SUPREME COURT OF THE
STATE OF FLORIDA

CASE NO. 86,626

METROPOLITAN DADE COUNTY FAIR
HOUSING AND EMPLOYMENT APPEALS
BOARD,

Petitioner,

vs.

SUNRISE VILLAGE MOBILE HOME PARK,

Respondent.

______________________________/

INITIAL BRIEF OF PETITIONER
METROPOLITAN DADE COUNTY FAIR HOUSING
AND EMPLOYMENT APPEALS BOARD

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INTRODUCTION

Petitioner, Metropolitan Dade County Fair Housing and Appeals Board, shall be referred to herein as "Petitioner" or "the Board". The Metropolitan Dade County Board of County Commissioners shall be referred to as "the Commission." Respondent, Sunrise Village Mobile Home Park shall be referred to as "Respondent" or "Sunrise". References to the Record on Appeal shall be denoted "R.__." For the convenience of this Court the opinion of the Third District Court of Appeal is attached hereto as Appendix A; the opinion of the circuit court below is attached as Appendix B; the final order of the Fair Housing And Employment Appeals Board is Appendix C. References to the appendices herein shall be denoted "App._____,p.___."

STATEMENT OF THE CASE AND FACTS

Respondent, Sunrise Village Mobile Home Park, Inc., owns and operates a mobile home park in Dade County, Florida. R.36. The land comprising the park is owned by Respondent; however, the individual mobile homes are owned by each tenant and are located within the park upon land rented to the mobile home owner by Respondent. R.36. Characterizing Sunrise Village as a "retirement community," Respondent has sought to admit as tenants only those persons already retired or those actively contemplating the park as a retirement home. Respondent seeks to exclude all persons neither retired nor considering the park as a retirement home.

Lot No. 182 is a mobile home lot within Sunrise Village Mobile Home Park. R.36. Prior to the commencement of this action before Petitioner, Metropolitan Dade County Fair Housing and Employment Appeals Board, Lot No. 182 was rented by Respondent to a couple, the Felixes, who owned the mobile home upon the lot. Mr. and Mrs. Felix, however, wanted to move and sell their mobile home. To that end, they put the mobile home up for sale and advised Respondent of their plans to sell. R.36.

Sometime thereafter, James Reid, Jr. accompanied by a friend, Catherine Cox, contacted Mr. and Mrs. Felix and expressed an interest in purchasing their mobile home. R.36. The Felixes informed Reid they would be willing to sell him their home, but went on to advise him that before he could become a tenant of the Park he would have to be interviewed by Park management. R.30, 36.

Still interested in purchasing the Felix's home, Reid, an actively employed twenty-nine year old, contacted the Sunrise Village office and spoke to the Park manager. He was told, "Honey, you're a little too young" for the retirement park. R.42. The manager also suggested that Reid's entry into the park would be contrary to the retirement community being developed by Respondent and would inhibit the gradual development of the planned retirement community. R. 38.

Reid charged Respondent, Sunrise Village Mobile Home Park, with age-based discrimination in housing in violation of Section 11A-3, Code of Metropolitan Dade County. R. 38. Respondent answered, denying the charge. R.38.

In the meantime, however, Reid had moved forward and purchased the mobile home from Mr. and Mrs. Felix despite Respondent's objections. R. 38. The parties at that time negotiated an accommodation, but through which Respondent sought to preserve the right to contest the age discrimination charge. Respondent renewed its objections to Reid's tenancy, though, after concluding he had misrepresented facts concerning, among other things, his marital and employment status and details concerning the purchase of the mobile home. R. 39.

On November 30, 1982, the Executive Director of the Metropolitan Dade County Fair Housing and Employment Appeals Board issued her investigative report. R.39. She concluded that Sunrise Village Mobile Home Park had

engaged in age discrimination and recommended an award of $7,000.00 to compensate Reid for the humiliation, embarassment and mental distress he suffered. R. 39. The Director further recommended that the Board order Respondent to cease its discriminatory practices. R. 39.

Respondent appealed the Director's findings to the full Board. On May 18, 1983, the Board convened for the first half of what would prove to be a two-day hearing of Respondent's appeal. The hearing was concluded on June 1, 1983. R. 40. Prior to concluding the hearing, though, Petitioner, the Board, moved to enjoin Respondent from applying its age restriction to Reid. R.30. On June 17, 1983, in Metropolitan Dade County Fair Housing and Employment Appeals Board, ex rel. James Reid, Jr. v. Sunrise Village Mobile Home Park, Inc. Eleventh Judicial Circuit Case No. 83-19311, Ca 27, a temporary injunction issued thereby requiring Respondent to permit Reid to move into the park. R.41.

Upon completion of the hearing on June 1, 1983, the Board deliberated its decision. On June 20, 1983, the Board issued its final order adopting in substance, the Executive Director's findings. R.41.

Respondent appealed the Board's order to the Appellate Division of the Circuit Court, pursuant to Section 11A-9, Code of Metropolitan Dade County. On appeal, Respondent argued that so far as Chapter 11A forbids all age-based discrimination, it is void as contrary to the laws of Florida, the Florida Constitution and the Constitution of the United STates. R. 46. Specifically, Respondent argued that Chapter 11A of the Code was in conflict with Chapter 83, Florida Statutes,which contemplates reasonable rules, regulations and entrance requirements for park tenants. Respondent also contended Chapter 11A impermissibly infringed upon its basic rights under the Florida Constitution. Respondent maintained Chapter 11A interferes with its constitutional right to acquire, possess and protect property. It also argued

that by exempting certain categories of landlords, Chapter 11A also denied it equal protection under the Florida Constitution and the Constitution of the United States. R.46. Respondent went on to argue that it was deprived of the use of its property without due process of law through the operation of Chapter 11A; that Chapter 11A constituted an impermissible interference with its constitutionally protected privacy. The final component of the Respondent's attack on the constitutionality of Chapter 11A was the argument that Chapter 11A violates the due process and equal protection guarantees of the Constitution of the United States. The Respondent raised two final points to the Circuit Court. The first was that the Board, in refusing to declare the ordinance unconstitutional, erred. Finally, Respondent challenged the award of $7,000.00 in compensatory damages, arguing that it was unsupported by record evidence.

The Appellate Division overturned the decision of the Board and held Chapter 11A unconstitutional in part. In its opinion the Appellate Division stated,

> "We reverse the Board's decision upon a holding that it results in an unconstitutional restraint on the right of the mobile home park owner to use its property for a legitimate purpose, namely, the creation of a retirement community. To the extent that Chapter 11A, Section 11A of the Dade County Code requires the Board's findings, it is deemed unconstitutional.
>
> Our decision is dictated by the Florida Supreme Court's holding that a housing restriction on the basis of age is not prohibited by the constitution unless such restriction is unreasonably or arbitrarily applied. White Egret Condominium v. Franklin, 379 So.2d 346 (Fla. 1980).
>
> > ...Age limitations or restrictions are reasonable means to accomplish the lawful purpose of providing appropriate facilities for the differing housing needs and desires of the varying age groups. We note that Congress has established age limitations in recognizing the need for senior citizen housing

> by including an age minimum of sixty-two years for occupancy of certain housing developments[1]
>
> Since the Dade ordinance does not allow for this judicially determined reasonable age restriction, and there is no evidence in the record that the restriction was arbitrarily applied to Reid or that the particular restriction is unreasonable, the category of age must be deleted from the anti-discrimination ordinance.
>
> Reversed and remanded.

On May 13, 1985, the Board submitted to the Third District Court of Appeal a Petition for Writ of Certiorari seeking review of a final order of the circuit court acting in its review capacity. As relief, Petitioner urged the District Court to reverse the decision of the circuit court, affirm the decision of the Board and reinstate the relief the Board awarded to James Reid, Jr. On May 31, 1985, Sunrise submitted a Response to the Petition for Writ of Certiorari. On June 18, 1985, a panel of this Court denied said Petition. On July 3, 1985, Petitioner submitted to this Court a Motion for Rehearing or Rehearing En Banc citing the exceptional import of the Panel decision if allowed to stand. In an Order dated September 11, 1985, this Court granted Petitioner's Motion for Rehearing En Banc. After consideration oral argument was heard by the Court en banc on October 8, 1985. In an opinion filed March 25, 1986, with seven judges participating in the result, a four judge plurality of the Third District Court of Appeal endorsed the holdings of the circuit court and denied the Board's petition for writ of certiorari. App. A, p.6, R. 306. Pursuant to the Fla.R.App. 9.030(a)(2)(v): The Third District certified to this Court as being of great public importance the following question:

> Under the principles enunciated in White Egret Condominium, Inc. v. Franklin, 379 So.2d 346 (Fla.

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[1] There is no exemption in the Dade County ordinance for such federally funded senior citizens housing projects.

1979), is chapter 11A, section 11A-3 of the Metropolitan Dade County Code an unconstitutional exercise of the county commission's police powers insofar as the ordinance prohibits reasonable age discrimination in housing? App.A,p.6, R.306.

On April 2, 1986, the Board, Petition herein, filed a notice of appeal invoking pursuant to Art.V, §3(b)(4), Fla.Const., this Court's discretionary jurisdiction to pass upon questions certified by the district court as being of great public importance. On April 23, 1986 this Court granted review.

QUESTION ON APPEAL

Under the principles enunciated in White Egret Condominium, Inc. v. Franklin, 379 So.2d 746 (Fla. 1979), is Chapter 11A-3 of the Code of Metropolitan Dade County an unconstitutional exercise of the county commission's police powers insofar as the ordinance prohibits reasonable age discrimination in housing? R. 306.

SUMMARY OF ARGUMENT

The Third District Court of Appeal, sitting en banc, entertained the Board's, Petitioner herein, Petition for Writ of Certiorari to the Appellate Division of the Eleventh Judicial Circuit, and upheld the decision of the circuit court below finding Chapter 11A, §11A-3, Code of Metropolitan Dade County, unconstitutional. App.A, p.1-10, R.301-310. Though upholding the circuit court, the Third District nevertheless certified as of the great public importance the following question:

> Under the principles enunciated in White Egret Condominium, Inc. v. Franklin, 379 So.2d 746 (Fla. 1979), is Chapter 11A-3 of the Code of Metropolitan Dade County an unconstitutional exercise of the county commission's police powers insofar as the ordinance prohibits reasonable age discrimination in housing? R. 306.

Respectfully, Petitioner asserts Chapter 11A, §11A-3 constitutes a valid exercise of the Commission's police powers. It is, therefore, not unconstitutional.

The authority to govern is inherent in the police power. 10 Fla.Jur.2d, Constitutional law §186. It is through this doctrine that all enactments which may be reasonably construed as expedient for the public welfare are validated. Newman v. Carson, 280 So.2d 426, 429 (Fla. 1973). Though all property owners enjoy the right to possess and enjoy property toward any legitimate end, that right is subject to reasonable restrictions in the interest of the public welfare. Sarasota County v. Barg, 302 So.2d 737, 741 (Fla. 1974); Palm Beach Mobile Home, Inc. v. Stong, 300 So.2d 881 (Fla. 1974).

With its guarantee of equal access to housing to all persons regardless of age, it cannot be denied that Chapter 11A, §11A-3 is related to a fundamental concern of the public welfare. Such an ordinance is

clearly within the scope of the commission police power. As such it may not be struck down. See, e.g. Roberts v. United States Jaycees, 468 U.S. ____, 104 S.Ct. 3244, 82 L.ed 2d 462 (1984).

As the body charged with determining and effectuating public policy within its jurisdiction, the Commission is entitled to deference in carrying out this function. Newman v. Carson, 280 So.2d 426. The courts below, however, erroneously ignored this principle and have attempted to substitute their own judgments and policy concerns for those of the County Commission. It is, nevertheless, clear that whatever legitimate policy bases exist to support the proposition that §11A-3 is unconstitutional, equally cogent considerations exist to support the expression of public policy contained therein. If a reasonable argument exists as to whether an enactment is unreasonable, the legislative will must prevail. City of Miami v. Kayfetz, 92 So.2d 798.

The courts below erred further in holding Chapter 11A unconstitutional in part, because no constitutional provision has been violated. It is axiomatic that before an enactment can properly be declared unconstitutional, it must first be shown to be in direct conflict with some constitutional provision, whether express or implied. 10 Fla.Jur. 2d, Constitutional Law, §57. When there is no violation of a constitutional provision, the will of the legislature must control. Id. The courts may not set aside an otherwise valid expression of public policy merely because it is deemed expedient or unwise. Id. at §59.

The circuit court's analysis in the instant case suggests that where the Florida Constitution is silent, the legislature is powerless to act. The Florida Constitution, however, is a limiting document and the legislature is free to act in any area which is not barred by the Constitution. See, e.g. State v. Dade County, 142 So.2d 79, 85 (Fla.

1962). Nothing in the Constitution of Florida, guarantees to owners of housing accommodations the right to discriminate on the basis of age. Absent such constitutional protection, either express or implied, the Commission has the authority to prohibit age-based housing discrimination. Designation of the age group to be protected is the exclusive province of the legislature and may not be disturbed by the judiciary absent a showing the classification exceeds the bounds of reasonable choice. Belle Terre v. Borass, 416 U.S. 1 (1974).

In holding Chapter 11A, §11A-3 unconstitutional the circuit court relied on the decision of this Court in White Egret Condominium, Inc. v. Franklin, 379 So.2d 346 (Fla. 1980). In White Egret the restrictions at issue were imposed by private parties. There was no local ordinance or other enactment involved. The sole question was whether the age restriction was itself unconstitutional. 379 So.2d at 348.

In analyzing the case the White Egret Court focussed on that restriction as a reasonable means to accomplish a lawful purpose. Id. at 351. In Dade County, however, the Metropolitan Dade County Board of County Commissioners has expressly prohibited all age-based discrimination in housing against persons over eighteen years old. Section 11A-3(1) and 11A-2(14), Code of Metropolitan Dade County. The restriction Respondent promulgated, prohibited by the Board of County Commissioners, must fall because it fosters an unlawful purpose. This is the true result dictated by White Egret, supra, if it is properly applied to the case at bar.

ARGUMENT

I.

CHAPTER 11A, SECTION 11A, CODE OF METROPOLITAN DADE COUNTY, IS NOT AN UNCONSTITUTIONAL EXERCISE OF THE COUNTY COMMISSION'S POLICE POWER INSOFAR AS IT PROHIBITS ALL AGE-BASED HOUSING DISCRIMINATION AGAINST ANY PERSONS OVER EIGHTEEN YEARS OLD.

In its discretion the Supreme Court of Florida may review any decision of a district court of appeal that passes upon a question certified by the district court to be of great public importance. Art.V, §3(b)(4), Fla.Constitution. In the instant case the Third District Court of Appeal denied the Board's Petition for Writ of Certiorari and upheld the decision of the circuit court below which held Chapter 11A, §11A-3, Code of Metropolitan Dade County, to be unconstitutional. In a plurality opinion the Third District certified to this Court as being of great public importance, the question of whether the blanket prohibition against age-based housing discrimination contained in Chapter 11A, §11A-3 is an unconstitutional exercise of the county is police powers under the principles enunciated by this Court in White Egret Condominium, Inc. v. Franklin, 379 So.2d 346 (Fla. 1979).[2]

A. Insofar As Chapter 11A, §11A-3 Seeks To Further The Legitimate Public Purpose Of Insuring Equal Access To All Available Housing Regardless Of Age, The Ordinance Is A Valid Exercise Of The Police Power.

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[2] The District Court denied the Board's Petition in a plurality opinion with seven judge participating in the decision. Judge Baskin, with two judges concurring, wrote the plurality opinion. Judge Barkdull concurred in the result. Chief Judge Schwartz, with two judges concurring, wrote the dissenting opinion. App.A, p.1-10, R.301-310.

The circuit court below held that Chapter 11A, §11A-3, Code of Metropolitan Dade County, is unconstitutional "insofar as it prohibits reasonable age restrictions in housing." App.A, op.1-2, R.301-302. The Third District Concurred citing "cogent policy reasons" in support of the exclusory age restriction Respondent would impose in the instant case. App.A, p.5, R.305. Respectfully, Petitioner disagrees with the holdings of the courts below and asserts those courts erred in finding §11A-3 constitutes an abuse of the Commission's police powers.

As a basic principle of constitutional law, it is understood that the police power of the sovereign is the fundamental source of governmental authority. The police power rests upon the theory that the welfare of the people is the supreme law. 10 Fla.Jur.2d, Constitutional Law §186. The police power doctrine validates any enactment which may be "reasonably construed as expedient for the protection of public safety, public welfare, public morals or public health." Newman v. Carson, 280 So.2d 426, 429 (Fla. 1973). It is, therefore, axiomatic that all private rights enjoyed by individuals are subject to modification through the state's right to exercise the police power for the welfare of the general public. Neisel v. Moran, 80 Fla. 98, 85 So. 346 (1919).

In the plurality opinion below, the Third District suggested Chapter 11A, §11A-3 is an impermissible infringement upon a property owner's right to use his property in any "legitimate manner not in conflict with the public welfare." R.304 (citing Palm Beach Mobile Home, Inc. v. Strong, 300 So. 2d 881 (Fla. 1974)). As the plurality recognized, though, reasonable restrictions on the use of property in the interest of public health, welfare, morals and safety are valid exercises of the police power. Sarasota County v. Barg, 302 So.2d 737, 741 (Fla. 1974). Such restrictions must be upheld where there is a real and substantial relationship between

the avowed public purpose and the regulatory scheme employed. Palm Beach Mobile Home, Inc. Supra, at 885 (quoting Atlantic Coastline Railroad v. City of Goldsboro, 232 U.S. 548, 34 S.Ct. 364, 58 L.Ed. 721 (1941)).

It cannot be denied that through its prohibition of age based housing discrimination, Chapter 11A, §11A-3 is related to a fundamental concern of the public welfare -- the need for equal access to adequate housing for all persons as expressed in Chapter 11A, §11A-1. This ordinance and similar laws forbidding discrimination in other contexts are clearly within the scope of the Commission's police power.[3] They may not, therefore, be struck down. See, e.g. Roberts v. United States Jaycees, 468 U.S. ____, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984); C.F., Martin v. City of New York, 201 N.Y.S.2d 111, 22 Misc.2d 389 (Sup.Ct. 1960). See also, City of New York v. Clafington, Inc., 243 N.Y.S. 437, 439, 40 Misc.2d 547 (Sup. Ct. 1963) (under the police power, the city has the authority to enact laws prohibiting discrimination in housing).

The plurality below, nevertheless, found Chapter 11A unconstitutional in its blanket proscription on age-based housing discrimination. In reaching that conclusion, however, the plurality committed error in its failure to accord the Commission the deference it was due in determining the public interest and in deciding how best to protect it.

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[3] As Chief Judge Schwartz notes in the dissenting opinion below (App.A, p.7, R.307), as a matter of inherent legislative power, the Metropolitan Dade County Board of County Commissioners has authority to enact legislation prohibiting discrimination. Article VIII, §6(F), Fla.Const. provides: "The Metropolitan Government of Dade County may exercise all the powers conferred now or hereafter by general law upon municipalities." Section 166.021(3), Fla.Stat., grants to municipalities the power to enact legislation concerning any subject matter upon which the state Legislature may act.

Where the validity of enactments made under the police power is at issue, this Court has insisted courts be very cautious in declaring a municipal ordinance unreasonable, noting a "peculiar propriety in permitting inhabitants of a City through its proper officials to determine what rules are necessary for their own local government." City of Miami v. Kayfetz, 92 So.2d 798, 801 (Fla. 1957). Clearly this Court recognized as inherent in the exercise of the police power the legislative discretion to determine the public interest and the measures necessary for its protection. Newman, 280 So.2d at 428.

In its opinion below, the plurality concludes that Chapter 11A, §11A-3 is unconstitutional because, as drafted, it has the effect of eliminating all adult [and retirement][4] housing in its jurisdiction, "a drastic means of fulfilling its purpose of assuring decent housing." R. 304. Petitioner asserts, however, that the plurality below has attempted, through its ruling, to substitute its judgment for that of the duly elected law-making body, the Board of County Commissioners.

The plurality's heavy reliance on policy serves only to underscore the extent to which it would supplant the determination of the Commission with its own judgment. The plurality goes so far as to echo the "cogent policy reasons" held to permit the establishment of housing developments restricted to the elderly in Taxpayers Association v. Weymouth Township, 80 N.J. 6, 364 A.2d 1016 (1976), cert. denied, 430 U.S. 977, 97 S.Ct. 1672, 52 L.Ed.2d 373 (1977). Among the considerations cited are: (a) the lack

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[4] The plurality opinion states that, as drafted, Chapter 11A, §11A-3 bans all adult and retirement communities within the Commission's jurisdiction. R. 304. However, while §11A-3 forbids age-based discrimination in housing, employment status discrimination is not banned. Thus, at least arguably, a residence restriction based on retirement status rather than age would be valid.

of housing specially designed to meet the needs and desires of the elderly, (b) the fixed and limited incomes upon which many older persons are dependent, (c) and the particular physical and social problems of the elderly. App. A., p. 5, R. 305 (citing Weymouth, 80 N.J. at _____, 364 A.2d at 1026-28).

The Petitioner admits that the considerations expressed by the plurality are admirable. Indeed, under other circumstances with other framers, Chapter 11A, §11A-3 might have been drafted to allow the age restrictions allowed in Weymouth, supra. However, as Chief Judge Schwartz notes in the dissenting opinion, the law-making body could appropriately act both to insure equal access to all available residential facilities and to prevent the creation of "age ghettos" from which any person could be excluded. App. A., p. 8, R. 308 (citing Marina Point, Ltd. v. Wolfson, 30 Cal.3d 721, 640 P.2d 115 (1982), cert. denied, 459 U.S. 858, 103 S.Ct. 129, 74 L.Ed.2d 111 (1982)). Further, as the Chief Judge points out, a number of jurisdictions, all for undoubtedly "cogent policy reasons", have determined to ban age-based housing discrimination. See Cal. Civ. Code §51 (West 1982) (permits establishment of elderly communities, bans discrimination against families with children) as interpreted in Marina Point; Conn. Gen. Stat. Ann. §46A-64 (West Supp. 1985). And see, Ariz. Rev. Stat. Ann. §33-1317 (Supp. 1985) (prohibits housing discrimination against families with children). The validity of these measures has never been questions in the reported decisions. App. A., p. 8, R. 308.

From the foregoing it is apparent that there exist excellent policy reasons both in support of measures banning all age-based housing discrimination against adults and in support of measures which allow the creation of communities reserved exclusively for the elderly. Petitioner, however, maintains it is well-established in precedent of this Court that

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if reasonable argument exits on the question of whether an enactment is arbitrary or unreasonable, the legislative will must prevail. Kayfetz, 92 So.2d at 801. If a court is convinced the object of an ordinance is one which reasonable men could find was fairly debatable as to reasonableness, then the ordinance will be upheld. Lester v. City of St.Petersburg, 183 So.2d 589, 591 (Fla. 2d DCA 1966).

B. Absent A Violation OF A Constitutional Provision, Either Express Or Implied, Chapter 11A Cannot Be Held Unconstitutional.

For a court to properly declare legislation unconstitutional, it must first have found that a Constitutional provision has been violated. 10 Fla. Jur. 2d, Constitutional Law, §56. The legislative enactment must be shown to be directly in conflict with a constitutional provision. When an enactment does not violate the State or Federal Constitution, the will of the legislature must control. Id. at §57. The courts cannot veto legislation and may not regulate public policy. Id. at §59. Reason, justice and morals, all laudable considerations, play no role in a determination of constitutionality.

It is axiomatic that the Florida Constitutional is a limiting document. The legislature is free to act in any area which is not barred by the Constitution. See, e.g., State v. Dade County, 142 So.2d 79, 85 (Fla. 1962). It is a fundamental principle of constitutional law that the courts may not invalidate legislation merely because it is deemed expedient, unwise or unreasonable.

The circuit court's analysis of the instant case suggests that because the Florida Constitutional does not prohibit housing restrictions based on age, legislative bodies are powerless to enact such prohibitions. The necessary extension of this flawed logic, however, is that the constitution guarantees to owners of housing accommodations, the right to discriminate

on the basis of age. No decision of any court of record in this State justifies this holding. Similarly, the Florida Constitution contains no provision, either express or implied, which protects such a right to discriminate. Absent such constitutional protection, the Metropolitan Dade County Board of County Commissioners may prohibit age discrimination in housing. Delineation of the age group to be protected is exclusively the province of the legislature. Based on this principle, the legislative determination of the Metropolitan Dade County Board of County Commissioners may not be stricken by the judiciary without violating the separation of powers principle fundamental to the constitutions of Florida and the United States. See, e.g., Belle Terre v. Boraas, 416 U.S. 1 (1974).

By affirmative legislative enactment, the Metropolitan Dade County Board of County Commissioners enacted Chapter 11A, §11A-1.[5] Through that section, the Commission asserted its legislative will and declared discrimination on the basis of age to be unlawful in Dade County. At Section 11A-2(14), the County Commission defines the protected class as all persons eighteen or over.

The age selected by the legislature is a matter which lies peculiarly within the sphere of legislative discretion; as a result, the judiciary must decline to substitute its judgment for that of the legislature, unless

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[5] Chapter 11A, §11A-1 provides:
Sec. 11A-1. Declaration of policy.

> It is hereby declared to be the policy of Dade County in the exercise of its police power for the public safety, public health, and general welfare to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, ancestry, national origin, age, sex, physical handicap, marital status, or place of birth, and, to that end, to prohibit discrimination in housing by any person.

the legislative classification causes different treatments so disparate as relates to the difference in classification as to be wholly arbitrary. See Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970), In re Estate of Leo Greenberg, 390 So.2d 40 (Fla. 1980).

Another precept of statutory construction is that doubts as to the validity of an enactment are to be resolved in favor of constitutionality when reasonably possible. Rollins v. State, 354 So.2d 61 (Fla. 1978). The Petitioner asserts that in the instant case under the "reasonable argument" test enunciated in Kayfetz, supra, the determination of public policy and the means to achieve that goal are decisions which lie within the exclusion province of the Commission.

As the dissenting opinion points out, Judge Baskin's is plurality opinion is founded on policy determinations which are beyond the power of the courts to make. App. A., p. 9, R. 309. It is well-established that the courts may not strike down an enactment because it "fails to square with their social or economic theories or what they deem to be sound public policy. App. A, p. 10, R. 310 (citing Ball v. Branch, 154 Fla. 57, 59, 16 So.2d 524, 525 (1944); Accord, Hamilton v. State, 366 So.2d 8, 10 (Fla. 1978). Therefore, to the extent that the courts below have attempted to substitute their policies for that of the Commission, the decisions below must be reversed.

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II

EVEN UNDER THE PRINCIPLES ENUNCIATED IN WHITE EGRET, CHAPTER 11A, §11A-3 MUST BE DEEMED A CONSTITUTIONAL EXERCISE OF LEGISLATIVE AUTHORITY.

In the holding endorsed by the plurality opinion of the Third District, the circuit court, sitting in its appellate capacity, held Chapter 11A, §11A-3, Code of Metropolitan Dade County, unconstitutional insofar as it does not allow for a "judicially determined reasonable age restriction." App. B., p. 2, R. 44. The circuit court stated its conclusion was dictated by the holding of this Court in White Egret, Inc. v. Franklin, 379 So.2d 349 (Fla. 1980). Briefly, in that case this Court considered whether a condominium restriction against residency by children under age twelve violates the condominium purchaser's right to marriage, procreation, association and his right to equal protection of the laws. 379 So.2d at 348. Ultimately the White Egret Court found the age restriction permissible, holding that "age limitations or restrictions are a reasonable means to accomplish the lawful purpose of providing appropriate facilities for the differing housing needs and desires of the varying age groups." Id. at 351. Such restrictions may be enforced if reasonably applied and a legitimate purpose is served. Id. Petitioner asserts, however, that in holding Chapter 11A, §11A-3 unconstitutional under White Egret, the circuit court committed fundamental error.

The circuit court cites White Egret for the proposition that an age-based housing restriction is not prohibited by the State Constitution unless unreasonably or arbitrarily applied. App. B., p. 2, R. 44. From the White Egret holding the circuit court concludes that because such restrictions are constitutionally permissible, the County Commission is foreclosed from exercising its police power so as to prohibit such restriction. App. B., p. 2.

In White Egret the Court had to consider only an age restriction imposed by a private party, a condominium association. That restriction was not in conflict with any existing law. Indeed, there was no county ordinance or state statute at issue. The sole question was whether the condo association's age restriction was itself unconstitutional. 379 So.2d at 348.

In White Egret this Court held that age restrictions are "a reasonable means to accomplish the lawful purpose of providing appropriate facilities . . . ." (Emphasis supplied). Id. at 351. In analyzing the instant case in light of White Egret, however, the circuit court overlooked the express intent of the Board of County Commissioners declaring all age-based housing discrimination against any person over eighteen years old to be unlawful. Chapter 11A, §§11A-1, 11A-2(14) and 11A-3(1), Code of Metropolitan Dade County. Thus, the age restriction imposed by the Respondent had been expressly declared unlawful by a duly authorized enactment of the Commission.

As further evidence the conclusion reached by the circuit court does not logically flow from White Egret, supra, Petitioner points out that had White Egret arisen in Dade County under the existing Chapter 11A, §11A-3 the result would have been the same. The anti-age discrimination prohibition inures only to the benefit of persons over eighteen years old. Chapter 11A, §11A-2(14). Those persons twelve years old and under excluded from condominium residency in White Egret would be likewise unprotected under §11A-3. Clearly, §11A-3 can exist without running afoul of the principles enunciated in White Egret.

In sum, contrary to the opinion of the circuit court, White Egret does not dictate the holding that Chapter 11A, §11A-3 is unconstitutional. This Court in White Egret only authorized age restrictions in contracts between

private parties to the extent a lawful purpose is fostered. Nothing in the _White Egret_ decision, however, precludes the appropriate legislative body from enacting and enforcing a contrary law. Further, because the housing restriction Respondent seeks to maintain in the instant case is itself unlawful in light of the exercise of the police power contained in Chapter 11A, §11A-3, no legitimate purpose can be served. _White Egret_, therefore, dictates Respondent's housing restriction must fail.

CONCLUSION

In overturning the final order of the Fair Housing and Employment Appeals Board, the circuit court held that Chapter 11A, §11A-3 is unconstitutional insofar as it restricts the rights of Respondent to use its property as a retirement community. The circuit court maintains its holding is dictated by the holding of this Court in White Egret, supra. Petitioner maintains, however, that the circuit court, and the Third District Court of Appeal which endorsed the circuit court's holding, committed fundamental error in the application of relevant law.

Both courts below erred in concluding that Chapter 11A, §11A-3 is an unconstitutional exercise of the County Commission's police power. It is well-established that private rights enjoyed by individuals are subject to modification by the appropriate legislative body through exercise of the police power in the interest of the public welfare. Newman v. Carson, 280 So.2d 426 (Fla. 1973); Sarasota County v. Barg, 302 So.2d 737 (Fla. 1974). Clearly Chapter 11A with its guarantee of equal access to housing of all persons regardless of age is clearly related to the public welfare. As such, Chapter 11A, §11A-3 is a valid exercise of the police power and may not be struck down. See, e.g., Roberts v. United States Jaycees, 468 U.S. _____, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984).

Further, the County Commission, the legislative body, is entitled to deference from the courts, as the Commission, alone, is charged with the responsibility for determining and implementing public policy. Newman, 280 So.2d at 428.

The courts below erroneously ignored this principle and have attempted to substitute their judgments and policy concerns for those of the Commission. While the circuit court and the plurality of the Third District cite sound policy bases for permitting the age restriction

Respondent seeks to enforce, there are clearly equally compelling reasons which could lead the legislature to conclude that equal access to housing could best be achieved by prohibiting all age-based housing discrimination. If a reasonable argument exists as to whether an enactment is unreasonable, the legislative will must prevail. City of Miami v. Kayfetz, 92 So.2d 798 (Fla. 1957).

The circuit court relies heavily on White Egret Condominium v. Franklin, 379 So.2d 346 (Fla. 1980) for the dual propositions that: (1) a housing restriction on the basis of age is not prohibited by the Constitution absent unreasonable or arbitrary application, and (2) age limitations or restrictions are reasonable means to accomplish the lawful purpose of providing appropriate facilities for the different housing needs and desires of differing age groups. 379 So.2d at 350-351. The Court erred, though, in its tacit suggestion that since the Constitution does not proscribe age-based restrictions, the legislature is necessarily prevented from doing so. That is not correct. In fact, before any court may declare an enactment unconstitutional, the act must be shown to be in direct conflict with some provision of organic law. Chapter 11A, though, conflicts with neither the Florida Constitution, the Constitution of the United States, nor any existing state statutes.

Under the circuit court's analysis, since the Supreme Court in White Egret found age-based housing restrictions to be reasonable, Chapter 11A, which allows no age-based restrictions must by implication be unreasonable and unconstitutional. The circuit court, though, departs from the fundamental principles of constitutional law in that it seeks to improperly declare unconstitutional an ordinance which it views as unreasonable. The ordinance, however, is a valid exercise of legislative authority. As such, Chapter 11A must be upheld by the Courts regardless of whether it is

perceived as unwise, unjust or unreasonable. Insofar as the legislature acts within its authority, it must be supported by the courts.

In sum, it is clear the courts below erred in holding Chapter 11A, §11A-3 unconstitutional. The ordinance is clearly a valid exercise of the Commission's police power, even in light of appropriate interpretations of this Court's holding in White Egret. Accordingly, the age restriction Respondent sought to impose is unlawful.

Petitioner, therefore, respectfully urges this Court to reverse the decisions of the courts below and reinstate the final order of the Metropolitan Dade County Fair Housing and Employment Appeals Board.

Respectfully submitted,

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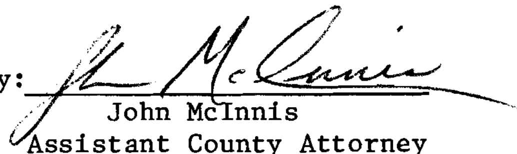
By: 
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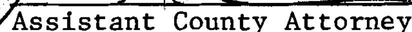
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 19th day of May, 1986, to: Elliot H. Lucas, Esquire, 590 English Avenue, Homestead, Fl. 33030 and to Keith C. Fischler, Esquire, Haben, Parker, Skelding, Costigan, McVoy, Labasky, 318 N. Monroe Street, Tallahassee, FL. 32301.


Assistant County Attorney