

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

American Civil Liberties Union )  
of Florida, Inc.; Jeanne Baker; )  
Dr. Walter Bradley; Shoshana Baker- )  
Bradley; Natasha Baker-Bradley; )  
Planned Parenthood of North Central )  
Florida, Inc.; Planned Parenthood of )  
Southwest and Central Florida, Inc., )

Plaintiffs )

Case No. 04 CA 1861

v. )

Glenda E. Hood, in her official capacity )  
as Florida Secretary of State, )  
Dawn K. Roberts in her official )  
capacity as the Director of the Division of )  
Elections, )

Defendants. )

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

**I. PRELIMINARY STATEMENT**

1. Plaintiffs bring the instant action to protect the constitutional and statutory right of Florida voters to be informed of the true purpose and legal effect of a legislatively proposed amendment that will substantially diminish the state constitutional right of privacy. Because the challenged ballot proposal fails to accurately notify voters of the proposed amendment's true effect and affirmatively misleads voters by suggesting that the amendment would protect rather than limit the right of privacy, it is fatally deficient and cannot constitutionally be placed on the November 2, 2004 general election ballot.

2. Plaintiffs American Civil Liberties Union of Florida, Inc.; Jeanne Baker; Dr. Walter Bradley; Shoshana Baker-Bradley; Natasha Baker-Bradley; Planned Parenthood of North Central Florida, Inc.; and Planned Parenthood of Southwest and Central Florida, Inc. by and through undersigned counsel, sue the Defendants Glenda E. Hood, in her official capacity as Florida Secretary of State, and Dawn K. Roberts, in her official capacity as Director of the Division of Elections. Plaintiffs ask this Court to (A) issue an injunction prohibiting placement of the challenged ballot title and summary on the November 2, 2004 general election ballot; (B) declare House Joint Resolution 1 legally deficient; and (C) order such other equitable relief as may be just and proper. As grounds in support thereof, Plaintiffs allege as follows:

## **II. JURISDICTION**

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

4. This Court has jurisdiction to issue an injunction 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.

5. This Court also has jurisdiction to grant declaratory relief pursuant to Article V, Section 5(b) of the Florida Constitution and section 86.011 of the Florida Statutes.

6. Venue is proper in Leon County because the Office of the Florida Secretary of State for the Florida Department of State is located in Leon County, Florida.

## **III. PARTIES**

a. Plaintiffs

7. Plaintiff American Civil Liberties Union of Florida, Inc. (ACLU of Florida) is the Florida affiliate of the American Civil Liberties Union. The ACLU of Florida is a statewide, nonprofit, nonpartisan organization dedicated to defending principles of liberty embodied in the State and Federal Constitutions. The ACLU of Florida has long defended the liberties embodied in the Florida Constitution, including protecting the privacy rights of Florida residents, minors and adults alike, and the legal rights guaranteed Florida voters participating in the electoral process. The ACLU of Florida has approximately 22,000 members in the State. Many, if not most, of its members are registered voters in the State of Florida. Plaintiff ACLU of Florida asserts the rights of its voting members in this action.

8. Plaintiff Jeanne Baker is President of the ACLU of Florida. Plaintiff Dr. Walter Bradley (Jeanne Baker's husband) and their two daughters, Plaintiff Shoshana Baker-Bradley, age 18, and Plaintiff Natasha Baker-Bradley, age 19, (collectively, the Baker-Bradley family), are members of the ACLU of Florida. The Baker-Bradley family resides in Coral Gables. All family members are citizens of the State of Florida and are registered voters pursuant to section 97.041 of the Florida Statutes. Plaintiffs Jeanne Baker and Dr. Walter Bradley have regularly voted in Florida general elections and on ballot proposals presented at those elections, and they intend to vote in the November 2, 2004 general election. Plaintiffs Shoshana and Natasha Baker-Bradley intend to vote for the first time in the November 2, 2004 general election. The members of the Baker-Bradley family are suing on their own behalf as citizens of, and registered voters in, Florida.

9. Plaintiff Planned Parenthood of North Central Florida, Inc. (PPNCF) is a not-for-profit Florida corporation. PPNCF operates health centers in Gainesville and Tallahassee. PPNCF's services include physical exams, contraception and contraceptive counseling, screening and treatment for HIV and sexually transmitted infections, screening and treatment for cervical conditions, and pregnancy testing and counseling, including referrals for abortion. Each year, PPNCF provides services to more than 11,000 men and women, including teens. PPNCF sues on behalf of those minors it serves, whose ability to obtain confidential medical care will be limited if the constitutionally deficient ballot proposal is placed on the general election ballot and the proposed amendment adopted.

10. Plaintiff Planned Parenthood of Southwest and Central Florida, Inc. (PPSWCF) is a not-for-profit Florida corporation. PPSWCF operates six health centers in Southwest and Central Florida, which serve more than 17,000 women, men, and teens each year. PPSWCF's services include physical exams, contraception and contraceptive counseling, screening and treatment for HIV and sexually transmitted infections, pregnancy testing and counseling, vasectomy, and medical and surgical abortion services. In addition to seeing teens by appointment, all of PPSWCF's health centers offer a walk-in Teen Clinic once a week. PPSWCF sues on behalf of those minors it serves, whose ability to obtain confidential medical care at PPSWCF will be limited if the constitutionally deficient ballot proposal is placed on the general election ballot and the proposed amendment adopted.

b. Defendants

11. Defendant Glenda E. Hood is the Florida Secretary of State. She is sued in her official capacity. As Secretary of State, she is the chief election officer of the state. § 97.012,

Fla. Stat.

12. Defendant Dawn K. Roberts is the Director of the Division of Elections. She is sued in her official capacity. As Director of the Division of Elections, she is responsible for the placement of proposed constitutional amendments on the general election ballot. Fla. Admin. Code R 1S-2.0011.

#### IV. STATEMENT OF THE CASE

13. On June 17, 2004, House Joint Resolution 1 (H.J.R. 1) was filed with Defendant Secretary of State for placement on the November 2004 general election ballot. H.J.R. 1 contains a proposed constitutional amendment and a ballot title and summary. *See Ex. A*, attached hereto.

14. H.J.R. 1 proposes the addition of section 22 to Article X of the State Constitution, relating to miscellaneous matters. The proposed amendment contained in H.J.R. 1 will become effective if it is approved by a vote of the electors at the November 2, 2004 election. *See Art. XI, § 5(d), Fla. Const.*

15. Only the ballot title and summary are to appear on the ballot; the actual language of the proposed amendment will not. *See H.J.R. 1; see also §101.161, Fla. Stat.*

16. The ballot title and summary (the “ballot proposal”), drafted by the legislature as part of H.J.R. 1, are to appear on the November 2004 ballot as follows:

CONSTITUTIONAL AMENDMENT  
ARTICLE X, SECTION 22  
PARENTAL NOTIFICATION OF A MINOR’S TERMINATION OF  
PREGNANCY.--Proposing an amendment to the State Constitution to authorize  
the Legislature to require by general law for notification to a parent or guardian of  
a minor before the termination of the minor’s pregnancy. The amendment  
provides that the Legislature shall not limit or deny the privacy rights guaranteed  
to minors under the United States Constitution as interpreted by the United States

Supreme Court. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the requirement for notification.

H.J.R. 1.

17. The full text of the proposed constitutional amendment, which will not appear on the November ballot, provides:

ARTICLE X  
MISCELLANEOUS

SECTION 22. Parental notice of termination of a minor's pregnancy.--The legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

*Id.*

18. The Legislature passed H.J.R. 1 to overturn Florida Supreme Court precedent holding that the State Constitution's explicit Right of Privacy Clause, Article 1, section 23, affords minors greater protection than does the Federal Constitution and prohibits the enforcement of a law requiring notification to a minor's parent before she obtains an abortion, or a judicial waiver of that requirement.

19. The Florida Supreme Court has declared that even though the United States Supreme Court has upheld laws requiring a minor to involve a parent or obtain a judicial bypass under the Federal Constitution, such laws violate the right of privacy contained in Article I, section 23 of the Florida Constitution. *See In re T.W.*, 551 So. 2d 1186 (Fla. 1989); *North Fla. Women's Health & Counseling Svcs. v. Florida*, 866 So. 2d 612 (Fla. 2003).

20. In the absence of an amendment to the State Constitution, the Legislature cannot

constitutionally pass a statute requiring a minor to notify a parent or obtain a court order before she obtains an abortion. Thus, the chief purpose of the proposed amendment is to supersede Florida Supreme Court precedent and limit the fundamental right of privacy currently guaranteed minors under Article I, section 23.

21. Proposed Article X, section 22, if adopted, would constitutionally authorize a parental notification law by explicitly limiting the Right of Privacy Clause contained in Article I, section 23 and requiring that a parental notification law passed by the Legislature conform only to the Federal Constitution.

22. The proposed amendment is to be placed in Article X relating to miscellaneous matters. Article X currently contains twenty-one sections relating to a variety of different, and predominately unrelated, issues. No sections currently contained in Article X relate to the right of privacy or refer to Article I, section 23.

23. Article I, section 23 is the only existing provision of the State Constitution relating to the individual right of privacy.

24. The statement of the title to be placed on the ballot summary does not make any reference to Article I, section 23, the Right of Privacy Clause, nor does it indicate how the proposed amendment would limit that Clause.

25. The summary of the proposed amendment to be placed on the ballot makes no reference to Article I, section 23, the Right of Privacy Clause, nor does it explain how the proposed amendment will limit that Clause.

26. The ballot summary states that the proposed amendment prohibits the legislature from limiting or denying the privacy rights guaranteed minors under the United States

Constitution as interpreted by the United States Supreme Court. The summary does not state that the proposed amendment would limit the right of privacy guaranteed minors under the Florida Constitution as interpreted by the Florida Supreme Court.

## **V. CAUSES OF ACTION**

### **COUNT I**

#### **H.J.R. 1 Violates Article XI, Section 5 of the Florida Constitution Because It is Not Accurate.**

27. Plaintiff re-allege Paragraphs 1-26 herein.

28. H.J.R. 1 violates Article XI, Section 5 of the Florida Constitution because the ballot proposal fails to accurately and fairly advise voters that the proposed amendment will substantially limit minors' state constitutional rights of privacy under Article I, section 23.

### **COUNT II**

#### **H.J.R. 1 Violates Article XI, Section 5 of the Florida Constitution Because It is Misleading.**

29. Plaintiffs re-allege Paragraphs 1-28 herein.

30. H.J.R. 1 violates Article XI, section 5 because the ballot proposal misleads voters as to the substance and effect of the proposed constitutional amendment by suggesting that it would help protect minors' privacy rights when the amendment would in fact reduce minors' privacy rights.

### **COUNT III**

#### **H.J.R. 1 Violates Section 101.161(1) of the Florida Statutes.**

31. Plaintiffs re-allege Paragraphs 1-30 herein.

32. H.J.R. 1 violates Florida Statute Section 101.161(1) because the ballot proposal fails to explain the substance and legal effect of the proposed amendment in clear and

unambiguous language.

**COUNT IV**  
**H.J.R. 1 Violates Article XI,**  
**Section 1 of the Florida Constitution.**

33. Plaintiffs re-allege Paragraphs 1-32 herein.

34. H.J.R. 1 violates the requirement of germaneness and locational specificity required by Article XI, Section 1 of the Florida Constitution because the proposed amendment is not placed within the provision to which it is directly related, Article I, section 23, "Right of Privacy," but is instead placed in a provision to which it has no relation, Article X, "Miscellaneous."

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs request this Court to:

- a. Declare H.J.R. 1, in its entirety, violative of Florida law;
- b. Enjoin Defendants from carrying out their respective duties to place the Title and Ballot Summary contained in H.J.R. 1 on the November 2, 2004 ballot;
- c. Order that H.J.R. 1 be permanently stricken from the November 2, 2004 ballot;  
and
- d. Award such other relief as the Court may deem just and proper.

Respectfully submitted,

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\* Application for Admission *Pro Hac Vice* Pending

