IN THE SUPREME COURT OF FLORIDA

Case No. 77,850

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,

Appellants,

vs.

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

Appellees,

REPLY BRIEF OF APPELLANT, FLORIDA LEAGUE OF CITIES, INC.

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PRELIMINARY STATEMENT

The following references are used throughout this Brief:

DOA, DOR	Department of Administration, Division of Retirement
FAC	Florida Association of Counties, Inc.
FPF	Florida Professional Firefighters
FRS or System	Florida Retirement System
League	Florida League of Cities, Inc.
PBA	Florida Police Benevolent Association
R	Record Reference
T	Transcript of Trial Proceeding Reference

SUMMARY OF ARGUMENT

Appellants' primary arguments before this Court are that Chapter 88-238, Laws of Florida, was enacted on an unsound actuarial basis and that the 1988 Legislature was not the "governmental unit responsible" to make provision for the funding of public pension benefit increases becoming effective in the years 1990 to 1993. Respondents/Appellees PBA and FPF make numerous arguments which Appellants believe are intended to divert this Court's attention from these two primary issues. These legal "red herrings" include arguments based on the federal Employee Retirement Income Security Act and Treasury regulations, the interpretation of legislative enactments under the contemporaneous construction doctrine and a grant of prospective relief only if Chapter 88-238, Laws of Florida, is determined to be unconstitutional.

Appellants believe it is necessary to address the different points raised by the Respondents/Appellees in order to guide this Court's attention back to the two primary issues before it. Therefore, this Brief will specifically address several "red herring" points raised by the Respondents/Appellees. The Reply Brief submitted by the Florida Association of Counties, et al., which the League concurs with, will focus on the primary issues before this Court.

INITIAL STATEMENT

A function of this Court is to develop standards, based on constitutional provisions, by which actions should be reviewed.

The Court is now presented with its first opportunity to review and announce the meaning and intent of Article X, Section 14, Florida Constitution, as well as establish standards, based on Article X, Section 14, by which increases in publicly funded pension benefits will be reviewed.

ARGUMENT

I. "GOVERNMENTAL UNIT RESPONSIBLE" CLARIFICATION

The League submits that the 1988 Legislature unconstitutionally mandated publicly funded pension benefit increases for the years 1990 to 1993 through Chapter 88-238, Laws of Florida, because the 1988 Legislature was not the "governmental unit responsible" to make provision for the funding of the increased benefits in years 1990 to 1993. This would be a function properly performed by the 1989 to 1992 Legislatures. League's Initial Brief, pages 8-13. The 1988 Legislature would be the "governmental unit responsible" for making provision for publicly funded pension benefit increases becoming effective in 1989. The 1989 Legislature would be the "governmental unit responsible" for making provision for publicly funded pension benefit increases becoming effective in 1990 and so on. The League submits that this is one of the constitutionally based expectations of taxpayers. PBA Answer Brief, pages 25-26.

Respondent/Appellee PBA states, "[t]he Legislature's

consolidation of five coordinated contribution/benefit increases into one act, rather than five acts, does not furnish a rational occasion for invalidating the act as actuarially unsound under Article X, Section 14." (Emphasis added). PBA Answer Brief, page 20. The process question here by the League focuses on the "governmental unit responsible" language of Article X, Section 14. Although the League also questions the validity of Chapter 88-238, Laws of Florida, on "sound actuarial basis" grounds, the League submits that the "governmental unit responsible" interpretation is a separate and distinct standard by which this Court can determine the unconstitutionality of Chapter 88-238, Laws of Florida.

Respondent/Appellee PBA argues at length about the "Legislature's plenary and exclusive power over public fiscal affairs." PBA Answer Brief, page 15. However, there are constitutional restraints on the extent of this power. See, Article VII, Florida Constitution, especially Sections 1(d) (balanced budget) and 18 (prohibition on state mandates). The League submits that Article X, Section 14 similarly acts as a limitation on the exercise of legislative prerogative.

II. ERISA

Respondents/Appellees discuss at length the reference to the federal Employee Retirement Income Security Act (ERISA) of 1974 in Section 112.63, Fla. Stat. PBA Answer Brief, pages 27-30; FPF Answer Brief, pages 9-12, 20-21. ERISA, United States Treasury

regulations and a United States Treasury Revenue Ruling are used to support two different arguments. The first is that since ERISA acknowledges and approves six different actuarial cost methods, the Florida Legislature may at any time and without actuarial assistance change the cost method under which the Florida Retirement System is operated. PBA Answer Brief, pages 27-28. The second is that since select Treasury regulations prohibit, with designated exceptions, a "reasonable funding method" from taking into account anticipated benefit changes, the changes made by Chapter 88-238, Laws of Florida, which take effect in future plan years cannot be considered in determining the charges and credits to the funding standard account for any given current year. PBA Answer Brief, pages 28-29.

The League submits that statutory reference to the actuarial cost methods approved by ERISA does not grant the Legislature the ability to enact publicly funded benefit increases which require changing the Florida Retirement System's actuarial cost method without first determining if such changes can be made on a "sound actuarial basis," as required by Article X, Section 14.

The League also submits that Respondents/Appellees' select use of Treasury regulations is an imaginative but misplaced argument. If taken to its logical conclusion, PBA's Treasury regulation argument amounts to a conclusion that the Department of Administration, Division of Retirement is improperly administrating the Florida Retirement System by considering now how the state will pay for the legislatively mandated future increases in benefits.

The trial judge did not accept this argument of PBA and neither should this Court.[1]

Respondents/Appellees' first argument centers on the different actuarial cost methods approved in ERISA. 29 U.S.C. Section 1002(31). One of these methods, the "entry age normal cost method," also known as the "entry age actuarial cost method," is the method which the Florida Retirement System has traditionally operated under. PBA Answer Brief, page 3; July 1, 1989, Evaluation of the Florida Retirement System by Milliman and Robertson, Inc., Appendix A-1 to A-2; (R. at 239); July 1, 1987, Evaluation of the Florida Retirement System by Milliman and Robertson, Inc., Appendix A, page 29; (R. at 238). Under the principles of the entry age normal cost method, "the actuarial present value of the projected benefits of each individual included in the evaluation is allocated as a level percentage of the individual's projected compensation

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[1] In his Final Judgment, the trial judge found:

> 3. Section 112.63(1)(f), Fla. Stat., makes reference to the actuarial costs methods approved in the Employee Retirement Income Security Act of 1974 (ERISA). The Florida Legislature has made ERISA a standard that is applicable by reference and to that limited extent must be complied with, but the Legislature has not adopted ERISA in its entirety.

(R. at 108).

The reference to ERISA in the Florida Statutes is designed to keep creative (actuarially uncertain or unreasonable) financing schemes out of publicly funded pension benefit systems. (T. at 506-507) (attached as Appendix 1); Senate Staff Analysis of SB 173 (April 6, 1983), (R. at 182-183); House Staff Analysis of PCB 8B (March 3, 1983), (R. at 184-185).

between entry age and assumed exit." (Emphasis added). Id. at R. 238 and 239.

By enacting Chapter 88-238, Laws of Florida, the 1988 Legislature changed the Florida Retirement System's actuarial cost method from the "entry age normal cost method" to the "attained entry normal cost method." (T. at 434); PBA Answer Brief, page 28. The "attained entry normal cost method" is also a method approved by ERISA. However, there is not a hint that this legislative change in methodology was made knowingly.

The evidence is to the contrary that this happened unknowingly and out of a lack of understanding. The non-level benefit and contribution rates of Chapter 88-238, Laws of Florida, were passed at the eleventh hour, with no consultation with actuarial experts about what the last-minute amendments to the bill meant in terms of the methodology. There is nothing in the legislative history prior to the enactment of Chapter 88-238, Laws of Florida, to indicate that the Legislature recognized that it was changing the methodology (or "basis" for funding as interpreted by Judge Hall).

On the eve of the enactment of Chapter 88-238, Laws of Florida, the Florida Retirement System's consulting actuaries, Milliman and Robertson, Inc., were contacted regarding the proposed non-level contribution and benefit increases. The consulting actuaries stated that "phasing in future costs of benefit increases represents a serious erosion of the System's financial integrity and should be avoided" also calling the "suggested approach" one which "would phase in the 'certain' costs of increases in future

benefits" and which would be "a dangerous precedent for the System." Appellants' Appendix Vol. I, Tab 5; (R. at 209). In correspondence with the Division of Retirement after passage of Chapter 88-238, Laws of Florida, the consulting actuaries noted:

> In summary, passage of this legislation, in our opinion, will drastically undermine the financial integrity of the Florida Retirement System (FRS) for decades to come.
>
> ...
>
> The employer rates stated in the bill are incorrect and were not prepared either by the State Retirement Actuary (Larry Gibney) or the state's consulting actuary (M & R).
>
> ...
>
> Actuarial funding of the FRS does <u>not</u> equate to funding in each particular year the value of benefits earned in that same year. **Sound actuarial funding requires a determination of the value of all <u>future</u> benefits to be paid to the current workforce and then spreads this value evenly over future payrolls.** Since an ultimate 3 percent accrual rate for Special Risk members would be a future certainty, the actuarial process requires that funding of these benefits commence immediately. (Bold emphasis added, with underlined emphasis in consultants' original).

Appellants' Appendix Vol. I, Tab 9; (R. at 213-214).

The League submits that the Florida Constitution requires more. The record should show that in enacting Chapter 88-238, Laws of Florida, the 1988 Legislature consciously knew that it was changing the FRS's traditional basis for funding benefits. At the least, it is clear that the Legislative leadership disregarded the advice of the System's consulting actuaries concerning the effects

the changed benefits would have on the System's soundness. The flawed process by which Chapter 88-238, Laws of Florida, was enacted (see League's Initial Brief, pages 15-22), along with the apparently unknown, but considerable, consequences that it had on the basis for funding those particular increased benefits, demonstrate how Chapter 88-238 increased pension benefits on an unsound actuarial basis.

Respondents/Appellees also present an argument based on carefully selected provisions of ERISA, United States Treasury regulations and a United States Treasury Revenue Ruling. PBA Answer Brief, pages 27-30; FPF Answer Brief, pages 9-12.

It first must be noted that ERISA was enacted to safeguard private pension systems and their beneficiaries, as well as protect revenue of the United States under certain federal tax laws. [2] Congress expressly did not intend ERISA to apply to public employee

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[2] 29 U.S.C. Section 1001. Congressional findings and declaration of policy.

(a) Benefit plans as effecting interstate commerce and the Federal taxing power.

...

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance. It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance. (Emphasis added).

pension plans maintained by governmental entities.[3]

Respondents/Appellees use the ERISA reference in Section 112.63, Fla. Stat., and select Treasury regulations to argue that a "reasonable funding method" cannot take into account anticipated benefit changes that become effective in future plan years. The trial judge did not accept this argument and neither should this Court.[4]

26 U.S.C. s. 412(c)(3), states that actuarial assumptions used in a pension funding plan must be reasonable. This section is further explained in 26 C.F.R. s. 1.412(c)(3)-1 which states (both the PBA and the FPF cite and discuss provisions of 26 C.F.R. s. 1.412(c) and a Revenue Ruling interpreting this section):

> (a) Introduction - (1) In general. This section prescribes rules for determining whether or not, in the case of an ongoing plan, a funding method is reasonable for purposes of section 412(c)(3). A method is unreasonable only if it is found to be inconsistent with a rule prescribed in this section. The term "reasonable funding method" under this section has the same meaning as the term "acceptable actuarial cost method" under section 3(31) of the Employee Retirement Income Security Act of 1974 (ERISA).

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[3] The provisions of ERISA, 29 U.S.C. Sections 1001-1461, do "not apply to any employee benefit plan if (1) such plan is a governmental plan (as defined by Section 3(32) [29 U.S.C. Section 1002(32)])". 29 U.S.C. Section 1003. 29 U.S.C. Section 1002(32) defines "governmental plan" as a "plan established or maintained by its employees by the government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

Therefore, unless specifically stated otherwise, the provisions of ERISA do not apply to public employee retirement systems and plans.

[4] See footnote 1, on page 5 of this Brief.

* * * *

(d) Prohibited considerations under a reasonable funding method - (1) Anticipated benefit changes - (i) In general. Except as otherwise provided by the Commissioner, a reasonable funding method does not anticipate changes in plan benefits that become effective, whether or not retroactively, in a future plan year or that become effective after the first day of, but during, a current plan year.

(ii) Exception for collectively bargained plans. A collectively bargained plan described in section 413(a) may on a consistent basis anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan. A plan's treatment of benefit increases scheduled in a collective bargaining agreement is part of its funding method. Accordingly, a change in a plan's treatment of such benefit increases (for example, ignoring anticipated increases after taking them into account) is a change of funding method.

(2) Anticipated future participants. A reasonable funding method must not anticipate the affiliation with the plan of future participants not employed in the service of the employer on the plan valuation date. However, a reasonable funding method may anticipate the affiliation with the plan of current employees who have not satisfied the participation requirements of the plan. (Emphasis added).

Section 1.412(c)(3)-1(d), which lists prohibited considerations under a "reasonable funding method", was designed to implement IRS policies on and to prevent manipulation of minimum funding standards and maximum taxable deductions for private sector pension plans. (T. at 501-506) (included in the attached Appendix 1). In viewing the Florida Retirement System, the policy considerations regarding private sector plans are simply not applicable to public sector plans. Even with the above policies in mind, the Treasury Secretary still allowed an exception to the rule

for collectively bargained plans because such increases in benefits were very likely to occur as stated in the collectively bargained agreement. The reasoning for the exception from the rule for collectively bargained plans is applicable to the increases present in Chapter 88-238, Laws of Florida. That is, the increases in benefits in Chapter 88-238, Laws of Florida, are more than "anticipated" as contemplated by the general rule. Rather, these increased benefits are more akin to collectively bargained increased benefits because the increases are guaranteed unless amended by the Florida Legislature. (T. at 511-512) (included in the attached Appendix 1).

Section 1.412(c)(3)-1(d)(2) states that a reasonable funding method cannot consider anticipated future participants. It should be noted that the Florida Retirement System has, as one of its assumptions, that the membership of the System will grow at the rate of 1.5 percent per year. See July 1, 1989, Valuation of the Florida Retirement System, Milliman and Robertson, Inc., Appendix A-2; (R. at 239) (attached as Appendix 2). Such an assumption would render the Florida Retirement System's funding method "unreasonable" under the federal Treasury regulations. (T. at 512-513) (included in attached Appendix 1).

The reference in section 112.63, Fla. Stat., to "actuarial cost methods" as proved in ERISA and permitted under Treasury regulations was designed to put a stop to creative funding schemes by Florida's public employers which might threaten the integrity of their publicly funded pension plans. Treasury regulations and

Revenue Rulings which are promulgated primarily to insure minimum funding standards and regulate tax deductions (preventing deductions for future increases in benefits which might never be effected by the private employer) cannot logically be applied to the Florida Retirement System, or any other public pension plan. Respondents/Appellees have successfully clouded the real constitutional issue here, by their ERISA and Treasury regulation arguments. The PBA and FPF suggestion that Section 112.63, Fla. Stat., adopts their position should be rejected by this Court.

III. CONTEMPORANEOUS CONSTRUCTION

Respondent/Appellee PBA goes to great length to state and restate that Article X, Section 14 and the subsequent legislative enactments describing the intent of Article X, Section 14 neither specifically require single-step pension benefit changes by a legislative body nor prohibit a single legislative body from mandating multi-step increases in benefits and the funding of the costs of those increased benefits over a period of years. PBA Answer Brief, pages 21-26.

Obviously, this precise language is not found in Article X, Section 14 or in Section 112.61, Fla. Stat., (the declared legislative intent in implementing the provisions of Article X, Section 14). However, Section 112.61, Fla. Stat., does state in part that the intent of the "Florida Protection of Public Employee Retirement Benefits Act," Sections 112.60 - 112.67, Fla. Stat., in

implementing Article X, Section 14, is "to prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers."

Appellants, Florida Association of Counties, et al. present an argument, in which the League concurs with, on how Chapter 88-238, Laws of Florida, violates the above pronouncement of legislative intent in implementing the provisions of Article X, Section 14. FAC Initial Brief, pages 8-15.

Respondent/Appellee PBA and the First District Court of Appeal discount this argument based on a "greater contemporaniety" analysis of the contemporaneous construction doctrine. PBA Answer Brief, pages 24-25; 580 So.2d at Footnote 9, pages 644-645.[5]

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[5] The footnote by the First District Court of Appeal reads:

> Brown v. Firestone, 382 So.2d 654 (Fla. 1980), expresses the principle that "[a] relatively contemporaneous construction of the constitution by the legislature is strongly presumed to be correct." Id. at 671 (citing Greater Loretta Improvement Ass'n. v. State ex rel. Boone, 234 So.2d 665 (Fla. 1970). Article X, section 14, was adopted in 1976. Neither Brown nor Greater Loretta requires the court to look to the 1983 version of Section 112.61, Fla. Stat., but instead would require the court to look at its original version, which the legislature passed in 1978. See, Chapter 78-170, Section 1, Laws of Florida. The earlier version merely required that governmental retirement systems or plans "be managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits." Not until 1983 did the legislature express its intent in implementing the provisions of Article X, Section 14, to require that a plan be "equitably funded by the current, as well

The League submits that the "greater contemporaniety" analysis is unfounded under decisions by this Court.

This Court has expressed the principle that "[a] relatively contemporaneous construction of the constitution by the legislature is strongly presumed to be correct." Brown v. Firestone, 382 So.2d 654, 671 (Fla. 1980). Further, according to repeated decisions of this Court, where a constitutional provision is susceptible to more than one meaning, the meaning adopted by the legislature is conclusive. See, Greater Loretta Improvement Association v. State ex rel. Boone, 234 So.2d 665 (Fla. 1970). The Greater Loretta opinion on the above proposition reads:

> (W)hether a constitutional provision may well have either of several meanings, it is a fundamental rule of constitutional construction that, if the Legislature has by statute adopted one, its action in this respect is well-nigh, if not completely, controlling. Id. at 669.

In Brown, the issue before this Court involved legislative construction of Article XII, Section 9(a)(2), Florida Constitution, which was amended to the Constitution by state voters in 1974. C/S HJR 2289 and 2984, 1974; adopted in 1974. Article XII, Section

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> as future, taxpayers." Chapter 78-170 has greater contemporaniety with the constitutional provision than does Chapter 83-37. We note that Chapter 83-37 offers no support for the appellant's position, for their theory of the case does not turn on whether public employee retirement benefits are protected, but whether future taxpayers are burdened disproportionately.

9(a)(2), requires that the revenues derived from gross receipts taxes be placed in a trust fund known as the "Public Education Capital Outlay in Debt Service Trust Fund" (PECO). The provision states that PECO funds are to be used for, "direct payment of the cost or any part of the cost of any capital project for the state system theretofore authorized by the legislature." Then Governor Bob Graham submitted that the term "capital project" in this section included only expenditures for the acquisition, construction and capital maintenance of real property, and therefore did not contemplate the expenditure of PECO funds for other purposes, specifically library books and scientific equipment.

This Court disagreed with the Governor's interpretation and held that PECO funds could be used to purchase library books and scientific equipment. In so holding, this Court looked to legislative enactments which implemented Article XII, Section 9(a)(2) under the contemporaneous construction doctrine.

In particular, this Court stated that Section 235.435(3)(d), Fla. Stat., specifically listed library books and equipment as a proper PECO expenditure. The Court went on to note that the legislature enacted Section 235.435(3)(d) in 1977, "only three years after adoption of the constitutional amendment to Article XII, Section 9." Brown at 670-71. However, the legislative history of Section 235.435(3)(d) dates back further than 1977.

Section 236.084, Fla. Stat., was transferred and renumbered Section 235.435, Fla. Stat., by the 1977 Legislature. Section 24,

Chapter 77-458, Laws of Florida. Interestingly, Section 236.084, which is today Section 235.435, was amended in 1975, the year after Florida voters adopted Article XII, Section 9(a)(2), Florida Constitution. Neither the 1975 amendment to, nor the then existing statutory language of, Section 236.084, Fla. Stat., mentioned anything about using PECO funds to purchase "library books and equipment." It was not until two years later, in 1977, that the language on "library books and equipment" was added to the Law. Section 24, Chapter 77-458, Laws of Florida.

Under the First District Court of Appeal's analysis, this Court could not have looked to the 1977 legislative activity, under the contemporaneous construction doctrine, to hold that PECO funds could be used for library books and equipment. Rather, this Court would have been constrained to viewing only the statutory law as it existed in 1975, the first year legislative amendments were enacted interpreting the recently adopted Article XII, Section 9(a)(2). The First District Court of Appeal's conclusion on "greater contemporaniety" directly conflicts with this Court's conclusion in Brown v. Firestone, and should be rejected.

IV. RELIEF

Respondent/Appellee PBA argues that if this Court determines that Chapter 88-238, Laws of Florida, violates the provisions of Article X, Section 14 any relief granted should be prospective only. The PBA submits that this would be the only "fair" relief

based on special risk members' reliance on the increased benefits. PBA Answer Brief, pages 37-42. In support of this position, PBA cites City of Winter Haven v. A.M. Klemm and Son, 132 Fla. 334, 181 So. 153, rehearing denied, 133 Fla. 525, 182 So. 841 (1938).

The League submits that the PBA's logic is flawed.

The first benefit increase of Chapter 88-238, Laws of Florida, became effective January 1, 1989. On January 5, 1989, the Florida Association of Counties filed its Complaint challenging Chapter 88-238 as being a violation of Article X, Section 14. (R. at 1-9). The League's Complaint was filed on January 13, 1989. Thus, the 1989 and subsequent benefit increases were challenged as being unconstitutional within days after the 1989 benefit increase became effective.

Such challenge clearly put all special risk members (and potential members) of the FRS on notice that the future benefits "promised" by Chapter 88-238 may or may not be upheld as constitutional and, therefore, that action of the legislature could not be relied upon to secure any "vested rights."

This Court's decision in Winter Haven v. Klemm, supra, clearly supports rather than detracts from the position of the League and the FAC, et al.

Initially, it is certainly not conceded that the increased pension benefits provided by Chapter 88-238, Laws of Florida, have vested and become individual property rights. This Court, in Winter Haven v. Klemm, stated:

Statutes and judicial judgments and decrees

> should be so interpreted and applied as to effectuate the intended purpose that is consistent with applicable provisions of the paramount organic law; and personal and property rights, that are intended by the Constitution to be secured to those lawfully claiming them, should be protected and enforced by due course of law, when no applicable express or implied provision of the State or Federal Constitutions is thereby violated. For example, when the subject of property rights is lawfully produced or created, and rights that are intended by the Constitution to be secured to those lawfully claiming them are bona fide duly acquired in the property so produced or created, such rights should by due course of law be protected and enforced, even though there be procedural or other defects,but no violation of controlling organic law, in the creation or acquisition of such rights. (Citations omitted).
>
> But if a command or prohibition of the Constitution is violated in the creation or production of the subjects of property or in the acquisition of interest therein, such rights are not rights that are intended by the Constitution to be secured, and they will not as such be protected or enforced in the courts. (Emphasis added).

Winter Haven v. Klemm, 181 So. at 164.

This Court today can hardly state the matter more clearly. It is crystal clear that no rights can arise under a statute enacted in violation of the Constitution. Neither the opinion of the trial judge nor the opinion of the district court provide any basis for reliance or vesting. This Court, in Klemm, expressly noted that invalid statutes cannot be validated by judicial decrees. Winter Haven v. Klemm, 181 So. at 165.

Special risk members of the FRS were put on formal notice of

the potential unconstitutionality of Chapter 88-238, Laws of Florida, when the act first took effect. Under the Winter Haven v. Klemm principle, if this Court determines Chapter 88-238 violates the provisions of Article X, Section 14, then no rights or interests could have arisen from those unconstitutional provisions. The decisions by the lower courts in this case cannot effect a contrary result.

CONCLUSION

Based on the foregoing reasons, and on the reasons presented in the Appellants' Initial Briefs and in the Florida Association of Counties, et al., Reply Brief, the decisions of the lower courts should be reversed.

Respectfully submitted this 13th day of January, 1992.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the above and foregoing Reply Brief of Appellant, Florida League of Cities, Inc., has been furnished this 13th day of January, 1992, by U.S. mail to each of the persons named below:

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