

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,

CASE NO.: _____

vs.

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

Defendants.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1. This is an action for declaratory and injunctive relief challenging the legal sufficiency of a proposed amendment to the Florida Constitution submitted by the Florida Legislature for placement on the November 2, 2010 ballot, hereinafter referred to as "Amendment 7." Amendment 7 cannot be lawfully submitted to Florida voters because its ballot title and summary fail to

FILED
CLERK OF CIRCUIT COURT
LEON COUNTY, FLORIDA

10 MAY 21 AM 9:37

FILED

COPY - not verified against original

advise the voters of the chief purpose and true effect of the amendment and constitute a classic case of "hiding the ball" or "flying under false colors."

Jurisdiction and Venue

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

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

4. Venue is proper in Leon County pursuant to Section 47.011, Florida Statutes.

Parties

5. Plaintiff FLORIDA STATE CONFERENCE OF NAACP BRANCHES is a Florida association that meets the requirements for associational standing in that a substantial number of its members would be affected if Amendment 7 were to be adopted; the subject matter of Amendment 7 is within the general scope and interest and activities of the FLORIDA STATE CONFERENCE OF NAACP BRANCHES and the requested relief is the type of relief for the FLORIDA STATE CONFERENCE OF NAACP BRANCHES to receive on behalf of its members.

6. Plaintiff ADORA OBI NWEZE is the President of the FLORIDA STATE CONFERENCE OF NAACP BRANCHES. She is a resident of Miami-Dade County, Florida, and a registered voter and taxpayer. She has regularly voted in Florida general elections and on ballot proposals and intends to vote in the November 2010 general election.

7. Plaintiff the LEAGUE OF WOMEN VOTERS OF FLORIDA, INC. is a Florida association that meets the requirements for associational standing in that a substantial number of its members would be affected if Amendment 7 were to be adopted; the subject matter of Amendment 7 is within the general scope and interest and activities of the LEAGUE OF WOMEN VOTERS OF FLORIDA, INC. and the requested relief is the type of relief for the LEAGUE OF WOMEN VOTERS OF FLORIDA, INC. to receive on behalf of its members.

8. Plaintiff DEIRDRE MACNAB is the President of the LEAGUE OF WOMEN VOTERS OF FLORIDA, INC. She is a resident of Orange County, Florida, and a registered voter and taxpayer. She has regularly voted in Florida general elections and on ballot proposals and intends to vote in the November 2010 general election.

9. Plaintiff BOB MILLIGAN is a resident of Leon County, Florida, and a registered voter and taxpayer. He has regularly voted in Florida general elections and on ballot proposals and intends to vote in the November 2010 general election.

10. Plaintiff NATHANIEL P. REED is a resident of Martin County, Florida, and a registered voter and taxpayer. He has regularly voted in Florida general elections and on ballot proposals and intends to vote in the November 2010 general election.

11. Plaintiff DEMOCRACIA AHORA, is a Florida association that meets the requirements for associational standing in that a substantial number of its members would be affected if Amendment 7 were to be adopted; the subject matter of Amendment 7 is within the general scope and interest and activities of DEMOCRACIA AHORA and the requested relief is the type of relief for DEMOCRACIA AHORA to receive on behalf of its members.

12. Plaintiff JORGE MURSULI is the President of DEMOCRACIA AHORA. He is a resident of Miami-Dade County, Florida, and a registered voter and taxpayer. He has regularly voted in Florida general elections and on ballot proposals and intends to vote in the November 2010 general election.

13. 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 Defendant DEPARTMENT OF STATE. Defendant Roberts is sued in her official capacity.

14. 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 The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution... Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the **chief purpose of the measure**. (Emphasis added.)

The Florida Constitution

15. Article XI of the Florida Constitution provides five methods through which the Constitution can be amended, each of which involves placement of proposed amendments on the ballot for a general election, at which a vote of three-fifths of the electors voting on the measure is required to approve the proposed amendment. The sections of Article XI pertinent to this action are Section 1, which provides that the Legislature, upon a three-fifths vote of each house, may place proposed amendments to any part of the Constitution on a general election ballot, and Section 3, which grants to the people the power, by petition, to place proposed amendments to any part of the Constitution on a general election ballot.

16. Currently, Article III, Section 16(a), Florida Constitution, provides the following with respect to legislative districts:

(a) **SENATORIAL AND REPRESENTATIVE DISTRICTS.** The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or

identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment.

17. Currently, there are no provisions in the Florida Constitution governing the Legislature in establishing congressional district boundaries.

18. Pursuant to Article XI, Section 3, Florida Constitution, on January 22, 2010, two citizen initiatives related to redistricting, were duly certified by Defendant DEPARTMENT OF STATE for placement on the 2010 general election ballot. The proposed amendments are intended to reduce or eliminate political favoritism in drawing Congressional and legislative districts. They would add carefully prioritized standards for redistricting to the Florida Constitution. Defendant DEPARTMENT OF STATE has designated these initiatives as Amendment 5 (legislative redistricting standards) and Amendment 6 (congressional redistricting standards) on the 2010 general election ballot. Copies of Amendments 5 and 6 and their respective ballot titles and summaries are attached hereto as Exhibits A and B respectively.

19. Amendment 5 would create Article III, Section 21, to provide the following additional, prioritized standards:

In establishing Legislative district boundaries:

(1) No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

(2) Unless compliance with the standards of this subsection conflicts with the standards of subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where, feasible, utilize existing political and geographical boundaries.

(3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over another within that subsection.

The full text of Amendment 5 is attached hereto as Exhibit "A."

20. Amendment 6 would create Article III, Section 20, to provide the following additional, prioritized standards:

In establishing Congressional district boundaries:

(1) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

(2) Unless compliance with the standards of this subsection conflicts with the standards of subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where, feasible, utilize existing political and geographical boundaries.

(3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over another within that subsection.

The full text of Amendment 6 is attached hereto as Exhibit "B."

Amendment 7

21. On the last day of the 2010 legislative session (April 30, 2010), the Legislature passed by the constitutionally mandated two-thirds vote of each house, HJR 7231, a joint resolution with a ballot title almost identical to the titles of Amendments 5 and 6: "STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE AND CONGRESSIONAL REDISTRICTING." The full text of HJR 7231 is attached hereto as Exhibit "C." HJR 7231 has been assigned ballot position as Amendment 7 by the Defendant DEPARTMENT OF STATE.

22. Amendment 7 would create Article III, Section 20, to provide as follows:

In establishing congressional and legislative district boundaries or plans, the state shall apply federal requirements and balance and implement the standards in this 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 this article. Districts and plans are valid if the balancing and implementation of the standards is rationally related to the standards contained in this constitution and is consistent with federal law.

23. The ballot title and summary for 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 the standards is rationally related to the standards contained in the State Constitution and is consistent with federal law.

24. The summary of Amendment 7, although nearly identical to the text of the proposed amendment, is misleading and fails to inform the voter of the chief purpose and effect of the amendment. It provides a classic case of "flying under false colors" or "hiding the ball." Among other defects:

A. The ballot summary fails to inform the voter that the chief purpose and effect of Amendment 7 is to limit the mandatory application of constitutional standards including but not limited to those that will be placed in the constitution by the passage of Amendments 5 and 6 if they are adopted by the required vote in the 2010 election.

B. The ballot summary of Amendment 7 especially fails to inform the voter that:

(1) It is intended and would have the effect of permitting the Legislature to "consider" but not implement the specific protections for minority voters contained in Amendments 5 and 6, thus avoiding mandatory application of those protections.

(2) It is intended to permit the Legislature to balance standards so that it can continue to use redistricting to perpetuate political power by drawing districts with intent to favor or disfavor incumbents or political parties.

(3) It is intended to permit the Legislature to subordinate existing and future standards and provisions contained in Article III of the Florida Constitution and to elevate the priority of its two purported "standards" which are permissive and vague but not mandatory.

(4) It is intended to provide validity to any district or plan that is related in any way to its vague but not mandatory standards.

C. The ballot summary fails to adequately inform the voter of the meaning of its purported "standards."

25. The ballot title of Amendment 7 is misleading in that it purports to provide "standards" for redistricting. Amendment 7 has the purpose and intended effect of eliminating any "standards." In effect it is intended to give the Legislature discretion to ignore any limits on its ability to draw districts with intent to favor or disfavor incumbents or political parties. Its purpose and effect is to eliminate all "standards" and give the Legislature free reign to draw districts for political advantage.

26. The ballot title mimics the titles of Amendments 5 and 6 in an apparent effort to confuse voters and hide the true purpose of the Legislature's Amendment.

27. Because the ballot title and summary of Amendment 7 are misleading and fail to adequately inform the voter of the chief purposes of the amendment, placement of Amendment 7 on the ballot would violate Article XI, Section 5, Florida Constitution, and Section 101.161(1), Florida Statutes.

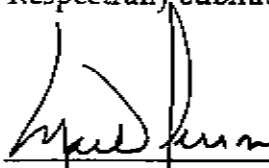
28. Plaintiffs will suffer immediate and irreparable harm if Amendment 7 with the accompanying ballot title and summary language is placed on the ballot for the 2010 general election.

29. Plaintiffs have no adequate remedy at law, and it is the public interest to ensure that Florida's electorate is accurately informed as to the true effect of proposed amendments to the Florida Constitution.

Prayer for Relief

WHEREFORE, Plaintiffs seek judgment declaring that Amendment 7 does not meet the constitutional and statutory requirements for placement on the ballot and enjoining Defendants from placing Amendment 7 on the 2010 general election ballot.

Respectfully submitted by:



MARK HERRON
Florida Bar No. 0199737
Email: mherron@lawfla.com
ROBERT J. TELFER III
Florida Bar No. 0128694
Email: rtelfer@lawfla.com
Messer, Caparello & Self, P.A.
Post Office Box 15579
Tallahassee, FL 32317-5579
Telephone: (850) 222-0720
Facsimile: (850) 224-4359



RONALD G. MEYER
Florida Bar No. 0148248
Email: rmeyer@meyerbrookslaw.com
JENNIFER S. BLOHM
Florida Bar No. 0106290
Email: jblohm@meyerbrookslaw.com
LYNN C. HEARN
Florida Bar No. 0123633
Email: lhearn@meyerbrookslaw.com
Meyer, Brooks, Demma and Blohm, PA
Post Office Box 1547
Tallahassee, FL 32302
Telephone: (850) 878-5212
Facsimile: (850) 656-6750

CONSTITUTIONAL AMENDMENT PETITION FORM

Under Florida Law, it is a first degree misdemeanor to knowingly sign more than once a petition or petitions for a candidate, a minor political party, or an issue. Such offense is punishable as provided in s. 775.082 or s.775.083. [Section 104.185, Florida Statutes]

NAME: _____
(Please print name as it appears on Voter I.D. Card)

RESIDENTIAL STREET ADDRESS: _____

CITY: _____ **ZIP:** _____

COUNTY: _____

Date of birth: / / **(or) Voter registration number:** _____

I am a registered voter of Florida and hereby petition the Secretary of State to place the following amendment to the Florida Constitution on the ballot in the general election:

ARTICLE AND SECTION BEING CREATED OR AMENDED: Add a new Section 21 to Article III

**BALLOT TITLE:
STANDARDS FOR LEGISLATURE TO FOLLOW IN
LEGISLATIVE REDISTRICTING**

BALLOT SUMMARY: Legislative districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

FULL TEXT: Add a new Section 21 to Article III

Section 21. STANDARDS FOR ESTABLISHING LEGISLATIVE DISTRICT BOUNDARIES

- In establishing Legislative district boundaries:
- (1) No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
 - (2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.
 - (3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

X _____
SIGNATURE OF REGISTERED VOTER

DATE SIGNED

Paid Political advertisement paid for by
FairDistrictsFlorida.org
P.O. Box 330868, Miami, FL 33233
RETURN SIGNED PETITIONS TO THIS ADDRESS

Paid petition circulator: Name:	Address:
RESERVED FOR BAR CODE	DATE APPROVED: 9/28/07 SERIAL NUMBER: 07-16

CONSTITUTIONAL AMENDMENT PETITION FORM

Under Florida Law, it is a first degree misdemeanor to knowingly sign more than once a petition or petitions for a candidate, a minor political party, or an issue. Such offense is punishable as provided in s. 775.082 or s.775.083. [Section 104.185, Florida Statutes]

NAME: _____
 (Please print name as it appears on Voter I.D. Card)

RESIDENTIAL STREET ADDRESS: _____

CITY: _____ **ZIP:** _____

COUNTY: _____

Date of birth: / / **(or) Voter registration number:** _____

I am a registered voter of Florida and hereby petition the Secretary of State to place the following amendment to the Florida Constitution on the ballot in the general election:

ARTICLE AND SECTION BEING CREATED OR AMENDED: Add a new section 20 to Article III

**BALLOT TITLE:
STANDARDS FOR LEGISLATURE TO FOLLOW IN
CONGRESSIONAL REDISTRICTING**

BALLOT SUMMARY: Congressional districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

FULL TEXT: Add a new section 20 to Article III

Section 20. STANDARDS FOR ESTABLISHING CONGRESSIONAL DISTRICT BOUNDARIES

In establishing Congressional district boundaries:

- (1) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
- (2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.
- (3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

X _____
SIGNATURE OF REGISTERED VOTER

DATE SIGNED

Paid Political advertisement paid for by

FairDistrictsFlorida.org

P.O. Box 330868, Miami, FL 33233

RETURN SIGNED PETITIONS TO THIS ADDRESS

Paid petition circulator: Name:

Address:

RESERVED FOR BAR CODE	DATE APPROVED: 9/28/07	SERIAL NUMBER: 07-15
-----------------------	------------------------	----------------------

ENROLLED

HJR 7231, Engrossed 1

2010 Legislature

1 House Joint Resolution

2 A joint resolution proposing the creation of Section 20 of
 3 Article III of the State Constitution to provide standards
 4 for establishing legislative and congressional district
 5 boundaries.

6
 7 Be It Resolved by the Legislature of the State of Florida:

8
 9 That the following creation of Section 20 of Article III of
 10 the State Constitution is agreed to and shall be submitted to
 11 the electors of this state for approval or rejection at the next
 12 general election or at an earlier special election specifically
 13 authorized by law for that purpose:

14 ARTICLE III

15 LEGISLATURE

16 SECTION 20. Standards for establishing legislative and
 17 congressional district boundaries.-In establishing congressional
 18 and legislative district boundaries or plans, the state shall
 19 apply federal requirements and balance and implement the
 20 standards in this constitution. The state shall take into
 21 consideration the ability of racial and language minorities to
 22 participate in the political process and elect candidates of
 23 their choice, and communities of common interest other than
 24 political parties may be respected and promoted, both without
 25 subordination to any other provision of this article. Districts
 26 and plans are valid if the balancing and implementation of
 27 standards is rationally related to the standards contained in
 28 this constitution and is consistent with federal law.

ENROLLED

HJR 7231, Engrossed 1

2010 Legislature

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE III, SECTION 20

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.