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## Court Kills Amendment 9 -- After Erasing Amendment 7

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A Leon County Circuit judge struck from the November ballot on Thursday a proposed constitutional amendment aimed at exempting Florida from the federal health care overhaul, calling the measure placed by the Republican-ruled Legislature "manifestly misleading" to voters.

The decision by Judge James Shelfer, appointed to the county bench by former Republican Gov. Jeb Bush and named to the circuit court by Gov. Charlie Crist, came just three weeks after the judge also threw off the ballot a redistricting measure that was also crafted by House and Senate GOP leaders.

Rep. Scott Plakon, R-Longwood, a sponsor of the health care proposal removed from the ballot Thursday, said the state would appeal the ruling, saying it likely will not be settled until the Florida Supreme Court reviews the matter. Justices also plan to look at Shelfer's redistricting ruling.

"I think it's another example of how far the opponents of health care freedom will go," said Plakon, who attended Thursday's hearing. "Now, they're using the activist judges to fight their case. We're going to keep fighting on."

The Legislature placed Amendment 9, dubbed the "Health Care Freedom" amendment, on the November ballot over heavy opposition from Democratic lawmakers. Democrats argued that it was largely a meaningless attempt by GOP legislators to sidestep a federal law that would remain binding in Florida no matter what voters said.

Democrats also claimed the measure was designed chiefly to drive conservative opponents of the federal health plan backed by President Obama to the polls in November, helping Republican candidates across-the-board in Florida.

Republican gubernatorial candidate Bill McCollum, the state's attorney general, is spearheading an effort by Florida and more than a dozen other states to overturn the federal health care law as an unconstitutional mandate imposed on residents. His office Thursday helped defend the ballot summary, which Shelfer ruled as flawed.

The judge also rejected a fallback position by House and Senate attorneys who sought to have the text of the entire proposed amendment placed before voters.

Following the ruling, McCollum said he was disappointed. But McCollum pointed out that if the decision stands, it increases the stakes in the lawsuit he filed to invalidate the federal health care law.

"It makes the lawsuit even more important," McCollum said. "That suit would throw out the entire law."

Deputy Attorney General Joe Jacquot said officials in McCollum's office would be discussing with legislative leaders their approach to a likely appeal.

The ballot summary for Amendment 9 was troubled by a host of problems, argued Mark Herron, attorney for four Florida residents challenging the measure. Among the promises made in the summary were that the amendment would ensure access to health care services without waiting lists, protect doctor-patient relationships, and prohibit mandates that don't work.

Herron said the ballot summary deceived voters since the amendment did not directly address those issues. Instead, he said such ballot language was intended merely to draw voter support.

"The courts have said in numerous cases ... electioneering has no place in ballot summaries," Herron told the court.

Russell Kent, representing McCollum's office, downplayed those provisions, saying they amounted to a challenge aimed at roughly 20 words in a more than 300-word ballot summary.

"This is really a political disagreement," Kent told Shelfer. "This is not about voters being misled. This is to keep this issue from going before voters by any means necessary."

But in his exchanges with the attorneys, it was clear Shelfer was troubled by the assurances made in the ballot summary.

"Is there anything in there that tells me that as a voter of this state, I would have a constitutional right not to be placed on a waiting list?" Shelfer asked Kent, who acknowledged the measure included no such safeguard.

Ruling from the bench, Shelfer said, "I think the three phrases that the plaintiff has pointed out ... are manifestly misleading."

As soon as Shelfer struck down the ballot summary, attorneys for the House and Senate pushed for him to approve allowing the full text of the lengthy amendment to appear on the ballot. Shelfer, though, said he was wary of moving ahead with that – since lawmakers approved the ballot measure with the summary included.

Separating that pairing, Shelfer said, amounted to "legislating from the bench."

"It would be highly presumptuous of me ... to make that decision," Shelfer said.

*David Royse of the News Service contributed to this report.*

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