IN THE SUPREME COURT OF FLORIDA

GEORGE FIRESTONE, et al.,

Petitioners,

v. CASE NO. 66,774

FLORIDA OPTOMETRIC ASSOCIATION, et al.,

Respondents.

BOB GRAHAM, et al.,

Petitioners,

v. CASE NO. 66,768

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FLORIDA SOCIETY OF OPHTHALMOLOGY, et al.,

Petitioners,

v. CASE NO. 66,762

FLORIDA OPTOMETRIC ASSOCIATION, et al.,

Respondents.

ON DISCRETIONARY REVIEW OF A DECISION
OF THE DISTRICT COURT OF APPEAL OF
FLORIDA, FIRST DISTRICT

REPLY BRIEF OF THE FLORIDA SOCIETY OF OPHTHALMOLOGY

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A. DEVELOPMENT OF THE 1968 CONSTITUTION SUPPORTS CONSTRUCTION OF A FIFTEEN DAY VETO PERIOD.

The Respondents' desire for a strict, literal interpretation of Article III, §8(a), Fla. Const. (1968) reveals their misunderstanding of the significance of the changes made in the 1885 Constitution. Contrary to their assertion (Resp. brief at 23-27), the veto period has been consistently lengthened not shortened.

The original 1885 Constitution provided a five (5) day veto period (Sunday excepted) during session and a ten (10) day period, measured from the date of adjournment sine die, when the legislature adjourned within the five (5) day veto period. Art. III, §28, Fla. Const. (1885). A 1954 amendment increased the ten (10) day period to twenty (20) days - a 100% increase. The 1968 Constitution increased the five (5) day "in session" veto period to seven (7) - a 40% increase. Likewise, it increased the effective time for the Governor's consideration of a bill after adjournment sine die to potentially infinite, since the stated fifteen (15) day period is measured from presentation and not adjournment. Art. III, §8(a), Fla. Const. (1968). For example, in In re Advisory Opinion to the Governor Request of June 29, 1979, 374 So.2d 959 (Fla. 1979), the Legislature adjourned sine die on June 6, 1979. The Governor was not presented with the bill until June 20, 1979, fourteen (14) days later. But

certainly the Governor considered the bill - or at least could have - during those fourteen (14) days, since, due to adjournment sine die, all lawmaking activity ceased and the bill's final form was known. This Court correctly determined that the bill became law without signature on July 6, 1979 upon expiration of the fifteen (15) day veto period. Id at 961,963. Thus, a minimum of twenty-nine (29) days were available to the Governor for careful reflection and consideration of the bill in question. Even if the court was wrong, as Respondents imply, so that the seven (7) day veto period made the bill become law on June 28, 1979, the Governor would have had not less than twenty-one (21) days to actually consider the bill.

Therefore, the actual time made available to the Governor for careful consideration of a bill under the provisions of the 1968 Constitution is potentially greater than the twenty (20) days allowed by the 1885 Constitution. Of course the Court cannot rely on such delay to supplement the Respondents' requested seven (7) day veto period because the Governor may be presented with bills the day after adjournment sine die, as the case at bar illustrates. The Governor has need of at least fifteen (15) days to carefully consider a bill, and the constitutional revisions clearly intend a longer veto period and more flexible approach to

accommodate the larger end-of-session volume. That this is so is further illustrated by the addition of a new provision which states that all bills must be signed by the presiding officers of each house, as well as the Secretary of the Senate and the Clerk of the House, "during the session or as soon as practicable after sine die adjournment." Art. III §7 Fla. Const. (1968) (emphasis supplied). It makes no sense to give the Legislature more time to authenticate, sign and present bills to the Governor because of the larger end-of-session volume, but give the Governor less time to carefully consider them. It makes no sense to increase the in-session veto period 40% (from five (5) to seven (7) days), but decrease the post-session veto period 65% (from twenty (20) to seven (7) days), when 55% of all bills are not presented until after sine die adjournment (Pet. brief at 15).

Contrary to the Respondents' charge (Resp. brief at 5,19), the issue is not the Governor's convenience, but the practical and sensible effort to remedy a problem in a rational way that serves the interests of the public, not the interests of a few.

B. STRICT CONSTRUCTION OF ARTICLE III, SECTION 8(a) WOULD YIELD ABSURD RESULTS.

Construction of a constitutional provision that would

yield absurd results will not be adopted when another construction of that provision will fairly accomplish the manifest intent and purpose of the people. City of Miami v. Romfh, 66 Fla. 280, 63 So. 440 (1913). The Respondents' seven (7) day veto period after sine die adjournment would give absurd results in the same way that strictly and literally construing the July 1 filing deadline for financial disclosure did in Plante v. Smathers, 372 So.2d 933 (Fla. 1979). That provision in pertinent part states that:

> [f]ull and public disclosure of financial interests shall mean filing with the secretary of state by July 1 of each year a sworn statement showing net worth . . . .

Article II, Section 8(h)(1), Fla. Const. (1968). The Court said that they:

> would reach an absurd result totally incongruous with the will of the people if (they) were to construe Art. II, §8, to mean that one who becomes a candidate after July 1 of an election year need not disclose until the following July 1.

372 So.2d at 937. The Court went on to say that an uncritical reading would lead to an absurd result and that they were charged with the responsibility of determining a more reasonable construction. Id. The same analysis fits our case.

Under the Respondents' strict construction, if the Legislature presents a bill to the Governor seven (7) days before, or on the day of sine die adjournment, when there are fewer bills to consider, the Governor has a fifteen (15) day veto period in which to carefully consider legislation that will affect millions of Florida citizens. But if the legislation is presented to the Governor one (1) day later, i.e., the day after sine die adjournment, the Governor has eight (8) days less in which to carefully consider the same legislation affecting the same millions of Florida citizens. The Respondents rhetorically ask whether something magical occurs in that twenty-four (24) hours (Resp. brief at 19). Unfortunately their negative answer belies the truth of their position - for black magic has occurred! Respondents contend that a mere limit has "simply expired." What has really happened is that, at a time when the Governor needs the greatest amount of time to carefully and meaningfully consider the greatest amount of legislation, the citizens' interest will have 53% less audience time with the Governor. Respondents would further have us believe that such detriment was "chose[n]" by the "electorate" and is "irrelevant" and a "logical fallacy" (Resp. brief at 18,19). However, they do not explain why because such absurdity cannot be explained.

The Respondents contend that the Governor is capable of

complying with a seven (7) day veto period after sine die adjournment (Resp. brief at 16-18). But mere compliance when there is no choice is not the issue. The issue is whether seven (7) days or fifteen (15) days after sine die adjournment better enables the Governor to carry out the job he was elected to do - serve the best interests of the people. Surely fifteen (15) days better enables him to more carefully consider the majority of legislation that reaches his desk only after sine die adjournment. Surely fifteen (15) days is what the Constitution intends the Governor to have.

Respondents' strict construction would render the fifteen (15) day proviso a nullity. It would give a hostile or recalcitrant Legislature an incentive to present all legislation after adjournment sine die in order to circumvent the fifteen (15) day allowance, thus forcing the Governor's hand or requiring him to hastily consider what legislation he could within only seven (7) days. The potentially disastrous consequences for Florida citizens are obvious. Such results are absurd. Moreover, a constitutional provision is to be construed in such a manner as to make it meaningful. A construction that nullifies a specific clause will not be given unless absolutely required by the context. Gray v. Bryant, 125 So.2d 846 (Fla. 1960).

Such a construction is not required here since the provision is fairly subject to another construction which will effectuate the framers' and peoples' intent, viz., that the veto period is fifteen (15) days after sine die adjournment.

C. THE MEANING OF ARTICLE III, SECTION 8(a) IS AMBIGUOUS.

While the words of Article III, Section 8(a) may be plain and straightforward, as Respondents allege, the meaning is ambiguous because the words, if only superficially read and understood at face value, lead to absurd results. See Plante at 937. Moreover,

> [w]ords are but imperfect vehicles designed to convey thought and in gathering the thought intended to be conveyed the purpose behind the words should be kept in mind. The Constitution is concerned with substance and not with form and its framers did not intend to forbid a common-sense application of its provisions.

State ex rel West v. Gray, 74 So.2d 114,118 (Fla. 1954) (citing Meredith v. Kaufman, 293 Ky. 395, 169 S.W.2d 37,38). The meaning is only "plain" to the Respondents and two District Court judges. Neither has addressed, much less explained, the irrational results that obtain pursuant to their interpretation. The meaning has apparently not been so "plain" to three Governors, the Attorney General, fifteen (15) Legislatures, one (1) District Court and one (1)

Circuit Court Judge , all of whom have consistently interpreted the veto period after sine die adjournment to be fifteen (15) days.

Respondents have failed in their attempts to disparage the interpretations given by these officials. They attempt to reduce the Governor's interpretation to the level of an administrative statutory interpretation (Resp. brief at 30,31). Citing the irrelevant case of Bill Frey, Inc. v. State, 173 So. 812 (Fla. 1937), the Respondents completely ignore the reality of Amos v. Mosely, 74 Fla. 555, 77 So. 619,625 (1917), wherein the court accorded great weight to executive construction of constitutional provisions, especially when occurring contemporaneously with adoption, as is the case at bar. See, Pet. brief at 8. Again citing two (2) irrelevant cases, the Respondents allege that the Governors' affidavits are irrelevant (Resp. brief at 30). But the two (2) cited cases stand for the proposition that an individual legislator's affidavit is "generally" not accepted to indicate legislative intent of statutes. In our case we are not dealing with a mere legislator construing statutory intent, but with the state's highest executives construing constitutional provisions, to which this court has previously given great weight. See Amos at 625. It is the required duty of the Governor not the Legislature to

interpret the law of the state, and he alone is charged with the duty to carry out a veto correlative to that interpretation.

The Respondents further state that the Governor has no expertise in constitutional interpretation (Resp. brief at 31), yet Governor Askew was a member of the Florida Constitution Revision Commission and the Legislature to which their proposal was submitted (App. Pet. brief at 3).

Likewise, the Respondents have failed to distinguish State v. Kaufman, 430 So.2d 904 (Fla. 1983), merely stating that no such ambiguous word such as "title" is at issue in our case. The Respondents fail to realize that while no single word in Article III, Section 8(a), may be ambiguous by itself, the collective meaning of "plain" words used together can be inherently ambiguous, as the Respondents aptly point out regarding the "ayes and noes" requirement in In re Interrogatories to the Governor Regarding Certain Bills of the Fifty-First General Assembly, 578 P.2d 200 (Col. 1978) (Resp. brief at 31). Further,

> [w]here the words are plain and clear and the sense distinct and perfect arising on them, there is generally no necessity to have recourse to other means of interpretation. But where there is some ambiguity or doubt arising from other sources then interpretation has its proper office. "There may be obscurity as to the meaning, from the doubtful character of the words used, from other clauses

> in the same instrument, or from an incongruity or repugnancy between the words and the apparent intention derived from the whole structure of the instrument or its avowed object. In all such cases interpretation becomes indispensable."

State ex rel West, 74 So.2d at 116 (citing Story on the Constitution, 4th Ed., Vol. I, Secs. 400,401, pp. 305,306). More importantly, this Court in Kaufman considered the purpose of the constitutional provision with an eye towards the absurd results that would ensue - needlessly reading a bill's complete title three (3) times,when it was identifiable by number or short title - if the provision's "plain meaning" was followed. See Kaufman at 907. The similarities with our case could not be closer.

D. CASES SUPPORTING STRICT INTERPRETATION ARE CLEARLY DISTINGUISHABLE

A common thread running throughout the cases the Respondents cite for support is the fact that a strict, literal interpretation or construction of the provision at issue, statutory or constitutional in those cases, did not lead to absurd results.

For example, in In re Interrogatories of the Governor, 578 P.2d at 202, Colorado's veto provision cannot be read so as to give their Governor less time after sine die adjournment than before. 578 P.2d at 202; Resp. brief

at 12. There is no ambiguity, no inconsistency, no absurd results possible. Further, there the Governor argued substantial compliance, i.e., that he substantially complied with the filing provision by publicly announcing his disapproval prior to the filing deadline. Id. Contrary to the Respondents' assertion (Resp. brief at 12), we are not arguing any such substantial compliance; we are arguing actual compliance with the correctly construed and intended meaning of Article III, Section 8(a).

Likewise in Heredia v. Allstate Ins. Co., 358 So.2d 1353 (Fla. 1978) (Resp. brief at 12,14), this court construed "insured" as written, not as "owner", because to do otherwise would have given an unintended, absurd result which would have rendered the insured's automobile insurance policy meaningless. Moreover, just as there the Legislature could have initiated statutory change if the court's ruling was incorrect, so here no constitutional changes have been initiated because the Legislature has agreed with the Governor on the correct interpretation of Article III, Section 8(a) since its inception.

Likewise, in Amos v. Gunn, 94 So. 615 (Fla. 1922) (Resp. brief at 10), the mandatory nature of a constitutional provision requiring the signatures of the presiding officers of both legislative houses before a bill

could become law, did not carry with it absurd results. The habitual disregard of such a provision was the evil to be avoided. Id at 618. In our case, the evil to be avoided is the absurd results of a strict construction of Article III, Section 8(a), the habitual disregard of which the Respondents disfavor.

The results of strict interpretation in this case are unlike those in the cases the Respondents cite, and should be avoided.

E. REPEAL STATUTES ARE NOT PRECLUSIVE.

Respondents claim that fifteen (15) years of untimely vetoes will not create uncertainty, administrative confusion and a burden in the courts because the Legislature readopts the statutes as law every two (2) years and repeals all laws not included in the statutes (Resp. brief at 15,16). Such an assertion is an over-simplification and in error. Not all laws are repealed. See Fla. Stat. §§11.2423 (list and description of laws or statutes not repealed), 11.2425 ("repeal . . . shall not affect any right accrued before such repeal . . . .") (1983). Thus, because of exceptions to the repeal statute in §11.2423, or because of rights that may have accrued under §11.2425 in conjunction with longer limitations, affected vetoes may well extend back to 1970.

F. THE CANONS OF CONSTRUCTION DO NOT SUPPORT RESPONDENTS' PLAIN MEANING.

The Respondents' reliance on the canon, "expressio unius est exclusio alterius" (Resp. brief at 20), is misplaced. It is used sparingly in constitutional construction, Taylor v. Dorsey, 155 Fla. 305, 19 So.2d 876 (1944), and applied with precaution. State ex rel. Moodie v. Bryan, 50 Fla. 293, 39 So. 929 (1905). Rather, "in construing and applying provisions of a constitution, the leading purpose should be to ascertain and effectuate the intent and the object designed to be accomplished." Mugge v. Warnell Lumber and Veneer Co., 58 Fla. 318, 50 So. 645,646 (1909) (emphasis supplied). Here, the intent and object designed to be accomplished was to give the Governor (and Legislature) more time to properly handle the onslaught of legislation that occurs at the end of each legislative session. Giving him less time immediately after sine die adjournment than he has immediately before frustrates that goal.

G. THE LEGISLATURE IS NOT SUING.

If the Respondents' position is correct, it is the Legislature's rights that are being injured. Why, then, are

they not bringing this suit? It is because the Respondents' position is without merit! Their apparent concern that a construction adverse to their position would somehow weaken the Legislature is a concern not shared by the Legislature. Indeed, the absence of any corrective measures, i.e., amendments, implies that the Legislature consents to the historical interpretation of Article III, Section 8(a) as being the constitutionally sound interpretation. "[I]ntent may be shown by implications as well as by express provisions." 74 So.2d at 116. It is significant with respect to the framers' intent that the Legislature, not the Revision Commission, adjusted the stated veto period to fifteen (15) days and changed the measuring point from "adjournment" to "presentation", as Respondents have noted (Resp. brief at 25). Based upon the Legislature's acquiescence, both implied and as expressed by its presiding officers' brief (App. Pet. brief at 27), it is reasonable to conclude that what the Legislature intended, is what they have consistently interpreted it to mean for the past fifteen (15) years. Hence, the Respondents' argument about the framers' intent is wholly without merit.

The Respondents have set forth no meaningful, logical or sensible reason why the Governor should have less time to carefully consider more legislation, as would occur under their construction of Article III, Section 8(a). Rather,

they demand that the Constitution be strictly construed regardless of the propriety of the result, or whether it is meaningfully consistent with sound public policy. The Respondents' midstream re-interpretation of the Constitution would preserve their own interest at the expense of the citizens at large and in opposition to the express and implied intent of the framers.

CONCLUSION

For the reasons provided above, the decision of the District Court should be reversed and the Certified Question should be answered that Section 8(a) affords the Governor fifteen (15) consecutive days to act on a bill presented after legislative adjournment sine die.

DATED this 3rd day of June, 1985.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of the Florida Society of Ophthalmology has been furnished by U. S. Mail on this 3rd day of June, 1985 to:

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