quickly approaching. The FIEC needs time to redraft the FIS, and a court may need time for further review if it remains inaccurate and misleading. Put simply, there is no reason for this to "come[] down to the wire," particularly when the State has previously opposed requests for a more expeditious result. FPF proposed shortening deadlines at the trial-court level to expedite the process, yet the State refused. FPF has filed a suggestion of pass-through jurisdiction with this Court, yet the State opposed. Ultimately, this litigation will determine FPF's ability to obtain a lawful FIS before ballot-printing

deadlines. The State’s suggestion that FPF is not harmed until after August 29 makes no sense in a context where ballot-printing deadlines are fast approaching.

Second, the State is incorrect that materially false and misleading information on a prominent public website harms no one. Members of the public, the media, communities that support and oppose the subject matter of the amendments, and others all rely on government officials to provide accurate information so that people can make informed decisions about how to exercise their voices to influence their democracy. Every day the current FIS remains in place increases the chances that Floridians will be confused, undermines FPF’s constitutional right to propose this amendment and to have a fair vote on it, and harms the democratic process.

Finally, the newly noticed meetings do not erase the harms to FPF. The meetings were noticed only days ago—on the same day the trial court ordered the FIEC to redraft the FIS. The FIEC’s notice says only that it will meet to “*consider potential* revisions” to the FIS. Although FPF believes the FIEC will perform its duty, the meetings have not taken place, so there is no indication yet (much less any guarantee) that the FIS will be redrafted in a lawful and timely

manner. Further, because FPF is not aware of past instances where the FIEC met absent a newly submitted or resubmitted initiative petition or a court order, if the stay is reinstated there will be no means of *ensuring*—through the judicial process that has been necessary so far—that the FIEC timely redrafts an accurate, non-misleading, lawful FIS and that the Secretary of State places that FIS on the ballot.

## **II. FPF is likely to prevail on the merits.**

### **a. Jurisdiction**

The trial court correctly found jurisdiction pursuant to section 86.011 of the Florida Statutes and *Advisory Opinion to Attorney General re Raising Florida’s Minimum Wage*, 285 So. 3d 1273, 1279 n.2, 1281 n.4 (Fla. 2019). Independent of *Minimum Wage*, the trial court also correctly found it had jurisdiction “to compel [FIEC] to comply with the law and halt its deprivation of a constitutional right.” App’x at 87.

#### **1. *Minimum Wage* contemplates a declaratory-judgment action to challenge a misleading FIS.**

The trial court correctly reasoned it had jurisdiction and that *Advisory Opinion to Attorney General re Raising Florida’s Minimum*

*Wage*, 285 So. 3d 1273 (Fla. 2019), and this Court’s holding in *FIEC v. All Voters Vote, Inc.*, 328 So. 3d 1149 (Fla. 1st DCA 2021), do not conflict with its Order.

The Court in *Minimum Wage* essentially invited a plaintiff to bring a declaratory-judgment action in county or circuit court when alleging a financial impact statement violates the law. *Minimum Wage*, 285 So. 3d at 1279 n.4 (noting that such an action is “[o]bviously” not precluded by the opinion in *Minimum Wage*); *accord id.* at 1279 n.2 (noting it was not clear that “the Legislature contemplated that this Court’s review authority be exclusive. See § 100.371(13)(c)2. (‘Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting.’ (emphasis added)).”).

The Florida Supreme Court in *Minimum Wage* held it lacked original jurisdiction to issue an advisory opinion regarding the validity of a financial impact statement. 285 So. 3d at 1279. From this ruling, the State draws the wrong conclusion. It reasons that because the Florida Supreme Court’s original-jurisdiction review was foreclosed, all judicial review was foreclosed. Yet, the Court saw no

reason why a circuit court could not exercise its traditional plenary jurisdiction to review a financial impact statement. *Minimum Wage*, 285 So. 3d at 1281 n.4 (“Obviously, our decision today does not preclude a challenge to a financial impact statement in circuit or county court, by declaratory judgment action under current law.”). After all, just as the legislature does not “give [the Florida Supreme Court] jurisdiction,” *id.* at 1279, it can neither give nor deny jurisdiction to other courts, *see id.* at 1281 n.4. *Minimum Wage* clearly suggests that a correct course of action to challenge a misleading FIS is through a declaratory-judgment action.

*All Voters Vote* does not conflict with the Supreme Court’s reasoning in footnotes 2 and 4 and, beyond that, is distinguishable.

First, *All Voters Vote* concerned solely this Court’s view of a remedy for a statutory violation, not a violation of the Florida Constitution. Florida’s circuit courts are tribunals of plenary jurisdiction. Art. V, § 5(b), Fla. Const. The Legislature cannot limit this jurisdiction. Because the Legislature cannot extinguish a constitutional right, it cannot erase the remedy for the deprivation of that right.

Second, *All Voters Vote* did not address the Florida Supreme

Court’s unanimous reasoning in footnotes 2 and 4. Such unanimous reasoning—even when couched as dicta<sup>6</sup>—cannot be so easily cast aside, as the State would have it. *All Voters Vote* did not purport to address—and should not be read as *sub silentio* rejecting or disregarding—the Florida Supreme Court’s unanimous statement that, “[o]bviously, our decision today does not preclude a challenge to a financial impact statement in circuit or county court, by declaratory judgment action under current law.” 285 So. 3d at 1279 n.4.

Third, *All Voters Vote* was decided more than two months closer to the election, and after the attorney general had requested, and the Supreme Court had declined to issue, an advisory opinion on the FIS.<sup>7</sup> These facts led the Court to believe that relief could no longer be provided, such that “the case [wa]s moot.” 328 So. 3d at 1150. A controversy only becomes moot when a judicial determination can no

---

<sup>6</sup> See, e.g., *Schwab v. Crosby*, 451 F.3d 1308, 1325 (11th Cir. 2006) (“[T]here is dicta and then there is dicta, and then there is Supreme Court dicta.”).

<sup>7</sup> *Advisory Opinion to Att’y Gen. re All Voters Vote in Primary Elections for State Legislature, Governor, & Cabinet (FIS)*, No. SC19-1505, 2019 WL 6971553, at \*1 (Fla. Dec. 19, 2019).

longer have an actual effect. *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992). For an issue to become moot, it must present a justiciable issue in the first place. No one describes a controversy that never existed as moot. Indeed, although this Court harbored doubts that a trial court could declare the financial impact statement unclear and ambiguous, it did not resolve the trial court’s authority to order its redrafting—whether the claim was justiciable. *All Voters Vote*, 328 So. 3d at 1150 n.1.<sup>8</sup>

**2. The Court has authority to protect constitutional rights and demand compliance with the law.**

A court’s jurisdiction arises from the Florida Constitution. First principles dictate that, where a constitutional right is in play, the constitution provides a remedy. *See Marbury v. Madison*, 5 U.S. 137, 163 (1803). Indeed, “[a] right without a remedy for its enforcement is an empty abstraction.” *Waller v. First Sav. & Tr. Co.*, 138 So. 780, 793 (Fla. 1931); *see also Collection & Recovery of Assets, Inc. v. Patel*, 276 So. 3d 494, 497 (Fla. 5th DCA 2019) (“a right without a remedy is no

---

<sup>8</sup> The State elides this point by citing a standing case and then saying, without citation, that the principles apply “[w]hether framed as mootness or standing.” App’x at 145. But, again, the question is what the opinion in *All Voters Vote* actually *did*. The panel dismissed on mootness grounds.

right at all”).

Florida’s circuit courts are tribunals of plenary jurisdiction. Art. V, § 5(b), Fla. Const. They therefore have plenary jurisdiction to address constitutional harms. The legislature cannot extinguish a constitutional right, nor can it erase the remedy for the deprivation of that right. It cannot deprive courts of their own constitutional authority to compel compliance with the constitution.

Each Floridian has a constitutional right to propose an amendment to their constitution through a citizen ballot initiative. Art. XI, § 3, Fla. Const. “Implicit in [Article XI, section 5] is the requirement that the proposed amendment be accurately represented on the ballot; otherwise, voter approval would be a nullity.” *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000). This accuracy requirement extends to any amendment, no matter how it is proposed. *Id.* at 16. “Because the financial impact statement will be printed on the ballot, the same due process concerns that inure to the title and summary of a proposed amendment are also applicable to the financial impact statement.” *Advisory Opinion to Att’y Gen. re Standards For Establishing Legislative Dist. Boundaries*, 2 So. 3d 161, 164 (Fla. 2009). The Florida Supreme Court has also

implicitly recognized that a financial impact statement on the ballot impeded the right to propose an amendment by finding the legislature did not have authority to require such a statement at all—the people had to authorize it first via constitutional amendment. *See Browning v. Fla. Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1066 (Fla. 2010). Thus, section 100.371(13) correctly cabins the FIEC’s FIS so as not to interfere with the right to propose an amendment. Its statement must be “clear and unambiguous” and limited to the financial impact on government budgets. § 100.371(13)(a), .371(c)(2), Fla. Stat.; *see also* Art. XI, § 5(c), Fla. Const.; *Advisory Op. to Att’y Gen. re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 161, 165 (Fla. 2009); *Advisory Op. to Att’y Gen. re Referenda Required for Adoption & Amend. of Local Gov’t Comp. Land Use Plans*, 963 So. 2d 210, 214 (Fla. 2007), *receded from on other grounds in Advisory Opinion to the Att’y Gen. re Raising Florida’s Minimum Wage*, 285 So. 3d 1273, 1277 (Fla. 2019). When the FIEC exceeds its mandate, it deprives citizens of the constitutional right to propose an amendment on fair and accurate terms for voters to intelligently approve or reject.

For example, “although the constitution does not expressly

authorize judicial review of amendments proposed by the Legislature, [the Florida Supreme Court] long ago explained that the courts are the proper forum in which to litigate the validity of such amendments.” *Fla. Educ. Ass’n v. Fla. Dep’t of State*, 48 So. 3d 694, 699 (Fla. 2010 (quoting *Armstrong v. Harris*, 773 So. 2d 7, 13 (Fla. 2000))). It is inconceivable that courts would have jurisdiction to enforce the constitution’s accuracy requirement as to ballot summaries of amendments proposed by joint resolution, which are agreed to by three-fifths of the legislature, but not for the FIS, which also appears on the ballot and is adopted by only a handful of appointees.

### **3. A private right of action exists but is not required.**

Just as the legislature cannot prevent a circuit court from compelling compliance with the law by expressly divesting jurisdiction, its failure to create a cause of action is also irrelevant. To be sure, this statutory scheme quite explicitly contemplates a right of action: “Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting.” § 100.371(13)(c)2., Fla. Stat. But even setting that statute aside, state

officials “are not free to ignore the law.” *Dortch v. Alachua Cnty. Sch. Bd.*, 330 So. 3d 976, 979 (Fla. 1st DCA 2021); *id.* at 978 (holding “government actors are required to comply with the laws”). No legislatively created private right of action ordained the parents’ right to compel schools to follow a state mask-opt-out law in *Dortch*. Likewise, the Florida Supreme Court has had no trouble ruling a court has authority to order compliance with a law without regard to a private right of action. *See, e.g., Treadwell v. Town of Oak Hill*, 175 So. 2d 777 (Fla. 1965).

The cases the State cites on this issue, *Moon-Vileno v. Fla. Ass’n of Court Clerks, Inc.*, 383 So. 3d 128 (Fla. 1st DCA 2024), and *MacNeil v. Crestview Hosp. Corp.*, 292 So. 3d 840, 841 (Fla. 1st DCA 2020), are inapposite because they involved monetary injuries and an absence of colorable rights affected by the requested relief. In *Moon-Vileno*, section 215.322(5) authorized clerks to collect a surcharge on credit card payments to cover processing costs, and the plaintiffs alleged the clerks were illegally profiting from such fees and sought a refund, but the plaintiffs showed no colorable right not to be charged more than the cost of processing, making a statutory private cause of action necessary for a justiciable claim. 383 So. 3d at 128. In

*MacNeil*, the plaintiff requested the court find that a hospital charge for a CT scan was “unreasonable” and illegal under the PIP statute, but did not allege his rights were violated, rendering any declaration by the court an improper advisory opinion. 292 So. 3d at 840-41. As the court explained in *Moon-Vileno*, a plaintiff must show “a justiciable question as to the existence or nonexistence of some right, status, immunity, power or privilege, or as to some fact upon which existence of such a claim may depend.” 383 So. 3d at 131. Unlike the plaintiffs in *Moon-Vileno* and *MacNeil*, FPF has done so. As the sponsor of an amendment proposed under Article XI, section 3 of the Florida Constitution, FPF has a right to have an accurate and clear presentation of its proposed amendment submitted to voters under Article XI, section 5 of the Florida Constitution. As such, the court’s authority need not depend on a statutory private right of action, and it is immaterial to determine if the statutes “create[]” a private right of action. As noted above, however, Florida law explicitly contemplates a right of action. § 100.371(13)(c)2., Fla. Stat.

**4. The State’s statutory interpretation requires rewriting the statutory language.**

The State also cites various statutory provisions concerning

ballot initiatives or financial impact statements that refer to “*the* Supreme Court” or “*the* court” (in the context of a previous reference to the Florida Supreme Court), as opposed to the “*a* court” language found in section 100.371(13)(c)2. of the Florida Statutes (“Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting.”). App’x at 148-154. As the Florida Supreme Court suggested in *Minimum Wage*, this language contemplates “*a* court” reviewing an FIS and remanding it to the FIEC. *See* 285 So. 3d at 1279 n.2. The State castigates FPF’s view of the “*a* court” language as “rest[ing] on the thinnest of reeds.” App’x at 151. But it actually rests on the clear statutory text. The State offers no reason why these “the Supreme Court” and “a court” provisions are inconsistent and cannot be easily read as working in harmony. To the contrary, the State’s focus on the distinctions in the language only highlights that the language the Legislature chose in each location was deliberate.

The statute first refers to the remedy should “*a court*” find any FIS not in accordance with the statute—in those circumstances, the FIS shall be remanded to the FIEC which must redraft within 15

days. § 100.371(13)(c)2., Fla. Stat. In a subsequent paragraph, the statute outlines “the Supreme Court” advisory-opinion review and provides a similar remedy—remand to the FIEC for redrafting—although distinct in other ways.<sup>9</sup> § 100.371(13)(e)1., Fla. Stat. These are separate portions of the statute, using different language.

Amidst a number of references to “*the* Supreme Court” and “*the* court,” the existence of the “*a* court” language only demonstrates that it is referring to something else. The State would have this Court believe the other references must mean that the “*a* court” language is a mistake; the State would have this Court (1) erase the word “a,” (2) replace it with the word “the,” (3) add the word “Supreme,” and (4) capitalize the word “court.” That is not this Court’s role.

### **b. Merits**

As to the merits, the trial court correctly held that the FIS violates Article XI, Section 5 of the Florida Constitution and section

---

<sup>9</sup> The statutory scheme includes a specific deadline of 75 days before the election for a requested advisory opinion to effectuate a redraft of the FIS. § 100.371(13)(e)1-2, Fla. Stat. Likewise, the only other reference to the Supreme Court in the statutory scheme is in connection with the consequence of this 75-day deadline should the Supreme Court reject an FIS and not approve a redraft by the deadline. § 100.371(13)(c)3., Fla. Stat.

100.371 of the Florida Statutes because it largely presents “outdated information about the legality of abortion under statutes and litigation unrelated to Amendment 4; the inclusion of such information renders it inaccurate, ambiguous, misleading, unclear, and confusing; and it highlights the potential of future litigation, which is speculative.” App’x at 90. As the trial court repeatedly observed—in the summary-judgment hearing, in its order granting summary judgment, in the hearing on the emergency motion to vacate the automatic stay, and in its order granting the emergency motion to vacate the automatic stay—the State did not dispute that the FIS was inaccurate or misleading in its filings. At the two hearings, the State did not present argument that the FIS complied with the law, and when the trial court asked at the summary-judgment hearing whether anyone wanted to be heard in defense of the FIS, no one—including the FIEC itself—accepted the invitation. App’x at 90, 310-11, 333-34.

This FIS is inaccurate, ambiguous, misleading, unclear, and confusing, and is not limited to addressing the estimated increase or decrease in revenue or costs to state or local governments. Allowing this impact statement to go before voters is contrary to the “core

purpose of financial impact statements.” *Legis. Dist. Boundaries*, 2 So. 3d at 165. Specifically, the current FIS does not “inform voters so that an educated decision may be made with regard to a proposed amendment.” *Id.*

\* \* \*

Finally, while FPF has satisfied each factor required to vacate the automatic stay, FPF also notes that the purposes for which the automatic stay exists are not served here by keeping the stay in place—and instead are served by vacating it. This Court has stated:

The rationale for automatically staying such orders when a public official seeks appellate review is that “planning-level decisions are made in the public interest and should be accorded a commensurate degree of deference.” An automatic stay also seeks to protect the public against “any adverse consequences realized from proceeding under an erroneous judgment.”

*Fla. Educ. Ass’n*, 325 So. 3d at 150 (citations omitted) (quoting *St. Lucie Cnty. v. N. Palm Dev. Corp.*, 444 So. 2d 1133, 1135 (Fla. 4th DCA 1984)). Neither of these interests are served here. First, there is no reason to accord a “commensurate degree of deference” to a decision that literally none of the Defendants-Appellants—including

the FIEC itself—has chosen to defend. Again, the trial court specifically asked on the record whether any party at the summary-judgment hearing wanted to defend the FIS, and no one accepted the invitation. App'x at 90, 310-11, 333-34. Second, there is no need to protect the public against “adverse consequences realized from proceeding under an erroneous judgment.” *Id.* (quotations omitted). That is because if the trial court’s judgment is overturned, the ballots can simply be printed with the current FIS that the State was already planning to use. Furthermore, the State asserts it is voluntarily holding hearings “on revising the financial impact statement,” App'x at 141; given that this is exactly what the trial court ordered, the State’s claims that it would be harmed by complying with an order to do what it claims it is voluntarily doing are particularly suspect.

### **III. Conclusion**

For the reasons outlined above, the automatic stay should only be reinstated until July 1, 2024.

Respectfully submitted on June 14, 2024,

/s/ Daniel B. Tilley

Daniel B. Tilley (FBN 102882)  
Samantha J. Past (FBN 1054519)  
Michelle Morton (FBN 81975)  
**ACLU Foundation of Florida**  
4343 West Flagler Street, Ste. 400  
Miami, FL 33134  
(786) 363-2714  
dtilley@aclufl.org  
spast@aclufl.org  
mmorton@aclufl.org

Nicholas L.V. Warren (FBN 1019018)  
**ACLU Foundation of Florida**  
1809 Art Museum Drive, Ste. 203  
Jacksonville, FL 32207  
(786) 363-1769  
nwarren@aclufl.org

Margaret Good (FBN 97931)  
**Margaret Good Law, PLLC**  
P.O. Box 5083  
Sarasota, FL 34277  
(941) 313-7485  
margaret@margaretgoodlaw.com

Joseph T. Eagleton (FBN 98492)  
**Brannock Berman & Seider**  
1111 West Cass Street, Ste. 200  
Tampa, FL 33606  
(813) 223-4300  
jeagleton@bbsappeals.com

*Counsel for Appellees*

**CERTIFICATE OF SERVICE**

I certify that a copy of this filing has been provided to counsel for all parties via the E-Filing Portal.

/s/ Daniel B. Tilley  
Daniel B. Tilley

**CERTIFICATE OF COMPLIANCE**

I certify under Florida Rule of Appellate Procedure 9.045 that this opposition brief is computer generated in 14-point Bookman Old Style.

/s/ Daniel B. Tilley  
Daniel B. Tilley

Date: August 2, 2024

Respectfully submitted,

ASHLEY MOODY  
*Attorney General*

HENRY C. WHITAKER (FBN1031175)  
*Solicitor General*

/s/ Daniel W. Bell  
DANIEL W. BELL (FBN1008587)  
*Chief Deputy Solicitor General*

DAVID M. COSTELLO (FBN1004952)  
*Deputy Solicitor General*

MYLES SEAN LYNCH (FBN1054083)  
*Assistant Solicitor General*

Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399  
*daniel.bell@myfloridalegal.com*

*Counsel for Respondents*

/s/ Ashley E. Davis  
ASHLEY E. DAVIS (FBN48032)  
*Chief Deputy General Counsel*

Florida Department of State  
R.A. Gray Building, Suite 100  
500 South Bronough Street  
Tallahassee, Florida 32399  
(850) 245-6536  
*joseph.vandebogart@dos.fl.gov*  
*ashley.davis@dos.fl.gov*  
*jenna.mclanahan@dos.fl.gov*

*Co-counsel for the Secretary of State*

/s/ David Axelman  
DAVID AXELMAN (FBN90872)  
*General Counsel*

HANNAH DUSHANE (FBN1030886)  
*Deputy General Counsel*

The Florida House of Representatives  
317 The Capitol  
402 South Monroe Street  
Tallahassee, Florida 32399  
Tel: (850) 717-5500  
*david.axelman@myfloridahouse.gov*  
*hannah.dushane@myfloridahouse.gov*

*Co-counsel for Vince Aldridge in his  
official capacity*

/s/ Carlos Rey  
CARLOS REY (FBN11648)  
*General Counsel*

The Florida Senate  
404 South Monroe Street  
Tallahassee, Florida 32399  
(850) 487-5855  
*rey.carlos@flsenate.gov*

*Co-Counsel for Azhar Khan in his  
official capacity*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished via the e-Filing Portal to counsel for all parties of record on this 2nd day of August, 2024.

/s/ Daniel W. Bell  
*Chief Deputy Solicitor General*