

**IN THE SUPREME COURT OF FLORIDA**

PAT BAINTEK et al.,

Appellants,

v.

LEAGUE OF WOMEN VOTERS et al.,

Appellees.

Case No.: SC14-1200  
L.T. No.: 1D14-2163;  
2012-CA-00412;  
2012-CA-00490;  
2012-CA-2842

---

**PLAINTIFFS' RESPONSE IN OPPOSITION  
TO MOTION FOR STAY OF MANDATE PENDING FILING  
AND RESOLUTION OF A PETITION FOR WRIT OF CERTIORARI**

Plaintiffs (Appellees in this Court) oppose this motion because it is, on its face, both frivolous and dilatory.<sup>1</sup> There is no good faith basis for Appellants to contend that this Court's opinion violated federal law, a showing they would have to make to the Supreme Court of the United States in any petition for writ of certiorari. The majority opinion demonstrates that the Appellants failed to preserve any federal claim based on waiver by failing to address it in any of their briefs and waiting until oral argument and after to attempt to insert this issue into the case.

And the concurring opinion demonstrates that, in any event, this federal claim is foreclosed by clear precedent of the Supreme Court of the United States

---

<sup>1</sup> The Plaintiffs previously filed a motion for sanctions in this appeal under § 57.105, Florida Statutes. The Court initially denied that motion, but the Plaintiffs' July 31, 2014, combined motion for rehearing of that ruling and separate request for appellate attorney's fees based on the underlying contempt order remains pending.

because Appellants had ample opportunities to raise their claim of First Amendment privilege and failed to do so, resulting in a waiver under clear Florida state law that fully meets the federal requirements for waiver. That opinion even cites a Supreme Court opinion upholding the waiver of a First Amendment claim. *Parker v. Illinois*, 333 U.S. 571, 574 (1948). Appellants ignore this case and instead claim that it is an open question in the Supreme Court whether these waiver principles, as opposed to a “heightened standard” Appellants raised for the first time at oral argument, apply to claims of First Amendment privilege.

As this Court found, “there is no legally valid reason at this time for allowing these documents or the testimony admitted at trial under seal to be hidden from public view.” Appellants’ motion having failed to identify any new legally valid reason to stay that determination, this Court should promptly deny the motion for stay.

Respectfully submitted,

MESSER CAPARELLO, P.A.

THE MILLS FIRM, P.A.

/s/ Mark Herron  
Mark Herron  
Florida Bar No. 199737  
Email: mherron@lawfla.com  
Robert J. Telfer III  
Florida Bar No. 0128694  
Email: rtelfer@lawfla.com  
2618 Centennial Place  
Tallahassee, FL 32308  
Telephone: (850) 222-0720

/s/ John S. Mills  
John S. Mills  
Florida Bar No. 0107719  
jmills@mills-appeals.com  
Andrew D. Manko  
Florida Bar No. 018853  
amanko@mills-appeals.com  
Courtney Brewer  
Florida Bar No. 0890901  
cbrewer@mills-appeals.com

Facsimile: (850) 558-0659

*Counsel for Appellees/Plaintiffs Rene Romo, Benjamin Weaver, William Everett Warinner, Jessica Barrett, June Keener, Richard Quinn Boylan, and Bonita Agan*

service@mills-appeals.com (secondary)  
203 North Gadsden Street, Suite 1A  
Tallahassee, Florida 32301  
(850) 765-0897  
(850) 270-2474 facsimile

and

KING, BLACKWELL, ZEHNDER &  
WERMUTH, P.A.

David B. King  
Florida Bar No.: 0093426  
dking@kbzwlaw.com  
Thomas A. Zehnder  
Florida Bar No.: 0063274  
tzehnder@kbzwlaw.com  
Frederick S. Wermuth  
Florida Bar No.: 0184111  
fwerthem@kbzwlaw.com  
Vincent Falcone III  
Florida Bar No.: 0058553  
vfalcone@kbzwlaw.com P.O. Box 1631  
Orlando, FL 32802-1631  
Telephone: (407) 422-2472  
Facsimile: (407) 648-0161

*Counsel for Appellees/Plaintiffs League of Women Voters of Florida, Common Cause, Brenda Ann Holt, Roland Sanchez-Medina Jr., J. Steele Olmstead, and Robert Allen Schaeffer*

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to the following attorneys on November 20, 2014:

D. Kent Safriet

Blaine Winship

Thomas R. Philpot  
Mohammad O. Jazil  
Hopping Green & Sams, P.A.  
P.O. Box 6526  
Tallahassee, Florida 32314  
kents@hgslaw.com  
tp@hgslaw.com  
mohammadj@hgslaw.com

*Counsel for Appellants*

George T. Levesque  
The Florida Senate, 422 The Capitol  
Tallahassee, Florida 32399-1300  
levesque.george@flsenate.gov  
glevesque4@comcast.net  
carter.velma@flsenate.gov

Michael A. Carvin  
Louis K. Fisher  
Jones Day  
51 Louisiana Avenue N.W.  
Washington, D.C. 20001  
macarvin@jonesday.com  
lkfisher@jonesday.com

Raoul G. Cantero  
Jason N. Zakia  
Jesse L. Green  
White & Case LLP  
200 South Biscayne Blvd., Ste. 4900  
Miami, FL 33131  
rcantero@whitecase.com  
jzakia@whitecase.com  
jgreen@whitecase.com  
ldominguez@whitecase.com  
lorozco@whitecase.com

*Counsel for Fla. Senate & Senate Pres.*

Atty. Gen., The Capitol, Suite PL-0 1  
Tallahassee, FL 32399-1050  
blaine.winship@myfloridalegal.com

*Counsel for the Attorney General*

J. Andrew Atkinson  
Ashley Davis  
Dep. of State, 500 S. Bronough Street  
Tallahassee, FL 32399  
jandrew.atkinson@dos.myflorida.com  
ashley.davis@dos.myflorida.com  
Diane.wint@dos.myflorida.com

*Counsel for Florida Secretary of State*

Daniel Nordby  
Florida House of Representatives  
422 The Capitol  
Tallahassee, FL 32399-1300  
daniel.nordby@myfloridahouse.gov  
Betty.Money@myfloridahouse.gov

Charles T. Wells  
George N. Meros, Jr.  
Jason L. Unger  
Andy Bardos  
Gray Robinson, P.A.  
301 South Bronough Street, Suite 600  
Tallahassee, Florida 32301  
Charles.Wells@gray-robinson.com  
George.Meros@gray-robinson.com  
Jason.Unger@gray-robinson.com  
Andy.Bardos@gray-robinson.com  
croberts@gray-robinson.com  
tbarreiro@gray-robinson.com  
mwilkinson@gray-robinson.com

*Counsel for Fla. House and Speaker*

Karen C. Dyer  
Boies, Schiller & Flexner, LLP  
121 South Orange Ave., Suite 840  
Orlando, FL 32801  
kdyer@bsfillp.com

Abba Khanna  
Kevin J. Hamilton  
Perkins Coie, LLP  
1201 Third Avenue, Suite 4800  
Seattle, Washington 98101-3099  
akhanna@perkinscoie.com  
rkelly@perkinscoie.com  
khamilton@perkinscoie.com  
rspear@perkinscoie.com  
jstarr@perkinscoie.com

*Counsel for Romo Plaintiffs*

Carol Jan LoCicero  
Deanna K. Shullman  
Mark R. Caramanica  
Allison S. Lovelady  
Thomas & LoCicero, PL  
601 South Boulevard  
Tampa, Florida 33601-2602  
dshullman@tlolawfirm.com  
mcaramanica@tlolawfirm.com  
alovelady@tlolawfirm.com  
lcardenas @tlolawfirm.com

*Counsel for the Media Organizations*

Allison J. Riggs, *Pro Hac Vice*  
Anita S. Earls  
Southern Coalition For Social Justice  
1415 W. Highway 54, Suite 101  
Durham, NC 27707  
allison@southerncoalition.org  
anita@southerncoalition.org

Victor Goode  
Dorcas R. Gilmore  
NAACP  
4805 Mt. Hope Drive  
Baltimore, MD 21215-3297  
vgoode@naacpnet.org  
dgilmore@naacpnet.org

Benjamin James Stevenson  
ACLU of Florida Foundation  
Post Office Box 12723  
Pensacola, Florida 32591  
bstevenson@aclufl.org

*Counsel for NAACP*

Ronald G. Meyer  
Lynn Hearn  
Meyer, Brooks, Demma & Blohm, P.A.  
131 North Gadsden Street  
Post Office Box 1547 (32302)  
Tallahassee, Florida 32301  
rmeyer@meyerbrookslaw.com  
lhearn@meyerbrookslaw.com

*Counsel for Coalition Plaintiffs*

/s/ John S. Mills  
Attorney