Nova Law Review

Volume 9, *Issue* 1 1984 *Article* 4

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Abstract

On Christmas night and into the early morning hours of December 26, 1983, a freeze descended upon most of Florida's citrus groves.

KEYWORDS: Citrus Freeze, Embargo, Constitutional

Constitutional Considerations Pertaining to Florida's Citrus Freeze Embargo: Are Due Process and Delegation of Power Problems Frustrating the Purposes of the Citrus Code?

I. Introduction

On Christmas night and into the early morning hours of December 26, 1983, a freeze descended upon most of Florida's citrus groves.[1] The most serious freeze damage was centered in the state's northern citrus counties such as Marion, Lake and Orange.[2] Southern portions of the State were less affected by the cold temperatures. Farms from Dade to Palm Beach counties suffered no freeze-related damage,[3] however, some portions of the southern-most citrus district, including the Indian River production area,[4] sustained below freezing temperatures with some reported fruit icing.[5] Subsequent to the cold spell, the Florida Citrus Commission held an emergency meeting and public hearing on December 29, 1983. The meeting resulted in an administrative order which placed an embargo on all citrus fruit within the state.[6] Except

1. Florida Agriculture Weather & Crop News, Dec. 27, 1983, at 1, col. 2. Damage to citrus will occur when temperatures of 28 degrees Fahrenheit or below are sustained for six hours or longer. Miami Herald, Dec. 26, 1983, at 1A, col. 3. Another hard freeze hit Florida's citrus belt during the morning of January 22, 1985, and authorities feared the cold temperatures would damage citrus which escaped harm during the Christmas freeze of 1983. The New York Times, Jan. 22, 1985, at 13, col. 1. On January 24, 1985, the Florida Citrus Commission ordered a seven-day, state-wide embargo to be followed by a fourteen-day ban on the shipment of any fruit showing signs of spoilage. Miami Herald, Jan. 25, 1985, at 1A, col. 2.

2. Miami Herald, Dec. 27, 1983, at 6A, col. 2.

3. Miami Herald, Dec. 26, 1983, at 16A, col. 2.

4. Indian River County, as well as Brevard, St. Lucie, Martin, Palm Beach, Broward, Dade and a portion of Volusia County comprise Citrus District Five. FLA. STAT. § 601.09(5) (1983). However, the Indian River production area is not confined to Indian River County. Its boundaries travel through several Florida counties, from Volusia in the north to Palm Beach in the south. FLA. STAT. § 601.091(2) (1983).

5. Florida Agriculture Weather & Crop News, Dec. 27, 1983, at 1, col. 2.

6. Florida Citrus Commission Order No. 0-83-16 (Dec. 29, 1983). Two years earlier the Commission issued a similar embargo after a serious January freeze. New

for citrus fruit used for processing purposes, the embargo banned the preparation for market, sale or shipment of any Florida citrus for seven days.[7]

Under Chapter 601, section 90(2)(a) of the Florida Citrus Code,[8]

York Times, Jan. 14, 1982, at 7D, col. 1.

7. Florida Citrus Commission Order No. 0-83-16 (Dec. 29, 1983).

8. FLA. STAT. § 601.90 (1983). The complete text of the statute follows:

(1) Whenever freezing temperatures of sufficient degree to cause serious damage to citrus fruit occur in any section of the citrus-producing areas of the state, the commission, upon call of the chairman and with such notice as may be appropriate under the circumstances, shall meet within 96 hours of the last occurrence of such freezing temperatures to determine whether or not such freezing temeperatures have caused damage to citrus fruit as defined in s. 601.03 and, if so, the degree of such damage.

(2) If the commission, at such meeting, determines that serious damage, as defined in § 601.89(1), has occurred to such citrus fruit, it may, upon majority vote, enter an emergency embargo order providing for one or more of the following:

(a) Prohibiting the preparation for market, sale, offering for sale, or shipment of citrus fruit for a period not to exceed 10 days after commencement of the embargo period.

(b) Prohibiting the sale, offering for sale, or shipment of any citrus fruit showing "damage," as defined by § 601.89(2), for a period not to exceed 14 days after commencement of the embargo period.

(c) Prohibiting the preparation for market, sale, offering for sale, or shipment of citrus fruit for a period not to exceed 10 days after commencement of the embargo period, and further prohibiting the sale, offering for sale, or shipment of citrus fruit showing "damage," as defined by § 601.89(2), for a subsequent period not to exceed 14 additional days.

(d) Prohibiting the sale, offering for sale, or shipment, in offshore export trade channels, of citrus fruit showing any degree of internal freeze-related injury, as defined by § 601.89(3), for a period not to exceed 30 days from commencement of the embargo period.

(3) Any emergency order entered pursuant to this section shall become effective upon adoption by the commission, the provisions of chapter 120 to the contrary notwithstanding, and shall have the full force and effect of law. The embargo period shall commence at a time established by the commission in its order, but not sooner than 36 hours following adoption of the order.

(4) Emergency embargo orders shall not be applicable to any citrus fruit sold or transported to a citrus processing plant for processing purposes or to any citrus fruit inspected, packed, and certified for shipment prior to commencement of the embargo; however, any such citrus fruit not shipped within 48 hours of commencement of the embargo shall be reinspected, on a random basis, and recertified as damage-free.

(5) Any order may provide for reasonably extended packinghouse in-

the state Citrus Commission may issue an embargo order banning the sale and transportation of all Florida citrus when fruit in any area of the state has sustained serious damage as the result of freezing temperatures. The broad scope of this statute raises two constitutional issues which form the basis of this note. The first question explores the substantive due process rights of certain citrus businessmen who are subject to the impact of an embargo. A second constitutional consideration concerns the propriety of the legislature's delegation of power to the Citrus Commission under the embargo statute. The statutes of two other major citrus-producing states, California and Texas,[9] afford very different and less drastic approaches to citrus freezes. The quarantine provision within Florida's Agricultural Code[10] also represents a feasible alternative to a state-wide embargo. Under the Florida Agricultural Code's provisions, as with the California and Texas laws, no restrictions on the movement of fruit may be issued unless the fruit is known or suspected to be damaged or infested.[11]

The Florida Citrus Code contains the embargo statute. The state legislature enacted the Code as an exercise of its police power, to protect the health and welfare of those directly or indirectly involved in the citrus industry and to protect the State's "major agricultural enterprise."[12] The Citrus Code recognizes the great public interest in the

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spection hours prior to commencement of the embargo period.

9. CAL. ADMIN. CODE TIT. 3, R. 1430.98 (1983), TEX. AGRIC. CODE ANN. § 71.002, 73.004 (Vernon 1984). While the Texas statute speaks of quarantines issued against crop pests and diseases it is nevertheless applicable when a citrus freeze occurs. *See infra* text accompanying note 121.

10. FLA. STAT. § 581.031(7) (1983).

11. *Id.*

12. FLA. STAT. § 601.02 (1983). The section details the purposes of the Citrus Code as follows:

> This chapter is passed:
>
> (1) In the exercise of the police power to protect health and welfare and to stabilize and protect the citrus industry of the state.
>
> (2) Because the planting, growing, cultivating, spraying, pruning, and fertilizing of citrus groves and the harvesting, hauling, processing, packing, canning, and concentrating of the citrus crop produced thereon is the major agricultural enterprise of Florida and, together with the sale and distribution of said crop, affects of health, morals, and general economy of a vast number of citizens of the state who are either directly or indirectly dependent thereon for a livelihood, and said business is therefore of vast public interest.
>
> (3) Because it is wise, necessary, and expedient to protect and enhance the quality and reputation of Florida citrus fruit and the canned and

industry and the necessity of protecting its reputation.[13] The legislature designed the Code to promote the general welfare of the citrus industry, which in turn will benefit Florida's overall economy.[14]

Section 601.04 of the Citrus Code[15] establishes the Citrus Com-

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concentrated products thereof in domestic and foreign markets.

(4) To provide means whereby producers, packers, canners and concentrators of citrus fruit and the canned and concentrated products thereof may secure prompt and efficient inspection and classification of grades of citrus fruit and the canned and concentrated products thereof at reasonable costs, it being hereby recognized that the standardization of the citrus fruit industry of Florida by the proper grading and classification of citrus fruit and the canned and concentrated products thereof by prompt and efficient inspection under competent authority is beneficial alike to producer, packer, shipper, canner, concentrator, carrier, receiver, and consumer in that it furnishes them prima facie evidence of the quality and condition of such products and informs the carrier and receiver of the quality of the products carried and received by them and assures the ultimate consumer of the quality of the products purchased.

(5) To stabilize the Florida citrus industry and to protect the public against fraud, deception, and financial loss through unscrupulous practices and haphazard methods in connection with the processing and marketing of citrus fruit and the canned or concentrated products thereof.

(6) Because said act is designated to promote the general welfare of the Florida citrus industry, which in turn will promote the general welfare and social and political economy of the state.

13. FLA. STAT. § 601.02(3) (1983).

14. FLA. STAT. § 601.02(6) (1983).

15. FLA. STAT. § 601.04 (1983). The section details the selection and composition of the Commission:

(1)(a) There is hereby created and established within the Department of Citrus a board to be known and designated as the "Florida Citrus Commission" to be composed of 12 practical citrus fruit men who are resident citizens of the state, each of whom is and has been actively engaged in growing, growing and shipping, or growing and processing of citrus fruit in the state for a period of at least 5 years immediately prior to his appointment to the said commission and has, during said period, derived a major portion of his income therefrom or, during said time, has been the owner of, member of, officer of, or paid employee of a corporation, firm, or partnership which has, during said time, derived the major portion of its income from the growing, growing and shipping, or growing and processing of citrus fruit.

(b) Seven members of said commission shall be designated as grower members and shall be primarily engaged in the growing of citrus fruit as an individual owner, or as the owner of, a member of, an officer of, or a stockholder of a corporation, firm, or partnership primarily engaged in citrus growing, and none of whom shall receive any compensation from any

mission. The Commission is comprised of twelve governor-appointed

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licensed citrus fruit dealer or handler, as defined in § 601.03, other than gift fruit shippers, but any of said grower members shall not be disqualified as a member if, individually, or as the owner of, a member of, an officer of, or a stockholder of a corporation, firm, or partnership primarily engaged in citrus growing which processes, packs, and markets its own fruit and whose business is primarily not purchasing and handling fruit grown by others, and one of said seven grower members shall be a resident of and appointed from each of the seven citrus districts as defined in § 601.09. Five members of said commission shall be designated as grower-handler members and shall be engaged as owners, or paid officers or employees of a corporation, firm, partnership, or other business unit engaged in handling citrus fruit. Two of said five grower-handler members shall be engaged in the fresh fruit business and three of the said five grower-handler members shall be engaged in processing of citrus fruits. One of the said five grower-handler members shall be appointed from Citrus District No. 7 and the remaining four shall be appointed from the state at large but of these four no two members shall be appointed from the same citrus district.

(2)(a) The members of such commission shall possess the qualifications herein provided and shall be appointed by the Governor, subject to confirmation by the Senate, for terms of 3 years each, and four members shall be appointed each year. Such members shall serve until their respective successors are appointed and qualified. The regular terms shall begin on June 1 and shall end on May 31 of the third year after such appointment. The members of the commission in office on July 1, 1969, shall continue to serve until the expiration of the present term of office. Beginning with their successors, confirmation by the Senate shall be required for removal from the commission.

(b) When appointments are made, the Governor shall publicly announce the actual classification and district, or state at large as the case may be, that each appointee represents. A majority of the members of said commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of said commission. Before entering upon the discharge of their duties as members of said commission, each member shall take and subscribe to the oath of office prescribed in § 5, Art. II of the State Constitution. The qualification of each member as herein required shall continue throughout the respective term of his office, and in the event a member should, after appointment, fail to meet the qualifications or classification which he possessed at the time of his appointment as above set forth, said member shall resign or be removed and be replaced with a member possessing the proper qualifications and classification.

(3) The commission is authorized to elect a chairman and vice chairman and such other officers as it may deem advisable. The chairman, subject to commission concurrence, may appoint such advisory committees or

state residents who are involved in the citrus growing, packing and processing industries. Seven of the members are "grower members,"[16] each of whom represents one of the state's seven citrus districts. The five remaining appointees are "grower-handler members."[17] Two of these five are involved in fresh fruit retailing and packing and the remaining three are citrus processors.[18] The Commission represents not only each of the state citrus districts but also the interests of the various aspects of the citrus industry.

When the Citrus Code was enacted in 1949, section 90 detailed the power of the Commission in the event of a serious citrus freeze.[19] The Commission was given the power to order a ban on the sale and transportation of citrus for a period of not more than seven days.[20] Although section 90 was considerably amended in 1959[21] and again in 1981,[22] the power to ban the movement of all Florida citrus subsequent to a serious freeze has remained intact during the thirty-six year history of the Code.

The 1981 amendment employed the term "embargo" for the first time and represented a substantial change in the existing law.[23] The 1959 text gave the Commission a choice between ordering a ten-day ban on the movement of all state citrus, a fourteen-day ban on the movement of freeze-damage fruit, or a combination of the two.[24] The 1981 amendment makes an additional provision for fruit destined to be sold in offshore trade channels.[25] This provision bans the exportation of

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councils composed of industry representatives as the chairman deems appropriate, setting forth areas of committee or council concern.

16. FLA. STAT. § 601.04(1)(b) (1983).

17. *Id.*

18. *Id.*

19. Florida Citrus Code, ch. 25149, § 90(2), 1949 Fla. Laws 280, 340.

20. Florida Citrus Code, ch. 25149, § 90(2)(a), 1949 Fla. Laws 280, 340.

21. The 1949 version of section 90 required the Commission to meet within seventy-two hours of the freeze. *Id.* at 348. This was extended to ninety-six hours in the 1959 amendment. Florida Citrus Code, ch. 59-7, § 601.90(2), 1959 Fla. Laws 12. The 1959 amendment also extended the permissible length of the ban from seven to ten days and further held that the order would become effective at a time "fixed" by the Commission, compared to the twenty-four hour time limit set out in the original statute. *Id.* at 13.

22. Florida Citrus Code, ch. 81-97, § 601.90(2), 1981 Fla. Laws 177, 179.

23. *Id.* at 177.

24. Florida Citrus Code, ch. 59-7, § 601.90(2), 1959 Fla. Laws 12.

25. Florida Citrus Code, ch. 81-97, § 601.90(2)(d), 1981 Fla. Laws 177, 179.

fruit showing any internal freeze damage for a period of thirty days.[26] Further, the 1981 version of the law states that any emergency order will become effective upon adoption by the Commission.[27] But, while the order is immediately effective, the embargo period may not commence any sooner than thirty-six hours following the issuance of the order by the Commission.[28] Despite these changes in embargo options and procedures, since its inception, the Citrus Commission has had considerable power in the event of a citrus freeze. In such a situation the Commission has been able to prohibit the sale and transportation for sale of all citrus in the state when it determines that a freeze has resulted in serious damage in any area of the citrus belt.[29]

In view of an embargo order's harsh impact on the citrus industry, it is surprising that the constitutionality of section 601.90 has not been challenged in the Florida courts. When an embargo is ordered pursuant to section 601.90(2)(a), no Florida citrus may be prepared for market, sold, offered for sale or shipped for the length of the embargo period.[30] This prevents growers from picking fruit and transporting it to packing houses. In turn, packing houses and retail outlets may not sell any fruit other than the fruit brought in and inspected before the embargo goes into effect. Grove owners whose entire crop escapes freeze damage, as well as the packing houses and retail outlets which primarily rely on these groves are subject to the effects of an embargo no less than those whose fruit has sustained serious freeze damage. The harshness of an embargo is somewhat mimimized by the thirty-six hours which must pass between the issuance of the order and the commencement of the embargo. That time may be used to harvest quality fruit and forward it to packing houses. After Department of Citrus inspectors certify this harvested fruit, it may be shipped forty-eight hours into the embargo

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26. *Id.*

27. Florida Citrus Code, ch. 81-97, § 601.90(3), 1981 Fla. Laws 177, 179.

28. *Id.* The immediate effectiveness of an emergency order prevents interested parties from seeking a hearing or judicial review. The statute itself notes that the remedies provided by Florida's Administrative Code, chapter 120, which include hearings and review by the courts, are not available in the face of an embargo. The non-access of these remedies to those who are adversely affected by a Commission order may present a question as to whether those parties are being deprived of their rights to procedural due process. However, that issue is beyond the scope of this note.

29. 1949 Florida Citrus Code, ch. 25149, § 90(2)(a), Fla. Laws 280, 348; ch. 59-7, § 601.90(2)(a), 1959 Fla. Laws 12; ch. 81-97, § 601.90(2)(a), 1981 Fla. Laws 177, 179.

30. FLA. STAT. § 601.90(2)(a) (1983).

period.[31] But even with this provision, for the remainder of the embargo period the citrus industry, with the exception of processors, is at a virtual standstill.

After considering the effects of an embargo, a number of constitutional questions may be raised. The remainder of this note will address two specific constitutional issues and will ultimately suggest an alternative to the present statute. It appears that an emergency embargo order, pursuant to section 601.90(2)(a), is a violation of the substantive due process rights of those in the citrus industry whose fruit or major sources of fruit remain damage-free after a serious freeze. Further, the delegation of power by the Florida legislature to the Citrus Commission in section 601.90 is inadequately defined and not sufficiently limited in scope, resulting in a failure to protect against unfair and arbitrary application. Both the Florida Constitution and state caselaw forbid such a delegation of power.[32]

II. Constitutional Questions Raised by Section 601.90(2)(a)

The Florida embargo statute has not yet been constitutionally challenged in Florida courts. Nevertheless, there is ample Florida case law available which may be used to examine the judicial standards employed to determine whether there has been either a due process violation or an improper delegation of legislative power. This case law includes Florida Supreme Court decisions pertaining to alleged constitutional violations resulting from the administration of plant control and Citrus Code statutes. None of the laws challenged in these cases called for a state-wide embargo, as does section 601.90(2)(a); however, the issues raised by these controversies are analogous to the constitutional questions presented in this note.

A. Substantive Due Process

Both the federal and Florida constitutions afford an individual a guarantee against deprivation of rights without due process of law.[33] It is well-settled that the dictates of the due process clause are satisfied if

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31. FLA. STAT. § 601.90(4) (1983).

32. *See infra* text accompanying notes 84-88.

33. "nor shall any State deprive any person of life, liberty, or property without due process of law. . . .", U.S. CONST. amend. xiv, § 1. The Florida Constitution states, "[n]o person shall be deprived of life, liberty or property without due process of law. . . ." FLA. CONST. art. I, § 9.

there is no unauthorized or arbitrary exercise of government powers.[34] The requirement of substantive due process forbids a state from depriving a person of life, liberty or property by any act which fails to bear a reasonable relationship to a legitimate government purpose.[35]

Before one can claim that his or her rights to due process are threatened, it must be demonstrated that a legitimate liberty or property interest exists.[36] Citrus operators who are subject to a state-wide embargo clearly suffer an interference with their business operations at the hand of a government agency, since they are forced to curtail the sale and transportation of fruit for possibly as long as ten days. It has been variously held that the right to pursue a legitimate occupation is a property right[37] and therefore aggrieved people within the citrus industry meet the first hurdle necessary to successfully allege a violation of due process.

Once it has been ascertained that a right guaranteed under the due process clause has been affected, further inquiry must be made to determine whether it is a fundamental right, since if no fundamental right is involved in the controversy a much less rigorous standard of review is employed.[38] In the case of *Sotto v. Wainwright*[39] the United States Court of Appeals for the Fifth Circuit furnished a list of fundamental rights, including the right to vote, to associate, to have free access to the courts and "assorted freedoms against state intrusion into

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34. Ozan Lumber Co. v. Union County Nat'l Bank of Liberty, 207 U.S. 251 (1907), relied on in Adams v. American Agricultural Chemical Co., 78 Fla. 362, 82 So. 850 (1919) and Davis v. Fla. Power Co., 64 Fla. 246, 60 So. 759 (1913).

35. State ex rel. Furman v. Searcy, 225 So. 2d 430, 433 (Fla. 4th Dist. Ct. App. 1969).

36. Thurston v. Dekle, 531 F.2d 1264, 1271 (5th Cir. 1976), *vacated on other grounds*, 438 U.S. 901 (1978). It should be mentioned that while many of the parties who are adversely affected by an embargo order may be corporations, it is settled law that a corporate concern is a person for the purposes of a due process challenge. *See* Dutton Phosphate Co. v. Priest, 67 Fla. 370, 65 So. 282 (1914); State v. Atlantic Coast Line Ry. Co., 56 Fla. 617, 47 So. 969 (1908); Freidus v. Freidus, 89 So. 2d 605 (Fla. 1956), holding this principle is true at least where property rights are concerned.

37. *See generally* State ex rel. Fulton v. Ives, 123 Fla. 401, 167 So. 394 (1936); State ex rel. Davis v. Rose, 97 Fla. 710, 122 So. 225 (1929); Paramount Enterprises v. Mitchell, 104 Fla. 407, 140 So. 328 (1932); Palm Beach Mobile Homes, Inc. v. Strong, 300 So. 2d 881 (Fla. 1974).

38. Ferrara v. Handry County School Bd., 362 So. 2d 371 (Fla. 2d Dist. Ct. App. 1978). Courts employ a reasonable relationship test when no fundamental right is involved, *see infra* text accompanying note 43.

39. 601 F.2d 184 (5th Cir. 1979).

family life and intimate personal decisions."[40] Further, an early Florida case declared that under both the Florida and federal constitutions the right to pursue a legitimate occupation is also a fundamental right.[41] If it is alleged that a state regulation has infringed on a fundamental right, the state must demonstrate a compelling interest in order to sustain the regulation.[42] Although the right to pursue an occupation is apparently a fundamental right, a state-wide citrus embargo does not prevent citrus operators from pursuing their livelihoods. Rather, the due process problem which arguably stems from the application of a freeze embargo takes the form of an unreasonable interference with the pursuit of an occupation, which, as noted earlier, is an infringement of a property right.[43] Therefore, the compelling state interest standard is admittedly not applicable to the problem faced by the citrus businesspeople due to section 601.90.

When a right other than a fundamental one is the subject of an alleged due process violation under the Florida Constitution, a court will employ a reasonable relationship test in order to determine if the state action is arbitrary.[44] Under this standard of review the regulation of a trade or business will be upheld if it bears any reasonable relationship to a legitimate government purpose and is not arbitrary or discriminatory. More recently, Florida courts have employed a balancing of interests test to aid in due process decisions.[45] Under this approach, in order to determine if a state regulation offends one's rights to due process a court must weigh the need for the protection of individual guaranteed rights against the state's interest in promoting the public welfare.[46] After balancing the respective interests of the parties, the

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40. *See id.* at 191.

41. State ex rel. Hosack v. Yocum, 136 Fla. 246, 251, 186 So. 448, 451 (1939).

42. Sotto v. Wainwright, 601 F.2d 184, 191 (5th Cir. 1979).

43. *See supra* text accompanying note 36.

44. Miami Laundry Co. v. Florida Dry Cleaning and Laundry Bd., 134 Fla. 1, 183 So. 759 (1938). *See also* Heller v. Abess, 134 Fla. 610, 184 So. 122 (1938) (holding courts may not void a regulation as violative of due process if there is any conceivable, reasonable basis for that regulation); Lasky v. State Farm Insurance Co., 296 So. 2d 9 (Fla. 1974) (stating that the test to be employed is whether a statute bears a reasonable relationship to a state goal). *See also* Johns v. May, 402 So. 2d 1166 (Fla. 1981); United Yacht Brokers, Inc. v. Gillespie, 377 So. 2d 668 (Fla. 1979); Belk-James, Inc. v. Nuzum, 358 So. 2d 174 (Fla. 1978).

45. Hadley v. Dep't of Admin., 411 So. 2d 184 (Fla. 1982) (recognizing there is no simple unchanging test to apply in due process controversies). *See also* City of Miami v. St. Joe Paper Co., 364 So. 2d 439 (Fla. 1978).

46. Hadley v. Dep't of Admin., 411 So. 2d 184, 188 (Fla. 1982).

court must decide which interests weigh heaviest in the balance.[47]

It is clear that the Florida Constitution's broad prohibition of state actions which deprive an individual of guaranteed rights is not meant to hinder Florida in the exercise of its police power.[48] However, any exercise of that power must be designed to promote public health, safety and morals[49] and if a regulation fails to bear any reasonable relationship to the proper ends of the police power, it will be held to violate the due process clause.[50] This failure to comply with the command of Florida's Constitution may be shown if an individual can demonstrate that the application of a police power regulation is arbitrary and unreasonable.[51]

It is clear that the principles of due process apply to all government officers and agencies to whom power or authority is delegated.[52] Therefore, a state agency such as the Citrus Commission is bound to comply with those principles. Since a primary purpose of the Citrus Code is "to protect health and welfare and to stabilize and protect the citrus industry of the state,"[53] the embargo statute is at least facially valid. However, this does not preclude the possibility that the statute may be unconstitutional as applied to certain individuals.[54]

Four Florida cases dealing with due process challenges against plant control and citrus regulations not only help to illustrate how the reasonable relationship standard is implemented, but also support the thesis that there are due process problems in the application of an embargo under section 601.90(2)(a). In *State ex rel. Wolyn v. Apalachicola Northern R.R. Co.*,[55] the Florida Supreme Court held that a Florida Plant Board order "must be based upon facts sufficient to support it. . ." in order for it to be valid.[56] The Plant Board had ordered a

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47. *Id.*

48. State ex rel. Pennington v. Quigg, 94 Fla. 1056, 114 So. 859 (1927); Scarborough v. Newsome, 150 Fla. 220, 7 So. 2d 321 (1942); Powell v. State, 345 So. 2d 724 (Fla. 1977).

49. Kass v. Lewin, 104 So. 2d 572, 578 (Fla. 1958).

50. Conner v. Cone, 235 So. 2d 492, 494 (Fla. 1970).

51. L. Maxcy Inc. v. Mayo, 103 Fla. 552, 139 So. 121 (1939). *See also* Graham v. Estuary Properties, Inc., 399 So. 2d 1374 (Fla. 1981).

52. State ex rel. Lawson v. Woodruff, 134 Fla. 437, 184 So. 81 (1938); Williams v. Kelly, 133 Fla. 244, 182 So. 881 (1938).

53. FLA. STAT. § 601.02(1) (1983).

54. *See supra* note 50.

55. 81 Fla. 383, 87 So. 909 (1921).

56. *Id.* at 392, 87 So. at 912.

quarantine prohibitng the shipment of sugar cane in a number of Florida counties where it was determined that the cane was likely to be infected with Mosaic disease.[57] The plaintiff sought to ship Japanese cane, a variety known to be immune from the disease, from one of the quarantined counties.[58] Without ruling on the constitutionality of the quarantine statute, the court held that, since plaintiff's cane posed no threat, no proper basis existed for the quarantine order.[59] The shipment was allowed. *Wolyn*, a 1921 case, clearly shows that quarantine orders are inapplicable against crops that are free of pests or pose no threat of infestation, since in such a situation the order bears no reasonable relationship to a legitimate state purpose. An extension of this reasoning suggests that an embargo order which is issued pursuant to a severe freeze should not be applied against undamaged citrus.

In *L. Maxcy, Inc. v. Mayo*,[60] a Florida law banning any arsenic spraying of citrus was held a valid exercise of the police power. The plaintiffs alleged the regulation was arbitrary and unreasonable since it was possible that moderate use of arsenic was not harmful to citrus[61] and, therefore, a total ban was unfair. The court noted that the use of arsenic did not change the appearance of the fruit, but affected its interior quality. This tended to defraud consumers and in turn injure the reputation of Florida citrus.[62] The difficulty in facially recognizing citrus treated with arsenic led the Florida Supreme Court to uphold the regulation. The court noted that in cases where an "evil tendency" cannot be easily distinguished, the legislature may impose regulations which prohibit innocent activity, "as a means of insuring a statute's effectiveness against the dominant evil of acts of that same general class regardless of degree."[63] In applying a reasonable relationship standard, the *Maxcy* court was able to find that the no-arsenic statute promoted the general welfare. Further, even as applied to individuals who were using arsenic in safe doses, the Florida Supreme Court sustained the regulation because of the difficulty inherent in recognizing

57. *Id.* at 386-7, 87 So. at 910. Mosaic disease is an insect-vectored virus of sugarcane which causes stunting and death of the plant. It can be spread by insects. Telephone interview with Peter D. Spyke, M.S., St. Lucie County Extension Agent (Nov. 28, 1984).

58. 81 Fla. at 385, 87 So. at 909-10.

59. *Id.* at 393, 87 So. at 912.

60. 103 Fla. 552, 139 So. 121 (1932).

61. *Id.* at 574, 139 So. at 130.

62. *Id.* at 572, 139 So. at 129.

63. *Id.*

citrus that was improperly treated.[64] Arguably, however, there is no similar problem when a citrus freeze occurs, for two reasons: first, damage will be known to occur if cold weather remains for a specified length of time, and second, inspection will readily determine if fruit is harmed. Therefore, the *Maxcy* reasoning, based on an inherent identification problem, is not applicable when considering the Florida embargo law.

In *Corneal v. State Plant Board*,[65] a regulation resulted in the destruction of healthy as well as infected citrus trees. It was held that grove owners must be compensated for the destruction of their uninfected trees.[66] Noting that the police power may be broadly employed, the Florida Supreme Court stressed that even the police power is subject to "constitutional limitations, and it cannot properly be exercised beyond such reasonable interferences with the liberty of action of individuals as are really necessary to preserve and protect the public health, safety and welfare."[67] The court approved the Plant Board's treatment program aimed at eradicating the burrowing nematode[68] in citrus groves, and further held that infected trees could be pulled and burned.[69] However, the destruction of healthy trees in close proximity to those found to be diseased robbed grove owners of profits and exceeded the proper limits of the police power.[70]

Corneal's holding rests in part on the concept of eminent domain. The Court stated that "the compulsory program requires the destruction of one owner's healthy trees for the purpose of protecting the healthy trees of his neighbors."[71] While a citrus embargo order fails to destroy property of unaffected grove owners to the extent it constitutes a taking without compensation,[72] it nevertheless infringes upon the

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64. *Id.* at 575, 139 So. at 130. The court suggested that in order to monitor a mere regulation of arsenic spraying the state would require "an army of enforcement officers" to administer the law. *Id.*

65. 95 So. 2d 1 (Fla. 1957), *modified*, 101 So. 2d 371 (Fla. 1958).

66. *Id.* at 6-7.

67. *Id.* at 4. The plaintiff in this case attacked the Plant Board order under both the Florida and federal constitutions. *Id.*

68. The burrowing nematode, *Radolophus similis*, is a worm which attacks the roots of citrus trees and is the only mobile nematode. Potential damage is greater due to the fact that a localized infestation may spread. Telephone interview with Peter D. Spyke, M.S., St. Lucie County Extension Agent (Nov. 28, 1984).

69. 95 So. 2d at 6.

70. *Id.*

71. *Id.*

72. "No private property shall be taken except for a public purpose and with full

property rights of those in the citrus business. Also, an embargo order has at least a temporary effect on profits since no sale of citrus may be made for the duration of the order. There is, therefore, some similarity between the unfair effects of the tree destruction in *Corneal* and an embargo which halts the business operations of citrus operators in possession of undamaged fruit. Since the *Corneal* court felt that the destruction of healthy trees was not reasonably related to the general welfare, it may arguably follow that an embargo order which prohibits the movement of undamaged, quality citrus would likewise be held impermissible.

More recently, in *Flake v. Department of Agriculture*,[73] Florida's Fifth District Court of Appeal held that a Florida quarantine order was constitutionally valid since the order constituted a precautionary measure. The plaintiffs, Mr. Flake and others, had illegally imported a new strain of citrus from Texas which was susceptible to foot rot[74] and a ringspot virus.[75] One of the plaintiff's trees was subsequently found to be infected with ringspot and the quarantine order was issued.[76] The court held "[i]n enacting regulatory measures which protect but do not destroy property, the law need not restrict itself to conditions actually harmful but may require precautions within the whole range of possible dangers. . . ."[77] This reasoning might lead one to view an embargo order as a precaution and therefore within the ambit of the police power. However, Flake's trees were known to be infected with a plant disease, which rendered the quarantine reasonably related to the police power since there was a legitimate concern that other trees would become diseased. Again, an argument may be made that no such reasonable relationship exists when an embargo affects grove owners and retailers dealing in undamaged fruit since the Florida citrus industry is

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compensation. . . ." FLA. CONST. art. x, § 6. An interesting argument may be made that an embargo effectuates a temporary taking of property. Such a discussion is beyond the scope of this note.

73. 383 So. 2d 285 (Fla. 5th Dist. Ct. App. 1980).

74. Foot rot, *Phytophthora parasitica*, is a fungus disease which occurs naturally in the soil. It attacks the stems, roots and fruit of citrus, causing root rot, girdling of the trunk and decay of fruit on the tree. Telephone interview with Peter D. Spyke, M.S., St. Lucie County Extension Agent (Nov. 28, 1984).

75. The Necrotic Ringspot Virus is not known in Florida. It causes lesions, stunting, and in some cases, death of the tree. Telephone interview with Peter D. Spyke, M.S., St. Lucie County Extension Agent (Nov. 28, 1984).

76. 383 So. 2d at 287.

77. *Id.* at 289 quoting Corneal v. State Plant Bd., 95 So. 2d 1 (1957).

not threatened by the sale or transportation of quality citrus.

In all of the foregoing cases, only plants or crops which were diseased, susceptible to disease, or of a nature where contamination was difficult to ascertain were allowed to be regulated under the police power. This case law arguably strengthens a due process argument aimed at section 601.90(2)(a). In addition, none of these cases applied the balancing of interests test.[78] If the test is applied to a hypothetical situation where an embargo has virtually shut down a citrus retailing operation for two weeks, additional problems with the constitutionality of the embargo law become apparent. Initially, the balance would seem to weigh heavily on the side of the state's interest in protecting those in the citrus industry and the reputation of Florida fruit. In 1915, the Supreme Court of the United States recognized that citrus is "one of the great industries of the state of Florida"[79] and that its reputation is in need of protection in foreign markets.[80] More recently it has been held that the citrus business is of such import to state welfare that the police power may be used to safeguard the industry.[81] If this interest is being weighed against the property rights of a citrus operator whose fruit is freeze-damaged, the embargo statute would certainly prevail, since the sale of such fruit would injure the reputation of Florida fruit. However, if the property rights subject to this hypothetical balance are those of a retailer in possession of only quality fruit, the balance arguably shifts. When the retailer is allowed to continue to sell this undamaged fruit, the purposes of the Citrus Code are well-served since the retailer's business to some degree enhances the reputation of Florida citrus and helps the economy of the state. When an embargo forces a retailer in possession of quality citrus, and others in a similar situation, to refrain from selling or transporting fruit, the purposes behind the Citrus Code are frustrated since the nation is kept from consuming undamaged Florida fruit. Furthermore, the publicity of the state-wide ban likely has a negative impact on out-of-state consumers. Under the balancing of interests standard, the retailer should prevail, not simply because of a desire to protect individual rights that are in no way affected by the exigencies of a citrus freeze, but also because of a recognition that this result is better for the state's welfare. As the balance tips in favor of individual citrus businessmen, one may arguably sug-

78. *See supra* text accompanying note 44.
79. Sligh v. Kirkwood, 237 U.S. 52, 61 (1915).
80. *Id.*
81. Dep't of Citrus v. Griffin, 239 So. 2d 577, 578 (Fla. 1970).

gest that the application of section 601.90(2)(a) in such a hypothetical situation bears no reasonable relationship to the purposes which underlie the Citrus Code.

This hypothetical situation represents what actually resulted from the embargo order of December 29, 1983. The suggested due process flaw within section 601.90 takes on greater proportions when one is reminded that people involved in the citrus industry throughout several counties were forced to comply with a state-wide embargo order despite the fact their fruit escaped any freeze damage. This potential due process problem affected more than a few isolated businesses; it forced all citrus operators throughout the southern portion of the State, except for processing plants and their suppliers, to halt the sale and transportation of citrus for the duration of the embargo period.[82]

B. Delegation of Power

The Florida Constitution expressly provides for the creation of certain administrative agencies,[83] but the Citrus Commission does not fall within this category. It is well settled, however, that legislative creation of administrative agencies is compatible with the Florida Constitution.[84] The Florida legislature provided for the creation of the Citrus Commission in section 601.04 of the Florida Citrus Code of 1949.[85] The Commission is an administrative board within the Department of Citrus[86] and its creation is a valid legislative act.[87] In addition to creat-

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82. The contribution of the counties in the southern portion of the citrus belt is not insignificant. For example, in January, 1983, the total shipments of state citrus numbered 8,157,560 4/5 bushel boxes. This was during a peak citrus shipping month in a year without a citrus freeze. Of that total, the southern citrus counties of Broward, Palm Beach, Martin and St. Lucie contributed 1,319, 639 4/5 bushel boxes. FLA. DIVISION OF FRUIT & VEGETABLE INSPECTION ANN. REP. 30 (1982-3).

83. FLA. CONST. art. IV, § 8(c) (creation of Parole Commission); art. IV, § 6(b) (boards to grant and revoke occupational licenses); art. IV, § 9 (Game and Fresh Water Commission).

84. Storrs v. Pensacola & A.R., 29 Fla. 617, 11 So. 226 (1982), for example, upheld the constitutionality of the Railroad Commission Act, which authorized railroad commissioners within the state to fix fair passenger and freight rates.

85. *See supra* note 15.

86. FLA. STAT. § 601.04(1)(a) (1983).

87. *See supra* note 80. *See also* Richardson v. Baldwin, 124 Fla. 233, 168 So. 255 (1936) (the state may authorize laws to protect agricultural industries and may confer authority on administrative agencies to make rules and regulations to enforce those laws); State ex rel. Davis v. Fowler, 94 Fla. 752, 114 So. 435 (1927); Milk

ing an administrative agency, the legislature may confer upon an agency the right to exercise the state police power.[88] But while the legislature may empower an administrative body to make determinations in accord with its policy in a certain area, this type of delegation is limited by article III, section 1 of the Florida Constitution.[89] Any statute which creates or grants power to an administrative agency is presumptively constitutional,[90] but whenever the legislature delegates discretionary authority to an administrative agency, it must guide the agency with standards and policy.[91] These standards must be sufficient to preclude the agency from exercising arbitrary power.[92]

It follows that in order to make an argument that section 601.90 represents an unconstitutional delegation of legislative power, one must ask three questions: 1) whether section 601.90 grants power to an administrative agency; 2) if section 601.90 grants such power, whether the Code furnishes that agency with standards to guide it in the exercise of its power; and 3) if these standards exist, whether they suffice to prevent an arbitrary exercise of power on the part of the administrative body.

The title of the embargo statute, "Freeze-damaged citrus fruit; power of commission," may easily answer the first question. The text of the section[93] specifically details the extent of the power, which includes the authority to enter an emergency embargo order. An affirmative answer also exists for the second question, since the section does give the Commission standards to follow in considering whether an embargo should be issued. Particularly, the Commission must determine that se-

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Comm'n v. Dade County Dairies, Inc., 145 Fla. 579, 200 So. 83 (1940).

88. Bailey v. Van Pelt, 78 Fla. 337, 82 So. 789 (1919); Fla. Canners Ass'n v. State Dep't of Citrus, 371 So. 2d 503 (Fla. 2d Dist. Ct. App. 1979), *aff'd*, 406 So. 2d 1079 (1981); Coca-Cola Co. v. State Dep't of Citrus, 406 So. 2d 1079 (Fla. 1981), *appeal dismissed*, 456 U.S. 1002 (1982). The Citrus Code specifically states it is enacted "[i]n the exercise of the police power. . . ." FLA. STAT. § 601.02(1) (1983).

89. FLA. CONST. art III, § 1 states in pertinent part, "The legislative power of the state shall be vested in a legislature of the State of Florida. . . ."

90. State ex rel. Atlantic C.L.R. Co. v. State Board of Equalizers, 84 Fla. 592, 94 So. 681 (1922).

91. Phillips Petroleum Co. v. Anderson, 74 So. 2d 544 (Fla. 1954).

92. Barrow v. Holland, 125 So. 2d 749 (Fla. 1960). "An agency of government having the power to regulate is not permitted to arrogate to itself or to delegate to its employees the arbitrary power to determine private rights with an unbridled discretion." *Id.* at 752. *See also* Delta Truck Brokers, Inc. v. King, 142 So. 2d 273 (Fla. 1962).

93. *See supra* note 1.

rious damage has occurred to citrus fruit before it may issue an emergency order. The standard of serious damage is defined in the preceding section.[94] The final question is whether the guidelines provided in section 601.90 as to "serious damage"[95] are sufficient to prevent the Commission from exercising its power in an arbitrary manner. This note has suggested that an embargo order fosters arbitrary and discriminatory results when cold weather damages only a portion of the state's citrus. In such a situation the order forces those with quality fruit to curtail business activity. This activity, if allowed to continue without interference, would actually promote the purposes of the Citrus Code. The fact that such an unfair infringement of rights[96] may result when the Commission follows the present system indicates that the

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94. FLA. STAT. § 601.89 (1983) provides:

(1) Citrus fruit shall be deemed "seriously" damaged by freezing when such freezing causes:

(a) Marked dryness to extend into the segments of oranges and grapefruit more than one-half inch at the stem end; or into segments of mandarin or hybrid varieties more than one-fourth inch at the stem end; or more than an equivalent amount by volume of dryness to occur in any other portions of the fruit.

(b) Internal freeze-related injury, as defined in subsection (3), when such condition or combinations of conditions is determined to affect the fruit to a degree equal in seriousness to that described in paragraph (a).

(2) Citrus fruit shall be deemed "damaged" by freezing when such freezing causes:

(a) Marked dryness to extend into the segments of oranges and grapefruit more than one-quarter inch but less than one-half inch at the stem end; or into segments of mandarin or hybrid varieties more than one-eighth inch but less than one-fourth inch at the stem end; or more than an equivalent amount by volume of dryness to occur in any other portions of the fruit.

(b) Internal freeze-related injury, as defined in subsection (3), when such condition or combinations of conditions is determined to affect the fruit to a degree equal in seriousness to that described in paragraph (a).

(3) Internal freeze-related injury to citrus fruit, caused by freezing, shall consist of any of the following:

(a) Wet cores or wet segment walls;

(b) Water soaking;

(c) Juice cell breakdown;

(d) Mushy condition;

(e) Honeycomb or open spaces in pulp; or

(f) Other evidence of internal breakdown, decay, or moldy condition.

95. FLA. STAT. 601.90(1) (1983).

96. *See supra* text accompanying notes 35-36.

standards currently set forth in section 601.90 are insufficient.

Several Florida cases recognize that sufficiently restrictive standards are required in a valid delegation of legislative power. In *Mahon v. County of Sarasota*,[97] the need for proper standards was emphasized when an agency regulation prohibiting the accumulation of garbage and vegetation was held invalid for failing to sufficiently limit the discretion of the county. A few years later, in *Dickinson v. State*,[98] Florida's Supreme Court held that the legislative delegation of power to a state agency for the purpose of administering the operation of cemetaries was unconstitutional since it was not clearly defined and sufficiently limited in scope. The court held that a delegation of power is invalid if it fails to afford adequate protection against unfairness and favoritism.[99]

Individuals alleging an over-broad delegation of power have also attacked agriculture and citrus statutes. In *Hutchins v. Mayo*,[100] the State Supreme Court held that, under the Florida Constitution, in order to determine whether a statute unlawfully delegates legislative authority, the test is "whether or not the act defines a pattern by which the rule or regulation must be made to conform."[101] In *Hutchins*, the plaintiffs challenged a statute which gave the Citrus Commission the power to fix various citrus standards and make regulations pertaining to grading, stamping or certifying citrus fruit as well as the power to collect assessments. The *Hutchins* court sustained the delegation of power because the powers that were delegated to the Commission were necessary to carry out the legislative policy of regulating the citrus industry.[102] An argument may be made that allowing the Citrus Commission to order a state-wide ban on the sale and transportation of citrus when only certain portions of the state have suffered freeze damage falls short of fulfilling the purpose of the Citrus Code. As has been suggested, such a ban actually hurts legislative policy.[103]

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97. 177 So. 2d 665 (Fla. 1965).

98. 227 So. 2d 36 (Fla. 1969).

99. *See id.* at 37.

100. 143 Fla. 707, 197 So. 495 (1940).

101. *See id.* at 496 (quoting Arnold v. State, 140 Fla. 610, 612, 190 So. 543, 544 (1939)). In this case, the pertinent portions of the Florida Constitution were article II, dealing with division of powers and article III, § 1, which vests legislative power in the state House of Representatives and the Senate.

102. *See id.* at 497.

103. *See supra* text accompanying note 77.

In *Conner v. Joe Hatton, Inc.*,[104] a statute which allowed the Commissioner of Agriculture to assess on all individuals involved in the sweet corn industry their pro-rata share of the expenses necessary to fund its marketing orders was held invalid. The statute was fatally defective since it failed to set any ceiling on the amount of money the Commissioner could spend on marketing orders as well as the amount which could be assessed against the individual members of the industry.[105] In *Department of Citrus v. Griffin*,[106] the Florida Supreme Court held that in determining whether a legislative delegation of authority is sufficiently restrictive, due consideration must be paid to "the practical context of the problem sought to be remedied or the policy sought to be effected."[107] In *Griffin*, plaintiffs challenged the Orange Stabilization Act,[108] which empowered the Department of Citrus to issue marketing orders and to fund them through limited assessments on boxed oranges. The *Griffin* plaintiffs also attacked a marketing order that had been issued pursuant to the act.[109] Both the Act and the order were upheld. The court noted that legislative delegation of power may be permissible in situations where it is impractical for the legislature to handle administrative matters on a year-round basis.[110] However, relying on *Dickinson v. State*[111] the Florida Supreme Court held that even when constantly changing conditions allowed a general scheme to be delegated, statutes may not be "so general and unrestrictive that administrators are left without standards for the guidance of their official acts."[112]

Admittedly, it may be impractical for the legislature to deal directly with the exigencies of a citrus freeze. If this is so, *Griffin* would appear to allow a general delegation of powers to an administrative body such as the Citrus Commission. Nevertheless, *Griffin* would likely demand that the empowering statute sufficiently limit the Commis-

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104. 203 So. 2d 154 (Fla. 1967).

105. *See id.* at 155. The portion of the Florida Constitution violated in this instance of delegation was article IX, § 3, which states that "[n]o tax shall be levied except in pursuance of law."

106. 239 So. 2d 577 (Fla. 1970).

107. *See id.* at 580.

108. *See id.* at 578.

109. *Id.*

110. *See id.* at 580.

111. *See supra* note 94.

112. 239 So. 2d 577, 581 (Fla. 1970).

sion's power.[113] Section 601.90 fails to state that the Commission may order an embargo against only that citrus which shows serious damage. It is this missing standard which renders the statute's validity questionable. Without this guideline, the application of the embargo statute to those who survive a freeze with quality fruit is unfair and unreasonable.

Another provision of the statute indicates that power has been insufficiently limited. Section 601.90 allows the Commission to choose between four types of embargos.[114] Each type of embargo may have an impact on different people within the citrus industry. Further, the impact may be felt for various lengths of time depending on the Commission's choice. However, even though each embargo may have different results, the same single standard (that serious damage has occurred to any citrus within the state) applies to all of the choices. Without any further guide the Commission may use the fact that citrus in the northern portion of the state has sustained serious damage to order a ban on the sale and transportation of citrus in other, possibly unaffected, portions of the state.

III. Alternatives to a State-wide Embargo and a Suggested Approach

Upon consideration of the constitutional questions raised by the existing freeze procedure, one must also consider alternatives to the present embargo system. Statutes of two other major citrus-producing-states, California and Texas, provide an illuminating study of more flexible approaches to freeze emergencies. Florida may profit by using these alternative approaches as sound guides toward a more acceptable freeze procedure.

The State of California demands that its citrus be free from serious damage.[115] A detailed inspection program has been developed to prevent damaged fruit from leaving the state. Once a freeze occurs, citrus fruit is inspected by examining the segment walls of the fruit.[116] This method of inspection continues until a survey provides additional evidence of the extent of actual freeze damage, a point known as "date

113. Griffin states that "[e]ven where a general approach would be more practical than a detailed scheme of legislation," constitutional limitations exist. *Id.* at 581.

114. *See supra* note 1; FLA. STAT. § 601.90(2) (1983).

115. CAL. ADMIN. CODE TIT. 3, R.1430.89 (1983).

116. CAL. ADMIN. CODE TIT. 3, R.1430.92(a) (1983).

A."[117] From date A forward, inspection may be made either by inspection of the segment walls or by a transverse cut through the center of the fruit.[118] This double method of inspection remains in effect until it is possible to make a reasonably precise determination of the full extent of freeze damage.[119] After this point, known as "date B,"[120] inspection is made by the transverse cut method.[121] The determination that a citrus freeze has triggered the drying process is based upon inspection of fruit in only those areas of California where freeze damage has occurred.[122]

The California approach focuses on inspection of fruit in areas hit by a freeze, leaving those citrus producers in other areas free from inspection or any interference with their business. This procedure avoids the constitutional problems faced by Florida's section 601.90. First, by allowing those citrus operators who escape any freeze damage to continue to pursue their livelihood, there is no danger of an arbitrary deprivation of property rights. This eliminates any violation of substantive due process through application of the freeze statute. Second, there is a valid delegation of power to the agricultural administrative body, since the California law states that inspections shall be made only in areas of the state which sustain freeze damage.[123] The statutes further detail the methods of inspection for freeze-damaged fruit.[124] These precise standards sufficiently limit the discretionary power of the officials so as to prevent any arbitrary and unfair application of the law.

The Texas Agricultural Code provides another citrus freeze procedure which is worthy of examination. The damage caused to citrus as

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117. *Id.*
118. CAL. ADMIN. CODE TIT. 3, R.1430.92(c) (1983).
119. CAL. ADMIN. CODE TIT. 3, R.1430.92(b) (1983).
120. *Id.*
121. *Id.*
122. CAL. ADMIN. CODE TIT. 3, R.1430.98 (1983) states:
> The determination by the Director of the Department of Food and Agriculture as required by Section 1430.92 of the California Administrative Code, that the drying process resulting from freezing damage has been developed (a) "to such extent as to furnish additional evidence of the extent of actual damage to the fruit" and (b) "to such extent as to permit reasonably accurate determination of the full extent of freezing damage by such examination, without regard to the damage on the segment walls," shall be based upon an investigation of the condition of orange fruits in the areas of the State where freezing damage to oranges has occurred.

123. *Id.*
124. *See supra* notes 112-117.

the result of a freeze falls into the category of "Citrus fruit and storage rot" on Texas' list of dangerous diseases and pests.[125] The Department of Agriculture may quarantine an infected area if it is determined that one of these plant diseases exists within the state.[126] This quarantine procedure deals with plant diseases which are not widely distributed in the state.[127] Texas also allows the Department of Agriculture to establish an emergency quarantine, without notice or public hearing, when a public emergency exists.[128] While this type of quarantine may immediately extend to the state borders, it is unlikely to be used in the face of a citrus freeze. Freeze damage occurs as the result of cold temperatures, and damage may be readily predicted and discovered. Texas' emergency quarantine is aimed at controlling the "introduction or dissemination of an insect pest or plant disease,"[129] indicating it is chiefly concerned with plant diseases which are of a spreading and uncertain nature. Freeze damage does not fall into this category. Therefore, the general quarantine provision of the Texas Agricultural Code[130] would most likely be followed in the event of a citrus freeze.

The Texas quarantine, like the California inspection program, focuses a freeze procedure only on areas that are affected by the citrus freeze.[131] Therefore, the Texas approach protects the property of people

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125. TEX. AGRIC. CODE ANN. § 73.004(27) (Vernon 1982).

126. TEX. AGRIC. CODE ANN. § 71.002 (Vernon 1982) states:
"If the department determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state, the department shall quarantine the infested area."

127. *Id.*

128. TEX. AGRIC. CODE ANN. § 71.004 (Vernon 1982) provides:
(a) The department may establish an emergency quarantine without notice and public hearing if the department determines that a public emergency exists in which there is the likelihood of introduction or dissemination of an insect pest or plant disease that is dangerous to the interests of horticulture and agriculture in this state.
(b) The department may establish the emergency quarantine at the boundaries of the state or in other areas within the state.
(c) The emergency quarantine and rules adopted in order to prevent the introduction or spread of the pest or disease are effective immediately on establishment or adoption.
(d) An emergency quarantine expires 30 days following the date on which it was established unless reestablished following notice and hearing as provided by this subchapter.

129. *Id.*

130. *See supra* note 122.

131. Quarantines are established against "the infested area." TEX. AGRIC. CODE

in the citrus business whose fruit is undamaged and also sufficiently limits the Department of Agriculture's administrative power.

Florida, too, has a quarantine law.[132] The Plant Industry Division of the Florida Department of Agriculture has the power to declare a quarantine against an orange grove if plant pests are discovered.[133] The statutory quarantine prohibits the movement, sale or other disposal of any plant or plant product included in the quarantined area.[134] Orders are issued "in reference to plant pests,"[135] indicating they must be premised on a plant-threatening situation.[136] This statute ensures that the harsh effect of a quarantine only affects those plant growers and distributors whose property lies within the infested area.

Just as it is possible to determine the extent of pest infestation, freeze damage may be ascertained by monitoring cold temperatures and inspecting suspect fruit. Therefore, it is possible that Florida's quarantine laws could be modified to expressly govern a citrus freeze situation. However, this would result in placing the quarantine decision in the hands of the Plant Industry Division, not the Citrus Commission. Since the Commission fairly represents all the interests within the citrus industry[137] it is best that that body retain power over citrus freeze situations.

Arguably, the better alternative is to correct the problems within section 601.90. The Commission should be authorized to order an embargo against any area of the state which sustains citrus damage as the result of a freeze. This would include both "serious damage" and "damage" as defined by the Citrus Code.[138] The length of the embargo should correspond to the length of time needed for the Department of Citrus inspectors to ascertain the degree of citrus damage. Any fruit showing damage to the extent that its sale would injure the reputation of Florida citrus or pose a threat to the general welfare should be pro-

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ANN. § 71.002 (Vernon 1982). Texas also allows the commissioners court of any county to request that the department investigate the possibility of a plant pest or disease within the county. TEX. AGRIC. CODE ANN. § 71.008 (Vernon 1982).

132. FLA. STAT. § 581.03(7) (1983).

133. *Id.*

134. FLA. STAT. § 581.101(1) (1983).

135. FLA. STAT. § 581.031(7) (1983).

136. A recent quarantine went into effect in the Greater Miami area on June 27, 1984, upon discovery of five adult Mediterranean fruit flies in the Little Havana neighborhood. Miami Herald, June 27, 1984, at 4D, col. 1.

137. *See supra* note 15.

138. FLA. STAT. § 601.89 (1983).

hibited from further movement, unless that fruit is to be used for processing purposes.[139] Under this system, quality fruit could continue to be packed and sold, lessening the negative impact a state-wide ban would have on consumers.[140] This negative consumer attitude is thought to outlast the embargo period.[141] South Florida citrus operators who were unreasonably subject to the 1983 embargo felt that a state-wide embargo ultimately resulted in consumer fear of Florida fruit.[142] This consumer fear has two causes: the absence of Florida citrus in the marketplace for a period of time, and the long time needed for citrus prices to stabilize.[143] The businessmen also expressed concern that the after-effect of an embargo, perhaps more than its immediate impact, hurts the industry.[144]

The suggested revisions to section 601.90 would result in a freeze procedure that would be technically different from the procedures followed in either California or Texas, but would rid the current law of the serious problems created by its application. A regional embargo system would not interfere with business pursuits in an unreasonable or arbitrary manner. Further, the suggested amendment to 601.90 would limit the power of the Commission, preventing it from being used in an unfair manner. The end result would well serve the two primary purposes of the Citrus Code: to enhance the reputation of Florida citrus and to promote the state's economy. A regional embargo would indicate to national consumers that only part of Florida's citrus belt sustained freeze damage. This would translate into more consumer confidence when purchasing Florida citrus. Consumer confidence would

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139. Under the proposed revision, § 601.901 would remain unaffected. This section enables the Commission to establish the maximum permissible degree of freeze damage in fruit to be used for processing. FLA. STAT. § 601.901 (1983).

140. At the emergency meeting on Dec. 29, 1983 which resulted in the embargo order, four telephone messages were read from grove owners who escaped freeze damage. All four were against the embargo. One caller specifically mentioned his concern about negative media coverage. He felt widespread publicity about an embargo implies to the country that Florida is without any fresh citrus whatsoever. *Emergency Meeting and Public Hearing of the Florida Citrus Commission*, Dec. 29, 1983 at 6.

141. *Id.*

142. *Emergency Meeting and Public Hearing of the Florida Citrus Commission*, Dec. 29, 1983 at 7.

143. *Id.*

144. *Id.*

result in continued sales, ultimately benefiting all those directly and indirectly concerned with Florida's greatest agricultural industry.

Nancy Perkins Spyke