

ACLU, Medical Associations, Children’s Rights Organizations File Amicus Brief in Challenge to Law Limiting Free Speech of Doctors to Ask About Firearms

LAW RESTRICTS SPEECH AND VIOLATES RIGHTS OF PATIENTS TO RECEIVE INFORMATION

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MIAMI – The ACLU of Florida today, along with several local and national children’s organizations and medical associations, requested permission from the United States District Court to file an Amicus Curiae (Friend of the Court) Memorandum in support of an injunction against a new Florida law limiting the right of medical providers to ask questions about guns and ammunition in the home.

“Restricting what people say because the state thinks the subject is out of bounds is profoundly un-American and a violation of freedom of speech,” said Howard Simon, Executive Director of the ACLU of Florida (ACLUFL). “Because asking about guns is disfavored by some politicians does not justify gagging doctors and limiting information about protecting children.”

The Memorandum filed today supports the request to stop enforcement of the new law and argues that the questions doctors ask are protected speech regardless of their motives or whether or not the questions are related to medical care. It also argues that the suppression of gun-related speech unconstitutionally violates the free speech rights of medical personnel and deprives patients and families of the right to hear questions and advice concerning guns.

“At its heart this is about giving children the fullest chance to live long and good lives,” said David Lawrence Jr., president of The Early Childhood Initiative Foundation, “What could be more important than children having the fullest possible chance to be safe?”

According to the Joint ACLUFL Memorandum, the new law will be, “effective to ban substantial speech” of medical providers. The Memorandum also notes that the law unnecessarily limits the restrictions on speech to medical care providers: “Numerous other licensed professionals such as lawyers, architects, engineers, real estate brokers, and financial advisers remain free under this statutory scheme to make inquiries of their clients regarding their firearm and ammunition ownership and to harass them about it.”

“The Supreme Court has made clear that violent video games, data mining, and picketers at military funerals all enjoy full First Amendment protection, Doctors deserve no less when they are talking to their patients,” said Thomas R. Julin, chair of Hunton & Williams LLP’s First Amendment litigation practice and ACLUFL cooperating attorney.

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“In suppressing the rights of doctors to speak freely with their patients about firearms in the home, the state has also precluded parents and children from exercising their own First Amendment rights to receive gun safety information that could prevent needless tragedies,” said Gerald Greenberg, ACLUFL Cooperating Attorney with the law firm Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson P.A. “This law will have its harshest impact on the youngest and most vulnerable members of society.”

The ACLU represents its Florida members as well as the University of Miami School of Law Children and Youth Clinic, Children’s Healthcare Is a Legal Duty, Inc., and the Early Childhood Initiative Foundation. The Joint Amicus Memorandum was joined by the Broward County Medical Association, the Broward County Pediatric Society, and the Palm Beach County Medical Society.

The 2011 Florida Legislature passed House Bill 155 (HB155) and was signed by Governor Scott on June 2, 2011. As passed and approved, the law prohibits doctors from making gun-related notes in medical records and says medical personnel, “should refrain from unnecessarily harassing a patient about firearm ownership.”

Earlier drafts of the proposal included fines of up to \$5,000,000 and criminal penalties of a third degree felony if a medical care provider inquired about gun use or ownership of a patient.

“The government is trying to play referee on conversations by ruling some topics out of bounds while other subjects or speakers are allowed,” Simon said. “That’s why we have a Constitution – to make sure the government can’t use the power of law to restrict speech – especially on politically sensitive speech such as guns and ammunition.”

Representing the parties in the Joint Memorandum are: Julin of Hunton & Williams LLP, Greenberg and Gordon M. Mead, Jr., ACLUFL Cooperating Attorneys of Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson P.A., and Randall Marshall, Legal Director of the ACLUFL.

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Editor’s Note:

A copy of the Amicus Memorandum is here: <http://www.aclufl.org/pdfs/2011-07-WollschlaegerAmicusMemo.pdf>

A copy of the request to file (Motion) is here: <http://www.aclufl.org/pdfs/2011-07-WollschlaegerAmicusMotion.pdf>

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