

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,898

LOREAN S. EVANS,
HENRY McDERMOTT,
LUCILLE McDERMOTT and
CHERYL LEE HARRISON,

Petitioners,

vs.

GEORGE FIRESTONE, as
Secretary of State of
Florida and "REASON '84:
THE COMMITTEE FOR CITIZENS
RIGHTS IN CIVIL ACTIONS",
a political action committee,

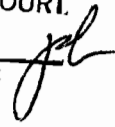
Respondents.

FILED

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CLERK, SUPREME COURT

By 
Chief Deputy Clerk

BRIEF OF FLORIDA CONSUMERS FEDERATION, INC.
AS AMICUS CURIAE, IN SUPPORT
OF POSITION OF PETITIONERS

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AMENDMENT NINE SHOULD BE REMOVED FROM THE BALLOT

This case arises from efforts of victims in three pending cases to remove from the ballot the proposed constitutional changes packaged as and collectively referred to as Amendment Nine. On behalf of its members and all Floridians, the Florida Consumers Federation supports the efforts of Petitioners Evans, McDermott and Harrison to protect the constitutional rights of Florida consumers and remove the Amendment Nine package from the ballot.

The Florida Consumers Federation wants the constitutional rights of Florida consumers to be enforced. Florida consumers are entitled to have this Court strike Amendment Nine from the ballot because the Amendment and the related summary are so unlawfully drafted that the presence of Amendment Nine on the ballot violates the Constitutional rights of Florida consumers to be able to vote separately on each and every Constitutional change proposed, after fair notice of each proposal has been given.

The proposal consumers expect to find in Amendment Nine but which is conspicuous in its absence is a proposal to reduce the greater-than-the-national average health care costs charged to Florida consumers. Instead, there are at least three separate express proposals which

make up the package of proposals known by the ballot reference "Amendment Nine":

1. The so-called percentage of liability.

Presently, Florida law allows any victim of another's wrongdoing to recover from any one of the wrongdoers whose wrongdoing contributed to the injuries. The first of the proposed Constitutional changes in the Amendment Nine package would change existing law so that if a wrongdoer cannot be found or is not financially able to pay his share of the victim's injuries, it would be the victim, not the other wrongdoers responsible for the victim's injuries, who would have to bear that part of the victim's damages attributable to the insolvent wrongdoer.

2. The summary judgment provision. Present

Florida law already allows for the entry of summary judgment when the applicable procedure is followed. The second of the proposed Constitutional changes in the Amendment Nine package would make part of the Constitution one part of the already-existing rule governing summary judgment.

3. The limitation on "noneconomic" damages.

The present Florida civil justice system is based on fault - the person found to be at fault pays for the damage he caused his victim. When the question of fault or the extent of damages caused by a wrongdoer is

disputed, each person involved - victim and wrongdoer - has a Constitutional right to have a jury listen to the evidence, and determine fault and the extent of damages. In determining damages, the jury takes into consideration the uniqueness of the victim and the extent of damage the wrongdoer has caused. In a personal injury action, for instance, the jury considers and allows for wages lost in the past and future, past and future medical expenses, as well as such human damages as injury to the victim's body, resulting pain, and the victim's inability to resume a normal life.

Although the third major proposal of the Amendment Nine package does not limit the damage a wrongdoer may cause, it would change existing law to relieve the wrongdoer of financial responsibility for human damage caused in excess of a single combined limit of \$100,000.

There are numerous implicit proposed constitutional provisions also inherent in the Amendment Nine package, including infringement on the constitutionally protected right to trial by jury. Our democracy is founded on the recognition that each of us is unique and that each of us is entitled to have jurors determine the extent of damages a wrongdoer has caused. Sections 2 and 22, Declaration of Rights, Article I,

Florida Constitution. The proposals in the Amendment Nine package would effectively restrict the jury's right to determine the extent of human damages in the most serious cases, and would arbitrarily limit the wrongdoer's monetary responsibility to a single \$100,000 sum to be divided among all of the wrongdoer's victims.

The promoters of the Amendment Nine package oppose the efforts to remove the Amendment Nine package from the ballot. They deny that the package contains proposed constitutional charges dealing with more than one subject. They deny that the ballot summary is misleading, and they claim that it gives voters fair notice of the proposed changes.

The promoters are wrong. As demonstrated above, Amendment Nine improperly contains several distinctly separate subjects. Both the amendment and ballot summary are misleading and ambiguous. Allowing the Amendment Nine package to remain on the ballot will deprive Florida consumers of their Constitutional rights to consider and vote on each proposed Constitutional change separately. Allowing the Amendment Nine package to remain on the ballot will mean that some persons are more equal than others, and that special interest groups can put themselves above the law at the expense of the Constitutional rights of individual Florida consumers.

The sponsors and promoters of the Amendment Nine package will no doubt urge this Court, as they urged the circuit court, to leave the package on the ballot and let the voters decide. The promoters and sponsors have no right to make that request. They violated the law by combining several proposed Constitutional changes in one package. It is Florida's consumers and voters who have the Constitutional right to have each proposed Constitutional change deal with only one subject, so that each voter can express his or her opinion - "Yes" or "No" - on each change proposed. See Section 3, Article XI, Florida Constitution. It is unfair and contrary to the Constitutional rights of all Floridians to force them to express a single "Yes" or "No" to the multiple changes packaged in Amendment Nine. How does the consumer who favors the summary judgment proposal, but opposes adopting the percentage of liability proposal, and opposes the wrongdoer financial protection proposal, cast a single "Yes" or "No" vote to reflect his or her opinion? Clearly, the Amendment Nine packaging deprives voters of their absolute right to vote separately on each change proposed for our State's Constitution.

In addition to violating the Constitutional right of Florida consumers and voters to have each proposed amendment limited to one subject, the promoters and

sponsors of Amendment Nine have failed to comply with the law in other respects. The ballot summary simply does not give Florida consumers fair notice of the provisions or effect of the Amendment package.

The summary [as well as the present advertising blitz the promoters have launched] claims that the Amendment Nine package:

allows full recovery of all actual expenses such as lost wages, accident costs, medical bills....

This is absolutely untrue. Under the Amendment Nine "percentage of liability" proposal, contrary to the ballot summary, a victim will not be fully compensated for even his actual expenses if one of two or more persons found to be at fault can't pay his share of the jury's verdict!

The amendment and the ballot summary are also misleading because they do not propose or implement any measure intended to achieve the goal and objective stated in the petition drive - that of reducing high Florida health care costs. The sponsors and promoters of the Amendment package obtained the petition signatures by claiming, as they continue to advertise, that the proposals will reduce health care costs. In news conferences, spokesmen for "Reason 84" claim that health

care costs will be reduced because: (1) insurance companies will reduce malpractice insurance premiums; and (2) physicians will pass the savings along to the consumers. First, there is no evidence that even one insurance company would lower premiums if the Amendment Nine proposals were adopted. Second, the fact is that some 30% of the physicians in this state do not carry malpractice liability insurance and thus do not pay any premiums; the uninsured charge the consumer no less for health care than their insured colleagues!

Further, both the summary and amendment package are ambiguous and misleading as to that group of damages constituting "noneconomic damages". The petitioners claim that the amendment and summary indicate that punitive damages are included in the \$100,000 cap. The "Reason 84" promoters themselves admitted before the circuit court that they do not know what "noneconomic damages" are, or if "noneconomic damages" include punitive damages:

Plaintiffs' other criticisms -- that "noneconomic damages" are not defined and that the summary does not state whether punitive damages are recoverable in excess of the \$100,000 cap -- are questions to be determined in a proper case if the amendment is adopted.

[Emphasis added]. Defendant Reason '84's September 12 Memorandum, at p. 12. (See Appendix for excerpt of memorandum).

How can anyone argue that the people of Florida are given fair notice by the Amendment Nine ballot summary as to what the Amendment Nine package will do when the promoters themselves patronizingly tell the courts that the answer will have to wait until the voters have already been tricked into changing the Constitution and giving up their rights? This is unfairness and contempt for the law and citizens' rights at its utmost.

The ballot summary is further deceptive and misleading because of its contention that:

Amendment 9 establishes citizen's rights in civil actions ...

This is not true. The amendment package takes away and restricts citizen's rights. It allows wrongdoers to avoid paying for the damages they cause. It establishes no rights for victims. It effectively limits the guaranteed right to have jurors determine the extent of damages caused. It changes the fault concept on which our system of civil justice is based. It unfairly punishes the most seriously injured victims by relieving the wrongdoer of his responsibility to pay for the damage he caused.

The Amendment Nine package does not establish citizens' rights. Instead, it benefits the environmental polluter, the child abuser, the contract breacher, the

drunk driver, the negligent airline, the careless professional and the corporate entities guilty of antitrust violations against small businesses. How can the promoters say it "establishes citizen's rights" when the proposed limitation on human damages applies as a single limit to mass disasters caused by wrongdoing? When the families of 200 people killed in a plane crash must divide the \$100,000 noneconomic damages (for a total of \$500 per death), when the multiple victims of an inadequately designed building which collapses must divide the \$100,000 to compensate for the pain and frustration of permanently crushed or paralyzed limbs and the victims' inability to resume normal lives, when innocent community residents who must move from their homes because toxic waste contamination or train-derailment-caused chemical pollution threatens them and renders their neighborhoods uninhabitable - when these citizens must divide the single \$100,000 in noneconomic damages - how can the promoters say that the Amendment Nine package establishes citizens' rights? The only "rights" "established" are those of the person at fault - not those of the innocent citizens and consumers of this State.

CONCLUSION

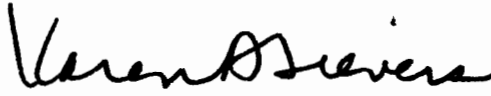
The consumers of this State have the Constitutional right to demand that the promoters and sponsors of Constitutional amendments comply with the law, limit any proposed amendment to a single subject, and provide an unambiguous, non-misleading summary that gives fair notice to the voters so that they can decide whether the amendment and its effect are what they want. The promoters of Amendment Nine have ignored, not complied with, the law.

The Constitutional and legal rights of Florida consumers should be protected. Special interest groups should not be allowed to take away or ignore the Constitutional and legal rights of Florida's consumers and citizens. Leaving the Amendment Nine package on the ballot would do just that.

Amendment Nine should be stricken from the ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Florida Consumers' Federation, Inc. was served by hand-delivery on September 25, 1984 to all attorneys with offices in Miami and was express mailed this 24th day of September, 1984 to all other counsel on the attached list.

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