

**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**

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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.¹

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 Specifically, the court found that the Statement (1) was inaccurate and presented outdated information; (2) was not limited to summarizing Amendment 4's probable impact to state and local government revenues or costs and to the state budget, as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

¹ 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.²

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

² 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)”).³

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

³ See 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.⁴

⁴ 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,

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CERTIFICATE OF SERVICE

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

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