OA 12-5-96

SUPREME COURT OF FLORIDA

CASE NO.: 88,609

L.T. CASE NO.: 95-2972

CECIL LANE, DEWEY E. DESTIN, JR., BUDDY BROWN, JULIE A. RUSSELL and MIKE DAVIS

Appellants,

vs.

LAWTON M, CHILES, as Governor of the State of Florida ROBERT A. BUTTERWORTH, a s Attorney General of the State of Florida; and the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Appellees.

FLORIDA CONSERVATION ASSOCIATION'S ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

Florida Conservation Association accepts the statement of the case by Appellants. Because the appeal properly presents only issues of law, the factual references are not material to the issues.

SUMMARY OF THE ISSUES

In their **Brief,** Appellants have taken the position that there are essentially two problems with Article **X,** Section **16** of the Florida Constitution which, they contend, that this Court should use as a **basis** to invalidate and overturn this provision of the Florida Constitution. They contend first that the Amendment, now part of the Florida Constitution should be declared invalid because the ballot summary failed to meet the legal requirements set forth under Florida law (Chapter **101,** Fla. Statutes). **As** will be shown below, this argument fails. The second argument advanced is that Article **X,** Section **16** of the Florida Constitution is violative of equal protection, due process and other provisions and rights set forth under the Florida and Federal Constitutions. Likewise, this argument, **is** not supported by applicable law. Additionally, although Appellants have properly characterized this **appeal** a being purely on issues of law, their arguments are replete with factual contentions which are unsupported by the record.

I. APPELLANTS' CHALLENGE TO THE BALLOT SUMMARY IS BOTH UNTIMELY AND WITHOUT BASIS.

Article **X,** Section 16 of the Florida Constitution was adopted by the voters of the State of Florida during the general elections held in November, 1994. Although its effective date was July 1, 1995, as of the time of its adoption in November 1994 it became part of the Florida Constitution and thus the native law of the State of Florida. In this action, filed in June 1995, more than eight **(8)** months after the adoption of Article **X,** Section 16 by the voters of the State of Florida, Appellants **seek** to have this Court revisit the issue of sufficiency of the ballot summary through which the voters of the State of Florida adopted Article **X,** Section 16.[1] As is shown by substantial authority in the State of Florida, the challenge is untimely.

In their arguments, Appellants have cited a number of legal authorities which speak to the proposition that ballot summaries for proposed amendments and referendums can be challenged in the courts of the State of Florida. Without exception, the authorities cited by Appellants relate to proposed amendments to the Constitution of the State of Florida and deal with circumstances where the proposed Constitutional Amendment and ballot summary relating thereto, were challenged and dealt with prior to the general election and adoption by the voters of the State of Florida of such an amendment. Accordingly, these authorities are not on point. This Court should not visit the ballot summary and issues regarding its propriety.

Significantly, and conspicuous by its omission from the Initial Brief of Appellants, this is not the first time this issue has been dealt with by this Court. In Sylvester v. Tindall, **18** So. 2d 892 (Fla.

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[1]The ballot summary was approved by the Florida Supreme Court in response to a request by the Attorney General in June 1993--Advisory **Op**inion-Limited Marine Net Fishing, 620 So. 2d 997 (Fla. **1993).**

1944) the Court dealt with the issue of the adoption by the voters of the 1942 amendment which added Article IV, Section 30 to the Florida Constitution. The omission of this case from Appellants' Initial Brief is even more conspicuous when it is understood that the subject matter of Sylvester dealt with the constitutional amendment creating the Florida Game and Fresh Water Fish Commission as a constitutional entity, and further the propriety of the adoption of rules and regulations by such Commission which banned commercial fishing and net fishing in the fresh water bodies of the State of Florida. In Sylvester, Justice Brown writing for the Court stated:

> "While it is true that the procedure set forth in Section I of Article **XVII is** mandatory and should be followed, (citations omitted), this court has recognized the almost universal rule that once an amendment is duly proposed and is actually published and submitted to a vote of the people and by them adopted without any question having been raised prior to the election as to the methods by which the amendment gets before them. the effect of a favorable vote by the people is to cure defects in the form of the submission, It was because of the recognition of this rule in the case of West v. State, 50 Fla. 154, **39** *So*. 412 (Fla. 1905), that Governor Gilchrist, (citations omitted), obtained an injunction against the Secretary of State to prevent the latters publication of **an** initiative and referendum proposal that was then been published upon the ground that the legislature had not proposed the amendment in accordance with the Constitutional provision. This question is very ably discussed in opinion written for this Court by Mr. Justice Davis in the case of State ex rel Landis v. Thompson, 120 Fla. 860, 163 ***So.*** 270."

Sylvester at 895. (emphasis supplied)

The Court recognized that perhaps, in a hypothetically particularly egregious situation, that there might be a basis to depart from such a rule. The Court continued, however,

> "But in view of our own decisions, above cited, we are satisfied that if there **was** any irregularity in the form of the ballot with reference to the amendment now before us, it was not a serious one and was cured by the adoption of the amendment by the people at the general election in November, 1942."

Sylvester at 896.

The case of Sylvester, and the authorities cited therein, are controlling in this instance. The very issue raised by Sylvester was **a** contention that the form of the ballot was not sufficient to put the electorate on notice as to just what they were voting upon. Sylvester at 895. That is the thrust of the major points raised by Appellants in their Complaint and in this appeal. Interestingly, nearly identical arguments were raised in Sylvester. While FCA certainly does not concede that the ballot summary was insufficient or deficient in any way, assuming, arguendo that such deficiency or insufficiency existed, it was cured when the voters of the State of Florida adopted it, without challenge.[2]

Plaintiffs have offered no single authority within the State of Florida or without that speaks to the proposition that this Court has authority and jurisdiction to visit the propriety of the amendment process after such an amendment has taken place and become a part of the Florida Constitution. On the other hand, as shown by Sylvester in the authorities cited therein, there is substantial authority which speaks to and supports the proposition that this Court should not undertake such an analysis as they have been invited to do by Appellants.

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[2]Appellants infer that the public notice of the Supreme Court's advisory opinion consideration was not sufficient to allow them to challenge the initiative summary. **As** pointed out by their Memoranda filed with the Trial Court they could have challenged it by separate action prior to the election but chose not do so.

11. ARTICLE X. SECTION 16 IS NOT VIOLATIVE OF ANY PROVISION OF THE FLORIDA OR FEDERAL CONSTITUTIONS.

The next argument advanced by Appellants is that Article **X,** Section **16** is violative of Florida and Federal due process clauses because it **is** to violates protected property and liberty interests; is arbitrary and oppressive; and deprives Plaintiffs of the economically viable use of their property. Viewed under the body of law which has existed both in this country and under English common law for centuries, Appellants are quite simply, wrong.

The state has a sovereign right, and a consequent sovereign duty, in regard to this matter of game and fish conservation, Sylvester at **898.**

> "There is a real distinction and difference between the right of the state in its lands and personal property and its right in fish in the public waters of the state. In its proprietary property, it has absolute rights. In fish and the public waters the state has a sovereign right primarily and essentially of preservation, conservation, and regulation for the people of the state, whose right is to take fish from the public waters subject to the regulations imposed by the state for the benefit of the people of the state. People of the state may take fish from the public waters unless forbidden by law. They may not legally take proprietary property of the State unless authorized to do so by due course of law."

State v. Stoutamire, 131 Fla. 698, 179 So, 730, 733 (emphasis supplied). The Florida **Supreme** Court has long recognized that the principles regarding the fish and water wildlife of the State of Florida are coincidental and synonymous with those laws regulating wild animals on the dry land areas of the State of Florida.

> Under the common law of England the title to animals ferae naturae or game is in the sovereign, for the use and benefit of the people; the killing or taking and **use** of the game being subject to governmental control and regulation for the general good. The power to control and regulate the killing and use of game was vested in the colonial governments of America and passed with the title to game in its

> natural condition to the several states as they became sovereigns, for the use and benefit of all people of the states, respectively, subject to any provision of the Federal Constitution that may be applicable to such control and regulation. The Constitution of the state does not forbid the passage of special or local laws upon the subject of game, and it contains no express provision relative to game; therefore the legislature may by a duly enacted law make any provision within its discretion for the preservation and conservation of the game in the state for the use and benefit of the people of the state, by regulating the taking or killing and use of certain or all kinds of game in any part of the state and during any periods, for such laws do not deny to anyone having rights in the premises to due process of law or the equal protection of the laws that are guaranteed to all persons by the state and federal constitutions.

Harper v. Galloway, 58 Fla. 255, 51 So. 226, **228.**

The authorities of states to make such regulations has been recognized and approved by the United States Supreme Court.

> The authority of the state to regulate and control the common property in game is well established. Greer v. Connecticut, 161 U.S. 519, and cases cited at page **528** (16 S.Ct. 600, 604, 40 L.Ed. 793). These and many other cases show that the state owns, or has power to control, the game and fish within its borders, not absolutely or as proprietor or for its own use or benefit but in its sovereign capacity as representative of the people. In Greer v. Connecticut, the Court, speaking through Mr. Justice White, said, (161 **U.S.** at page 529, 16 S.Ct. 604): "Whilst the fundamental principles upon which the common property in game rests have undergone no change the development of free institutions has led to the recognition of the fact that the power control lodged in the State resulting from this common ownership, is to be exercised, like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good."

Sylvester at 898-899.

The key flaw in Appellants' argument here is that the restrictions imposed by Article **X,** Section 16 are drawn from the power of the State to regulate and protect those resources. This

authority is part of the Constitutional grant of power to the state and the rights of the Appellants such as they are, are subject to its proper exercise. In speaking to the propriety of the amendment which created the Florida Game and Fresh Water Fish Commission and in analyzing further, that the Commission's authority to adopt by regulation, prohibitions of the use of any nets for the taking of fresh water fish species, this Court stated "we have no doubt whatever of the right of the people to adopt this amendment to our Florida Constitution, It does not violate or come in conflict with any provision of the Federal Constitution, and certainly not that provision of the Federal Constitution which guarantees a republican form of government to every state." Svlvester at 899. Accordingly, any argument that Article X, Section 16 of the Florida Constitution violates other provisions of the Florida Constitution or the due process and equal protection provisions of the Federal Constitution is without merit. If, as Appellants concede, these regulations could be accomplished by statute, it can unquestionably be done through the Florida Constitution.

III. NO FUNDAMENTAL RIGHT OF APPELLANTS HAS BEEN INFRINGED.

In their Initial Brief, Appellants have taken the position, inferentially, that Article X, Section 16 of the Florida Constitution improperly infringes upon fundamental rights of the Appellants. This contention is inaccurate. Article I of the current Florida Constitution is entitled Declaration of Rights. (Florida Constitution Article I.) Foremost in the present Florida Constitution, as in constitutions of other states, is a bill of rights entitled the Declaration of Rights, which sets forth the fundamental rights and privileges of persons or of the people collectively, The Declaration of Rights constitutes a limitation upon the powers of each and all of the branches of state government and was adopted primarily for the purpose of guaranteeing to the people certain inalienable rights and for the protection of the people against the arbitrary exercise of power by government. See State ex rel Davis v. Stuart at 97 Fla P. 69, 120 So, 335 (1929); Maxcev v. Mavo, 103 Fla. 552, 139 So. 12 I (1931); Boynton v. State, 64 So. 2d 536 (Fla 1953).

The Declaration of Rights specifically enumerates certain fundamental rights of the people which include the right to trial by jury, freedom of religion, freedom of speech and press, the right to assemble and petition the government, the right to a remedy for injuries, to bear arms, to reasonable bail, to writ of habeas corpus, the right to work, to presentment or indictment by a grand jury, and the right of an accused to appear and defend in person, to confront witnesses, to have compulsory process to procure witnesses on one's behalf, and to a speedy public trial by an impartial jury of the county where the crime was committed, The Declaration of Rights also provides that no person may be deprived of life, liberty, or property without due process of law. Florida Constitution Article I. Section 9. It is this latter statement in Article I, Section 9, that Appellants argue serves the basis for an invalidation of Article X, Section 16 of the same constitution.

As conceded by Appellants, reasonable limitations may be imposed upon such fundamental rights, but they may not be limited to such an extent as to amount to a nullity. Gibson v. Florida Legislative Investigative Committee, 126 So. 2d 129 (Fla. 1960). The liberty right confirmed in Article I, Section 9, has been interpreted as meaning the right to freely pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper and necessary and essential, subject only to the valid restrains on individual action which may be exacted under the police power of the state. Riley v. Sweat, 110 Fla. 362, 149 So, 48 (1933). It is the absence of arbitrary restraint, rather than immunity from reasonable regulations and prohibitions imposed in the public welfare which are protected. See Southern Utilities Comnanv v. Palatka, 86 Fla. 583, 99 So. 236 (1923); affirmed 268 U.S. 232, 69 L.Ed. 930, 45 S.Ct. 488. Thus, the personal liberty guaranteed by the state and the federal constitution is not an absolute right, but is subject to regulation by law when the common good or common decency requires it. See Neisel v. Moran, 80 Fla. 98, 85 So. 346 (1919); Whitaker v. Parsons, 80 Fla. 352, 86 So. 247 (1920); Mairs v. Peters, 52 So. 2d 793 (Fla. 1951). Restated, governmental regulations, including constitutional provisions, are valid when they afford due process in equal protection and do not violate some specific organic provision, even though they may, in effect, deprive individuals of life, liberty, and property to accomplish the purposes for which the constitution was adopted. Whitaker v. Parsons, infra. While Appellants have inferred that Article X, Section 16 is improperly arbitrary, no facts in the record or body of law has been offered to support that argument. Thus, it fails.

The only discussion or argument raised by Appellants which genuinely speaks to the issue is the argument that the prohibition against the use of certain nets within the state waters of Florida constitutes a taking of property without compensation. Here, however, the Appellants have made

an argument which is unsupported by facts in the record and which overstates the affect of Article X, Section 16 as it relates to the particular nets the use of which are absolutely banned within the state waters of Florida, While Article X, Section 16 does in fact ban the use of gill and other entangling nets within the waters of Florida, it is clear that those are not the only uses for such property by Appellants. For example, not affected and not in any way infringed by Article X, Section 16, is the use of such nets either outside of the state of Florida in the territorial waters of other states or outside the waters of the state of Florida within the federal waters or international waters.

The Appellants' reference and reliance upon citation to In re Forfeiture of 1969 of Piper Navajo, 602 So.2d 933 (Fla. 1992), is improper because of violations of Federal Aviation Administration regulations, attempted to cause the civil forfeiture of a privately owned aircraft, Article X, Section 16 makes no forfeiture or confiscation of private property. Instead, it merely regulates what properties may be used within the State of Florida. Ample precedent exists which demonstrates the error in Appellants' argument.

The enactment of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.S. \$1201 exec.) was held to not constitute a taking of the property of coal mine operators under the just compensation clause of the United States Constitution, Fifth Amendment. Hodel v. Virginia Surface Mining and Reclamation Association, 69 L.Ed. 2d 1, 101 S.Ct.. 2352 (1981). In Hodel, coal miners argued that the regulations imposed by the Act, deprived the operators of the economically viable use of their property and thus constituted an improper taking. The Court held that the act merely regulated the conditions under which operations might be conducted and therefore did not constitute a taking. Similar arguments by miners within the state of Indiana were dismissed by the Court as well in Hodel v. Indiana, 69 L.Ed. 2d 40, 101 S.Ct. 2376 (1981). The fact that a governmental regulation

prevents the most profitable use of property is not dispositive. A reduction in the value of property is not necessarily equated with a "taking". Andrus v. Alard, 62 L.Ed. 2d 10, 100 S.Ct. 3 18 (1979). In other words, the prohibition against taking a private property for public use without just compensation, the denial of one traditional property right does not always amount to a taking. Where an owner possesses a fill bundle of property rights the destruction of one strand of the bundle is not a taking because the aggregate must be viewed in its entirety. Id.

In their argument, Appellants seek to shift the burden of demonstrating propriety to that of Appellees. In other words, they seek to have Appellees demonstrated why there is a "need" to eliminate the use of gill net fishing within the state waters of Florida, Such an argument turns constitutional law on its head. Constitutional provisions are presumed valid and, when challenged, the challenger bears the burden of demonstrating the alleged invalidity in the constitutional provision. Constitutional amendments become a part of the constitution and must be construed in paramenteria with all other portions of the constitution having a bearing on the same subject matter. Indeed, where a constitutional amendment is argued to conflict with a preexisting provision, the amendment must prevail since it is the latest expression of the people's will. Sylvester v. Tindall, 18 So. 2d 892, 900-901 (Fla. 1944). Having failed to support any argument of error on this issue by the Trial Court, the Final Judgment should be affirmed.

IV. ARTICLE X, SECTION 16 DOES NOT VIOLATE THE EQUAL PROTECTION AFFORDED UNDER ARTICLE I, SECTION 2 OF THE FLORIDA CONSTITUTION.

In their brief, Appellants have offered various bases that Article X, Section 16 of the Florida Constitution improperly infringes upon the equal protections afforded to commercial net fisherman under Article I, Section 2 of the Florida Constitution. This argument is entirely without legal or logical support. This argument advanced by Appellants begins by mischaracterizing the appropriate standard of review of Article X, Section 16 by this Court. Having done that, it goes further and misrepresents the impact and effect of the challenged provision of the Florida Constitution. In both United Job Brokers, Inc. v. Gillespie, 377 So. 2d 668 (Fla. 1979) and DeAyala v. Florida Farm Bureau Casualty Insurance Company, 543 So. 2d 204 (Fla. 1989), the Court correctly determined that infringement on fundamental constitutional rights under either the Federal or Florida Constitution requires an analysis under strict scrutiny of the applicable statutory scheme. Appellants have gone too far in suggesting that Article X, Section **16** infringes upon a fundamental constitutional right and thus should be analyzed under the standard annunciated in DeAyala (Appellant's Brief p. 28). s noted earlier, no single authority or fact lends support to the specific and implicit argument that commercial net fishing in the nearshore and inshore waters of the State of Florida is a fundamental constitutional right. To advance such a conclusion is to suggest that every commercial enterprise and venture, occupation or profession within the State of Florida requires similar protection as a fundamental constitutional right, This Court has held on numerous occasions that occupations and professions cannot be regulated to the point of extinction. In this instance, however, there are absolutely no facts in the record that suggest that the effect of Article X, Section 16 is to eliminate either commercial net fishing or commercial fishing within the nearshore or inshore salt waters of the State of Florida.

Interestingly, the argument advanced by Appellants with regard to equal protection issues is internally inconsistent and contrary and contradictory. In their statement of the case and facts, at pp. 1-2 of Appellant's Brief, they state that "the instant appeal presents only issues of law, namely: whether Article X, Section 16, Florida Constitution should be invalidated because it violates appellant's rights to due process of law and equal protection, and whether it should be invalidated for failure to comply with ballot summary requirements." The argument advanced regarding equal protection issues, however, instead, focuses on whether or not the means employed by Article X, Section 16 in regulating the type of equipment which may be used in the nearshore and inshore salt waters of the State of Florida is "the least restrictive means available" or whether there is in fact a need for the type of regulation imposed by Article X, Section 16. (See Appellant's Brief at pp. 28-31).

The trial court in this case correctly concluded that a distinction between commercial fisherman and sports fisherman as argued by Appellants is not improper, even when contained within an administrative rule. See State Marine Fisheries Commission v. Organized Fishermen, 503 So. 2d 935 (Fla. 1st DCA 1987). As noted, the amendment does not seek to punish anyone (unless they violate the clear provisions of Article X, Section 16) nor does it seek to single out particular kinds of fishermen. Rather, the amendment regulates particular kinds of fishing equipment. Similarly, any distinction between the scope of the regulations on the east coast and west coast of the State of Florida does not create a constitutional infirmity. Rather, the distinction is constitutionally sound because it takes into consideration the difference in the extent of sovereign waters on their respective coasts. No single authority has been offered by Appellants that such a distinction is in anyway improper or constitutionally improper.

V. NO PROPER CHALLENGE EXISTS TO THE ENACTMENT OF RESTRICTIONS ON NET FISHING.

The remainder of Appellants' argument maybe summarized and characterized quite simply as contending that the State of Florida, whether by legislative act, by statute, by administrative rule or by constitutional amendment, is without authority to limit net fishing is the manner which is accomplished by Article X, Section 16 of the Florida Constitution. Once again, Appellants position is not only without support, it is self-contradictory, ignores existing law and is oximoronic. The internal contradictions in Appellants argument are perhaps the most interesting. In the first part of their argument, Appellants contend that the Florida Constitution is no place for an amendment which limits and restricts the taking of saltwater fishes by the use of nets. Rather, they contend, if such restrictions are to be put in place they should be put in place by the legislature through statute or through rules adopted by the Florida Marine Fisheries Commission. They do not explain the obvious contradiction which is, if the Marine Fisheries Commission or the legislature can adopt by rule or statute restrictions which would mirror or even exceed those put in place by Article X, Section 16 and would not be violative of all of the constitutional provisions which they suggest have been violated here, then why is it that the Florida Constitution cannot implement such restrictions? Not only have they failed to provide an answer to this question, they have failed to recognize the invalidity of their remaining arguments because of the very existence of this contradiction

In its advisory opinion on this very initiative, the Florida Supreme Court addressed this issue.

> "State constitutions generally do not restrict the subject matter that may be addressed by ballot propositions. James M. Fisher, Ballot Propositions: The Challenge of Direct Democracy to State Constitutional Jurisprudence, 11 Hastings Cont. L.Q. 43 (1984)".

Advisory Opinion--Marine Net Fishing, 620 So. 2d 997 (Fla. 1993) at 1000, fn. 3.

Justice McDonald, joined by others, expressed a concern over the number of amendments,

but recognized the sovereign right of the people to make not only amendments in general, but this specific amendment! The Trial court recognized, as this one also has, that policy arguments are best made to the Legislature and are not a basis for invalidating part of this State's Constitution.

Restrictions on the taking of the fishes in the waters of the State of Florida, both fresh and salt, have been in effect for more than fifty (50) years, As noted in Sylvester v. Tindall, the State of Florida, through rules enacted by the Game and Fresh Water Fish Commission has, banned the taking of fish from the fresh waters of the state by any method except hook and line, since 1944. In the great public outcry which existed at that time this restriction was first imposed[3], all of the arguments which are raised by Appellants with regard to Article X, Section 16 were raised to challenge the rules of the Game and Fish Commission. The documentation set forth regarding these arguments in Sylvester v. Tindall makes it clear that these arguments are without any further force and effect in 1996 than they were in 1944.

The present challenge to Article X, Section 16 is of even less force and effect than was Sylvester's challenge to his arrest for violation of the Game and Fish Commission regulations against the taking of fresh water fish by nets in 1944. Rather than a rule adopted by a commission or even a statute adopted by the legislature, these restrictions put in place by the native body of law in Florida, the Florida Constitution. While the body of law is of superior stature, the sweep of the regulation is substantially less, The rules adopted by the Game and Fish Commission in the 1940s, banned the taking of all fresh water fishes by the use of any kind of nets. In this instance, Article X, Section 16 bans the use of certain nets within a very small portion of the nearshore and inshore waters and restricts the sizes of other nets to be used in the same waters. Appellants contention that such a

[3]As noted, there is nearly an identity as to the issues raised here and by Sylvester.

restriction is an invalid impairment of property and contract rights simply fails. As noted by the authorities cited above, the sovereign right and duty of the State to protect and conserve its fish and wildlife stocks for the benefit of all of its citizens, is not only paramount but is in priority to any personal property rights of Appellants and any contractual rights because it predates them and indeed predates the charter of the sovereign State of Florida, now something more than 150 years old.

The similarities between the challenges raised by Appellants in this case and the Plaintiff in Sylvester v. Tindall are not only so remarkable as to be beyond coincidence, but the decision of the Court in Sylvester provides this Court with a primer on the applicable law and the decision on these issues required of this Court, Indeed Mr. Sylvester, after his arrest for the use of a drag seine net in violation of the rules adopted by the Game and Fresh Water Commission, challenged those rules on the grounds that the rules discriminated against commercial fishermen and was for the benefit of sport fishermen. No basis in law exists for such an argument. Appellants bring an untimely challenge that is without legal support.

VI. ARTICLE X, SECTION 16'S BALLOT SUMMARY COMPLIED WITH ALL PROVISIONS OF SECTION 101.161(1), FLORIDA STATUTES

The ballot summary was approved by the Florida Supreme Court in response to a request by the Attorney General in June 1993--Advisory Opinion-Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993). Appellants infer that the public notice of the Supreme Court's advisory opinion consideration was not sufficient to allow them to challenge the initiative summary. As pointed out by their Memoranda they could have challenged it by separate action but chose not to. It is not too late.

Even if it were appropriate to undertake a post adoption analysis of the sufficiency of the ballot summary language, that has been done. Trial Court concluded as reflected in its Order Granting Final Summary Judgment ". the ballot summary meets the requirements of Florida law in any event." (Final Order at p. 11.) Appellants have cited no single authority that even if a post adoption analysis of the balance summary is appropriate and required, that it may be done on a de novo basis by this Court. In response to their suggestion that such an analysis was proper, appropriate or required, the Trial Court undertook it. While the Trial Court rejected the argument from a legal standpoint because of the passage of time as set forth by this Court in Sylvester v. Tindall, 18 So. 2d 892 (Fla. 1944), the Court went further to conclude that even if such an analysis was appropriate, necessary or required, that Article X, Section 16 met the requirements of Chapter 101, Florida Statutes. No authority has been offered by Appellants that it would be appropriate for this Court to undertake a de novo factual analysis of the sufficiency of the ballot summary language. Rather, similar to all other instances where factual and legal arguments are resolved by the Trial Court, the appropriate review by this Court is as to questions of law only rather than the factual analysis which Appellants seek to have occur, Indeed, what Appellants have in fact argued to this Court is that they are entitled to a trial in this Court on the sufficiency of the ballot

summary based upon the affidavits and other materials submitted to the Trial Court. No legal authority exists for this proposition and it must be rejected by this Court.

The remainder of the arguments raised by Appellants with respect to the ballot summary issue is an attempt to include requirements within Florida law which do not exist. The requirements for ballot summary language on proposed constitutional amendments are contained within Chapter 101, Florida Statutes. Appellants have suggested that additional requirements; to wit notification to voters of the existence of other regulations; notification of the post adoption specific impact and effect of the specific amendment language; notification to voters of the impact of the amendment on a specific commercial fishing industry to wit specifically mullet fishing; the impact of the amendment on the east coast versus the west coast and the argument that the amendment would impact only commercial fishermen and take property and require thereby public compensation all should have been included. None of these requirements are hinted at within Chapter 101 or any other statutory or case law within the State of Florida. The cases cited by Appellants, particularly Firestone' and its progeny stand for the proposition that a ballot summary may not mislead Florida voters as to the effect and scope of a proposed constitutional amendment. No argument has been advanced by Appellants that the ballot summary language of Article X, Section 16 misled the Florida voters. Instead, their argument is that there should have been multiple specific additional disclosures to the citizens of the State of Florida of the Amendment's effect. This is not just inconsistent with the requirements articulated in Chapter 101, Florida Statutes, it is from a factual standpoint impossible. To comply with the word length limitation contained in Chapter 101 and yet include the type of disclosures argued by appellants, goes beyond illogical, it is impossible. As noted by the trial court, the proper method for such disclosures and

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[4] Fine v. Firestone, 448 So. 2d 984 (Fla. 1984)

arguments to the voting public, is within the political process not the statutory process.

CONCLUSION

The arguments advanced by Appellants in their challenge to the constitutionality of Article X, Section 16 are both too late and without support, They have produced not a single legal authority which stands for the proposition that the requirements which they seek to have imposed, post adoption, on the provisions of Article X, Section 16 exist Instead, they seek to have this Court do through judicial determination, what they have argued is so improper about the voters adoption of Article X, Section 16. While they have criticized the adoption of Article X, Section 16 through the electoral process, arguing that it is an action which is more properly suited to legislative action rather than constitutional action, they have asked that this Court do exactly the same thing judicially in placing restrictions upon the adoption of constitutional amendments which do not exist within the legislation or constitution of the State of Florida. No support exists whatsoever for the arguments advanced by Appellants. Article X, Section 16, now a part of the Florida Constitution for more than two (2) years at the time that this challenge comes before the Court for argument, is a valid constitutional provision and the Order of the trial court granting summary judgment in favor of Appellees should be affirmed.

DATED this 9th day of October, 1996.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail this 19th day of October, 1996 to Victoria E. Heuler, Esquire, Post Office Box 14129, Tallahassee, FL 323 17, Jonathan Glogau, Esquire, PL-01 The Capitol, Tallahassee, Florida, 32399, M. B. Adelson, Florida Department of Environmental Protection, 3900 Commonwealth Blvd., Room 628, Tallahassee, Florida, 32399 and Dean E. Aldrich and David Guest, Florida Wildlife Federation, Inc., Sierra Club Legal Defense Fund, Post Office Box 1329, Tallahassee, FL 32302.

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