IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

GEORGE FIRESTONE, et al.,

Petitioners,

vs.

CASE NO. 66,774

FLORIDA OPTOMETRIC ASSOCIATION, et al.,

Respondents.
_____/

BOB GRAHAM, et al.,

Petitioners,

vs.

CASE NO. 66,768

FLORIDA OPTOMETRIC ASSOCIATION, et al.,

Respondents.
_____/

FLORIDA SOCIETY OF OPHTHALMOLOGY, et al.,

Petitioners,

vs.

CASE NO. 66,762

FLORIDA OPTOMETRIC ASSOCIATION, ET AL.,

Respondents.
_____/

REPLY BRIEF OF PETITIONERS

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A. THE MEANING OF ARTICLE III, SECTION 8(a) IS NOT PLAIN.

Respondents contend that Article III, Section 8(a) is absolutely clear, unambiguous and susceptible to only one interpretation. It is not! The language within this section of the Constitution is not clear and this lack of clarity is underscored by the longstanding interpretation by Florida's Executive Branch, Florida Supreme Court, and the Florida Legislature. Given this ambiguity, it is entirely appropriate to look at the longstanding interpretation of Article III, Section 8(a) by the Executive Branch and this interpretation should be given weight.

Article III, Section 8(a) simply does not provide for a bill presented after adjournment. Respondents argue that Article III, Section 7 anticipates presentation after adjournment. Article III, Section 7 of the Florida Constitution may anticipate presentation after adjournment but, Article III, Section 8(a), the section which governs vetoes, does not address presentation after adjournment. Therefore, Article III, Section 8(a) is ambiguous and this Court should look at longstanding interpretation to interpret its meaning.

All the Governors of Florida since the adoption of the 1968 Constitution have interpreted Article III, Section 8(a) as allowing fifteen days to consider bills presented after adjournment sine die of the Legislature. Similarly, the Legislature has acquiesced in the veto of many bills more than seven days after presentment which had been presented

after adjournment sine die. In one hotly litigated case, for example, Brown v. Firestone, 382 So.2d 654 (Fla. 1980), the Legislature strongly objected to certain line item appropriation vetoes exercised by the Governor. The Legislature did not question the timeliness of the vetoes though they had been exercised fifteen days after presentment. Moreover, in the instant case, the Secretary of the Senate assumed the correctness of the Governor's veto of Senate Bill 168 and returned the bill to the Secretary of State.

Furthermore, Respondents claim that the prospect of placing in question numerous vetoes exercised over the last fifteen years is a "parade of horribles" which is eliminated by the annual reviser's bill. The reviser's bill, for example, Chapter 83-61, Laws of Florida, does not apply to all laws. As provided in Section 11.2423, Florida Statutes, the reviser's bill does not apply to special or local bills. Many of the vetoes which are be thrown into question in this case involve just such laws.

B. THE GOVERNOR'S ABILITY TO REVIEW BILLS IN SEVEN DAYS IS IRRELEVANT.

Respondent notes that the Governor and his staff should be expected to work hard. They can and do. The fact that the Governor exercised his vetoes within a seven-day period following the 1984 Legislature is irrelevant. The Governor's only prudent course while this case is pending in the courts

is to exercise any veto in such a fashion that it will be upheld regardless of the outcome of this case. The Governor's following the "seven day rule" under duress does not alter the facts and argument presented in Petitioners' Initial Brief. The vast majority of bills have been and are presented after adjournment sine die of the Legislature. (Petitioners' Brief at 15-16) The fifteen-day period provided in Article III, Section 8 is, in fact, needed by the Governor for a rational review of the great number of bills presented.

C. THE 1968 CONSTITUTION EFFECTIVELY EXTENDED THE VETO PERIOD.

Respondent claims that an examination of the evolution of the Florida Constitution somehow proves that power has been progressively shifted from the Governor to the Legislature. Because of this imagined trend to punish the Governor, Respondent would urge a reading of Article III, Section 8(a) which allows him only seven days to review bills. While the 1968 Constitution, provided for a shorter period of time in number of days from the prior Constitution, it provided more effective time for the Governor to consider vetoed bills. Previously, the period of time for consideration of vetoes ran from adjournment. Since the Legislature is in complete control of the time of presentment, the Legislature could effectively deny the Governor any time under the 1885 Constitution.

Under the 1968 Constitution, the period of time runs from presentation, therefore, it should be viewed as an extension rather than a restriction of time for the Governor to consider bills.

Nonetheless, the Respondents' argument is irrelevant because an interpretation by this court that the Governor has only seven days to veto a bill in no way shifts any power to the Legislature since it has already adjourned. The only possible reading of the Respondents' position is that forcing the Governor to review bills in seven days works to his disadvantage, but of course the Respondents' claim that this is not the case.

D. ALLOWING THE GOVERNOR ONLY SEVEN DAYS TO VETO A BILL PRESENTED AFTER ADJOURNMENT IS ILLOGICAL.

Article III, Section 8(a), Florida Constitution, has two primary purposes. First, it limits the amount of time given the Governor to veto bills presented to him while the Legislature is in session. Why? The answer is self-evident. By limiting the veto period, the Constitution is merely assuring that the Legislature will be able to exercise the power given to it by Article III, Section 8(c), to override the veto while it is in session. On the other hand, Section 8(a) is also crafted to protect the Governor's constitutional authority to veto bills. After the last week of the session begins, Section 8(a) provides the Governor fifteen days in which

to review and act upon legislation instead of seven. Why? Again, the answer is self-evident. It is during the later part of the session and after adjournment that the great majority of legislation is presented to the Governor. Allowing him fifteen days to review this deluge of legislation gives the Governor additional time that is needed to carefully consider and to reasonably act upon this legislation.

In view of the evident purposes of Section 8(a), it would be totally illogical to adopt the Respondents' terribly restrictive interpretation of Section 8(a) which would allow the Governor only seven days in which to review legislation presented to him after the Legislature has adjourned. There is simply no reason for such hasty action. The Legislature has adjourned and cannot act upon the veto. It will not have that opportunity until the next regular session, ten months off, unless called into special session. Meanwhile, the Governor can put the additional eight days to good use in reviewing the voluminous legislation.

The Respondents have not offered any justification to contravene the only logical interpretation of Section 8(a), that is, the Governor has fifteen days to review legislation presented to him after adjournment. Instead, the Respondents offer the feeble argument that the Governor should only have seven days because the public needs to quickly know what legislation has become law. (Answer Brief at 33.) The Petitioners submit that the Governor's constitutional responsibility

to review legislation clearly outweighs the public's need to know eight days sooner that a bill has become law. Indeed, the Governor will put those additional eight days to good use to protect the public from any ill-advised or poorly considered legislation hastily enacted in the crush of activity during the closing days of the session. Thus, logic compels that the Governor be given fifteen days to review legislation presented after adjournment.

CONCLUSION

Therefore, Article III, Section 8(a) should be interpreted by this Court to allow the Governor fifteen days to consider bills which have been presented after adjournment sine die.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY BRIEF OF PETITIONERS has been furnished by U.S. Mail to John D.C. Newton, II, Esquire, Leonard A. Carson, Esquire, Cambridge Centre, 253 East Virginia Street, Tallahassee, Florida 32301; Richard Collins, Esquire, Post Office Box 5286, Tallahassee, Florida 32314-0058; Kenneth G. Oertel, Esquire, Lewis State Bank Building, Suite 646, Tallahassee, Florida 32301 and Susan Tully, Esquire, Office of the Attorney General, Administrative Law Section, Tallahassee, Florida 32301, this 7th day of June, 1985.

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