

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

COMMITTEE FOR HEALTH CARE FOR)
MASSACHUSETTS, BARBARA ROOP, JOHN)
GOODSON, BARBARA ANDERSON, JULIE)
PINKHAM, JOHN W. SEARS, ANNE SHUHLER,)
ANN ELDRIDGE MALONE, BEN LIPSON,)
MYLES STRIAR and WILLIAM SPRING,)

Plaintiffs,)

v.)

WILLIAM F. GALVIN, as he is SECRETARY OF)
THE COMMONWEALTH,)

Defendant.)

CIVIL ACTION
NO.

COMPLAINT FOR DECLARATORY JUDGMENT

Introduction

1. Amendment article 48 of the Constitution of the Commonwealth expressly reserves to the people of Massachusetts the power to submit constitutional amendments – called “initiative amendments” – to the voters for their approval or rejection. This reservation of power represents a formal constitutional commitment to the fundamental concept of popular sovereignty and was intended by the people to afford a means of effecting constitutional change notwithstanding the inattention, recalcitrance, or opposition of the organs of government, including the General Court. While the power to initiate constitutional amendments is not absolute and requires strict adherence to prescribed procedures, neither the text nor the purpose of article 48 permits or condones the use of non-constitutional means to thwart an otherwise qualified initiative amendment from being presented to the people at a statewide election.

2. This action is brought by voters seeking to present to the people at the 2008 statewide election an initiative amendment relative to the provision of health insurance coverage (“the health care amendment”). The health care amendment has been duly certified by the Attorney General as meeting all of the applicable threshold requirements for initiative amendments; the Secretary of State has certified that it has been signed by the requisite number of qualified voters; and it has been approved by not less than one-fourth of the elected members of a joint session of the 2003-2004 General Court, (having received 153 affirmative votes at a July 2004 joint session, well in excess of the 50 votes required to advance to the 2005-2006 session). Thus, the health care amendment has met all of the prerequisites for an initiative amendment to advance to the ballot save one – a minimum of 50 votes in the affirmative in a final vote on the amendment by a joint session of the 2005-2006 General Court. Such a final vote – up or down – is mandated by article 48.

3. Notwithstanding the constitutional mandate to take “final action” on the amendment, the joint session has to date declined to do so. Instead, at the joint session that reconvened on July 12, 2006, the joint session voted 118 to 76 to refer the amendment to a study committee, a parliamentary maneuver intended to kill the amendment by depriving it of “final action.” The joint session reconvened on November 9, 2006, but did not vote on the health care amendment. The joint session stands in recess until January 2, 2007, the last day of the 2005-2006 legislative session.

4. Upon information and belief, if final action on the health care amendment were permitted to occur, it would receive not less than the requisite 50 votes to qualify for submission to the people at the 2008 statewide election. Instead, a motion that requires only a majority to

pass has been used to defer indefinitely – and therefore improperly deny – the mandatory final action on the amendment.

5. This action, which presents a factual and procedural history of an initiative amendment not previously considered by the Court, asks for declaratory and injunctive relief to effectuate the purposes of article 48 without interfering with the legitimate prerogatives of coordinate branches of the government. It asks the Court to declare that the health care amendment is qualified for presentation to the people and to order the Secretary to place it on the 2008 ballot, unless one of the following occurs:

- a joint session of the 2005-2006 General Court (which expires on January 2 , 2007) takes final action on the health care amendment and it receives not less than 50 votes in the affirmative, in which case the amendment advances to the 2008 ballot in the ordinary course and no judicial action is required, or
- a joint session of the 2005-2006 General Court takes final action on the health care amendment and it receives less than 50 votes in the affirmative, in which case the amendment fails to advance in the ordinary course and no judicial action is required.

6. Absent such judicial relief, the people will be denied their right to utilize a fundamental feature of the Massachusetts Constitution.

Parties

7. Plaintiff COMMITTEE FOR HEALTH CARE FOR MASSACHUSETTS is an unincorporated association of Massachusetts voters, which has led the effort to place the health care amendment on the ballot.

8. Plaintiff BARBARA ROOP is a qualified voter who resides in Boston, Suffolk

County.

9. Plaintiff JOHN GOODSON is a qualified voter who resides in Newton,

Middlesex County.

10. Plaintiff BARBARA ANDERSON is a qualified voter who resides in

Marblehead, Essex County.

11. Plaintiff JULIE PINKHAM is a qualified voter who resides in Quincy, Norfolk

County.

12. Plaintiff JOHN W. SEARS is a qualified voter who resides in Boston, Suffolk

County.

13. Plaintiff ANNE SHUHLER is a qualified voter who resides in Watertown,

Middlesex County.

14. Plaintiff ANN ELDRIDGE MALONE is a qualified voter who resides in Boston,

Suffolk County

15. Plaintiff BEN LIPSON is a qualified voter who resides in Chestnut Hill, Suffolk

County.

16. Plaintiff MYLES STRIAR is a qualified voter who resides in Boston, Suffolk

County.

17. Plaintiff WILLIAM SPRING is a qualified voter who resides in Boston, Suffolk

County.

18. Defendant WILLIAM F. GALVIN is the SECRETARY OF THE

COMMONWEALTH. As such, defendant Galvin is obliged by the provisions of art. 48 to present to the people for their approval or rejection at a statewide election any constitutionally qualified initiative amendment. He is sued in his official capacity only.

Jurisdiction

19. General Laws ch. 214, § 1, gives this court jurisdiction over the voters' complaint. General Laws ch. 231A, § 1, authorizes this court to grant declaratory relief.

Claim for Relief

20. Amendment art. 48 of the Constitution of the Commonwealth ("art. 48") provides that "the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection." Mass. Const., amend. art. 48, Pt. I.

21. In 2003, exercising the right of initiative reserved to the people, the requisite number of Massachusetts voters petitioned for an amendment to the Constitution of the Commonwealth, modeled on the Constitution's Education Clause that would establish the Commonwealth's duty to enact such laws as would assure health care insurance for all residents of Massachusetts. In accordance with art. 48, Init., Pt. II, § 3, not less than ten qualified voters signed and submitted their petition to the Attorney General.

22. The Attorney General thereafter reviewed the petition and, in accordance with art. 48, Init., Pt. II, § 3, duly certified that "the measure and the title thereof are in proper form for submission to the people, and that it is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections, and it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent."

23. Also in accordance with art. 48, Init., Pt. II, § 3, the certified petition, along with the Attorney General's summary, was filed with the Secretary of the Commonwealth, who prepared signature blanks for subsequent signers. A true copy of the form is attached hereto as Exhibit A.

24. The petitioners collected and timely filed with the Secretary the signatures of qualified voters numbering in the aggregate not less than three percent of the votes cast in the 2002 gubernatorial election. Art. 48, Init., Pt. II, § 3, and Pt. IV, § 2. The Secretary thereafter transmitted the proposed health care amendment to the General Court, where it was then deemed introduced and pending. Art. 48, Init., Pt. II, § 4.

25. Article 48 requires the General Court to meet in joint session to consider and take final action on all initiative amendments that are introduced and pending. An initiative amendment "shall, not later than the second Wednesday in May, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof." Art. 48, Init., Pt. IV, § 2.

26. Article 48 further provides that "[f]inal legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session . . . an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next general court." Art. 48, Init., Pt. IV, § 4.

27. The 2003-2004 General Court met in joint session, as a constitutional convention, to consider the health care amendment. On July 14, 2004, the joint session took final action by voting to approve the health care amendment, 153 in favor and 41 opposed. This vote represented more than three times what was necessary to refer the amendment to the next General Court.

28. The final step in the process to qualify for submission to the people is set forth in art. 48, Init., Pt. IV, § 5: “If in the next general court . . . an initiative amendment or a legislative substitute shall again receive the affirmative votes of a least one-fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the secretary of the commonwealth, who shall submit the amendment to the people at the next state election.”

29. The General Court assembled in joint session on July 12, 2006 to consider all pending amendments, including the health care amendment.

30. The Article of Amendment states as follows:

The people of the Commonwealth of Massachusetts hereby declare it necessary and expedient to alter the Constitution by the adoption of the following Article of Amendment:

Upon ratification of this amendment and thereafter, it shall be the obligation and duty of the Legislature and executive officials, on behalf of the Commonwealth, to enact and implement such laws, subject to approval by the voters at a statewide election, as will ensure that no Massachusetts resident lacks comprehensive, affordable and equitably financed health insurance coverage for all medically necessary preventive, acute, and chronic health care and mental health care services, prescription drugs and devices.

31. In due course, the joint session reached the health care amendment, designated S.4. Senator Moore moved to refer the amendment to a “special committee of the convention” to

further act on the matter. The motion was briefly debated before Senator Moore withdrew his motion without objection.

32. Following the withdrawal of the motion, debate on the question – agreeing to the health care amendment – commenced.

33. Senator Moore then renewed his motion for a “special committee of the House and Senate” to review the health care amendment. The chair ruled that debate on the motion would be limited to ten minutes. Senator Montigny asked for a call of the yeas and nays when action on the motion was taken, which was agreed to by the convention.

34. During debate on the motion, Representative Peterson raised a point of order as to whether the motion constitutes final action as defined under Article 48. The chair responded, “It will be designated to a special committee. The recommendations and the actions are hard for me to predict the outcome, so it is difficult for the chair to predict the outcome.”

35. Representative Hynes raised a point of parliamentary inquiry, asking whether “the matter before us to commit the matter to the Joint Committee on Health Care Finance, could there be an amendment for the committee to report back to this convention on November 9 its findings?” The Chair said the motion was not amendable. Accordingly, the special committee was not required to act or report by the expiration of the 2005-2006 General Court.

36. Representative Travis asked “If that commission does not report before the end of the year it will never come before this Constitutional Convention. Is that correct?” The Chair said, “That is correct.”

37. Representative Hynes said, addressing the Chair, “You said it could be part of this committee to report back at a time certain, how does one suggest to the committee it should

report back?” The Chair responded, “The speaker and I have talents that manifest themselves occasionally over some of these chairs, and rest assured that’ll be the case.”

38. Senator Jehlen asked, “If this is not going on in this Constitutional Convention or before the November election, when if ever it would go to the ballot? Would it be dead forever?” The chair responded, “The short answer is the campaign would have to start all over again. If this study is ordered, this ballot question is dead? That’s correct. So a vote for this study is a vote against the ballot question.” After taking advice, the chair said, “Any action taken up until the end of this calendar year will allow it to be on the ballot the next cycle. I think the statement the lady is making is not accurate.” The chair said, “It would all depend on the response on the Secretary of State, so it is not definitively deceased.” (There was laughter.)

39. By a roll call vote of 118 yeas and 76 nays, the motion passed and the health care amendment was designated to the Joint Committee on Health Care Financing.

40. The Joint Committee on Health Care Financing has not since convened to consider the health care amendment nor has it announced any plans to do so.

41. On July 24, 2006, plaintiff Roop wrote a letter to the Senate President, and delivered copies to the Speaker of the House and the Chairs of the Joint Committee on Health Care Financing, asking the Joint Committee to convene to consider the health care amendment to ensure that it submit its report in time for the November 9 joint session to take final action. A true copy of this letter is attached hereto as Exhibit B. No response has been made to this letter.

42. On November 6, 2006, plaintiffs Roop and Goodson wrote to the Senate President, and delivered copies to the Speaker of the House and the Chairs of the Joint Committee on Health Care Financing, requesting that the Joint Committee be discharged of further consideration of the health care amendment and that the amendment be reported to the

November 9 joint session for final action as required by Article 48. A true copy of this letter is attached hereto as Exhibit C. No response has been made to this letter.

43. On November 9, 2006, the joint session reconvened. Although the health care amendment was listed on the calendar, no vote was taken. The joint session recessed (by a vote of 109 - 87) until January 2, 2007, without taking final action.

44. Based on the July 2004 joint session's final action on the health care amendment (with 153 votes in favor), the joint session's action in July, 2006 (there were 76 votes against the motion to refer the amendment to a study committee), and later communications between the amendment's proponents and legislative supporters, the plaintiffs believe and therefore allege that not less than 50 members would vote in favor of the health care amendment were it to be brought before the joint session for final action.

45. The plaintiffs and the voters seeking to place the health care amendment on the ballot have done everything that art. 48 requires of them to comply with what has been aptly called a "people's process." It is contrary to the text and purpose of art. 48 that the 2005-2006 General Court has failed to take final action on the amendment.

46. Upon information and belief, the General Court will take no final action through the expiration of the current General Court on January 2, 2007. It is contrary to art. 48 that such an evasion of constitutional duty may be permitted to go unremedied.

47. As art. 48 imposes a mandatory duty on the General Court to convene in joint session to take final action on the health care amendment and as art. 48's purpose is to establish a people's process that may overcome the indifference or obstruction of a majority of the elected members of the General Court, the constitution requires that an affirmative final action be deemed to have occurred under the circumstances alleged above. Under such circumstances, the

Secretary has a duty to place the health care amendment on the ballot at the 2008 statewide election.

48. An actual controversy exists between the parties as to the Secretary's duty as described herein.

Prayer for Relief

WHEREFOR, the plaintiffs request that this court:

A. Absent final action by the joint session, either approving or disapproving the health care amendment, prior to the expiration of the 2005-2006 General Court on January 2, 2007, declare that the amendment has met the material requirements of art. 48 for presentation to the people for their approval or rejection;

B. Direct the Secretary of the Commonwealth to place the health care amendment on the ballot for the people's approval or rejection at the 2008 statewide election; and

C. Provide any other relief that law and equity require, so that the Constitution of the Commonwealth may function as its framers and the people intended.

Respectfully submitted,

COMMITTEE FOR HEALTH CARE FOR
MASSACHUSETTS, BARBARA ROOP,
JOHN GOODSON, BARBARA
ANDERSON, JULIE PINKHAM, JOHN W.
SEARS, ANNE SHUHLER, ANN
ELDRIDGE MALONE, BEN LIPSON,
MYLES STRIAR and WILLIAM SPRING

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Dated: November 10, 2006

CERTIFICATE OF SERVICE

I, Nikki Jean Fisher, hereby certify that on November 10, 2006 I served the attached Complaint by delivering copies by hand and by US Mail to:

The Hon. William F. Galvin,
Secretary of the Commonwealth
One Ashburton Place
Boston, MA 02108

The Hon. Tom Reilly
Attorney General
One Ashburton Place
Boston, MA 02108

Nikki Jean Fisher, BBO #660268

Dated: November 10, 2006