

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

FLORIDA STATE CONFERENCE  
OF NAACP BRANCHES;  
ADORA OBI NWEZE;  
THE LEAGUE OF WOMEN  
VOTERS OF FLORIDA, INC.;  
DEIRDRE MACNAB;  
ROBERT MILLIGAN;  
NATHANIEL P. REED;  
DEMOCRACIA AHORA;  
and JORGE MURSULI;

Plaintiffs,

vs.

CASE NO.: 2010 CA 1803

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

Defendants,

and

FLORIDA HOUSE OF REPRESENTATIVES  
and FLORIDA SENATE,

Intervening Defendants.

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**ORDER GRANTING SUMMARY FINAL JUDGMENT**

THIS MATTER came before the Court for hearing on July 8, 2010, upon cross motions for summary judgment. Both parties, on the record and by their motions agreed that there are no genuine issues of material fact for the Court to decide and that the case should be determined by Summary Judgment.

At issue is the title and ballot summary for an amendment to the Florida Constitution that is designated as Amendment 7. Amendment 7 is a legislative proposal approved by a supermajority of the legislature for inclusion on the November 2<sup>nd</sup> ballot. The ballot summary and the proposed amendment are, for all practical purposes, identical. The ballot summary and the title to Amendment 7 read as follows:

STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE AND CONGRESSIONAL REDISTRICTING.--In establishing congressional and legislative district boundaries or plans, the state shall apply federal requirements and balance and implement the standards in the State Constitution. The state shall take into consideration the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities of common interest other than political parties may be respected and promoted, both without subordination to any other provision of Article III of the State Constitution. Districts and plans are valid if the balancing and implementation of standards is rationally related to the standards contained in the State Constitution and is consistent with federal law.

The cross motions ask the Court to determine if the ballot title and the ballot summary comply with the requirements of Florida Statute 101.161(1) and the various appellate decisions that interpret the requirements of the statute. Defendant's request that Amendment 7 be found in compliance and be allowed on the ballot. The Plaintiff's request the ballot summary and title be found to be in violation of F.S. 101.161(1) and that Amendment 7 not be allowed on the November 2<sup>nd</sup> ballot. Plaintiffs argue that Amendment 7's ballot summary and title fail to advise the voters of the amendment's chief purpose and true effect. Plaintiff's argue that as found by the Supreme Court in other cases, this ballot summary and title seeks to "hide the ball" and that Amendment 7 "flies under false colors".

The bar is high for the Plaintiff. 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 amendment is legally defective. Further, this Court understands and takes seriously its admonition that every act of the legislature, especially a proposal to amend our Constitution, comes before the Court with a presumption of lawfulness. Conversely, the Defendants in this case need only convince the Court that there is any possible interpretation of the ballot language and title that allow a finding that they comply with the statute and the case authority----a very low threshold.

The arguments in the written briefs and orally presented by the lawyers have convinced the Court that it must find for the Plaintiffs. The ballot summary and title do not meet the requirements of Florida Statute 101.161(1) and therefore Amendment 7 cannot be included on the November 2, 2010 ballot.

Apart from the number of districts required to be drawn, the Florida Constitution currently contains only one requirement binding on the legislature when they meet every ten years to draw districts. That one mandatory requirement is that each district be contiguous. Amendment 7, were it to pass, would make that one mandatory requirement aspirational only and would subordinate contiguity to the other aspirational goals or "standards" contained in Amendment 7.

This case is on "all fours" with *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982) and *Evans v. Bell*, 651 So. 2d 162 (Fla. 1st DCA 1995) in which courts struck amendments due to defective ballot summaries. Those decisions, together with *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), serve as the lynchpin of this court's decision.

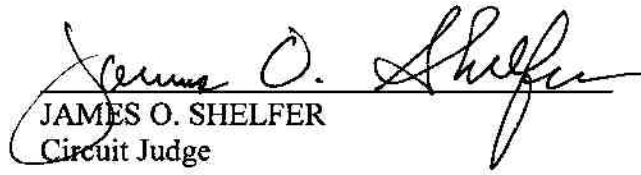
To be clear, there is nothing unlawful or improper about what the legislative proposal seeks to do. The wisdom of a proposed amendment is not a matter of concern for this Court. But to be legally entitled to a place on the ballot, the summary and title must be fair and must advise the voter sufficiently to enable the voter to intelligently vote for or against the amendment. “The purpose of section 101.161 is to assure that the electorate is advised of the true meaning , and ramifications (emphasis added) of an amendment.” *Askew*. To meet the requirements of *Askew* and *Evans* and *F.S. 101.161* the ballot summary and title must inform the voter that a vote for the amendment is a vote to make the mandatory requirement of contiguity aspirational and to subordinate it to the other aspirational “standards” contained in the amendment. Requiring that all districts be contiguous is a valuable right afforded to all citizens of Florida. A citizen cannot, and should not, be asked to give up that right without being fully informed and making an intelligent decision to do so.

Amendment 7, if passed, would allow this or any future legislature, if it chose to do so, to gerrymander districts guided by no mandatory requirements or standards and subject to no effective accountability so long as its decisions were rationally related to, and balanced with, the aspirational goals set out in Amendment 7 and the subordinate goal of contiguity.

Accordingly, it is ORDERED and ADJUDGED that:

1. The Plaintiffs’ Motion for Summary Judgment is GRANTED;
2. The Defendant’s and Intervening Defendants’ Motions for Summary Judgment are DENIED;
3. The Court ENJOINS the Defendants Department of State and Dawn K. Roberts, in her official capacity as the Secretary of State, from placing Amendment 7 on the ballot for the November 2010 general election.

**DONE and ORDERED** this 17<sup>th</sup> day of July, 2010, at Leon County, Florida.

  
JAMES O. SHELFER  
Circuit Judge

Copies furnished to Counsel of Record