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

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

Plaintiffs,

Case No. 2010 CA 2202

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.

FILED
2010 JUL 30 P 12:23
BOB INZER
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

FINAL JUDGMENT

THIS MATTER came before the Court for Final Hearing on July 29, 2010. There are no issues of material fact and the Court did not take any testimony. This case is decided on the memorandums of law presented by the parties (including the amicus briefs submitted by the Senate and the House), the arguments made by the attorneys and the amicus parties and the case law from the Supreme Court that has evolved over the course of hearing multiple constitutional amendment challenge cases.

At issue is the ballot summary for a proposed amendment to the State Constitution, approved by Legislature by the constitutionally required three-fifths of the membership of each house, for inclusion on the November 2, 2010 general election ballot, that is designated as Amendment 9.

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The ballot summary of Amendment 9 reads as follows:

> 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.

The Plaintiffs ask the Court to determine if the ballot summary complies with the requirements of Section 101.161(1), Florida Statutes, and the various appellate decisions that apply and interpret the requirements of that statutory provision. Section 101.161(1), Florida Statutes, in pertinent part, requires:

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> 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 ....

Plaintiffs request that ballot summary be found to be in violation of Section 101.161(1), Florida Statutes, and that Amendment 9 be stricken from the ballot. Plaintiffs argue that the ballot summary is political rhetoric that invites an emotional response from the voter materially misstating the substance of the amendment.

Defendant, Secretary of State, requests that the ballot summary of Amendment 9 be found to be in compliance with Section 101.161(1), Florida Statutes. Alternatively, in the event the Court finds the ballot summary to be in violation of Section 101.161(1), Florida Statutes, Defendant Secretary of State requests that the text of the amendment itself be ordered by this Court to be substituted in lieu of the ballot summary.

The bar is high for Plaintiffs. To interfere with the right of the people to vote on a proposed constitutional amendment, the Court must find clearly and convincingly that the proposed ballot summary is defective. Further, this Court understands and takes seriously the admonition that every act of the Legislature, especially joint resolutions to amend the State Constitution, comes before the Court with a presumption of legality.

The summary contains three statements in its introduction that the Plaintiff argues makes the summary misleading. The first statement is "to ensure

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access to health care services without waiting lists". A citizen reading this could only conclude that once passed a constitutional right would exist to obtain a doctor of one's choice without being put on a waiting list. The amendment says nothing about "waiting lists". The second statement called into question reads "protect the doctor-patient relationship". The amendment says nothing about "the doctor-patient relationship" nor does it have anything to do with doctor-patient confidentiality. The final statement is that the amendment will "guard against mandates that don't work". Neither the amendment nor the summary explain what mandates and why they don't work. There is no explanation as to who the mandates don't work for. Is it mandates that don't work for hospitals, or for insurance companies, or for HMO's, or is it mandates that don't work for citizens? "Mandates that don't work" is certainly a subjective term that in this context could have no purpose other than to influence a voter's decision on the amendment. All of these phrases are examples of comments that the Supreme Court has repeatedly said are not allowed in ballot summaries.

This case cannot be distinguished from *Evans v. Firestone,* 457 So. 2d 1351 (Fla. 1984), *In re Advisory Opinion to the Attorney General – Save Our Everglades,* 636 So. 2d 1636 (Fla. 1994); *In re Advisory Opinion to the Attorney General re: Tax Limitation,* 644 So. 2d 486 (Fla. 1994); and *Advisory Opinion to the Attorney General re: Additional Homestead Tax Exemption,* 880 So. 2d 646 (Fla. 2004). In each of these cases, amendments were stricken from the ballot due to defective ballot summaries. *Armstrong v. Harris,* 773 So. 2d 7 (Fla. 2000), compels the conclusion

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that the accuracy requirement of Section 101.161(1), Florida Statutes, applies to all proposed constitutional amendments, including those proposed by joint resolution of the Legislature.

The wisdom of a proposed amendment is not a matter of concern for this Court. The "ballot summary should tell the voter the legal effect of the amendment <u>and no more</u>." (Emphasis added) *Evans,* 457 So. 2d at 1355. As explained by the Florida Supreme Court in and *Advisory Opinion to the Attorney General re: Additional Homestead Tax Exemption:*

> The use of the phrase "provides property tax relief" clearly constitutes political rhetoric that invites an emotional response from the voter by materially misstating the substance of the amendment. *See In re Advisory Op. to the Att'y Gen.--Save Our Everglades,* 636 So. 2d 1336, 1341-42 (Fla. 1994) (finding "emotional language" of ballot title and summary to be misleading as it resembled "political rhetoric" more than "accurate and informative synopsis"); *Evans,* 457 So. 2d at 1355 (holding ballot summary defective in part because phrase "thus avoiding unnecessary costs" constituted "editorial comment"). This misleading language does not reflect the true legal effect of the proposed amendment. *See Advisory Op. to the Att'y Gen. re Tax Limitation,* 644 So. 2d 486, 490 (Fla. 1994) (stating that the ballot summary must be accurate and informative and "objective and free from political rhetoric").

880 So. 2d at 653

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FINDINGS ON BALLOT SUMMARY:

Based on the case authority contained in the Supreme Court decisions cited above, this case is not difficult to decide. Clearly and convincingly the ballot summary contained in the Joint Resolution does not meet the requirements of Florida Statute 161.101(1) and therefore may not be included on the November 2010 ballot.

REMEDY:

The Florida House of Representatives and the Florida Senate, through their respective counsel appeared at the Final Hearing with a request that the Court allow them to appear as Amicus Curie and for the Court to accept the Amicus briefs filed before the hearing. Having a direct stake in the outcome of this case, the request was granted. The briefs of the House and the Senate were limited to the remedies available to the Court if the summary was found to be defective.

It appears to the Court that only two paths would allow the Court to accommodate the request of the amicus parties. The first path would require the Court to substitute the amendment language for the summary. This would require that the Court substitute its discretion for that of three-fifths of the legislature. Presumably, if the Court could substitute its chosen language for that of the legislature then it could make any other substantive changes that it

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chose to make. Clearly the Court does not have such authority. Substitution of the amendment for the summary is not an option.

The second path is one advanced by the Senate, the House and the Secretary of State. This path would allow the amendment to go on the ballot without a summary. The Defendants argue that no summary is required by Florida Statue 101.161(1) and that the amendment itself can be the "substance of the amendment" as referenced in the statute. Here again, the Court lacks the authority to grant the relief requested for to do so would be to turn a blind eye to the expressed intent and meaning of Florida Statute 101.161(1) and the long line of precedent established by the Supreme Court in ruling on amendment cases. To rule that no summary is required would be to disregard the action of the legislature who expressly did provide a summary to accompany this amendment on the ballot. The Court lacks the authority to grant the remedy requested by the Defendants.

The bottom line is that the limited function of the Court is to determine if the ballot summary, the ballot title and the amendment comply with the requirements of the Florida Constitution and with Florida Statute 101.161(1). The Court is not empowered to correct the acts of the legislature even if failure of the Court to act results in the amendment being stricken from the ballot.

Now, therefore, it is ORDERED and ADJUDGED that:

1. The Court finds for the Plaintiff and against the Defendant.

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2. The Court enjoins the Defendant, Department of State, an agency of the State of Florida, and Dawn K. Roberts, in her official capacity as the Interim Secretary of State, from Placing Amendment 9 on the ballot for the November 2010 general election.

DONE and ORDERED at Tallahassee, Leon County, Florida this 30th day of July, 2010.

JAMES O. SHELFER
Circuit Judge

Copies to Counsel of Record

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