IN THE SUPREME COURT OF FLORIDA

Supreme Court Case No. 77,850
[District Court Case No. 90-2071]

FLORIDA ASSOCIATION OF COUNTIES, INC., a non-profit Florida corporation; FLORIDA LEAGUE OF CITIES, INC., a non-profit Florida corporation; and SANDRA GLENN and ROBERT ANDERSON, citizens and taxpayers of the State of Florida and respectively of Seminole County and Sarasota County, Florida,

Plaintiffs/Appellants,

vs.

DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT, an agency of the State of Florida; PROFESSIONAL FIRE FIGHTERS OF FLORIDA, a labor organization; and the FLORIDA POLICE BENEVOLENT ASSOCIATION, a labor organization,

Defendant/Intervenors/Appellees.

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ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL FIRST DISTRICT OF FLORIDA

REPLY BRIEF

of FLORIDA ASSOCIATION OF COUNTIES, INC. and the individual Citizens and Taxpayers

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Attorneys for Appellants:

TOM R. MOORE, Esq.
Of Counsel to
ROBERTS & EGAN, P.A.
for Individual Taxpayers
& FLORIDA ASSOCIATION
OF COUNTIES, INC.

KRAIG CONN, Esq.
Asst. General Counsel
FLORIDA LEAGUE
OF CITIES, INC.

PATRICIA A. DORE
Special Counsel for
FLORIDA ASSOCIATION
OF COUNTIES, INC.

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ISSUE PRESENTED:

WHETHER CHAPTER 88-238, LAWS OF FLORIDA, WHICH PROVIDED FOR FIVE AUTOMATIC ANNUAL INCREASES BOTH IN PUBLIC EMPLOYEE RETIREMENT BENEFITS AND IN THE FUNDING OF THOSE INCREASED BENEFITS, FUNDED THE INCREASED BENEFITS CONTRARY TO THE SPIRIT AND INTENT OF ARTICLE X, SECTION 14, OF THE CONSTITUTION OF FLORIDA.

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RESPONSE TO APPELLEE PBA'S SUPPLEMENTAL STATEMENT OF THE FACTS

Suffice it to say that appellants found the PBA's supplemental statement of the facts to be argumentative, inaccurate in a number of places (including not only statements with no citation to support them, but also with respect to some statements with references to the record), and more importantly, largely irrelevant additions.

The critical and pertinent facts in this case are evident. Very few facts are needed here to see clearly what the 1988 Legislature did. The facts that support the trial judge's determination that the funding basis established by Chapter 88-238, Laws of Florida, was and is an unwise and imprudent basis for funding, are clearly stated and supported by the record.

These appellants choose here not to enter into a lengthy battle over the supplemental statement of facts, when it largely is irrelevant anyway.

SUMMARY OF ARGUMENT

Nothing in the three answer briefs can cure the fundamental problem with the funding basis established by Chapter 88-238, Laws of Florida, nor justify the temerity of the lower courts in their refusal to declare Ch. 88-238, Laws of Florida, to be unconstitutional.

The answer briefs fail generally to rebut the argument of the appellants in their Initial Brief, choosing instead to focus on issues that attempt to turn the Court from the central question of constitutional law.

This Reply Brief briefly discusses these obfuscations presented by the intervenors and responds to and rebuts each of them. In the end, it is clear that intervenors have little that they can say to preclude the inescapable conclusion that an unwise and imprudent basis for funding is also an unsound basis for funding.

ARGUMENT

Introduction

This is a relatively simple rather than complex case. Yet, the stakes are high both in dollars and in constitutional principle.

Contrary to the implications and assertions of the intervening PBA and firefighters, the truly pertinent facts are few, and evident.

When freed from the obfuscations and red herring arguments of the intervenors (briefly rebutted in this Reply Brief), there is a very simple syllogistic process involved in this straightforward question of Florida constitutional law:

MAJOR PREMISE:

> **Article X, Section 14, requires that legislation increasing public employee retirement benefits provide "for the funding of the increase in benefits on a *sound* actuarial basis." [Emphasis added.]**

MINOR PREMISE:

> **The funding basis provided by Chapter 88-238, Laws of Florida, is a departure from and *inconsistent* with the established funding basis for the Florida Retirement System and is an *unwise and imprudent basis* for funding the particular increase in benefits set forth in that Act.[1]**

CONCLUSION:

> **Chapter 88-238, Laws of Florida, is inescapably unconstitutional in that it provides for funding of the subject increased benefits on an unwise, imprudent, unorthodox and "unsound" basis, within the plain and clear sense of the words "funding on a sound actuarial basis" as used in, and in the context of, Article X, Section 14, of the Florida Constitution.**

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1. See page 2, *infra*, for the exact language used by the trial judge in so stating his findings as to the nature and character of the funding basis established by Ch. 88-238 as to these particular benefits.

While PBA emphasizes the specific conclusions stated in the formal Final Judgment,[2] it bemoans appellants' emphasis on what the trial judge said in his detailed oral explanation of his decision, on the record. Primarily, PBA's expressed objection to appellants' emphasis on these oral statements consists of PBA's presentation of a mistaken notion of the judiciary's function here.

Intervenors clearly fail to distinguish between (1) common questions of legislative wisdom that most certainly are totally and properly within the sole province of the legislative branch; and (2) the uncommon question of constitutional law as to the "soundness" of, including the wisdom and prudence of, any funding basis provided in legislation which increases public employee retirement benefits. [More on PBA's argument on that, in another section below.]

PBA and the firefighters have very little to say in their answer briefs about what the trial judge actually said, which is repeated here as follows:

> I think that it is apparent that the Florida Retirement System is *based on a firm foundation* of entry age normal cost concept. 88-238 is a *departure*, in my estimation, from that scheme. It is *inconsistent* with the scheme. It is *inconsistent* with prior language or language found in other parts of the statute or chapter. *But* it is my finding, *as a matter of law*, that the Legislature or the legislative branch has the *prerogative* to depart from that scheme or to be inconsistent therewith *as long as it is not violative of Article X, Section 14 of the Florida Constitution*.
>
> That is a reluctant conclusion, because my personal view of it is that *it was an unwise and imprudent basis*, but that it is not the function of the judicial branch to sit in judgment on the prudence or lack thereof of the legislative branch, but to determine whether the actions of that branch, when reviewed by the judicial branch, pass the constitutional test, in this instance, the measure set forth in Article X, section 14.

Appellants' APPENDIX Vol. I, TAB 3 at 6 (emphasis added).

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2. For example:

> "The funding scheme employed by Chapter 88-238, Laws of Florida, does not violate the provisions of Article X, Section 14 of the Florida Constitution."

Final Judgment, at 5 (emphasis added).

After reading the three answer briefs herein, it remains clear from the statements of the trial judge that he simply did NOT equate or link the lack of wisdom and lack of prudence as to the new and different (inconsistent) "basis" for the funding, with the word "sound" in the constitutional provision. Therein lies the fundamental error.

The trial judge quite clearly believed that the 1988 Legislature "as a matter of law" not only "has the prerogative" to "depart" from the normal, traditional, customary, orthodox basis for funding of FRS retirement benefits (to wit: to depart from use of the entry age normal cost method), but also has the prerogative to do so in a way that actually is "inconsistent" with that established basis for funding of the FRS "so long as it is <u>not</u> violative of Article X, Section 14." [Emphasis added.]

Now, there's the rub - in the last quoted phrase.

The intervenors can only restate that the trial judge, with the approval of the district court, opined that "funding on a sound actuarial basis" means ONLY that "a retirement program must be funded in such a way that the retirement fund is able to meet its continuing obligations as and when they mature." [Final Judgment, at paragraph 4 on page 4. See Appellants' Appendix, TAB 1.]

Intervenors urge this Court to accept that such "consensus definition" is ALL that the constitutional phrase means. However, the reason for calling this the "consensus definition" is that everyone agreed that the phrase required a legislative body to provide a funding basis that, *at the least,* would eventually produce sufficient funds to pay for the cost of the increased benefits. As repeatedly stated by everyone, there has never been an issue here that the legislation eventually will produce the funds to pay for the benefits as and when they accrue.

The constitutional construction question before this Court, simply stated, is "whether the constitutional phrase 'funding on a sound actuarial basis' requires the *basis* for funding of any particular package of increased retirement benefits to be

'sound' in a broader sense than just that the retirement fund is able to meet its continuing obligations as and when they mature."

Respectfully, appellants still find it very hard to even imagine, in spite of the decisions below and the arguments of the intervenors, that the word "sound" in the constitutional context of Article X, Section 14, does not mean more than the two lower courts have said that it does. It seems all too obvious that if a new and different basis for funding a particular package of increased public employee retirement benefits under the FRS, is neither a wise basis for funding those particular increased benefits, nor a prudent basis for doing so, then it also must be an unsound basis for funding those increased benefits.

Appellants surmise from the decisions below that the fundamental and proper reluctance of courts to declare acts of the legislature unconstitutional, resulted here in an unjustified temerity to invalidate Ch. 88-238, Laws of Florida. That temerity is unjustified in light of the plain and clear sense arising from the word "sound" as used in Article X, Section 14, and as easily gleaned from the basically undisputed facts about the evils sought to be remedied by the adoption of this constitutional provision.

Notwithstanding all of the obfuscations (discussed below) presented by PBA and the firefighters to sidetrack the courts below as to the central issue, it must be stated that they *could not* argue, and *did not* argue, that the word "sound" is not a synonym for the word "wise" or that the word "prudent" is not similarly construed by America's dictionary publishers.[3]

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3. See Appellants' Initial Brief at 23 ("wise" being one of the synonyms of "sound"); and the Appendix to this Reply Brief, attached hereto at the end of this brief (showing "wise" and "prudent" not only as synonyms for each other, but also that "wise" suggests "a balance of the mind and a combination of knowledge, experience, and reflection leading to a *soundness* of judgment" (emphasis added).

These additional dictionary references, for this Court's perusal, include a number of antonyms for the words "wise" and "prudent" which are quite significant in light of the facts of this case. These further demonstrate that the "unwise and imprudent" nature of the basis for the funding dictated by Ch. 88-238, Laws of Florida, as found by the trial judge to exist here, connotes that the basis for funding here was "thoughtless, foolish, rash, improvident (and/or) wasteful." Such is the plain

The Successful Obfuscation of the Main Issue by Appellees: Appellants' Response & Rebuttal

The most frustrating aspect of these consolidated cases, from the early stages to this final stage, has been the success of the intervenors in obfuscating the main issue of constitutional law.

Unlike the League (which spends considerable time in its Reply Brief in rebutting some of the "red herring" issues that seemed to influence the lower courts), these appellants refuse to do more here, generally, than provide this Court with a succinct statment of rebuttal as to each of the obfuscations presented by the other side. Only the first two points discussed below, and to a lesser degree the third, seem deserving of more than cursory treatment.

<u>Obfuscation #1: That the challengers of Ch. 88-238 must suffer adverse consequences from the fact that there is "no fixed meaning" to the words "sound actuarial basis."</u> - PBA spends 7 pages in its answer brief asserting that the absence of some fixed meaning to the phrase "sound actuarial basis" somehow means that the courts must not construe the language in a manner which would have the effect of striking down the legislation.

This Court clearly can, and no doubt will, look at the words of the entire Section 14 and construe the entire section in a common sense context which applies to the particular facts here. This Court most certainly will note the legislative mischief that is afoot under this particular set of facts.

It borders on impertinence for PBA to argue that the absence of a fixed meaning (especially of a constitutional provision that is "unique" within the Nation) somehow works to the advantage of those who would uphold the challenged statute. There are literally volumes of cases where the courts have construed from a particular set of facts what constitutes "due process of law" or "interstate commerce"

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everyday sense and meaning of the words actually used by the trial judge.

- notwithstanding that such phrases have no fixed meaning expressly within the four corners of the constitutional provisions where they are found. Whatever the PBA and the firefighters perceive as difficulties (*e.g.* insufficient standard) for shaping over a period of time (through repeated judicial interpretation of a constitutional provision) what that provision means in any specific factual context, the absence of any previous construction by the courts as to Article X, Section 14, makes that task of this Court all the more important.

The fact that this case is of major importance in establishing the meaning of Article X, Section 14, hardly means that the courts must timidly avoid questioning what the 1988 Legislature did here. To the contrary, appellants firmly believe that this Court will view this constitutional provision in a way that gives to it the most logical and meaningful interpretation to prevent abuses of legislative power to increase public employee retirement benefits.

Obfuscation #2: That the legislative history of Article X, Section 14, confirms that the sole purpose of the amendment was to assure sufficiency of funding. - PBA and the firefighters spend several pages in their respective briefs suggesting, similarly to obfuscation #1, that the absence in the legislative history of some definitive explanation of the choice of words in the phrase "funding on a sound actuarial basis," precludes this Court from giving those words (particularly the word "sound") their plain English meanings *in addition to* the "solvency" aspect of the word "sound." Intervenors incorrectly argue that "sound" cannot connote BOTH "solvent" *and* other consistent meanings of that word, at the same time.

The legislative history, indeed quite clearly, was that Florida had a horrible history of promising retirement benefits without providing the funds to pay for them. The *main* reason for the presentation and adoption of the constitutional provision most surely was to put a halt to such practices.

But, that obvious curing of that most obvious ill, just as obviously does *not*

preclude this Court from declaring a logical and common sense judicial construction of the actual words used in the constitutional provision to prevent legislative bodies from trying to find imaginative ways to avoid the spirit and intent of the constitutional constraint imposed upon them.

No legislative body in Florida, including the Florida Legislature, should be permitted to believe otherwise after the final decision in this case. Any legislative body can meet the "solvency" test which PBA says is the "sole" objective of the language of Article X, Section 14, while finding numerous variations on the theme that some other future legislator will have to face the future angry constitutents who will be asked to pay for those ever-increasing benefits.

The narrow construction thus far successfully urged by the intervenors, flys in the face of the plain and clear meaning of the "other" synonyms (besides "solvent") which characterize the meaning of the word "sound" (such as, and including the synonym "wise"). As an adjective modifying the word "basis" for funding of any particular increased benefits, the word "sound" plainly includes, according to this particular subject matter, that the legislative body *cannot* provide a funding basis that is foolish, thoughtless, rash, destabilizing and unconservative, even if the legislation provides mathematical formulas or numbers that by actuarial calculations will eventually produce enough money to pay the cost of the benefits.

Otherwise, the only recourse to taxpayers will be periodic revolt, *when* they realize what is happening to them.

The firefighters present the fact that an increase in firefighters' retirement benefits from 2% to 3% (in the annual accrual rate) was in place for a four-year period during the 1970's, as if this helps their argument. To the contrary, these appellants suggest that when the cost of those benefits hit home to the taxpayers in the 70's, and then to their legislators, the legislators (many of whom were NOT the ones who enacted the increased benefits) rolled back the 3% to 2%.

That is the kind of legislative history that is important and which ran concurrent with the adoption of Article X, Section 14. That is the legislative history that places the constitutional provision in context as to the subject increased benefits.[4]

Quite obviously, the imposition of automatic annual increases taking place over a series of years, serves as a destabilizing factor (again, showing the "unsound" character of the funding basis) in the administration, financing and operation of the FRS. As experience tells us, and as the firefighters are acknowledging, "repeal" is a remedy for the unwise and imprudent funding basis here. But, if repeal is appropriate *when* the people of Florida finally (after the 1993 increases) fully realize what the 1988 Legislature did to them, then it should be clear that today, this Court, under the authority of Article X, Section 14, should not allow such a funding basis to have validity in the first place.

A construction of the constitutional provision by this Court which produces this reasonable effect, with reference to these particular circumstances, is all that is necessary. Such an approach certainly is the law of Florida as announced by this Court in *State ex rel. West v. Gray*:

> When the words in a constitution admit of two or more senses, each of which is agreeable to common usage, the sense in which they were intended to be used must be collected partly from the words and partly from conjecture as to their intention. In short, the words must be construed "according to the subject matter, in such a sense as to produce a reasonable effect, and with reference to the circumstances of the particular transaction."[5]

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4. In *State ex rel. v. Gray*, 74 So.2d 114, 116 (Fla. 1954), the Court noted that "light" on the meaning of words used in the constitution:

> " . . . may be obtained from contemporary facts or expositions; from antecedent mischiefs, from known habits, manners and institutions; and from other sources almost innumerable, which may justly affect the judgment in drawing a fit conclusion in a particular case."

5. *Ibid.*

The express and implicit language, and spirit of the subject constitutional provision, precludes any legislative body from using an unwise (foolish), imprudent (thoughtless, rash), basis for funding (which here is also both unorthodox and an inconsistent methodology with respect to that basis heretofore and still used for funding all other benefits paid under the FRS).

Obfuscation #3: That the wisdom of legislation is a question solely within the province of the legislature. - This is a straw man if ever there was one.

The intervenors continue to totally miss (perhaps intentionally) the distinction set forth in the these appellants' Initial Brief at page 17 as to what *is* important about the trial judge's determination that the basis for funding under Chapter 88-238 *is an unwise* and imprudent basis.

First, it is interesting to note that PBA went to some length in their Supplemental Statement of the Facts to quote F.A.C. counsel as to a *portion* of his opening remarks at trial. The quote was to the effect that these appellants are "not challenging the wisdom of the act of the legislature *in increasing the benefits from two to three percent as far as the accrual rates for those benefits.*"[6] [Emphasis added.]

PBA omitted, for very good reason, the next sentence of those opening remarks, to wit:

> "What we are here for, is to question the manner in which those particular increased benefits were funded in that legislation."[7]

From the outset, appellants have questioned NOT the 1988 Legislature's prerogative to increase the level of benefits, but its constitutional ability (or inability) to establish a funding basis for that package of increased benefits that was and is a foolish basis, a thoughtless basis, a rash basis, an unorthodox basis, and a basis inconsistent with that basis always and still used for funding all other FRS benefits.

6. PBA Answer Brief at 10, footnote 3.

7. Transcript, Vol. I at 7.

Given that one of the synonyms of "sound" is "wise" - the question of whether the *basis* of funding is a wise basis, is *at the least* pertinent to the *constitutional construction question* of whether that funding basis is "sound."

Stated another way: when any case comes before the courts questioning whether the basis for funding of a particular package of increased retirement benefits is constitutionally qualified as funding "on a sound actuarial basis" as required by Article X, Section 14, the courts will look at the particular facts surrounding the legislation to answer that question. If those facts demonstrate to the court, as here, that the basis for the funding is "an unwise and imprudent basis", then one can fairly gather from such determination (from the everyday meanings that accompany those words used by the trial judge) that the basis for the funding also may be fairly characterized in one or more of the following ways: it is indeed a "thoughtless" funding basis; or a "foolish" funding basis; or a "rash" funding basis.[8] Appellants submit that the facts support that the particular funding basis challenged here is all of those, and more (*e.g.* also an unstable basis; a technically flawed basis; an unconservative basis).

In the constitutional setting here, of course this Court can and should consider the fact that the trial judge found the funding basis to be unwise and imprudent. Then, looking at the facts, this Court will see clearly that the funding basis uniquely imposed upon the FRS by Ch. 88-238, only as to this particular set of increased benefits, is a funding basis that can properly be called a foolish, thoughtless and rash basis.

Thereafter, the leap without temerity, which the lower courts would not make, is not difficult at all: the funding basis is also "unsound" in the constitutional sense.

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8. These are the antonyms of "wise" and "prudent" (or synonyms of "unwise" and "imprudent"). See Appendix to this Reply Brief.

Obfuscation #4: That level rather than non-level funding is not required by the constitution. - This is another straw man.

Appellants do *not* argue that "level" funding is *mandated* by the constitution, in all cases or even generally. Appellants position quite simply is that the altered "basis" for funding used by the 1988 Legislature, to fund these particular challenged increased benefits, is funding on an unsound basis.

The choice in this particular case of a non-level, phased-in, multi-step basis for funding, by whatever description, was also a choice which established a thoughtless, rash, imprudent, to wit: unsound funding basis.

At this point, the desired confusion sought by the intervenors and successfully achieved by them thus far in this case, has waned. It now seems much more clearly stated by appellants here than in the lower courts, that what matters, and is an undisputed fact, is that the 1988 Legislature imposed automatic annual increases which promise to bring ever-increasing substantial financial burdens on Floridians that they will not fully realize until after 1993, more than five years after enactment of those automatic increases.

True, such a method of funding may not be as great an evil as that of promising benefits without funding them at all. But, it nonetheless remains as politics at its worst: giving future benefits to a particular interest group in a way that taxpayers will not get the bill until those that enacted the law are long gone from the scene.

That is the evil that Chapter 88-238 created as to the challenged package of increased benefits. Such is the "dangerous precedent" that fosters (if not stopped by this Court) future legislative gamesmanship of a similar nature. There may be other legislative acts in the future that can utilize a non-level funding basis and establish it to be a thorough, thoughtful, wise, prudent, and conservative funding basis. But, Chapter 88-238 is not such an act.

Obfuscation #5: That this is a political question and, as such, is to be avoided by this Court. - The intervenors emphasized politics in several places in their briefs and PBA quoted the testimony of appellants' actuary, Dr. Winklevoss, in asserting this notion.[9] What PBA did not do, was quote the remainder of what Dr. Winklevoss said. In sum, Dr. Winklevoss agreed that a political question was involved, but that this did not change the fact that the question before the Florida courts is also a constitutional question, in light of Florida's Article X, Section 14.[10]

Obfuscation #6: That appellants failed to meet the stringent burden of proof. - The "burden of proof" argument is an empty one because the winner in this case is the side that secures the construction of the constitution that fits its theory of the case. The same facts which render the funding basis unwise and imprudent, more than sufficiently demonstrate that the funding basis is also "unsound."

Obfuscation #7: That the question here is whether there is competent substantial evidence to support the "finding of fact" by the trial judge that the funding of the increase was on a sound actuarial basis. - This is an outrageous argument, made by the firefighters.[11] This case most certainly does not turn on any non-existent "finding of fact" as to the ultimate question of constitutional law.

Obfuscation #8: That ERISA and federal treasury regulations preclude consideration of the cost of future increases in benefits until they actually become effective. - This particular obfuscation probably constitutes the most successful one

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9. PBA Answer Brief at 7-8.

10. See the full exchange between the trial judge and Dr. Winklevoss in Transcript, Vol. III at 362-365.

This exchange includes Dr. Winklevoss' testimony that the phrase "sound actuarial basis" is "beautifully written" and deserving of construction showing that it means more than just that "inflow will equal or exceed the outflow." In sum, Dr. Winklevoss said there was more to the phrase funding on a "sound actuarial basis" than that it be "actuarially sound." The latter means that "inflow will equal or exceed the outflow" while the latter means that much, and more.

11. Firefighters Answer Brief at 27.

in the intervenors' arsenal for clouding the real constitutional issue. The League has chosen to repond to this in some detail.

These appellants, however, deem this obfuscation to be deserving of a still relatively succinct rebuttal, even though the argument was both imaginative and successful with both lower courts in persuading them to minimize the import of the discriminatory effects of the challenged legislation on future taxpayers versus current taxpayers.

In a nutshell, ERISA and the treasury regulations carefully selected by PBA to obfuscate the constitutional issue here, has nothing whatsoever to do with PUBLIC pension plans. These federal laws and regulations prevent abuses in the private sector. They prevent private employers from taking current-year tax deductions for promised future benefits which the employers may never pay.

In fact, the cost of the package of increased benefits in the challenged legislation is calculable and certain. That is how the 7.04% 30-year level contribution rate figure arises, with which the intervenors have no quarrel. Yet, they successfully used the argument [that the court should not look at the cost of future benefits which are at a rate (3%) which is not yet effective] in persuading the lower courts that there is no significant discrimination here between different generations of taxpayers.

On this appeal to this Court, it makes little difference to these appellants that this particular error be corrected, because it is *not* the question of degree of discrimination that matters anyway. What matters is the obvious fact that the automatic annual increases place a heavy burden on Floridians five years *after* the enactment of the legislation, so that legislators may avoid the political heat of the ultimate cost, while reaping the political benefits in the year of enactment.

Whether or not this Court spends a great deal of time sorting out whether the lower courts erred in finding that there was no significant discrimination between taxpayers of different years, it is inescapable that the burden five years down the

road is ever-increasing and substantial and, more importantly, fundamentally "unsound" as an approach to funding this package of increased benefits.

Obfuscation #9: That Chapter 83-37, Laws of Florida "could not possibly have been intended to be a permanent rule of constitutional interpretation."[12] - Short answer: why not?

In 1970 this Court essentially said that the legislative construction enacted by statute "is well-nigh, if not completely, controlling."[13] This Court did not alter that proposition either in *Brown v. Firestone* in 1980, or in *Iglesia v. Floran* in 1981.[14]

However, neither the intervenors in their answer briefs, nor the district court in its opinion, have any answer to appellants' argument that the 1983 legislation is consistent with the the 1978 legislation that provides the legislative construction of Article X, Section 14. The district court flatly refused to look at Ch. 83-37 as being of lesser contemporaneity. The intervenors did not even cite or discuss any of the three cases.

Obfuscation #10: That the relief sought should be limited to prospective relief only. - There is absolutely no way that City of Winter Haven v. Klemm & Son,[15] can be read as establishing some right in PBA members or firefighters to "vest" retirement benefits in them pursuant to the challenged legislation, during the course of this litigation. If anything, the *Klemm* decision is a very favorable opinion for appellants on this question.

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12. See PBA Answer Brief at 25.

13. See *Greater Loretta Improvement Association v. State ex rel. Boone*, 234 So.2d 665, 669 (Fla. 1970).

14. See the discussion of these cases in Appellants' Initial Brief, particularly at pages 9 - 11.

15. 132 Fla. 334, 181 So. 153, rehearing denied, 133 Fla. 525, 182 So. 841 (1938).

CONCLUSION

On January 1, 1992, yet another automatic annual increase in public employee retirement benefits went into effect in this state as a result of the passage of Chapter 88-238, Laws of Florida, by the 1988 Legislature.

And, the end is not yet here. Even in the midst of serious economic recession, another annual automatic increase is scheduled for next January 1st (1993). Not until well into 1993 will Floridians really experience the full economic impact of what the 1988 Legislature did to them. All of this is foisted upon them as being "funding on a sound actuarial basis."

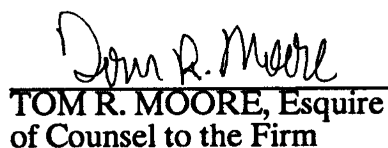
In their answer briefs, the PBA and firefighters can only obfuscate the central question of constitutional law and keep repeating, we won below.

Article X, Section 14, is designed to protect not only public employees themselves, but also the general public. The intervenors have no real answer to the trial judge's determination that the funding basis here is an unwise and imprudent basis. They can only offer obfuscations and plead that this Court also defer to the legislative branch, as did the lower courts.

That is no answer. The constitution means what it says. By its explicit and implicit terms, no legislative body may impose an unwise and imprudent funding basis on any public employee retirement system.

The answer briefs fail to adequately defend the temerity of the lower courts. This Court should reach the conclusion that appellants submit is inescapable: that a funding basis that is an unwise and imprudent basis, is also one that is an unsound basis, and unconstitutional.

ROBERTS & EGAN, P.A.
Attorneys for Appellants



TOM R. MOORE, Esquire
of Counsel to the Firm

CERTIFICATE OF SERVICE

This is to certify that a copy of the above and foregoing REPLY BRIEF OF APPELLANTS has been furnished this 13th day of January, 1992, by U.S. mail to each of the persons named below:

George Waas, Esq.
Assistant Attorney General
Department of Legal Affairs
Attorney for Department of Administration
The Capitol, Suite 1501
Tallahassee, Fla. 32399-1050

Kelly Overstreet Johnson, Esq. hand-delivery to
Attorney for Florida Police Benevolent Association
P.O. Box 11300
Tallahassee, Fla. 32302

Kraig Conn, Esq.
Attorney for League of Cities, Inc.
201 West Park Ave.
Tallahassee, Fla. 32301

Richard A. Sicking, Esq.
RICHARD A.SICKING, P.A.
Attorney for Professional Firefighters of Florida
2700 SW 3rd Ave., Suite 1E
Miami, Florida 33129

Certified by ROBERTS & EGAN, P.A., Attorneys for Appellants, FLORIDA ASSOCIATION OF COUNTIES, INC., *et al.* by and through the undersigned.

Tom R. Moore

by Tom R. Moore, Esq.
Of Counsel to the Firm

217 South Adams Street
Tallahassee, Fla. 32301
(904) 224-5169