IN THE
SUPREME COURT OF FLORIDA

CASE NO. 77,179

BOB MARTINEZ, et al.,

Appellant/Cross-Appellee,

vs.

MARK SCANLAN, et al.,

Appellee/Cross-Appellant.

ON APPEAL FROM A FINAL JUDGMENT OF THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA, CERTIFIED BY THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, AS BEING OF GREAT PUBLIC IMPORTANCE

INITIAL BRIEF OF AMICI CURIAE SELF-INSURERS: FLORIDA CONSTRUCTION, COMMERCE, AND INDUSTRY SELF-INSURERS' FUND; FLORIDA ASSOCIATION OF SELF-INSURERS; AND FLORIDA GROUP RISK ADMINISTRATORS ASSOCIATION, INC., IN SUPPORT OF POSITION OF APPELLANTS

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STATEMENT OF INTEREST OF AMICI

This brief is filed pursuant to Florida Rule of Appellate Procedure 9.370 on behalf of the Florida Construction, Commerce and Industry Self-Insurers' Fund ("FCCI"), the Florida Association of Self-Insurers ("FASI"), and the Florida Group Risk Administrators Association, Inc. ("GRA") in support of the position of the Appellants/Cross-Appellees in this case. FCCI, FASI, and GRA collectively comprise virtually all of the self-insurance segment of the workers' compensation system in Florida, and will be referred to collectively in this brief as the "Self-Insurers." The self-insurance mechanism is the delivery system by which approximately 40% of the workers' compensation benefits are paid for and to injured workers in Florida.

FCCI, a not-for-profit organization, is a pooling of liabilities arrangement organized pursuant to §440.57, Florida Statutes, to provide workers' compensation insurance to its members. It operates solely within the geographical boundaries of Florida, and serves over 7,000 Florida businesses. FCCI collects insurance premiums from its members, pays the members' required workers' compensation benefits, and returns the surplus, if any, to its membership. In 1990 (prior to the 1990 Act), FCCI returned to its membership accumulated surplus from the 1988 fund year of $12.4 million, representing approximately 6% of premiums paid by members in 1988.

FASI is a not-for-profit trade association of businesses which are involved in the self-funding of workers'

compensation benefits in ways authorized by Chapter 440, Florida Statutes. Its active members are either individual self-insurers as authorized by §440.38, Florida Statutes, or group self-insurers as authorized by §440.57, Florida Statutes. The membership of FASI represents approximately 75% of the self-insurance premiums in Florida, or approximately 30% of the total workers' compensation premium base. The number of employer businesses involved under the umbrella of FASI exceeds 25,000.

GRA is a not-for-profit Florida corporation organized to represent administrators of group self-insurance funds authorized pursuant to §§440.38 and 440.57, Florida Statutes, and Rule 38F-5 of the Florida Administrative Code, to provide workers' compensation coverage to eligible Florida employers.

The 1990 Workers' Compensation Law mandated a 25% reduction in annual premiums effective September 1, 1990, to reflect decreased benefit levels required to be paid to and for injured workers. FCCI and other funds represented within FASI and GRA collected premiums consistent with the law since its effective date.

FCCI (and other self insurance funds and self-insurers) collected premiums in 1990 which are insufficient to pay benefits at levels required before the effective date of the 1990 Workers' Compensation Law. Were the Court to conclude that the 1990 law was unconstitutional, and invalidate the law retroactively to July 1, 1990, FCCI would have to enforce its contractual rights with its members and retroactively collect

from them the balance of premiums at levels required prior to the 1990 law, in order to fund benefits at pre-1990 levels.

Collection by FCCI of additional premiums from member businesses retroactively would create chaos. Forty-five percent (45%) of FCCI members are in the construction business and, in this period of economic downturn, many are in a marginal economic position. Since contractors must bid on projects to be completed months in the future, basing their cost estimates in part on workers' compensation premiums, any great shift in premiums could imperil these businesses. This becomes obvious when it is understood that workers' compensation premiums are the second highest cost element in the construction industry, after payroll, and generally are set at a very large percentage of payrolls (up to 60%). Members who are locked into contract prices or who have performed and collected on contracts based on the 1990 law will not be able to recoup the added cost of a return to the pre-1990 premiums, and those premiums will go unfunded.

Injured workers would also be directly affected by any shortfall in premiums collected, since the fund will be underfunded to the extent that benefit levels at the pre-1990 law level outstrip premiums collected under the 1990 law. If FCCI's (or any fund's) existence were imperiled by such an adverse development, it may not be able to make all payments to injured workers. The 25% reduction in premiums mandated by the 1990 law far outstrips the 6% surplus generated by FCCI in 1988,

as well as the surplus generated by FCCI in any of the last ten years, for that matter.

STATEMENT OF THE CASE AND OF THE FACTS

The Self-Insurers adopt the Statements of the Case and the Facts of the brief filed by the Department of Legal Affairs, on behalf of the State Defendants, and of the other Appellants/ Cross-Appellees in this appeal. In addition, the Self-Insurers add the following brief statement of the case and of the facts.

Within days of the trial court's decision, the Legislature convened a special session for the "sole and exclusive purpose" of addressing workers' compensation. On January 22, 1991, the Legislature enacted remedial legislation, see Fla. HB 11-B (1991) (1st Engrossed); Fla. SB-8 (1991) (2nd Engrossed) (collectively "the 1991 Acts"), to cure any alleged "all or nothing" defects in the Comprehensive Economic Development Act of 1990, Ch. 90-201, 1990 Fla. Laws 705 ("1990 Act" or "Act"). The 1991 Acts became law on January 24, 1991, upon the signature of the Governor. SB 8-B reenacted the entire workers' compensation portion of the 1990 Act. SB 8-B operates retroactively to the effective date of the 1990 Act. (The international trade provisions were reenacted separately in Fla. HB 9-B.) HB 11-B repeals the provisions of the 1990 Act which the trial court held violated the separation of powers doctrine.

The potential chaos that invalidation of the entire 1990 Act would cause to the workers' compensation system was explicitly recognized during the discussion of the reenactment

of the provisions of the 1990 Act, in a series of questions posed to the Chairman of the Commerce Committee in the House of Representatives:

> Q: [By Representative Kelly]: Mr. Simon is it true that the mandated rate reductions contained in Public Law 90-201, Laws of Florida, are tied to the cost saving provisions of that Act, and the workers' compensation industry has relied in good faith upon the provisions of that Act in collecting premiums and paying claims in accordance with that Act?
>
> A: [By Representative Simon]: That is an accurate statement.
>
> Q: Is it true that if the Supreme Court were to affirm that part of the decision to the Circuit Court invalidating Public Law 90-201, and order the workers' compensation industry to comply with the law applicable prior to the changes contained in Public Law 90-201, Laws of Florida, such a decision would cause further extreme disruption of the workers' compensation system?
>
> A: That is correct.
>
> Q: Is it the intent of the Legislature that this remedial law curing the constitutional deficiencies found by the Circuit Court in Case No. 90-3137 will be effective immediately and operate retroactively in accordance with the intended effective dates of Public Law 90-201, to avoid further litigation over issues capable of being cured?
>
> A: Yes, that's, yes that's definitely correct.

See Audio Tape of Special Session B, Florida House of Representatives, January 22, 1991.

Upon the conclusion of that discussion, the bill, SB 8-B, passed the House by a vote of 117-0. It reenacted the workers' compensation portion of Public Law 90-201 retroactively to the effective date of the 1990 Act. Section 120 of SB 8-B, 1991 Special Session B. (A. 3).

INTRODUCTION

Before we begin to advocate a course of decision for the Court, we pause to reflect on the context of this case. We are dealing with an extremely important matter, perhaps the most significant public law issue currently before the Florida courts.

The importance and urgency of this matter is reflected in the certification by the District Court of Appeal of this appeal as involving a matter of great public importance, and in the recently held legislative special session which was addressed primarily to the workers' compensation issue.

The importance is also human and economic, because we are dealing with a subject which affects virtually all workers and most of Florida commerce. Workers' compensation is important not only for injured workers, but for those uninjured workers as well who are dependent on Florida businesses for jobs in this uncertain economy.

Indeed, this Court has recognized the significance of these matters in the expedited briefing schedule which it has imposed. The goals in this case should be a speedy determination of the issues, and a return to a stable workers' compensation system.

SUMMARY OF ARGUMENT

The Legislature's enactment of SB 8-B and HB 11-B during the 1991 Special Session B, and the Governor's signing those bills into law, have cured those aspects of the 1990 Act which the trial court held invalidated the entire Act. In the special session, the Legislature separately enacted the workers'

compensation provisions (SB 8-B) and the international trade provisions (HB 9-B) of the 1990 Acts, curing any single subject issues. The Legislature also repealed those provisions the trial court held violated the separation of powers doctrine -- the Industrial Relations Commission and the appropriation for the Workers' Compensation Oversight Board.

This Court has in the past applied the law in effect at the time of its decision, when the newly enacted provision is remedial in nature. The 1991 Acts are remedial in nature, particularly inasmuch as they effect no changes from the 1990 Act applicable to this appeal other than to cure those aspects of the law the trial court held violative of the single subject rule and separation of powers doctrine. Interpretation of the 1991 Acts instead of the 1990 Act at this time is also consistent with the long-standing rule of this Court to construe acts of the Legislature in such a way as to effectuate legislative intent and resolve any doubts as to the validity of the statute in favor of its constitutionality.

There are also significant policy reasons why the Court should apply the 1991 Acts and avoid passing on the trial court's single subject and separation of powers rulings. Any doubt cast upon the validity of the benefit and premium provisions between the effective date of the 1990 Act and the effective date of the 1991 Acts would only exacerbate the confusion the Legislature has so urgently sought to avoid. Indeed, the calling of a special session one week after the trial court's judgment and the Legislature's expression that the

reenactment of the workers' compensation law was to be retroactive to the effective date of the 1990 Act is clear evidence of its intent to prevent such confusion.

If this Court decides to review the single subject or separation of powers issues raised by the trial court's decision, it should hold that the trial court erred in its ruling. The trial court's holding that the 1990 Act encompassed "too broad" a subject is unprecedented under this Court's decisions. It is also not supported by article III, section 6 of the Florida Constitution, which requires only that a law "shall embrace but one subject and matters properly connected therewith." Two years of background analyses by the legislatively-created public interest committees, as well as the private sector, demonstrated the relationship of workers' compensation costs and competitiveness in international trade, to the subject of Florida's economic development. The Legislature's decision to address certain aspects of those economic issues deserves deference by the courts.

The trial court conceded that it found no evidence of the "classic perceived evil of logrolling" in the enactment of the 1990 Act. The court held that the scope of the bill was "too broad." Such an unprincipled approach is inconsistent with several recent decisions of this Court upholding legislation covering extremely broad subjects, such as "tort reform" and "crime," and employing several distinct provisions "properly connected with those subjects."

The approach of the court below would also give no guidance to future legislatures as to how they validly could legislate concerning modern, complex subjects requiring comprehensive measures.

The trial court's ruling that the 1990 Act violated the doctrine of separation of powers and required the entire act to be stricken is also incorrect. Applicable cases hold that where a provision violates the separation of powers doctrine, the offending provision should be severed where severance would not do violence to the remainder of the act. The trial court also erred in holding that provisions governing the retention of judges of the Industrial Relations Commission infringed on the executive power, because past decisions indicate that the Judicial Nominating Commission is in fact an executive agency. Similarly, the trial court's holding that the appropriation of funds for the Workers' Compensation Oversight Board violated executive powers was error because appropriation of such funds is a legislative prerogative and the appropriation was for a legislative body, the Joint Legislative Management Committee, to administer legislative aspects of the Act.

The trial court also erred in holding that the Legislature lacked the authority to set or modify the time periods in which the workers' compensation laws would automatically be repealed, or "sunset." It is fundamental that the Legislature can repeal its previous acts, provided it does so without violating the constitution.

ARGUMENT

I.

THE 1991 WORKERS' COMPENSATION ACTS ENACTED DURING THE 1991 SPECIAL LEGISLATIVE SESSION, THE LAW IN EFFECT AT THE TIME OF THE COURT'S DECISION, APPLY TO THIS APPEAL AND DO NOT VIOLATE THE SINGLE SUBJECT RULE OR SEPARATION OF POWERS DOCTRINE OF THE FLORIDA CONSTITUTION.

The 1991 Acts unavoidably affect this appeal. The enactment of the 1991 legislation allows this Court to (1) hold that the law in effect at the time of decision does not violate the separation of powers and single subject rules, and (2) rule upon the remaining matters certified by the district court of appeal.[1]

The grounds upon which the trial court ruled all of Public Law 90-201 invalid have explicitly been cured by recent legislative action. This Court should construe the law in effect at the time of its decision, the 1991 Acts, which do not violate the single subject rule or separation of powers doctrine, and which apply as of the effective date of the 1990 Act. Together, the 1991 Acts cure the two "all or nothing" constitutional flaws the trial court found to exist in the 1990 Act.

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1. A remand would be a waste of judicial time and effort because the only changes made by the Legislature in the special session that affect issues in the appeal are the cure of the alleged single subject problem and the elimination of the provisions the court held violative of the separation of powers doctrine. A remand would in fact unnecessarily prolong the present confusion in the workers' compensation system.

A. The Supreme Court Should Interpret The Law In Effect At The Time Of Its Decision, The 1991 Acts, Which Cured The Alleged Facial Infirmities In The 1990 Act, Retroactively To The Effective Date Of The 1990 Act.

As explained more fully below, this Court should apply the law in effect at the time of its decision -- the 1991 Acts. Moreover, in recognition of the Legislature's stated intent during the special session to remedy any possible technical defects in the 1990 Act due to the continuing workers compensation crisis, this Court should interpret the 1991 Acts and avoid unnecessary consideration of the 1990 Act. See discussion at 4-5, supra.

The Legislature's intent to settle the confusion in the workers' compensation system forthwith is clearly demonstrated by recent events: the Legislature's convening a special session six weeks prior to the commencement of the regular session; its reenactment of the 1990 law without the international trade component, and abolition of the concerns which led the trial court to hold the law violative of the separation of powers doctrine; and its making the reenactment of the substantive workers compensation provisions retroactive to the effective date of the 1990 Act. Floor discussion addressed the need to correct the court decision. That legislative goal can best be accomplished by this Court dealing directly and immediately with the 1991 Acts, and holding that the curative actions taken during the special session apply retroactively to the effective date of the 1990 Act.

1. The 1991 Acts Cure The Alleged Single Subject Rule And Separation Of Powers Violations.

The 1991 Acts differ from the 1990 Act in two respects relevant to the issues on appeal. First, the 1991 Acts eliminate any possible single subject violation by narrowing the subject matter of the Act to workers' compensation. Senate Bill 8-B reenacted the Workers' Compensation law, omitting the international trade provisions which the trial judge found to be impermissibly included with the workers' compensation law in the Comprehensive Economic Development Act of 1990. Fla. SB 8-B (1991) (2d Engrossed). (A. 3). Second, the separation of powers issues raised below were eliminated by House Bill 11-B, which deleted from the reenacted workers' compensation bill provisions relating to the Industrial Relations Commission, the Workers' Compensation Oversight Board, and the appropriation of funds to the Joint Legislative Management Committee. Fla. HB 11-B (1991) (1st Engrossed). (A. 1).

2. This Court May Apply The Law In Effect At The Time Of Its Decision.

This Court has on several prior occasions applied subsequently enacted remedial legislation in effect at the time of its decision. Florida Patient's Compensation Fund v. Von Stetina, 474 So.2d 783, 787 (Fla. 1985); Hendeles v. Sanford Auto Auction, 364 So.2d 467 (Fla. 1978); Florida East Coast Ry. v. Rouse, 194 So.2d 260 (Fla. 1966). The 1991 Acts are the law in effect at the time of decision and on which this Court's decision should be made. As this Court stated in a similar situation:

> We cannot disregard the judicial knowledge which we have, as well as the judicial responsibility to recognize the applicability of acts of the Legislature which are presumptively valid. The [new] statute if sustained, would completely supersede the [prior law]. Similarly, it would make moot many of the problems suggested by the complaint. In fact, if we were to pass upon the instant litigation without regard to the [new] Act, it would be effort to no avail.

Board of Public Instruction of Orange County v. Budget Comm'n of Orange County, 167 So.2d 305, 307 (Fla. 1964).[2] Similarly, the 1991 Acts remove the two grounds on which the trial court held the 1990 Act unconstitutional in its entirety. Thus, review of the 1990 Act without consideration of the 1991 Acts would be "effort to no avail," and could only cause unneeded confusion in the worker's compensation system.

In Von Stetina this Court, presented with a procedural history very similar to the one in this case, ruled on the constitutionality of a newly amended statutory section, which became effective during the proceedings in the trial court. There, the complaint challenged as unconstitutional three sections of a 1976 Florida Statute limiting liability for medical malpractice, relating to the method by which the Florida Patient's Compensation Fund paid final judgments. Von Stetina, 474 So.2d at 784.

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2. In Board of Public Instruction, the Supreme Court invited the parties to file briefs on the impact of the new Act. The parties failed to do so, stipulating instead that the Court should rule on the record prior to the Act. Rather than venture an opinion without the benefit of briefs, the Court remanded. 167 So.2d at 307. Here, there is no reason to remand because the changes applicable to this appeal are technical, and briefing is provided.

While the challenge to the 1976 law was pending in the trial court, one of the three sections was amended through a remedial act changing the manner in which future special damages were to be paid. The trial court refused to rule on the validity of the new section, holding the statutory change was substantive and could not be applied retroactively. Id. at 787. This Court disagreed, and after finding the statute remedial in nature, proceeded to interpret the constitutionality of the newly amended section because it was the law in effect at the time of its decision. Von Stetina, 474 So.2d at 787-88. As in Von Stetina, the 1991 Acts are remedial, and should supply the law of decision for this Court.

Likewise, in City of Pompano Beach v. Haggerty, 530 So.2d 1023 (Fla. 4th DCA 1988), cert. denied, 489 U.S. 1054 (1989), the Fourth District Court of Appeal construed the constitutionality of an amended ordinance, even though the amendment occurred during the pendency of the appeal. The court did so in light of two considerations, the remedial nature of the ordinance, and the court's obligation to dispose of the case according to the law prevailing at the time of the appellate decision. Haggerty, 530 So.2d at 1025-26.

Consistent with these principles, this Court should review the constitutionality of the law prevailing at the time of its decision -- the 1991 Acts. To do otherwise "would be effort to no avail". To do otherwise would also be a great public disservice because a ruling that the 1990 Act is "invalid," without consideration of the 1991 Acts, would

compound the chaos which now besets the workers' compensation system. Nothing beneficial would be gained by any dictum relating to the trial court's "all or nothing" rulings.

3. The 1991 Acts Are Remedial, And Operate Retroactively To The Effective Date Of The 1990 Act Without Impermissibly Impairing Substantive Rights.

The 1991 Acts should be given retroactive application. First, because the 1991 Acts are remedial and procedural, they should be applied retrospectively. Second, the Legislature has specifically declared that the reenactment of the workers' compensation legislation apply retroactively to the effective date of the 1990 Act. And even if this Court were to determine that the 1991 Acts affect substantive, as opposed to procedural, rights, the Acts should be applied retroactively consistent with the Legislature's mandate. Such retroactive application is appropriate because the benefits of retroactive application outweigh any possible harm retroactivity might cause.

a. The 1991 Acts Are Curative, Procedural And Remedial And Thus Should Be Applied Retroactively.

The 1991 Acts are procedural and remedial in nature. As such, they should be applied retroactively to the effective date of the 1990 Act. Such application does not trigger the doctrine which invalidates laws attempting to alter substantive rights which have already come into being:

> Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only

> operate in furtherance of the remedy or confirmation of the rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes.

Department of Agric. & Consumer Serv. v. Bonanno, 568 So.2d 24, 30 (Fla. 1990) (quoting City of Lakeland v. Catinella, 129 So.2d 133, 136 (Fla. 1961)); see also Young v. Altenhaus, 472 So.2d 1152, 1154 (Fla. 1985) (these "statutes do not fall within the constitutional prohibition against retroactive legislation and they may be held immediately applicable to pending cases"); Village of El Portal v. City of Miami Shores, 362 So.2d 275, 278 (Fla. 1978) (same).

There is a compelling argument that workers' compensation laws as a whole are remedial in nature, because they provide a statutory remedy in exchange for workers' giving up uncertain common law remedies:

> [T]he fundamental purpose of workers' compensation acts [is] to provide for employees a remedy that is both expeditious and independent of proof of fault and for employers a liability that is limited and determinate. In other words, the certain remedy afforded by the Act is deemed to be a sufficient substitute for the doubtful right accorded by the common law.

Mahoney v. Sears, Roebuck & Co., 419 So.2d 754, 755 (1st DCA 1982), aff'd, 440 So.2d 217 (Fla. 1983). "Modern social legislation is generally regarded as being remedial in nature. . . . Workers' compensation laws . . . are remedial." Sutherland Stat. Const. § 60.02 (4th Ed). As long as the Legislature does not totally abrogate the statutory remedy it

has provided, workers' compensation legislation will be considered remedial.

Where, as here, the 1991 Acts effect merely "remedial or procedural" changes, retroactive application is appropriate. In Bonanno, this Court reviewed the retroactivity of chapter 89-91, Laws of Florida, which set forth a mechanism for payment of compensation for citrus plants destroyed by officials as part of Florida's citrus canker eradication program. The Court found the law to be "remedial in nature because it confirms the right to compensation and merely provides the procedure by which the amount of compensation is to be determined." Bonanno, 568 So.2d at 30. Similarly, the 1991 Acts confirm the substantive provisions of the 1990 Act and with respect to those provisions held invalid by the trial court, correct the infirmities found below.

Likewise, in Birnholz v. 44 Wall Street Fund, Inc., 880 F.2d 335 (11th Cir. 1989) the United States Eleventh Circuit Court of Appeals, applying Florida law, examined the retroactivity of amendments to the Florida Securities and Investor Protection Act. The court held that the amended statute, which provided a method of obtaining a substantive right, but which did not alter the true substance of the original statute, is "legal machinery and not a fountain of legal rights". Id. at 339. It noted that, "the amended statute operated in confirmation of an exemption privilege already existing and therefore did not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes." Id. at 340.

The same reasoning applies to the 1991 Acts. The 1991 Acts confirm the substantive rights of employers and employees that were enacted in 1990, merely removing possible technical or procedural flaws (e.g., the single subject rule) and changing procedural aspects of the law (e.g., eliminating any separation of powers defect by eliminating the IRC). The 1991 Acts are remedial and procedural and thus may be applied without concern as of the effective date of the 1990 Act.

b. Even If The 1991 Acts Are Considered "Substantive," Retroactive Application Does Not Impair Vested Rights.

The 1991 Acts do not alter or impair the rights of workers under the 1990 Acts. Workers' benefits are the same under the 1991 Acts as they were under the 1990 Act; thus, there has been no impairment of rights. In McKibben v. Mallory, 293 So.2d 48, 53 (Fla. 1974) this Court held: "Where a statute has been repealed and substantially reenacted by a statute which contains additions or changes in the original statute, the reenacted provisions are deemed to have been in operation continuously from the original enactment".

In addition, pursuant to the automatic stay triggered by this appeal to the Florida Supreme Court under Florida Rule of Appellate Procedure 9.310(b)(2), the 1990 Act remains effective until this Court rules otherwise. Because the 1991 Act was enacted while that stay was in effect, there was an uninterrupted transition from the 1990 Act to the 1991 Act and workers' rights to benefits were unchanged by the transition --

the substantive workers' compensation rights are the same under the 1990 and 1991 Acts.

A statute is subject to challenge as impermissibly impairing a contract only if it actually alters or impairs rights. Sanchez v. Sanchez de Davila, 547 So.2d 943, 945 n.2 (3d DCA), rev. denied, 554 So.2d 1167 (Fla. 1989); Nieves v. Hess Oil Virgin Islands Corp., 819 F.2d 1237, 1243 (3d Cir.), cert. denied, 484 U.S. 963 (1987). Because the 1991 Acts do not alter or impair rights, they can be applied retroactively, without triggering constitutional concerns.[3]

II.

THE TRIAL COURT ERRED IN INVALIDATING THE 1990 ACT ON THE GROUND THAT IT VIOLATED THE SINGLE SUBJECT RULE.

The legal and practical reasons for the Court to decide the single subject and separation of powers issues as they are presented by the 1991 Acts are compelling. However, if the

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3. And even if this Court were to find that the 1991 Acts "impair vested rights," the statutes may nevertheless be applied retroactively. Under either this Court's impairment of contract analysis, see United States Fidelity & Guar. v. Dep't of Insurance, 453 So.2d 1355 (Fla. 1984) or its due process analysis, see Department of Agric. & Consumer Serv. v. Bonanno, 568 So.2d 24 (Fla. 1990), the 1991 Acts do not impermissibly abrogate rights. Both tests require a balancing of the public interest served by the law with the nature and extent to which an individual's right is affected. USF&G, 453 So.2d at 1360; Bonanno, 568 So.2d at 30. In this case, where no vested rights are actually impaired, see USF&G, 453 So.2d at 1361, where workers' compensation is a highly regulated field, see id., where the State is not one of the contracting parties, see id., and where the 1991 legislation addresses a compelling public interest, see id. at 1360; Bonanno, 568 So.2d at 30; Ch 90-201, 1990 Fla. Laws 705 (preamble), the benefits of retroactive application would be held to outweigh any counterveiling interests.

Court declines to rule on the law as reenacted and amended during the 1991 Special Session, it should nevertheless conclude that the trial court erred in holding the 1990 Act invalid on the grounds that it violated the single subject rule and the separation of powers doctrine of the Florida Constitution.[4]

Article III, section 6 of the Florida Constitution, also known as the "single subject" rule, provides that "every law shall embrace but one subject and matter properly connected therewith . . . ." This prohibition against multiple subjects in a single legislative act is intended to prevent "logrolling" -- a practice by which legislators piggyback bills unlikely to garner support to unrelated but popular bills. See Burch v. State, 558 So.2d 1 (Fla. 1990).

The trial court held that the 1990 Act violates the single subject rule. In so ruling, however, the court observed that the Act "does not on its face show the classic perceived evil of what we call logrolling." (A. 8 at 8). Nor did the trial court find the topics covered by the Act unrelated to the subject of "economic growth and development in the state of Florida." Instead, it focused on what it described as a "more subtle" evil: the scope of the subject itself. The trial court explained:

> In essence, there's so much in there that's good that it reduces the accountability of a legislator because they can always say that they

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4. The 1990 Act should, of course, be construed in such a way as to effectuate legislative intent and all doubts as to its validity should be resolved in favor of its constitutionality. See Bunnell v. State, 453 So.2d 808 (Fla. 1984); McKibben v. Mallory, 293 So.2d 48, 51 (Fla. 1974).

> voted for the good portion of the bill and not necessarily the bad part of it, but at least they can explain away that which might be politically distasteful.

(A. 8 at 9).

This holding departs from the principles set forth by this Court in a long line of cases construing the single subject rule and from the plain language of the constitution itself. The trial court's interpretation of the single subject rule would hinder legislative efforts to enact comprehensive legislation and should not be adopted by this Court. Furthermore, because workers' compensation and foreign trade are "properly connected" to the subject of economic development, the ruling below was erroneous.

A. The Trial Court's Interpretation Of The Single Subject Rule Is Contrary To The Constitution And Controlling Law.

The trial court's interpretation of the single subject provision constitutes an erroneous departure from both the language of article III, section 6 of the Florida Constitution and from principles enunciated by the Florida Supreme Court in construing that provision. The constitution states in pertinent part:

> Every law shall embrace but one subject and matters properly connected therewith . . . .

Fla. Const. art. III, §6. Thus, the constitution expressly authorizes any law pertaining to a single subject and matters properly connected with that subject. It contains no limitation whatsoever on the breadth of the subject.

The Supreme Court of Florida has never held that an act of the Legislature can run afoul of the single subject rule simply because it addresses too broad a subject. Indeed, this Court has consistently held that the Legislature must be accorded wide latitude in the enactment of laws. Burch v. State, 558 So.2d 1 (Fla. 1990)(quoting State v. Lee, 356 So.2d 276 (Fla. 1978)). The subject of an act may therefore be "as broad as the legislature chooses" as long as its provisions are "properly connected" for purposes of article III, section 6. Burch v. State, 558 So.2d 1, 2 (Fla. 1990)(quoting Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969)); Chenoweth v. Kemp, 396 So.2d 1122, 1124 (Fla. 1981); State v. Lee, 356 So.2d 276, 282 (Fla. 1978); see also Smith v. Department of Ins., 507 So.2d 1080 (Fla. 1987). In Board of Public Instruction v. Doran, this Court explained:

> The term "subject of the act" within this [constitutional] provision means the matter which forms the groundwork of the act and it may be as **broad as the legislature chooses** so long as the matters included have a natural or logical connection.

Doran, 224 So.2d at 699 (emphasis added).

This standard was expressly approved and applied by this Court more recently in Burch, 558 So.2d at 1, Smith, 507 So.2d at 1080, and Lee, 356 So.2d at 276. In all three cases, this Court held that broad subjects containing numerous diverse topics did not violate the single subject rule. The Court's analysis in Burch, Smith and Lee focused not on the breadth of the subject itself, but whether each topic was "germane to the

subject of the act . . . or tend(ed) to make effective or promote the objects and the purposes of the legislation included in the subject." Smith, 507 So.2d at 1087 (quoting State v. Canova, 94 So.2d 181 (Fla. 1957)).

The trial court's decision departs from these long-settled principles. Significantly, the court did not find the topics covered by the act unrelated to the subject of "economic development in the State of Florida". It concluded that the act violated the single subject rule because the subject itself is too broad. Such an interpretation of article III, section 6 is contrary to the authorities discussed above and should not be adopted by this Court.

B. Trial Court's Interpretation Is Unworkable And Will, If Adopted, Impede The Legislature's Ability To Adopt Comprehensive Legislation.

This Court has never held that legislation that is "too broad" violates the single subject rule, and it should not do so now. The rule framed by the trial court lacks principle and would produce uncertainty in the courts and the legislature. "Breadth" in itself is not indicative of the dangers that the single subject rule is intended to prevent. Hence, a rule constraining the legislature's ability to address broad subjects would hamstring efforts to legislate in a comprehensive fashion without any constitutional or policy justification.

Because "too broad" is not a bright line test, the trial judge's interpretation of the single subject provision would leave the legislature without guidance and in effect

re-write the constitution. What does "too broad" mean? The trial judge stated that the "broad umbrella" of growth and economic development permits legislators to escape accountability by characterizing the bill in different ways to appeal to different constituencies. Does this mean that legislation is invalid if it addresses a subject that is inherently broad, or does it mean that legislation addressing an inherently broad subject is invalid only if it incorporates divergent topics? Or, does it mean that legislation is invalid if it suffers from the "subtle evil" of reduced accountability?

These questions serve to demonstrate that a rule limiting the breadth of legislation would lead to unprincipled results. In every session, the Legislature passes hundreds of bills addressing subjects ranging from "insurance and civil actions" to "transportation needs of Florida". Chapter 86-168, for example, contains 68 sections addressing "state government". Chapter 89-233 contains 41 sections addressing "public safety". Both of these subjects are so broad that the list of potential subtopics is virtually endless. Yet the "state government" law merely pertains to agency purchasing and budget issues. The "public safety" law, much like the legislation at issue here, covers only a few of the many topics which could be incorporated into a bill addressing "public safety." Nevertheless one could easily conclude under the trial court's test that each of these laws address a subject that is "too broad".

Although the trial court stated that broad subjects permit legislators to avoid accountability, the scope of a bill has little if any effect on the legislator's ability to "market" his accomplishments to different constituencies. Virtually all bills have "good" parts and "bad" parts vis-a-vis particular constituencies. An example is chapter 88-380, an act relating to Acquired Immune Deficiency Syndrome ("AIDS"). A legislator can tell his liberal constituents that he voted for "this good AIDS education bill" while telling his conservative constituents that he voted for this "good AIDS testing bill".

Furthermore, there is no correlation between the breadth of a subject and the objectives of the single subject rule. This Court has said that article III section 6 is intended to prevent "a single enactment from becoming a cloak for dissimilar legislation having no necessary or appropriate connection with the subject matter". Lee, 356 So.2d at 2872 (citing Colonial Inv. Co. v. Nolan, 131 So. 178 (1930)). Comprehensive legislation of the kind at issue here is generally the subject of highly visible public debate. There are no dark mysteries, no cloaks, no surprises. Hence, breadth alone is not indicative of the evils that the single subject rule is designed to control.

Given the degree of debate and comment leading up to the adoption of the 1990 Act, it is ironic that the court below applied its "too broad" interpretation to invalidate the Act under the single subject provision. If this Court were ever to adopt such a rule, it should do so where the Legislature's

action lacked a reasonable foundation. Here, the Legislature adopted chapter 90-201 following an impressive degree of public comment and debate. Two years before enacting the 1990 Act, the Legislature passed chapter 88-201, 1988 Fla. Laws 1098, the Florida Economic Development Act of 1988. That act established the Economic Growth and International Development Commission and authorized it to study and recommend strategies for protecting Florida's ability to compete with other states to attract industry and commerce. The commission sought comment and participation from all interests, including the labor interests who now oppose the 1990 Act.

Moreover, the interpretation of the single subject rule suggested by the trial court would dictate a different result in virtually all of the single subject cases to come before this court in recent years. In Burch, for example, this Court considered the constitutionality of chapter 87-243, 1987 Fla. Laws 1622, a comprehensive act addressed to the subject of "crime." The act contained seventy six sections, including three separate titles, ranging from topics as diverse as criminal forfeiture to road right of ways to drunk driving. The tort reform acts at issue in Lee and Smith broach equally broad subjects in an equally comprehensive fashion. Chapter 86-160, for example, contains provisions ranging from insurance to malpractice to contract and tort litigation. Although those acts addressed broad subjects, all were the subject of lengthy and visible public debate. In none of these cases did this Court find the evil of "logrolling."

In sum, the rule adopted by the trial court, which limits the scope of the subject that may be addressed in an act, will not serve the purposes of the single subject rule. Moreover, it will impede the Legislature's ability to enact comprehensive legislation. Piecemeal legislation, as this Court has noted, is an ineffective and awkward way to address problems that require comprehensive solutions. See Burch v. State, 558 So.2d 1, 3 (Fla. 1990). Hence, this Court should not adopt the trial court's interpretation of article III, section 6.

C. Because Matters Included In The 1990 Act Are Properly Connected Therewith, The Trial Court Reached The Wrong Result Under Principles Enunciated In Decisions Of This Court.

The 1990 Act does not violate the single subject rule under article III, section 6 of the Florida Constitution under the principles enunciated by this Court. As noted above, it has long been held that the subject of an act may be as broad as the Legislature chooses so long as the matters included therein are "properly connected" to that subject. Matters included in an act are "properly connected" where

> the provisions are fairly and naturally germane to the subject of the act, or are such as are necessary to make effective or promote the objects and purposes of the legislation included in the subject.

Smith v. Department of Ins., 507 So.2d 1080, 1087 (Fla. 1969) (quoting State v. Canova, 94 So.2d 181 (Fla. 1957)).

By this standard, the matters included in the Act are "property connected" to the subject of the 1990 Act. Chapter

90-201 reflects the Legislature's effort to address a subject of increasing importance in the current recessionary climate -- ecomomic growth and development. The Act contains two general subtopics, workers' compensation reform and international trade. As is demonstrated in the record below, respected and detailed studies commissioned by the Legislature and conducted by the Florida Chamber of Commerce found that both of these measures promote economic growth and development. (A. 10, 11).

The Legislature adopted chapter 90-201 in response to findings and recommendations of the Economic Development Commission. (A. 10, 11). Many of those findings -- in addition to the findings of a similar report prepared by the Florida Chamber of Commerce -- are reflected in the preamble to the Act. As explained in the preamble, workers' compensation and international trade have a critical impact on Florida's economy and its ability compete with other markets. The evidence adduced at trial to establish this impact is unrefuted. (A. at 17, 18). Hence, these topics "are properly connected" with the subject of the Act.

The decisions of this court in Smith, Lee and Burch support the conclusion that the Florida Growth and Economic Development Act of 1990 does not violate the single subject rule. In State v. Lee and again in State v. Smith, this Court considered single subject challenges to comprehensive, broad based legislation designed to address the liability Insurance crisis. Although the legislation at issue in both cases

contained numerous divergent provisions, this Court found no evidence of logrolling -- each of the tort reform acts, the court emphasized, were legislative attempts to deal comprehensively with tort claims and the related insurance problems. Indeed, the Legislature enacted the Tort Reform Act of 1986, much like the act at issue here, upon the recommendations of a special commission established for that purpose.

More recently, in Burch v. State, this Court considered a single subject challenge to chapter 87-243, 1987 Fla. Laws. 1622, sweeping crime control legislation containing topics as diverse as pawn brokers, drug education and abandonment of road rights of way. The court concluded that "three basic areas" of the act bore a logical relationship to the subject of the act: controlling crime. As in Smith and Lee, the court noted that "there is nothing in this act to suggest the presence of logrolling . . . in fact, it would have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation." Burch, 558 So.2d at 3.

The Economic Growth and Development Act of 1990 covers two topics. In comparison, the crime control act in Burch covered three; the tort reform act in Smith covered five. Each survived constitutional single subject challenges. Like the legislation at issue in Smith, the Legislature adopted the 1990 Act following two years of highly visible debate and in response to express findings of the Florida Growth and Economic Development Commission. Hence, the Florida Economic Development

Act of 1990 is comprehensive legislation analogous to the legislation upheld in Smith, Lee and Burch. Therefore, if this Court interprets the 1990 Act, the trial court should be reversed because the 1990 Act does not violate the single subject provision of the constitution.

III.

THE TRIAL COURT ERRED IN INVALIDATING THE 1990 ACT ON THE GROUNDS THAT IT VIOLATED THE SEPARATION OF POWERS DOCTRINE.

As with the discussion in section II, supra, the actions of the Legislature in the 1991 Special Session obviate the need to address the separation of powers doctrine in this case. If, however, the Court addresses the issue, it should conclude that the 1990 Act does not violate separation of powers.[5] Moreover, the three specific provisions of the Act held by the trial court to be violative of separation of powers are severable from the remainder of the Act, which could still stand and serve its legislative purpose if the provisions found infirm by the trial court were excised. The function of the courts is not to invalidate legislation across the board, but, when necessary, to excise objectionable portions of otherwise valid legislation in order to avoid impinging on the constitutional power of the Legislature to enact laws of the state.

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5. It is noted that the record fails to show that any of the Appellees/Cross-Appellants were subjected in any way to the Industrial Relations Commission or the Workers' Compensation Oversight Board, or affected in any other way by provisions of the 1990 Act held to violate separation of powers.

A. The Trial Court's Holding That Provisions Of The Act That Violate Separation Of Powers Are Not Severable From The Remaining Provisions Of The Act Was Erroneous.

The trial court specifically held unconstitutional sections 20.171(5)(a)1d, 20.171(5)(a)1e, Florida Statutes (Supp. 1990), as well as section 118 of the Act. The court stated

> In a separation of powers constitutional challenge, if the separation of powers rule is violated then the entire statute is negated.

(A.7 at 4). This statement is erroneous; there is no such rule of constitutional statutory construction. In actual practice, this Court has invalidated portions of acts or statutes as violative of separation of powers while leaving intact remaining portions of those laws. In Avila South Condominium Ass'n v. Kappa Corp., 347 So.2d 599, 608 (Fla. 1977), this Court held unconstitutional all but the first two sentences in each of Section 711.12(2) Fla. Stat. (1975) and its successor, Section 718.111(2), Fla. Stat. (Supp. 1976). Section 711.12(2) created substantive rights in the first two sentences, then went on to create what the Court held to be matters of procedure. Kappa Corp., 347 So.2d at 608. The Court held the latter to be "an impermissible incursion by the legislature into the exclusive prerogative of this Court" and therefore unconstitutional. Id. However, the substantive portions were allowed to stand. Id.

The long-standing test of whether a portion of a law is severable from the remainder of the statute was clearly articulated by this Court in Eastern Air Lines v. Department of

Revenue, 455 So.2d 311 (Fla. 1984), appeal dismissed, 474 U.S. 892 (1985):

> It is a fundamental principal [sic] that a statute, if constitutional in one part, may remain valid except for the unconstitutional portion. However, this is dependent upon the unconstitutional provision being severable from the remainder of the statute. The severability of a statutory provision is determined by its relation to the overall legislative intent of the statute of which it is a part, and whether the statute, less the invalid provisions, can still accomplish this intent.

Id. at 317 (emphasis added) (citing Cramp v. Board of Pub. Instruction of Orange County, 137 So.2d 828 (Fla. 1962)). Severance is preferred, for it is not the purpose of courts to frustrate the objectives of the Legislature. Courts should strive instead to sever discrete, objectionable sections of otherwise valid legislation.

The only circumstances in which severance is not permitted is where "the valid portion of the law would be rendered incomplete, or if severance would cause results unanticipated by the legislature." Eastern Air Lines, 455 So.2d at 317. The outcome turns on whether the constitutionally infirm provision "can be logically separated from the remaining valid provisions," which in turn depends on whether the "legislative purpose expressed in the valid provisions can be accomplished independently of those which are void; and the good and bad features are not inseparable and the Legislature would have passed one without the other; and an act complete in itself remains after the invalidated provisions are stricken."

Presbyterian Homes of Synod v. Wood, 297 So.2d 556, 559 (Fla. 1974).

In 1991, Special Session B, the Legislature reenacted the Workers' Compensation Bill and amended it by repealing the provisions relating to the IRC, the Workers' Compensation Oversight Board, and funding for the Joint Legislative Management Committee. Fla. HB 11-B (1991) (1st Engrossed). There can be no clearer expression of the Legislature's intent to have the remaining provisions of the 1990 Act survive without the provisions the trial court held invalid.

Substantively, it is readily apparent that each of the provisions held by the trial court to violate the separation of powers doctrine could be severed without causing any other sections of the 1990 Act to collapse. The trial court invalidated that portion of section 3 of the Act dealing with the review and retention of judges of the Industrial Relations Commission (IRC). The court specifically found objectionable the following provision:

> If the Supreme Court Judicial Nominating Commission issues a favorable report [regarding retention of a judge], the Governor shall reappoint the judge.

(A.7 at 3). Severing this clause would do no violence to the rest of the Act. The purpose of the clause is to provide a mechanism for review and retention of judges. If the Legislature overstepped its bounds by inserting mandatory language regarding the interaction of the Governor and the

Judicial Nominating Commission (JNC), the objectionable portion quoted above may be excised.

The provisions found objectionable are not so significant to the legislative purpose, as set forth in the preamble, that the Legislature would not have passed the Act without it. The purpose expressed by the Legislature in the preamble and the remainder of the Act is to reduce the cost to businesses in Florida associated with paying workers' compensation insurance premiums and benefits. The IRC is not essential to this purpose, nor are the specific objectionable provisions regarding retention of IRC judges. Either the retention provision or the entire provision creating the IRC can be severed without affecting the remainder of the statute.

The court also invalidated the portion of section 3 which provides:

> The Industrial Relations Commission judges are also subject to the jurisdiction of the Judicial Qualifications Commission during their term of office.

This provision is also severable. In fact, the arguments for finding it infirm (which amici do not concede) provide the reasoning showing why it is severable. The Executive has the authority to adopt rules regarding the conduct of its officers. If the above-quoted provision is severed, the IRC would still stand as intended by the Legislature. The Executive could then adopt rules to govern the IRC's conduct. The remainder of the Act would be entirely unaffected.

Finally, the appropriation provision held to violate separation of powers is also severable. Section 118 of the 1990 Act appropriated funds from the workers' compensation trust fund to the Joint Legislative Management Committee to administer the provisions of the Act relating to the Workers' Compensation Oversight Board. If section 118 is unconstitutional, it and provisions creating the Workers' Compensation Oversight Board can be severed without invalidating the entire Act.

Under the 1990 Act, the Workers' Compensation Oversight Board is a legislative entity housed within the Joint Legislative Management Committee. Ch. 90-201, §38, 1990 Fla. Laws 705, 769-72. The Board's function was to oversee the workers' compensation system as it progressed under the Act, report its progress, and make recommendations regarding future legislation. The Board was not involved in any way in implementing the numerous provisions relating to the functioning of the system or alterations in benefits and premiums. Without the Workers' Compensation Oversight Board, the Act would remain "complete in itself" and the remainder of the bill would still be valid. The means chosen to effect the fundamental purposes of the Act, inter alia, addressing basic issues of premium rates and benefit formulas, would remain intact.

B. Provisions Relating To The Retention And Oversight Of Industrial Relations Commission Judges Did Not Grant Any Branch Of Government Any Powers Impinging On Powers Vested In Any Other Branch, So There Was No Separation Of Powers Violation.

The trial court held that two provisions of section 3 of the Act, which created the Industrial Relations Commission

violate the separation of powers doctrine. To determine constitutional validity of a statute, courts must look at its practical operation and effect. Sparkman v. State ex. rel. Scott, 58 So.2d 431, 432 (Fla. 1952). Doing so reveals that each of these two provisions is constitutionally valid.

1. The Power Of Retention Of IRC Judges Was Solely Within The Executive Branch Under The Express Provisions Of The Act.

Section 3 of the 1990 Act created Florida Statute § 20.171(5), establishing within the executive branch an Industrial Relations Commission (IRC), which would consist of five judges empowered to hear appeals from rulings of compensation claims judges under chapter 440. There is no doubt that the IRC was to be an executive entity: this Court has held as much in holding that the previous IRC, which was substantially similar to that created by the 1990 Act, was a quasi-judicial body housed within the executive branch. Scholastic Systems, Inc. v. LeLoup, 307 So.2d 166, 170 (Fla. 1974). As part of the retention process for these judges, the Supreme Court Judicial Nominating Commission was to furnish to the Governor a retention report. If the report was favorable for retention, the 1990 Act provided that "the Governor shall reappoint the judge."

The trial court held this provision to violate separation of powers. The court said that the "provision is fatally defective because it mandates that the decision of the Supreme Court Judicial Nominating Commission, a judicial branch

entity, controls the retention process, leaving the Governor with no discretion regarding the retention of executive branch employees." (A. 7) (emphasis added). The trial court's reasoning is flawed and its holding incorrect.

The Judicial Nominating Commission is not a judicial entity, but rather is an executive body. In re Advisory Opinion to Governor, 276 So.2d 25, 29 (Fla. 1973). It cannot therefore be said that its decisions are impingements on executive power by the judicial branch. Id. See Kanner v. Frumkes, 353 So.2d 196, 197 (Fla. 3d DCA 1977).

In the 1973 advisory opinion decision, this Court responded to a request by then Governor Reuben Askew for an advisory opinion regarding his power to appoint judges. In re Advisory Opinion to the Governor, 276 So.2d at 26-29. The Court advised Governor Askew that "the appointment of a judge is an executive function and the screening of applicants which results in the nomination of those qualified is also an executive function. . . . Once the judicial nominating commissions have been established by the Legislature they become a part of the executive branch of government." Id. at 29-30. It further advised "nominations made by the judicial nominating commissions [are] binding on the Governor, as he is under a constitutional mandate to appoint" candidates nominated by the commission. Id. at 29. Because the judicial nominating commission is actually an agency of the executive branch, its role in the selection and retention of judges cannot be said to impinge upon the executive power.

The trial court's reasoning calling into question the retention provision because it removes the discretion of the executive does not withstand analysis. First, the Act reserved in the Governor, and ultimately in the people, the power to retain or dismiss judges, as the Governor could dismiss for cause any judge. Fla. Stat. § 20.171(5)(a)1.b. (Supp. 1990). With ultimate control being left solely within the Governor's discretion, there was no impingement upon executive power, and no violation of the separation of powers doctrine. Moreover, the judicial nominating commission itself is within the executive branch and therefore is subject to the control of the Governor. Once the Legislature created the IRC and the mechanics of the nominating and retention process, the execution of the legislative mandate was left entirely to the executive branch.

2. The 1990 Act Did Not Grant Executive Power To The Judicial Qualifications Commission.

The trial court also held invalid the provision of the 1990 Act making judges of the IRC subject to the jurisdiction of the Judicial Qualifications Commission (JQC). (A.7 at 3). The court held the provision to be defective "because it requires that executive branch employees be disciplined by the judicial branch." Id. This is not so.

The fallacy in the court's reasoning is that the recommendations of the JQC are never binding, not even when applied to members of the article V judiciary. Fla. Const. article V, §12(f) ("Upon recommendation of [the JQC], the

supreme court may order that the justice or judge be disciplined . . . . "). State ex rel. Turner v. Earle, 295 So.2d 609, 611 (Fla. 1974). The JQC can only present the Supreme Court with a recommendation, which the Court may or may not follow. Id. The ultimate disciplinary authority over article V judges rests with the Court. Id.

Likewise, under the 1990 Act, the JQC, taking advantage of its peculiar insight into the conduct of judicial officers, would have been authorized to provide an opinion regarding the conduct of judges of the IRC, measured by standards of judicial ethics. The Governor would have absolute discretion to follow or reject the opinion. If so desired, the Governor could promulgate rules establishing the standards of conduct applicable to IRC judges. Thus, the provision found objectionable by the trial court was without teeth and in no way impinged on executive power.

The section only provided that the judges would fall within the jurisdiction of the JQC. No provision was made regarding discipline. Rules regarding discipline of judges of the IRC were therefore left to the Governor. It is basic to our system that each branch of our government has the inherent authority to govern itself, and to adopt rules to accomplish this purpose. Clayton v. Willis, 489 So.2d 813, 815 (Fla. 5th DCA 1986), rev. denied, 500 So.2d 546. Under the Act, the Governor had this authority.

The mechanism was enabled for cooperative review, however, which is valid constitutionally: "The doctrine of

separation of powers . . . carries with it a responsibility of each branch to cooperate with the other branches to accomplish the purpose of each constitutional provision." Forbes v. Earle, 298 So.2d 1, 2 (Fla. 1974). This is not to say that the JQC was to be the agent of the executive branch; the JQC would operate within its own rules, not subject to executive control. But as long as the JQC had no binding power over the IRC or the Governor, there was no impingement on executive power.

C. The Appropriation Of Funds To The Joint Legislative Management Committee Was For Legislative Functions Under The Act, And Therefore Did Not Impinge On Executive Power.

The trial court also held section 118 of the Act to unconstitutionally violate separation of powers. The rationale is unclear. Section 118 appropriated funds from the Workers' Compensation Administration Trust Fund to the Joint Legislative Management Committee to administer provisions of the Act:

> There is hereby appropriated to the Joint Legislative Management Committee from the Workers' Compensation Administration Trust Fund for the fiscal year 1990-1991 the sum of $601,564 and 7 full-time equivalent positions to administer the provisions of this act.

The trial court held this section unconstitutional, "because it appropriates executive branch trust fund monies to a legislative body to administer an act regulated by an executive agency." (A.7 at 4). This confusing holding reflects the trial judge's misconceptions regarding the content of the Act.

As stated, section 118 appropriated funds to the Joint Legislative Management Committee to administer its duties under

the Act, not to administer the entire act as the trial court's decision implies. Several other appropriations to various agencies were also made for administration or implementation of the Act. See Ch. 90-201, §§ 7, 114, 115, 116 and 117, 1990 Fla. Laws 705, 712, 822-23. The functions to be performed by each entity receiving funds under the Act were described in detail in various provisions elsewhere in the Act.

The function of the Joint Legislative Management Committee in administering the Act was described within section 38. It was not executive in nature. The Act created within the legislative branch the Workers' Compensation Oversight Board, which was to review the performance of the workers' compensation system and make recommendations to the legislature about future legislation. Fla. Stat. §§ 440.4415(1), (2) (Supp. 1990). "The board and the legal counsel shall be assigned, for administrative purposes, to the Joint Legislative Management Committee" and be subject to its rules and procedures. Id. § 440.4415(5). Thus, the questioned appropriation provided funding for a legislative body to administer legislative functions under the Act. It did not infringe on the powers of any other branch of government.

The trial court implied in its decision that appropriation of funds from the workers' compensation trust fund to a legislative entity was an improper appropriation of executive funds to the legislative branch. The workers' compensation trust fund was created and governed by § 440.50, Florida Statutes. The funds contained therein are "for the

payment of all expenses in respect to the administration of [the workers' compensation system] . . . ." Fla. Stat. § 440.50(1)(a) (1989). The trust fund being the creation of the Legislature, it is within the province of the Legislature to enact additional legislation regarding the appropriation and use of those funds. Brown v. Firestone, 382 So.2d 654, 663 (Fla. 1980) ("The Florida Legislature is vested with authority to enact appropriations and reasonably to direct their use."); Fla. Const. article III, § 12. Accordingly, this section does not impinge on the power of the Executive, either in its passage or its effect.

IV.

THE COURT BELOW ERRED IN RULING THAT THE LEGISLATURE EXCEEDED ITS AUTHORITY IN ENACTING THE SUNSET PROVISIONS OF THE 1989 AND 1990 WORKERS' COMPENSATION LAWS

In addition to holding the Florida Growth and Economic Development Act invalid on the "all or nothing" grounds addressed in the preceding sections of this brief, the trial court held that several sections of the 1990 Act (and that part of the 1989 workers' compensation law "sunsetting" the law in 1991) invalid but severable from the remaining sections of chapters 90-201 and 89-289.

Section 43 of chapter 89-289 is a "sunset" provision. It states: "chapter 440, Florida Statutes, is repealed on October 1, 1991, and shall be reviewed by the legislature pursuant to s. 11.61, Florida Statutes." Section 56 of Chapter 90-201, dubbed the "backwards repealer" by the trial court (A. 7

at 7), repeals the sunset provision of the 1989 law. It states:

> Notwithstanding the provisions of the regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with § 11.61, Florida Statutes, Chapter 440, Florida Statutes, shall not stand repealed on October 1, 1991, and shall continue in full force and effect as amended herein.

The trial court ruled that both section 43 of chapter 89-289 and section 56 of chapter 90-201 are invalid. The court held that because the Legislature's "statutory authority to sunset regulatory agencies . . . is not applicable to general law", sections 43 and 56 are "not consistent with the authority granted to the legislature whereby it could sunset regulatory agencies . . . ." (A. 7 at 6-7). This holding is patently wrong. Moreover, it reflects a profound misunderstanding of the Legislature's lawmaking authority and of the sunset act itself.

The Florida Sunset act requires periodic review of laws and regulations burdening "the competitive market". See Fla. Stat. § 11.61 (2)(b). The act is intended to protect the free market system by requiring those who seek continued regulation of the private sector to justify such restraint. To achieve this goal, the act provides

> that the legislature conduct a periodic and systematic review of the need for and the benefits derived from a program or function which licenses or otherwise regulates a profession, occupation, business, industry, or other endeavor, and pursuant to such review, terminate, modify, or reestablish the program or function.

Fla. Stat. § 11.61 (2)(c) (1989).

The trial court's assertion that the sunset act does not apply to "general laws" is simply incorrect. A general law is "a law that operates universally throughout the state, uniformly upon subjects as they exist in the state, or uniformly within a permissible classification . . .". Dept. of Business Regulation v. Classic Mile, Inc., 541 So.2d 1155, 1157 (Fla. 1989). A special law, by contrast, is one that operates upon a specific object or territory within the state. Id. Laws that regulate business and industry -- like the laws at issue here -- are general laws. Virtually all legislation subject to sunset review is comprised therefore of "general" laws. Cf. Alterman Transport Lines v. State, 405 So.2d 456 (Fla. 1981)(rejecting a constitutional challenge to the application of the sunset act to general laws regulating the trucking industry). Indeed, the sunset act as amended in 1984 established a ten year schedule over which all of the Florida statutes would be reviewed under the sunset criteria. See Fla. Stat. § 11.61 n. 1.

Even if the Legislature had intended the sunset act to reach only "special" laws, the provisions identified by the trial court are not invalid for the simple reason that the Legislature has the power to enact any law that it deems appropriate. This power is inherent and subject only to constitutional limitation. Pinellas County v. Laumer, 94 So.2d 837, 840 (Fla. 1957); State v. Board of Public Instruction, 170 So. 602, 606 (Fla. 1936). Hence, the Legislature cannot be constrained by the acts of preceding Legislatures. Trustees of International Imp. Fund v. St. Johns River Co., 16 Fla. 531

(1878); see also Alterman Transport Lines, 405 So. 2d at 460 (sunset act not an impermissible attempt to bind subsequent Legislatures).

The court below did not identify any provision of the Florida constitution supposedly violated by the 1989 and 1990 sunset provisions somehow reflect an unconstitutional exercise of the Legislature's power. The Legislature clearly has the authority to expand or limit the applicability of the sunset act should it choose to do so. The decision below striking down section 56 of the 1990 Act should therefore be reversed.

V.

ANY FINDING BY THIS COURT THAT THE 1990 OR 1991 ACTS IS UNCONSTITUTIONAL SHOULD HAVE PROSPECTIVE EFFECT ONLY.

If this Court finds the 1990 Act or 1991 Acts to be unconstitutional in whole or in part, the Court's decision should be given prospective application only.[6] Retroactive application of such a decision would wreak havoc in the workers' compensation system, with possible failures of businesses and the concomitant loss of jobs.

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6. Even if this Court were to find the entire Act unconstitutional, its ruling may be given exclusively prospective application. In Aldana v. Holub, 381 So.2d 231 (Fla. 1980), this Court determined the "medical mediation act" to be "unconstitutional in its entirety as violative of the due process clauses of the United States and Florida Constitutions." Id. at 238. Furthermore, this Court ruled that its "opinion will have prospective application only." Id. Similarly, even if this Court were to rule the Act unconstitutional in its entirety, this Court may determine that its decision be given prospective effect only.

In National Distributing Co. v. Office of Comptroller, 523 So.2d 156 (Fla. 1988), this Court reviewed the factors which may lead to an exclusively prospective application of one of its decisions. In National Distributing, the Court found unconstitutional sections of two statutes which imposed an excise tax on the sale of certain alcoholic beverages. Addressing the question of prospective versus retrospective effect, the Court weighed the equities of the situation. It held that its ruling was to have prospective application only because retroactive application would have required a tax refund and caused considerable chaos and confusion to implement. Id. Under the reasoning of National Distributing, if this Court were to rule any part of the 1990 Act unconstitutional, such a ruling should be given prospective application only.

In enacting the 1990 and 1991 laws, the Florida Legislature determined that "if the present crisis is not abated, many businesses will cease operating and numerous jobs will be lost in the State of Florida." Ch. 90-201, 1990 Fla. Laws 705, 707-9 (preamble). Subsequent to the enactment of the 1990 Act, affected individuals and businesses have acted pursuant to and in reliance on the provisions of the 1990 Act, including the payment and collection of premiums and the payment and receipt of benefits. As is explained in the amici's Statement of Interest above and as was recognized during the legislative debate when the 1991 curative acts were passed, a decision requiring the industry now to conform to the pre-1990 benefits and premiums would cause a catastrophic disruption of

the workers' compensation system. It would, to put it mildly, further aggravate what the Legislature described in the 1990 and 1991 Acts as "a financial crisis in the workers' compensation insurance industry." Ch. 90-201, 1990 Fla. Laws 705, 707-9 (preamble); SB 8-B, 1991 Special Session B (preamble). See National Distributing, 523 So.2d at 158.

The Legislature's motives in enacting the subject legislation are also relevant to the issue of the prospective application of any decision. In National Distributing, this Court's holding that its decision would have prospective effect turned in part on its determination that the Legislature enacted the statutes in question in good faith. 523 So.2d at 158. Here, the Legislature likewise acted in good faith to deal comprehensively with a matter of "overpowering public necessity [--] reform of the current workers' compensation system in order to reduce the cost of workers' compensation insurance while protecting the rights of employees to benefits for on-the-job injuries." Ch. 90-201, 1990 Fla. Laws 705, 707-9 (preamble). This crisis should not be further exacerbated by retroactive application of a Court's decision. Instead, as in National Distributing, any holding that the 1990 or 1991 Acts are invalid should "be given an exclusively prospective application." 523 So.2d at 158, so that the Legislature can go back to the drawing board and attempt to legislate in this crucial economic area without exceeding the constraints of the Florida Constitution.

VI.

IF THIS COURT HOLDS ANY OF THE BENEFIT COST REDUCTIONS OF THE 1990 ACT OR 1991 ACT UNCONSTITUTIONAL, THEN IT MUST ALSO STRIKE THE PREMIUM COST REDUCTIONS BECAUSE THEY CANNOT BE CONSTITUTIONALLY SEVERED FROM THE BENEFIT COST REDUCTIONS.

Amici hereby adopts the position of the Intervenor-Defendants/Cross-Claimants/Cross-Appellants National Council on Compensation Insurance and Employers Insurance of Wausau relating to the necessity of striking the premium cost reduction provisions of the 1990 and 1991 Acts, in the event this Court agrees with the Appellee/Cross-Appellant's arguments (on cross-appeal) that the benefit cost reduction provisions of the Acts are invalid.[7]

CONCLUSION

The Legislature in its 1991 Special Session has eased considerably this Court's job with respect to the appeal of the trial court's holding that the 1990 Act violates the single subject rule and the separation of powers doctrine. Under the doctrine that the Court is to apply the law in effect at the time of decision, and the preference to uphold statutes if possible and avoid unnecessary constitutional decisions whenever possible, this Court should review the 1991 enactments which have eliminated the grounds for the trial court's decision. As

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7. As for the other specific provisions of the 1990 Act the court held unconstitutional, the Self-Insurers agree in substance with the arguments advanced in the briefs of other Appellants.

reenacted and amended during the 1991 special legislative session, the Acts clearly do not violate the separation of powers doctrine or the single subject rule.

If the Court were inclined to pass on these broad constitutional issues, it should reject the novel and incorrect constitutional theories advanced by the trial court. However, if the Court agrees with the trial court's constitutional analysis as to any issue, any ruling should apply prospectively only in order to avoid the catastrophic confusion the Legislature has attempted in good faith to avoid.

The trial court's ruling that the Legislature lacks the authority to sunset provisions of the workers' compensation laws lacks any legal authority, and should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief Of Amici Curiae Self-Insurers: Florida Construction, Commerce, and Industry Self-Insurers' Fund; Florida Association of Self-Insurers; and Florida Group Risk Administrators Association, Inc., In Support of Position of Appellants to the counsel on the attached service list by United States Mail this 28th day of January, 1991.

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