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IN THE SUPREME COURT OF FLORIDA

IN RE: ADVISORY OPINION TO THE
 ATTORNEY GENERAL -- RESTRICTING
 LAWS RELATING TO DISCRIMINATION

CASE NO. 82,674

FEA/UNITED'S BRIEF
AS AMICUS CURIAE

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SUMMARY OF ARGUMENT

The Florida Education Association/United, affiliated with the American Federation of Teachers (AFT), American Federation of Labor - Congress of Industrial Organizations (AFL-CIO), hereinafter "FEA/United," is a labor and employee organization existing in the State of Florida which, through its affiliated local unions, acts as exclusive bargaining agent and collective bargaining representative for approximately 60,000 instructional and non-instructional public employees throughout the State of Florida.

FEA/United is in agreement with and supports the position of the interested organizations and individuals who have previously submitted comments and reply briefs regarding the proposed ballot initiative petition restricting laws related to discrimination. On information and belief, all interested organizations and individuals submitting comments to date have stated their opposition to the proposed ballot initiative petition, except for its sponsor, the American Family Political Committee of Florida. FEA/United joins these organizations and individuals in requesting that this Court declare the proposed ballot initiative petition invalid.

The statements of fact, law and policy already presented to this Court do not need to be repeated. FEA/United endorses those statements. However, there are two specific matters which, on information and belief, have not yet been brought to this Court's attention: (1) Article I, Section 6 of the Florida Constitution, and (2) Section 447.501(1)(a) and (b), Florida Statutes. These

constitutional and statutory provisions give additional and independent support to the arguments already presented by others that the proposed ballot initiative petition encompasses more than one subject, does not provide adequate notice of its effect, and violates the Florida Constitution.

FEA/United will attempt in good faith to present only that information which is necessary to comprehend the effect of the proposed ballot initiative petition on Article I, Section 6 of the Florida Constitution and on Section 447.501 (1) (a) and (b), Florida Statutes, without repeating information already furnished by others. FEA/United believes this additional information strongly and independently supports the argument that the proposed ballot initiative petition should be declared invalid.

ARGUMENT**THE PROPOSED BALLOT INITIATIVE PETITION
SHOULD BE DECLARED INVALID**

FEA/United and its locals must be certified in order to act as collective bargaining representative for public employees pursuant to Chapter 447, Part II, Florida Statutes (1993). Section 447.501(1)(a) and (b), Florida Statutes (1993), expressly prohibits discrimination based upon membership or non-membership in FEA/United or any other labor and employee organization:

447.501 Unfair Labor Practices.--

- (1) Public employers or their agents or representatives are prohibited from:
 - (a) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part.
 - (b) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other conditions of employment.

The effect of the proposed ballot initiative petition, if it became in fact and law a new amendment to the Florida Constitution, would apparently be to repeal Section 447.501(1)(a) and (b), Florida Statutes (1993). This is because the above-quoted statutory provision "creates, establishes or recognizes" a clearly defined "protection" against discrimination based upon "membership in any employee organization," a "status or condition" which is not among those listed in the proposed ballot initiative petition as protectable.

This repeal would be mandatory, by the express terms of the proposed ballot initiative petition. A related effect would appear

unavoidable, in light of the fact that the above statutory provision expressly prohibiting discrimination is derived directly from Article I, Section 6 of the Constitution of the State of Florida:

Section 6. Right to work.-- The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

The proposed amendment to Article I, Section 10 would directly contravene Article I, Section 6 of the Constitution of the State of Florida. This effect is not permissible, of course, in the absence of notice and without specification of the repeal of Article I, Section 6 as part of the subject addressed by the proposed ballot initiative petition. Coexistence of the two constitutional provisions would be impossible, which is merely another way of saying that the proposed constitutional amendment is unconstitutional in light of the fact that the "status or condition" expressly protected under Article I, Section 6 is not among those listed as protectable.

FEA/United has consciously restrained itself from repeating the citation of case authorities indicating that the proposed ballot initiative petition does not comply with Article XI, Section 3 of the Florida Constitution and/or Section 101.161, Florida Statutes (1993). See, e.g., Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982) ("The problem, therefore, lies not with what the

summary says, but with what it does not say"); Fine v. Firestone, 448 So.2d 984, 995 (Fla. 1984) (McDonald, J., concurring) (proposed amendment constitutes impermissible "logrolling"). FEA/United emphasizes instead that the rights protected by Section 447.501(1)(a) and (b), Florida Statutes, and Article I, Section 6 of the Florida Constitution, are not empty or minor, but have been the source of strenuous litigation since at least 1974. For this purpose, FEA/United attaches Appendix A to this brief, which consists of citations of appellate decisions in the following pertinent categories: "Protected Activity," page xxxii; "Discrimination Against Employees for Protected Activities," page xxxv-xxxvi; and "Employer Interference with Employee's Rights," page xxxvii. The fifty-one (51) cases cited therein indicate that Section 447.501(1)(a) and (b) and Article I, Section 6 indeed have teeth. They are part and parcel of the system of public employee collective bargaining as it has developed over the past quarter of a century in Florida.

CONCLUSION

For the reasons set forth above, as well as for the reasons presented previously to this Court by other organizations and individuals, FEA/United respectfully requests that this Court declare the proposed ballot initiative petition invalid.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that service of the Motion to File Brief as Amicus Curiae, which was filed with the Court yesterday, was completed in part yesterday, December 21, 1993, and that service of that motion has now been completed in full by means of facsimile transmission this morning, December 22, 1993.

I further certify that a copy of the foregoing FEA/United's Brief as Amicus Curiae is being sent by mail and/or via facsimile today, December 22, 1993, to the following:

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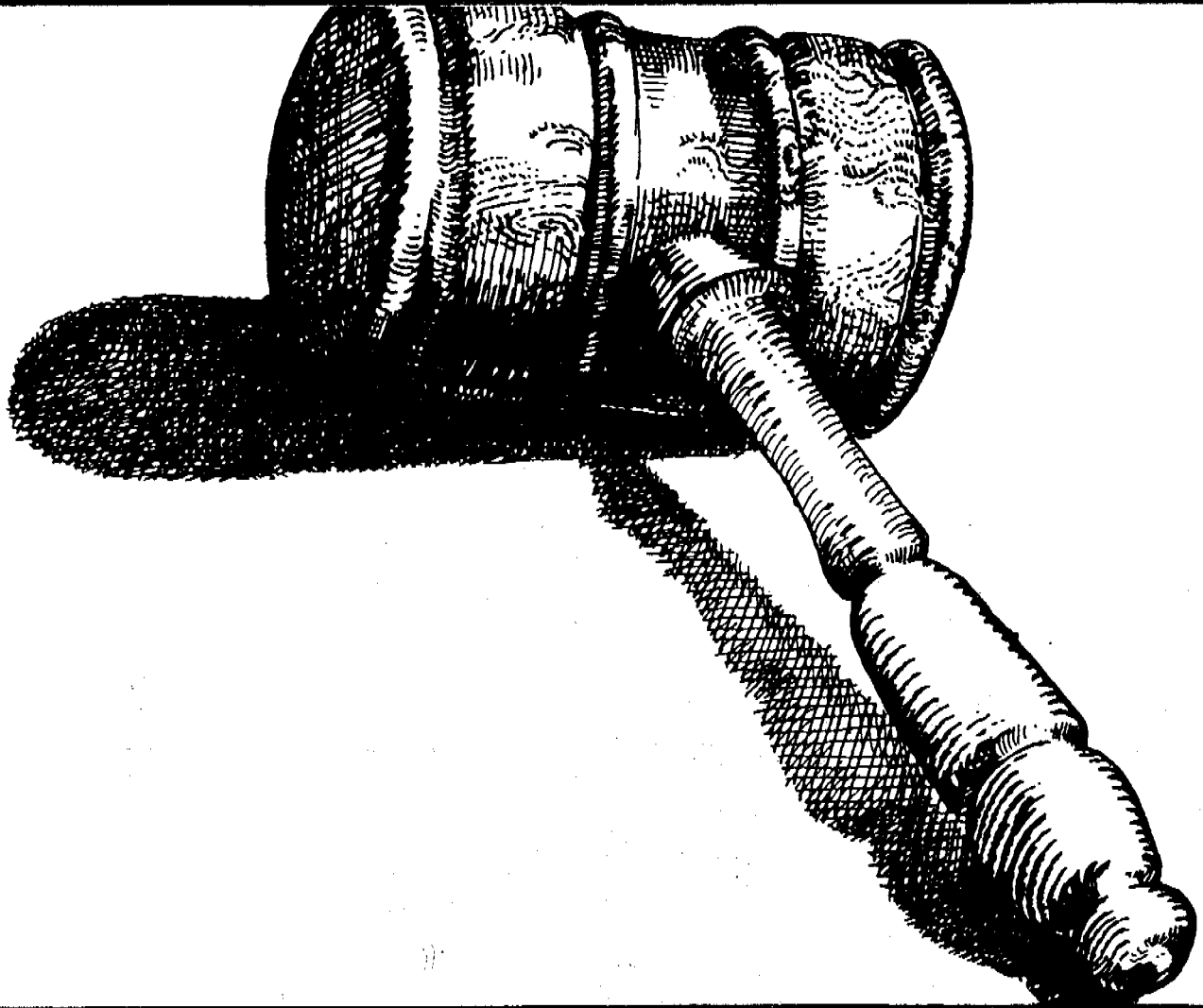
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Appellate Decisions PERC Collective Bargaining Cases



Public Employees Relations Commission

APPENDIX A

DISCLAIMER

While extreme care was taken in the development of these summaries of appellate decisions in PERC cases, inaccuracies may exist. The summaries are intended solely as a research aid and not as a substitute for direct reference to the actual decisions. These materials do not purport to represent official PERC interpretation or policy and should not be cited or otherwise offered as authority for any legal position.

STATEMENT BY THE COMMISSION

We would like to express our appreciation for the effort by the legal staff which went into producing these materials on appellate decisions in PERC cases. This is the seventh edition of this listing of appellate decisions. The materials have been updated to include final appellate decisions through June 30, 1988. Where judicial decisions in other than appellate cases were considered significant, they have been included. Certain appellate decisions with no precedential significance, such as voluntary dismissals, were not included. The case summaries are listed in approximate chronological order, preceded by an alphabetical index and a separate subject matter index. Special thanks are due General Counsel Phillip P. Quaschnick and Staff Counsel Sharon E. Cromar, Law Clerk Peter Harris and Word Processing Supervisor Marcha Beane. We will continue to update these materials annually.

Michael Mattimore
Michael Mattimore, Chairman
April 5, 1989

James W. Sloan
James W. Sloan, Commissioner

Donna Maggert Hoole
Donna Maggert Hoole, Commissioner

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