

IN THE SUPREME COURT OF FLORIDA

DAWN K. ROBERTS as ACTING
SECRETARY OF STATE OF THE
STATE OF FLORIDA,

Appellant,

v.

Case No. SC10-1508
L.T. Case No. 2010 CA 2114

BRIAN K. DOYLE and FLORIDA
AFL-CIO,

Appellees.

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PRELIMINARY STATEMENT

Appellant, DAWN K. ROBERTS, in her official capacity as the Interim Secretary of State of Florida, was Defendant below; this brief will refer to her as the Secretary. Appellees, BRIAN K. DOYLE and FLORIDA AFL-CIO, were the Plaintiffs below; this brief will refer to them as Appellees.

The record on appeal consists of one (1) volume, which will be referenced as “R.,” followed by the appropriate page or paragraph number(s), e.g., R. 25-26. The record also contains a transcript of a July 22, 2010 hearing, which will be referenced as “T.,” followed by the appropriate page number of the transcript.

STATEMENT OF THE CASE AND FACTS

Statement of the Case

The sole issue before this Court is whether the ballot title and summary for Amendment 3 clearly and conclusively violates section 101.161(1), Fla. Stat. The court granted judgment in favor of Appellees, and directed the Secretary to remove the ballot title and summary from the November 2010 general election ballot.

R.50-57. On June 17, 2010, Appellees filed an action challenging the ballot title and summary for Amendment 3. R.4-9. The Secretary filed her answer on July 16, 2010. R.48-49. The case was expedited and the parties each submitted memoranda of law. R.11-31, 32-47. A final, non-evidentiary hearing was held on July 22, 2010. The Secretary filed a notice of supplemental authority on the same day, addressing an inquiry raised by the court at the hearing.¹ On July 23, 2010, the trial court ordered that the ballot title and summary be removed from the ballot. R.57. The Secretary appealed on July 26, 2010. R.58-59. On July 30, 2010, the First District Court of Appeal certified the appeal as one of great public importance and this Court, on August 3, 2010, accepted jurisdiction and expedited briefing.

¹ The notice of supplemental authority was filed in the lower court but was inadvertently left out of the record on appeal. The notice will be filed with this Court.

Statement of the Facts

Amendment 3 was filed in the Senate on January 6, 2009 as Senate Joint Resolution (“SJR”) 532. The Florida Legislature passed 532 by a vote of 26 – 11 in the Senate on May 1, 2009 and a vote of 104 – 13 in the House the same day.

R.34. On May 29, 2009, the Secretary approved the measure for placement on the November 2010 general election ballot as Amendment 3. R.4 ¶ 2, 34. Amendment 3 would, among other things, amend Article VII of the Florida Constitution to provide an additional, temporary homestead exemption to individuals who have not owned a principal residence during the previous 8 years. R5-6, 6-7 ¶ 5, 17.

The relevant provision of Amendment 3 states:

SECTION 6. Homestead exemptions.—

(f)(1) By general law, and subject to conditions specified therein, the legislature shall provide an additional homestead exemption to the person or persons who:

a. Establish the right to receive the homestead exemption in subsection (a) within one year after purchasing the homestead property; and

b. Have not owned a principal residence during the eight year period before the purchase. For married persons, neither the purchaser nor his or her spouse may have owned a principal residence during the preceding eight years.

(2) The additional homestead exemption shall equal 25 percent of the just value of the property on January 1 of the year

in which the homestead exemption in subsection (a) is received, but not more than \$100,000.

a. The amount of the additional exemption shall be reduced in each subsequent year by an amount equal to twenty percent of the amount of the initial additional exemption or by an amount equal to the difference between the just value of the property and the assessed value determined under subsection (d) of section 4 of this Article, whichever is greater.

b. The additional homestead exemption shall not apply after the fifth year after the initial additional exemption is granted.

(3) Only one additional exemption under this subsection may apply to a single homestead property.

Amendment 3 would also amend Article XII of the Florida Constitution to establish the effective date of the additional exemption as January 1, 2011, “for properties purchased on or after January 1, 2010.” Omission of the effective date was not challenged or addressed in the order appealed. See R.4-9, 11-19, 40-57; T.9, 10. Assessments are made on January 1st of the year following the purchase of the home. See Art. VII, § 4(d)(3) and (4), Fla. Const.; R.35. The relevant provision of Amendment 3 states:

Additional homestead exemption for first-time homestead property owners.—The amendment to subsection (f) of Section 6 of Article VII providing for an additional homestead exemption for persons who have not owned a principal residence within an eight-year period and this section shall take effect January 1, 2011, and shall be available for properties purchased on or after January 1, 2010.

The challenged portion of the ballot title and summary for Amendment 3 states:

...ADDITIONAL HOMESTEAD EXEMPTION FOR NEW HOMESTEAD OWNERS. –

This amendment also requires the Legislature to provide an additional homestead exemption for persons who have not owned a principal residence during the preceding 8 years. Under the exemption, 25 percent of the just value of a first-time homestead, up to \$100,000, will be exempt from property taxes. The amount of the additional exemption will decrease in each succeeding year for 5 years by the greater of 20 percent of the initial additional exemption or the difference between the just value and the assessed value of the property. The additional exemption will not be available in the 6th and subsequent years.

Amendment 3 would provide an additional, temporary homestead exemption for those who have not owned a principal residence during the preceding 8 years. R.5-6, 29,13, 17, 54, 56. The ballot title refers to them as “new homestead owners.” R.30. There is no dispute that the amount of the exemption is disclosed in the summary – “25 percent of the just value”; the cap on that amount is disclosed – “up to \$100,000”; the duration limitation is disclosed – “will not be available in the 6th and subsequent years”; and the exemption’s “additional” nature is disclosed. R.13, 16, 54, 55; T.34.

SUMMARY OF THE ARGUMENT

The trial court erred in ordering that the ballot title and summary for Amendment 3 be removed from the ballot. The chief purpose of Amendment 3 is to provide an additional, temporary homestead exemption to individuals who have not owned a principal residence during the previous 8 years, *i.e.*, the “new homestead owners” referenced in the ballot title. Both the ballot title and summary use clear and unambiguous language, and fairly informs voters of this amendment’s chief purpose and describes its essential terms.

This Court should reverse and find that the ballot title and summary are not misleading and do not violate section 101.161(1), Florida Statutes.

ARGUMENT

I. Standard of Review and Appellees' Burden

The sole issue is whether the ballot title and summary for Amendment 3 violate section 101.161(1), Fla. Stat. The standard of review is de novo. Dep't of State v. Slough, 992 So. 2d 142, 147 (Fla. 2008). It is Appellees' burden to prove that the ballot title and summary are clearly and conclusively defective for failing to inform the voter of the chief purpose of the amendment or misleading the public generally. It is this Court's "duty [] to uphold [the Legislature's] action if there is any reasonable theory under which it can be done." Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956); Advisory Op. to the Att'y Gen. re Fla. Marriage Prot. Amendment, 926 So. 2d 1229, 1236 (Fla. 2006).

II. Background

A. The Legislature's Proposal

The Staff Analysis accompanying SJR 532 explains that it "proposes an amendment ... to create an additional homestead exemption for first-time homebuyers." Fla. S., CS/SJR 532, Staff Analysis 1 (Apr. 15, 2009). The exemption would apply to January 2011 assessments for homes purchased on or after January 1, 2010. Id. at 4. A related analysis notes that the reference to "first-time" homebuyers implicitly means a home purchase not within the previous 8 years. See Fla. Rev. Est. Conf., CS/SJR 532, Analysis 1 (June 8, 2009).

The assessed value of residential property is set at a level equal to the property's just value during the first year in which a Florida homeowner establishes a homestead exemption. See Art. VII, § 4(d), Fla. Const. The property's assessed value is then recalculated in each subsequent year that the homestead exemption is maintained, but the growth in assessed value from the prior year is capped at the lower of three percent or the percentage change in the Consumer Price Index. Id. During normal economic periods the just value of the property thus grows at a faster rate than the capped assessed value, increasing the size of the assessment differential and the tax savings for the homeowner. See Fla. Rev. Est. Conf., CS/SJR 532, Analysis 1 (June 8, 2009).

Explaining the need for the proposed amendment, the Revenue Estimating Conference analysis noted that “new homesteaders” are at a significant tax disadvantage to established homesteaders. Id. Such individuals “often pay significantly higher taxes because the new home's assessed value is equal to the just value,” whereas “established homesteaders [get to] transfer built-up differentials when they move, thus reducing their first-year's tax impact.” Id. New homesteaders simply do not have the built-up differentials to offset their first-year tax impact. See T.30.

B. Legal Standards

“The deliberative processes of the Legislature are surrounded by guarantees that the duly elected representatives of the people will know what they are doing when they act in their law-making role.” Smathers v. Smith, 338 So. 2d 825, 828 (Fla. 1976). The Florida Constitution specifically empowers the Legislature to propose amendments for submission to the voters. See Art. XI, §§ 1 and 5(a), Fla. Const. Any resulting proposal for a Constitutional amendment must be embodied in a joint resolution, “agreed to by three-fifths of the membership of each house.” Id. at § 1.

Section 101.161(1), Florida Statutes, requires that the ballot title and a summary of the amendment’s “substance” be printed on the ballot in “clear and unambiguous language.” “Simply put, the ballot must give the voter fair notice of the decision he must make.” Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982), quoting Askew v. Firestone, 421 So. 2d 151, 155 (Fla. 1982); see also Advisory Op. to the Att’y Gen. re Fee on Everglades Sugar Prod., 681 So. 2d 1124, 1127 (Fla. 1996). It is not necessary to “explain [the amendment’s] complete terms;” the function of the ballot title and summary is not “to provide [the voter] with that needed education.” Advisory Op. to the Att’y Gen. re Physician Shall Charge the Same Fee for the Same Health Care Serv. to Every Patient, 880 So. 2d

659, 665 (Fla. 2004) quoting Metro. Dade County v. Shiver, 365 So. 2d 210, 213 (Fla. 3d DCA 1978).

Florida courts have noted that voters have a duty to educate themselves on the merits of proposed constitutional amendments and have access to several sources of information from which to do so. See, e.g., Shiver, 365 So. 2d at 213 (“Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon before he enters the voting booth”); see also Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954) (“It is a matter of common knowledge that many weeks are consumed, in advance of elections, apprising the electorate of the issues to be determined”); Advisory Op. to the Att’y Gen. re Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996) (“The voter must be presumed to have a certain amount of common sense and knowledge,” such as an understanding of how the state taxation system operates). Moreover, pursuant to section 101.171, Florida Statutes, a copy of each proposed amendment is conspicuously posted at every precinct on election day. See Same Fee for the Same Health Care, 880 So. 2d at 665 (noting that “[a]ll voters will be on notice of this definition, as the full text of the amendment will be posted at all voting precincts on election day”).

“The lack of detail ... does not render the title and summary misleading.” Advisory Op. to the Att’y Gen. re Local Growth Mgmt. Plan Changes, 2 So. 3d 118, 123 (Fla. 2008); see also Advisory Op. to the Att’y Gen. re Funding of Embryonic Stem Cell Research, 959 So. 2d 195, 201 (Fla. 2007) (“This Court has previously approved summaries that omit certain details that are otherwise included in the full amendment”). Stated somewhat differently, the standard is not whether the title or summary might possibly have explained the amendment in a better or more complete way. See Shiver, 365 So. 2d at 213. The issue is whether the title and summary inform the voter of the “chief purpose” of the amendment and do not mislead. Advisory Op. to the Att’y Gen. re Florida Marriage Prot. Amendment, 926 So. 2d 1229, 1236 (Fla. 2006). The ballot title and the entire summary are read together and in their appropriate context when considering any challenge to their terms. See Advisory Op. to the Att’y Gen. re Ltd. Casinos, 644 So. 2d 71, 75 (Fla. 1994); see also Tax Limitation, 673 So. 2d at 868 (reading the ballot title “with common sense and in context with the summary”).

Florida courts have a “duty ... to uphold the proposal unless it can be shown to be clearly and conclusively defective.” Floridians Against Casino Takeover v. Let’s Help Florida, 363 So. 2d 337, 339 (Fla. 1978). Given this duty, courts review proposed amendments with “extreme care, caution and restraint.” Askew v.

Firestone, 421 So. 2d 151, 156 (Fla. 1982). As the Florida Supreme Court noted over fifty (50) years ago, “our first duty is to uphold [the Legislature’s] action if there is any reasonable theory under which it can be done.”² Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956). “The Legislature which approved and submitted the proposed amendment took the same oath to protect the Constitution that we did” and the Court’s duty “is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval.” Id. Finally, the “Court’s review of a proposed amendment is strictly limited to these legal issues and does not include an evaluation of the merits or the wisdom of the proposed amendment.” Advisory Op. to the Att’y Gen. re Florida Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys., 769 So. 2d 367, 368 (Fla. 2000).

III. The Ballot Language of Amendment 3 is Accurate

The chief purpose of Amendment 3 is to provide an additional, temporary homestead exemption to individuals who have not owned a principal residence during the previous 8 years, *i.e.*, the “new homestead owners” referenced in the

² Including ordering that the text of the proposed amendment itself appear on the ballot in lieu of the challenged ballot title and summary, as the Florida Supreme Court has ordered in the past. See ACLU of Florida v. Hood, No. SC04-1671 (Sept. 2, 2004). See generally Dep’t of Legal Affairs v. Dist. Court of Appeal, 5th Dist., 434 So. 2d 310, 313 (Fla. 1983) (generally proper to “suggest to a court how it previously viewed the proposition”).

ballot title. Indeed, SJR 532 states the purpose of the amendment is “to provide an additional homestead exemption to persons who have not owned a principal residence within the preceding 8 years.”

Every detail of Amendment 3 need not be discussed in the ballot title and summary; the law only requires that its chief purpose be set forth clearly and without deception. See Advisory Op. to the Att’y Gen. re Ltd. Political Terms in Certain Elective Offices, 592 So. 2d 225, 228 (Fla. 1991). The title and summary clearly indicate who is eligible to receive the exemption and the parameters for eligibility. See Fee on Everglades Sugar Prod., 681 So. 2d at 1128-29 (finding that regardless of whether the levy is called a “fee” or a “tax” it is clear who pays it, how much, for how long, and why, and the voter is thus fairly informed of the amendment’s chief purpose).

A. The Property Purchase Date is Not Material to the Chief Purpose

The trial court erroneously found that the purchase date of the property, “on or after January 1, 2010,” is a material condition of the additional homestead exemption, and the failure to reference specifically it in the ballot language was misleading. R.54-55. The property purchase date is not material and there is no need to disclose it where the summary adequately informs voters, as they stand in the booth in 2010, that the exemption is for “persons who have not owned a principal residence during the preceding 8 years.”

The property purchase date is merely a detail of Amendment 3. It is not its chief purpose. The additional exemption would be available beginning on January 1, 2011. Assessments for homestead exemptions are made on January 1 of the year following a home purchase. See Art. VII, § 4(d)(3) and (4), Fla. Const.

Assessments made on and after January 1, 2011 – Amendment 3’s effective date – could only be made on properties purchased on or after January 1, 2010. The property purchase date is a detail of the effective date of Amendment 3 that has not been challenged and is not subject to this appeal. T.9 (Appellees’ counsel: “we’re not dealing here with an effective date”); see also T.4-9 (not challenging the omission of the effective date). Amendment 3’s chief purpose is to provide an additional homestead exemption to a particular subset of individuals. Indeed, Appellees and the court below both describe Amendment 3’s purpose as providing an additional homestead exemption to persons meeting certain conditions. R.4, 11, 50.

A lack of detail does not render the ballot title and summary misleading. See Local Growth Mgmt. Plan Changes, 2 So. 3d at 123 (because there was no conflict with current law, the lack of detail was not misleading); see also Funding of Embryonic Stem Cell Research, 959 So. 2d at 201 (lack of detail on donor compensation not misleading because voter is fairly informed of the chief purpose

– state funding of embryonic stem cell research); Same Fee for the Same Health Care, 880 So. 2d at 666 (failure to define the term “charge” was not misleading because the summary reflected the chief purpose); compare Advisory Op. to the Att’y Gen. re Indep. Nonpartisan Comm’n to Apportion Legis. and Cong. Dist.s Which Replaces Apportionment by Leg., 926 So.2d 1218, 1228-29 (Fla. 2006) (summary was wholly incorrect where referenced “non-partisan method” for selection of commissioners was actually partisan). The ballot title and summary do not conceal or omit the chief purpose of Amendment 3 and do not conflict with any current constitutional provision, rather the amendment writes on a “clean slate,” creating an “additional” exemption. See Ltd. Political Terms, 592 So. 2d at 228 (finding the amendment wrote on a “clean slate” and therefore its summary was not misleading for failing to indicate the current lack of term limits).

The homestead exemption at issue only applies to property purchased on or after January 1, 2010. The fact that this date is not mentioned in the ballot summary does not suggest that voters will be misled. It is “not necessary” to explain every detail. Funding of Embryonic Stem Cell Research, 959 So. 2d at 201 (emphasis added); see also Local Growth Mgmt. Plan Changes, 2 So. 3d at 123 (omitted details of the petition process used to effect the subject amendment’s chief purpose); Advisory Op. to the Att’y Gen. re Protect People, Especially

Youth, from Addiction, Disease, and Other Health Hazards of Using Tobacco, 926 So. 2d 1186, 1194 (Fla. 2006) (finding that “[t]he ballot summary need not, and does not, reflect every component of the program”). “[T]hat certain details...are omitted...is not the test.” Shiver, 365 So. 2d at 213. A ballot summary is not defective for omitting a detail where the primary purpose of the amendment is disclosed. See Advisory Op. to the Att’y Gen. re Florida’s Amendment to Reduce Class Size, 816 So. 2d 580, 585-86 (Fla. 2002) (omitting the exception for “extracurricular classes” was not fatal “because the primary purpose of the amendment-the legislative funding of reduced classroom size-[wa]s adequately disclosed”).

The titles and summaries in the cases Appellees cited and upon which the trial court relied, however, did conceal the chief purpose of the subject amendment, which was also a substantial change in current law. Cf. Askew v. Firestone, 421 So. 2d at 155 (summary failed to inform voters of the amendment’s chief purpose of removal of the existing 2-year lobbying ban); Armstrong v. Harris, 773 So. 2d 7, 18 (Fla. 2000) (summary failed to mention the amendment’s chief purpose would be to nullify the Florida Constitution’s Cruel or Unusual Punishment Clause); Advisory Op. to the Att’y Gen. re Casino Authorization, Taxation and Regulation, 656 So. 2d 466, 469 (Fla. 1995) (summary did not mention the amendment’s chief

purpose was to remove the expansive gambling prohibition); Smith v. Am. Airlines, Inc., 606 So. 2d 618, 620 (Fla. 1992) (summary failed to mention that the amendment would substantially increase the tax rate); see also Advisory Op. to the Att’y Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 566 (Fla. 1998) (failing to mention the amendment would “severely limit” the ability to choose health care provider, rather than “establish[]” that right as indicated); Wadhams v. Bd. of County Comm’rs, 567 So. 2d 414, 416 (Fla. 1990) (failing to inform voters that the amendment’s chief purpose was to curtail the Board’s current, unrestricted right to meet).

The ballot title and summary at issue in Amendment 3 do not omit the chief purpose of the amendment. Rather, they fairly inform the voter that the proposed homestead exemption is: “additional;” in the amount of “25 percent of the just value” “up to \$100,000;” “will not be available in the 6th and subsequent years;” and is “for persons who have not owned a principal residence during the preceding 8 years.”

B. The Ballot Title and Summary Clearly Indicate Which Homeowners and Homesteads are Eligible for the Additional Exemption.

1. “New Homestead Owners”

Amendment 3 will implicate a limited group of individuals: new homestead owners. The term, as defined by the ballot summary, is not confusing. Indeed, the

ballot summary defines a “new homestead owner” as an individual who has “not owned a principal residence during the preceding 8 years.” The ballot summary’s definition is identical to the text of Amendment 3. “New homestead owners” is simply a customary phrase that accurately describes who is eligible for the additional exemption. See Statewide High Speed Monorail, 769 So. 2d at 371 (finding the moniker “statewide” was not misleading to describe a monorail linking only five urban areas). There is simply no inconsistency, especially when reading the ballot title and summary together. See, e.g., Tax Limitation, 673 So. 2d at 868; Ltd. Casinos, 644 So. 2d at 75.

2. “First Time Homestead”

The trial court also found that voters would have difficulty understanding the import of the phrase “first-time homestead.” But this analysis ignores the entirety of the ballot summary which informs voters that eligibility depends on not having “owned a principal residence during the preceding 8 years.” Moreover, the trial court’s concerns regarding voter confusion neglect the fact “that the voter has a certain amount of common understanding and knowledge” that will cure even inconsistent use of terms. See Advisory Op. to the Att’y Gen. re Local Trustees, 819 So.2d 725, 732 (Fla. 2002) (emphasis added) (observing that

inconsistent use of the terms “local,” “accountable operation,” and “procedures for selection” was not misleading).

3. “Principal Residence”

The trial court also took issue with the phrase “principal residence” as used in the ballot summary. This Court has recognized that a ballot summary may be found defective because of the omission or concealment of the amendment’s chief purpose — which is the ultimate requirement of section 101.161. See Same Fee for the Same Health Care, 880 So. 2d at 664 (“the statute itself requires only that the voter be made aware of the chief purpose”). Indeed, the summary in Advisory Op. to the Att’y Gen. re Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1021 (Fla. 1994), was struck from the ballot because it failed to inform voters that the authority of government entities to enact or adopt any anti-discrimination law in the future would be curtailed. Likewise, in Advisory Op. to the Att’y Gen. re Proposed Prop. Rights, 644 So. 2d 486, 495 (Fla. 1994), the Court found that the ballot title and summary was “devoid of any mention” that the proposal “would result in a major change in the function of government.” The ballot title and summary here, however, fairly inform voters of Amendment 3’s chief purpose, *i.e.*, to provide additional, temporary exemptions for first time homestead owners.

“Principal residence” is neither a legal term nor difficult to define. To the contrary, it is analogous to the term “substantial equivalent” which was upheld because it was “frequently used and understood by the common voter, and . . . [did] not require special training in the legal profession to comprehend.” Marriage Prot., 926 So. 2d at 1237-38; see also Advisory Op. to the Att’y Gen. re Standards for Establishing Legis. Dist. Boundaries, 2 So. 3d 175, 189 (Fla. 2009) (use of “language minorities” was not misleading). The Court in Marriage Protection pointed out the difference between commonly understood terms and legal terms when distinguishing “substantial equivalence” from the legal terms in Property Rights, Voter Approval and Treating People Differently that the Court had found deceptive. See id.

Contrary to the trial court’s order, “principal residence” is not intended to be read synonymously with “homestead.” See R.56, 45. “Principal residence” is generally known to be one’s “main home” and commonly understood as the kind of property eligible for a homestead exemption – the subject of Amendment 3. See Merriam-Webster Online Dictionary (2010), available at <http://www.m-w.com/dictionary/residence> and <http://www.m-w.com/dictionary/principal> (last visited July 12, 2010). It is simply wrong to believe that voters could not understand that their main home is a “principal residence.” See Advisory Op. to

the Att’y Gen. re Protect People from the Health Hazards of Second-Hand Smoke,
814 So. 2d 415, 419 (Fla. 2002) (finding that voters would understand that a
“workplace” could include a restaurant).

CONCLUSION

The material aspects of Amendment 3 are described by the title and summary with sufficient clarity to fairly apprise the voter of what he or she must decide – whether to provide an additional, temporary homestead exemption to individuals who have not owned a principal residence during the preceding 8 years. Since the ballot title and summary comply with the well-established standards, Amendment 3 should remain on the November 2010 ballot. Appellees did not meet their burden to prove the title and summary are clearly and conclusively defective. Therefore, in light of this Court’s duty to uphold the Legislature’s proposed Amendment if at all feasible, the Secretary respectfully requests that the Court reverse the trial court’s order and enter a final judgment in her favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail and facsimile transmission on this 6th day of August 2010 to Barry Richard, Glen T. Burhans, Jr., and Bridget K. Smitha at Greenberg Traurig, P.A., 101 East College Avenue, Tallahassee, Florida 32301, Facsimile (850) 681-0207.

/s/ Ronald Lathan
Ronald Lathan

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I HEREBY CERTIFY that the font used in this Initial Brief is Times New Roman 14 point in accordance with Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Ronald Lathan
Ronald Lathan