OA 12-5-96

IN THE SUPREME COURT OF FLORIDA

CASE NO. 88,609

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

Appellants,

- AGAINST -

LAWTON M. CHILES, as Governor of the State of Florida; ROBERT BUTTERWORTH, as Attorney General of the State of Florida; FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; FLORIDA WILDLIFE FEDERATION; and FLORIDA CONSERVATION ASSOCIATION

Appellees.

On Certified Judgement from the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida
Case No. 95-2972

ANSWER BRIEF FOR APPELLEE FLORIDA WILDLIFE FEDERATION

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STATEMENT OF THE CASE AND FACTS

On November 8, 1994 in a general election the voters of Florida approved, pursuant to Article XI of the Florida Constitution, an amendment to the Florida Constitution entitled "Limiting Marine Net Fishing." This amendment, Article 10 Section 16 of the Florida Constitution ("Marine Net Amendment"), was adopted to protect certain public resources--marine life in Florida waters--from unnecessary killing, overfishing, and waste through regulations on the types of fishing gear allowed for use in Florida waters.

This Court, in an Advisory Opinion, had found on June 17, 1993, more than a year prior to the amendment's approval by Florida voters, that the proposed amendment met the single subject and ballot summary requirements. Advisory Opinion to the Attorney General--Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993). Appellants did not challenge the adequacy of the ballot summary prior to the November 1994 election and then waited more than seven months after the amendment's adoption, just days before it took effect, before first challenging the ballot summary.

SUMMARY OF ARGUMENT

Art. X, § 16, Fla. Const., the Marine Net Amendment, was approved by the voters of Florida and thereby adopted as an amendment to the Florida Constitution. Article XI of the Florida

Constitution reserves to the people of Florida the power to amend their Constitution with the sole limitation that the amendment must concern only a single subject. Amendment by initiative is subject only to the additional limitation that the initiative sponsors must prepare a ballot title and short ballot summary which fairly summarizes the chief purpose of the proposed amendment. § 101.161 (2) Fla. Stat. (1996). This court found, in an advisory opinion prior to the amendment's adoption, that the initiative met the statutory ballot summary requirements and the constitutional single subject requirement. Advisory Opinion to the Attorney General Re Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994).

Appellants seek to reopen the question of the adequacy of the ballot summary after failing to challenge it prior to the election or even within a reasonable amount of time following the election. Thus their present challenge to the adequacy of the ballot summary is barred by laches. See Grose v. Firestone, 422 So. 2d 303, 306 (Fla. 1982) (Adkins, J. concurring). Nonetheless, even if Appellants' claims were evaluated on the merits, the ballot summary is adequate. Additionally, the adoption of a ballot initiative by the electorate has been held by this court to cure defects in the ballot summary and indeed the only ballot initiative overturned after ballot approval concerned a case where there was no ballot summary provided at all. Sylvester v. Tindall, 18 So. 2d 892 (Fla. 1944); State ex

rel Landis v. Thompson, 163 So. 270 (Fla. 1935); Wadhams v. Board of County Com'rs, 567 So. 2d 414 (Fla. 1990).

Arguments by Appellants that Art. X, Sect 16, Fla. Const., which is fully a part of the Florida Constitution, can be voided for purported conflicts with other portions of the Florida Constitution are without merit. If there exists a conflict between the Marine Net Amendment and any pre-existing portion of the Florida Constitution, the new amendment must be given effect with inconsistent provisions modified or suspended to the extent necessary to cure the inconsistency. Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978); State v. Division of Bond Finance of the Desartment of General Services, 278 So. 2d 614, 617 (Fla. 1973).

The Marine Net Amendment does not violate either the equal protection guarantees or the due process guarantees of the Fifth and Fourteenth Amendments to the United States Constitution. When restrictions on types of fishing gear apply equally to all people there is no violation of equal protection guarantees. State Marine Fisheries Commission v. Organized Fishermen of Florida, 503 So. 2d 935, 939 (1st DCA 1987); Skiriotes v. Florida, 313 U.S. 69, 75 (1941). The Marine Net Amendment does not violate Appellants due process rights since the amendment's restrictions on types of fishing gear and locations for their use are reasonably related to the patently valid state interest in the protection of the integrity of the public resource of fisheries within state waters. Furthermore, the Marine Net

Amendment does not constitute a taking since it involves no forfeiture or seizure of personal property nor does it eliminate all lawful uses including resale within and without the state.

Consequently, Art. X, Sect. 16, Fla. Const. is a valid portion of the Florida Constitution and an expression of the will of the electorate that its provisions be implemented for the purpose of safeguarding a valuable public resource from unnecessary killing, overfishing and waste.

I. ARTICLE X, SECTION 16 OF THE FLORIDA CONSTITUTION WAS PROPERLY PLACED ON THE BALLOT AND ADOPTED PURSUANT TO ARTICLE XI, FLORIDA CONSTITUTION

Article XI of the Florida Constitution expressly provides for amendment to the Florida Constitution, reserves to the people of Florida the power to propose revisions and amendments, and exclusively reserves to the people the power to approve amendments and revisions. Sponsors of amendments proposed by initiative must prepare a short ballot title and a summary of the proposed amendment, to appear on the ballot, which states the substance of the amendment explaining, in 75 words or less, the chief purpose of the amendment. § 101.161(2), Fla Stat. (1995).

This Court in reviewing the statutory sufficiency of ballot summaries has held that the court should not infringe upon the people's right to vote on an amendment unless the summary is "clearly and conclusively defective." Askew V. Firestone, 421 So. 2d 151, 154 (Fla. 1982). Where this Court has found the ballot summary to be clearly misleading to the public concerning

the material elements of the amendment, it has stricken the summaries from the ballot. Advisory Opinion to the Attorney General Re Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994).

Here, this Court found previously that the ballot summary for the Marine Net Amendment has met the statutory requirements of § 101.161, Fla. Stat. of adequately summarizing the proposed amendment. Advisory Opinion to the Attorney General-Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993). Two years later and over seven months after approval of the amendment in the general election of November 1994, Appellants first complained, seeking equitable relief of insufficiencies in the ballot summary. Appellants now claim that the advisory character of this Court's prior opinion on the adequacy of the ballot summary amounts to an invitation to relitigate the question long after the adoption of the amendment.

A. APPELLANTS' CHALLENGE OF ARTICLE X, SECTION 16 OF THE FLORIDA CONSTITUTION IS BARRED BY LACHES

The doctrine of laches bars claims for equitable relief to parties who wait unseasonably long to initiate suit and thereby disadvantage a party against whom equity is sought. Nowell v. Nowell, 634 So. 2d 235, 237 (Fla. 1st DCA 1994); Stephenson v. Stephenson, 52 So. 2d 684 (Fla. 1951). Waiting several months until the eve of the election to challenge a ballot summary could bar such a suit on the grounds of laches. Grose v. Firestone, 422 So. 2d 303, 306 (Fla. 1982) (Adkins, J. concurring).

Appellants had actual notice or constructive notice of the ballot summary during the campaign leading up to the balloting on the Marine Net Amendment as all voters have the responsibility of informing themselves of the issues on the ballot. By waiting more than seven months after approval of the Marine Net Amendment to challenge the ballot summary, Appellants have significantly disadvantaged the Appellees, the sponsors of the amendment, and indeed the voters of Florida, because of lost opportunities to cure defects, if any, in time for the balloting and by casting doubt on the finality of elections and the certainty of amendment to the Florida Constitution. The Supreme Court has stated its reluctance to interfere with the rights of voters to vote on proposed amendments when setting the strict standard of "clearly and conclusively defective" for striking ballot summaries from the ballot. Askew v. Firestone 421 So. 2d 151, 154 (Fla. 1982); Weber v. Smathers, 338 So. 2d 819 (Fla. 1976), disapproved on other grounds sub nom Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978).

Generally, procedural objections concerning the manner in which constitutional amendments appear on the ballot are deemed cured by the approval of the measure by the voters. Sylvester v. Tindall, 18 So. 2d 892 (Fla. 1944); State ex rel Landis v. Thompson, 163 So. 270 (Fla. 1935). The only authority supporting a post-election disapproval of an amendment for non-compliance with §101.161, Fla. Stat. is Wadhams v. Board of County Com'rs, 567 So. 2d 414 (Fla. 1990) in which *no ballot summary at all*

appeared on the ballot. Nonetheless, even the Wadhams court acknowledged that "there would come a point where laches would preclude an attack on the ordinance" although in that case the court deemed that filing within a few weeks after the election was sufficient. Id. at 417. Appellants urge this Court to permit relitigation of the sufficiency of a ballot summary despite having failed to act promptly to seek review of the ballot summary prior to the election or soon thereafter. Thus Appellants' allegations of insufficiencies in the ballot summary should be barred by laches since Appellants waited over seven months after the election to object, the ballot summary was not plainly defective, and the amendment was approved by the electorate.

B. ARTICLE X, SECTION 16 OF THE FLORIDA CONSTITUTION WAS ADOPTED IN COMPLIANCE WITH § 101.161, FLORIDA STATUTES AND ARTICLE XI, FLORIDA CONSTITUTION

Relitigation of matters expressly addressed in an advisory opinion is strongly disfavored except in truly extraordinary cases where a vital interest was not addressed previously. Florida League of Cities v. Smith, 607 So. 2d 397, 399 (Fla. 1992). This Court's advisory opinion concerning the Marine Net Amendment expressly addressed the validity of the ballot summary. Advisory Opinion to the Attorney General-Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993). Since, none of Appellants' complaints about the adequacy of the ballot summary rise to the

level of a vital interest, the advisory opinion should be dispositive on the sufficiency of the ballot summary.

Even if the advisory opinion is not held to be controlling, Appellants' argument fails on the merits. The ballot summary must state the chief purpose of the proposed amendment without being clearly misleading to the public concerning material elements of the amendment. Askew v. Firestone, 421 So. 2d 151, 154 (Fla. 1982). The summary however is not required to "explain every detail or ramification of the amendment." Advisory Opinion to the Attornev General-Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 228 (Fla. 1991); see also, e.g., Smith v. American Airlines, Inc., 606 So. 2d 618, 620 (Fla. 1992); Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986). Further the statutory limitation of the ballot summary to a 75 word description of the chief purpose, clearly indicates a legislative intention that the summary need not be nor could not be a comprehensive list of all possible effects or consequences of the amendment. §101.161, Fla. Stat. (1995); See, e.g., Smith, 606 So. 2d at 621. Appellants, using well in excess of 75 words, lists 6 alleged defects in the ballot summary, but none of the alleged defects are part of the chief purpose of the amendment. Nor do any of the alleged constitutional infirmities exist, as demonstrated below, so that their omission does not render the ballot summary misleading.

Article X, Section 16 of the Florida Constitution was, pursuant to Art. XI, Fla. Const. and §101.161, Fla. Stat. (1995),

properly proposed by initiative, properly placed on the ballot accompanied by a clear and statutorily sufficient ballot summary, and approved by the voters of Florida in a general election. Hence Art. X, § 16, Fla. Const. was validly adopted.

II. ARTICLE X, SECTION 16 IS A VALID SECTION OF THE FLORIDA CONSTITUTION NOTWITHSTANDING ANY CONFLICTS WITH ANY PREEXISTING PROVISIONS OF THE FLORIDA CONSTITUTION

Article X, Section 16 of the Florida Constitution was, as established above, properly approved and added to the Florida Constitution and must therefore be interpreted as an element of the Florida Constitution. Appellants' reliance upon authority for the standards of review of statutes, ordinances and regulations for conformity with the Florida Constitution is consequently doctrinally erroneous and inapposite.

A. CONFLICTS, IF ANY, BETWEEN ARTICLE X, SECTION 16 AND THE REST OF THE FLORIDA CONSTITUTION ARE TO BE RESOLVED IN FAVOR OF THE AMENDMENT

There are no subject matter limitations placed on amendments to the Florida Constitution. Art. XI, Fla. Const. If an amendment to the Constitution conflicts with preexisting provisions, established patterns of constitutional construction provide that the amendment supersedes the previous provisions. Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978). Otherwise the amendment process could be routinely frustrated. Id. Indeed the Florida Supreme Court has held that:

> [i]t is a fundamental rule of construction that, if possible, amendments to the Constitution should be construed so as to harmonize with other constitutional provisions, but if this cannot be done, the amendment being the last expression of the will of the people will prevail, An amendment to the Constitution, duly adopted, is the last expression of the will and intent of the law-making power and prior provisions inconsistent therewith or repugnant to the amendment are modified or superseded to the extent of inconsistency or repugnancy.

State v. Division of Bond Finance of the Department of General Services, 278 So. 2d 614, 617 (Fla. 1973).

Although amendments to the Florida Constitution are virtually unlimited with respect to Florida law, apart form the single subject requirement which is not at issue in this action, they must not violate the federal constitution. Gray v. Golden, 89 So. 2d 785 (Fla. 1956); Collier v. Gray, 157 So. 40, 45 (Fla. 1934).

Appellants offer no doctrinal basis for, or caselaw supporting, the proposition that an amendment to the Florida Constitution can be voided subsequent to its adoption as part of the Florida Constitution on the grounds that it is inconsistent with pre-existing parts of the Florida Constitution. Arguably an amendment foreclosing a basic right identified in Art. I, § 2, Fla. Const. might be voidable if a constructive subject matter limitation upon amendments were read into the identification of basic rights as inalienable. However the lack of any allowance for subject matter restrictions beyond the single subject rule argues strongly that no other subject matter limitation was

intended upon amendments to the Florida Constitution. See Art. XI, § 3, Fla. Const..

As a practical matter virtually all such cases would also be subject to attack for violations of federal constitutional protections. However no such infringements of basic rights under the Florida Constitution or violations of federally guaranteed rights are remotely implicated by the Marine Net Amendment. Rather Article X, Section 16 of the Florida Constitution regulates the means by which all persons may fish in state waters in order to protect a public resource; it does not even approach infringement upon the basic rights enumerated in Art. I, Sect. 2, Fla. Const. A prohibition on the use of gill nets in Florida waters is not a restriction on a basic liberty interest but rather a reasonable restriction, in a regulated industry, that is rationally related to the state public welfare interest in protection of state fisheries.

Appellants' in their Motion for Summary Judgement assert violations of equal protection guarantees under Art. I, § 2, Fla. Const. but, as it is shown in Part III A below that there is no actual violation of equal protection or other basic rights in Art. X § 16, no review of compliance of the Marine Net Amendment with the Florida Constitution is warranted.

B. LEGISLATIVE CHARACTER OF AN AMENDMENT IS NOT GROUNDS FOR INVALIDATION OF AMENDMENT

Amendments to the Florida Constitution that are legislative in nature do not inherently, by their legislative character, violate any basic rights guaranteed by the Florida Constitution and thus cannot be declared void for conflict with the Florida Constitution. Thus, Appellants' policy argument, that the will of the Florida voters must be overthrown by voiding Art. X. Sect. 16, Fla. Const., cannot stand. Even if one accepts Appellants' contention that amendments possessing a legislative character are inappropriate for inclusion in a state constitution, Florida law does not empower the courts to replace the judgement of the people of Florida with its own on such a policy question. See Florida League of Cities, 607 So. 2d at 400; Askew, 421 So. 2d at 154.

While four Justices of this Court allowed, in a concurrence in Advisory Opinion-Marine Net Fishing, that the provisions of the Marine Net Amendment may have been better suited as a legislative enactment rather than a constitutional amendment, they made no suggestion that the Florida courts might be empowered to repudiate the decision of the voters of Florida in approving such an amendment. 620 So. 2d at 1000. The only remedy suggested in the concurrence was contemplation of future revisions of the Florida Constitution to restrict amendments that are primarily legislative in character. Id.

Thus Art. X, § 16, Fla. Const. is a valid part of the Florida Constitution unimpaired by any putative conflicts with

prior provisions of the Florida Constitution and Appellants' arguments for voiding the Marine Net Amendment must be rejected.[1]

III. ARTICLE X, SECTION 16 DOES NOT VIOLATE ANY PROVISIONS OF THE U.S. CONSTITUTION

Article X, Section 16 of the Florida Constitution, as a properly adopted amendment to the constitution can be nonetheless be stricken from the Florida Constitution, in whole or in part, if it violates any applicable provision of the U.S. Constitution.

A. ARTICLE X, SECTION 16 DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES IN THE U.S. CONSTITUTION

The Fourteenth Amendment to the United States Constitution prohibits any state from denying any person within its jurisdiction equal protection of the laws. Review for the possibility of violation of the equal protection provisions of the federal constitution arises when distinct classes of people

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[1] Although, legislation of fisheries protection may be preferable by means other than constitutional amendment, the people of Florida retain the important right to amend or revise the Constitution so that when the legislature or other state authorities fail to adequately protect a state resource, a ballot initiative provides an opportunity for vindicating the public interest when otherwise frustrated by legislative or regulatory failure.

Plaintiffs' complaints concerning the alleged impropriety of adoption of a Constitutional amendment sought by putative special interests ring hollow because plaintiffs, seeking to overthrow a properly adopted Constitutional amendment for the purpose of defeating regulations calculated to protect a public resource, more resemble a special interest than does the majority of Florida voters who approved the amendment.

are treated differently under the law. Appellants claim that Art. X, § 16 creates classes of commercial and recreational fisherman and classes of east coast and west coast fishermen. In fact the language of Art. X, § 16 creates no such classes and applies equally to all people of the State of Florida. Even if the amendment impliedly created distinct classes receiving disparate treatment, the test for review of the amendment for violation of equal protection guarantees would be a rational basis inquiry into the relationship of the amendments provisions and its purposes. Florida League of Cities v. Dep't. of Envtl. Reg'n., 603 So. 2d 1363 (1st DCA 1992); Junco v. State Bd. of Accountancy, 390 So. 2d 329 (Fla. 1980) (exercise of police power may have unequal application so long as resulting classifications are reasonable and not wholly arbitrary).

Restrictions on types of fishing gear permitted are rationally related to the purpose of protecting the state's public welfare interest in preserving state fisheries resources and particularly do not violate equal protection guarantees when equally applicable to all persons even if their impacts are unequal on different groups. State Marine Fisheries Commission v. Organized Fishermen of Florida, 503 So. 2d 935, 939 (1st DCA 1987); Skiriotes v. Florida, 313 U.S. 69, 75 (1941) (Florida law prohibiting diving gear used to take commercial sponges not in violation of equal protection guarantees as it applies to all people); State v. Rafield, 515 So. 2d 283 (1st DCA 1987), decision approved, 565 So. 2d 704, cert. denied, 498 U.S. 1025

(restrictions on use of gill nets and other nets not in violation of equal protection).

The extent of the ban on oversize (in excess of 500 square feet) nets in east coast waters and west coast waters is in both cases one third of the extent of state waters and ends at roughly comparable depths offshore. Since rational bases exist for any disparate treatment of putative classes under Art. X, § 16, Fla. Const., there is no equal protection violation and therefore no basis for voiding the Marine Net Amendment for conflicts with Florida Constitutional provisions.

B. ARTICLE X, SECTION 16 DOES NOT VIOLATE CONSTITUTIONAL DUE PROCESS PROVISIONS

The Fourteenth Amendment to the U.S. Constitution bars states from depriving any person of life, liberty, or property without due process of law. For a state's exercise of its police power not to violate the substantive due process rights secured by the Fourteenth amendment, regulations must be reasonably related to the purpose of the regulation and that purpose must concern a valid state interest. Woods v. Holy Cross, 591 F.2d 1164 (11th Cir. 1979). States have a valid interest in the protection of fish and other resources in state waters. Skiriotes v. Florida, 313 U.S. 69 (1941); State v. Casal, 410 So. 2d 152 (Fla. 1982), on remand, 411 So. 2d 1040, cert. granted sub nom, Florida v. Casal, 459 U.S. 821, cert. dismissed, 462 U.S. 637; State v. Hill, 372 So. 2d 84 (Fla. 1979) (Florida has the authority to prohibit shrimping within its jurisdiction). The

purpose of Art. X, § 16, Fla. Const. is, as stated in the amendment, the protection of public fisheries resources to be achieved by restrictions on the types of fishing gear that may be used within Florida waters. Thus the Marine Net Amendment does not violate due process guarantees for its regulation of fishing practices since fishing regulations, even prohibitions of specific types of gear, are rationally related to the state's interest in protecting marine resources. Skiriotes, 313 U.S. 69 (1941).

Appellants' reliance on Fraternal Order of Police v. Dept. of State, 392 So. 2d 1296 (Fla. 1980), and Carter v. Town of Palm Bch., 237 So. 2d 130 (Fla. 1970), is misplaced because both cases find a due process violation only in cases where occupations or activities were prohibited rather than merely regulated. The liberty interest in one's right to engage in a lawful livelihood is subject to the exercise of police powers where there is any rational relationship to a legitimate state objective. Fraternal Order of Police, 392 So. 2d at 1302. Art. X, § 16, Fla. Const. regulates fishing within Florida waters but hardly prohibits the occupation of commercial fishing in state waters.

Art. X, § 16, Fla. Const. does not invade or subject to forfeiture any property it seeks to regulate in furtherance of its goal of protecting public marine resources. A regulation can constitute an unconstitutional taking of property if it denies a substantial portion of the beneficial use of the property, but

such a regulation is not a taking if a reasonable use of the property remains. Glisson v. Alachua County, 558 So. 2d 1030, 1035 (1st DCA 1990), rev. denied, 570 So. 2d 1304 (Fla. 1990). Prohibitions of use of gill nets in certain Florida waters have been previously upheld. See State v. Perkins, 436 So. 2d 150 (2nd DCA 1983), rev. denied, 436 So. 2d 100 (Fla. 1983).

While a regulatory taking can impose upon personal property as well as real property, personal property can be sold and or removed to a jurisdiction without the same regulations so that regulations are less likely to leave personal property without a reasonable use remaining. Indeed Appellants are not prevented by Art. X, § 16, Fla. Const. from using their personal property for commercial fishing further offshore, outside of Florida waters, or within Florida waters where consistent with the Marine Net Amendment and other applicable Florida Law. Furthermore much of the personal property identified by Appellants as allegedly subjected to regulatory taking, including boats, freezers and other gear, could be used for purposes other than commercial fishing and all of the property could lawfully be sold for economically reasonable uses.

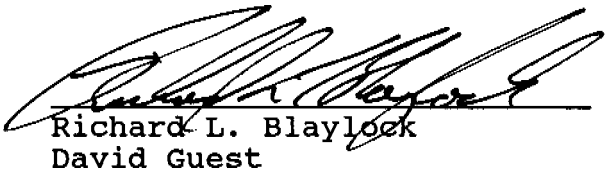
To declare a regulatory measure invalid as a taking on its face, as Appellants seek to do, the mere fact of the regulation taking effect must constitute a taking. Glisson, 558 So. 2d at 1036. Appellants rely on In Re Forfeiture of 1969 Piper Navajo, 592 so. 2d 233 (Fla. 1992) for the proposition that the least restrictive form of regulation must be selected. However in

Piper Navajo the Court, in reviewing a statute that is essentially penal in nature, compares the draconian automatic forfeiture of property with alternative means of regulating use and possession of non-FAA-approved fuel tanks for aircraft to soften the harsh punishment of forfeiture, 592 So. 2d at 236. Since Art. X, § 16, Fla. Const., in its restrictions on the types of nets permitted for use in state waters, neither subjects any of Appellants' property to forfeiture nor does it restrict its sale, the amendment neither triggers the Piper Navajo rule nor substantially forecloses the economic value of Appellants' personal property. Hence, on its face, as a matter of law, Art. X, § 16, Fla. Const. is not a regulatory taking.

CONCLUSION

For all of the foregoing reasons, Art. X, § 16, Fla. Const. was validly placed on the ballot in November 1994, properly approved by the voters of the State of Florida, and thereby adopted as an amendment to the Florida Constitution. As a part of the Florida Constitution, Article X, Section 16 cannot be voided for any conflicts, if any, with pre-existing portions of the Florida Constitution. Lastly Art. X, § 16, Fla. Const. violates neither equal protection nor due process guarantees of the U.S. Constitution. Thus the decision of the trial court below granting summary judgement affirming the validity of Art. X, § 16, Fla. Const. should be upheld.

Respectfully submitted this 18th day of October, 1996.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been provided by U.S. Mail this 18th day of October, 1996, to:

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