

SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.: SC05-1563

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: FLORIDA MARRIAGE PROTECTION AMENDMENT

**RESPONSE OF INTERESTED PARTIES RICHARD NOLAN, ET AL, TO
FLORIDA4MARRIAGE.ORG'S MOTION TO STRIKE "ANSWER" BRIEF
AND ACCOMPANYING APPENDIX OF INTERESTED PARTIES**

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The Interested Parties Richard Nolan, et al., by and through their counsel, submit this response to Florida4Marriage.org's Motion to Strike "Answer" Brief and Accompanying Appendix of Interested Parties.

Florida4Marriage.org (the "Proponents") argue that the Answer Brief of the Interested Parties should be stricken because it is not permitted by this Court's September 2, 2005 order. That order reads in pertinent part as follows:

IT IS THEREFORE, the order of the Court that interested parties shall file their briefs on or before September 22, 2005, and serve a copy thereof on the Attorney General. Answer briefs shall be filed on or before October 12, 2005. Please file an original and eight (8) copies of all briefs.

(Emphasis in original.) The Proponents seem to be saying that this language means that interested parties were entitled to file only one brief (on September 22) and that answer briefs may be filed only by the Attorney General or other individuals who did not file briefs on September 22. That is simply not a plausible reading of the plain language of the order. Moreover, this Court routinely uses identical language in its orders setting briefing schedules in cases involving the review of proposed constitutional amendments, and it routinely accepts both initial briefs and answer briefs from amendment sponsors and other interested parties. *See, e.g., Advisory Op. to the Att'y Gen. Re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, Case No.*

SC04-1134; *Advisory Op. to the Att’y Gen. Re: Patients’ Right to Know About Adverse Medical Incidents*, Case No. SC04-777; *Advisory Op. to the Att’y Gen. Re: Public Protection from Repeated Medical Malpractice*, Case No. SC04-778; *Advisory Op. to the Att’y Gen. Re: Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Parimutuel Facilities*, Case No. SC03-857. See http://www.floridasupremecourt.org/pub_info/archives.shtml. And in none of these cases did the Attorney General file any brief. *Id.*

The Proponents’ suggestion that Fla. R. App. Proc. § 9.210 supports their position is hard to fathom. That rule provides that generally, the only briefs permitted on appeals are an initial brief, an answer brief, a reply, and a cross-reply. That rule does not dictate the briefing schedule in this proceeding. It provides for alternating briefing by appellants and respondents in appeals from lower courts. The Court’s order here (and in other cases involving advisory opinions regarding proposed constitutional amendments) provided for simultaneous filing of briefs by all parties (first the initial brief, then the answer brief). Moreover, section 9.210 does not limit parties to a single brief.

Finally, the Proponents make the preposterous assertion that the Answer Brief filed by the Interested Parties is not really an answer brief, but rather, an attempt to espouse the views already presented in their brief filed on September 22.

It is no such thing. The Answer Brief is a point-by-point answer to each of the arguments presented in the Proponents' brief.

The Proponents' motion to strike is baseless. There is no reason this Court should be denied the benefit of the Interested Parties' answer to the Proponents' arguments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by overnight delivery via Federal Express on October 17, 2005, upon:

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