

## **SEEKING VOTE BY LEGISLATURE, HEALTH CARE BALLOT ACTIVISTS FILE SUIT WITH SJC**

By Michael P. Norton  
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STATE HOUSE, BOSTON, NOV. 10, 2006....A lawsuit filed today by citizen activists who have mounted a long campaign to amend the constitution calls on the state's highest court to order Secretary of State William Galvin to put the amendment before voters on the 2008 ballot, unless the Legislature votes the proposal down on January 2.

The plaintiffs' suit, filed on behalf of the Committee for Health Care For Massachusetts, asserts that the up-or-down vote by the Legislature is required by the state constitution, the same argument made by gay marriage opponents who fumed yesterday when the Legislature voted to recess their convention until January without taking a vote on their citizen petition. The health proposal would make access to health insurance a constitutional right.

Former US Attorney for Massachusetts Donald Stern, who served as counsel to Gov. Michael Dukakis and is now a partner at Bingham McCutchen LLP, will handle the case for the plaintiffs, which include Barbara Anderson of Citizens for Limited Taxation, a longtime critic of the Legislature's handling of ballot proposals and laws.

Other plaintiffs include Massachusetts Nurses Association Executive Director Julie Pinkham, former MDC Chair and Suffolk County Sheriff John Sears, Ann Eldridge Malone of the Alliance to Defend Health Care, Massachusetts Workforce Investment Board Youth Committee Chairman William Spring, and journalist and author Ben Lipson.

The health care question has not emerged for an up-or-down vote during six meetings of the Constitutional Convention held over this two-year legislative session that ends January 2. In July, the convention voted 118 to 76 to send the health care question to a special committee of the Legislature. It has not surfaced from that committee and the question's sponsors say the special committee has never met.

Health Care For Massachusetts Campaign co-chair Barbara Roop said Friday that the suit is based on the plaintiff's interpretation of the constitution. "It's very clear that they're required to vote up or down," said Roop. "They're perfectly within their rights to vote it down, and we would have lost fair and square. We'd

be very unhappy about that . . . but they do have to vote.”

Similar cases have been brought surrounding the Legislature’s handling of term limits and gay marriage proposals, Roop said, and each time the court ruled that a vote is required under the constitution. Forcing the Legislature to take that vote is another matter, Roop said.

“The principle of law is very clear,” she added. “The question is whether the SJC will grant a meaningful remedy” or issue a ruling that leaves a “core part of the constitution meaningless.”

The amendment’s sponsors gathered more than 71,000 signatures in 2003, launching the intensive process to amend the constitution. In July 2004, lawmakers meeting in Constitutional Convention amended and endorsed the plan by a vote of 153 to 41. This year, before sending the plan to a study committee, lawmakers said the constitutional requirement should be put on hold while a new state health insurance access law is given time to work.

The authors of the constitutional amendment say it represents the hammer that will force state government to successfully implement the new law, known as Chapter 58, and does not specify a specific approach to reform.

In a statement released along with a copy of the complaint, Roop said: “The amendment’s supporters have done everything in their power to let the people decide if they want to create a collective right to affordable, comprehensive health and mental health care coverage for every Massachusetts resident. By failing to cast the up or down vote required by our constitution, the General Court has shut down the ‘people’s process’ and damaged the very fabric of democracy Massachusetts-style.”

“The secretary has no comment,” said Brian McNiff, a spokesman for Secretary of State Galvin. “As is the procedure in these matters, he would be represented by the attorney general.”

Senate President Robert Travaglini could not be reached for comment Friday. Travaglini said Thursday, after voting against recessing a convention that was on the verge of taking up the citizen-sponsored gay marriage question, that he would have preferred that “we record ourselves on the issue, and decide final action in that fashion.” Travaglini, as Senate President, is scheduled to preside over the session’s final convention in January.

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