

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ALABAMA**

**Jim Zeigler
Plaintiff**

vs.

Civil Action No. 06-80

**Alberto Gonzales, Attorney General of
The United States; and
Deborah J. Rhodes, U.S. Attorney for
The Southern District of Alabama
Defendants**

AMENDED AND SUBSTITUTE COMPLAINT

1. This action challenges the constitutionality of a Federal act entitled “The Deficit Reduction Omnibus Reconciliation Act of 2005”, also known as S.B. 1932 and PL 109-171 (herein called “the DRA”). It was purportedly signed into law by President George W. Bush on February 8, 2006, to become effective immediately. The manner of enactment of the DRA creates a cause of action for declaratory relief for persons who have an interest in Medicaid laws for nursing home eligibility or Medicare laws for durable medical equipment, who pay filing fees to file federal civil actions, and who are taxpayers. Plaintiff Jim Zeigler alleges that the DRA was not constitutionally enacted in that differing versions were passed in the United States House of Representatives (herein called “the House”) and the United States Senate (herein called “the Senate”). The version that was signed by the President never passed the House and thus has never become a “Law of the United States.”

II. JURISDICTION

2. Jurisdiction is conferred upon this Court by existence of a Federal question and of questions arising under particular statutes, to wit, Article I, § 7 and § 9 of the United States Constitution, the First and Fourteenth Amendments to the United States Constitution and 28 U.S.C. § 1331.

3. Plaintiff's claim for declaratory relief is authorized by 28 U.S.C. § 2201 and 2202, and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

III. PARTIES

4. Plaintiff Jim Zeigler is a resident of Mobile, Alabama, which is in the Southern District of Alabama. He is an elderlaw attorney. He represents senior citizens seeking Medicaid eligibility for nursing home costs in the Southern District of Alabama pursuant to 42 U.S.C. 1396p(c)(1)(B)(i) and 42 U.S.C. 1396p(C)(1)(D)(i). He is admitted to practice in this Federal District, the Eleventh Circuit, and the U.S. Supreme Court. He has filed Federal civil actions in this District and will continue to do so. Those include Civil Action Numbers 04-753-B, 00-0075-CV-RV-C and 06-80. He is a Federal and state taxpayer.

5. Defendant Alberto Gonzales is the Attorney General of the United States. He is the chief law enforcement officer and attorney for the United States.

6. Defendant Deborah J. Rhodes is the U.S. Attorney for the Southern District of Alabama and is a necessary party to this action.

IV. FACTS

7. The Senate passed S. 1932 on Dec. 21, 2005. It contained a provision providing that Medicare will pay for **13 months** to rent some types of durable medical equipment. The provision is on page 89, Subtitle B, chapter 1, sec. 5101(a).
8. The House passed a bill purporting to be S. 1932 on Feb. 1, 2006. It set **36 months** as the period of time for said Medicare payments.
9. The House and Senate simply passed differing versions of the bill.
10. The version of S. 1932 purportedly signed into law by the President Feb. 8, 2006, set the number of months in question at 13 months as passed by the Senate, but not by the House.
11. The bill signed by the President has never passed the House.
12. The Act has not passed both houses of Congress and been signed by the President in identical form and, thus, has not become law, as required in U.S.Const. art. I, § 7.
13. The Act raises filing fees to file civil actions in federal district court.
14. The DRA substantially changes the rules for Medicaid nursing home coverage, specifically 42 U.S.C. 1396p(c)(1)(B)(i) and 42 U.S.C. 1396p(C)(1)(D)(i), et. al.
15. Plaintiff Zeigler is personally and substantially hindered in his legal practice because he is uncertain as to whether to proceed under the previous law, which is constitutional, or the DRA, which he alleges is unconstitutional, unenforceable and null.
16. Zeigler is unable to counsel his clients as to whether they should comply with the law prior to Feb. 8, 2006 or the law after Feb. 8, 2006.
17. Zeigler is further personally affected in that he must now pay the increased filing fees required by the Act.

18. Zeigler actively opposed S. 1932 because it penalizes senior citizens who are faithful givers to their churches. It makes them ineligible for Medicaid nursing home coverage until a “penalty” is paid for every dollar gifted during five years prior to nursing home admission and application for Medicaid.

**V. CAUSE OF ACTION: DECLARATORY JUDGMENT —
UNCONSTITUTIONALITY OF FEDERAL STATUTE**

19. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202, of an actual substantial justiciable controversy as alleged in paragraphs 1 through 18, set forth above. Plaintiff seeks judgment that the DRA is not a law within the meaning of the U.S. Constitution, both facially and as applied to the Plaintiff in his practice of elderlaw, as a taxpayer, and as a person affected by the Act’s provisions raising filing fees for Federal civil actions, because the purported enactment of the Act violated express and clear requirements of the U.S. Constitution for a bill to become law, specifically Art. I, § 7.

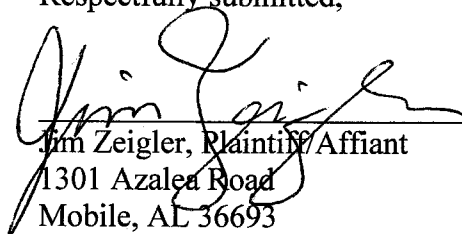
WHEREFORE, Plaintiff asks this Court:

1. To enter judgment declaring The Deficit Reduction Omnibus Reconciliation Act of 2005 to have been purportedly enacted in violation of U. S. Const. art. I, § 7, and 42 U.S.C. § 1983;
2. To enter judgment declaring The Deficit Reduction Omnibus Reconciliation Act of 2005 has never passed both Houses of Congress and been signed by the President in identical form, as required by U. S. Const. art I, § 7 and thus has never become law;

3. For attorneys' fees and costs as provided by 42 U.S.C. § 1983 and 1988;
4. To grant such other and further relief as this Court shall find just and proper.

Dated this 5th day of May, 2006.

Respectfully submitted,

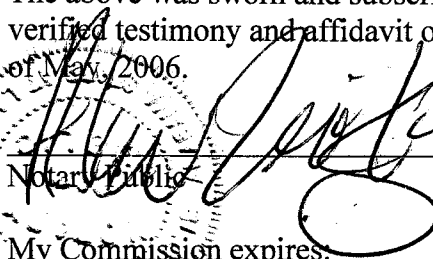


 Jim Zeigler, Plaintiff/Affiant
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Legal@JimZeigler.com
 251-660-2060

State of Alabama)
)
 County of Mobile)

Verification of Complaint

The above was sworn and subscribed before me, the undersigned Notary Public, as the verified testimony and affidavit of Jim Zeigler, affiant, who is known to me, on this 5th day of May, 2006.

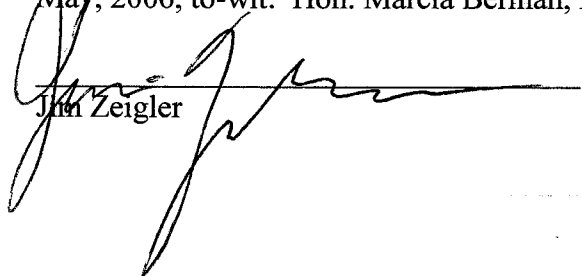


 Notary Public
 My Commission expires: _____

BLOISE ALAN ZEIGLER Notary Public, State of Alabama Alabama State At Large My Commission Expires May 07, 2008

Certificate of Service

I hereby certify that I served a copy of the foregoing on all counsel of record on this day of May, 2006, to-wit: Hon. Marcia Berman, Esq. at marcia.berman@usdoj.gov



 Jim Zeigler