

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

Case No.: 12-14009

D.C. Docket No.: 1:11-cv-22026-MGC

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DR. BERND WOLLSCHLAEGER, DR. JUDITH SCHAECHTER, DR. TOMMY SCHECHTMAN, AMERICAN ACADEMY OF PEDIATRICS, FLORIDA CHAPTER, AMERICAN ACADEMY OF FAMILY PHYSICIANS, FLORIDA CHAPTER, AMERICAN COLLEGE OF PHYSICIANS, FLORIDA CHAPTER, INC., ROLAND GUTIERREZ, STANLEY SACK, SHANNON FOX-LEVINE,  
*Plaintiffs-Appellees,*

vs.

GOVERNOR OF THE STATE OF FLORIDA, et al.,  
*Defendants-Appellants.*

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Appeal from the United States District Court  
for the Southern District of Florida

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**AMERICAN BAR ASSOCIATION'S MOTION FOR LEAVE TO FILE  
*EN BANC* BRIEF AS *AMICUS CURIAE* IN SUPPORT OF  
PLAINTIFFS-APPELLEES DR. BERND WOLLSCHLAEGER, ET AL.  
AND AFFIRMANCE**

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**DOCKET NO.: 12-14009**  
**WOLLSCHLAEGER, ET AL. V. GOVERNOR OF FLORIDA, ET AL.**

**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and 11th Cir. R. 26.1, *amicus curiae* American Bar Association (“ABA”) discloses that it is an Illinois nonprofit corporation, has no parent corporation, and does not issue shares of stock. ABA is a national organization representing its more than 400,000 attorney members, law student members, and non-lawyer “associates” in related fields.\*

On behalf of *amicus curiae*, American Bar Association, the undersigned certifies that the Certificate of Interested Persons and Corporate Disclosure Statement included within Defendants-Appellants’ *En Banc* Brief is complete.

/s/ Paulette Brown  
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Paulette Brown

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\* No party’s counsel authored this brief, and no party, its counsel, or other person contributed money intended to fund this brief’s preparation or submission, other than ABA and its members.

## MOTION

Pursuant to 11th Cir. R. 35-9, the American Bar Association (“ABA”) moves for leave to file an *En Banc* Brief as *amicus curiae* in support of Plaintiffs-Appellees and affirmance.

This motion should be granted because the ABA has a strong interest in protecting the free speech rights of regulated professionals. The ABA is one of the largest voluntary professional membership organizations in the United States and is the leading association of legal professionals. Since its founding in 1878, the ABA has paid special attention to protecting the rights guaranteed by the Constitution, including the First Amendment rights of health care practitioners and other regulated professionals.

Of specific relevance to the question before the *en banc* Court, in 2012 the ABA adopted a policy that opposes “governmental actions and policies that limit the rights of physicians and other health care providers to inquire of their patients whether they possess guns and how they are secured in the home or to counsel their patients about the dangers of guns in the home and safe practices to avoid those dangers.” ABA Policy #111 (adopted August 2012) (“ABA Policy #111”).<sup>1</sup> The accompanying report (“ABA Report #111”) notes that legislation limiting the

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<sup>1</sup> Available at [http://www.americanbar.org/content/dam/aba/directories/policy/2012\\_hod\\_annual\\_meeting\\_111.doc](http://www.americanbar.org/content/dam/aba/directories/policy/2012_hod_annual_meeting_111.doc)

right of health care professionals to ask their patients such questions interferes with preventive care duties that are a foundation of modern medicine, and that such legislation violates the First Amendment rights of both health care practitioners and their patients.

The ABA has a strong interest in the First Amendment issues presented to this Court and in the crucial importance of open and unfettered dialogue between members of regulated professions (such as doctors and attorneys) and their patients or clients. Indeed, while Judge Wilson declined to write a third dissenting opinion, his dissent from the first two panel decisions in this case cited ABA Policy #111.

The State of Florida has passed a statute barring doctors from asking patients questions about firearm ownership that Florida deems not “relevant” to medical care. Florida now defends the Act on the novel and sweeping ground that speech that takes place within a professional-client relationship is entitled to lesser protection under the First Amendment. A decision upholding that rationale would allow States to bar not only doctors but also other professionals, including lawyers, from expressing to their clients any viewpoint with which the State disagrees. Such a rule would strike at the very heart of the attorney-client relationship and violate basic First Amendment principles.

The statute forms an unlawful content-based, viewpoint discriminatory, and speaker-based limitation on speech. As a result, the statutes cannot withstand any

heightened review under the First Amendment, much less strict scrutiny. Further, paternalistic rationales are insufficient to uphold a State's restriction on truthful and politically unpopular speech. The State of Florida cannot, under the guise of its power to regulate the medical profession, silence certain speech with which the State disagrees.

Finally, this motion should be granted because one of the counsel for *amicus curiae*, Richard J. Ovelmen, of Carlton Fields Jordan Burt, P.A., served as counsel for *amicus curiae*, TechFreedom, in *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 131 S. Ct. 2653, 180 L. Ed. 2d 544 (2011), a central Supreme Court decision applicable in this case.

### **CONCLUSION**

The American Bar Association respectfully requests the Court grant this motion and accept the ABA's attached *En Banc* Brief as *amicus curiae* in support of Plaintiffs-Appellees and affirmance.

Dated: April 27, 2016

Respectfully submitted,

/s/ Paulette Brown

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**CERTIFICATE OF COMPLIANCE**

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14-point Times New Roman.

Dated this 27th of April, 2016.

/s/ Paulette Brown

Paulette Brown

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27th day of April 2016, I caused the foregoing to be electronically filed using the Court’s CM/ECF system, which will provide service on all counsel of record, including those identified below, via Notice of Docket Activity generated by CM/ECF:

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