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FILED
SID. J. WHITE
JUL 13 1994

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

CASE NO. 83,597

DONALD G. RESHA

Petitioners,

v.

KATIE D. TUCKER,

Respondents.

**FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT**

**AMICUS BRIEF OF
ACADEMY OF FLORIDA TRIAL LAWYERS**

**GARY GERRARD, ESQ.
GARY GERRARD, P.A.
95 Merrick Way, Suite 525
Coral Gables, Florida 33134**

The legal arguments of Petitioner, Donald G. Resha, and the American Civil Liberties Union (ACLU) adequately discuss the legal authorities applicable to the decision of this case. The Academy joins in supporting the result of allowing a private action for violation of Art. I, §23, Florida Constitution as argued for by petitioner. We add only the following brief comments.

In the last 2,000 or so years, human society has progressed from the Sophist view¹, that might makes right, and those with the might define the right, to limited government². This transition is no mere change of words or description. From either perspective, government is one group of people exercising the power and authority of the state telling the rest of us what we can and cannot do. The very essence of limited government is that those who exercise this power and authority, may do so only for limited purposes and in limited ways. The reason for these limitations is to protect each and every individual from the abuses of power which fill the pages of the history books.

Limited governments are instituted by "we the people" in adopting constitutions which express the limitations placed upon those who act as government. When these limitations have been adopted by the people in the only way "we the people" have to speak to limit government, as was done in the adoption of Article I, §23 of the Florida Constitution, and the limitation is so clear and

¹ Plato, Dialogues, Gorgias, The Great Books, Encyclopedia Britannica, v. 7, p. 271-275.

² Locke, John, An Essay Concerning the True Original Extent and End of Civil Government, The Great Books, Encyclopedia Britannica, v. 35, p. 25.

explicit, the people who adopted it should not have to rely upon the very government they have placed limits upon to "implement" the limitations. To do so, allows the very government intended to be limited, to repeal by inaction, the limitations placed upon it by the people.

When the people have placed a limitation upon those who act as government, there must be a remedy for a violation of the limitation. There are only two means for obtaining that remedy. One is in the courtrooms of the courts created by the people to provide a remedy, and the other is the battlefield. When the courts decline to grant a remedy for a violation of a limitation placed on those who act as government, the people are relegated to the street.

Although the opponents of enforcing Art. I, §23 in the courts may raise the specter of invading hoards of litigants, the adjudication of claims of abuse of power and individual rights is why courts were created.

CONCLUSION

The court should quash the decision of the Court of Appeal and reinstate the jury verdict and judgment of the Trial Court.

RESPECTFULLY SUBMITTED.

GARY GERRARD, P.A.
Attorney for Academy of Florida
Trial Lawyers, Amicus Curiae
Alhambra West Suite 525
95 Merrick Way
Coral Gables, Florida 33134
Tel: (305) 444-5100

By: 

GARY GERRARD

I hereby certify that a correct copy of the foregoing was served by U.S. Mail this 6th Day of July, 1994, to Brian S. Duffy, P.O. Drawer 229, Tallahassee, FL 32302-0229, and to James Green, Suite 1300, One Clearlake Centre, 250 Australian Ave. S., West Palm Beach, FL 33401, and Richard E. Johnson, 324 W. College Ave., Tallahassee, FL 32301-8836.

GARY GERRARD, P.A.
Attorney for Academy of Florida
Trial Lawyers, Amicus Curiae
Alhambra West Suite 525
95 Merrick Way
Coral Gables, Florida 33134
Tel: (305) 444-5100

By: 

GARY GERRARD