

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

ANDY FORD, BEVERLY SLOUGH,
JOSEPH JOYNER, CHRISTI MOSS,
RABBI MERRILL SHAPIRO, and
REVEREND HARRY PARROT, JR.,

Plaintiffs,

vs.

CASE NO. 37 2008-CA-001905

KURT BROWNING, in his official capacity
As Florida Secretary of State,

Defendant.

**INTERVENORS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

Intervenors, Florida Catholic Conference, Inc., a Florida not-for-profit corporation, Mercy Hospital, Inc., Friends of Lubavitch of Florida, Inc., Catholic Charities of the Archdiocese of Miami, Inc., and Association of Christian Schools International, by and through its undersigned counsel hereby file their Response in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendant's Cross-Motion for Summary Judgment and state as follows:

SUMMARY OF ARGUMENT

The last sentence of Article I, section 3 and Article IX, section 1(a) of the Florida Constitution, as recently interpreted by the First District Court of Appeal and Florida Supreme Court, are primarily about the state budgetary process. In the words of Plaintiffs' counsel in that case: "[T]he language and history of Article I, § 3 compel the conclusion that, as both courts below held, this provision was intended to prohibit ... the use of public funds to pay for Florida

children to receive a religious education in sectarian schools." (*Bush v. Holmes*, Case Nos. SC04-2323/SC04-2324/SC04-2325, Answer Brief, at 17) (Tab A) The First District Court of Appeal agreed. *Bush v. Holmes*, 886 So. 2d 340, 353 (Fla. 1st DCA 2004), *aff'd on other grounds*, 919 So. 2d 392 (Fla. 2006). Likewise, the Florida Supreme Court held that Article IX, section 1(a) precludes public or taxpayer funding of private education. *Bush v. Holmes*, 919 So. 2d 392, 407-08 (Fla. 2006) (applying the principle of construction "expressio unius est exclusio alterius").

Article I, section 3 also pertains to taxation and not merely in the education context as the Florida Supreme Court held in *Johnson v. Presbyterian Homes*, 239 So. 2d 256 (Fla. 1970) and *Nohrr v. Brevard County Educ. Facilities Auth.*, 247 So. 2d 304 (Fla. 1971). In these cases, the court held tax exemptions for a religious retirement home and tax exempt bond financing constitutional under Article I, section 3. Therefore, Article I, section 3 addresses both the revenue and expenditure side of the state budgetary process. Ballot Initiative Nos. 7 and 9 are the inverse of the present expenditure limitations and, therefore, were well within the authority of the Florida Taxation and Budget Reform Commission ("TBRC").

This court should grant summary judgment in favor of the Defendant and deny Plaintiffs' motion for summary judgment on these grounds and because the Plaintiffs lack standing to bring this case as discussed in greater detail below.

BACKGROUND

Article I, section 3 of the Florida Constitution is a so-called Blaine amendment. Nationally, the impetus to Blaine amendments in the mid-nineteenth century was a political and cultural movement known as Know Nothingism or nativism opposed to immigration from predominately Catholic Southern Europe. As the number of Catholic immigrants in the United States increased, they "began to resist the Protestant domination of the public schools." *Zelman*

v. Simmons-Harris, 536 U.S. 639, 720 (2002) (Breyer, Stevens, Souter, JJ., dissenting). "Catholics sought equal government support for the education of their children in the form of aid for private Catholic schools. But the 'Protestant position' on this matter, scholars report, 'was that public schools must be 'nonsectarian'" *Id.* at 721. This is not to say that they wanted the public schools to be secular. Far from it, they favored the so-called common religion taught in the public (or common) schools of the time. In this sense, their concern was not with church-state separation *per se*, but with sectarianism and its adherents. As described in *Vidal v. Girard's Ex'rs*, 43 U.S. 127, 153 (1844) and by Horace Mann himself,¹ the so-called common religion was a form of nondenominational Protestantism. In Florida until the early-1960s, public school students were statutorily required to observe it through daily recitation of the Lord's Prayer, readings from the King James Bible, and singing religious hymns. See *Chamberlin v. Dade County Bd. of Pub. Instruction*, 143 So. 2d 21, 23, 35 (Fla. 1962) (statute requiring these and baccalaureate programs constitutional), *rev'd*, 377 U.S. 402 (1964) (referencing § 231.09, Fla. Stat. (1961)). Teachers were subject to religious tests. *Chamberlin v. Dade County Bd. of Pub. Instruction*, 171 So. 2d 535, 537 (Fla. 1965) ("Appellants ... have no legal right to complain that religious tests were used in qualifying teachers for employment.")

Know Nothingism, also known as a form of nativism, "played a significant role in creating a movement that sought to amend several state constitutions (often successfully), and to amend the United States Constitution (unsuccessfully) to make certain that government would not help pay for 'sectarian' (*i.e.*, Catholic) schooling for children." *Zelman*, 536 U.S. at 721; see also *Nevada ex rel. Nevada Orphan Asylum v. Hallock*, 16 Nev. 373 (1882) (striking down payment for orphans at a Catholic asylum); *Cook Cy. v. Chicago Indus. Sch. for Girls*, 18 N.E.

¹ HORACE MANN, LIFE AND WORKS: ANNUAL REPORTS OF THE SECRETARY OF THE BOARD OF EDUCATION OF MASSACHUSETTS FOR THE YEARS 1845-1848, at 292 (1891).

183 (Ill. 1888) (striking payment for tuition); *Smith v. Donahue*, 195 N.Y.S. 715 (N.Y. App. Div. 1922) (striking provision of textbooks and other supplies for parochial school students).²

This history is critically relevant to this case not because religious prejudice was associated with Know Nothingism, but because public funding of sectarian institutions was at the core of nativist efforts to enact provisions such as the last sentence of Article I, section 3. In a very real sense, the *raison d'être* of Blaine amendments nationally was to crimp the public budgetary process that the TBRC was created to examine and reform. See *Holmes*, 886 So. 2d at 349 ("[A]ll [the various Blaine amendments in state constitutions] contained a form of restriction on state financial support to religions or religious institutions.") Making the same point about Article I, section 3, Plaintiffs' counsel put it this way:

On its face, this constitutional language makes clear that the state may not use taxpayer funds to pay for churches and other religious institutions – through their parochial schools – to teach their religion to Florida schoolchildren. As the trial court observed, "[t]he language utilized in this provision is clear and unambiguous. There is scant room for interpretation or parsing." [] It is difficult to imagine how the prohibition on the use of public funds for this purpose could have been more clearly expressed.

(Answer Brief, at 18) (TAB A)

The First District Court of Appeal agreed. See *Holmes*, 886 So. 2d at 351 ("[T]he drafters of the no-aid provision clearly intended at least to prohibit the direct or indirect use of public monies to fund education at religious schools.") Left in doubt by the First District was

² Eight justices of the United States Supreme Court have recognized this history. See *Mitchell v. Helms*, 530 U.S. 793, 828-29 (2000) (plurality opinion of Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.) ("Opposition to aid to 'sectarian' schools acquired prominence in the 1870's with Congress' consideration of the Blaine amendment, which would have amended the Constitution to bar any aid to sectarian institutions."); *Zelman v. Simmons-Harris*, 536 U.S. 639, 720-21 (2002) (Breyer, Stevens and Souter, JJ., dissenting) (recognizing that Blaine Amendments were part of a backlash against "political efforts to right the wrong of discrimination against religious minorities" in public primary education); *Lemon v. Kurtzman*, 403 U.S. 602, 645 (1971) (Brennan, J., concurring) (the "subsidy of sectarian educational institutions became embroiled in bitter controversies very soon after the Nation was formed.")

whether Article I, section 3 also precludes neutral public funding of other critical social services provided by religious institutions to the neediest among us including the types of services offered by the Intervenor such as eldercare, healthcare, education, and indigent care. Because the question did not present itself squarely in *Holmes*, the majority left it for another day. *Id.* at 362. The concurrence argued that whether including religious institutions in these programs is constitutional should depend upon "the purpose of the program, the extent of public funding, whether the level of funding substantially exceeds the cost of the public benefit, or the means by which the public dollars reach the sectarian institution," *see id.* at 371 (Allen, Davis, Padovano, and Browning, JJ., concurring, and Wolf, C.J., concurring in part and dissenting in part), whereas the dissent argued:

The majority's caution that the holding 'should not in any way be read as a comment on the constitutionality of any other government program or activity which involves a religious or sectarian institution,' is only to ignore the problem. Why wouldn't the holding be applied to other programs? There is no meaningful difference.

Holmes, 886 So. 2d at 378 (Polston, Barfield, Kahn, Lewis, Hawkes, JJ., dissenting).

As compared to the national Blaine amendment movement, Florida was unusual. Until *Bush v. Holmes*, no reported decision in Florida held that Article I, section 3 required excluding religious institutions altogether from the state budgetary process. *See Holmes*, 886 So. 2d at 376 (arguing that *Holmes* failed to distinguish controlling precedent). To the contrary, repeated cases held that, as long as a public benefit flowed to the religious institution incidentally as a result of a neutral program of general eligibility, there was not a violation of the Constitution. *Koerner v. Borck*, 100 So. 2d 398, 401-02 (Fla. 1958) ("any improvement to county-owned land" over which the church had an easement "will be made for the benefit of the people of the county and not for the church"); *Southside Estates Baptist Church v. Bd. of Trs.*, 115 So. 2d 697 (Fla. 1959)

("We ourselves have heretofore taken the position that an incidental benefit to a religious group resulting from an appropriate use of public property is not violative of [the precursor to Article I, section 3]."); *Johnson v. Presbyterian Homes of the Synod of Fla., Inc.*, 239 So. 2d 256, 261-62 (Fla. 1970) (statute exempting properties used as licensed homes for the elderly, including religious homes, was consistent with Blaine amendment); *Nohrr v. Brevard County Educ. Facilities Auth.*, 247 So. 2d 304, 307 (Fla. 1971) ("A state cannot pass a law to aid one religion or all religions, but state action to promote the general welfare of society, apart from any religious considerations, is valid, even though religious interests may be indirectly benefited."); *Rice v. State*, 754 So. 2d 881 (Fla. 5th DCA 2000) ("expenditure of public money to enforce" a criminal statute enhancing penalties for controlled substance crimes near a place of worship "is too remote to aid any sectarian purpose."); accord 72-246 Fla. Op. Att'y Gen. 421, 421 (1972); 77-55 Fla. Op. Att'y Gen. 117, 119 (1977).

Consequently, if the TBRC did not focus on Article I, section 3 before now, the reason is that it was *Bush v. Holmes*, 886 So. 2d 340, 353 (Fla. 1st DCA 2004), *aff'd on other grounds*, 919 So. 2d 392 (Fla. 2006) that concentrated its attention upon the provision's implications for the state budgetary process. The same may be said about Article IX, section 1(a). The Florida Supreme Court in *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), recounted the history of Article IX, section 1, beginning with a decision holding that the adequacy of school funding is not a justiciable constitutional question. In *Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 405 (Fla. 1996), the Florida Supreme Court "ultimately concluded that it is the Legislature, not the Court, that is vested with the power to decide what funding is 'adequate.'" *Holmes*, 919 So. 2d at 403. But the Court found that this changed after 1998:

In 1998 in response in part to *Coalition for Adequacy & Fairness*, the Constitutional Revision Commission proposed and the citizens of this state

approved an amendment to article IX, section 1 to make clear that education is a 'fundamental value' and 'a paramount duty of the state,' and to provide standards by which to measure the adequacy of the public school education provided by the state.

Id.

In other words, *Holmes* held that the adequacy of school funding is now a justiciable question. The historical record indicates, as discussed in greater detail below, that the TBRC has always considered Article IX and even school choice measures within its jurisdiction, but any question about the matter was resolved definitively with respect to Article IX, section 1(a) and Article I, section 3 by the same case at different levels of appeal. *Bush v. Holmes*, 886 So. 2d 340, 353 (Fla. 1st DCA 2004), *aff'd on other grounds*, 919 So. 2d 392 (Fla. 2006).

ARGUMENT

I. The Plaintiffs Lack Standing to Bring Counts I and II and to Challenge Ballot Initiative No. 7.

A preference in the law for reaching the merits of a case must be balanced against the importance of ensuring that the party who brings a case has a "sufficient interest" in its outcome. The Plaintiffs in this case overstretch the limits of the standing doctrine with respect to Counts I and II and Ballot Initiative No. 7, which they do not challenge under ballot summary law. The Complaint states that the individuals who are Plaintiffs are citizens, taxpayers, and voters who intend to vote in the November 2008 general election and to advocate against passage of Ballot Initiatives Nos. 7 and 9. (Compl. ¶¶ 5-11) Four of the individuals purport to sue in their "individual and official capacities," but no associations are plaintiffs. (Compl. ¶¶ 5-8) Two of the individuals are clerics without any stated organizational affiliation. None challenge any appropriation based on the legislature's taxing and spending power, attack the constitutionality of a taxing statute, or Ballot Initiative No. 7 under section 101.161(1), Florida Statutes. *Cf. Hialeah*

v. Delgado, 963 So. 2d 754, 756 (Fla. 3d DCA 2007) (citing *Sancho v. Smith*, 830 So. 2d 856, 864 (Fla. 1st DCA 2002) (concerning voter standing to challenge ballot language under § 101.161(1), Fla. Stat.); *Dep't of Revenue v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981) (concerning voter standing to challenge a taxing statute); PHILIP J. PADOVANO, FLORIDA CIVIL PRACTICE § 4.3, at 88 (2007 ed.) (concerning taxpayer standing to challenge appropriations).

Altogether, the Plaintiffs' standing to reach Counts I and II and Ballot Initiative No. 7 is no different than the right vested in the members of the public at large. In *United States Steel Corp. v. Save Sand Key, Inc.*, 303 So. 2d 9, 13 (Fla. 1974) (standing to sue on the part of a citizens' group was not present absent an allegation of special injury differing in kind from that suffered by public generally), the Florida Supreme Court held that a private plaintiff has standing to enforce a public right only if it can be established that the plaintiff has suffered a 'special injury.'" *Accord Askew v. Hold the Bulkhead-Save Our Bays, Inc.*, 269 So. 2d 696, 697 (Fla. 2d DCA 1972) ("Neither of appellees has alleged or shown that one or the other of them will suffer a *special* injury or that either has a *special* interest in the outcome of this action.") (emphasis original); *Rickman v. Whitehurst*, 74 So. 205, 207 (Fla. 1917) (similar); *Linning v. Bd. of County Comm'rs of Duval County*, 176 So. 2d 350, 353 (Fla. 1st DCA 1965) (similar). Plaintiffs have failed to plead any such special injury different in kind from that of any other Florida resident.

Absent a showing of special injury, "the taxpayer's remedy should be at the polls and not in the courts." *Markham*, 396 So. 2d at 1122 (citing *Paul v. Blake*, 376 So. 2d 256, 259 (Fla. 3d DCA 1979) (otherwise "the courts would in all likelihood be faced with a great number of frivolous lawsuits filed by disgruntled taxpayers.")). Instead, the Plaintiffs' press for precisely the opposite of this: they ask the court to keep voters from considering Ballot Initiatives Nos. 7 and 9. Their claim that they will be disadvantaged if the Initiatives remain on the ballot because

they will spend money to advocate against them is not a constitutionally cognizable harm, but a privilege and right of all Floridians that they may exercise or forego at their discretion.³ Consequently, the Plaintiffs lack standing to raise Counts I and II and to challenge Ballot Initiative No. 7.

II. The TBRC's Jurisdiction Extends to Public Funding and Taxation

The Defendant and other Intervenors have definitively elaborated upon the scope of the TBRC's jurisdiction. This response adopts their arguments in full that the TBRC's jurisdiction extends to public funding and taxation. Contrary to the effort of the Plaintiffs to cabin the TBRC's authority, the plain text of Article XI, section 6, the historical record related to the foundation of the TBRC, and the subject matter of the original TBRC reforms harmoniously indicate the same thing: the TBRC's authority was intended to be broad and certainly broad enough to propose Ballot Initiatives Nos. 7 and 9 dealing with public funding and taxation.

The Plain Text

The text of Article XI, section 6 is plain on its face, beginning with the title of the section. It is the "Taxation and Budget Reform Commission," not advisory board. Its purposes or inputs are set forth plainly in section 6(d) and its outputs in section 6(e) as follows:

³ In contrast, the Intervenors' standing to intervene in this case arises in the first place from the potential special economic harm generally deemed sufficient for standing that they will suffer if the Initiatives are removed from the ballot. See PHILIP J. PADOVANO, FLORIDA CIVIL PRACTICE § 4.3 at 87 (2007 ed.)). Each of the Intervenors provide social services such as eldercare, healthcare, education, and indigent care to vulnerable populations that, in some cases, few or no other organizations are willing to provide. Ballot Initiative Nos. 7 and 9 would remove constitutional barriers in Article I, section 3 and Article IX, section 1(a) to treating Intervenors equally under the law by comparison to secular organizations, so that additional services might qualify for state funding. They will also be unable to vote and to persuade others to support them or to overcome historic nativist religious prejudice against them.

SECTION 6. Taxation and budget reform commission.—

(d) The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a strategic decisionmaking process.

(e) The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall issue a report of the results of the review carried out, and propose to the legislature any recommended statutory changes related to the taxation or budgetary laws of the state. Not later than one hundred eighty days prior to the general election in the second year following the year in which the commission is established, the commission shall file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it dealing with taxation or the state budgetary process.

The two are best viewed as an organic whole, but the Plaintiffs ask this court to drive a wedge between them on the theory that the TBRC's outputs mentioned in (e) dealing with "taxation or the state budgetary process" are somehow narrower than its inputs mentioned in (d). In other words, the Plaintiffs claim, for example, that the TBRC can "examine constitutional limitations on taxation and expenditures at the state and local level," but afterwards the TBRC is powerless to propose amendments to fix at least the second of these problems because the "state budgetary process" somehow does not encompass "expenditures." The argument hinges entirely on an unnatural use of the word "budget" within the phrase "state budgetary process." Contrariwise, it is well settled that

{t}he words and terms of a Constitution are to be interpreted in their most usual and obvious meaning, unless the text suggests that they have been used in a

technical sense. The presumption is in favor of the natural and popular meaning in which the words are usually understood by the people who have adopted them.

City of Jacksonville v. Continental Can Co, 113 Fla. 168, 172, 151 So. 488, 489-90 (1933). In general, a dictionary may provide the popular and common-sense meaning of terms presented to the voters. *Myers v. Hawkins*, 362 So. 2d 926, 930 n.10 (Fla. 1978).

Advisory Opinion to Governor-1996 Amendment 5 (Everglades), 706 So. 2d 278, 283 (Fla. 1997).

Every family, business, company and governmental body knows that a "budget" includes inputs and outputs. Inputs for the state are primarily tax revenue. Outputs are public appropriations for expenses, services, and the like. Ideally, the "state budgetary process" reconciles these two, premised upon an estimate of both over a specified period of time, usually a fiscal year. This is known as a "balanced budget."⁴ Plaintiffs ask this court to define the budgetary process minus one-half of the equation, the outputs. Under their construction, a budget would never be balanced. This is no plain textual reading of Article VII, section 6, but a modification of the English lexicon. It is also contrary to an essential purpose of the TBRC, which is to ensure that the state has the ability to pay for its "needs during the next twenty year period." Art. XI, § 6(d), Fla. Stat.

Intervenors agree this much with the Plaintiffs: the text of Article XI, section 6 is plain and, therefore, does not require statutory construction. *State ex rel. West v. Gray*, 74 So. 2d 114, 116 (Fla. 1954) ("Where the words are plain and clear and the sense distinct and perfect ... there

⁴ See BLACKS LAW DICTIONARY (6th ed. 1990) ("[B]udget" is "[a] statement of estimated revenues and expenses for a specified period of time, generally a year. A balanced budget is one in which revenues equals or exceeds expenditures. Also, sum of money allocated to a particular purpose or project, or for a specified period of time."); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976) ("Budget" is a "statement of the financial position of a sovereign body (as of a nation) for a definite period of time based on detailed estimates of planned or expected expenditures during the period and proposals for financing them"; "budgetary" is "involving or exercised through a budget.")

is generally no necessity to have recourse to other means of interpretation.") On its face, section 6(e) provides that the TBRC may propose revisions to the constitution dealing with taxation and budgetary inputs and outputs. There is no ambiguity or doubt that should arise in the court's mind about the term "budget" even when linked with "state" and "process." Yet if the court feels the need also to deploy the basic canons of constitutional construction, they point in the same direction.

Article XI, section 6 "must be construed as a whole in order to ascertain the general purpose and meaning of each part; each subsection, sentence, and clause must be read in light of the others to form a congruous whole." *Bush v. Holmes*, 919 So. 2d 392, 407 (Fla. 2006) (citing, *inter alia*, *Dep't of Env'tl. Protection v. Millender*, 666 So. 2d 882, 886 (Fla. 1996)). A construction that will lead to an absurd result such as that "budget" excludes outputs or that the outputs of 6(e) are narrower than the inputs in 6(d) will not be adopted "when contra interpretation is more in keeping with the obvious intent and purpose sought to be accomplished." *Millender*, 666 So. 2d at 886-87. Self-evidently, it was not the framers' intent to assign a duty to the TBRC such as examining limitations on expenditures that it then could not do anything about.

Relatedly, "[t]he fundamental object in construing a constitutional provision is to ascertain and give effect to the intentions of the framers and adopters," so as not to defeat it including the evils sought to be remedied. *State ex rel. Dade County v. Dickinson*, 230 So. 2d 130, 135 (Fla. 1969). As explored in more detail below, the intent of the framers was to establish a "reform commission," not an advisory board that a simple executive order could create. The 1991 Commission Rules, a contemporaneous construction of Article XI, section 6, put it this way: "The primary role of the Commission shall be to recommend statutory and constitutional

changes dealing with taxation and the state budgetary process." (TBRC Rule ¶ 1.005 (as amended Oct. 8, 1991)). Narrowing the outputs of 6(e) as compared to the inputs in 6(d) fails this test.

In addition, the list of phrases in 6(d) having to do with budgeting and taxation does not require the conclusion that they are different in kind from "state budgetary process." The doctrine of construction "noscitur a sociis" teaches that a word is known by the company it keeps. In 6(d), "state budgetary process" is followed immediately by "the revenue needs and expenditure processes of the state." This is nearly the dictionary definition of "budget" presented above, further underscoring that the state budgetary process deals with inputs and outputs. Next comes "the appropriateness of the tax structure of the state, and governmental productivity and efficiency" prior to a semicolon. Here is another closely-related pair. A productive or efficient entity converts inputs to outputs in the least wasteful manner. (WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976) [hereinafter WEBSTER'S]) This requires an appropriate tax structure and expenditure process. These concepts are separated by semicolons from the remaining list of phrases which repeat the word "tax" (including taxation), "fund," "expenditure," and "process."

Under Plaintiff's analysis, phrases that are not different in kind must be superfluous, whereas under the Defendant's and Intervenors' construction, their important meaning lies in the manner in which they elaborate slightly upon the different aspects of taxation, funding, and the process. Table 1 shows these three primary categories of terms in Article XI, section 6(d). As budgetary inputs, the TBRC is required to look at needs, tax structure, the interaction between state and local taxation, alternative methods for raising revenue, ways to more efficiently gather revenue from the same sources, and constitutional limitations on taxation (which Article I,

section 3 addresses). As budgetary outputs, the TBRC must look at different aspects of funding including the expenditure processes, the ability of state and local governments to adequately fund operations and facilities, alternative methods to fund needs, and constitutional limitations on expenditures at the state and local level (which Article I, section 3 and Article 1, section 9 address). Each of these phrases relate to their heading and, thus, are similar in kind, but elaborate on a specific TBRC duty like a species within a genus. To imply as do the Plaintiffs that this classification is proper for taxation, but not for funding and expenditures is entirely without foundation.

Table 1: The Company of Words Kept in Article XI, Section 6(d)

Taxation	Fund and Expenditure	Process
		"[E]xamine the state budgetary process...."
"[E]xamine ... the revenue needs"	"[E]xamine ... expenditure processes of the state"	"[E]xamine ... expenditure processes of the state"
"[E]xamine ... the appropriateness of the tax structure of the state"		
"[R]eview policy as it relates to the ability of state and local government to tax...."	"[R]eview policy as it relates to the ability of state and local government to ... adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period"	
"[D]etermine ... alternative methods for raising sufficient revenues for the needs of the state"	"[D]etermine methods favored by the citizens of the state to fund the needs of the state...."	
"[D]etermine measures that could be instituted to effectively gather funds from existing tax sources"		"[R]eview the state's comprehensive planning, budgeting, and needs assessment processes to determine whether the resulting information adequately supports a strategic decisionmaking process"

"[E]xamine constitutional limitations on taxation...."	"[E]xamine constitutional limitations on ... expenditures at the state and local level	
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"Process" in Section 6(d) is associated with budgeting and expenditures. Contrary to Plaintiffs' claim, in context and by common usage it is broader, not narrower than "laws." A "process" is a progression past various stages to completion. (WEBSTER'S). The TBRC's process begins with examining and reviewing, turns to determining, and ends in 6(e) with "issu[ing] a report of the results of the review carried out," "propos[ing] to the legislature any recommended statutory changes related to the taxation or budgetary laws of the state," and "fil[ing] with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it dealing with taxation or the state budgetary process." The TBRC's statutory and constitutional outputs are the same for each of its inputs. Plaintiffs' effort to limit the outputs in the area of expenditures, but not taxation, is inconsistent with the text of Article XI, section 6 and should be rejected.

The Historical Record

The historical record related to the foundation of the TBRC supports this plain textual reading of Article XI, section 6. The documents presenting the most relevant contemporaneous understanding of the scope of the TBRC's jurisdiction include the following: (1) staff analysis relating to the purpose of the TBRC; (2) the 1991 Commission Rules stating the purpose of the TBRC and broadly defining the "state budgetary process" and "taxation"; and (3) the subject matter considered by the first TBRC.

Legislative History. According to a legal memorandum to the first TBRC from its counsel, the legislative history of Article XI, section 6 supports a broad interpretation of the TBRC's authority. (Donna Blanton, Memo. of Law to Comm'r Steve Uhlfelder at 2 (July 30,

1991) (copy of original from Fla. State Archives) [hereinafter "Blanton Memo"] (Tab B)) The Legislature adopted the House proposal for the TBRC, House Joint Resolution 1616, which did not limit the Commission's purview to any section of the constitution, and rejected Senate Joint Resolution 360, which would have limited the TBRC's authority to propose constitutional revisions to Article VII. (Senate Staff Analysis, SJR 360, ¶ I.B. (April 25, 1988)) (Tab C) Put otherwise, the legislature opted for and voters approved a broad mandate for the TBRC.

Contemporaneous House staff analysis confirms this. (House of Rep., Comm. on Fin. and Taxation, Staff Analysis, Bill No. HJR 1616, ¶ I.A.-B. (May 10, 1988) [hereinafter "House Staff Analysis 1616"]) (Tab D) (emphasis added); *accord* House of Rep. Comm. on Fin. and Taxation (as revised), Staff Analysis, Bill No. HB ¶ 390, B. (May 5, 1988) [hereinafter "House Staff Analysis 390"] (Tab E) The Staff analysis emphasizes that the foremost purpose of the TBRC was to provide an additional avenue for constitutional reform proposals bearing upon taxation, revenue and public funding measures for submittal directly to the voters:

A. Present Situation:

Presently there are only four ways to amend the Florida Constitution: by Joint Resolution agreed to by three-fifths of the membership of each house of the Legislature; by proposal of the constitution revision commission which meets every twenty (20) years; by initiative; and by a constitutional convention called by the electors. There is no commission established, statutorily or constitutionally, which examines the tax structure and revenue needs of the State with an aim toward recommending equitable ways to fund current and future growth needs of the State.

B. Effect of Proposed Changes:

...Any proposal of the Commission for constitutional changes could be submitted directly to the voters.

(House Staff Analysis 1616, ¶ I.A.-B. (emphasis added); *accord* House Staff Analysis 390, B).

Underscoring the importance of this court's deference to the TBRC's Ballot Initiatives, the Journals of the House of Representatives and Senate support the same conclusion and reveal no intent to prevent the TBRC from proposing constitutional changes relating to expenditures. (See Fla. S. Jour. 1231 (Reg. Sess. June 7, 1988) ("Provides for the Tax Reform Commission to ... recommend proposed constitutional changes to be submitted directly to the voters....") (Tab F); Fla. H.R. Jour. (Reg. Sess. May 31, 1988) (TBRC may "submit proposed constitutional changes to the voters.") (Tab G)

The 1991 Rules. The TBRC's rules adopted at its very first meeting are also compelling evidence of both the purpose of the Commission and its jurisdiction. The Commission stated that its "primary role" was "to recommend statutory and constitutional changes dealing with taxation and the state budgetary process." (TBRC Rule ¶ 1.005, at 7 (as amended Oct. 8, 1991)) (Tab H). Then, the TBRC went on to define the "state budgetary process" within the meaning of Article XI, section 6(e) of the Florida Constitution as follows:

the manner in which every level of government in the state expends funds, incurs debt, assesses needs, acquires financial information, and administers its fiscal affairs, and includes the legislative appropriation process and the budgetary practices and principles of all agencies and subdivisions of the state involved in financial planning, determining, implementing, administering, and reviewing governmental programs and services.

(*Id.* (emphasis added)).

Therefore, the plain text of Article XI, section 6 and the contemporaneous historical understanding of its jurisdiction concur that the phrase "state budgetary process" includes budgetary inputs and outputs and the process itself. The 1991 Commission Rules also define "taxation" to mean "all public revenues and revenue raising laws at every level of government in the state." (*Id.*) This also accords with the plain textual reading presented above.

First Reforms. The subject matter of the constitutional reforms considered by the first TBRC is also illuminating for purposes of this case. In particular, the first TBRC proposed a modification to Article I, which became section 25. (Tom Rankin, Memo. to Members, TBRC at 14 (batesnumber) (April 20, 1992) (Taxpayers' Bill of Rights)) (Tab I). The first TBRC was also focused on public education funding and considered amendments the Constitution involving school funding including a school choice reform measure. (TBRC Agenda, Gov't Services/Procedures and Structure Comm. Mtg. Minutes at 13, 16-17, 22, 24 (batesnumbers) (Aug. 6, 1991) (Tab J) (recommending a constitutional amendment "to provide that net proceeds derived from the lotteries and deposited in the State Education Lotteries Trust Fund should be distributed to each public school in the state based on a per student basis."); Tom Slade, Memo. to Members, TBRC at 2-3, 9-10 (batesnumbers) (Aug. 16, 1991) (Tab K) (outlining recommended amendment requiring school districts to "enact policies offering parents choices in where their children attend public school to be eligible to receive State Education Lotteries Trust Fund proceeds.")). Donna Blanton advised Steve Uhlfelder this was within the TBRC's authority. (Blanton Memo, at 1-2).

In addition, the first TBRC considered a proposal quite similar to proposed Article IX, section 8 to be entitled, "No more than 10 percent of the non-instructional personnel in each school district, excluding the superintendent and principals of each school shall receive compensation in excess of the average of teacher's salaries in that district." (Intro. of Proposal No. M-276 at 0-1 (batesnumbers) (Sept. 30, 1991)) (Tab L)

Altogether, the plain text, historical record, and first reforms undertaken by the TBRC unambiguously indicate that the scope of the TBRC's jurisdiction extends to

taxation, revenue, expenditures, public funding, and process. Therefore, summary judgment is proper in favor of the Defendant, but should be denied the Plaintiffs.

III. Article I, Section 3 Affects Taxation and the State Budgetary Process.

It is not an overstatement to say that, historically, as discussed in brief above, Blaine amendments have primarily been about state funding and only secondarily "separation of church and state." In Florida, as elsewhere, the Blaine amendment is accompanied by a state establishment clause, which states: "There shall be no law respecting the establishment of religion...." Art. I, § 3, Fla. Const. With or without the last sentence of Article I, section 3, an establishment of religion is prohibited in Florida. The significance of the last sentence of Article I, section 3 by comparison to the first (when read pursuant to the standard principles of constitutional construction) is that the last primarily acts as a restraint relating to "revenue of the state."

No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

Art. I, § 3, Fla. Const.

Consequently, in outlining the elements of a claim for violation of Article I, section 3, the First District mentions as the very first requirement "the prohibited state action must involve the use of state tax revenues." *Holmes*, 886 So. 2d at 352. In short, there can be no gainsaying from a historical perspective, plain textual reading, and case law itself that Article I, section 3 deals with public funds and expenditures and, as we shall see, taxation.

A. Article 1, Section 3 Does and Resolution No. 7 Would Directly Impact State Funding and Expenditures.

The relevance of the last sentence of Article I, section 3 to the output side of the state budgetary process – state funding and expenditures – is plain. According to *Holmes*, the first

element of a violation of Article I, section 3 requires evidence of "use of state funds to aid sectarian institutions." 886 So. 2d at 352. "Revenue of the state" mentioned in Article I, section 3 is funds "taken from the public treasury." Art. 1, § 3, Fla. Const. The First District struck the Opportunity Scholarship Program because it was undisputed that it used state revenue to fund scholarships paid to private schools including religious ones. 886 So. 2d at 352. According to the court, this is what distinguished the OSP from the facts in prior cases.⁵ *Id.* Consequently, Article I, section 3 clearly relates to public funding and expenditures and is, therefore, within the ambit of the TBRC's jurisdiction both to examine under 6(d) and propose reform under 6(e).

Resolution No. 7 proposes to revoke the last sentence of Article I, section 3 and to replace it with a non-discriminatory standard: "An individual or entity may not be barred from participating in any public program because of religion." The proposal is the inverse of the present standard and, in this sense, joins other cases involving constitutional amendments inspired by precedent.⁶ Whereas sectarian institutions may not presently use state funds, Resolution No. 7 would permit their use by enabling religious institutions to participate in public programs from which they are presently barred. The First District has held that Article I, section 3 limits the use of public funds; therefore, its revocation and replacement with a sentence that permits their use by religious institutions certainly impacts fully one-half of the state budgetary

⁵ Actually, in *Koerner v. Borck*, 100 So. 2d 398, 398 (Fla. 1958) (disbursement to improve the park) and *Southside Estates Baptist Church v. Bd. of Trs.*, 115 So. 2d 697, 698 (Fla. 1959) (utilities), it was also anticipated that there could be a small public disbursement benefiting religious institutions, but the court fashioned an incidental and *de minimus* funding exception.

⁶ Plaintiffs imply there is something sinister about constitutional reforms proposed in reaction to precedent. *But see Armstrong v. Harris*, 773 So. 2d 7, 17 & n.26 (Fla. 2000), *cert. denied*, 532 U.S. 958 (2001) (death penalty amendment changing "cruel or unusual punishment" to "cruel and unusual punishment" to conform with the federal standard in reaction two cases). The Constitution is, in the final analysis, the peoples' to modify.

process by enabling the State to make expenditures directly or indirectly to religious organizations for various charitable services.

Plaintiffs erroneously claim that the amended language in Resolution No. 7 has nothing to do with the state budgetary process. First, their argument is premised upon their fundamentally unsound restatement of the word "budget" and mistaken view that the last sentence of Article I, section 3 is exclusively about the separation of church and state. Second, the argument fails to take into account that the removal of an obstacle to state expenditures obviously enables the legislature to expand and enact programs and make appropriations previously forbidden or drawn into question by *Bush v. Holmes*. For example, Plaintiffs' counsel has himself called into question the constitutionality of at least the first of these scholarship programs: the Corporate Income Tax Scholarship Program, McKay Scholarship Program and Voluntary Pre-K / Early Learning Coalition Scholarship Program.⁷

For these reasons and the reasons articulated in the Defendant's and Intervenors' memoranda, Article I, section 3 does and Resolution No. 7 would directly impact the state budgetary process by influencing state funding and expenditures; therefore, they are within the Article XI, section 6 jurisdiction of the TBRC.

B. Article I, section 3 Impacts Taxation and State Revenue.

The last sentence of Article I, section 3 also impacts taxation and the input side of the state budgetary process. In both *Johnson v. Presbyterian Homes of Synod of Fla., Inc.*, 239 So. 2d 256 (Fla. 1970) and *Nohrr v. Brevard County*, 247 So. 2d 304, 307 (Fla. 1971), tax

⁷ See, e.g., *Legislature Crafts Plan to Keep School Vouchers*, ST. PETERSBURG TIMES (Jan. 7, 2006) ("Teacher-union attorney Ron Meyer of Tallahassee believes the tax-credit approach might be just as vulnerable under the Constitution."); see also J. Scott Slater, *Florida's "Blaine Amendment" and Its Effect on Educational Opportunities*, 33 STETSON L. REV. 581, 600 (2004) ("The constitutionality of the TaxCredit Program under Florida's Blaine Amendment is uncertain.")

exemptions for religious institutions were challenged under Article I, section 3. In *Johnson*, Manatee County and the City of Bradenton argued that section 192.06(14), Fla. Stat. (1967) was "unconstitutional as applied to the facts of this case in that it attempts to grant tax exemptions to homes for the aged owned by religious organizations and operated primarily for religious purposes." 239 So. 2d at 258. The Florida Supreme Court held the statute "does not violate the Fla. Const. (1885), Declaration of Rights, § 6, F.S.A., and the First Amendment to the United States Constitution."⁸ *Id.* at 262. Then, in *Nohrr*, an intervenor urged that "the Educational Facilities Law violates the First and Fourteenth Amendments to the United States Constitution and Fla. Const., art. 1 § 3..." 247 So. 2d at 307. The theory was that "the law permits the authorities to issue [tax exempt] revenue bonds in order to aid religious schools, as well as secular schools." *Id.* The Florida Supreme Court held this did not violate Article I, section 3. *Id.*

About these cases, the First District emphasized that they did not have to do with a payment of money from the revenue of the public treasury. *Holmes v. Bush*, 886 So. 2d at 355-56. "In the case of an exemption, the state merely refrains from diverting to its own uses income independently generated by the churches through voluntary contributions." *Id.* at 356. Nevertheless, a tax exemption clearly impacts the budgetary process by decreasing the pool of revenue that the state may otherwise appropriate. This is the patent reason local governments such as the County of Manatee and City of Bradenton prefer businesses over religious institutions as property holders. Tax exemptions impact governmental revenue. As discussed

⁸ The precursor to Article I, section 3 was Fla. Const. of 1885, Declaration of Rights, § 6 ("No preference shall be given by law to any church, sect or mode of worship and no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination or in aid of any sectarian institution.")

above, Article I, section 3 may also impact tax credits, another aspect of taxation and revenue, although no Florida court has yet been presented with this question.

Therefore, Article I, section 3 of the Florida Constitution indirectly impacts taxation and state revenue and, therefore, is within the Article XI, section 6 jurisdiction of the TBRC.

III. Article IX, Section 1(a) Affects the State Budgetary Process.

Article IX, section 1(a) affects the state budgetary process by requiring the legislature to make "adequate provision" for public education and to provide "sufficient funds" for classroom size reduction as follows:

Section 1. Public education –

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make **adequate provision** for the education of all children residing within its borders. **Adequate provision** shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.... To assure that children attending public schools obtain a high quality education, the legislature shall make **adequate provision** to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms

... **Payment** of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local schools districts. Beginning with the 2003-2004 fiscal year, the legislature shall **provide sufficient funds** to reduce the average number of students in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of this subsection.

Art. IX, § 1(a), Fla. Const. (emphasis added).

As set forth above, until *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), the adequacy requirement in Article IX, section 1(a) was not deemed justiciable. See *Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 405-06 (Fla. 1996) ("[T]he courts cannot decide whether the Legislature's appropriation of funds is adequate in the abstract....") (citation omitted). But interpreting amendments to Article IX, section 1(a), the court in *Holmes*

changed this: "Article IX, section 1(a) is a limitation on the Legislature's power because it provides both a mandate to provide for children's education and a restriction on the execution of that mandate." 919 So. 2d at 406. The restriction on use, according to the Court, is that Article IX, section 1(a) "prohibits the state from using public monies to fund a private alternative to the public school system...." *Id.* at 408. Consequently, Article IX, section 1(a) without question deals with public funding and expenditures and for this reason concerns the state budgetary process within the meaning of the TBRC's Article XI, section 6(e) jurisdiction.

The same is even more true of Ballot Resolution No. 9, which modifies Article IX, section 1 and Article XII in pertinent part as follows:

ARTICLE IX EDUCATION

Section 1. Public funding of education –

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make **adequate provision** for the education of all children residing within its borders. This duty shall be fulfilled, at a minimum and not exclusively, through adequate Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education....Nothing in this subsection creates an entitlement to a publicly-financed private program.

(b) To assure that children attending public schools obtain a high quality education, the legislature shall make **adequate provision** to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms

... **Payment** of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local schools districts. Beginning with the 2003-2004 fiscal year, the legislature shall **provide sufficient funds** to reduce the average number of students in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of this subsection.

(c) ~~(b)~~ Every four-year old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood

development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards....

(d) ~~(e)~~ The early childhood education and development programs provided by reason of subsection (c) subparagraph (b) shall be implemented no later than the beginning of the 2005 school year through funds generated in addition to those used for existing education, health, and development programs. Existing education, health, and development programs are those funded by the State as of January 1, 2002 that provided for child or adult education, health care, or development.

SECTION 8. Requiring sixty-five percent of school funding for classroom instruction. -At least sixty-five percent of the school funding received by school districts shall be spent on classroom instruction, rather than on administration. Classroom instruction and administration shall be defined by law. The legislature may also address differences in administrative expenditures by district for necessary services, such as transportation and food services. Funds for capital outlay shall not be included in the calculation required by this section.

ARTICLE XII SCHEDULE

SECTION 28. Requiring sixty-five percent of school funding for classroom instruction. -The requirement that sixty-five percent of school funding received by school districts be spent on classroom instruction in Section 8 of Article IX, and this section, shall first be applicable to school years commencing during the state fiscal year 2009-2010.

Ballot Initiative No. 9 (emphasis added; underlining and strikethroughs original).

The proposed modification to Article IX, section 1(a) still explicitly incorporates a requirement for "adequate" provision of school funding for Florida's children, but revokes the second prong of the limitation on the legislature recognized in *Bush v. Holmes*, 919 So. 2d at 408, specifying the manner of fulfilling the obligation. By stating that the proposed modification to section 1(a) does not create an entitlement to a publicly-financed private program, Ballot Initiative No. 9 deals in greater depth with the appropriation and expenditure side of the state budgetary process by making sure that any public funding of private education will be discretionary with the legislature.

The proposed addition of section 8 to Article IX also squarely addresses school funding and budgeting by mandating how the money received by school districts will be budgeted. Plaintiffs' argument that the TBRC could not address both state and local funds received by school districts is mistaken in two respects. First, Article XI, section 6(d) requires the TBRC to "review policy as it relates to the ability of state and local government to adequately fund governmental operations and capital facilities..." and to "examine constitutional limitations on ... expenditures at the state and local level...." (emphasis added).⁹ Article IX, section 1(a) and Ballot Initiative No. 9 require nothing less than "adequate provision for the education of all children," as well as adequate classroom facilities to meet class size requirements. By adjusting how the first of these requirements is met, Ballot Initiative No. 9 is well within the TBRC's jurisdiction.

Second, the Florida Education Finance Program (FEFP) directs both state and local funding inasmuch as it dictates even the minimum funding and maximum local millage rates that localities may charge. § 1011.60(6), Fla. Stat. (each district participating in the state appropriations for the FEFP must "make the minimum financial effort required for the support of the Florida Education Finance Program as prescribed in the current year's General Appropriations Act"); § 1011.71, Fla. Stat. (each district school board shall levy a millage rate "not to exceed the amount certified by the commissioner as the minimum millage rate necessary to provide the district required local effort for the current year...."). The state educational budget reflects the amount of Required Local Effort (RLE) school districts must raise as a condition of receiving state funds pursuant to a complicated formula. State law and appropriations determine

⁹ From the beginning, the implementing legislation for the TBRC first adopted in 1988 authorized and directed "[a]ll state and local governmental agencies ... to assist, in any manner necessary, the Tax Reform Commission upon its request or the request of the chairman." (Fla. HB390 (enacting § 286.036(2), Fla. Stat. (May 10, 1988)) (Tab M)

total school funding each year both through the general appropriation process and amendment to the local millage rates. In this sense, there is no divorcing local from state educational funds within the FEFP framework. In fact, statutory law presently addresses "minimum classroom expenditure requirements" in Ch. 1011, Part II, Florida Statutes, dealing with state "funding for school districts." See §§ 1011.60(8); 1011.64, Fla. Stat.

There is also an obvious relationship between productivity and the amount of money spent on instruction, rather than administration. A constitutional charge of the TBRC was to examine "governmental productivity and efficiency." Art. XI, § 6(d), Fla. Const. Enhancing these obviously reduces the need for public funding. Accordingly, it was within the prerogative of the TBRC to make a constitutional proposal to require 65% of school funding to be spent on classroom instruction. For these reasons, Article IX, section 1(a) is within the TBRC's jurisdiction.

CONCLUSION

The TBRC was empowered to transfer Ballot Initiatives Nos. 7 and 9 to the Florida Secretary of State to be "submitted directly to the voters." (House Staff Analysis 1616 ¶ I.A.) The TBRC will not meet again for another 20 years. There could be no greater harm than preventing the voters from casting their ballots with respect to these once-in-two-decades Initiatives. In contrast, the harm identified by the Plaintiffs is, in reality, a privilege available to Floridians to try to persuade the electorate to their views about the Initiatives – and, in fact, the very privilege the Intervenors respectfully request the right to exercise to persuade voters that they should be treated equally under the law. The remedy requested by the Plaintiffs negates all of the Intervenors' rights, whereas the remedy sought by the Intervenors ensures merely a vigorous public debate.

WHEREFORE, Florida Catholic Conference, Inc., a Florida not-for-profit corporation, Mercy Hospital, Inc., Friends of Lubavitch of Florida, Inc., Catholic Charities of the Archdiocese of Miami, Inc., and Association of Christian Schools International respectfully request that this Court deny the Plaintiffs' motion for summary judgment and grant the Defendant's cross-motion for summary judgment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 1st day of July, 2008, a true and correct copy of the foregoing has been furnished by e-mail and fax (without attachments) and regular U. S. Mail (with attachments) to **Ronald G. Meyer, Esquire, and Jennifer S. Blohm** at Meyer and Brooks, P.A., 2544 Blainstone Pines Drive, P.O. Box 1547, Tallahassee, FL 32302; **Blaine Winship**, Collins Building, 107 West Gaines Street, Tallahassee, FL 32301, and **Daniel J. Woodring** at Woodring Law Firm, 3030 Stillwood Court, Tallahassee, FL 32308.



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