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

RABBI MERRILL SHAPIRO, REVEREND KENT SILADI, REVEREND HARRY PARROTT, JR., REVEREND HAROLD BROCKUS, RABBI JACK ROMBERG, REVEREND BOBBY MUSENGWA, ANDY FORD, LEE SWIFT and SUSAN SUMMERS-PERSIS,	)	
Plaintiffs,	)	Case No. _____
v.	)	
KURT BROWNING, in his official capacity as Florida Secretary of State,	)	
Defendant.	)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs bring this action to enjoin the placement on the November 2012 general election ballot of a certain amendment to the Florida Constitution proposed by joint resolution of the Florida Legislature (the "Amendment"). The proposed constitutional amendment cannot lawfully be submitted to Florida voters because the Amendment's 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 sections 26.012 and 86.011, Florida Statutes.

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

4. Venue is proper in Leon County pursuant to section 47.011, 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 Rabbi 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 2012 general election. Plaintiff Shapiro is the Rabbi of Temple Shalom in Deltona, Florida.

6. Plaintiff Reverend Kent Siladi is a resident of Rockledge, and a citizen and taxpayer of Florida. Plaintiff Siladi is a registered voter in Brevard 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 2012 general election. Plaintiff Siladi is the Conference Minister for the Florida Conference of the United Church of Christ.

7. Plaintiff Reverend 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 2012 general election. Plaintiff Parrott is an ordained Baptist minister, now retired after 38 years of service.

8. Plaintiff Reverend Harold Brockus is a resident of St. Petersburg, and a citizen and taxpayer of Florida. Plaintiff Brockus is a registered voter in Pinellas 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 2012 general election. Plaintiff Brockus retired after 32 years of service with the pastorate of Good Samaritan Church in Pinellas Park, a congregation affiliated with both the Presbyterian Church USA and the United Church of Christ.

9. Plaintiff Rabbi Jack Romberg is a resident of Tallahassee, and a citizen and taxpayer of Florida. Plaintiff Romberg is a registered voter in Leon 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 2012 general election. Plaintiff Romberg is the Rabbi of Temple Israel in Tallahassee.

10. Plaintiff Reverend Bobby Musengwa is a resident of St. Petersburg in Pinellas County and a citizen and taxpayer of Florida. He intends to vote in Pinellas County, Florida in the November 2012 general election. Plaintiff Musengwa is the Pastor of Maximo Presbyterian Church in St. Petersburg.

11. 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 2012 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.

12. Plaintiff Lee Swift is a resident of Punta Gorda, and a citizen and taxpayer of Florida. Swift is a registered voter in Charlotte 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 2012 general election. Plaintiff Swift is President of the Florida School Boards Association, Inc., a statewide association of elected school board members representing school boards throughout Florida. Plaintiff Swift sues in his individual and official capacities.

13. Plaintiff Susan Summers-Persis is a resident of Ormond Beach, and a citizen and taxpayer of Florida. Plaintiff Summers-Persis is a registered voter in Volusia 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 2012 general election. Plaintiff Summers-Persis is President of the Florida Association of School Administrators, Inc., a statewide association of administrative personnel employed in public school districts throughout Florida. Plaintiff Summers-Persis sues in her individual and official capacities.

14. Plaintiffs, and the associations represented by plaintiffs Ford, Swift and Summers-Persis, strongly support religious freedom for all Floridians through the maintenance of the separation of church and state, as well as the education of Florida's children through a system of free public schools. For that reason, they oppose the Amendment, and, should the Amendment be placed on the ballot for the November 2012 general election, intend to contribute to, and otherwise participate actively in, a campaign to persuade Florida voters to reject it.

15. 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 2012 general election ballot. Defendant Browning is sued in his official capacity.

FACTS

CS/HJR 1471

16. During the 2011 Session of the Florida Legislature, the Committee Substitute for House Joint Resolution 1471 ("CS/HJR 1471"), proposing an amendment to the Florida Constitution to be submitted to the electorate in the November 2012 general election, was adopted by both houses of the Legislature by the requisite three-fifths vote, as provided in Section 1 of Article XI of the Florida Constitution.

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

> Religious Freedom.—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.

18. CS/HJR 1471 would make two changes to 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, CS/HJR 1471 would add a new sentence to Article I, section 3, which would require the government to extend funding to religious institutions under certain circumstances. Thus, upon a favorable vote of the electorate, Article I, Section 3 of the Florida Constitution would be amended to read as follows:

> SECTION 3. Religious freedom.—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. Except to the extent required by the First Amendment to the United States Constitution, neither the government nor any agent of the government may deny to any other individual or entity the

benefits of any program, funding, or other support on the basis of religious identity or belief. ~~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.~~

19. CS/HJR 1471, which was transmitted to and filed with defendant Browning on July 1, 2011, for placement on the ballot for the November 2012 general election, is now referred to by defendant Browning and the Secretary of State's office as Amendment No. 7.

20. When the Legislature adopted CS/HJR 1471, it also adopted a ballot title and summary to be placed on the 2012 general election ballot. This ballot title and summary read as follows:

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 3

RELIGIOUS FREEDOM.—Proposing an amendment to the State Constitution to provide, consistent with the United States Constitution, that no individual or entity may be denied, on the basis of religious identity or belief, governmental benefits, funding, or other support and to delete the prohibition against using revenues from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

21. The language proposed to be added to Article I, Section 3 by CS/HJR 1471 goes well beyond that required by any provision of the United States Constitution. In fact, federal courts have repeatedly held that the United States Constitution permits government bodies to decline to provide public funding to religious institutions. The language proposed to be added would not make the provisions of the Florida Constitution relating to religious beliefs "consistent" with the United States Constitution but would, in fact, confer upon religious institutions greater entitlement to governmental benefits than is conferred by the United States Constitution.

CS/CS/HB 1355

22. During the 2011 Session of the Florida Legislature, CS/CS/HB 1355 (now codified as Chapter 2011-40, Laws of Florida) was adopted. Section 29 of that session law creates section 101.161(3)(b)2, Florida Statutes (2011), to provide, in relevant part, as follows:

> If the court finds that all ballot statements embodied in a joint resolution are defective and further appeals are declined, abandoned, or exhausted, unless otherwise provided in the joint resolution, the Attorney General shall, within 10 days, prepare and submit to the Department of State a revised ballot title or ballot summary that corrects the deficiencies identified by the court, and the Department of State shall furnish a designating number and the revised ballot title or ballot summary to the supervisor of elections of each county for placement on the ballot. The court shall retain jurisdiction over challenges to a revised ballot title or ballot summary prepared by the Attorney General, and any challenge to a revised ballot title or ballot summary must be filed within 10 days after a revised ballot title or ballot summary is submitted to the Department of State.

23. CS/CS/HB 1355 (now codified as Chapter 2011-40, Laws of Florida) provides that each joint resolution proposed by the Legislature "shall include one or more ballot statements set forth in order of priority." CS/HJR 1471 contains only the single ballot summary referred to above.

24. CS/CS/HB 1355 (now codified as Chapter 2011-40, Laws of Florida) also provides that "a ballot statement that consists of the full text of an amendment or revision shall be presumed to be a clear and unambiguous statement of the substance and effect of the amendment or revision, providing fair notice to the electors of the content of the amendment or revision sufficiently advising electors of the issue upon which they are to vote." The Legislature determined not to publish the full text of the amendment proposed by CS/HJR 1471 on the general election ballot.

25. CS/CS/HB 1355 (now codified as Chapter 2011-40, Laws of Florida) is facially inconsistent with the provisions of:

(a) Article II, Section 3 of the Florida Constitution, which provides that "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

(b) Article III, Section 7 of the Florida Constitution, which provides, *inter alia*, the exclusive procedure for the enactment of joint resolutions and requires that each bill and joint resolution be signed by the presiding officers of both houses of the Legislature.

26. CS/CS/HB 1355 (now codified as Chapter 2011-40, Laws of Florida) impermissibly purports to delegate legislative branch functions to an executive branch official.

COUNT I.
CLAIM FOR RELIEF: ADEQUACY OF BALLOT TITLE AND SUMMARY LANGUAGE ACCOMPANYING PROPOSED AMENDMENT NO. 7
(Violation of Article XI, Section 5 of the Florida Constitution; Violation of § 101.161 of the Florida Statutes)

27. The allegations in paragraphs 1 – 26 of the complaint are realleged.

28. The ballot title and summary language adopted by the Legislature for placement on the general election ballot are misleading as to the true effect of Amendment No. 7, in violation of Article XI, section 5 of the Florida Constitution and § 101.161(3), Florida Statutes.

(a) The ballot summary is misleading in that its phrase "consistent with the United States Constitution" suggests to voters that the Amendment is required by the United States Constitution or merely renders the Florida Constitution's church-state provisions the same as those of the United States Constitution. In fact, the Amendment is not required by the United States Constitution and would give religious institutions a constitutional right to public funding

that they do not have under the United States Constitution. The ballot summary is also misleading because it is not an accurate articulation of the Amendment, in that it does not disclose that the Amendment would in fact *require* funding of religious individuals or entities under many circumstances.

(b) The ballot title "Religious Freedom" is misleading in that it suggests that the Amendment expands religious freedom, whereas the Amendment would in fact harm religious freedom by promoting the mandatory, coercive extraction by taxation of funds from Florida taxpayers to support religious institutions that promulgate religious doctrines to which the taxpayers do not subscribe, and by fostering governmental interference with internal affairs of religious institutions that will inevitably accompany increased public funding of such institutions. The term "religious freedom" is commonly understood as protecting one's rights to practice one's religion without interference by the government, but the Amendment does not promote such freedom. The ballot title "Religious Freedom" is misleading and insufficiently specific because it fails to communicate the actual subject matter of the Amendment: public funding of religious institutions.

29. For these reasons, Amendment No. 7, with the accompanying ballot title and summary language, may not lawfully be placed on the ballot for the 2012 general election.

30. Plaintiffs will suffer immediate and irreparable harm if Amendment No. 7, with the accompanying ballot title and summary language, is placed on the ballot for the November 2012 general election.

31. 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 the proposed Amendment to the Florida Constitution.

WHEREFORE, plaintiffs respectfully request that this Court:

1. Declare that the ballot title and summary language accompanying Amendment No. 7 (CS/HJR 1471) do not accurately inform Florida voters of the true effect of the proposed Amendment, in violation of Article XI, section 5, of the Florida Constitution and § 101.161(1), Fla. Stat.;

2. Enjoin defendant Browning, and all persons and entities acting under his direction or in concert with him, from placing Amendment No. 7 on the ballot for the November 2012 general election;

3. Award to plaintiffs the attorneys' fees, expenses, and costs incurred in prosecuting this action; and

4. Order such other and further relief as this Court may deem appropriate.

COUNT II.
CLAIM FOR RELIEF: THE PROVISIONS OF CS/CS/HB 1355, CHAPTER 2011-40, LAWS OF FLORIDA PERMITTING EXECUTIVE BRANCH REWRITE OF A LEGISLATIVE PROPOSAL ARE UNCONSTITUTIONAL
(Violation of Article II, Section 3 and Article III, Section 7 of the Florida Constitution)

32. The allegations in paragraphs 1 – 31 of the complaint are realleged.

33. Section 101.161(3)(b)2, Florida Statutes (2011) (Section 29 of Chapter 2011-40, Laws of Florida), provides that the Attorney General may rewrite a ballot title or ballot summary enacted by the Legislature, if it is found to be defective by a court, and that the Department of State shall furnish that rewritten ballot title or ballot summary to the supervisor of elections of each county for placement on the ballot.

34. Pursuant to the well-recognized separation of powers doctrine established in Florida law, and Article II, Section 3 and Article III, Section 7 of the Florida Constitution, the Florida Legislature may not delegate to another branch of government legislative functions that belong exclusively to it.

35. Plaintiffs will suffer immediate and irreparable harm if the ballot title and summary language contained in CS/HJR 1471 are permitted to be rewritten by a member of the executive branch as permitted by Section 101.161(3)(b)2, Florida Statutes (2011), and are then placed on the ballot for the November 2012 general election.

36. Plaintiffs have no adequate remedy at law, and it is in the public interest to ensure that the separation of powers, required by the Florida Constitution, is properly maintained.

WHEREFORE, plaintiffs respectfully request that this Court:

1. Declare that the language in Section 29, Chapter 2011-40, Laws of Florida, [section 101.161(3)(b)2, Florida Statutes (2011)], which permits the Attorney General to rewrite the ballot title and summary of ballot amendments proposed by joint resolution of the Legislature, and requires that the Department of State furnish the rewritten ballot title and summary to county election officials for placement on the ballot, violates the separation of powers requirements and Article II, Section 3 and Article III, Section 7 of the Florida Constitution;

2. Enjoin defendant Browning, and all persons and entities acting under his direction or in concert with him, from placing Amendment No. 7 on the ballot for the November 2012 general election with a ballot title or summary which has been rewritten by the Attorney General;

3. Award to plaintiffs the attorneys' fees, expenses, and costs incurred in prosecuting this action; and

4. Order such other and further relief as this Court may deem appropriate.

Respectfully submitted,

RONALD G. MEYER, ESQUIRE
On Behalf Of:

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. 123633
Email: lhearn@meyerbrookslaw.com
Meyer, Brooks, Demma and Blohm, P.A.
131 North Gadsden Street
Post Office Box 1547 (32302)
Tallahassee, FL 32301
(850) 878-5212
(850) 656-6750 facsimile

JOHN M. WEST*
Email: jwest@bredhoff.com
JOSHUA B. SHIFFRIN*
Email: jshriffrin@bredhoff.com
Bredhoff & Kaiser, P.L.L.C.
805 Fifteenth Street, N.W.
Suite 1000
Washington, DC 20005
(202) 842-2600
(202) 842-1888 facsimile

PAMELA L. COOPER
General Counsel
Florida Bar No. 0302546
Email: pam.cooper@floridaea.org
Florida Education Association
300 East Park Avenue
Tallahassee, FL 32301
(850) 224-7818
(850) 884-0447 facsimile

ALICE O'BRIEN*
General Counsel
Email: aobrien@nea.org
National Education Association
1201 16th Street, NW
Washington, D.C. 20036
(202) 822-7035
(202) 822-7033 facsimile

DANIEL MACH*
Email: dmach@dcaclu.org
ACLU Program on Freedom of Religion
and Belief
915 15th Street, NW
Washington, D.C. 20005
(202) 548-6604
(202) 546-0738 facsimile

AYESHA N. KHAN*
Email: khan@au.org
ALEX J. LUCHENITSER*
Email: luchenitser@au.org
Americans United for Separation of Church
and State
1301 K Street NW
Suite 850, East Tower
Washington, D.C. 20005
(202) 466-3234
(202) 898-0955 facsimile

DAVID L. BARKEY
Southern Area Counsel
Florida Bar No. 23964
dbarkey@adl.org
Anti-Defamation League
One Park Place
621 NW 53rd Street, Suite 450
Boca Raton, FL 33487
(561) 988-2900
(561) 989-0712 facsimile

JOHN J. DINGFELDER
Florida Bar No. 829129
jdingfelder@aclufl.org
ACLU Foundation of Florida, Inc.
Post Office Box 25477
Tampa, Florida 33622-5477
(813) 287-1698
(813) 289-5694 facsimile

RANDALL C. MARSHALL
Florida Bar No. 0181765
rmarshall@aclufl.org
ACLU Foundation of Florida, Inc.
4500 Biscayne Blvd., Suite 340
Miami, FL 33137-3227
(786) 363-2700
(786) 363-1108 facsimile

* *Motion to Appear Pro Hac Vice to be filed*

Attorneys for Plaintiffs