

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

Jim Zeigler
Plaintiff

vs.

Civil Action No.: _____

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

COMPLAINT

1. This action challenges the constitutionality of a federal Act entitled “The Deficit Reduction Act of 2005”, also known as Senate Bill S. 1932 (herein called “the Act.”). It was purportedly signed into law by President George W. Bush on February 8, 2006 to become effective immediately. The manner of passage of the Act creates a cause of action for declaratory relief for any person who has an interest in Medicaid laws for nursing home eligibility, Medicare laws for durable medical equipment, and other persons affected by the Act. Plaintiff Jim Zeigler alleges that the Act was not constitutionally enacted in that differing versions passed the U.S. House and the U.S. Senate. The version that was signed into law by the President never passed the U.S. House.

II. JURISDICTION

2. Jurisdiction is conferred on this Court by existence of a federal question and questions arising under particular statutes, to wit, Article I, section 7 of the United States

Constitution, the First and Fourteenth Amendments to the United States Constitution, 28 U.S.C. §§ 1331, 1343(a)(3), 42 U.S.C. §§ 1983, 1988, and 42 U.S.C. 1396p(c)(1)(B)(i) and 42 U.S.C. 1396 p (C)(1)(D)(i) et. al.

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. 1396 p (C)(1)(D)(i).

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 U.S. Senate passed S. 1932 on Dec. 21, 2005. It contained a provision that Medicare will pay for **13 months** to rent some types of durable medical equipment before medical suppliers must then bill the Medicare patient. The provision is on page 89, Subtitle B, chapter 1, sec. 5101 (a).

8. The U.S. 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. S. 1932 has not passed both houses of Congress and been signed by the President in identical forms and thus has not become law, as required in Article I, section 7 of the United States Constitution.
13. Plaintiff Jim Zeigler practices elderlaw in the Southern District of Alabama. He represents senior citizens in obtaining eligibility for Medicaid nursing home coverage pursuant to 42 U.S.C. 1396p(c)(1)(B)(i) and 42 U.S.C. 1396 p (C)(1)(D)(i), et. al.
14. The Act substantially changes the rules for Medicaid nursing home coverage, specifically 42 U.S.C. 1396p(c)(1)(B)(i) and 42 U.S.C. 1396 p (C)(1)(D)(i), et. al.
15. 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 Deficit Reduction Act of 2005, 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 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.

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

18. This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, of an actual substantial justiciable controversy as alleged in paragraphs 1 through 17, set forth above. Plaintiff seeks judgment that the Deficit Reduction Act is unconstitutional, both facially and as applied to the Plaintiff and his practice of elderlaw, because the Act violates express and clear requirements of the U.S. Constitution for a bill to become law, specifically Article I, Section 7.

WHEREFORE, Plaintiff asks this Court:

1. To enter judgment declaring the Deficit Reduction Act of 2005 to have been purportedly enacted in violation of the United States Constitution, Article I, Section 7, and 42 U.S.C. § 1983;
2. To enter judgment declaring the Deficit Reduction Act of 2005 has never passed both Houses of Congress and been signed by the President in

identical form, as required by the United States Constitution, Article I,
Section 7 and thus has never become law;

3. For attorneys' fees and costs as provided by 42 U.S.C. § 1988; and

4. To grant such other and further relief as this Court shall find just and
proper.

Dated this ____ day of February, 2006.

Respectfully submitted,

Jim Zeigler, Plaintiff
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