Orig. 001

IN THE SUPREME COURT OF FLORIDA

GEORGE FIRESTONE, et al.,

Petitioner,

v. CASE NO. 66,774

FLORIDA OPTOMETRIC ASSOCIATION, et al.,

Respondents.

_____/

BOB GRAHAM, et al.,

Petitioners,

v. CASE NO. 66,768

FLORIDA OPTOMETRIC ASSOCIATION, et al.,

Respondents.

_____/

FLORIDA SOCIETY OF OPHTHALMOLOGY, et al.,

Petitioners,

v. CASE NO. 66,762

FLORIDA OPTOMETRIC ASSOCIATION, et al.,

Respondents.

_____/

ANSWER BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE AND FACTS

Respondents; Florida Optometric Association, Jon S. Jacobs, O.D., and Representative Fred R. Dudley; accept the Statement of Facts in the brief of Petitioners George Firestone and Bob Graham. The Statement of Case and Facts in the brief of Petitioner, Florida Society of Ophthalmology, is argumentative. Respondents do not accept it.

INTRODUCTION

The First District Court of Appeal has presented, in one certified question, two issues to this court. They are:

1. Does Article III, Section 8(a), Florida Constitution allow the govenor seven or fifteen consecutive days following presentation to veto a bill presented to him after the legislature adjourns sine die?
2. If Article III, Section 8(a), Florida Constitution allows the governor seven days after presentation to veto bills presented after the legislature adjourns sine die, should the effect of the opinion so holding have only prospective application?

Resolution of the first question depends upon this court's interpretation of Article III, Section 8(a) of the Florida Constitution. It states:

> Every bill passed by the legislature shall be presented to the governor for his approval and shall become a law if he approves and signs it, or fails to veto it within seven consecutive days after presentation. If during that period or on the seventh day the legislature adjourns sine die or takes a recess of more than thirty days, he shall have fifteen consecutive days from the date of presentation to act on the bill.

The district court of appeal below carefully considered the language of the constitution and the arguments advanced for ignoring it. The court held:

> Under its plain meaning, Article III, Section 8(a) states that the governor ordinarily has seven consecutive days after presentment to take action on a bill. There are two exceptions, which, if they occur during the seven-day period after presentation, operate to extend such period: (1) the legislature's adjourning sine die; and (2) the legislature's recessing more than thirty days. If either of the two events occurs, the governor has an additional eight days to act on a bill; that is, he has a total of fifteen days from the date of presentment to exercise his veto.

Florida Optometric Association v. Firestone, 10 Fla. L. W'kly 676, 677 (March 15, 1985).

The court then applied Article III, Section 8(a) to the facts before it and concluded that Governor Graham's purported veto of Senate Bill 168 was untimely and therefore invalid.

> In the case at bar neither of the two exceptions took place. The Florida Legislature had already adjourned before the bill was presented to the governor for his consideration. Therefore, relying on the plain meaning of the words in Article III, Section 8(a), Governor Graham had only seven days from June 14, 1983 to veto SB 168. Accordingly, on the expiration of the seventh day without his action, or June 21, 1983, the bill automatically became a law.

Id.

Petitioners offer a potpourri of factual[1] and legal arguments for reversing the district court's opinion. This brief will analyze the court's opinion, analyze the plain meaning of Section 8(a), respond to the petitioners' arguments, and set forth historical support for the court's decision.

1/ It is hard to tell from the first two pages of the ophthalmologists' argument that this court is a judicial body being presented with a legal issue. The argument makes inaccurate and unsupported factual statements about the competence, training, and education of optometrists. While respondents believe the remarks are inappropriate, since they have been made and are misleading they must be answered.

The ophthalmologists state that Senate Bill 168 allows "optometrists for the first time to prescribe and apply drugs for therapeutic as well as diagnostic purposes." FSO, p. 5. The issue of whether current law allows optometrists to prescribe and apply legend drugs is currently before this court in Board of Optometry, v. Florida Medical Association, Inc., Fla. Sup. Ct. Case No. 66,881. The issue in that case is whether the Board of Optometry had the statutory authority to promulgate Florida Administrative Code Rule 21Q-3.10 which, similarly to Senate Bill 168, establishes education and training requirements for optometrists who choose to prescribe and apply certain non-controlled legend drugs. Among other things the record in that case shows that optometrists have safely utilized legend drugs for many years.

If the training and qualifications of optometrists is relevant to this proceeding, Respondents request the Court to review the record in Case No. 66,881 in which that issue was factually developed. That record demonstrates the education and competency of optometrists to diagnose and treat disorders of the eye. The decision in Board of Optometry v. Florida Medical Association, 10 FLW 377 (Fla. 1st DCA, February 7, 1985), turned on the Board's statutory authority. Neither the district court of appeal nor the hearing officer questioned the competency, education, or training of optometrists to safely employ legend drugs in their practice.

Resolution of the second issue requires examination of the factors to be considered in determining whether a ruling should be applied prospectively. Respondents take no position upon prospective application of an opinion affirming the district court so long as the ruling applies in this case in which the issue was litigated. Prospective application actually vitiates many of Petitioners' arguments which rely in large part upon an alleged great number of possibly invalid vetoes as a reason to reverse the district court's interpretation of Article III, Section 8(a).

Although the jurisdiction of the trial court is not a question certified to this court, Firestone and Graham have raised it in their briefs. This brief will address the issue.

Respondents will also refer to the record by the letter "R". They will refer to the brief of the Florida Society of Ophthalmologists by the abbreviation FSO, and to the joint brief of Firestone and Graham by the abbreviation F&G.

SUMMARY OF ARGUMENT

All this Court must do is interpret Article III, Section 8(a) of The Florida Constitution. Section 8(a) is a plain and simply worded phrase which means what it says. It allows the governor to veto bills presented to him by the legislature if he does so within seven days of presentation. If he does not, bills become law without the governor's signature. Section 8(a) establishes two exceptions to the seven day period. They are: (1) If the legislature adjourns during the seven days following presentation, the period is extended to fifteen days following presentation.; (2) If the legislature takes a recess of more than thirty days during the seven days following presentation, the period is extended to fifteen days following presentation.

The meaning is plain. Here the words mean Governor Graham had seven days to veto Senate Bill 168. Since he did not veto the bill within seven days after presentation, it became law on the eighth day. The words of Section 8(a) and the application of every applicable canon of construction lead to that conclusion. The Secretary of State, the Governor, and the Florida Society of Ophthalmology ask this Court to ignore the plain meaning of the Constitution and its history. They ask this Court to twist the Florida Constitution to the Governor's convenience.

Petitioners offer a multitude of reasons for going beyond the plain meaning of the Constitution. Petitioners argue Section 8(a) is not plain. It is. Petitioners argue that the framers of the Constitution never contemplated presentation after adjournment. They did. Petitioners argue allowing the Governor only seven days is illogical. It is not. Petitioners argue that multitudes of Florida's statutes will fall. They will not. Petitioners argue that the Legislature and this Court have previously interpreted Section 8(a) to allow the Governor fifteen days to act on bills presented after adjournment. They have not. Petitioners argue that past governors' legal opinions should bind this Court.

They should not.

Petitioners' arguments condense to three themes. (1) The Constitution does not mean what it says, it means what we want it to say. (2) We have always done things this way; our lives will be harder if you make us change. (3) When the Governor vetoed Senate Bill 168, the Senate was not in session anyway. The main idea is to give the Governor plenty of time to act when the legislature is not in session.

The dissent below was more forthright. It admits that the language of the Constitution and proper construction leave "little room for justifying a contrary result." Florida Optometric Association v. Firestone, 10 Fla. L. W'kly 676, 678 (March 15, 1985). The dissent admits its author is justly subject to the charge of shutting his eyes to the language of the Constitution. But "[d]espite the precise language of section 8(a), I **believe** the intent underlying this section is to afford the governor fifteen days, not just seven, within which to exercise a veto at any time the governor is properly considering a bill and the legislature is not in session." Id. (emphasis supplied) The dissenter believes the meaning is different. The same is true for Petitioners. Ultimately they advance no reasons for holding that the intent of Section 8(a) differs from the intent its words express.

Petitioners' interpretation is an interpretation of convenience. The rule of law and a constitutional government cannot tolerate such a cavalier attitude toward fundamental organic restrictions.

> First, it would open the door to all branches of government to take a casual, substantial compliance approach to actions mandated by our Constitution. Secondly, the court cannot permit the executive and legislative branches to amend constitutional provisions which are clear, unambiguous, and mandatory in nature."

In re Interrogatories of the Governor Regarding Certain Bills of Fifty-First General Assembly, 578 P. 2d 200, 209 (Colo. 1978), (Erickson, J., concurring in part and dissenting

in part).

Petitioners seek prospective application of the holding in this case. Respondents do not quarrel with that position so long as the holding applies in the case before this Court to the parties before this Court. Petitioners have advanced no reason why it should not.

Petitioners also dispute the trial court's jurisdiction to issue a writ of mandamus. This Court has ruled that a mandamus action is the proper way to challenge an invalid veto.

ARGUMENT

ARTICLE III, SECTION 8(a) OF THE FLORIDA CONSTITUTION ALLOWS THE GOVERNOR SEVEN DAYS TO ACT UPON BILLS PRESENTED TO HIM AFTER THE LEGISLATURE ADJOURNS SINE DIE.

The Meaning of Article III, Section 8(a) is Plain

This case does not present a difficult issue. The words of Article III, Section 8(a), are plain and straightforward. The issue becomes confusing only if one ignores the words to conjure up a conveniently different meaning.

Article III, Section 8(a) of the Florida Constitution states:

> Every bill passed by the legislature shall be presented to the governor for his approval and shall become a law if he approves and signs it, or fails to veto it within seven consecutive days after presentation. If during that period or on the seventh day the legislature adjourns sine die or takes a recess of more than thirty days, he shall have fifteen consecutive days from the date of presentation to act on the bill.

The words and meaning of Section 8(a) are plain. They allow the Governor seven consecutive days after a bill is presented during which he may veto the bill. If the Governor does not veto the bill during those seven days it becomes law. Two events, and only two events, during those seven days expand the period to fifteen days. The two events, which must occur during the period of seven consecutive days following presentation, are: (1) adjournment sine die, or (2) a recess of more than thirty days.

The Legislature did not adjourn sine die, or take a recess of more than thirty days, during the seven consecutive days following presentation of Senate Bill 168 to the Governor. He did not veto the bill during those seven days. Consequently according to the plain meaning of the constitution, Senate Bill 168 became law on the eighth day following presentation, June 22, 1983.

Petitioners admit that the plain language of the Constitution is the first and most important consideration. Yet they argue Article III, Section 8(a) is ambiguous. Upon any fair reading of the clause, it is hard to call the words ambiguous.

The issue in this case is constitutional interpretation. Ultimately the quest is for "the intent and objective of the people." Plante v. Smathers, 372 So. 2d 936 (Fla. 1979). The people's words are the expression of their intent. Sutherland, Statutory Construction §46.03 (1973); Metropolitan Dade County v. City of Miami, 396 So. 2d 144 (Fla. 1980).

> [A]lthough the spirit of an instrument, especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. ... [I]f, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application.

Sturges v. Crowninshield, 17 U.S. (4 Wheat) 122, 202, 203, 4 L. Ed. 529, 550 (1819). See also, Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So. 2d 879, 882 (Fla. 1983), stating the intent of the legislature is to be gleaned from the statute.

For this reason the plain meaning of a constitutional provision is the beginning of any analysis. It is the end of the analysis if the words are unambiguous. Plain meaning is always the most important consideration. "When the provisions of the Constitution, as adopted by the citizenry of Florida, are clear and unambiguous, they are to be read and enforced as written." Plante v. Florida Commission on Ethics, 354 So. 2d 87, 89 (Fla. 1st DCA 1977). See also, Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So. 2d 879, 882 (Fla. 1983), ("Where... the... law is proper and unambiguous, we need look no further than the statute itself.")

The words of Article III, Section 8(a) are plain. The meaning of those words is clear. They are not unreasonable, illogical, or ambiguous. Every bill passed by the Legislature must be presented to the Governor for his consideration. If the Governor signs a bill, it becomes law. If the Governor does not veto the bill within seven consecutive days after presentation, the bill becomes law. Only two legislative actions extend the time for a Governor's veto if they occur during the seven day period following

presentation. Only if the Legislature (1) adjourns sine die or (2) takes a recess of more than thirty days during the seven days does the period for gubernatorial action lengthen by eight days. Nothing other than these two legislative actions during the seven consecutive days following presentation extends the veto period.

The Legislature **did not** adjourn sine die during the seven consecutive days after Senate Bill 168 was presented to the Governor. The Legislature **did not** recess for more than thirty days during the seven consecutive days after Senate Bill 168 was presented to the Governor. The Governor had until June 21, 1983, to act on the bill. He did not act. Senate Bill 168 became law at one second after midnight of the seventh day. Atlantic Coastline Railroad Company v. Mallard, 58 Fla. 318, 43 So. 755 (1907).

The plain meaning of Section 8(a) is undisputable. The provisions of the Constitution are "imperative and mandatory" and must be obeyed. Amos v. Gunn, 94 So. 615, 618 (Fla. 1922). This court has made it clear:

> "that there are few evils, which can be inflicted by a strict adherence to the law, so great is [sic] that which is done by the habitual disregard, by any department of the government, of a plain requirement of that instrument from which it derives its authority, and which ought therefore to be scrupulously observed and obeyed."

Amos v. Gunn, Id., (quoting Cooley's Const. Lim. [(6 ed.)] 180). The essence of Petitioners' argument is that this Court should condone and perpetuate the evil of "habitual disregard".

The ophthalmologists have devised a clever way to create the appearance of ambiguity in Section 8(a), i.e., they restate the clause. Their manipulation of the phrase betrays the weakness of their position.

The restatement significantly changes the section's meaning; it is constitutional interpretation by insertion. Section 8(a) does not divide presentation into three categories. It does not say "in session" presentation. Section 8(a) establishes a general

principle. All bills presented to the Governor become law if the Governor signs them or if he fails to veto them within seven days of presentation. The occurence of two events during the seven days triggers an eight day extension of the period. Section 8(a) conditions extension of the period for action by the Governor upon events occurring after presentation. It says **nothing** about presentation while the legislature is in session.

The extent of rewriting worked by the ophthalmologists' "restatement" of Section 8(a) is demonstrated by conforming Section 8(a) to the restatement. Deleted language is striken through. Underlined language is inserted. Both are necessary to make Section 8(a) read as Petitioners would have it.

> Every bill passed by the legislature shall be presented to the governor for his approval. Those presented during the legislative session and more than seven days prior to adjournment sine die or a recess of more than thirty days shall become a law if he approves and sign them or fails to veto them within seven consecutive days after presentation. ~~If during that period or on the seventh day the legislature adjourns sine die or takes a recess of more than thirty days, he shall have fifteen consecutive days from the date of presentation to act on the bill.~~ Those bills presented during the legislative session but seven or less days prior to adjournment sine die or a recess of more than thirty days, or presented after adjournment sine die, shall become law if the governor approves and signs them or fails to veto them within fifteen consecutive days after presentation.

The ophthalmologists' restatement shifts the focus of the section by presenting Section 8(a) as conditioning extension of the veto period upon the Legislature's status when a bill is presented. Section 8(a) does not do so. Article III, Section 8(a) establishes **what** occurs after presentation, not **when** a bill is presented, as the trigger for the fifteen day veto period. There is no ambiguity.

The Governor and the Secretary further muddy the waters by speculating about ambiguity in the meaning of "a recess of more than thirty days". As they admit, a recess is not at issue here. Ambiguity, if any, in the meaning of thirty days has nothing to do with the fact that either triggering event must occur during the seven days following

presentation. The Governor and Secretary also overlook Article III, Section 3(e) which requires a concurrent resolution of both houses before either can recess for more than seventy-two consecutive hours. Thus, the Governor will know the length of the recess when it begins. This supposed ambiguity of Section 8(a) is nothing more than a red herring.

The Supreme Court of Colorado examined a similar clause in the Colorado Constitution and concluded that such a plain provision should be interpreted and enforced as written. Colorado's Constitution provided:

> If any bill shall not be returned by the governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly shall by their adjournment prevent its return, in which case it shall be filed with his objections in the office of the secretary of state, within thirty days after such adjournment, or else become a law.

In re Interrogatories of the Governor Regarding Certain Bills of Fifty-First General Assembly, 578 P. 2d 200, 202 (Col. 1978), (hereafter Interrogatories of the Governor); (quoting Article IV, § 11, Colo. Const.). The facts before the court were: (1) the bills were presented to the Governor; (2) the General Assembly by its adjournment prevented return of the bills within ten days; (3) the Governor disapproved of the bills within thirty days of the Assembly's adjournment and publicly announced his disapproval; and (4) the Governor filed the bills with his exceptions in the Office of the Secretary of State more than thirty days after adjournment. The court held that "[w]ithout the required filing of the bills and objections with the Secretary of State within the 30-day period following adjournment, the Governor's actions had no effect and the bills became law." Interrogatories of the Governor, 578 P. 2d at 202.

The Colorado governor, like Petitioners, argued substantial compliance, i.e., because the governor had publicly announced his veto the intent of the constitution was met. The

Colorado Governor, like Petitioners in this case, also relied on the fact that for twenty years governors had filed vetoed bills with the Secretary of State more than thirty days after adjournment. The court rejected his arguments emphasizing, as the district court did below, the plain meaning of the Constitution. The mandatory language of the Colorado Constitution, like Section 8(a), left "no room for the type of functional interpretation sought by the Governor." Interrogatories of the Governor, 578 P. 2d at 203.

The court also expressed well the fundamental reasons for adhering to the language of a constitution and resisting the lure of convenient interpretations.

> "Constitutional provisions are organic. They are adopted with the highest degree of solemnity. They are intended to remain unalterable except by the great body of the people, and are incapable of alteration without great trouble and expense. They are the framework of the state as a civil institution, giving cast and color to all its legislation, jurisprudence, institutions, and social and commercial life by confining the Legislature, the executive, and judiciary within prescribed limits. All the great potential, dominating, creative, destroying and guiding forces of the state are brought within their control so far as they apply. Thus, to the extent of their duration, they define and limit the policy of the state more rigidly and unalterably than the sails and rudder of the ship, when set govern and control its course. . . . We are aware of no decision authorizing the view that a constitutional clause, dealing with matters so high and vital in character as the executive power of veto, and the making of laws, and having form and terms so emphatic, is merely directory."
>
> We realize that at times constitutions must be interpreted in the light of changing times and circumstances, nevertheless, under the circumstances of this case, the views of Judge Poffenbarger are applicable. Our constitutional provision is perfectly plain and emphatic.

Interrogatories of Governor, 578 P. 2d 203, quoting Judge Poffenbarger's opinion in Capito v. Topping, 65 W. Va. 587, 64 S.E. 854 (1909).

This Court too has recognized the importance of enforcing the plain meaning of language.

> Where the words selected by the Legislature are clear and unambiguous, however, judicial interpretation is not appropriate to displace the expressed intent. Foley v. State, ex rel. Gordon, 50 So. 2d 179, 184 (Fla. 1951); Platt

> v. Lanier, 127 So. 2d 912, 913 (Fla. 2d DCA 1961). It is neither the function nor prerogative of the courts to speculate on constructions more or less reasonable, when the language itself conveys an unequivocal meaning.

Heredia v. Allstate Insurance Company, 358 So. 2d 1353, 1355 (Fla. 1978). The principle and conclusion expressed in Heredia govern this case. The words and meaning of Article III, Section 8(a) are plain. There is no reason to go further. They should be enforced as written.

There Is No Need To Go Beyond The Plain Meaning Of The Constitution

Petitioners acknowledge that when the Constitution's meaning is plain, there is no need for the Court to go beyond it. Their attempt to create ambiguity of whole cloth is an effort to skirt the principle. Despite their lip service to plain meaning, Petitioners advance four illegitimate and unsupported reasons for going beyond the Constitution's plain meaning to use extrinsic aids to construction. The reasons Petitioners advance are: (1) The framers of the Constitution did not contemplate or provide for presentation after adjournment; (2) Ruling that Article III, Section 8(a) means what it says will create chaos by imperiling fifteen years of untimely vetoes; (3) The governor is incapable of acting on all bills presented after adjournment within seven days of presentation; (4) Allowing the governor seven days to act on bills presented after adjournment is illogical. These reasons do not justify ignoring the plain meaning of the Constitution.

The Framers Contemplated Presentation After Adjournment

The foregoing discussion about plain meaning demonstrates that the framers did provide for presentation after adjournment. They allowed the Governor seven days after presentation during which he could veto a bill presented after adjournment. Petitioners confuse their desire for a third exception (for bills presented after adjournment) with the fact that the Constitution provides for only two exceptions. Petitioners ask this court to

fashion some constitutional common law to deal with a supposedly unforeseen situation.

Presentation after adjournment was not, however, unforeseen. Article III, Section 7 of the Florida Constitution expressly provides that bills may be signed by legislative officers and functionaries "during the session or as soon as practicable after its adjournment sine die." This was a change from the 1885 Constitution. Article III, § 17, Fla. Const. (1885, as amended). Article III, Section 7 of the Constitution also provides that bills which have passed the legislature must be signed by legislative officers before they are presented to the governor. These changes in the Constitution demonstrate that the framers clearly knew adjournment could precede presentation. If the framers had thought adjournment prior to presentation should be included as an exception to the seven day rule, the framers would have said so as plainly as they said that adjournment on the seventh day **after** presentation triggers the fifteen day period. They did not.

Chaos Is Not Imminent

In an attempt to create a sufficiently frightening parade of horribles, Petitioners claim a great number of vetoes will be imperiled by applying the Constitution as written. An unpleasant result is no reason to ignore the words of the Constitution. Reino v. State, 352 So. 2d 853 (Fla. 1977). Applying the statute of limitations to murder prosecutions where the exception for capital crimes could not be applied to a murder committed during the post-Furman death penalty hiatus, this Court said:

> [I]t must be remembered that without law there can be no order. The law must be applied evenhandedly to all lest we run the risk of selective prosecutions. Our government would then become one of men rather than laws.

Id. at 861.

The monster is also mythical. Fifteen years of untimely vetoes are not in danger. Every two years the Legislature re-adopts the statutes as law and repeals all laws not

included in the statutes. The Legislature did so in 1983 with Chapter 83-61, Laws of Florida (1983). Consequently the only vetoes which may be affected are the untimely vetoes, if any, of 1982, 1983, and 1984.

Furthermore, Petitioners themselves offer a solution to the specter of past untimely vetoes. The Court could make the ruling prospective, applying it to this cause and to future vetoes.

The Governor Is Capable Of Doing His Job

Petitioners emphasize the number of bills presented after adjournment since 1974. This leads them to conclude that the Governor cannot do his job in the seven days the Constitution allows. Again, this is no reason to ignore the Constitution. It is also a proposition unsupported in the record or by the trial court's findings of fact. Significantly, the Governor has managed to exercise his veto within seven days while this case has been pending. The following chart shows the date of presentation, date of veto, and elapsed time for every bill passed by the 1984 Legislature, presented to the governor after adjournment sine die, and vetoed by the governor.

1984 BILLS PRESENTED AFTER ADJOURNMENT WHICH WERE VETOED

BILL NO.	DATE PRESENTED	DATE OF VETO	ELAPSED TIME	SOURCE
House Bill 344	6/7/84	6/14/84	7 days	Journal of House of Representatives, June 1, 1984, p. 1293; Journal of House of Representatives, December 6, 1984, p. 5
House Bill 382	6/7/84	6/14/84	7 days	Journal of House of Representatives, June 1, 1984, p. 1293; Journal of House of Representatives, December 6, 1984, p. 6

House Bill 475	6/7/84	6/14/84	7 days	Journal of House of Representatives, June 1, 1984, p. 1293; Journal of House of Representatives, December 6, 1984, p. 7
House Bill 953	6/7/84	6/14/84	7 days	Journal of House of Representatives, June 1, 1984, p. 1293; Journal of House of Representatives, December 6, 1984, p. 8
House Bill 1012	6/7/84	6/14/84	7 days	Journal of House of Representatives, June 1, 1984, p. 1293; Journal of House of Representatives, December 6, 1984, p. 9
House Bill 1300	6/7/84	6/14/84	7 days	Journal of House of Representatives, June 1, 1984, p. 1293; Journal of House of Representatives, December 6, 1984, p. 11.
Committee Substitute for House Bill 431	6/7/84	6/22/84	15 days	Journal of House of Representatives, June 1, 1984, p. 1293; Journal of House of Representatives, December 6, 1984, p. 6
Committee Substitute for Senate Bill 210	6/8/84	6/14/84	6 days	Journal of the Senate, June 18, 1984, p. 973; Journal of the Senate, December 6, 1984, p. 10
Committee Substitute for Senate Bill 504	6/8/84	6/14/84	6 days	Journal of the Senate, June 18, 1984, p. 973; Journal of the Senate, December 6, 1984, p. 10
Committee Substitute Senate Bill 106	6/14/84	6/20/84	6 days	Journal of the Senate, June 18, 1984, p. 973; Journal of the Senate, December 6, 1984, p. 8

Committee Substitute Senate Bill 341	6/14/84	6/20/84	6 days	Journal of the Senate, June 18, 1984, p. 973; Journal of the Senate, December 6, 1984, p. 11
House Bill 18	6/14/84	6/21/84	7 days	Journal of House of Representatives, June 1, 1984, p. 1293; Journal of House of Representatives, December 6, 1984, p. 5
House Bill 1302	6/14/84	6/14/84	0 days	Journal of House of Representatives, June 1, 1984, p. 1293; Journal of House of Representatives, December 6, 1984, p. 9; Journal of the Senate, December 6, 1984, p. 12
Committee Substitute Senate Bill 192	6/18/84	6/25/84	7 days	Journal of the Senate, June 18, 1984, p. 973; Journal of the Senate, December 6, 1984, p. 9

The Journals of the Senate and the House of Representatives thus show the Governor is capable of doing his job in compliance with the Constitution. The Governor vetoed every bill but one within seven days.

The argument that the Governor cannot do his job is apparently an attempt to invoke the principle that constitutions should not be interpreted to provide absurd results. That principle, like others, does not come into effect unless the plain meaning of a provision is ambiguous. Here the plain meaning is not ambiguous.

Furthermore the result described by the Petitioners is not absurd. It is not absurd that a Governor and his staff would have to work hard. Establishing the appropriate veto period was a decision for the electorate, and the electorate chose seven days.

Allowing The Governor Seven Days Is Not Illogical

Petitioners say to apply the plain meaning of the Constitution would be illogical. The Constitution sets limits upon the veto power of the Governor. That is not illogical. Petitioners note that the Governor would have fifteen days to act on a bill presented six days before the session's end, and seven days to act on a bill presented one day after the session's end. The result would be that the bill presented before the session's end could properly be vetoed one day after the second bill. The statement is true but irrelevant. It is the "argument of the beard," a logical fallacy.

There will always be a point, under any interpretation, at which Section 8(a) would allow the Governor more time or less depending upon which side of that point presentation occurred. Even under Petitioners' interpretation, the Governor gets seven days to act on a bill presented eight days before adjournment and fifteen days to act on a bill presented seven days before adjournment. Does something magical occur in that twenty-four hours? Do the Governor's abilities or work load change? No. A limit has simply expired.

As Petitioners point out, the Governor does not even know with certainty when the Legislature will adjourn. But he does know he will always have seven days. If that period was deemed sufficient in the final hectic eight days of the session, surely it is sufficient when the session is definitely ended, the Governor's lobbying duties have ended, and the Governor has to consider only those bills which have passed. In all events the Constitution assures the Governor seven days. Petitioners' true quarrel is with the idea of a limit, not with the court's interpretation. Rather than accept the Constitution's seven day limitation, Petitioners would like to interpret the Constitution as allowing the Governor what Petitioners consider to be a "reasonable" period of time in which to act. Their desire does not render the Constitution's seven day limit illogical.

The Canons of Construction Support the Plain Meaning

Since the meaning of Article III, Section 8(a) is plain, there is no need to consider the canons of construction and extrinsic aids. Nonetheless, properly applied they support Section 8(a)'s plain meaning.

Applying the canons of construction demonstrates that Article III, Section 8(a) means what it says. The constitutional history of Florida's veto provision further supports the plain meaning. So does the history of the present wording of Article III, Section 8(a). The constitutional balance between executive and legislative authority in Florida lends additional credence to the district court's construction. Petitioners rely on one particularly weak reed, the legal opinion of three governors. No meritorious argument favors their position.

Expressio Unius Est Exclusio Alterius

The canon of construction, "expressio unius est exclusio alterius,"[2]/ supports the conclusion that the seven day period applies when adjournment precedes presentation. That rule states that express mention of exceptions means there are no other exceptions.

> [T]he purpose of a proviso is not to enlarge or extend the act or section of the Constitution of which it is a part, but is a limitation on the language

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2/ Expressio unius est exclusio alterius applies to interpretation of Florida's Constitution. Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433, 434 (Fla. 1973); See also, Mugge v. Warnell Lumber and Veneer Co., 58 Fla. 318, 321, 50 So. 645, 646 (1909) ("The rules used in construing statutes are in general applicable in construing constitutions.") The ophthalmologists state "[i]t is untenable and unsupportable to suggest that a 'general rule' or 'exceptions to the rule' were intended at any stage of the drafting process." FSO at 16. The statement is accompanied by a notable absence of citations to supporting authority. See, Weinberger v. Board of Public Instruction of St. Johns County, 93 Fla. 470, 112 So. 253, 256 (1927) ("The principle is well established that where the Constitution expressly provides the manner of doing anything, it impliedly forbids it being done in a substantially different manner.)

employed therein, and will be construed strictly and limited to the objects fairly within its terms.

In re Advisory Opinion to the Governor, Request of February 25, 1975 (Sarasota County Tax Collector), 313 So. 2d 717, 721 (Fla. 1975).

Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433 (Fla. 1973) provides clear guidance for applying the canon to Section 8(a). Interlachen Lake Estates applied expressio unius est exclusio alterius to Article VII, Section 4, a similarly structured constitutional provision with a construction similar to Article III, Section 8(a). The case exemplifies the correct interpretation of Section 8(a). Article VII, Section 4 required that all property be justly valued for taxation, except (1) agricultural land and exclusively non-commercial property; and (2) personal property held as stock in trade and livestock. The court held that these two exceptions clearly imply "no separate standards for valuation may be established for any other classes of property." Id. at 434. Consequently a statute valuing platted land as unplatted until sixty percent of one plat was sold as individual lots was unconstitutional because the nature of the property did not fulfill either exception. Id.

Article III, Section 8(a), like Article VII, Section 4, establishes a general rule and two exceptions. As in Interlachen Lakes Estates, specific mention of only two exceptions (adjournment sine die, or a recess of more than thirty days, during the first seven days after presentation) means there are no other exceptions. Since neither exception applies in this case, the seven day veto period of the general rule must be enforced.

The Constitution As A Whole

Constitutions must be construed to harmoniously implement the entire document. Smathers v. Smith, 388 So. 2d 825, 827 (Fla. 1976); Askew v. Game and Fresh Water Fish Commission, 336 So. 2d 556, 560 (Fla. 1976). Interpreting Article III, Section 8(a), to allow the governor fifteen days, rather than seven, to act on bills when the legislature

adjourns sine die prior to presentation creates illogical results and internal inconsistencies. "[O]r on the seventh day" is precise language. It indicates intent to resolve ambiguity. The framers anticipated adjournment prior to presentation and provided for it in the Constitution. Bills that have passed the legislature must be signed by legislative officers before they are presented to the governor, Art. III, § 7, Fla. Const. (1968). Article III, Section 7 expressly provides that enrolled bills may be signed by legislative officers and functionaries "during the session or as soon as practicable after its adjournment sine die."

Constitutions should be construed to give every word meaning. In re Advisory Opinion to the Governor, Request of June 29, 1979, 374 So. 2d 959, 964 (Fla. 1979). An interpretation which would give meaning to one section should not be adopted if it renders another section meaningless. Section 8(a) is carefully worded. The framers were precise. The phrase "if during that period" prefacing the exceptions to the seven day rule cannot rationally be construed to mean "if before or during that period." That construction would make the word "during" meaningless.

Silence Speaks

Silence on a subject indicates the intent not to treat it specially. See Williams v. Smith, 360 So. 3d 417, 420 (Fla. 1978); S&J Transportation, Inc. v. Gordon, 176 So. 2d 69, 72 (Fla. 1965). Article III, Section 8(a) does not create an exception for adjournment **prior** to presentation. Section 8(a) creates an exception for adjournment on the seventh day **after** presentation. Since the framers did not specially treat adjournment prior to presentation as an exception, and were aware adjournment could occur prior to presentation, the framers must have intended for the general rule to apply.

The History of the Veto Provision

The history of Florida's veto provision shows the seven day period should apply when adjournment precedes presentation. Historically the constitution has increasingly limited the governor's veto power. These limitations on the governor's veto power ensure certainty, prompt gubernatorial decision, and a fair opportunity for legislative review of gubernatorial action. In this case, the seven day veto period best serves those goals.

Florida's present constitution limits the governor's veto power more than did earlier constitutions. The 1838 Constitution authorized a "pocket veto" by the governor.[3/] A pocket veto permits a governor to effectively veto a bill by taking no action on it, if the legislature adjourns during the allotted veto period. The pocket veto protects the governor against the legislature shortening by adjournment his veto opportunity, and removes the legislature's opportunity to override the veto if it adjourns during the veto period. Kennedy v. Sampson, 511 F. 2d 430, 434, n. 13 (D.C. Cir. 1974).

The 1868 Constitution abolished the pocket veto. Art. III, § 28, Fla. Const. (1868). The governor was required to take action to veto a bill and to file all bills vetoed after adjournment with the Secretary of State, to be laid before the legislature at its next session. Id. This change guaranteed the legislature an opportunity to override any veto, thereby weakening the governor's veto power. The 1868 Constitution merely provided the governor a definite period during which he could veto a bill, even if the legislature adjourned.

The 1885 Constitution carried this provision forward. In 1954, the longer veto period was increased from ten to twenty days after adjournment. Art. III, § 28, Fla. Const.

3/ The pocket veto provision of the 1838 Constitution is similar to Article 1, Section 7 of the United States Constitution.

(1885, as amended).

Changes in the constitutional veto provision prior to 1968 reveal a definite shift in lawmaking power away from the executive branch and toward the legislature. The governor's veto opportunity has been increasingly restricted and defined. The legislature's ability to override a veto has been correspondingly broadened and protected. This shift in the constitutional balance of powers is significant. It clearly indicates movement toward a more powerful legislative branch.

Development of the 1968 Constitution

In 1967, a Constitutional Revision Commission developed and proposed a draft of a new state constitution. Proposed Revised Constitution of Florida, November 10, 1966, as amended November 28, 1966 to December 16, 1966; Fla. St. Archives, Series No. 727, Box No. 1, Folder No. 4 ("Commission Draft"). The Commission Draft provided a working proposal for the 1967 special constitutional revision session of the legislature. Sen. J. Res. 1-x(67), Sen. Journal, January 9, 1967, p. 5; House J. Res. 4-x(67), Journal of House of Rep., January 9, 1967, p. 4. The history of Article III, Section 8(a) during the 1967 Revision Commission proceedings and in subsequent legislative action also demonstrates that the seven day period should apply when adjournment precedes presentation of a bill. The Commission Draft further reinforced the legislature's constitutional authority to consider and override a veto at the earliest available opportunity.

Two attorney general opinions issued before 1967 questioned the legislature's authority to consider vetoed bills passed during a regular session at a subsequent special session. 1961 Op. Att'y Gen. Fla. 061-97 (June 16, 1961); 1967 Op. Att'y Gen. Fla., 067-55 (August 17, 1967). The Commission Draft resolved any uncertainty as to the legislature's veto override authority during special sessions by expressly requiring the Secretary of State to lay vetoed bills before the originating house "at its next regular or

special session." Commission Draft, Art. III, § 8(b). This provision was adopted and appears in the current constitution. Art. III, § 8(b), Fla. Const. (1968). The changes resolved in the legislature's favor all uncertainty about the legislature's right to override a veto.

Article III, Section 8(a) identifies two events during the seven days following presentation, (1) adjournment sine die or (2) a recess of more than thirty days, which trigger an eight day extension of the veto period. That structure was not contained in the 1967 Commission Draft. The Commission Draft carried forward the language of the 1885 Constitution. The Legislature considered and modified the Commission Draft. House Amendment 744 and Senate Amendments 86 and 156 added the word "consecutive" before the number of days, shortened the longer veto period to fifteen days, and changed the starting point for the longer period from "adjournment" to "presentation." Fla. St. Archives, Series No. 727, Box 3, Folder 9; Fla. St. Archives, Series No. 727, Box 1, Folder 12, Sen. Journal, August 10, 1967, p. 60; Fla. St. Archives, Series No. 727, Box 1, Folder 12, Sen. Journal, August 11, 1967, p. 65. The amendments shortened and made more definite the period for gubernatorial action on bills. The maximum time allowed for the governor's consideration of a bill decreased from twenty-six days to fifteen, a 42% reduction.

The 1968 change in the trigger which activates the longer veto period demonstrates the framers' goal of certainty. The 1885 Constitution allowed the governor twenty days to act on a bill if the legislature, by adjourning during the usual five day veto period, "prevented its return." The twenty days ran from the date of adjournment. Art. III, § 28, Fla. Const. (1885, as amended in 1954). Thus, if a bill was presented to the governor four days prior to adjournment, the governor had twenty-four days in which to act on the bill.

In contrast, the 1968 Constitution provides a specific starting point for the

governor's veto period (date of presentation) that is not affected by legislative adjournment. The 1968 Constitution also establishes a general rule (seven days) for gubernatorial action, with two very narrow exceptions. These changes from the 1885 Constitution reflect the framers' intention that the veto period be shorter and more definite.

A change in a constitutional provision demonstrates an intent. That intent should be implemented. Swartz v. State, 316 So. 2d 618 (Fla. 1st DCA 1975), cert. denied, 333 So. 2d 464 (Fla. 1976). The changes of 1868 and 1968 demonstrated the framers' intent to limit exercise of the governor's veto power and to facilitate legislative review of vetoed bills at the earliest opportunity. Interpreting Article III, Section 8(a) to require gubernatorial action on a bill within seven days of presentation, when adjournment precedes presentation, furthers the framers' intent.

The only recorded contemporary observation about the 1967 amendments to Article III, Section 8(a), reinforces the finding that the framers' primary purpose in amending Section 8(a) was to shorten and make more definite the time during which the Governor is required to act. During the House debate on House Amendment 744, (adding the word "consecutive") representative Land, the amendment's sponsor, said the purpose of the change was to provide a definite time after which legislators could accurately respond to their constituents' inquiries as to whether particular measures had become law. Fla. Legislature Const. Rev. Proceedings, September 1, 1967, Fla. St. Archives, Series No. 727, Box No. 13, Tape No. 3. Representative Land's concern was to shorten and clarify the veto period, not promote the Governor's convenience.

Representative Land's remarks reflect the historical purposes and effects of veto provisions. A veto provision has three purposes: (1) to give the chief executive a suitable opportunity to consider bills presented to him; (2) to give the legislative branch

an opportunity to consider the Governor's objections to bills and override the veto; and (3) to quickly inform the electorate of the session's results. Edwards v. United States, 286 U.S. 482, 486, 52 S. Ct. 627, 628, 76 L. Ed. 1239, 1240 (1932).4/ All three purposes are best served by applying the plain meaning of Section 8(a).

Florida's Constitutional Tradition: A Strong Legislature

Allowing the governor only seven days to act on a bill when adjournment precedes presentation furthers Florida's constitutional theme of a strong legislature and weaker Governor.5/ Article III, Section 8(a) is only one of many sections implementing Florida's tradition of a strong legislature.6/ Such pervasive values "merit special deference and protection." Thomson, Principles and Theories of Constitutional Interpretation and Adjudication: Some Preliminary Notes, 13 Melbourne University Law Review 597, 607 (1982). The governor's veto is a restriction on the legislature's authority. Brown v.

4/ Rulings of the United States Supreme Court on constitutional language similar to Florida's are helpful, persuasive, and entitled to great weight. Pomponio v. The Claridge of Pompano Condominium, Inc., 378 So. 2d 774, 779 (Fla. 1979).

5/ This is an acknowledged purpose of Florida's Constitution. McCullon, I., The Florida Cabinet System — A Critical Analysis, 43 Fla. B.J. 156 (1969).

6/ Other constitutional provisions indicative of a strong legislature and weaker governor include:
(a) Diffused executive authority through an elected cabinet. Art. IV, § 4, Fla. Const.
(b) Limitation on number of governor's executive departments. Art. IV, § 6, Fla. Const.
(c) Legislature's authority to override vetos at "next regular or special session." Art. III, § 8(b), Fla. Const.
(d) Legislative review of governor's suspensions of state officers. Art. IV, § 7(b), Fla. Const.
(e) Legislative approval of governor's executive appointments. Art. IV, § 6(a), Fla. Const.
(f) Legislature's power to convene itself in extended or special sessions. Art. III, §§ 3(c)(2) and (d), Fla. Const.

Firestone, 382 So. 2d 654 (Fla. 1980). Veto provisions derogate separation of powers and "therefore, must be strictly construed." Hendricks v. State of Indiana, ex. rel. Northwest Indiana Crime Commission, Inc., 196 N.E. 2d 66, 70 (Ind. 1964). See also, Kennedy v. Sampson, 511 F. 2d 430, 435, 438 (D.C. Cir. 1974). Florida's tradition of a strong legislature invokes a narrow construction of the governor's veto powers. If there were any doubt, Florida's constitutional goal of a strong legislature mandates applying the shorter period.

Petitioners' Aids To Construction

Petitioners ignore the history of the Constitution and the canons of construction. Instead they rely upon imaginary constructions of Section 8(a) by this Court and the Legislature, and upon the legal opinions of three governors.

Prior Supreme Court and Legislative Interpretations

The ophthalmologists' argue that "the Legislature... [has] been interpreting Section 8(a) for years to mean that the Governor has fifteen days to veto bills presented to him after adjournment sine die." FSO at 8; See also, FSO at 11. The statement is inaccurate. The ophthalmologists cite no act or resolution of the Legislature reflecting any interpretation of Section 8(a). They refer only to a prefatory statement in argument of counsel in a brief in In re: Advisory Opinion to the Governor — Request of June 29, 1979, 374 So. 2d 959 (Fla. 1979). In addition to being only argument of counsel and not an act of the Legislature, the brief was not addressing the proper interpretation of Section 8(a). It was addressing whether the effective date specified in a bill or the general date of effectiveness provided in Article III, Section 9 of the Florida Constitution determined the effective date of a law.

In re: Advisory Opinion to the Governor, Request of June 29, 1979, is also the basis for Petitioners' claim that this Court has previously held that Article III, Section 8(a)

allows a governor fifteen days to veto bills presented after adjournment. The district court correctly noted that the meaning of Section 8(a) was not at issue or ruled upon in that case. It also correctly noted that advisory opinions are not precedent.

Advisory opinions are not precedent because they are not the product of the adversarial process. Petition of Kilgore, 65 So. 2d 30, 31 (Fla. 1953) (Response of Terrell, J.) That failing was pointed out by Justices England and Sundberg in their responses declining the governor's request in In re Advisory Opinion to the Governor, Request of June 29, 1979, 374 So. 2d 959 (Fla. 1979). Advisory opinions are also not precedent because they are opinions of the justices, not of the court.

As Justice Buford observed:

> In complying with such requests for advisory opinions, the Justices do not act as a judicial body but as individual judicial officers. The advice so given to the Governor is not binding on the Governor but is only advisory. Such advices are not binding on the Court so as to be controlling in litigated cases.

In re Advisory Opinion to the Governor, 9 So. 2d 172, 177 (Fla. 1942) (response of Buford J.).

The absence of adversarial presentation shows in the opinion and case record in In re Advisory Opinion to the Governor, Request of June 29, 1979. The governor's request assumed he had fifteen days. The length of the veto perid was not at issue. One issue was the Legislature's authority to create judgeships other than those the Supreme Court recommended. Another issue was whether the bill took effect upon the date which it specified, which preceded the date all parties assumed was the date upon which the bill became law, or sixty days after adjournment as provided in Article III, Section 9 of the Florida Constitution. The interested parties did not examine the veto period. Consequently the Governor's claim to the fifteen day veto period was accepted without examination. The length of the veto period was of no concern to the Governor or any

other participant. More importantly it was not an issue addressed by this Court. This Court has never ruled upon the meaning of Article III, Section 8(a).

The Governors' Interpretations

Petitioners' main legal argument can be stated in two sentences. For fifteen years governors have interpreted Article III, Section 8(a) to allow them fifteen days to veto bills presented after adjournment. The Florida Supreme Court should bow to their legal judgment. The argument is more accurately stated: Claude Kirk, Reubin Askew, and Bob Graham have interpreted Article III, Section 8(a) to allow them as much time as possible to decide whether they will veto a bill.

The legal opinions of previous governors have little weight. The affidavits submitted below and the "testimonial briefs" submitted to this court are irrelevant. Security Feed and Seed Co. v. Lee, 138 Fla. 592, 189 So. 869 (1939); McLellan v. State Farm Mutual Automobile Insurance Co., 366 So. 2d 811 (Fla. 4th DCA 1979).

Petitioners' argument creates the impression that it is the Governor, not the courts of this state, which the Constitution vests with the duty and authority to construe the Constitution. It is not. The judicial power rests exclusively in the courts. Art. V, § 1, Fla. Const.; Art. V, § 3(b)(3), Fla. Const.

Any consideration of the Governor's interpretation stems from application of the principle of statutory construction that administrative interpretations of statutes by officers charged with interpreting them should receive certain consideration. There are a number of reasons for the principle; none apply here. These reasons are: (1) the administrative officer may have some expertise; (2) the officer has a duty to interpret the statute; and (3) The officer is acting in a quasi-judicial role. Bill Frey, Inc. v. State ex rel. Taylor, 173 So. 812 (Fla. 1937).

Here the Governor has no expertise in constitutional interpretation. That is the Court's realm. Similarly the Constitution does not assign the duty of constitutional interpretation to the Governor.

The governors' interpretation may be considered. But it must be evaluated for its weight, rationality, and credibility. The interpretation of the former governors lack all three.

Petitioners say, citing State v. Kaufman, 430 So. 2d 904 (Fla. 1983), that the Governor's interpretation of the Constitution is presumptively correct. That is not what Kaufman held. Kaufman involved the Legislature's interpretation of "title" in a procedural provision requiring that a bill's title be read three times. It had nothing to do with an interpretation by the Governor. It also involved, as the court ruled, the word "title", which is susceptible of several meanings. No such ambiguous word is at issue here.

The opinion in Interrogatories of the Governor exemplifies the difference between Kaufman and this case. A second issue in the case was whether bills had been properly voted upon under a constitutional requirement that votes be taken by ayes and noes upon final passage. The Colorado legislature had the practice of adopting previous roll call votes. It was challenged. The Colorado Supreme Court held that the practice met the constitutional requirement. It noted that the "ayes and noes" requirement was inherently ambiguous, and deferred to the longstanding legislative interpretation of a procedural provision, as this Court did in Kaufman. The Colorado court emphasized that the requirement of filing with the Secretary was specific, like the veto period in this case, and could not be abandoned in favor of existing practice.

Finally, the Governor is not an impartial interpreter of Section 8(a). He has a vested interest in interpreting it to allow more time. "[H]is rulings are not made in adversary

proceedings and are not entitled to the weight which is accorded interpretations by administrative agencies entrusted with the responsibility of making inter partes decisions." Fishgold v. Sullivan Drydock and Repair Corp., 328 U.S. 275, 290, 90 L. Ed. 1230, 1243, (1946). Most important, there is no need to turn to the Governor's interpretation of a constitutional provision which is plain.

The Governors who have interpreted Section 8(a) have simply applied the procedures of the 1885 Constitution, under which the longer period always applied if the Legislature was adjourned. They have overlooked or ignored the 1968 changes and have continued to take the longer period whenever the Legislature was adjourned (R - 111-125). Conveniently, their actions also arrogated to the governors the longest conceivable period of time. "[C]onsistent practice cannot create or destroy an executive power." Kennedy v. Sampson, 511 F. 2d 430, 441 (D.C. Cir. 1974). The Governor cannot, by "consistent practice," extend executive power that is expressly limited by the Constitution. The extending of executive power is exactly what three governors have done with their interpretation of the veto period. For fifteen years governors have managed to misinterpret or ignore the Constitution. That is no reason to continue the practice.

The governors' practice is not one which the Legislature has approved by legislation. This is far different from Amos v. Moseley, 77 So. 619 (Fla. 1917) where the legislature had indicated its interpretation of a constitutional provision by enacting laws which necessarily presumed a specific meaning for the provision. And, as Amos v. Moseley points out, repetition of an error cannot make it right.

The Intent Of The Framers Is Served By The Plain Meaning

Petitioners argue that the intent of the framers would be frustrated by applying the plain meaning of Article III, Section 8(a). They claim the intent was to allow the

Governor more time if the legislature is not around. They divine this intent from Article III, Section 8(a), the purposes of veto provisions, and the number of bills presented after adjournment since 1974. Article III, Section 8(a) does not support Petitioners' intent. If allowing the Governor more time when the Legislature is not in session were the goal, a recess shorter than thirty days would have been chosen to trigger the extension of the veto period.

Nor are Petitioners supported by the purposes of a veto provision. Petitioners emphasize two purposes of a veto provision: (1) giving the chief executive a suitable opportunity to consider bills, and (2) providing the legislative branch a chance to override the veto. They ignore the third purpose of a veto, viz, informing the electorate of the session's results. All of the purposes must be considered when interpreting the Constitution. The purpose of the specific time limit in the Florida Constitution "was to secure promptness of action on his [the Governor's] part." State v. Deal, 4 So. 899, 906 (1888). That was also the purpose of a specific time limit in the 1800's. That was the purpose in 1968 when Representative Land commented that the limits on a time period during which the Governor was required to act on a bill were to ensure that the electorate would quickly know what the Legislature had done. Fla. Legislature Const. Rev. Proceedings, September 1, 1967, Fla. St. Archives, Series No. 727, Box No. 133, Tape No. 3. That purpose remains. That purpose is best served by enforcing the seven day period for gubernatorial action which the Constitution imposes in the absence of one of two events, neither of which occurred in this case.

Events since 1974 do nothing to support Petitioners' interpretation. Article III, Section 8(a) was adopted in 1968. Post 1974 events had nothing to do with the framers' intentions.

The fact that a large number of bills are presented after adjournment supports interpreting Section 8(a) to allow the Governor only seven days in which to exercise his veto. Article III, Section 8(a) obviously contemplates a seven day period as the norm. The norm should govern most instances. If most bills are presented after adjournment, they of all bills should be governed by the seven day period.

PROSPECTIVE APPLICATION

Petitioners, recognizing the value of a fallback position, paradoxically argue that the interpretation adopted by the Court in this case should not be applied in this case. It should only be applied, they argue, in future litigation. Judicial decisions are ordinarily both retrospective and prospective. Florida Forest and Park Service v. Strickland, 18 So. 2d 251 (Fla. 1944); In Re Dillin, 557 F. Supp. 363 (S.D. Ga. 1983). Petitioners have advanced no reasons at all why the ruling in this case should not be applied in this case.

Three factors must be established before a court may deviate from retrospective application of its decision in a civil case. They are: (1) The decision must establish a new principle of law by overruling clear past precedent or making an unforeseeable decision in a case of first impression; (2) The history, purpose, and effect of the rule of law involved must be examined to determine whether retrospective operation will further or retard its operation; and (3) A retrospective application must generate substantial inequity. Chevron Oil Co. v. Huson, 404 U.S. 97, 92 S. Ct. 349, 30 L. Ed. 2d 296 (1971); Florida Forest and Park Service v. Strickland, 18 So. 2d 251 (Fla. 1944). All three factors must be established in order for a decision to apply only prospectively. International Studio Apartment Association, Inc. v. Lockwood, 421 So. 2d 1119 (Fla. 4th DCA 1982), cert. denied, 430 So. 2d 451 (Fla. 1983), cert. denied, 104 S. Ct. 244 (1983). Not one of the three factors for prospective application has been established here.

Petitioners rest their argument for prospective application on two unfounded assumptions. First, they assume the decision in this case would overrule clear past precedent or establish an unpredictable interpretation of the Constitution. There is no prior court opinion deciding the issue before this Court. The conclusion of the district court was not unpredictable. It follows simply from the words of the Constitution. With no clear past precedent, the first factor is not established. See, Smith v. Dean, 554 F. Supp. 29 (N.D. Tex. 1982).

The inequity Petitioners advance is their claim that the law would be thrown into chaos, and fifteen years of vetoes would be imperiled. As previously pointed out, this fear is groundless. Every two years the Legislature re-adopts the statutes as law and repeals all laws not included in the statutes. See, e.g. Chapter 83-61, Laws of Florida (1983). Consequently the only vetoes which may be affected are the other untimely vetoes, if any, of 1982, 1983, and 1984.

Furthermore, for inequity to support prospective application of a ruling the danger must be proven, not only hypothesized. In re Dillin, 557 F. Supp. 363 (S.D. Ga. 1983) (noting that a statute of limitations blocked most of the presumed flood of lawsuits). See e.g., Benyard v. Wainwright, 322 So. 2d 473 (Fla. 1975) (noting numerous suits already filed in hopes of retrospective application.)

Petitioners also neglect the third factor, whether retrospective application will further or retard the effect of the rule of law. The importance of retrospective application is most graphically demonstrated by considering the message to the executive branch conveyed by a strictly prospective application. The message is: Interpret the plain words of our Constitution as you please. The courts may advise you that you have erred. The courts may require you to obey the Constitution in the future. But until you are caught, you may do as you please without fear that your unconstitutional actions will

be overturned.

Stating the proposition establishes it as intolerable. It eviscerates the Constitution. Our governing document becomes a toothless watchdog of the people's rights, an unarmed guard on the government's power.

Even when courts apply rulings prospectively, the rulings have effect in the cases in which they are made. If the Court does not apply its ruling in this case to the parties before it, the Court will be doing nothing more than rendering an advisory opinion. To do so would be grossly inequitable to the party with the good sense and perserverance to litigate an issue. 1616 Reminic Limited Partnership v. Atchison & Keller Co., 704 F. 2d 1313 (4th Cir. 1983).

Every case relied upon by Petitioners involved whether a ruling would be applied retrospectively in cases following a decision, not in the case in which the decision was made. Two of Florida's most far-reaching decisions were applied to the cases in which they were issued. The rulings in Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973) (establishing comparative negligence) and West v. Caterpillar Tractor Co., Inc., 336 So. 2d 80 (Fla. 1976) (establishing strict liability) applied to those cases and to all cases pending at any level in which the issue had been properly preserved. Linder v. Combustion Engineering, Inc., 342 So. 2d 474 (Fla. 1977).

Franklin v. State, 257 So. 2d 21 (Fla. 1971) illustrates how rulings are prospectively applied. Franklin declared Section 800.01, Florida Statutes, prohibiting the abominable and detestable crime against nature, unconstitutional. The ruling was prospective only. But this Court reversed Franklin's conviction for violation of Section 800.001. Regardless of whether the Court applies its ruling to other parties and other cases, it should apply to the case and to the parties before the court.

Petitioners have not advanced any reason for not applying this Court's ruling in this case. The dissent inspiring their argument was advocating prospective application for cases to follow, not the case then at bar. In re Interrogatories of the Governor Regarding Certain Bills of Fifty-First General Assembly, 578 P. 2d 200 (Col. 1978). The argument for prospective application is unfounded. The argument that this Court's ruling should not apply to the very case in which it is issued is unsupported by law and reason. Respondents take no position upon whether the ruling should be prospective for any other law or any other party. This Court may or may not wish to rule on an issue which does not come before it in an adversarial posture.

MANDAMUS IS THE APPROPRIATE REMEDY

Although the trial court's jurisdiction was not a question certified to this Court, Petitioners raise it. The district court correctly held that the trial court had jurisdiction.

Mandamus is the appropriate remedy. The Florida Supreme Court ruled unequivocally in Brown v. Firestone, 382 So. 2d 654 (Fla. 1980), Division of Bond Finance v. Smathers, 337 So. 2d 805 (Fla. 1976), and Dickinson v. Stone, 251 So. 2d 268 (Fla. 1971), that the Secretary of State's duty to publish validly enacted and only validly enacted laws of the State of Florida is ministerial. In Dickinson and Division of Bond Finance, the Supreme Court issued writs of mandamus directing the Secretary of State to expunge from the laws of Florida language which the Court had determined was not validly enacted. In Brown, the Court ordered the Secretary to record as the law of Florida items and provisions which the Governor improperly vetoed. In each case there was no question about whether the Secretary's duty was ministerial. In each case the Court commanded the Secretary of State to perform his duty. There was no fussing about whether the Secretary of State was making a ministerial or a discretionary decision when he published a law. The issue was the validity of the law.

Petitioners are confusing the Supreme Court's discretion with the Secretary's duty. The statements in Brown about the Court's reluctance to entertain a petition for writ of mandamus, are about whether the Florida Supreme Court would choose to exercise its discretion and consider an original petition for writ of mandamus. The issue of whether to exercise discretion does not even arise until the preliminary matters of the existence of a ministerial duty and the absence of an adequate legal remedy have been resolved favorably for the petitioner.

The Supreme Court prefers that the constitutionality of a statute be determined first by a trial court. Dickinson v. Stone, 251 So. 2d 268 (Fla. 1971). The trial court is where this case began. It has followed the normal appellate progression and is before this Court now by Petitioners' action. The parties had the opportunity in the trial court to present evidence, and they did so. Petitioners presented evidence which included affidavits of governors and lawyers, and summaries of documents. The trial court received all evidence submitted by the Petitioners. Even then, the pertinent facts were not disputed. (R-68, 69, 86, 87, 88, 90, 126). The only pertinent facts are the date Senate Bill 168 was presented to the Governor, the date the Legislature adjourned sine die, and the date the Governor acted on the bill. The proceeding below was a trial court proceeding with a full opportunity for a factual presentation before a circuit judge.

This Court has authoritatively ruled that in Florida a writ of mandamus is the appropriate way to compel the Secretary of State to publish an improperly vetoed bill as the law. Brown v. Firestone. If the law of Mississippi, so highly touted by Petitioners, were different, it would be irrelevant. But the law of Mississippi is not different. Petitioners erroneously characterize the decision in Ladner v. Deposit Guaranty National Bank, 290 So. 2d 263 (Miss. 1973). That case held that the Secretary of the Mississippi State Senate was making a discretionary decision when he chose to deliver to the Senate a bill returned by the Governor with a veto message. The court so ruled under the circumstances of the case. The "facts stated in the petition" were determinative. Ladner v. Deposit Guaranty National Bank, 290 So. 2d at 267.

The phrase "under these circumstances" is crucial. The circumstances involve the nature of the Secretary of the Senate's duty. The Mississippi court emphasized that there was no specific statute establishing the duty of the Secretary of the Senate. His duty of delivering a senate bill to the Secretary of State or to the Senate arose "as a duty

incident to the office and not by terms of the statute." Ladner, at 267. The veto message was addressed to the Mississippi State Senate, not the Senate Secretary. Under those circumstances the Secretary of the Senate had no clear duty.

The circumstances of Ladner are significantly different from the circumstances governing the Secretary of State's duty in the State of Florida. The Secretary is bound, by the Constitution and statutes, to keep the records of the official acts of the legislative and executive departments, and publish all laws. Art. IV, § 4(b), Fla. Const.; §§ 15.07, 283.12, Fla. Stat. (1983). The Secretary of State's duties are established by Constitution and statute; they do not arise as an incident of his office. The duties are ministerial, they are not discretionary.

While Petitioners have argued that there is an adequate remedy available, they neglect to identify it. They submit that an action for declaratory judgment would be an adequate remedy. Petitioners pointed out in the trial court that this argument was merely a matter of characterization. (R-128). Either the trial court or this Court could describe the action as one for declaratory or injunctive relief. Nothing would change. The issue was presented to a circuit court. Each party had an opportunity to present evidence and be heard. That court issued its decision. The order was appealed to and reversed by a district court of appeal. Petitioners believe mandamus is the appropriate action. Regardless of style, however, the issue was properly presented to and acted upon by the trial court.

CONCLUSION

The Florida Optometric Association, Jon S. Jacobs, O.D., and Representative Fred R. Dudley ask this Court to affirm the decision of the First District Court of Appeal and apply that holding to the parties in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. MAIL, this 13th day of May, 1985, to:

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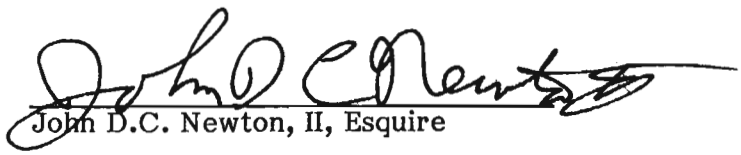

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