

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE
ATTORNEY GENERAL RE:
FLORIDA MINIMUM WAGE
AMENDMENT

CASE NO.: SC04-943

**RESPONSE OF FRA AND FRF TO MOTION OF FLORIDIANS
FOR ALL TO FILE ANSWER BRIEF AND
MOTION BY FRA AND FRF TO POSTPONE ORAL ARGUMENTS
AND FOR LEAVE TO FILE REPLY BRIEF**

Pursuant to Florida Rule of Appellate Procedure 9.300, the Florida Restaurant Association, Inc. (“FRA”), and the Florida Retail Federation, Inc. (“FRF”), as opponents of the initiative petition in this case, hereby respond in opposition to the Motion of Floridians for All to File Answer Brief. If this Court ultimately determines to grant said Motion, then FRA and FRF hereby move the Court to postpone oral arguments in this case and allow FRA and FRF at least seven days from receipt of the answer brief of Floridians for All PAC to file a reply brief. In support of the above, FRA and FRF state as follows:

1. On June 10, 2004, this Court entered its Scheduling Order directing all interested parties to file any initial and answer briefs in this case by June 18, 2004.
2. Both the sponsor of the initiative petition at issue, Floridians for All PAC, and FRA and FRF timely filed initial briefs.
3. On Friday, June 25, 2004, counsel for Floridians for All PAC advised the undersigned by telephone that Floridians for All PAC would be filing a motion with the Court requesting leave to file an answer brief, with the proposed answer brief to be attached

to that motion. The undersigned advised counsel for Floridians for All PAC that the undersigned would object to the additional brief unless the undersigned were given adequate time to prepare and file a reply brief prior to oral arguments. Counsel for Floridians for All PAC indicated that this would not be acceptable.

4. The undersigned never received a copy of the motion from Floridians for All PAC, nor did the undersigned receive a copy of the proposed answer brief.

5. On Sunday, June 27, 2004, the undersigned checked the Court's website and discovered that Floridians for All PAC had indeed filed the contemplated motion on June 25. The proposed answer brief purportedly attached to the Motion, however, was not available on the Court's website.

6. On Monday, June 28, 2004, both counsel of record for FRA and FRF will be out of town on other business that cannot be rescheduled. As such, counsel for FRA and FRF will not have adequate time to receive a copy of the answer brief on Monday and prepare a reply, either written or oral, before the scheduled oral arguments on Tuesday, June 29, 2004.

7. Allowing this "eleventh-hour" filing of an additional brief by Floridians for All PAC on the eve of oral arguments would be procedurally improper and obviously prejudicial to FRA and FRF. The Motion of Floridians for All PAC should therefore be denied.

8. If this Court, however, deems it appropriate to grant the Motion of Floridians for All PAC and receive its answer brief, then FRA and FRF move this Court to postpone oral arguments in this case for a short time and allow the undersigned at least seven days from

receipt of the answer brief to file a reply brief so that the issues in this case may be properly framed for the Court prior to oral arguments.

9. If Floridians for All PAC is inconvenienced in any way by the postponement of oral arguments, then it is an inconvenience of their own making. While this Court understandably wishes to expedite review of the initiative in light of the approaching November elections, the fact that the Court's review is taking place at this time is entirely a result of the actions taken by Floridians for All PAC. Floridians for All PAC waited until August 7, 2003, less than 15 months before the November 2004 election, to file its initiative petition with the Secretary of State. Floridians for All PAC then took almost nine months, until May 3, 2004, to collect the 48,869 signatures necessary to trigger this Court's review. Notably, in the less than two months since that time, Floridians for All PAC has collected over 172,000 additional signatures. See Appendix A (Data from Fla. Division of Elections).

10. There is perhaps no more significant and far-reaching type of case this Court considers than when it engages in review of a proposed amendment to the Florida Constitution. The timing of this review – driven as it is by the actions of Floridians for All PAC – cannot be allowed to unduly rush this Court's consideration of the initiative, nor should this timing act to prejudice those parties who are lawfully exercising their right to challenge the initiative's compliance with the relevant legal requirements. Fundamental fairness dictates that the undersigned be permitted adequate time to receive, review, and reply to the answer brief of Floridians for All PAC prior to oral arguments.

WHEREFORE, FRA and FRF ask this Court to deny the Motion of Floridians for All To File Answer Brief. If the Court ultimately grants this Motion, then FRA and FRF move this Court to postpone oral arguments in this case for a short time and allow the undersigned at least seven days from actual receipt of the answer brief to file a reply brief.

Respectfully submitted on this 28th day of June, 2004.

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CERTIFICATE OF COMPLIANCE WITH RULE 9.300(a)

I HEREBY CERTIFY that, pursuant to Rule 9.300(a), the undersigned has consulted with counsel for Floridians for All PAC and the undersigned is authorized to represent that counsel for Floridians for all PAC will promptly file an objection to this motion.

Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by facsimile and by United States Mail to Brian Koch, Esq., White & Case LLP, 200 S. Biscayne Blvd., Suite 4900, Miami, FL 33131 (Fax No. 305-358-5744), and by United States Mail to the following, all on this 28th day of June, 2004:

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