

COPY

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Case No. 2010 CA 2202

Judge:

MONA MANGAT, DIANA DEMEREST, GRACIE FOWLER, and LOUISA MCQUEENEY,

Plaintiffs,

vs.

DEPARTMENT OF STATE, an agency of the State of Florida, and DAWN K. ROBERTS,
in her official capacity as the Interim Secretary of State,

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

10 JUN 24 PM 2:20
BUSHNER
CLERK OF CIRCUIT COURT
LEON COUNTY, FLORIDA

FILED

COPY - not verified against original

1. Plaintiffs bring this action to enjoin the placement on the November 2010 general election ballot of an amendment to the Florida Constitution proposed by the Florida Legislature during the 2010 Regular Session of the Legislature as House Joint Resolution 37. The proposed constitutional amendment - which appears as Amendment No. 9 - cannot lawfully be submitted to Florida voters because the ballot title and summary language are misleading as to the true effect of the proposed amendment. In short, the ballot title and summary language does not comply with the requirements of Section 101.161(1), Florida Statutes.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to Article V, section 5(b), of the Florida Constitution and section 26.012 of the Florida Statutes.

3. This Court has jurisdiction to grant (a) declaratory relief pursuant to Article X, section 5(b), of the Florida Constitution and section 86.011 of the Florida Statutes, and (b) injunctive relief pursuant to Article V, section 5(b) of the Florida Constitution, section 26.012(3) of the Florida Statutes, and Florida Rule of Civil Procedure 1.610.

4. Venue is proper in Leon County pursuant to section 47.011 of the Florida Statutes because Defendants, the Department of State and the Secretary of State are both located in Leon County, Florida.

PARTIES

5. Plaintiffs MONA MANGAT, DIANA DEMEREST, GRACIE FOWLER, and LOUISA MCQUEENEY are each citizens of the State of Florida registered voters. Plaintiff MONA MANGAT is a registered voter in Pinellas County. Plaintiff DIANA DEMEREST is a registered voter in Palm Beach County. Plaintiff GRACIE FOWLER is a registered voter in Orange County. Plaintiff LOUISA MCQUEENEY is a registered voter in Palm Beach County. Plaintiffs have an interest in ensuring that efforts to amend the Florida Constitution are undertaken in compliance with the law, that voters are provided with a clear and unambiguous statement of the chief purpose of the amendment, and that the description of the effect of the proposed amendment does not mislead voters. Plaintiffs have standing to bring this action. *City of Hialeah v. Delgado*, 963 So. 2d 754 (Fla. 3d DCA 2007), *rev. dismissed* 970 So. 2d 824 (Fla. 2007).

6. Defendant DEPARTMENT OF STATE is an agency of the State of Florida and it is responsible for placing proposed constitutional amendments that are legally sufficient on the ballot. Pursuant to Section 101.161(1), Florida Statutes:

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such

amendment or other public measure shall be printed in **clear and unambiguous language** on the ballot (Emphasis added.)

7. Defendant DAWN K. ROBERTS is the Interim Secretary of State of the State of Florida. She is the chief election officer of the state and the head of the Department of State. Defendant Roberts is sued in her official capacity.

FACTS

Amending the Florida Constitution

8. Article XI of the Florida Constitution provides five methods through which the Constitution can be amended, all of which involve the placement of proposed amendments on the ballot for a general election, at which a vote of three-fifths of the voters is required to approve the amendment. The method that is pertinent to this case is Section 1 of Article XI, which provides that “Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature.”

House Joint Resolution 37

9. On April 23, 2010, the legislature passed HJR 37, which seeks to amend the Florida Constitution by creating a new Section 28 to the Declaration of Rights in Article I of the Florida Constitution. The new section would read, in its entirety, as follows:

ARTICLE I DECLARATION OF RIGHTS

SECTION 28. Health care services.—

(a) To preserve the freedom of all residents of the state to provide for their own health care:

(1) A law or rule may not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.

(2) A person or an employer may pay directly for lawful health care services and may not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for

lawful health care services and may not be required to pay penalties or fines for accepting direct payment from a person or an employer for lawful health care services.

(b) Subject to reasonable and necessary rules that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems may not be prohibited by law or rule.

(c) This section does not:

(1) Affect which health care services a health care provider is required to perform or provide.

(2) Affect which health care services are permitted by law.

(3) Prohibit care provided pursuant to general law relating to workers' compensation.

(4) Affect laws or rules in effect as of March 1, 2010.

(5) Affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or an employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or an employer for lawful health care services, except that this section may not be construed to prohibit any negotiated provision in any insurance contract, network agreement, or other provider agreement contractually limiting copayments, coinsurance, deductibles, or other patient charges.

(6) Affect any general law passed by a two-thirds vote of the membership of each house of the legislature after the effective date of this section, if the law states with specificity the public necessity that justifies an exception from this section.

(d) As used in this section, the term:

(1) "Compel" includes the imposition of penalties or fines.

(2) "Direct payment" or "pay directly" means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

(3) "Health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment, in full or in part, for health care services, health care data, or health care information for its participants.

(4) "Lawful health care services" means any health-related service or treatment, to the extent that the service or treatment is permitted or not prohibited by law or regulation, which may be provided by persons or businesses otherwise permitted to offer such services.

(5) "Penalties or fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge, or named fee with a similar effect established by law or rule by an agency established, created, or controlled by the government which is used to punish or discourage the exercise of rights protected under this section. For purposes of this section only, the term "rule by an agency" may not be construed to mean any negotiated provision in any insurance contract, network agreement, or other provider agreement contractually limiting copayments, coinsurance, deductibles, or other patient charges.

10. On April 23, 2010 when the legislature passed HJR 37, it also adopted a ballot title and explanatory statement as required by Article XI, section 5, of the Florida Constitution and Section 101.161(1) of the Florida Statutes. This ballot title and explanatory statement read as follows:

HEALTH CARE FREEDOM
CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 28

HEALTH CARE SERVICES.—Proposing an amendment to the State Constitution to ensure access to health care services without waiting lists, protect the doctor-patient relationship, guard against mandates that don't work, prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system; permit a person or an employer to purchase lawful health care services directly from a health care provider; permit a health care provider to accept direct payment from a person or an employer for lawful health care services; exempt persons, employers, and health care providers from penalties and fines for paying directly or accepting direct payment for lawful health care services; and permit the purchase or sale of health insurance in private health care systems. Specifies that the amendment does not affect which health care services a health care provider is required to perform or provide; affect which health care services are permitted by law; prohibit care provided pursuant to general law relating to workers' compensation; affect laws or rules in effect as of March 1, 2010; affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or an employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or an employer for lawful health care services; or affect any general law passed by two-thirds vote of the membership of each house of the Legislature, passed after the effective date of the amendment, provided such law states with specificity the public necessity justifying the exceptions from the provisions of the amendment. The amendment expressly provides that it may not be construed to prohibit negotiated provisions in insurance contracts, network agreements, or other provider agreements contractually limiting copayments, coinsurance, deductibles, or other patient charges.

(emphasis supplied)

11. HJR 37 (and the accompanying ballot title and explanatory statement), which was transmitted to Defendants on May 20, 2010, for placement on the ballot for the November 2010

general election, is now referred to by Defendants Roberts and the Department of State as Amendment 9. A copy of HJR 37 (enrolled) is attached hereto as Exhibit "A."

12. The purpose of the ballot title and summary is "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Advisory Opinion to the Attorney General, Re: 1.35% Property Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 974 (Fla. 2009), citing *Advisory Opinion to the Attorney General, Re: Fee on Everglades Sugar Products*, 681 So. 2d 1124, 1127 (Fla. 1996). The title and summary are intended to ensure that voters are advised of the amendment's true meaning, and in so doing the court must determine whether they fairly inform the voter of the chief purpose of the amendment, and they mislead the public. *Id.* at 975-975.

13. The ballot title and summary include false and improper statements of the content of Amendment 9, whose only possible purpose is to mislead the public. Those false and misleading statements include:

a. That the amendment will "ensure access to health care services without waiting lists." In fact, the amendment does not reference, nor does it have anything to do with waiting lists. The statement is nothing more than false political commentary intended for no purpose other than to mislead voters into believing that the amendment will affect "waiting lists."

b. That the amendment will "protect the doctor-patient relationship." In fact, the amendment does not reference, nor does it have anything to do with the doctor-patient relationship. The statement is nothing more than false political commentary intended for no purpose other than to mislead voters into believing that the amendment will affect "the doctor-patient relationship."

c. That the amendment will “guard against mandates that don't work.” There can be no better example of the overt political nature of the false statements contained in the ballot title and summary than this. The amendment, as written, has nothing to do with any “mandates,” nor does it explain how any such mandates “don’t work,” nor does it state how the amendment would protect against such phantom unworkable mandates. The legislative statement is nothing more than political commentary on the federal health care reform act. More to the point, the amendment misleads the voting public as to the real purpose and effect of the proposed amendment.

14. The ballot title and summary language passed by the legislature for placement on the general election ballot is misleading as to the true effect of Amendment 9, in violation of Article XI, section 5 of the Florida Constitution and § 101.161(1), Fla. Stat..

15. Plaintiffs will suffer immediate and irreparable harm if Amendment No. 9, with the accompanying ballot title and summary language, is placed on the ballot for the November 2010 general election.

16. Plaintiffs have no adequate remedy at law, and it is in the public interest to ensure that Florida voters are accurately informed as to the true effect of proposed amendments to the Florida Constitution.

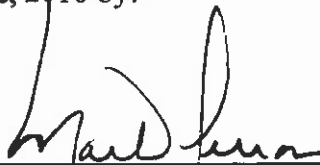
PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- a. Declare that the ballot title and summary language accompanying Amendment No. 9 (HJR 37) do not accurately inform Florida voters of the true effect of the proposed amendments, in violation of Article XI, section 5, of the Florida Constitution and Section 101.161(1), Fla. Stat.

- b. Enjoin Defendant Department of State and Defendant Roberts, in her official capacity as the chief election officer of the state and the head of the Department of State, and all persons and entities acting under their direction or in concert with them, from placing Amendment No. 9 on the ballot for the November 2010 general election;
- c. Award to plaintiffs the attorneys' fees, expenses, and costs incurred in prosecuting this action; and
- d. Order such other and further relief as this Court may deem appropriate.

Respectfully submitted on this 24th day of June, 2010 by:



Mark Herron
Florida Bar No.: 0199737
Email: mherron@lawfla.com
E. Gary Early
Florida Bar No.: 0325147
Email: gearly@lawfla.com
Albert T. Gimbel
Florida Bar No.: 0279730
Email: tigimbel@lawfla.com
MESSER, CAPARELLO & SELF, P.A.
Post Office Box 15579
Tallahassee, FL 32317-5579
Telephone: (850) 222-0720
Facsimile: (850) 558-0659

Attorneys for Plaintiffs

ENROLLED
CS/CS/HJR 37

2010 Legislature

House Joint Resolution

A joint resolution proposing the creation of Section 28 of Article I of the State Constitution, relating to health care services.

Be It Resolved by the Legislature of the State of Florida:

That the following creation of Section 28 of Article I of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 28. Health care services.—

(a) To preserve the freedom of all residents of the state to provide for their own health care:

(1) A law or rule may not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.

(2) A person or an employer may pay directly for lawful health care services and may not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and may not be required to pay penalties or fines for accepting direct payment from a person or an employer for lawful health care services.

(b) Subject to reasonable and necessary rules that do not

ENROLLED
CS/CS/HJR 37

2010 Legislature

29 substantially limit a person's options, the purchase or sale of
30 health insurance in private health care systems may not be
31 prohibited by law or rule.

32 (c) This section does not:

33 (1) Affect which health care services a health care
34 provider is required to perform or provide.

35 (2) Affect which health care services are permitted by
36 law.

37 (3) Prohibit care provided pursuant to general law
38 relating to workers' compensation.

39 (4) Affect laws or rules in effect as of March 1, 2010.

40 (5) Affect the terms or conditions of any health care
41 system to the extent that those terms and conditions do not have
42 the effect of punishing a person or an employer for paying
43 directly for lawful health care services or a health care
44 provider for accepting direct payment from a person or an
45 employer for lawful health care services, except that this
46 section may not be construed to prohibit any negotiated
47 provision in any insurance contract, network agreement, or other
48 provider agreement contractually limiting copayments,
49 coinsurance, deductibles, or other patient charges.

50 (6) Affect any general law passed by a two-thirds vote of
51 the membership of each house of the legislature after the
52 effective date of this section, if the law states with
53 specificity the public necessity that justifies an exception
54 from this section.

55 (d) As used in this section, the term:

56 (1) "Compel" includes the imposition of penalties or

ENROLLED
CS/CS/HJR 37

2010 Legislature

57 finer.

58 (2) "Direct payment" or "pay directly" means payment for
59 lawful health care services without a public or private third
60 party, not including an employer, paying for any portion of the
61 service.

62 (3) "Health care system" means any public or private
63 entity whose function or purpose is the management of,
64 processing of, enrollment of individuals for, or payment, in
65 full or in part, for health care services, health care data, or
66 health care information for its participants.

67 (4) "Lawful health care services" means any health-related
68 service or treatment, to the extent that the service or
69 treatment is permitted or not prohibited by law or regulation,
70 which may be provided by persons or businesses otherwise
71 permitted to offer such services.

72 (5) "Penalties or fines" means any civil or criminal
73 penalty or fine, tax, salary or wage withholding or surcharge,
74 or named fee with a similar effect established by law or rule by
75 an agency established, created, or controlled by the government
76 which is used to punish or discourage the exercise of rights
77 protected under this section. For purposes of this section only,
78 the term "rule by an agency" may not be construed to mean any
79 negotiated provision in any insurance contract, network
80 agreement, or other provider agreement contractually limiting
81 copayments, coinsurance, deductibles, or other patient charges.

82 BE IT FURTHER RESOLVED that the following title and
83 statement be placed on the ballot:

84 HEALTH CARE FREEDOM

ENROLLED
CS/CS/HJR 37

2010 Legislature

85 CONSTITUTIONAL AMENDMENT

86 ARTICLE I, SECTION 28

87 HEALTH CARE SERVICES.—Proposing an amendment to the State
88 Constitution to ensure access to health care services without
89 waiting lists, protect the doctor-patient relationship, guard
90 against mandates that don't work, prohibit laws or rules from
91 compelling any person, employer, or health care provider to
92 participate in any health care system; permit a person or an
93 employer to purchase lawful health care services directly from a
94 health care provider; permit a health care provider to accept
95 direct payment from a person or an employer for lawful health
96 care services; exempt persons, employers, and health care
97 providers from penalties and fines for paying directly or
98 accepting direct payment for lawful health care services; and
99 permit the purchase or sale of health insurance in private
100 health care systems. Specifies that the amendment does not
101 affect which health care services a health care provider is
102 required to perform or provide; affect which health care
103 services are permitted by law; prohibit care provided pursuant
104 to general law relating to workers' compensation; affect laws or
105 rules in effect as of March 1, 2010; affect the terms or
106 conditions of any health care system to the extent that those
107 terms and conditions do not have the effect of punishing a
108 person or an employer for paying directly for lawful health care
109 services or a health care provider for accepting direct payment
110 from a person or an employer for lawful health care services; or
111 affect any general law passed by two-thirds vote of the
112 membership of each house of the Legislature, passed after the

ENROLLED

CS/CS/HJR 37

2010 Legislature

113 effective date of the amendment, provided such law states with
114 specificity the public necessity justifying the exceptions from
115 the provisions of the amendment. The amendment expressly
116 provides that it may not be construed to prohibit negotiated
117 provisions in insurance contracts, network agreements, or other
118 provider agreements contractually limiting copayments,
119 coinsurance, deductibles, or other patient charges.