

IN THE SUPREME COURT OF FLORIDA
CASE NO. SC05-1564

ADVISORY OPINION TO THE
ATTORNEY GENERAL

RE: INITIATIVE EXTENDING SALES TAX
TO NON-TAXED SERVICES WHERE
EXCLUSION FAILS TO SERVE
PUBLIC PURPOSE

**AMENDED ANSWER BRIEF OF THE SPONSOR
FLORIDIANS AGAINST INEQUITIES IN RATES**

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STATEMENT OF THE CASE AND FACTS

As stated in the Initial Brief, the Initiative Extending Sales Tax To Non-Taxed Services Where Exclusion Fails to Serve Public Purpose is one of three proposed constitutional amendments sponsored by Floridians Against Inequities in Rates ("FAIR") directing the Legislature to perform an open review of exemptions and exclusions to the sales tax, mandating a legislative decision on whether each exemption or exclusion advances a public purpose and directing the manner by which sales tax exemptions are granted by the Legislature.

Such proposed amendments are presented to the public as separate amendments to comply with the reasoning provided by the Court concerning a constitutional amendment previously prepared by FAIR in Advisory Op. to the Att'y Gen. re Fairness Initiative Requiring Legislative Determination That Sales Tax Exemptions and Exclusions Serve a Pub. Purpose, 880 So. 2d 630 (Fla. 2004). (See App. B. to the Initial Brief).

Each of the three separate amendments has constitutional validity and advance independently the objective of FAIR, even if one or both of the other two amendments proposed by FAIR are rejected by the electors. The Interested Parties in this case filed a brief objecting to the proposed amendment currently before the Court in this case and have filed a brief objecting to the constitutional amendment proposed in the Initiative Requiring Legislative Determination That Sales Tax Exemptions Serve a Public Purpose in Case No. SC 05-1565. See App. D to the Initial Brief (providing the ballot title, ballot summary and ballot text of such initiative).

The Interested Parties in this case did not file a brief objecting to the constitutional amendment prepared by FAIR in the Initiative Directing Manner By Which Sales Tax Exemptions are Granted by the Legislature. See App. C to the Initial Brief (providing ballot title, ballot summary and ballot text of such initiative).

SUMMARY OF THE ARGUMENT

In their Initial Brief, the Interested Parties assert multiple reasons to support their argument that the proposed amendment violates both the single-subject rule of Article XI, section 3, Florida Statutes, and the ballot notice requirements of section 101.161, Florida Statutes. Such asserted reasons and arguments misconstrue and distort the plain language of the proposed amendment and conflict with longstanding principles of judicial deference established by the Court in its review of constitutional amendments proposed by citizen initiative.

First, the Interested Parties erroneously argue that the Court should prevent the voters from considering the proposed amendment because it is unwise. The wisdom of a constitutional amendment proposed by citizen initiative is decided by the voters.

Second, the Interested Parties ground their arguments on the untenable assumption that the Legislature will stand silent or act irresponsibly in its implementation of the proposed amendment if approved by the electors. Any assumption of inaction by the Legislature has no place in a single-subject analysis of a citizen initiative and is not a factor in the review by the Court of the proposed amendment.

Citizen initiatives proposing constitutional amendments are reviewed under a forgiving standard and it is the Court's "duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'" Advisory Op. to the Att'y Gen. re Florida's Amendment to Reduce Class Size, 816 So. 2d 580, 582 (Fla. 2002) (quoting Advisory Op. to the Att'y Gen. re Tax Limitation, 673 So. 2d 864, 867 (Fla. 1996));

Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 399 (Fla. 1978)).

Consistent with this concept of judicial deference and restraint, the Court has frequently held that the wisdom and necessity of amendments proposed by initiative is for the people to decide. "In evaluating the propriety of the initiative petition, the Court does not review the merits of the proposed constitutional amendment, and does not decide whether the Legislature should more appropriately address the subject matter of the proposed amendment." Florida's Amendment to Reduce Class Size, 816 So. 2d at 582. See also Advisory Op. to the Att'y Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys., 769 So. 2d 367, 369 (Fla. 2000).

Further, the proposed amendment is consistent with the reasoning provided by the Court concerning the constitutional amendment previously prepared by FAIR in Advisory Op. to the Att'y Gen. re Fairness Initiative Requiring Legislative Determination That Sales Tax Exemptions and Exclusions Serve a Pub. Purpose, 880 So. 2d 630 (Fla. 2004) (See App. B. to the Initial Brief).

The proposed amendment is a constitutional mandate by the citizens of Florida to instruct and direct the Legislature to review non-taxed services and determine whether the omission of such services from taxation under the existing sales tax serves a public purpose. All of the legislative prerogatives of the Legislature in the performance of its mandated review of non-taxed services remain intact.

The power of the people to directly submit for approval at general elections constitutional amendments unfiltered by the executive and legislative branches of government is an express reservation of political power. In granting constitutional political power to all branches of government, the people reserved to themselves the power and right to consider the wisdom of future initiatives proposed by constitutional amendment by the requisite number of their fellow citizens.

INTRODUCTION

The Florida Constitution, by express provision and by its reservation of power to the people embodied in the constitutional initiative process, recognizes that all political power in Florida is ultimately derived by a grant from its citizens. Article I, section 1, Florida Constitution, expressly states that "[a]ll political power is inherent in the people." Art. I, § 1, Fla. Const. The power of the people to directly submit for approval at general elections constitutional amendments unfiltered by the executive and legislative branches of government is an express reservation of political power. Art. XI, § 3, Fla. Const. Within its express limitations, the constitutional citizen initiative process is a right of self determination reserved by the people to themselves in their approval of the Florida Constitution. In granting constitutional political power to all branches of government, the people reserved to themselves the power and right to consider the wisdom of future initiatives proposed by constitutional amendment by the requisite number of their fellow citizens.

The sanctified nature of this reservation of the right of self determination preserved for all Florida citizens has, on numerous occasions, been recognized by the Court:

This Court traditionally has been reluctant to interfere with this right by barring citizens from formulating their own organic law:

There is no lawful reason why the electors of this State should not have the right to determine the manner in which the Constitution may be amended. This is the most sanctified area in which a court can exercise power. Sovereignty

resides in the people and the electors have a right to approve or reject a proposed amendment to the organic law of this State, limited only by those instances where there is an entire failure to comply with a plain and essential requirement of [the law].

Advisory Op. to the Att'y Gen. re Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So. 2d 491, 494 (Fla. 2002) (quoting Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958)).

This clear statement of judicial restraint and deference in reviewing the right of citizens to determine organic law by constitutional amendment was recognized by the Court in Non-Violent Drug Offenses, to be "especially appropriate in the case of proposed constitutional amendments arising through the citizen initiative process." 818 So. 2d at 494. Such initiatives are reviewed under a forgiving standard and it is the Court's "duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'"

Advisory Op. to the Att'y Gen. re Florida's Amendment to Reduce Class Size, 816 So. 2d 580, 582 (Fla. 2002) (quoting (Advisory Op. to the Att'y Gen. re Tax Limitation, 673 So. 2d 864, 867 (Fla. 1996); Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 399 (Fla. 1978)).

Consistent with this concept of judicial deference and restraint, the Court has frequently held that the wisdom and necessity of amendments proposed by initiative is for the people to decide. "In evaluating the propriety of the initiative petition, the Court does not review the merits of the proposed constitutional amendment, and does not decide

whether the Legislature should more appropriately address the subject matter of the proposed amendment." Florida's Amendment to Reduce Class Size, 816 So. 2d at 582. See also Advisory Op. to the Att'y Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys., 769 So. 2d 367, 369 (Fla. 2000).

The Court has emphasized the high degree of restraint required in its review of initiative petitions, "the Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). Specifically, where citizen initiatives are concerned, "the Court has no authority to inject itself in the process, unless the laws governing the process have been 'clearly and conclusively' violated." Advisory Op. to Att'y Gen. re Right to Treatment and Rehabilitation for Non-Violent Drug Offenses, 818 So. 2d 491, 498-99 (Fla. 2002).

As a consequence, the limited judicial inquiry in the review of a citizen petition for constitutional amendment is whether the proposal violates the constitutional single subject requirement and whether the ballot language and summary is clear to the average voter.

The proposed amendment is a constitutional mandate by the citizens of Florida to instruct and direct the Legislature to review non-taxed services and determine whether the omission of such services from taxation under the existing sales tax serves a public purpose. All of the legislative prerogatives of the Legislature in the performance of its mandated review of non-taxed services remain intact.

The proposed amendment places before the electors the sole question of whether they desire to instruct and direct the Legislature to perform this essential step in sales tax reform. Faced with a reluctant Legislature, the people have reserved to themselves the power to act by citizen initiative. No organic law is directly proposed by the proposed amendment. The Legislature is directed by the people to conduct a deliberate public purpose review of services not taxed under the existing sales tax under its existing legislative power.

Pursuant to such a review, the Legislature can exempt from sales taxation under Chapter 212, Florida Statutes, some or all non-taxed services by direct legislative action. If the Legislature determines that certain non-taxed services are to be subject to the sales tax, it can directly tax the category of services, with such exemption, classification or limitation it chooses, or the Legislature can allow the category of services to be taxed on January 1, 2009, by its inaction. Additional sales tax revenues estimated to be received from such taxation can be applied by the Legislature to reduce sales tax rates or appropriated by the Legislature under its constitutional appropriation power.

All legislative prerogatives remain intact by the proposal except that the Legislature cannot ignore the instruction and demand by the people to review the fairness and public purpose advanced by not taxing each category of services under the existing sales tax.

The proposed amendment has the logical and oneness of purpose to place before the voters the proposition of whether they desire to instruct and direct by constitutional

amendment a public purpose review by the Legislature of those services currently not taxed under the existing sales tax authorized in Chapter 212, Florida Statutes.

The power of the people to instruct and direct the Legislature in the manner provided in the proposed amendment should not be restrained by an argument that the Legislature will not act responsibly in performing its mandated review or in its implementation of the proposed amendment. Only if the Legislature stands silent in the face of the demand by the people for a deliberate review of non-taxed services will such services be taxed without explicit legislative implementation. Such inaction is unlikely and such argument is grounded in a cynicism on the integrity of the Legislature. An argument founded on a fear that the Legislature will not perform its constitutional duty or undertake traditional legislative functions in face of a constitutional mandate cannot be applied as a bar to an exercise of the citizen initiative power the people reserved to themselves. In such unlikely event, the provision of Chapter 212, Florida Statutes, general laws relating to the regulation and collection of taxes and general principles of taxation will direct the collection of the sales tax on those services not directly exempted by the Legislature.

ARGUMENT

I. THE PROPOSED AMENDMENT COMPLIES WITH SINGLE-SUBJECT REQUIREMENT OF ARTICLE IX, SECTION 3, FLORIDA CONSTITUTION.

The objections of the Interested Parties raise a cry of hysteria and present a parade of horrors that distorts both the thrust of the proposed amendment and its plain language.

The proposed amendment is an instruction and direction by the people to the Legislature to review by a date certain all services not subject to the sales tax authorized in Chapter 212, Florida Statutes, and exempt from future taxation only those services that the Legislature determines in its unfettered discretion serve or advance a public purpose. The power of the people to direct and instruct the Legislature is a fundamental power reserved by the people in the constitutional initiative process embodied in Article XI, section 3, Florida Constitution. The proposed amendment appropriately instructs and directs the legislative branch under the Florida Constitution to perform a measure of sales tax reform by undertaking a mandated review of each category of services, and determine whether their exclusion from taxation serves a public purpose.

In performing such a review, the power of the Legislature remains unfettered. Under the proposed amendment, it is the Legislature that decides whether to expressly exempt or tax a category of services from sales taxation or allow a category of services to be subject to the sales tax on January 1, 2009, as a result of the provision in the constitutional amendment. The Legislature possesses the power to enact conditions or

restrictions in implementation of the sales taxation of a currently excluded category of services or to create classifications within any category of services it may determine to tax.

The discretion of the Legislature is absolute and unfettered. Any additional sales tax revenues estimated to be created as a consequence of legislative action or operation of the proposed amendment is subject to legislative appropriation or direction in the same manner as any other State revenue.

If the Legislature determines, pursuant to the constitutional mandate that not taxing a category of services does not advance or serve a public purpose, it has three constitutional choices under the proposed amendment. First, it can directly extend the existing sales tax to such category of services with such conditions and limitations as it determines. Second, it can expressly exempt all or any part of a category of services that advances or serves a public purpose with such conditions and limitations as it desires. Third, it can allow the non-taxed services to be taxed commencing January 1, 2009, with such implementing legislation it deems necessary.

The voter's decision is crystal clear. Does he or she want services not currently subject to the sales tax authorized in Chapter 212, Florida Statutes, to be reviewed by the Legislature to determine whether the exclusion of such services from sales taxation serves a public purpose. In other words, does the voter want to instruct and direct the Legislature to focus its legislative power on a review of services not taxed under the existing sales tax in the manner contemplated in the proposed amendment?

The Interested Parties argue that the voters are incapable of understanding the complexity of the existing sales tax and the benefits provided by not taxing the services they champion. They point to the difficulty faced by the Legislature in 1986 and 1987 in imposing a comprehensive service tax in support of their argument of special interest calamity. This argument is turned on its head by recognizing that the effort expended by the Legislature in the adoption and repeal of the comprehensive service tax in 1986 and 1987 created institutional knowledge that may be easily recalled in the implementation of the proposed amendment. In its determination of the public purpose advanced by not taxing a category of services pursuant to the mandated review, the Legislature can look to this institutional knowledge when it grants an exemption to a category of services, or allows a category of services to be taxed either directly or by inaction on January 1, 2009. In making such unfettered legislative determination, the Interested Parties further assume that the Legislature will not deal with any necessary issues of use, tax authorization or nexus.

As any objective observer of the Legislature in 1987 knows, the comprehensive service tax was repealed not because the Legislature could not address the implementation and collection issues involved as asserted by the Interested Parties. The 1986 service tax was implemented and collection compliance was secured but was repealed in 1987 because of political pressure by those interests in opposition.

The Interested Parties argue that the proposed amendment violates the single-subject requirement in that "it appears to establish a deadline, after which the Florida

Legislature may not be authorized to enact additional exemptions from the services tax." See Brief of Interested Parties at pp.16-17. Such argument ignores the plain meaning of the language in the proposed amendment. Upon the completion of the mandated review of non-taxed services "all services that are not exempted by the legislature shall be subject to the existing sales tax effective January 1, 2009." Nothing in the plain language of the proposed amendment restricts or limits the power of the Legislature to tax or exempt a category of services at any time. The Legislature, under the proposed amendment, retains absolute and unfettered legislative power to change its policy and grant a sales tax exemption to a category of services it elected to tax directly or by inaction pursuant to the review of all non-taxed services mandated under the proposed amendment.

A similar distortion of the plain meaning of the language in the proposed amendment is the assertion by the Interested Parties that the proposed amendment "engages in logrolling in that it would compel a voter to accept a permanent exemption of 'employee salaries and benefits' from the new services tax in exchange for taxation of other services." See Brief of Interested Parties at p. 19. Employee salaries and benefits are expressly excluded from sales taxation by legislative inaction on January 1, 2009, if not expressly exempted by taxation pursuant to the mandated legislative review of all categories of non-taxed services. However, nothing in the paragraph restricts the power of the Legislature to tax employee salaries and benefits in the future in a manner consistent with other constitutional limitations.

Finally, the Interested Parties stretch and distort well established single subject requirements applied to citizen initiatives and argue that the voters should be denied the right to instruct and direct the Legislature to review the public purpose served or advanced by not taxing each category of non-taxed services because, "The uncertain manner in which the new services tax would be implemented under this initiative constitutes an equally important violation of the single-subject requirement." See Brief of Interested Parties at p. 20.¹ Whether any category of services, no category of services or all categories of services are subject to sales taxation under Chapter 212, Florida Statutes, is a decision of the Legislature in complying with the instruction and direction of the people embodied in the proposed amendment.

The question for the voters is whether they want to instruct and direct the Legislature to perform a review of non-taxed services and determine under the traditional legislative process which category of services provides or advances a public benefit and which does not. The determination of public benefit is a legislative prerogative but the legislative obligation to perform the review is mandated by the people.

Under the proposed amendment, the Legislature is the branch of government instructed and directed by the voters to review the fairness of not subjecting a category of services to the sales tax. Such instruction and direction is consistent with the assignment

¹In this quote the mischaracterization of the proposed amendment by the Interested Parties as creating a "new service tax" is noted. The proposed amendment simply instructs and directs the Legislature to review each category of services and exempt "from future taxation only those services whose exemption is determined to advance or serve a

of governmental power within the Florida Constitution. The proposed amendment does not directly impose a sales tax on services nor favor one category of services over another.

The people are simply and clearly directing and instructing the Legislature to review all non-taxed services to determine whether their exclusion from the sales tax serves or advances a public purpose. All non-taxed services which the Legislature determines pursuant to its mandated review are not entitled to an exemption will be taxed either directly by the Legislature or by operation of the constitutional proposal on January 1, 2009. Under the proposed amendment, the taxation of all or a portion of employee salaries and benefits will require direct legislative action and cannot occur by legislative inaction.

The Interested Parties wring their hands and fret that the Legislature will act irresponsibly. If the Legislature determines that additional implementing legislation is necessary as a consequence of its determination that a category of services is to be taxed either by express enactment or by operation of the constitutional amendment on January 1, 2009, it has to be constitutionally assumed that the Legislature will act responsibly to incorporate its taxing decision appropriately in the Florida tax structure. Why do the Interested Parties assume that the Legislature will not deal with any necessary issues of use, tax collection or nexus if, pursuant to its review, it determines that a category of services should not be exempt and should be subject to the sales tax? Such assumption

public purpose." It does not mandate the taxation of any currently non-taxed services.

has no place in any single subject analysis of the proposed amendment and is not a factor in the review by the Court of the proposed amendment. A constitutional amendment proposed by initiative is not required to resolve and explore every issue of implementation, particularly where the power of the Legislature is not limited within the context of the proposed amendment.²

The Legislature's power remains intact. The Legislature can grant an exemption for all categories of services not currently taxed. The Legislature can directly tax some or all services that are not currently subject to the sales tax or allow a category of services to be taxed on January 1, 2009, by inaction. The Legislature can tax all or a portion of employee salaries and benefits by express legislative action.

The essence of the argument of the Interested Parties is that the people have reserved to themselves only the power to instruct and direct a review one by one of each category of services not taxed under Chapter 212, Florida Statutes, or has reserved the power to instruct and direct the Legislature only to impose a tax on a single category of services. The reserved power to amend the Florida Constitution by petition in Article XI, section 3, Florida Constitution, is not so narrowly drawn.

Nothing in the proposed amendment creates a cataclysmic change to the Florida Constitution. Those who benefit from the exclusion of a category of services from sales

²See, for example, the direction in the class size amendment in Article IX, section 1, Florida Constitution, which directs the Legislature, beginning with the 2003-2004 fiscal year, to provide sufficient funds to meet the class size mandate directed by the people. The political power of the people in this initiative was not suppressed by any concern the

tax taxation may fear that a comprehensive review by the Legislature of the public service advanced by such exclusion may be cataclysmic to their private interest. However, placing the light of public scrutiny on whether the exclusion of a category of services from the sales tax serves a public interest is a power reserved to the people. The voters are entitled to assume that the Legislature will act responsibly in obeying their instruction and direction.

Legislature would not act responsibly and not appropriate sufficient funds.

II. THE BALLOT TITLE AND SUMMARY PROVIDE FAIR NOTICE OF THE AMENDMENT'S CONTENT AND UNAMBIGUOUSLY DISCLOSE THE CHIEF PURPOSE OF THE AMENDMENT.

The title and summary must be drafted "so the voter will have fair notice of the content of the proposed amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Op. to the Att'y Gen. re Stop Early Release of Prisoners, 661 So. 2d 1204, 1206 (Fla. 1995). An informed vote does not equate to providing the voter with every potential detail or ramification of the proposal. Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986) (citing Miami Dolphins v. Metropolitan Dade County, 394 So. 2d 981 (Fla. 1981)). In other words, the ballot summary "is not required to include all possible effects . . . nor to 'explain in detail what the proponents hope to accomplish.'" Advisory Op. to the Att'y Gen. re Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996) (quoting Advisory Op. to the Att'y Gen. English--The Official Language of Florida, 520 So. 2d 11, 13 (Fla. 1988)).

The Interested Parties argue that the ballot language for the proposed amendment is misleading because the proposed amendment requires a mandated review of the sales tax without mandating a corresponding review of the use tax.³ As recognized by the Interested Parties, the sales and the use tax compliment each other in that both taxes work

³Had the proposed amendment directed a review of both the sales tax and the use tax, the Interested Parties would likely argue that such proposal constituted logrolling by including two separate taxes and thus included multiple subjects.

in harmony to provide a uniform system of taxation regardless of where the transaction occurs or the service is provided.

The proposed amendment does not mandate a public purpose review of the use tax on currently exempt services, so the Legislature is not directed to conduct such a review by the proposed amendment. However, to argue that the Legislature would exempt a category of services from the sales tax and not exempt a use tax on the same category of services assumes the Legislature would act irresponsibly and reject its long standing policy of providing a uniform system of taxation regardless of whether the services are sold or used in this State. To argue the reverse -- that the Legislature would extend the sales tax to a category of services, either directly or indirectly, and not subject the same category of services to the use tax also assumes that the Legislature would act irresponsibly and against Florida interests. The proposed amendment is required to be considered in the context that all branches of government will perform their constitutional duty responsibly.⁴

⁴Similarly, the argument that the ballot language is misleading because communications services are currently taxed under Chapter 202, Florida Statutes, distorts the current statutory scheme of the taxation of communications services. Section 202.13(1), Florida Statutes, provides that if Chapter 200, Florida Statutes, is declared "invalid, ineffective, inapplicable, unconstitutional, or void for any reason, chapters . . . 212 . . . as such chapters existed before January 1, 2000, shall fully apply to the sale, use or consumption of communications services." Nothing in the proposed amendment precludes the Legislature from continuing or reviewing this tax policy or insulates communications services from the mandated review of non-taxed services. Within the context of the proposed amendment, communications services are currently taxed by the Communications Services Tax which is a replacement tax to the sales tax authorized in Chapter 212, Florida Statutes.

The ballot language expresses the clear intent of the proposed amendment and is not misleading.

Under the proposed amendment, it is the Legislature that reviews each category of non-taxed services and determines whether to grant an exemption or allow a category of services to be taxed on January 1, 2009, by operation of the constitutional amendment. Unaffected by the proposal is the power of the Legislature to tax directly a category of services, place a condition or limitation on an exemption granted or enact necessary implementing legislation as a consequence of their mandated public purpose review.

The ballot clearly informs the voter that he or she is directing the Legislature to perform a review of each service not currently taxed under the existing sales tax and exempt only those services that advance or serve a public purpose. Additionally, the voter is clearly informed that, if the Legislature, pursuant to its review of all non-taxed services, fails to act by granting an exemption, except for employee services and benefits, such services will be subject to the existing sales tax effective January 1, 2009.

CONCLUSION

It is submitted that the proposed amendment fully meets the requirements of Article XI, section 3, Florida Constitution, and section 101.161, Florida Statutes, and qualifies for submission to the electorate when the requisite signatures are collected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing brief has been furnished by United States Mail with adequate postage to the Office of the Attorney General, The Capitol, Tallahassee, Florida 32399; Cynthia S. Tunnickliff and Howard E. Adams, Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., Post Office Box 10095, Tallahassee, Florida 32302; and Victoria L. Weber, Dan R. Stengle and David L. Powell, Hopping Green & Sams, P.A., Post Office Box 6526, Tallahassee, Florida 32314, this ___ day of October, 2005.

Robert L. Nabors

CERTIFICATE OF FONT

I HEREBY CERTIFY that this brief is presented in Times New Roman font, 14 point type, a font that is proportionately spaced as required by the Florida Rules of Appellate Procedure.

Robert L. Nabors

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