

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

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

Plaintiffs,

vs.

CASE NO. 37 2008-CA-001905

KURT BROWNING, in his official capacity
As Florida Secretary of State,

Defendant.

AMENDED NOTICE OF HEARING

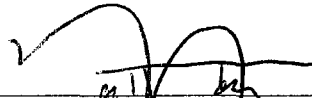
NOTICE IS HEREBY GIVEN that Intervenors, Florida Catholic Conference, Inc., a Florida not-for-profit corporation; Mercy Hospital, Inc.; Friends of Lubavitch of Florida, Inc.; Catholic Charities of the Archdiocese of Miami, Inc.; and Association of Christian School International (collectively "Intervenors"), will call up for hearing on **Thursday, July 10, 2008, at 10:00 a.m., Eastern**, or as soon thereafter as counsel can be heard, Intervenors' **Amended Motion to Intervene**, before The Honorable John C. Cooper, Circuit Judge, in Chambers at the Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida 32301. Thirty (30) minutes has been reserved for the hearing.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Individuals with disabilities needing a reasonable accommodation to participate in this proceeding should contact the Clerk of the Court not later than seven (7) days prior to the proceeding. If notice to the individual of a deposition, court date, subpoena, etc., is less than seven (7) days, then the individual should contact the Clerk of the Court as soon as possible after receiving that notice. If hearing impaired, TELEPHONE 1-800-955-8771 (TDD); OR 1-800-955-8770 (V), via Florida Relay Service.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 8th day of July, 2008, a true and correct copy of the foregoing has been furnished by fax and regular U. S. Mail to **Ronald G. Meyer, Esquire, and Jennifer S. Blohm** at Meyer and Brooks, P.A., 2544 Blairstone Pines Drive, P.O. Box 1547, Tallahassee, FL 32302; and **Blaine Winship**, LeRoy Collins Building, 107 West Gaines Street, Tallahassee, FL 32301.



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cc: Honorable John C. Cooper (via hand delivery)

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AMENDED MOTION TO INTERVENE

Intervenors, Florida Catholic Conference, Inc., a Florida not-for-profit corporation, Mercy Hospital, Inc., Friends of Lubavitch of Florida, Inc., Catholic Charities of the Archdiocese of Miami, Inc., and Association of Christian Schools International, by and through its undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.230, seek leave to intervene in this case and state that their interests will be directly and immediately impacted for the reasons set forth herein.

Intervenors are all religious and to this extent "sectarian institutions" within the meaning of the last sentence of Article I, section 3 of the Florida Constitution. Article I, section 3 states, "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 sectarian institution." The courts have not yet fully interpreted this provision, but it plainly treats those subject to it as second-class citizens without the same rights as their secular counterparts solely because of their religious convictions. Based on their religious convictions, Intervenors offer a wide variety of social

services such as eldercare, healthcare, education and indigent care to vulnerable populations that, in some cases, few or no other organizations are willing to provide. Ballot Initiative No. 7 (TBRC Proposal CP0020) would remove a barrier to treating the Intervenors equally under the law, so that Intervenors are judged on the merits of their programs, rather than according to their religious affiliation.

Intervenor the Florida Catholic Conference, Inc. ("Conference") is a Florida not-for-profit corporation comprised of all the active Roman Catholic Bishops in the State of Florida. The Conference is the vehicle through which the Bishops speak, cooperatively and collegially, to Roman Catholics and the public on subjects including healthcare, eldercare, indigent care and education and through which they seek to advocate for the adoption of Ballot Initiative No. 7 and 9. The Conference is also an association of 178 Catholic elementary (including pre-K) schools, 36 Catholic high schools, and 7 Catholic special education schools, serving 90,739 pre-K through 12 students, nearly 40 percent of which are minorities. The Conference teaches that persons deserve equal respect and status under the law regardless of their religious or secular views; that every person has the right to adequate healthcare, eldercare, and indigent care; and that parents should be empowered to choose the schools where their children will excel whether public or private.

This is a matter of religious doctrine as well as practice. The Conference pursues its teachings by inviting persons regardless of faith to receive services offered by Roman Catholic organizations and advocating for the expansion of social services needed by Florida's vulnerable populations. The court's ruling on whether the Taxation and Budget Reform Commission ("TBRC") exceeded its authority by transmitting Ballot Initiative No. 7 to the Secretary of State will directly and immediately impact the Conference's ability to overcome historic religious

prejudice directed originally at Catholics but since expanded to apply to all religious persons.¹ This court's ruling will also directly and immediately impact the Conference's ability to exercise its First Amendment (including free speech and free exercise) rights and the right of its constituent members to vote for Ballot Initiative No. 7 and 9 and to participate equally in government programs otherwise closed to them on the basis of the last sentence of Article I, section 3 of the Florida Constitution or Article IX, section 1 of the Florida Constitution. Many of the students attending schools affiliated with the Conference receive Corporate Income Tax Scholarships, McKay Scholarships or Voluntary Pre-K / Early Learning Coalition Scholarships, which may have been placed at risk when the Florida Supreme Court struck the Opportunity Scholarship Program. *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006). In contrast, Ballot Initiative No. 9 explicitly permits the funding of public scholarships without violating Article IX, section 1 of the Florida Constitution. Consequently, the Conference will gain or lose by the direct legal operation and effect of the judgment in this case.

¹ Although Plaintiffs are likely to minimize the bigoted history of Blaine Amendments, the U.S. Supreme Court has acknowledged and condemned it. See *Mitchell v. Helms*, 530 U.S. 793, 828-29 (2000) (plurality opinion of Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.) ("Opposition to aid to 'sectarian' schools acquired prominence in the 1870's with Congress' consideration (and near passage) of the Blaine Amendment, which would have amended the Constitution to bar any aid to sectarian institutions. Consideration of the amendment arose at a time of pervasive hostility to the Catholic Church and to Catholics in general, and it was an open secret that 'sectarian' was code for 'Catholic.' See generally Green, *The Blaine Amendment Reconsidered*, 36 AM. J. LEGAL HIST. 38 (1992)."); *Zelman v. Simmons-Harris*, 536 U.S. 639, 720-21 (2002) (dissenting opinion of Breyer, J., joined by Stevens and Souter, JJ.) (recognizing that Blaine Amendments were part of a backlash against "political efforts to right the wrong of discrimination against religious minorities" in public primary education); see also PHILIP HAMBURGER, *SEPARATION OF CHURCH AND STATE* (2002); JOSEPH P. VITERITTI, *CHOOSING EQUALITY: SCHOOL CHOICE, THE CONSTITUTION AND CIVIL SOCIETY* (1993); CHARLES GLENN, *THE MYTH OF THE COMMON SCHOOL* (1988); Richard W. Garnett, *The Theology of the Blaine Amendments*, 2 FIRST AMD. L. REV. 45 (2003); John Jeffries & James Ryan, *A Political History of the Establishment Clause*, 100 MICH. L. REV. 279 (2001).

Intervenor Mercy Hospital, Inc. is one of seven Catholic hospitals and healthcare facilities, six rehabilitation and nursing centers, and one Catholic hospice in Florida providing healthcare, eldercare, and indigent care to uninsured and under-insured persons. Mercy Hospital is a ministry of the Roman Catholic Church sponsored by the Sisters of St. Joseph of St. Augustine, Florida. For the fiscal year ending December 31, 2006, Mercy Hospital provided a total of \$23.6 million in charity care, community outreach and other community benefit services. Among its outreach programs is St. John Bosco Clinic, a parish-based primary care program staffed by volunteer physicians and support staff in Little Havana who provide free healthcare to disadvantaged children and adults who are not otherwise eligible for healthcare in Miami-Dade County. Mercy Hospital also offers outpatient primary and specialty medical care and treatment for persons living with HIV/AIDS to the uninsured and underinsured. Mercy Hospital also provides general healthcare to the community. Mercy Hospital's services are financed by private and state funds including appropriations and Medicaid. Mercy Hospital intends to educate voters on the importance of adopting Ballot Initiative No. 7, so that religious healthcare providers can expand healthcare services for the least and last among us who otherwise might not receive services at all. This court's decision on whether the TBRC exceeded its authority by transmitting Ballot Initiative No. 7 to the Secretary of State will directly and immediately impact Mercy Hospital's First Amendment rights and right to participate in programs otherwise closed to it on the basis of the last sentence of Article I, Section 3 of the Florida Constitution. Mercy Hospital, Inc. will gain or lose by the direct legal operation and effect of the judgment in this case.

Intervenor Friends of Lubavitch of Florida, Inc. is an association of Jewish congregations throughout Florida who perform acts of mercy and serve Jewish schools including preschools, elementary and secondary schools and a Rabbinical college. Less than 25 percent of the roughly

1,300 children who attend its schools can afford full tuition. Informed by Jewish theology and commitment to the poor, Intervenor accepts these students anyway and seeks to offset their costs with private and public scholarship funds. The Friends of Lubavitch of Florida, Inc. would like to educate voters on the importance of adopting Ballot Initiative No. 7 and 9, so that religious and secular social service providers can meet more of the pressing needs in our society. This court's decision on whether the TBRC exceeded its authority by transmitting Ballot Initiative No. 7 and 9 to the Secretary of State will directly and immediately impact the Friends of Lubavitch of Florida, Inc.'s First Amendment rights and right to participate equally in government programs otherwise closed to it on the basis of the last sentence of Article I, section 3 of the Florida Constitution or Article IX, section 1(a) of the Florida Constitution. Ballot Initiative No. 9 explicitly permits the funding of public scholarships such as received by students attending schools affiliated with The Friends of Lubavitch of Florida, Inc. without violating Article IX, section 1 of the Florida Constitution. Therefore, the Friends of Lubavitch of Florida, Inc. will gain or lose by the direct legal operation and effect of the judgment in this case.

Intervenor Catholic Charities of the Archdiocese of Miami, Inc. ("Catholic Charities") receives federal and state funds to provide health care, indigent care and elder care offered by few other organizations, including transitional housing for the homeless, shelter care and child welfare services for unaccompanied, undocumented immigrants, foster placement for minors who are refugees, HIV/AIDS care teams, substance abuse services, meals for the elderly, elder day care, guardian programs, respite care, mental health counseling, individual and family counseling, child care, housing for the disabled and elderly, various crisis intervention services providing food, rent, utilities and other financial services, and disaster and emergency assistance for the vulnerable. Catholic Charities is the hands and feet of the Roman Catholic Church

helping the neglected in South Florida. In 2006-07, state funds accounted for 2 percent of Catholic Charities' budget. Catholic Charities intends to educate voters on the importance of adopting Ballot Initiative No. 7, so that it can meet more of the pressing needs in South Florida. This court's decision on whether the TBRC exceeded its authority by transmitting Ballot Initiative No. 7 to the Secretary of State will directly and immediately impact Catholic Charities' First Amendment rights and right to participate equally in government programs otherwise closed to it on the basis of the last sentence of Article I, section 3 of the Florida Constitution. Catholic Charities will gain or lose by the direct legal operation and effect of the judgment in this case.

Intervenor the Association of Christian Schools International, Inc. ("ACSI") is an international association of religious schools including 402 in Florida serving roughly 62,000 Florida students. Like the other associations of private religious schools, many of the students attending affiliated schools receive Corporate Income Tax Scholarships, McKay Scholarships or Voluntary Pre-K / Early Learning Coalition Scholarships. Ballot Initiative No. 7 would redress the basis of the First District Court of Appeals decision in *Bush v. Holmes*, 886 So. 2d 340 (Fla. 1st DCA 2004), *aff'd on other grounds*, 919 So. 2d 392 (Fla. 2006), holding a very similar state scholarship program unconstitutional under the last sentence of Article I, section 3 of the Florida Constitution. Ballot Initiative No. 9 would modify Article IX, section 1(a) explicitly to permit the public funding of scholarships. ACSI intends to educate the parents of its students and voters on the importance of adopting Ballot Initiative No. 7 and 9 and to participate equally in government programs otherwise closed to it on the basis of the last sentence of Article I, section 3 of the Florida Constitution. This court's decision on whether the TBRC exceeded its authority by transmitting Ballot Initiative No. 7 and 9 to the Secretary of State will directly and

immediately impact ACSI's First Amendment rights and its members' right to equal treatment under the law, such that it will gain or lose by the direct legal operation and effect of the judgment in this case.

Intervenors' interest in this case is unlikely to be adequately represented by the parties. In contrast to the Intervenors, none of those named as parties have alleged that they are private social service providers affected by the last sentence of Article I, section 3 of the Florida Constitution or would directly benefit by replacing the sentence with the principle of equal treatment. Neither are any of the plaintiffs recipients or potential recipients of public scholarships such as Corporate Income Tax Scholarships, McKay Scholarships or Voluntary Pre-K / Early Learning Coalition Scholarships. For this reason, it would be erroneous to treat the Intervenors merely as public-spirited citizens or taxpayers with a hypothetical interest in fair play. What distinguishes Intervenors practically and constitutionally under Article I, section 3 from their secular counterparts is exactly what the TBRC was established to address, according to Article XI, section 6 of the Florida Constitution; i.e., Intervenors are subject to "constitutional limitations on ... expenditures at the state and local level." Similarly, Ballot Initiative No. 7 and 9 would remove the barrier to equal treatment under the law. Ballot Initiative No. 9 would also remove a barrier to public expenditures. The Ballot Initiatives would not privilege religious organizations, require endorsement of their religious exercise, or create a public entitlement, but merely enable Floridians to decide for themselves where they can receive the best and most cost effective services funded by charitable contributions and the state budgetary process.

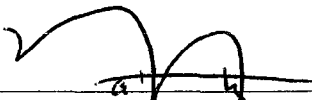
Briefing Schedule. Intervenors are prepared to adhere fully to the existing briefing schedule without in any manner slowing the proceedings and to accept the record and pleadings as they find them.

Certificate of Counsel. Undersigned counsel previously conferred with Ronald G. Meyer, designated counsel for Plaintiffs, who opposes intervention. Undersigned counsel has also conferred with Blaine Winship, counsel for the Department, who does not oppose this Amended Motion to Intervene.

WHEREFORE, Florida Catholic Conference, Inc., a Florida not-for-profit corporation, Mercy Hospital, Inc., Friends of Lubavitch of Florida, Inc., Catholic Charities of the Archdiocese of Miami, Inc., and Association of Christian Schools International respectfully request his court's permission to intervene in this case as a party for all purposes with the same rights and privileges as the other parties, together with such further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 8th day of July, 2008, a true and correct copy of the foregoing has been furnished by fax and regular U. S. Mail to **Ronald G. Meyer, Esquire, and Jennifer S. Blohm** at Meyer and Brooks, P.A., 2544 Blairstone Pines Drive, P.O. Box 1547, Tallahassee, FL 32302; and **Blaine Winship**, LeRoy Collins Building, 107 West Gaines Street, Tallahassee, FL 32301.



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