

THE
JOURNAL
OF THE JAMES MADISON INSTITUTE

Winter 2005



**How the Voters Have Lost Faith
in Petition-Driven Amendments
to Florida's State Constitution**

**THE JAMES
MADISON
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A FOUNDATION FOR
FLORIDA'S FUTURE

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The James Madison Institute is a Florida-based, nonpartisan, nonprofit research and educational organization dedicated to advancing such timeless ideals as economic freedom, limited government, federalism, traditional values, the rule of law, and individual liberty coupled with individual responsibility.

The Journal is a quarterly magazine provided to members and supporters of The James Madison Institute, to members of the Florida Legislature, and to others who share the Institute's conservative philosophy. *The Journal* is intended to keep Floridians informed about their government, to help advance practical public policy solutions, and to recognize individuals who exemplify civic responsibility, character, and service to others in their lives. Opinions expressed in *The Journal of The James Madison Institute* are those of the authors and do not necessarily reflect the views of The James Madison Institute, its staff, or its Board of Directors. All rights reserved.

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MESSAGE FROM THE PUBLISHER

J. STANLEY MARSHALL



We believe that this magazine has played a unique and useful role in meeting our obligations to keep Floridians informed about public policy and to advance such timely ideals as economic freedom, limited government, federalism, the rule of law, and individual liberty coupled with individual responsibility.

To be more specific, *The Journal* seems to be used in at least three ways:

- Our members read it and then have it available to refer to on occasion as they consider matters dealt with in the most recent issues.
- We hear from legislators that they use it as a source of information and ideas in their legislative deliberations.
- We see it occasionally in the waiting rooms of doctors and other professional people.

We are of course gratified to know of each of these, and our goal is to find ways to broaden *The Journal's* value to JMI's members and others who influence public policy.

But *The Journal* is only one of the Institute's regular publications. We also write and distribute opinion pieces under the title *Point of View*; we issue Backgrounders dealing with issues we deem to be of importance to Floridians; and we distribute our newsletter *The Messenger*. You'll find a complete account of our publications and other activities on our website, www.jamesmadison.org.

Production of publications can be expected to

increase in the future largely because of the addition of several new scholars/writers, some of whom are affiliated with The Institute on a part-time basis. An important full-time position has been filled with the appointment of Robert F. Sanchez as Director of Public Policy. He is a long-standing friend of The Institute. You can read more about this outstanding Floridian on page 17.



Our basic charter of governance will very likely continue to be trivialized.



flawed process, including four of the amendments that voters approved last November. The initiative-by-petition process has resulted in several abuses of citizen participation in government and unless Floridians can find ways to modify it, our basic charter of governance will very likely continue to be trivialized.

In this issue, we're also beginning a series of brief articles profiling members of the Institute's Board of Directors. They are remarkably dedicated people who give generously of their time and their resources to advance the work of The Institute. We'd like for you to get to know them and the great work they do. ❧

The lead article in this issue deals with one of the most important problems facing Floridians this year: the initiative petition method by which we Floridians amend our state Constitution. Other articles deal with some of the recent products of that

Worthy Words

"I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations."

—JAMES MADISON, in a speech to the Virginia Convention, June 16, 1788.

"The system of private property is the most important guaranty of freedom, not only for those who own property, but scarcely less for those who do not."

—FRIEDRICH AUGUST VON HAYEK, in *The Road to Serfdom*, 1944.

We Want to Hear from You

If you have a letter to the editor, or a suggestion, or a comment, you can reach the *Journal* staff in any of the following ways. We will treat all communications received as letters to the editor unless you instruct us otherwise, and we reserve the right to edit your communiqué for length, style, or clarity.

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COVER STORY

POLL SHOWS PUBLIC DISTRUST OF AMENDMENT PROCESS

BY MARK PRITCHETT
AND BOB McCLURE

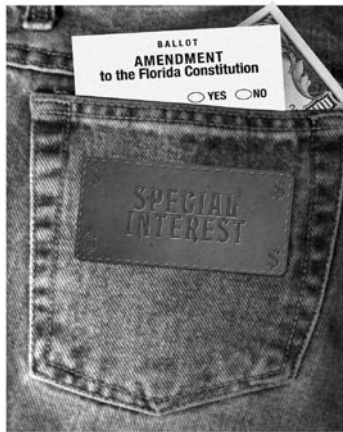
How ironic. Many Floridians now deeply distrust a Constitutional amendment process that was expressly created to empower them. That was a key finding of a scientific survey conducted in the month following last November's general election. The survey's results suggest that most Floridians now believe that powerful special interests have largely taken over a process originally touted as a way to allow for grassroots democracy.

The survey included 28 questions about the initiative petition process for amending Florida's Constitution.

The questionnaire, which was designed by nationally known political scientist Dr. Susan A. MacManus of the University of South Florida, also included seven demographic questions to ensure a representative sample.

The survey was conducted by a re-

spected opinion-research firm, Susan Schuler & Associates of Tampa. The entire project was cosponsored and jointly funded by the Collins Center for Public Policy and The James Madison Institute.



Special Interests and Public Distrust

The results were dismaying but no surprise to close observers of the amendment process in recent years. Only 12 percent of the 800 Florida residents who were surveyed agreed that “average citizens get amendments on the ballot”

while a whopping 72 percent agreed that “well-funded special-interest groups” do so. That’s an especially stunning figure when you consider the original intent of the initiative petition process.

The survey asked respondents, “How often do you think amend-

ments get put on the ballot that really should not be there?” Only 8 percent said “Never” while 82 percent said “Sometime” or “Often.”

Two-thirds of those surveyed believed incorrectly that the ballot contains the entire text of each proposed amendment. Asked about the wording of the amendments, only 24 percent characterized it as “easy to understand” while 75 percent deemed it “generally confusing.” Consider, for a moment, the implications of that statistic. Imagine the consternation if these questions were on a college exam, and three-fourths of the students characterized the exam’s directions and questions as “generally confusing”?

Worse, the survey revealed a disturbing level of cynicism and distrust. For instance, 71 percent of the respondents said they believe that “the names and titles of the amendments are intentionally worded to make people vote for them.”

The survey also revealed that even though voters are bombarded by an advertising blitz about some of the amendments, they still don’t feel adequately informed. For instance, only 33 percent of those surveyed said they felt they “got enough information about the pros and cons of the proposed amendments” while 46 percent complained that they “did not get enough information” and another 17 percent said they “just got one side of the issue.”

Solutions

Further reflecting the public’s yearning for more reliable information,

83 percent think the state government should provide a nonpartisan voter’s guide spelling out the pros and cons of each proposed amendment. Only 9 percent opposed that idea.

Of the many ideas floating about for reforming Florida’s amendment process, publishing a “nonpartisan voter’s guide” is among the easiest to accomplish—though it’s not without its pitfalls. The Florida Legislature probably has the legal authority to create such a guide, and lawmakers could easily provide sufficient funds to cover the cost, which would be negligible in a state budget that exceeds \$60 billion.

Many other states have such voter guides. The challenge in Florida will be to ensure the reality and perception of neutrality on the part of those who oversee the production of the guide. That may not be easy. In the past, proposed constitutional amendments touching on race, bilingualism, gambling, abortion, and other issues have deeply polarized Florida voters. Such polar divisions aren’t necessarily along traditional party lines, either. Witness the on-going disputes involving trial lawyers, doctors, and insurers fighting about recent amendments that affect them. Even so, a voter guide would be a welcome first step in addressing one of the symptoms of voter dissatisfaction with the current process.

Another step that could be achieved by statute is cracking down on abuses by those who gather the signatures on the petitions. Nearly two-thirds of those surveyed said they believe the Legislature “needs

to tighten up the rules for collecting signatures on petitions regarding constitutional amendments,” 87 percent “favor stiffer penalties for petition signature collectors who fraudulently sign someone’s name to the petition,” and 83 percent “favor clearer rules against signature collectors badgering, harassing, or intimidating persons to sign a petition.”

What else could be done by statute to improve the amendment process? Not much. Most of the serious reforms would require amending the state Constitution. The survey asked voters about several of these kinds of changes, and it found that one of the frequently touted reforms was opposed by a slight plurality of the voters. Only 42 percent of those surveyed would favor requiring a higher percentage of the vote to approve a Constitutional amendment, while 50 percent would oppose it.

This is also one of those proposals that raise the “be careful what you ask for” alarm. If an extraordinary majority were required for all future amendment proposals—including those intended to repeal past mistakes such as the class-cap amendment—the prospects of having a repeal proposal approved would dim. At the least, amendments that were ratified by a simple majority of the voters ought to remain subject to repeal by a simple majority if and when voters recognized an error, as occurred with the amendment man-

dating construction of a high-speed rail network.

Meanwhile, the percentages opposed to raising the threshold for voter approval were reversed for another proposal, with 50 percent of those surveyed favoring, and 42 percent opposing, the process used in Nevada and several other states. There, a Constitutional amendment must win voter approval twice before it takes effect.

Should voting on amendments


be confined to the “off years” when there is no Presidential election? Of those surveyed, 56 percent said “Yes” while 37 percent said they favor the current system.

A plurality (48 percent) favored and 33 percent opposed the idea of allowing the petition process’s end product to be a


statute in some instances instead of a Constitutional amendment. Proponents argue that “statutory amendments” rather than constitutional amendments would provide an outlet for grassroots initiatives such as the “pregnant pigs amendment,” which Florida voters approved but which even some proponents would agree does not really belong in the state’s basic governing charter.

In the states that allow this initiative petition statute process, such statutes—being mere laws rather than a part of the state Constitution—are subject to eventual repeal by the Legislature. Opponents believe that statu-

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Most of the serious reforms would require amending the state Constitution.



THE ROCKY ROAD TO REFORM: FLORIDA'S MEDICAL LIABILITY CRISIS IN THE WAKE OF AMENDMENT THREE

BY ROBERT "JAKE" BEBBER

Here's a gripping medical story-line that you're not likely to see on any of TV's hospital melodramas.

As the *South Florida Sun-Sentinel* reported last Dec. 22, the family of a stroke patient who died in March 2004 has sued the West Boca Medical Center. The suit alleges that the hospital's emergency department didn't have a neurosurgeon available and had failed to make appropriate advance arrangements to transfer patients who needed neurosurgical care to another facility where such coverage was available.

When 53-year-old Barbara Masterson arrived at West Boca's E.R., the hospital tried calling neurosurgeons for hours, but no neurosurgeon was willing to come see the patient, who was having a hemorrhagic stroke. Valuable time passed until Dr. Gary Gieseke at Holy Cross Hospital in Ft. Lauderdale agreed

to operate on her. She survived the surgery but died on March 2 from a blood clot traveling to her lungs—a common complication.

"They knew or should have known by then that the neurosurgeons were refusing to come into the ER for those cases," plaintiff attorney

Gary Cohen is quoted as saying. "Yet they were holding themselves out as a full-service emergency room."

The article goes on to note that many medical specialists such as neurosurgeons are refusing to put their livelihoods at risk in order to see emergency department patients. A few days later, a *Miami Herald* story detailed the lack of specialists willing to provide coverage in the emergency department, citing the exposure to frequent lawsuits and the inability to be paid.¹



This suit may portend a coming trend of plaintiffs seeking damages from hospitals being unable to find specialists willing to treat emergency patients. Many specialists have all but abandoned emergency room care, since they are typically under-reimbursed from Medicare and Medicaid, or not reimbursed at all, and then sued by the patient whose life they just saved.

The unique nature of emergency and trauma care makes it especially vulnerable to liability claims in today's overly-litigious environment in Florida.

Patients come to the emergency department—or are transported there—often with highly complex medical conditions. Many times, they are not capable of responding to questions on their medical history, known allergies, or what medications they are taking. They may be unconscious, unaware of their medical history, intoxicated, or high on illegal drugs.

Time is critical, and emergency physicians have to diagnose, treat, and stabilize patients within moments and then attempt to secure specialist care from a trauma surgeon, neurosurgeon, dermatologist, plastic surgeon, OB-GYN or a host of other specialists. And it must be remembered that federal and state laws mandate that emergency care be provided, regardless of a patient's ability to pay—with no subsequent mandate that providers be reim-

bursed for that care in many cases. In short, emergency care in Florida and the country is the ultimate safety net in universal care.


Yet even under the conditions where the best care is provided, not every outcome will be perfect. Practicing medicine is as much an art as it is a science, and not every medical contingency can be considered. Mistakes can and do occur because physicians cannot operate with perfect knowledge.

Our medical liability crisis is


part of a larger crisis in health care, which in turn reflects a growing societal problem of entitlement. An emergency physician from Miami once told me about a time he spoke to a colleague from Tennessee who was shocked at the lack of pediatric neurologists in South Florida who were will-

ing to treat children with emergency brain injuries, again citing the near certainty of being sued in South Florida, regardless of the outcome. In Tennessee, they apparently had little problem getting treatment for their children with brain injuries. When the physician from Miami inquired as to why, he was told "In Tennessee, we still believe in the 'Will of God.'"

That statement may appear simplistic on the surface, but its underlying message is powerful. Western democracies are slowly losing their ability to cope with the imperfections of life and humanity, as their demands for economic security and



Our crisis in health care reflects a growing societal problem of entitlement.



quality of life outpace the ability to finance either public entitlement programs or a liability system of retributive justice.

2003 Legislative Reforms

In one of the most contentious political debates in decades, the Florida Legislature adopted Senate Bill 2-D during a special session in the fall of 2003. This legislation was one of the most comprehensive medical liability reform measures passed in Florida. However, the Florida Medical Association and other health care organizations were extremely disappointed in the final product, feeling that it did not go far enough in getting a handle on an out-of-control liability system of spiraling medical liability insurance premiums and almost unlimited jury awards.

Moreover, the Academy of Florida Trial Lawyers announced immediate plans to challenge the constitutionality of the new law's caps on non-economic damage awards, even though the caps were "pierceable" under so many circumstances that many would suggest they are almost meaningless.²

Many legislators felt quite proud of themselves for finally coming to an agreement after so many special sessions, suggesting that because "both sides" in the debate—the lawyers and the doctors—were unhappy, that probably meant they did the right thing. Instead, the physicians and trial attorneys took their debate to the public in the form of proposed constitutional amendments, bypassing the legislative process altogether

and throwing open the doors to further chaos.

Taking it to the Street

The Florida Medical Association (FMA) responded to the perceived lack of effective action in the Legislature by introducing a constitutional amendment to limit attorney contingency fees in medical liability cases—later to become Amendment Three. The trial lawyers responded by placing two amendments of their own on the ballot: Amendment Seven, which opened up medical peer review records to the public and Amendment Eight, the so-called "Three Strikes" amendment to revoke physician licensure after three incidents of medical malpractice. (See the separate article in this issue of *The Journal*.)

Unfortunately, none of these amendments, or the reforms from 2003, addresses the fundamental "root causes" that political liberals are so fond of looking for when the issue is crime or public education's failures.

Moreover, to get around Amendment Three, some lawyers are quietly planning to have plaintiffs sign waivers of the rights this amendment provides. This is also done occasionally in the health care system, where prospective patients may be asked to sign papers stating that disputes will be handled through arbitration or means other than the traditional court system.

Of course, the lawyers will probably first go to court in an attempt to have the Amendment Three ruled

unconstitutional. Alexander Clem, President of the Academy of Florida Trial Lawyers, recently told *The Florida Bar News* in November of 2004, “If we are going to cap lawyers’ fees, can we cap business executives’ salaries, can we cap insurance policies? What about a plumbers’ salary?”

In fact, Mr. Clem would get little sympathy from physicians, whose reimbursement is already “capped” by Medicaid, Medicare, and managed care organizations.

The trial lawyers would also argue that not only is this government interfering in private contracts, but that Amendment Three will limit access to the courts because fewer lawyers will be willing to front the cost of liability cases in the hopes of an award.

Here again, they would receive little sympathy from emergency-care physicians, who are mandated to provide care regardless of the ability of a patient to pay. (Perhaps, in order to ensure fairness, the FMA should consider proposing an amendment that in order to guarantee access to the courts, no lawyer can refuse to take a medical malpractice case, regardless of the plaintiff’s ability to pay court costs or attorney fees.)

Even if Amendment Three survives the lawyers’ challenges, it may not achieve its intended effect of discouraging lawsuits, given that Amendment Eight contains a powerful incentive for lawyers to sue and for doctors and hospitals to settle out of court.

In fact, Florida may well experience growth in the number of cases filed,

with smaller settlement agreements. The certainty of settlement may very well mitigate the reduced percentage that an attorney can make, encouraging lawyers to do medical malpractice business on volume in much the same way that managed care has forced physicians to see more and more patients for less reimbursement per patient in order to maintain the same income level.

Larger Questions Unresolved

Who is responsible for your care, and should society pay a cost when you believe you have been wronged? Is any health care system—or entitlement system—able to withstand the massive demographic trends at work today, where fewer workers are available today to subsidize an ever-growing elderly population with demands for more frequent and expensive care? Those questions may seem simple, yet it is unlikely any constitutional amendment or legislative bill could easily address them.

Capping damage awards and attorney fees may slow the rate of growth in this one area of health care costs. However, unless we address the social demand for “womb to tomb” coverage of all our quality of life needs—from health care to retirement to economic security—we will continue to ride a downward spiral toward severe fiscal problems. We are trapped in an “entitlement box” whereby we demand care of an unreasonable quality (no bad outcomes) and expect others to pay for it. We have lost our perspective on life, unwilling to accept personal

responsibility and instead complaining we are “victims” of corporations, employers, socio-economic forces or other nameless and faceless entities that demand a government program to intervene and mitigate those consequences.

Reforming health care will require society’s collective reassertion of a sense of individual responsibility. Government can provide tools, through consumer directed choice, legal reform and education in basic health maintenance skills. But we can no longer sustain our society through welfare expansion or a litigation lottery which remains unchecked. It will be a hard and difficult thing to do, yet it remains our

only true choice at reforms to preserve what is best about America. ❧

Robert “Jake” Bebbler is Deputy Executive Director of the Florida College of Emergency Physicians, a medical specialty society. Mr. Bebbler is also a Ph.D. student in the Public Affairs program at the University of Central Florida. The views expressed here are his own. He welcomes your comments at jbebbler@fcep.org.

¹ “Emergency Rooms Lack Specialists” by John Dorschner, *Miami Herald*, December 26, 2004

² The law also created a separate cap on non-economic damages for emergency and trauma care providers. This cap was not pierceable, but only applied in cases where care was being provided under Florida’s “Access to Emergency Care” laws or federal EMTALA laws. This “hard cap” did not apply to follow-up care.

AMENDMENT PROCESS *(Continued from page 6)*

tory amendments would result in a proliferation of unnecessary laws and would make voting on election day confusing because of lengthy ballots filled with numerous proposed laws.

While there are no easy answers in how to restore public trust in the initiative petition process for amending the state Constitution, the public opinion poll provides a good start toward understanding how Floridians feel about the process and why they distrust it.

A summary of the survey is being provided to Florida legislators, and the entire survey will be posted

on the respective websites of the sponsoring organizations, the James Madison Institute (www.jamesmadison.org) and the Collins Center for Public Policy (www.collinscenter.org).

The hope is that the information provided by this survey will be helpful to Florida’s policymakers as they try to fashion remedies for a process that is arguably a textbook example of good intentions gone awry. ❧

Mark Pritchett is Executive Vice President of the Collins Center for Public Policy. Bob McClure is President and CEO of The James Madison Institute.

PRESERVING PATIENTS' ACCESS TO QUALITY HEALTH CARE

BY CARL W. "RICK" LENTZ, M.D.

The malpractice crisis plaguing Florida's health care system not only continues, but it's getting worse. This is despite the Legislature's efforts in 2003, when lawmakers met three times in special sessions to grapple with this problem but still failed to fashion an adequate solution.

Afterward, the Florida Medical Association (FMA) voted to protect patients' access to quality health care by introducing a constitutional amendment to limit attorneys' contingency fees in medical liability lawsuits. Appearing on the Nov. 4, 2004 ballot as Amendment Three, it passed and took effect the next day. Under its provisions, patients in medical liability lawsuits will receive 70 percent of the first \$250,000—and 90 percent of the remaining amount—after the court costs have been paid.

The passage of this amendment will ensure that the injured patients rather than the attorneys will receive the greater share of any monetary award. It should also temper the frivolous lawsuit mentality, which has plagued our nation and our state.

Unfortunately, when the voters approved Amendment Three, they also approved two amendments pushed by the Academy of Florida Trial Lawyers. Those proposals, which appeared on the ballot as Amendment Seven and Amendment Eight, have ominous and potentially destructive effects.

It's troubling to note that at first, the lawyers didn't even intend for these amendments to pass. Rather, they proposed them as a way to force the FMA to withdraw Amendment Three. Over and over again, the trial lawyers' emissaries approached FMA members with an offer to withdraw



their amendments if the FMA would withdraw Amendment Three.

It's doubtful that any real thought process went into considering the terrible consequences the trial lawyers' amendments could produce. But now we are stuck with them and their terrible social cost. Consider:

**Amendment Seven:
"Patients' Right to Know About
Adverse Medical Incidents"**

This amendment creates a constitutional right for a patient or a potential patient to have access to any records of adverse medical incidents involving a health care facility or provider. Such incidents would include medical malpractice and other acts that have caused, or have the potential to cause, injury or death.

That may sound good at first blush, but it may well destroy the very peer-review processes that are essential to maintaining the quality of health care. Physicians have always been involved in efforts to ensure that their fellow physicians were delivering quality care to their patients. Hospitals, ambulatory surgery centers, office surgery facilities, and county medical societies all have peer-review programs where doctors review specific events and perform random reviews of their fellow doctors.

Absolute candor is essential for these reviews to be effective. To ensure candor in this important process, Florida law had given these

records the protection of confidentiality so that all participants may speak freely. Because of Amendment Seven, however, this confidentiality has been stripped away. As a result, the physicians who perform these reviews as volunteers may now be subjected to lawsuits for damages including actions for libel, slander, or interference with a business relationship. That is sure to have a chilling effect on these deliberations. Unless the Legislature or the courts correct these risks, there will be few if any physicians willing to participate in

this function so vital to protecting patients.

So this simple amendment, which seems to be aimed at protecting patients, is actually doing just the opposite. It potentially removes this important safeguard.

The medical records of patients who are involved in malpractice lawsuits are now and have always been available for review

by the patients and their attorneys. Amendment Seven brings no added protection; it simply exposes the peer-review system to destructive consequences.

At the December 2004 Interim Meeting of the American Medical Association, the Florida Medical Association brought forward a resolution seeking to have Federal legislation passed to make peer-review activities confidential. There is already Federal Court case law holding that these peer-review activities



***Few if any
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are so important that they ought to be held confidential. Such legislation can be grafted onto the pending patient safety legislation. This Federal Law would pre-empt the Florida law and preserve this important patient protection system.

**Amendment Eight:
Public Protection from
Repeated Medical Malpractice**

A Tallahassee judge has delayed implementation of the so called “Three Strikes and You’re Out” amendment until the Legislature has a chance to pass legislation to carry it out in “an intelligent, consistent manner.”

It is clear that this amendment applies to final judgments in a court of law, final orders of the Florida Board of Medicine, and final decisions of binding arbitration proceedings involving medical liability. It is also clear that it does not apply to any settlements in a medical liability case or to an administrative proceeding before the Board of Medicine.

What is not clear and is most troubling, however, is how can there be two very different levels of evidence that could result in a physician’s losing his or her license to practice medicine. In a Board of Medicine action, as in a criminal law case, the prosecutor must show “beyond a reasonable doubt” that the physician had failed to maintain the requisite standard of care. Yet in a civil case involving medical liability, the attorney for the plaintiff must only prove “by a preponderance of the evidence” that the physician had failed

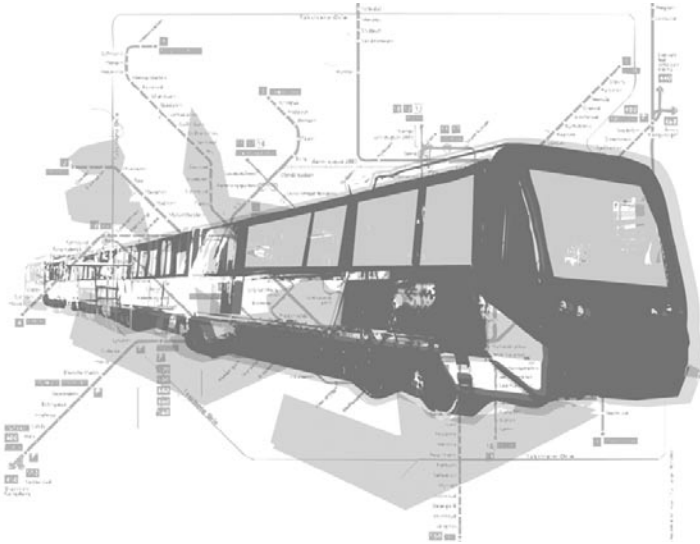
to maintain the requisite standard of care. These two burdens of proof are dramatically different.

It is clear from many studies, including one from Harvard, that most medical liability cases are about bad outcomes, not bad doctors. Is it reasonable to have doctors losing their right to practice medicine because of three bad results? Doctors are already leaving Florida, changing their scope of practice by avoiding difficult cases, and retiring early because of the legal climate in Florida. This would only exacerbate the problem. Florida patients’ access to quality care would be even more limited than it is now.

The Legislature needs to act this year to resolve these problems. There are ways to ensure that patients are compensated adequately when a doctor makes a mistake, but that do not cause doctors to lose their licenses or leave the state because of bad results. It’s essential that the level of the burden of proof in medical liability cases be changed to “beyond a reasonable doubt.” To fail to address this inequity will truly harm the patients of Florida.

Several other issues are raised by this poorly drafted amendment. Can one incident result in two strikes? For instance, if a physician loses as a defendant in a civil lawsuit and then the Board of Medicine finds against the physician for the same incident, is that two strikes? Lawmakers need to address that question. They also must also determine who exactly are considered to be “medical doctors”

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DERAILING THE SOLAR EXPRESS

BY ROBERT F. SANCHEZ

Florida thankfully dodged a bullet train in November 2004, when voters repealed a costly constitutional amendment that they had passed in November 2000. It was a close call. Much like the movie melodrama's scene where the heroine is rescued from the railroad tracks in the nick of time, the state's transportation budget was rescued from a constitutional mandate to waste billions of dollars on a bad idea while shortchanging legitimate infrastructure projects that would benefit the state's economy.

The project to subsidize the construction and operation of a high-speed rail system had little prospect of commercial success. However, like the class-cap amendment and other costly examples of legislating through the initiative petition pro-

cess for amending our constitution, the "bullet train" bore no price tag when it was initially presented to voters.

The plan's fiscal drawbacks might have been evident had it undergone the vetting process used for ordinary legislation. Because this scheme couldn't pass fiscal muster, however, its advocates used a detour often traveled in recent years by special interests whose ideas can't get past the Legislature's budget watchdogs: the initiative petition route.

It's a trail that the Florida Constitution's framers created in the name of grassroots democracy. Increasingly in recent years, however, it has resembled a bucolic bike trail taken by Teamsters driving 18-wheelers. A process intended as a check on legislative resistance to changing the

state's basic charter of governance has become a profit center for political consultants, petition gatherers, ad agencies, direct mailers, the news media, and others who derive benefits from costly statewide political campaigns.

Because there isn't much public agitation to tinker with esoteric governance provisions that truly do belong in the state Constitution, the special interests who profit from this new cottage industry often go Dumpster-diving for saleable ideas that the Legislature considered but discarded.

The glossy campaign against repeal of high-speed rail reached its zenith (or, arguably, its nadir) a week before last November's election, when Florida newspapers ran an expensive full-color, full-page ad purchased by advocates of high-speed rail. It

featured a state map showing high-speed rail linking every major city from Miami to Pensacola—and a fanciful fare schedule with claims such as “Tallahassee to Gainesville, 84 min, \$15.60” or “Cocoa to Orlando, 33 min, \$6.00.”

Since the route map showed a stop at Port Canaveral, which is near the Kennedy Space Center, it would have been equally credible to advertise “Cocoa to the Moon, 3 hours, \$19.95.”

Fortunately, voters—better informed about this project's true cost and unrealistic projections of fares and ridership—wisely recognized its folly and repealed the amendment mandating it. This puts the future of high-speed rail back where it properly belongs: in the Legislature, where costs and benefits can be properly weighed. ❧

PRESERVING PATIENTS' ACCESS *(Continued from page 14)*

as stated in the Amendment Eight. Who's included? Doctors of Medicine? Undoubtedly. But what about Doctors of Osteopathy? Dentistry? Podiatry? Pharmacy? Chiropractic? Statutory language is needed to clarify this.

In the end, Amendment Three will have a very beneficial effect on the practice of medicine in Florida and will help to preserve the access to quality care for the patients of Florida. Amendment Seven, however, will severely limit the important oversight that physicians have rou-

tinely performed in the peer review systems unless something is done to reestablish the privileged nature of peer review. As for Amendment Eight, it will severely exacerbate the already worsening of access to quality care if the Legislature does not correct the distinctly different burdens of proof between civil medical liability cases and actions by the Board of Medicine. ❧

Dr. Carl W. “Rick” Lentz of Daytona Beach is past president of the Florida Medical Association.

INTRODUCING BOB SANCHEZ DIRECTOR OF PUBLIC POLICY

Robert F. Sanchez, JMI's Director of Public Policy, has deep roots in Florida. His ancestors came to Florida from Spain in the early 1600s. In the 1810s, Bob's great-great grandfather Francisco Sanchez was a leader in the East Florida statehood movement, which helped to build support for Florida's acquisition by the United States.

Bob was born in Bradenton and grew up in Sarasota. In 1959, he was graduated cum laude from Florida State University. Commissioned an officer in the U.S. Army, he served two years of active duty at The Infantry Center at Fort Benning, Ga. After returning to FSU in 1961 to pursue graduate studies, he remained active in the Army Reserve for an additional eight years, reaching the rank of captain.

In 1962, he received his master's degree cum laude and joined the FSU faculty as an instructor of high school English and journalism at FSU's University School. In 1968, he accepted an appointment as assistant professor of English and journalism at Florida A&M University.

In 1974, Bob joined the *Miami Herald* Editorial Board. During his 26 years there, his areas of interest included education, state govern-

ment, and politics. In the Editorial Board's daily meetings, he championed free-market solutions and libertarian principles, earning him the nickname as *The Herald's* "token conservative." In 1984, he authored *The Herald's* endorsement of Ronald Reagan's re-election after *The Herald's* conservative Publisher, Richard Capen, wisely overruled the Editorial Page Editor's intention to have *The Herald* endorse big-government liberal Walter Mondale.

Bob won numerous awards during his *Herald* career. In 1983, he and his Editorial Board colleagues won the Pulitzer Prize for commentary.

Throughout his *Herald* career, Bob spent several weeks each year in Tallahassee during the Legislature's annual session. He also attended virtually every meeting of the Miami-Dade School Board, and he taught as an adjunct professor at Florida International University, Florida Atlantic University, Barry University, and the University of Miami.

In 2000, Bob returned to Tallahassee to become spokesman for the Department of Highway Safety and Motor Vehicles. Upon retiring from state government in 2005, he joined JMI as Senior Fellow and Director of Public Policy. ∞

MEET JMI'S BOARD OF DIRECTORS

Editor's Note:

The James Madison Institute is fortunate to have a dedicated Board of Directors. The board's members have been most generous with their time and their financial support. In this issue of *The Journal*, we're profiling Board Chairman Charles Hilton and JMI's longest-serving director, Rebecca Dunn. In future issues, we'll profile others.

Chairman

L. Charles Hilton, Jr.

Board Chairman Charles Hilton's work ethic was inspired by his father, who began his business career as a heavy equipment operator for a road contractor. The family moved frequently—usually several times a year. Following his hard-working father's example, Charles began work at age 12 by delivering newspapers.

Early on, Charles Hilton learned to do the very best he could at everything he undertook. He became an Eagle Scout at age 14, worked his way through college and law school, and became a lawyer in January 1955. He served as an Air Force Judge Advocate General (“Jag”) Officer for two years, and has been an active attorney for 50 years. He has had a

varied practice, mostly civil but some criminal, including several capital cases. He has litigated in nearly every forum available to a Florida lawyer, always exerting every effort to win every battle.

Although Charles and his father had neither money nor a financial backer, they started a grading and paving company in 1958. That company continues to thrive today as a general contractor with a building division and a site-work division. The company was in the high rise structural concrete business for 20 years.

A man of faith, Charles was active in the United Methodist Church for many years. He also has been active in other civic and business organizations, served as President of the Florida Transportation Business Association, Chairman of Florida Tax-

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Watch, and on various other boards and commissions. In addition, he has been a long-time supporter of organizations advocating limited government, more individual responsibility, and personal freedom. He served on the board of the National Taxpayers Union, Citizens for an Alternative Tax System, Citizens for a Sound Economy (now Freedom Works), and was a founding member of The Club for Growth.

In 1967, Charles Hilton and his family started in the motel business, building a 51-unit motel. Today they continue to operate five hotels. They also built and operated a cable television system, which later merged with Knology Holdings. He was an automobile dealer for 25 years and has been an active real estate developer as well. The family owns and operates a full length 18-hole golf course, a nine-hole executive golf course, and a driving range.

During the World War II years, Charles Hilton lived near Eglin Air Force Base and developed a strong love for aviation. He has been a pilot for more than 40 years.

Charles Hilton, healthy and vigorous at age 73, strongly believes that people in a free society have a right to make decisions about their medical care. He and his daughter Julie recently led a successful effort to get a Health Freedom Bill passed by the Florida Legislature. It says essentially that you can receive—and your healthcare practitioner can deliver—whatever kind of healthcare you want, whether complementary, alternative, or conventional, provided

that you have given your informed consent.

Throughout his adult life, Charles Hilton has been an active advocate for more freedom, less government, lower taxes, and more individual responsibility. That love of freedom ultimately led him to the James Madison Institute where he says he's found a home.

Rebecca Freeman Walter Dunn

Rebecca Freeman Walter Dunn has been a member of the board of directors since 1996, which makes her JMI's longest-serving board member.

Long involved in public service, the North Carolina native and long-time Floridian currently serves the state of Florida through her 2001 appointment by Gov. Jeb Bush to the Florida Federal Judicial Nominating Commission.

An active member of her community, she has served on the boards of Tampa Bay's public TV station (WEDU-Channel 3), the H. Lee Moffitt Cancer Center and Research Institute, University of South Florida Economic Advisory Board, the Florida Orchestra, the Community Foundation for Palm Beach and Martin Counties, the Tampa Bay Performing Arts Center, the American Red Cross, Leadership Hillsborough, the Easter Seal Society, the Gulf Coast Lung Association, the Boys and Girls Club of America, and the University of Tampa. She is also a member of the Tampa Bay Area Committee on Foreign Rela-

tions and the Junior League.

Through their foundations, she and her husband, Bill Dunn, support and participate in many free market think tanks. These include Reason Foundation, the Cato Institute, the Institute for Justice, the Institute for Humane Studies, the Foundation for Economic Education, and the Mackinac Center.

In 1995 Rebecca created the James Madison Forum of Tampa Bay. The Forum sponsored speakers and expanded the community's awareness of a variety of public policy issues including charter schools, Social Security choice, private property rights, free market environmentalism, and

immigration reform. Among the guest speakers the group brought to the Tampa Bay area are William F. Buckley, Jr., Margaret Thatcher, and cultural critic Michael Medved.

“It was my hope and the goal of the Forum to encourage people in my community to learn about the issues facing us today on a local, state, and national level. I care deeply about the freedom that we experience here in America. The James Madison Institute supports that ideal and throws out a red flag whenever they see an attack or action that compromises our liberty. Active involvement, for me, was not an option; it was a necessity.” ❧

Worthy Words

“I am certain that nothing has done so much to destroy the juridical safeguards of individual freedom as the striving after this mirage of social justice.”

—FRIEDRICH AUGUST VON HAYEK,
Economic Freedom and Representative Government, 1973.

“Useless laws weaken the necessary laws.”

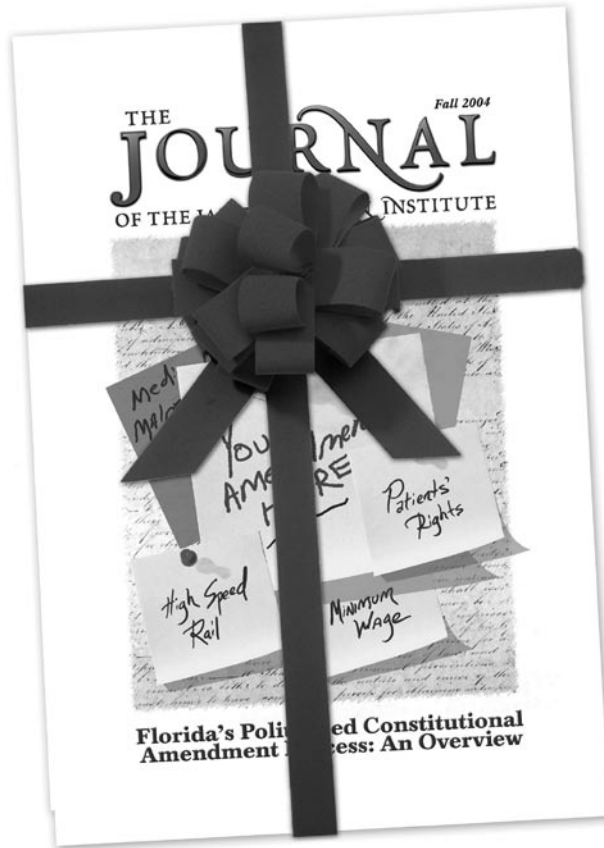
—CHARLES DE SECONDAT, Baron de Montesquieu,
De l'Esprit des Lois, 1748.

“They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.”

—BENJAMIN FRANKLIN,
Historical Review of Pennsylvania, 1759.

“The people never give up their liberties but under some delusion.”

—EDMUND BURKE,
Speech at Buckinghamshire County Meeting, 1784.



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