

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

ANDY FORD, BEVERLY SLOUGH,)
JOSEPH JOYNER, CHRISTI MOSS,)
RABBI MERRILL SHAPIRO, and)
and REVEREND HARRY PARROT, JR.,)

Plaintiffs,)

v.)

KURT BROWNING, in his official capacity)
as Florida Secretary of State,)

Defendant.)

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1. Plaintiffs bring this action to enjoin the placement on the November 2008 general election ballot of certain amendments to the Florida Constitution proposed by the Florida Taxation and Budget Reform Commission (“TBRC” or “Commission”). These proposed constitutional amendments—which appear in Ballot Initiatives Nos. 7 and 9—cannot lawfully be submitted to Florida voters because: (a) the amendments do not deal with the limited subjects as to which the TBRC has constitutional authority to propose amendments; and (b) in the case of Initiative No. 9, the TBRC’s proposed ballot title and summary language are misleading as to the true effect of the proposed amendment.

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 the Office of the Florida Secretary of State for the Florida Department of State is located in Leon County, Florida.

PARTIES

5. Plaintiff Andy Ford is a resident of Atlantic Beach, and a citizen and taxpayer of Florida. Ford is a registered voter in Duval County, Florida. He has regularly voted in Florida general elections and on ballot proposals presented at those elections, and intends to vote in the November 2008 general election. Plaintiff Ford is President of the Florida Education Association, a statewide association of teachers and other employees of public school districts throughout Florida. Plaintiff Ford sues in his individual and official capacities.

6. Plaintiff Beverly Slough is a resident of Switzerland, Florida, and a citizen and taxpayer of Florida. Slough is a registered voter in St. Johns County, Florida. She has regularly voted in Florida general elections and on ballot proposals presented at those elections, and intends to vote in the November 2008 general election. Plaintiff Slough is President of the Florida School Boards Association, Inc., a statewide association of elected school board members representing school boards throughout Florida. Plaintiff Slough sues in her individual and official capacities.

7. Plaintiff Joseph Joyner, Ed.D., is a resident of St. Augustine, and a citizen and taxpayer of Florida. Dr. Joyner is a registered voter in St. Johns County, Florida. He has

regularly voted in Florida general elections and on ballot proposals presented at those elections, and intends to vote in the November 2008 general election. Plaintiff Joyner is President of the Florida Association of District School Superintendants, a statewide association of school superintendents employed in public school districts throughout Florida. Plaintiff Joyner sues in his individual and official capacities.

8. Plaintiff Christi Moss is a resident of Tallahassee, and a citizen and taxpayer of Florida. Plaintiff Moss is a registered voter in Leon County, Florida. She has regularly voted in Florida general elections and on ballot proposals presented at those elections, and intends to vote in the November 2008 general election. Plaintiff Moss is President of the Florida Association of School Administrators, Inc., a statewide association of administrative personnel employed in public school districts throughout Florida. Plaintiff Moss sues in her individual and official capacities.

9. Plaintiff Merrill Shapiro is a resident of Palm Coast, and a citizen and taxpayer of Florida. Plaintiff Shapiro is a registered voter in Flagler County, Florida. He has regularly voted in Florida general elections and on ballot proposals presented at those elections, and intends to vote in the November 2008 general election. Plaintiff Shapiro is the Rabbi of Temple Beth Shalom in Palm Coast, Florida.

10. Plaintiff Harry Parrott, Jr. is a resident of Penney Farms, and a citizen and taxpayer of Florida. Plaintiff Parrott is a registered voter in Clay County, Florida. He has regularly voted in Florida general elections and on ballot proposals presented at those elections, and intends to vote in the November 2008 general election. Plaintiff Parrott is an ordained Baptist minister, now retired after 38 years of service.

11. Plaintiffs, and the associations represented by plaintiffs Ford, Slough, Joyner, and Moss, strongly support the separation of church and state and the education of Florida's children through a system of free public schools. For that reason, they oppose Ballot Initiatives Nos. 7 and 9, and, should those Initiatives be placed on the ballot for the November 2008 general election, intend to contribute to, and otherwise participate actively in, a campaign to persuade Florida voters to reject them.

12. Defendant Kurt S. Browning is the Florida Secretary of State. As Secretary of State, Browning is responsible for the operation of the Division of Elections, and has the ministerial duty of furnishing to the Supervisor of Elections of each county the designated number, ballot title, and substance of each proposed constitutional amendment that is to appear on the November 2008 general election ballot. Defendant Browning is also the custodian of the Florida Constitution, Florida Statutes, and Legislative Resolutions. Defendant Browning is sued in his official capacity.

FACTS

Ballot Initiatives in Florida

13. 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. Four of these methods provide procedures through which any portion of the Florida Constitution can be amended: Section 1 of Article XI provides that the legislature, upon a three-fifth vote of each house, may place proposed amendments to any part of the Constitution on a general election ballot; Section 2 provides for the establishment of a Constitution Revision Commission, which convenes in every twentieth year, and may place

proposed amendments to any part of the Constitution on a general election ballot; Section 3 grants to the people the power, by petition, to place proposed amendments to any part of the Constitution on a general election ballot; and Section 4 grants to the people the power, by petition, to convene a constitutional convention to place proposed amendments to any part of the Constitution on a general election ballot.

14. In contrast to the other four methods, the fifth method of amending the Constitution, which was added to Article XI in 1988, provides a procedure for proposing amendments dealing only with limited subjects. Article XI, section 6, establishes a 29-member Taxation and Budget Reform Commission. As amended in 1998, Article XI, section 6, provides that the TBRC will convene every 20 years, to conduct certain inquiries and investigations related to the state's budget and tax structure, to hold public hearings on these matters, and to propose certain statutory changes and constitutional amendments. In both the statutory and constitutional contexts, the TBRC has authority to make proposals dealing only with limited subjects.

15. With regard to legislation, the TBRC may “propose to the legislature any recommended statutory changes related to the taxation or budgetary laws of the state.” Art. XI, § 6(e), Fla. Const.

16. The limitation on the subjects as to which the TBRC may propose constitutional amendments for placement on a general election ballot is similar—but not identical—to that regarding legislation:

Not later than one hundred eighty days prior to the general election in the second year following the year in which the commission is established, the commission shall file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it *dealing with taxation or the state budgetary process*.

Art. XI, § 6(e), Fla. Const. (emphasis added). Conversely, the Commission has no authority to propose constitutional amendments that do not “deal[] with taxation or the state budgetary process.”

The 2007-2008 Taxation and Budget Reform Commission

17. Pursuant to Article XI, section 6, of the Florida Constitution, as well as section 286.036 of the Florida statutes, the TBRC convened on March 16, 2007. Between September 20, 2007 and December 5, 2007, the Commission held a series of public hearings throughout Florida, the purpose of which was to afford the general public an opportunity to present recommendations on taxation and budget issues to the Commission.

18. The TBRC adopted seven proposed constitutional amendments, designated as Ballot Initiatives Nos. 3 through 9. As required by Article XI, section 6(e), five of these Ballot Initiatives deal with the subjects of “taxation or the state budgetary process”:

- a. Initiative No. 3 (TBRC Proposal CP0004) proposes certain changes in the factors that may be considered in assessing the value of residential real estate for *ad valorem* taxation purposes;
- b. Initiative No. 4 (TBRC Proposal CP0015/CP0016) addresses property tax exemptions for real property encumbered by conservation easements, as well as the classification and assessment of land used for conservation purposes;
- c. Initiative No. 5 (TBRC Proposal CP0002) involves property assessments for the purposes of *ad valorem* taxation, and the use of tax proceeds for education;
- d. Initiative No. 6 (TBRC Proposal CP0006/CP0008/CP0034) proposes changes in the tax assessment of certain types of waterfront properties; and

- e. Initiative No. 8 (TBRC Proposal CP0035) involves sales tax levied for community college funding.

19. On April 25, 2008—the final day of its session—the TBRC adopted certain additional proposed constitutional amendments that had been considered and defeated earlier in its session. In contrast to the proposed amendments referenced in Paragraph 18 that the TBRC had adopted previously, these additional proposals—TBRC Proposals CP0020 and CP0026/CP0040—do not deal with the subjects of “taxation or the state budgetary process” as required by Article XI, section 6(e).

TBRC Proposal CP0020

20. Article I, section 3, of the Florida Constitution currently provides:

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

21. In *Bush v. Holmes*, 886 So. 2d 340 (Fla. 1st DCA 2004), *aff'd on other grounds*, 919 So. 2d 392 (Fla. 2006), the First District Court of Appeals, sitting *en banc*, relied on the final sentence in Article I, section 3, to find Florida’s “Opportunity Scholarship Program” (“OSP”) unconstitutional. The Court specifically noted that the sentence was “clearly intended at least to prohibit the direct or indirect use of public monies to fund education at religious schools.”

22. TBRC Proposal CP0020 would make two changes in Article I, section 3. First, it would delete entirely the last sentence of the section, which prohibits the use of public funds “directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” Second, Proposal CP0020 would add the following new sentence to

Article I, section 3: “Individuals or entities may not be barred from participating in public programs because of their religion.”

23. TBRC Proposal CP0020, which was transmitted to defendant Browning on April 28, 2008, for placement on the ballot for the November 2008 general election, is now referred to by defendant Browning and the Secretary of State’s office as Initiative No. 7.

TBRC Proposal CP0026/CP0040

24. Article IX, section 1(a), of the Florida Constitution currently provides in pertinent part:

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. . . .

25. In *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), the Florida Supreme Court relied on Article IX, section 1(a), to find the OSP unconstitutional. In its holding, the Court found that the OSP violated this provision by devoting the state’s resources to the education of children through means other than the required system of free public schools.

26. TBRC Proposal CP0026 was proposed on or about December 26, 2007, and TBRC Proposal CP0040 was proposed on or about January 14, 2008. During the final meeting of the TBRC, held on April 24 and 25, 2008, the TBRC combined Proposals CP0026 and CP0040 into a single proposal designated as CP0026/CP0040.

27. TBRC Proposal CP0026/CP0040 seeks to amend the Florida Constitution in four substantive respects:

- a. Article IX, section 1(a) would read as follows (the proposed additions to this provision are highlighted in **bold**; the proposed deletions are indicated with ~~strike through text~~):

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. **This duty shall be fulfilled, at a minimum and not exclusively, through adequate** Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. **Nothing in this subsection creates an entitlement to a publicly-financed private program.**

- b. A new Section 8, reading as follows, would be added to Article IX:

At least sixty-five percent of the school funding received by school districts shall be spent on classroom instruction, rather than on administration. Classroom instruction and administration shall be defined by law. The legislature may also address differences in administrative expenditures by district for necessary services, such as transportation and food services. Funds for capital outlay shall not be included in the calculation required by this section.

- c. A new Section 28, reading as follows, would be added to Article XII:

The requirement that sixty-five percent of school funding received by school districts be spent on classroom instruction in Section 8 of Article IX, and this section, shall first be applicable to school years commencing during the state fiscal year 2009-2010.

- d. The title of Article IX, section 1, would be changed from "Public Education" to "Public funding of education."

TBRC Proposal CP0026/0040 also would make other, non-substantive, changes in the numbering of Article IX, section 1.

28. On April 25, 2008, when the TBRC adopted Proposal CP0026/CP0040, 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:

CONSTITUTIONAL AMENDMENT
ARTICLE IX, SECTIONS 1 AND 8
ARTICLE XII, SECTION 28

REQUIRING 65 PERCENT OF SCHOOL FUNDING FOR CLASSROOM INSTRUCTION; STATE'S DUTY FOR CHILDREN'S EDUCATION.--Requires at least 65 percent of school funding received by school districts be spent on classroom instruction, rather than administration; allows for differences in administrative expenditures by district. Provides the constitutional requirement for the state to provide a "uniform, efficient, safe, secure, and high quality system of free public schools" is a minimum, nonexclusive duty. Reverses legal precedent prohibiting public funding of private school alternatives to public school programs without creating an entitlement.

29. TBRC Proposal CP0026/CP0040 (and the accompanying ballot title and explanatory statement), which was transmitted to defendant Browning on April 28, 2008, for placement on the ballot for the November 2008 general election, is now referred to by defendant Browning and the Secretary of State's Office as Initiative No. 9.

**FIRST CLAIM FOR RELIEF: AUTHORITY OF THE TAXATION AND
BUDGET REFORM COMMISSION TO PROPOSE BALLOT
INITIATIVE NO. 7 (TBRC Proposal CP0020)
(Violation of Article XI, Section 6, of the Florida Constitution)**

30. The allegations in paragraphs 1 - 29 are realleged and incorporated herein by reference.

31. In adopting Ballot Initiative No. 7, and transmitting it to defendant Browning for placement on the ballot for the November 2008 general election, the TBRC exceeded its authority under Article XI, section 6, of the Florida Constitution by proposing constitutional amendments that do not deal with the subjects of “taxation or the state budgetary process.”

32. Ballot Initiative No. 7 is therefore null and void in its entirety, and may not lawfully be placed on the ballot for the November 2008 general election.

33. Plaintiffs will suffer immediate and irreparable harm if Ballot Initiative No. 7 is placed on the ballot for the November 2008 general election. Plaintiffs have no adequate remedy at law, and it is in the public interest to ensure that Florida voters are not asked to vote on unlawfully proposed amendments to the Florida Constitution.

**SECOND CLAIM FOR RELIEF: AUTHORITY OF THE TAXATION AND
BUDGET REFORM COMMISSION TO PROPOSE BALLOT
INITIATIVE NO. 9 (TBRC Proposal CP0026/CP0040)
(Violation of Article XI, Section 6, of the Florida Constitution)**

34. The allegations in paragraphs 1 - 29 are realleged and incorporated herein by reference.

35. In adopting Ballot Initiative No. 9, and transmitting it to defendant Browning for placement on the ballot for the November 2008 general election, the TBRC exceeded its authority under Article XI, section 6, of the Florida Constitution by proposing constitutional amendments that do not deal with the subjects of “taxation or the state budgetary process.”

36. Ballot Initiative No. 9 is therefore null and void in its entirety, and may not lawfully be placed on the ballot for the November 2008 general election.

37. Plaintiffs will suffer immediate and irreparable harm if Ballot Initiative No. 9 is placed on the ballot for the November 2008 general election. Plaintiffs have no adequate remedy

at law, and it is in the public interest to ensure that Florida voters are not asked to vote on unlawfully proposed amendments to the Florida Constitution.

**THIRD CLAIM FOR RELIEF: ADEQUACY OF BALLOT TITLE AND SUMMARY LANGUAGE ACCOMPANYING PROPOSED BALLOT INITIATIVE NO. 9
(Violation of Article XI, Section 5 of the Florida Constitution;
Violation of § 101.161 of the Florida Statutes)**

38. The allegations in paragraphs 1-29 are realleged and incorporated herein by reference.

39. The ballot title and summary language adopted by the TBRC for placement on the general election ballot is misleading as to the true effect of Ballot Initiative No. 9, in violation of Article XI, section 5 of the Florida Constitution and § 101.161(1), Fla. Stat..

40. For this independent reason, Ballot Initiative No. 9, with the accompanying ballot title and summary language, may not lawfully be placed on the ballot for the 2008 general election.

41. Plaintiffs will suffer immediate and irreparable harm if Ballot Initiative No. 9, with the accompanying ballot title and summary language, is placed on the ballot for the November 2008 general election.

42. 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 TBRC exceeded its authority under Article XI, section 6, of the Florida Constitution by transmitting Ballot Initiative No. 7 (TBRC Proposal CP0020) and Ballot Initiative No. 9 (TBRC Proposal CP0026/CP0040) to

defendant Browning for placement on the ballot for the November 2008 general election;

- b. Declare that the ballot title and summary language accompanying Ballot Initiative No. 9 (CP0026/CP0040) does 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 § 101.161(1), Fla. Stat.
- c. Enjoin defendant Browning, and all persons and entities acting under his direction or in concert with him, from placing Ballot Initiative No. 7 or Ballot Initiative No. 9 on the ballot for the November 2008 general election;
- d. Award to plaintiffs the attorneys' fees, expenses, and costs incurred in prosecuting this action; and
- e. Order such other and further relief as this Court may deem appropriate.

Respectfully submitted,



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