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CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: Advisory Opinion to the Attorney  
General - Restricting Laws Related  
to Discrimination

Case No. 82-674

\_\_\_\_\_ /

REPLY BRIEF OF:

Florida Association of Community Relations Professionals

In Opposition to the Proposed Amendment

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## INTRODUCTION

The Florida Association of Community Relations Professionals is comprised of approximately 300 members. Some of the membership are employed by the Commission on Human Relations, the State's enforcement arm for employment and housing discrimination. Some are employed by cities and counties which also have anti-discriminatory ordinances with respect to employment and housing. Examples of cities and counties having anti-discriminatory housing ordinances are: the City of Clearwater, Broward County, the City of Orlando, the City of St. Petersburg, the City of Tampa, the City of Jacksonville, Pinellas County, the City of Gainesville, Lee County, the City of Pensacola, the City of Tallahassee, and Dade County.

The Florida Association of Community Relations Professionals supports the other organizations and individuals who urge this Court to strike the proposed amendment from the ballot. The Amendment violates Article XI, Section 3 of the Florida Constitution because it embraces more than one subject.

THE INITIATIVE VIOLATES ARTICLE XI,  
SECTION 3 OF THE FLORIDA CONSTITUTION

In the Initial Brief filed by the American Family Political Committee (hereinafter AFPC), it is asserted that the single-subject requirement has been met because the "proposed amendment deals only with limitation of discrimination against the person to certain specified categories" (AFPC Initial Brief, page 3).

The language of the proposed amendment itself belies AFPC's assertion. The language is broad and extremely vague. It is unclear what the particular phrases actually mean, such as "any law regarding discrimination," "right, privilege or protection" and "any characteristic, trait, status or condition."

In Fine v. Firestone, 448 So.2d 984, 995 (Fla. 1984), Justice McDonald stated in his concurring opinion:

Combining multiple propositions into one proposal constitutes "logrolling," which, if our judicial responsibility is to mean anything, we cannot permit. The very broadness of the proposed amendment amounts to logrolling because the electorate cannot know what it is voting on--the amendment's proponents' simplistic explanation reveals only the tip of the iceberg. The ballot must give the electorate fair notice of the proposed amendment being voted on. Askew v. Firestone, 421 So.2d 151 (Fla. (1982)). The ballot language in the instant case fails to do that. The very broadness of the proposal makes it impossible to state what it will affect and effect and violates the requirement that proposed amendments embrace only one subject.

(footnotes omitted).

The proposed amendment would impact upon several areas of existing legislation. See Coalition's Initial Brief, Appendix D, which indicates that the phrase "laws related to discrimination" may affect over seventy divergent laws. One example of the significance of the effect of the proposed amendment on existing legislation is the State and local agencies' fair housing program. The State, counties and cities have worked together to get a successful housing program in Florida whereby the citizens of Florida could seek redress from discrimination in housing and the financing of housing. The State, counties and cities have worked together to ensure that their respective legislation would be deemed "substantially equivalent" to their federal counterpart to enable the State and local agencies to work cooperatively with the federal government and be reimbursed for a substantial cost of the housing program.

The Assistant General Counsel for Fair Housing of the U.S. Department of Housing and Urban Development has advised that the proposed amendment will result in a significant difference in familial status coverage. See Appendix A. A State or local agency cannot obtain or maintain substantial equivalency status without including as protected classes all classes protected by the Act. 54 Fed. Reg. 3276 (1989), See Exhibit B, FACRP's Initial Brief, Exhibit B.

Here, the proposed amendment's definition of the term "familial status" does not include coverage of pregnant women and persons who are in the process of securing legal custody of a

minor, whereas such coverage is included under the U.S. and Florida Fair Housing Acts. 42 U.S.C. Section 3602(k); Section 760.23(6), Florida Statutes (1993). Additionally, the federal and state acts extend familial status protection to children under the age of 18 as well as to the parent or guardian. The proposed amendment extends familial status protection only to the parent or guardian, not the child.

Thus, these differences would preclude the State, counties and cities from becoming certified or maintaining their certification by the federal government. They would lose all federal funding for their housing program. Therefore, a separate funding source for enforcement of the State and local laws would need to be created.

"The test, as set forth in Fine, is functional and not locational, and where a proposed amendment changes more than one government function, it is clearly multi-subject." Evans v. Firestone, 457 So.2d 1351 at 1354 (Fla. 1984). Because the proposed amendment affects several legislative functions at the state, county and city levels, it is multi-subject and violates the single-subject requirement of Article XI, Section 3 of the Florida Constitution.

CONCLUSION

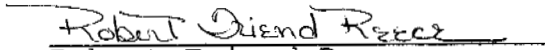
This Court should declare the proposed initiative unconstitutional and should strike it from the ballot.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 21st day of December 1993 to The Honorable Robert A. Butterworth, Attorney General, Department of Legal Affairs, Office of the Attorney General, Room 535, Hayden Burns Building, 605 Suwanne Street, Tallahassee, Florida 32399-0450; Scott L. Thomas, Esquire, Post Office Drawer 2440, Tupelo, Mississippi 38803; G. Donovan Conwell, Esquire, Fowler, White, Gillen, Boggs, Villareal & Banker, 501 East Kennedy Boulevard, Suite 1700, Tampa, Florida 33601; Chesterfield H. Smith, Esquire, Holland & Knight, 701 Brickell Avenue, 30th Floor, Post Office Box 15441, Miami, Florida 33131-2852; William E. Adams, Jr., Esquire, Cooperating Attorney, Lambda Legal Defense & Education Fund, 3305 College Avenue, Fort Lauderdale, Florida 33314; and Suzanne Goldberg, Lambda Legal Defense & Education Fund, 666 Broadway, New York, New York 10012-2317.

  
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U. S. Department of Housing and Urban Development  
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cc: *Cretta Johns*  
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DEC 3 1993

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: Roberta Achtenberg, Assistant Secretary for  
Fair Housing and Equal Opportunity

THROUGH: *Carole W. Wilson*  
Carole W. Wilson, Associate General Counsel for  
Equal Opportunity and Administrative Law

FROM: *Harry L. Carey*  
Harry L. Carey, Assistant General Counsel for Fair Housing

SUBJECT: Effect of Proposed Amendment to Florida's Constitution  
on State and Local Certifications of Substantial  
Equivalency

Pursuant to the December 3, 1993 request of Marcella Brown, Director, Funded Programs Division, this office has reviewed the proposed amendment to the Florida Constitution (copy attached). The proposed constitutional amendment would limit state and local prohibitions against all forms of discrimination by restricting the protected classes or bases to: "race, color, religion, sex, national origin, age, handicap, ethnic background, marital status [and] familial status." The amendment, if adopted, would repeal all previously enacted state and local laws establishing rights, privileges, or protections that do not fall within the enumerated bases.

We have reviewed Florida's Fair Housing Act (FFHA) and determined that the proposed constitutional amendment would restrict FFHA's coverage, thus affecting the state of Florida's and numerous local jurisdictions' fair housing laws that are substantially equivalent, on their faces, to the Federal Fair Housing Act (the Act). Specifically, the proposed constitutional amendment defines "familial status" more restrictively than FFHA by eliminating the state fair housing rights and protections now afforded to pregnant women and persons in the process of securing custody of persons under the age of 18.

FFHA's "familial status" coverage applies when any:

individual who has not attained the age of 18 years ...  
domiciled with:

- (a) A parent or other person having legal custody of such individual; or
- (b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

§ 760.22(5). FFHA's familial status protections are extended further "to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years." § 760.23(6). These FFHA provisions are coextensive with the Act's familial status coverage. 42 U.S.C. § 3602(k); 24 C.F.R. § 100.20.

The proposed constitutional amendment, however, defines familial status more restrictively than FFHA and the Act. The proposed constitutional amendment defines familial status as:

the state of being a person domiciled with a minor, as defined by law, who is the parent or person with legal custody of such minor or who is a person with written permission from such parent or person with legal custody of such minor.

Fla. Bar News, Dec. 1, 1993 at 15.

The proposed constitutional amendment's definition of familial status differs from FFHA's familial status coverage in three ways. First, the proposed constitutional amendment references minors as defined by law, rather than persons under the age of 18. This difference, however, is not substantive since under Florida law a minor "includes any person who has not attained the age of 18 years." Fla. Stat. § 1.01(13). Second, the proposed constitutional amendment would repeal FFHA's coverage of pregnant women and persons who are in the process of securing legal custody of a minor. These groups are omitted from the amendment's definition of "familial status" and do not fall within any other enumerated protected class. Finally, the proposed constitutional amendment's definition of "familial status" grants the right of familial status protection only to the parent or custodian of the child under 18 years of age. Both FFHA and the Act, however, extend familial status protection to children under age of 18 as well as to the parent or custodian. Thus, the proposed constitutional amendment raises concerns about whether children could be barred under Florida law from receiving damages to compensate them for injuries suffered due to familial status discrimination.

In conclusion, we believe the proposed constitutional amendment will result in a significant difference in familial status coverage.