IN THE SUPREME COURT OF FLORIDA

JEFFREY ALLEN FARINA ET AL.,
Movants/Petitioners,
vs. CASE NO. SC00-410
STATE OF FLORIDA,
Respondent.
_____/

CONSOLIDATED WITH

MARK JAMES ASAY, ET AL.,
Petitioners, CASE NO. SC00-154
vs.
ROBERT A. BUTTERWORTH ET AL.,
Respondents.
_____/

LLOYD CHASE ALLEN, ET AL.,
Petitioners, CASE NO. SC00-113
vs.
ROBERT A. BUTTERWORTH ET AL.,
Respondents.
_____/

RESPONSE OF MOVING/PETITIONING PARTIES IN *FARINA ET AL.* TO BRIEF OF AMICUS CURIAE

Movants/Petitioners Jeffrey Allen Farina, Rolando Garcia, and Leo Edward Perry, respond to the amicus brief of John E. Thrasher, Speaker of the House or Representatives, as follows:

The entire argument of the amicus is premised on erroneous legal assumptions. As will be demonstrated below, the argument of the amicus has no validity and fails.

Separation of Powers. The amicus predicates its argument on the proposition that a postconviction action in the nature of habeas corpus and coram nobis, now subsumed under the ambit of Florida Rules of Criminal Procedure 3.850 and 3.851, is merely a "civil action collaterally challenging the enforceability of a judgment." Brief of

Amicus at 5. However, this Court many times -- including in recent weeks -- has flatly rejected that premise. See Hall v. State, 24 Fla. L. Weekly S42 (Fla. Jan. 20, 2000) ("both a postconviction motion and an appeal from the denial of that motion are collateral criminal proceedings," not civil proceedings, and thus are excluded from legislative reach of the frivolous filing statutes); State ex rel. Butterworth v. Kenny, 714 So. 2d 404 (Fla. 1998) ("postconviction relief proceedings, while technically classified as civil actions, are actually quasi-criminal in nature because they are heard and disposed of by courts with criminal jurisdiction," and thus do not fall within the legislative prohibition against the filing of civil actions by the CCRCs). In fact, this Court has singled out postconviction actions as requiring the "'more flexible standards of due process'" than with other actions. Steele v. Kehoe, 747 So. 2d 931, 934 (Fla. 1999) (quoting State v. Weeks, 166 So. 2d 892, 896 (Fla. 1964)). Therefore, decisions relied upon by the amicus for the proposition that civil actions are subject to statutes of limitations have no application here.

The amicus next contends that state government as set forth in the Florida Constitution is "preeminent[ly] model[ed]" after that of the United States Constitution, and therefore whatever the U.S. Constitution permits the respective federal branches to do, the Florida Constitution permits the respective state branches to do. See Amicus Brief at 7. To the contrary, the Florida Constitution neither structurally nor functionally follows directly in the path of the federal constitution.

For one thing, the documents serve different functions:

> Federal and state bills of rights thus serve distinct but complementary purposes. The federal Bill of Rights facilitates political and philosophical homogeneity among the basically heterogeneous states by securing, as a uniform minimum, the highest common denominator of freedom that can prudently be administered throughout all fifty states. The state bills of

> rights, on the other hand, express the ultimate breadth of the common yearnings for freedom of each insular state population within our nation. Accordingly, when called upon to construe their bills of rights, state courts should focus primarily on factors that inhere in their own unique state experience, such as the express language of the constitutional provision, its formative history, both preexisting and developing state law, evolving customs, traditions and attitudes within the state, the state's own general history, and finally any external influences that may have shaped state law.
>
> When called upon to decide matters of fundamental rights, Florida's state courts are bound under federalist principles to give primacy to our state Constitution and to give independent legal import to every phrase and clause contained therein. We are similarly bound under our Declaration of Rights to construe each provision freely in order to achieve the primary goal of individual freedom and autonomy.

State v. Traylor, 596 So. 2d 957, 962-63 (Fla. 1992) (footnote omitted).

For another thing, the Florida Constitution expressly departs from the United States Constitution with respect to separation of powers.[1] Separation of powers is an express -- not an implicit -- constitutional mandate in Florida, and distinct, essential functions have been delegated by the people to certain branches exclusively. One such provision is article V section (2)(a), which mandates that this Court be the sole and exclusive purveyor of the rules applicable to litigating actions in the courts of this State. The Constitution further recognizes the Court's express and exclusive rulemaking authority in article IV sections 1(c) and 10, wherein this Court is given the authority to issue advisory opinions "subject to their [the Court's] rules of procedure." Yet despite the plain and straightforward language of those provisions, and other provisions delegating exclusive authority to the judicial branch, the amicus erroneously posits, with

[1] There are many other departures as well, such as vesting the Supreme Court of Florida with the authority to issue advisory opinions, see art. IV, § 1(c), Fla. Const., id. § 3(b)(10), a function never provided to the United States Supreme Court.

no supporting authority, that "rulemaking is inherently legislative." Brief of Amicus at 6. Judicial rulemaking is expressly a judicial function in this State, and many authorities cited in the motions/petitions in this case demonstrate that time-honored principle. Cf. art. III § 4(a), Fla. Const. ("Each house [of the Legislature] shall determine its rules of procedure.") (Emphasis supplied).

The amicus asserts, without support in law, logic, or history, that "[t]he legislative power defines and balances rights." Brief of Amicus at 6. This far-reaching proposition underlies the entire DPRA. The Legislature wants this Court to disregard the Constitution, history, and the Court's exclusive function as final interpreter of the Constitution, so that the majority will (as expressed in an Act of this Legislature) reigns supreme. The amicus arrogates almost all power unto itself, upsetting the delicate constitutional balance. That demonstrates a fundamental misunderstanding of the role of the Constitution and the courts in our society.

The Constitution, by its very nature, is designed to protect minority interests against overreaching by partisan majority will. The Judiciary is the repository of that constitutional mandate, the non-partisan branch assigned by the people to protect them from the partisan political branches and to be the final arbiter of the meaning and application of the Florida Constitution. Accord Marbury v. Madison, 5 U.S. 137 (1803). The Constitution is the document that establishes rights as the judiciary interprets it, and only insofar as the Constitution does not prohibit specific branches of government from also conferring rights, the respective branches may do so.

The amicus turns the Constitution on its head by claiming all rights and powers rest in a single branch -- the Legislature -- unless limited and express authority is delegated

elsewhere. This defiant approach to the Constitution is sadly reminiscent of Cooper v. Aaron, 358 U.S. 1 (1958), where all nine justices together signed a single opinion to make clear that "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." 358 U.S. at 18.

The amicus next contends that the Legislature has the constitutional right to impose statutes of limitations on any action. There is no support for that proposition. Whether the DPRA imposes a "statute of limitation" or a "statute of repose,"[2] the Act clearly is intended to impair a citizen's right to file a petition for the extraordinary writs of habeas corpus or coram nobis, now almost fully embraced under the ambit of Florida Rules of Criminal Procedure 3.850 and 3.851. See, e.g., State ex rel Butterworth v.

[2] Movants/petitioners note that the amicus and the Attorney General appear to be at odds as to whether the DPRA's strict time limits act as statutes of limitation or statutes of repose. See Brief of Amicus at 15 & 15 n.17. Despite what the amicus claims the Legislature's intent may have been, as a practical matter the DPRA does appear to operate as a statute of repose to absolutely cut off all actions not filed within the times allotted. The unreasonable, unyielding harshness of the DPRA is easily seen by the narrow way in which the DPRA defines when an action accrues. According to the amicus, the DPRA says a postconviction action accrues at the time of sentencing, see Brief of Amicus at 12-13, irrespective of whatever circumstances may come to light later through disclosure of previously undisclosed materials covered by Brady v. Maryland, 373 U.S. 83 (1963), public records, new laws that have retroactive application under Witt v. State, 387 So. 2d 922 (Fla. 1980), and other circumstances such as those in Scott v. Dugger, 604 So. 2d 465 (Fla. 1992) (a codefendant's subsequent life sentence constitutes newly discovered evidence which would permit collateral relief), and Porter v. State, 723 So. 2d 191 (Fla. 1998) (new evidence showing trial judge was biased). If the cause of action inflexibly accrues at sentencing, the DPRA will act as a statute of repose to bar subsequent postconviction actions that could not have been known to exist at the time of sentencing or for years thereafter, even when due to the State's fault. Because the only escape valve to allow an action to "accrue" after the rigid times set forth in the DPRA is for new evidence of actual innocence of the underlying offense, there appears to be only one true "statute of limitation" in the DPRA. Otherwise, the Act does appear to operate as an unreasonable, unconstitutional repose statute, intruding on the rights of access of courts, habeas corpus, coram nobis, due process, equal protection, and the right to be free of cruel and/or unusual punishment.

Kenny, 714 So. 2d 404, 408-10 (Fla. 1998) (detailing the historical derivation of these rules as procedural mechanisms to provide for the orderly administration of extraordinary relief requests).

Unlike causes of action that are given the force of law by statute or common law, over which the Legislature may exert some substantive control, the Great Writ of habeas corpus, and the writ of coram nobis, are constitutionally endowed, and various provisions of Florida Constitution have vested complete and total authority over those writs in the judicial branch. See art. V, § 2, Fla. Const. (1838) (all power over writs vest in "Judicial Department"); art. V, § 2, Fla. Const. (1861) (same); art. V, § 2, Fla. Const. (1865) (same); art. VI, § 5, Fla. Const. (1868); art. IX, §§ 5, 8, Florida Constitution (1868, as amended, 1875) (same); art. V, §§ 4,5,6, Fla. Const. (1885) (same); art. V, §§ 4,5,6, Fla. Const. (1885, as amended, 1956) (same); art. V, §§ 3,4,5, Fla. Const. (1968, as amended, 1972) (same). This follows a long common law tradition dating back centuries to the very roots of American law in England, where the writs evolved as exclusive judicial prerogatives. See generally Alto Adams and George John Miller, Origins and Current Florida Status of the Extraordinary Writs, 4 U. Fla. L. Rev. 421 (Winter 1951) (and authorities cited therein); see also Fay v. Noia, 372 U.S. 391 (1963) (historical explication of the Great Writ).

The consistent, specific, exclusive grant of authority to the judiciary with respect to these writs contrasts sharply with the total omission of any such grant of authority to the Legislature since the inception of the Florida Constitution. The Legislature has been given no express or implied power to abolish, impair, interfere with, or otherwise condition a right or remedy expressly provided by the Constitution.

The amicus focuses only on the presence of habeas corpus in article I section 13, never mentioning the writ provisions of article V. The amicus then tries to stretch article I section 13 into the broad proposition that the writ is subject to limitation equally by all branches of Florida government. See Amicus brief at 9-10. The amicus' argument has no merit whatsoever. First, the plain language of article I section 13 indicates that it was designed to prevent the partisan political branches from abusing the judiciary's control over the writ of habeas corpus by suspending or impairing it in any way, as President Lincoln apparently did with the federal writ of habeas corpus during the Civil War. See Origins and Current Florida Status of the Extraordinary Writs, supra, at 450. Second, the argument of the amicus ignores the long history of the writs as exclusive judicial prerogatives. Third, the amicus ignores the fact that the writs are specifically provided to the judiciary's control in article V, and always have been made part of Florida's "Judicial Department." Fourth, the amicus discusses habeas corpus but fails to consider the fact that postconviction actions often implicate the writ of coram nobis, which is not mentioned in article I.

The only authority the amicus relies upon for its erroneously broad proposition about its authority to devise statutes of limitations is Williams v. Law, 368 So. 2d 1285 (Fla. 1979). However, the amicus omits the facts of that case, which show that it does not even come close to the proposition for which it was cited. Williams involved a County Board of Tax Adjustment's decision to classify a parcel of property as agricultural land after that classification had been denied by the property appraiser. The property appraiser then sought to enjoin the Board from enforcing its decision, and the issue became one of whether the property appraiser's action was an appeal from an

administrative board's decision or an original action, for which different time limits controlled. This Court, as a matter of statutory interpretation, held that the property appraiser's action was an original action. The question of whether the Legislature had constitutional authority to impose such a limitation was not at stake, and any language to that effect in the opinion is pure dicta.

The amicus notably fails to mention settled case law establishing that the Legislature has no constitutional authority to enact statutes of limitations on writs seeking extraordinary relief, at least outside the administrative proceedings context. For example, in Palmer v. Johnson, 97 Fla. 479, 121 So. 466 (1929), the Legislature enacted a statute restricting the right of a party to petition the Supreme Court of Florida to review a Circuit Court's decision rendered in the Circuit Court's appellate capacity. Palmer filed his petition outside the 30-day statutory limit, and Johnson argued the statute barred the petition. This Court relied on substantial precedent to hold that the Legislature could not constitutionally enact such a law, saying that legislative act circumscribing the judiciary's control over a constitutional writ "would be ineffectual." The same rule has been applied in other writ contexts. See, e.g., Ex parte Beattie, 98 Fla. 785, 124 So. 273 (1929) (holding that Legislature had no authority to abrogate the writ of mandamus or quo warranto by passing a law providing and conditioning the right to seek review of an election contest); State ex rel. Buckwalter v. City of Lakeland, 112 Fla. 200, 150 So. 508 (1933) (holding that Legislature had no authority to impair the judiciary's total and exclusive discretion in issuing a prerogative writ, in this case mandamus). Thus:

> It may be said as a general rule that whatever power is conferred upon the courts by the Constitution cannot be enlarged or abridged by the Legislature. State ex rel. Robinson v. Durand, 36

> Utah, 93, 104 P. 760; 15 C. J. 731; In re Albori, 95 Cal. App. 42, 272 P. 321. This rule is also stated as follows: "The Legislature cannot lawfully interfere with the substance of the judicial power and discretion vested in the courts by the Constitution, nor hamper or hinder the free and independent exercise thereof." See Spafford v. Brevard County, 92 Fla. 617, 110 So. 451, 453.

State ex rel. Buckwalter, 150 So. at 511-12 (emphases supplied).

Suspension of the Writ and Access to the Courts. Even if the legislature could permissibly regulate time limits and other procedures governing constitutional writs without violating separation of powers, the amicus' assertion that the DPRA imposes "reasonable" restrictions on postconviction actions, including the imposition of a January 8, 2001 deadline for all defendants in the direct appeal pipeline to file motions for postconviction relief, is demonstrably false. The amicus notes that this Court "has since January 1, 1985, enforced its own common law time bar on postconviction claims through Fla. R. Crim. Pro. 3.850 and 3.851" without running afoul of Article I, Sections 13 and 21 of the Florida Constitution. Brief of Amicus at 10; see also id. at 12.[3] The amicus ignores entirely, however, the predicate for the time bars adopted by this Court.

This Court has long emphasized that, because Rule 3.850 is a "procedural vehicle for the collateral remedy otherwise available by writ of habeas corpus," it implicates Article I, Section 13 of the Florida Constitution which guarantees "that the right to relief

[3] The amicus insists that the Eleventh Circuit Court of Appeals has "recognized" the time limits contained in Rule 3.850 are a "statute of limitations." See Amicus Brief at 10. A review of the cited case, however, discloses that there is absolutely no legal significance to the federal court's characterization of the deadline as a statute of limitations. Webster v. Moore, 199 F.3d 1256 (11th Cir. 2000). The only question presented was whether the motion in question was procedurally barred because it was untimely under state law. It was not relevant to the federal court's analysis whether the time limit in question was a statute of limitations, rule of court, or some other type of judicially or legislatively-imposed deadline.

through the writ of habeas corpus must be 'grantable of right, freely and without cost.'" Haag v. State, 591 So.2d 614, 616 (Fla. 1992) (quoting Art. I, Sec. 13, Fla. Const. and State v. Bolyea, 520 So.2d 562, 563 (Fla.1988)). In Haag, this Court acknowledged "that the right to habeas relief, like any other constitutional right, is subject to certain reasonable limitations consistent with the full and fair exercise of the right," and cited as an example the two-year time limit imposed by Rule 3.850. 591 So. 2d at 616 (emphasis added). The Court went on to emphasize that:

> The fundamental guarantees enumerated in Florida's Declaration of Rights should be available to all through simple and direct means, without needless complication or impediment, and should be fairly administered in favor of justice and not bound by technicality.

Haag, 591 So. 2d at 616. This Court has therefore made clear that judicially-established time limits and other restrictions on the right to seek collateral review do not violate the constitutional right to habeas corpus when they are reasonable, "administered in favor of justice" and "not bound by technicality." The time limits embodied in the DPRA -- particularly those that apply to the approximately 85 "pipeline" defendants -- do not meet any of these criteria.

The amicus makes much of the fact that, under Rule 3.851, capital defendants were allowed only a one year time period to file motions for postconviction relief, see Brief of Amicus at 12, but effectively ignores that the reduced time frame was upheld by a divided Court only with the express understanding that each death-sentenced defendant would be promptly assigned qualified, adequately-funded counsel. In re Rule of Criminal Procedure 3.851 (Collateral Relief After Death Sentence has been Imposed), 626 So.2d 198, 199 (Fla. 1993); Fla. R. Crim. P. 3.851(b)(3) & Court Commentary. Indeed, this

Court noted:

> In the event the capital collateral representative is not fully funded and available to provide proper representation for all death penalty defendants, the reduction in the time period [from two years] would not be justified and would necessarily have to be repealed, and this Court will forthwith entertain a petition for the repeal of the rule.

Fla. R. Crim. P. 3.851, Court Commentary.

Consistent with the principles on which Rule 3.851 was predicated, this Court has tolled the applicable time limits based on inadequate staffing or funding, or other administrative problems affecting the ability of the CCRC offices to provide competent representation. See, e.g., Amendments to Florida Rules of Criminal Procedure – Capital Postconviction Public Records Production (Time Tolling). In re Rule of Criminal Procedure 3.851 (Collateral Relief after Death Sentence Has Been Imposed) and Rule 3.850 (Motion to Vacate, Set Aside, or Correct Sentence), 719 So.2d 869 (Fla. 1998). This Court has also insisted that the deadlines be administered in a fair and equitable manner. For example, this Court has held consistently that the state's failure to produce public records is grounds for extending the relevant deadlines or for amending a motion for postconviction relief. See, e.g., Reed v. State, 640 So. 2d 1094, 1098 (Fla. 1994); Hoffman v. State, 613 So. 2d 405, 406 (Fla. 1993); Walton v. Dugger, 634 So. 2d 1059, 1062 (Fla. 1993); Mendyk v. State, 592 So. 2d 1076, 1082 (Fla. 1991); Engle v. Dugger, 576 So. 2d 696 (Fla. 1991).

The DPRA specifically removes the very safeguards that have been essential to the constitutionality of Rule 3.851's one-year deadline. First, ignoring entirely the motions/petitions filed in Farina et al., the amicus presumes that the DPRA confers a right to counsel and a mechanism for appointment of counsel in the pipeline cases.

See Brief of Amicus at 2-3 & n.2. As demonstrated in the motions/petitions, the legislature failed to authorize or provide any mechanism for the appointment or withdrawal of counsel in pipelines cases. The counsel problem in pipeline cases was noted specifically by this Court in its Order of February 7, 2000, in In re Rules Governing Capital Postconviction Actions, No. SC00-242.

The amicus also asserts that "because the Legislature actually provides the resources for prosecuting claims, though the establishment and funding of Capital Collateral Regional Counsel services, a one year period is clearly reasonable." Brief of Amicus at 12. However, as discussed in the motions/petitions, even if there were a mechanism for appointing counsel in the pipeline cases, the three CCRC offices cannot possibly absorb all 85 of the pipeline cases. Moreover, despite the passage of DPRA, the Governor has not requested funding for any additional positions for the CCRCs. See The Florida Bar News, at 13, February 15, 2000. Rather, it is apparently expected that the additional cases will be assumed by private counsel on the registry managed by the Commission on Capital Cases. The motions/petitions outline the grave concerns that have already arisen regarding the quality of representation provided by registry lawyers, including six cases -- more than in Texas -- in which registry lawyers missed clients' federal habeas corpus deadlines. Thus, far from conditioning its draconian deadlines upon the provision of competent and adequately-funded counsel, DPRA simply dumps the 85 pipeline cases onto a collateral counsel system that is already stretched to the breaking point, and that will be further burdened by a significantly increased number of new cases each year. Movants/petitioners submit that the January 8, 2001 deadline is

therefore manifestly unreasonable.[4]

In addition to the overwhelming counsel problems, DPRA also specifically eliminates the flexibility that has enabled judges to administer deadlines in capital postconviction cases with a semblance of fairness. DPRA requires all motions to be "fully-pled" when filed and prohibits all amendments or extensions of times, including any based on the state's failure to comply with its obligation to disclose public records. DPRA § 6 (creating § 924.056(3)(a) & (c), Fla. Stat.); Id. § 9 (creating § 924.059(1), Fla. Stat.). DPRA also purports to strip courts of any authority to toll the statutory deadlines "for any reason or cause." Id. § 6 (creating § 924.056(3)(d), Fla. Stat.) Consequently, DPRA attempts to make the courts powerless to toll filing deadlines due to the unavailability of competent counsel and precludes the filing of "shell" pleadings that would preserve a defendant's federal habeas rights during such a time period. This further underscores the patent unreasonableness of DPRA's January 8, 2001 deadline for pipeline cases.

Ironically, in defending the reasonableness of requiring non-pipeline defendants to file their motions for postconviction relief six months after filing their initial briefs on direct appeal, the amicus argues that "[t]he time period was clearly designed . . . to recognize that the issues on appeal and the issues on postconviction relief do not overlap," and that "DPRA guarantees a period of time after the direct appeal is fully

[4] Movants/petitioners submit that the crisis with respect to the registry is sufficiently serious that this Court should not allow more cases to be assigned to the registry until it is overhauled completely. Thus, even if other portions of the DPRA were to be upheld, the January 8, 2001 deadline should be stayed and/or tolled until the Court is assured that competent counsel will be provided. Failure to do so will result in irreparable harm to movants/petitioners.

formed to allow the postconviction counsel to craft a motion or petition for postconviction relief which does not overlap the issues on direct appeal." Brief of Amicus at 13. The amicus asserts further, in a footnote, that an inflexible deadline -- without regard to the status of the direct appeal -- would be completely impractical. See Brief of Amicus at 13 n. 16. The January 8, 2001 deadline is, however, precisely such an arbitrary deadline. It applies inflexibly, with no exceptions, to all pipeline defendants, without regard to the status of their direct appeal. In at least some instances, the January 8, 2001 deadline may fall before the initial brief is filed and, in others, it will fall considerably less than six months after the filing of the initial brief.

Amicus also overlooks that the January 8, 2001 deadline encompasses claims of ineffective assistance of appellate counsel, which cannot even "accrue" until after an appeal is decided. Many of the scores of pipeline cases will still be pending on appeal when the January 8, 2001 deadline arrives. Thus, the amicus impliedly asserts that the absolute bar on postconviction actions alleging ineffective assistance of counsel is "reasonable" even though the actions are forever barred before they could have accrued. No court could find that to be a reasonable procedural bar.

Clemency. Yet another false premise of the amicus is that clemency serves as an effective safeguard for capital defendants to secure relief from erroneous convictions and sentences. However, the clemency process is ill-equipped to make decisions based on constitutional error and factual innocence claims affecting death-sentenced individuals. First, the clemency powers are vested solely in the unrestricted discretion of the Governor and are subject solely to the rules fashioned by the Governor for its administration, absent a blatant constitutional violation. See art. IV, § 8, Fla. Const.; Sullivan v. Askew, 348

So. 2d 312 (Fla. 1977). Second, the information upon which clemency decisions are made is not subject to adversarial scrutiny or reliability testing under evidence rules; facts, conjecture and opinion from many sources are free to enter the process. Third, the capital defendant is not entitled to review the information contained within the clemency files since all such files are confidential. See Asay v. Florida Parole Commission, 649 So. 2d 859 (Fla. 1994) (no requirement for clemency board to disclose exculpatory evidence to capital defendant); Parole Commission v. Lockett, 620 So. 2d 153 (Fla. 1993) (no requirement for the production of information from clemency files). Fourth, the clemency proceeding is offered to capital defendants in early stages and only once. See Bundy v. State, 497 So. 2d 1209 (Fla. 1986) (Executive Branch is not required to entertain a second clemency proceeding). Moreover, even if a second clemency proceeding is held, the capital defendant is not entitled to the appointment of counsel to prepare and present a second clemency application. See Provenzano v. State, 739 So. 2d 1150 (Fla. 1999). The suggestion that the availability of clemency is "a more effective moral safeguard" to protect capital defendants' from wrongful convictions and death sentences is totally without foundation.

On a final note, movants/petitioners wish to point out that we were given approximately 48 hours to file this pleading due to the untimely filing of amicus.[5] This underscores the fundamental problem of haste underlying the DPRA and these entire

[5] Movants/petitioners question the amicus' participation in this action. It appears that by allowing the Legislature to participate in an action challenging the facial or as-applied constitutionality of an Act of the Legislature, this Court is inviting the Legislature to participate in virtually every action challenging the constitutionality of any Act, facially or as applied. This bad precedent has the potential for creating a mass of unruly litigation in all the courts of this State.

proceedings. Rules that are likely to make the difference between life and death should be considered with appropriate deliberation, not with inappropriate haste. This Court should not follow in the Legislature's ill-trodden footsteps by rushing to judgment because doing so will further subvert due process.

CERTIFICATE OF SERVICE

We certify that a copy of this response has been furnished by delivery to: Robert A. Butterworth, Attorney General, Carolyn M. Snurkowski, Assistant Deputy Attorney General, and Richard A. Martell, Chief of Capital Appeals for Office of the Attorney General, the Capitol, Plaza Level, Tallahassee, FL, 32301; John Thrasher, Speaker of the House, 4th Floor, The Capitol, Tallahassee, FL 32301; and by U.S. Mail to Neal A. Dupree, CCRC, Todd G. Scher, Litigation Director, CCRC - Southern Region, 101 NE Third Ave., Ste. 400, Ft. Lauderdale, FL 33301; John W. Moser, CCRC, Michael P. Reiter, Chief Assistant, CCRC - Middle Region, 3801 Corporex Park Dr., Ste. 210, Tampa, FL 33619; and Gregory C. Smith, CCRC, Andrew Thomas, Chief Assistant, CCRC - Northern Region, 1533-B S. Monroe St., Tallahassee, FL 32301, on this _____ day of _____, 2000.

Respectfully submitted,

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