

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1840
L.T. NO. 3D06-2765

REINALDO DELGADO, JR.,

Petitioner,

vs.

CITY OF HIALEAH, et al,

Respondents.

**PETITIONER'S BRIEF ON JURISDICTION
ON PETITION TO INVOKE
DISCRETIONARY JURISDICTION**

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INTRODUCTION

This petition for discretionary review is filed by Reinaldo Delgado, Jr., Appellee below, under Fla. R. App. P. 9.030(a)(2)(A)(iv). The district court has misapplied decisional law of this Court. *E.g.*, Aguilera v. Inservices, Inc., 905 So. 2d 84, 86-87 (Fla. 2005); Furlong v. Leybourne, 171 So. 2d 1, 4 (Fla. 1964). The district court decision would allow “straw ballot” elections, conducted as “special elections” in conjunction with meaningful general elections, to “fly under false colors”, and “hide the ball”. Armstrong v. Harris, 773 So. 2d 7, 16 (Fla. 2000). The constitutional “accuracy requirement” as “truth in packaging” for ballot questions would be undermined with respect to “straw ballots”. Advisory Op. to AG re: Indep. Nonpartisan Comm’n., etc., 926 So. 2d 1218, 1220 (Fla. 2006), interpreting Fla. Stat. § 101.161(1). Such “ballots” could be drawn up with more than one subject; with unclear and ambiguous wording; and without explanatory statement of its “chief purpose”. Such misuse of “straw ballots” by Florida governmental entities should be addressed by this Court.

STATEMENT OF THE CASE AND FACTS

The district court affirmed the trial court’s grant of standing to Petitioner, but reversed the trial court’s adherence to City of Miami v. Staats, 919 So. 2d 485

(Fla. 3d DCA 2005). (A. 2-3) The trial court followed Staats, in which the same district court found that a “straw ballot” question, posed *by a municipality*, relating to an exclusively *state* and *county constitutional officer* (the *county* property appraiser) violated Section 101.161(1), supra.

The district court acknowledged the “special election” Respondent called for a “straw ballot” was held at the same time as a meaningful general election on November 7, 2006. (A. 2). The district court articulated no “explanatory statement” in the “straw ballot” of its “purpose” to be held with a meaningful election. Section 101.161(1), supra. Nonetheless, the court found Respondent’s “straw ballot” “avoids [the] problems” found to prevail in the City of Miami’s similar “straw ballot” in Staats. (A. 6).

The court found Respondent asked voters if they would support a petition seeking a *county*, not a municipal, charter change, instead of an outright underlying change to the exclusively county office being “straw balloted”. (A. 6) Another “problem” Respondent avoided, according to the district court, was: Respondent correctly stated the name of the county officer: county property appraiser, not “tax assessor”. (Id.)

A problem Respondent did not “avoid” was the same as in Staats, i.e.: the

issue is “one which must be addressed by the electorate of the entire county...” [919 So. 2d at 487], not a separate municipality.¹

SUMMARY OF ARGUMENT

The district court decision misapplies the law enunciated by this Court and other district courts precluding misleading, ambiguous and confusing ballot questions. Aguilera, *supra*, 905 So. 2d at 86-87. The district court decision thus expressly and directly conflicts with Armstrong v. Harris, *supra*, 773 So. 2d at 16; Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982); Fla. Ass’n. of Realtors, Inc. v. Smith, 825 So. 2d 532, 536 (Fla. 1st DCA 2002).

A municipal “straw ballot” on an exclusively countywide issue conducted by a meaningless “special election” in conjunction with a very meaningful general election, inherently and innately “flew under false colors”. Municipal voters were

¹ Still another “problem” Respondent’s “straw ballot” cannot “avoid” is violation of legislative intent: “...No special election may be called for the purpose of conducting a straw ballot...” Fla. Stat. § 125.01(1)(y). The statute precludes countywide “straw ballots” by special election, on county questions unrelated to municipal business.

misled to believe their votes counted, when they did not. The “election” was nothing but a “survey”, misuse of the ballot box for an “opinion poll”. City of Miami v. Staats, supra.

The district court found mention in the “straw ballot” of a “petition” removed confusion over whether the votes counted. But, that is not so. The “petition” was undefined. The voters could very easily believe the “vote” itself was the “petition” to be turned over to the county. No mention was made of how, or when, or who, would circulate a “petition”. It was unexplained why a countywide “petition” would circulate only in Respondent municipality. Also, the “ballot” did not explain a follow-up to the “petition”. Would a petition actually be circulated or would the results of a city “straw ballot” simply be turned over to county officials for subsequent consideration? In short, was the “straw ballot” just a “political survey” or a true election?

The Florida legislature obviously believes that “straw ballot” special elections in local government serve little, if any, valid public purpose or policy. Section 125.01(1)(y), supra. It may be inferred the legislature believed such “elections” innately “fly under false colors” and “hide the ball”. Armstrong v. Harris, supra. This Court should ratify the legislative policy approach, and ban

local “straw balloting” via “special elections”, particularly when conducted in tandem with meaningful general elections.

ARGUMENT

THE DECISION OF THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH OPINIONS OF THIS COURT AND OTHER DISTRICT COURTS ON THE SAME QUESTION OF LAW.

“Express and direct” misapplication of the law, enunciated by this Court, or another district court, allows for discretionary review here. Jenkins v. State, 385 So. 2d 1356 (Fla. 1980); Aguilera, supra, 905 So. 2d at 86-87. The primary function of this Court upon discretionary review is to “stabilize the law”, avoiding patently irreconcilable precedents. FPL v. Bell, 113 So.2d 697, 699 (Fla. 1959). Cases posing issues of proper public policy particularly should warrant this Court’s supervisory discretion.

Both the same district court (in City of Miami v. Staats, supra) and our legislature in Fla. Stat. § 125.01(1)(y) evince a policy stance that “straw ballots” ill-serve “special elections”. Such “special” balloting should be meaningful, reflecting seriousness of purpose in expending public funds to call them.

When an election such as the one at issue in this case concerns itself

unmistakably with an exclusively county question of whether a county (and state) constitutional officer should be elected or appointed, the issue is one of *organic* and constitutional stature within the county in question. It is not a municipal election, whether the votes count or not. To suggest it is, “flies under false colors” and “hides the ball”. The district court conflicts, directly and expressly, with Armstrong v. Harris, *supra*, and this Court’s pronouncement in Askew v. Firestone, *supra*.

Respondent’s municipal “straw ballot” makes a mockery of the electoral process. It dilutes and downgrades seriousness of purpose in voting. The electoral process is diverted to pollsters and political operatives, with hidden agenda. That is why the legislature enacted Section 125.01(1)(y). Local elections should count, just as statewide and national elections do. Particularly in an era of “high tech”, poll-taking can be accomplished through multiple means of communication, including the Internet. The ballot box should be preserved for its traditional role in democratic government. Respondent’s “special election” was a “special” electoral fraud, a departure from numerous precedents of this Court and our district courts of appeal. This Court should accept jurisdiction.

CONCLUSION

The Court should exercise its discretionary review of this case under Rule 9.030(a)(2)(A)(iv), supra.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Notice to Invoke Discretionary Jurisdiction has been served by fax & mail to Akerman, Senterfitt, P.A., c/o Michael Fertig, Esquire & Jennifer Cohen Glasser, Esquire, One Southeast Third Avenue, Miami, FL 33131-1714; and to City of Hialeah, c/o William M. Grodnick, City Attorney, 501 Palm Avenue, Fourth Floor, Hialeah, FL 33010; and by mail only to Oren Rosenthal, Miami-Dade Assistant County Attorney, 111 N.W. 1st Street, Suite 2810, Miami, FL 33128, this 28th

day of September, 2007.

CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that this brief has been type in Times New Roman
14-point font.
