

REPORT TO THE GOVERNOR, SENATE, AND  
HOUSE OF REPRESENTATIVES  
OF THE STATE OF FLORIDA  
RECOMMENDING REPEAL OF THE  
RACIALLY DISCRIMINATORY ALIEN LAND  
PROVISION OF THE FLORIDA CONSTITUTION

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*Submitted by*

The Immigration and Nationality Law Review Association  
Alien Land Law Project  
University of Cincinnati College of Law  
P.O. Box 210040  
Cincinnati, Ohio 45221-0040  
inlr@law.uc.edu  
www.law.uc.edu/inlr  
(413) 254-1204

**I. INTRODUCTION: A RACIALLY DISCRIMINATORY PROVISION OF FLORIDA LAW SHOULD BE REPEALED.**

A provision intended to discriminate against Asians on the basis of race, passed in a different era, remains part of the Florida Constitution. It serves no useful purpose; it is unenforced, would be unconstitutional if enforced, and is contrary to the public policy and laws of this state which in many other contexts prohibit racial discrimination. Accordingly, it should be repealed.

As this report explains, in 1926, the legislature passed and the electors approved an amendment to the Florida Constitution denying to "aliens ineligible to citizenship" the same constitutional guarantee of the right to own real property enjoyed by citizens and other aliens. This law was aimed at persons of Asian racial ancestry. Asian Americans not born in the United States, at that time, could not become naturalized citizens by virtue of their race. Accordingly, Asians were racially ineligible to citizenship. *See Part II(A), post.*

Anti-Asian Alien Land Laws such as Florida's were not aberrational or isolated. Instead, these laws were part of a system of racial discrimination against Asian Americans during the Jim Crow era, similar to that experienced by members of other races. Discrimination in various states included school segregation, prohibition on interracial marriage, exclusion from desirable, affordable housing through racially restrictive covenants, and the well-known internment of Japanese Americans during World War II. *See Part II(B), post.*

The alien land provision of the Florida Constitution violates the United States Constitution because it discriminates on the basis of race and status as an alien without the justifications required for such discrimination by the United States Constitution. It also

interferes with federal regulation of immigration, and is therefore preempted by the Constitution. *See* Part III, post.

Because it is unconstitutional and unenforced, there is no particular reason to keep it. However, there are strong reasons to repeal it. First, it is contrary to the public policy of Florida which opposes racial discrimination. Second, because it is a part of an unfortunate history of racial discrimination, keeping it as a part of Florida's basic law sends the incorrect and offensive message that immigrants and non-whites are not welcome in this state. Accordingly, it should be repealed. *See* Part IV, post.

## **II. FLORIDA'S PROHIBITION ON LAND OWNERSHIP IS PART OF A LONG HISTORY OF RACIAL DISCRIMINATION AGAINST ASIAN AMERICANS ACROSS THE UNITED STATES**

As explained in Part II(A), laws aimed at "aliens ineligible to citizenship," such as Florida's, were aimed at Asian Americans, in particular Japanese Americans. In addition, the discrimination imposed by Alien Land Laws was particularly harsh, including imprisonment or seizure of land solely because of the individual's race. Part II(B) points out that the anti-Asian land laws were part of a larger pattern of discrimination by law against Asian Americans.

### *A. Alien Land Laws Represented A Particularly Harsh Form Of Racial Discrimination Against Asian Americans.*

#### **1. Laws Disadvantaging "Aliens Ineligible To Citizenship" Were Racially Discriminatory Because Eligibility To Citizenship Turned On Race**

In 1926, this state became one of more than a dozen to limit the right of aliens ineligible to citizenship to own land. The Florida Constitution of 1885, § 18, provided: "Foreigners shall have the same right as to the ownership and disposition of property in this State as citizens of the State." In 1926, the electors considered an amendment to this section denying

aliens ineligible to citizenship this protection. Several newspapers editorialized against it; The *Tampa Sunday Tribune*, for example, argued "there is no menace of foreign ownership in Florida . . . Colonies of Japanese, for instance, would mean intelligent and productive farming operations in Florida." Editorial, *Reject the Three*, TAMPA SUNDAY TRIBUNE, Oct. 24, 1926. The electors nevertheless approved the amendment, which now appears as the italicized portion of Florida Constitution Art. I § 2:

All natural persons, female and male alike, are equal before the law and have inalienable rights among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; *except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law.* No person shall be deprived of any right because of race religion, national origin, or physical disability.

This language is now somewhat obscure, but the meaning of the term at the time of its enactment was clear. The Supreme Court of Florida has held that when interpreting statutes,

legislative intent is the polestar by which the court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute. Furthermore, construction of a statute which would lead to an absurd or unreasonable result or would render a statute purposeless should be avoided. To determine the legislative intent, we must consider the act as a whole "the evil to be corrected, the language of the act, including its title, the history of its enactment, and the state of the law already in existence bearing on the subject."

*State v. Webb*, 398 So. 2d 820, 824 (Fla. 1981) (quoting *Foley v. State*, 50 So. 2d 179, 184 (Fla. 1951)). See also *State v. Jefferson*, 758 So. 2d 661, 665 (Fla. 2000) (noting that task of court is to ascertain the legislature's intent).

At the time the constitution was amended, the technical, obscure-sounding phrase "alien ineligible to citizenship" was a term of art referring primarily to Asians. As the *Miami Herald* explained in discussing the amendment, "In all probability it is intended to exclude Japanese from ownership of land in Florida." Editorial, *Defeat All*, MIAMI HERALD, Oct. 30, 1926. The

relationship between the term "alien ineligible to citizenship" and Asian race derives from the historical racial restrictions on access to United States citizenship by naturalization. This history is little known; as Cornell Law School Professor Milton Konvitz wrote in a ground-breaking study:

When Earl G. Harrison in 1944 resigned as United States Commissioner of Immigration and Naturalization, he said that the only country in the world, outside of the United States, that observes racial discrimination in matters relating to naturalization was Nazi Germany, "and all will agree that this is not very desirable company." It comes as a surprise to most Americans to learn that the United States has prohibited Japanese, Filipinos, the people of India, Burma, and others from becoming American citizens.

MILTON R. KONVITZ, *THE ALIEN AND THE ASIATIC IN AMERICAN LAW* 80-81 (1946).

The first federal naturalization law passed in 1790 extended benefits only to "free white persons." Act of Mar. 26, 1790, ch. 3, 1 Statutes at Large 103. Naturalization was extended to persons of African nativity and descent in 1870. Act of July 14, 1870, ch. 254, § 7, 16 Statutes at Large 254, 256. Thus, aliens of all other races were ineligible to citizenship. The Immigration Act of 1924 made the racial definition explicit, stating that the "term 'ineligible to citizenship' when used in reference to any individual means an individual who is debarred from becoming a citizen of the United States under section 2169 of the Revised Statutes . . . ." Immigration Act of 1924, 43 Statutes at Large 153, § 28(c). Section 2169, defining eligibility for naturalization, provided that "[t]he provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity and persons of African descent."<sup>1</sup> Applying this statute, the Supreme

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<sup>1</sup> American Indians were naturalized as a group in 1924; members of races native to the Western hemisphere were made eligible for naturalization by statute in 1940. Chinese were added to the list in 1943; Indians and Pilipinos in 1946. Naturalization was put on a wholly race-neutral basis in 1952. See Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 *UCLA LAW REVIEW* 1, 13-14 (1998), reprinted in 19 *IMMIGRATION & NATIONALITY LAW REVIEW* 3 (1999).

Court explained: "Generally speaking, the natives of European countries are eligible. Japanese, Chinese and Malays are not." *Terrace v. Thompson*, 263 U.S. 197, 220, 44 S. Ct. 15 (1923). *See also Morrison v. California*, 291 U.S. 82, 85-86, 54 S. Ct. 281 (1934) (listing the non-white races which were ineligible for citizenship).

Non-racial factors could prevent an individual alien from being eligible to citizenship, such as criminal convictions or lack of good moral character. However, "[w]hile any alien is ineligible to naturalization, whatever his race, if he lacks any one of several other qualifications required for naturalization, the [Alien Land Laws] have been interpreted as applying solely to those 'ineligible aliens' whose ineligibility is due to their race." Dudley O. McGoveney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CALIFORNIA LAW REVIEW 7, 7 n.1 (1947). The laws affected not only Japanese ineligible for citizenship, but also other Asian racial groups. *See California Delta Farms, Inc. v. Chinese American Farms*, 278 P. 227 (Cal.) (Chinese), *appeal dismissed*, 280 U.S. 520, 50 S. Ct. 67 (1929); *Carter v. Utley*, 231 P. 559, 559 (Cal. 1924) (Indian); *In re Fujimoto's Guardianship*, 226 P. 505 (Wash. 1924) (Japanese); RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 272 (1989) (Koreans).

Because of the clarity of the relationship between the Alien Land Laws and the federal naturalization laws, courts without exception have recognized that the term "alien ineligible for citizenship" was used as a racial classification. For example, in *Sei Fujii v. State*, 242 P.2d 617, 625 (Cal. 1952), the California Supreme Court invalidating that state's Alien Land Law, explained: "By its terms the land law classifies persons on the basis of eligibility to citizenship, but in fact it classifies on the basis of race or nationality. This is a necessary consequence of the

use of the express racial qualifications found in the federal code." *See also Takahashi v. Fish and Game Commission*, 334 U.S. 410, 412, 68 S. Ct. 1138 (1948) (noting that "[f]ederal laws, based on distinctions of 'color and race' have permitted Japanese and certain other nonwhite racial groups to enter and reside in the country but have made them ineligible for United States citizenship.") (citations omitted); *Oyama v. California*, 332 U.S. 633, 646, 68 S. Ct. 269 (1948) (striking down portion of California's law prohibiting ownership by aliens ineligible to citizenship, noting that it operated to "discriminat[e] . . . on the basis of . . . racial descent."); *State v. Oakland*, 287 P.2d 39, 42 (Mont. 1955) (declaring state's Alien Land Law unconstitutional for reasons set forth in *Sei Fujii* and *Namba*); *Namba v. McCourt*, 204 P.2d 569, 614 (Or. 1949) ("[O]ur Alien Land Law . . . must be deemed violative of the principles of law which protect from classifications based on race, color and creed.").

Scholars also unanimously recognize the racially discriminatory intent of the laws. As an article published at the University of Miami explains:

[I]n the early part of the twentieth century, some states passed laws known as the "alien land laws" that barred "aliens ineligible to citizenship" from owning certain real property. This facially neutral phrase was taken from the immigration and naturalization laws, which barred most non-white persons from becoming citizens. While incorporating a facially neutral phrase from the immigration laws into the land laws, the state effectively barred certain non-whites from owning real property. These laws were undisputedly directed at persons of Japanese ancestry.

Kevin R. Johnson, *Aliens and the U.S. Immigration Laws: The Social and Legal Construction of Non-Persons*, 28 UNIVERSITY OF MIAMI INTER-AMERICAN LAW REVIEW 263 (1997) (footnotes omitted). Many other scholars agree. *See, e.g.*, PAULI MURRAY, STATES' LAWS ON RACE AND COLOR 19 (1951) ("The purpose of these laws is to prevent Chinese, Japanese and certain Oriental groups from acquiring land"); Keith Aoki, *No Right to Own?: The Early Twentieth-*

*Century "Alien Land Laws" as a Prelude to Internment*, 40 BOSTON COLLEGE LAW REVIEW 37, 38-39 (1998) ("The salient point of these laws was their strongly racist basis--'aliens ineligible to citizenship' was a disingenuous euphemism designed to disguise the fact that the targets of such laws were [Japanese]"); Edwin E. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CALIFORNIA LAW REVIEW 61, 61-62 (1947) ("the alien land law was enacted and has been enforced solely as a discriminatory law directed against the Japanese"); McGoveney, *supra*, at 7 (Alien Land Laws apply to "aliens who are *racially* ineligible to naturalize") (emphasis in original); *The Alien Land Laws: A Reappraisal*, 56 YALE LAW JOURNAL 1017, 1017 n.3 (1947) ("The phrase 'ineligible for citizenship' initially operated to exclude all Asiatics").

California led the states in passing and enforcing anti-Asian land laws; after it passed its law in 1913, many others followed suit. FRANK CHUMAN, *THE BAMBOO PEOPLE: THE LAW AND JAPANESE AMERICANS* 76-77 (1981); TAKAKI, *supra*, at 206-07; McGoveney, *supra*, at 7-8. Because of the similar history and language of the Alien Land Laws, it is appropriate to consider the meaning and purpose of the laws of sister states. *See Flammer v. Patton*, 245 So. 2d 854, 858-59 (Fla. 1971) (noting that the Supreme Court of Florida has "long held that when our Legislature adopts a statute from another state, we should adopt that state's judicial construction of the statute.") (citing *Blank v. Yoo Hoo of Florida*, 222 So. 2d 420 (Fla. 1969); *State ex rel. Porter v. Atkinson*, 108 Fla. 325, 146 So. 581 (1933); *Duval v. Hunt*, 34 Fla. 85, 15 So. 876 (1894)); *Ellis v. State*, 622 So. 2d 991, 997 (Fla. 1993); 2B NORMAN J. SINGER, *STATUTES AND STATUTORY CONSTRUCTION* § 52.03, at 307-08 (6th ed. 2000) (statutes of other states relevant if it appears "through similarity of language that the act being construed was copied from another state or states.").

Proponents of the California Alien Land Law, the first and model for those in the other states, made no secret of its racially discriminatory aims. Professor Konvitz wrote that the California law was designed "to drive the Japanese from the land (and ultimately from California.)" KONVITZ, *supra*, at 158. California Attorney General U.S. Webb explained:

The fundamental basis of all legislation upon this subject State and Federal, has been, and is, race undesirability. The simple and single question is, is the race desirable. . . . [The law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land.

*Id.* at 159.

## 2. The Alien Land Laws Were Enforced By Punitive Measures Including Imprisonment And "Escheat"--Forfeiture To The State

The Alien Land Laws in many states were enforced through punitive legal measures. These laws and their enforcement "deeply demoralized the community" at the time, DAVID J. O'BRIEN & STEPHEN S. FUGITA, *THE JAPANESE AMERICAN EXPERIENCE* 24 (1991), and represent a bitter memory for Asian Americans today. Accordingly, this law cannot be overlooked as trivial or insignificant.

As might be expected of laws motivated by racial prejudice, in some states they were enforced by harsh measures, including criminal prosecution and "escheat," forfeiture of the property without compensation. *Cf. Dutton v. Donohue*, 44 Wyo. 52, 8 P.2d 90 (1932) (discussing escheat). As the Arizona Supreme Court explained, interpreting its representative land law:

The state may take the real property of an ineligible alien, or any interest he may acquire therein, from him by a proceeding to escheat it. It may also prosecute an ineligible alien who has conspired with another to effect a transfer of realty, or an interest in realty, to him, criminally and punish him severely. And

these remedies may be used concurrently. . . . Our law has real teeth in it, and persons who violate it may suffer very severe penalties, that is, they may have their lands escheated to the state besides being made to suffer criminal punishment -- as much as two years in the State Penitentiary or a \$5,000 fine, or both.

*Takiguchi v. State*, 55 P.2d 802, 803, 805 (Ariz. 1936) (citations omitted).

Many individuals, white and Asian, were successfully prosecuted criminally for engaging in land transactions. *See, e.g., People v. Osaki*, 286 P. 1025 (Cal. 1930); *People v. Entriken*, 288 P. 788 (Cal. App. 1930); *People v. Cockrill*, 216 P. 78 (Cal. App. 1923), *aff'd*, 268 U.S. 258, 45 S. Ct. 490 (1925); *see also Ex Parte Nose*, 231 P. 561 (Cal. 1924) (denying habeas corpus), *app. dismissed*, 273 U.S. 772, 47 S. Ct. 102 (1926).

Historical documentation of the Alien Land Law cases does not reveal the "scope of financial hardship and emotional trauma which the statutes created. We do know, however, the financial losses were real." Thomas E. Stuen, *Asian Americans and their Rights for Land Ownership* 620, in *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY* (Hyung-Chan Kim ed., 1992). After California strengthened its statute in 1921, "more than 30,000 Japanese farmers [prepared] to abandon nearly 500,000 acres of California's richest crop lands." *Japanese Exodus from California*, *THE LITERARY DIGEST*, Jan. 12, 1924, at 14. This had a permanent effect on the position of the Japanese Americans in the community. "Had the [aliens ineligible for citizenship] been able to consolidate a larger agricultural base, their power potential could have been far more substantial." JERE TAKAHASHI, *NISEI/SANSEI: SHIFTING JAPANESE AMERICAN IDENTITIES AND POLITICS* 24 (1997). The consequence of the discriminatory laws was a "heightened sense of alienation from American life and intensified ... feelings of subordination." *Id.*

B. *Historical Racial Discrimination Against Asian Americans Included School Segregation, Prohibitions On Interracial Marriage, Racially Restrictive Covenants Preventing Home Purchases, Racial Violence, Internment During World War II, And Racial Restrictions On Immigration.*

The significance of the Alien Land Laws can only be fully understood by examining the larger legal regime of which they were a part. During the Jim Crow era, and in other periods, Asian Americans, like members of other non-white racial groups, were subject to systematic discrimination on the basis of race. This discrimination made it more difficult to interact with the wider community, to learn, to obtain housing, employment and economic opportunities.

*School Segregation.* In several states, children of Asian racial ancestry were forced to attend segregated schools; indeed, the first Supreme Court decision to uphold segregation in education involved an Asian American child in Mississippi. *Gong Lum v. Rice*, 275 U.S. 78, 48 S. Ct. 91 (1927). *See also, e.g., Wong Him v. Callahan*, 119 F. 381 (C.C.N.D. Cal. 1902) (upholding California statute segregating students of Chinese descent). The Supreme Court declared segregated schools unconstitutional in *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 693 (1954), and in *Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693 (1947).

*Anti-Miscegenation Laws.* Many states prohibited persons of Asian ancestry from marrying persons of other races. As Professor Pauli Murray wrote in 1951:

One of the most widespread racial restrictions is found in the field of marriage. Thirty states forbid marriages between white persons and Negroes or mullatoes. Fifteen of those statutes also prohibit marriages between white persons and persons of Mongolian or Oriental descent and five states bar marriages between whites and American Indians.

MURRAY, *supra*, at 18. Several courts upheld restrictions on Asian American marriage. *See, e.g., Naim v. Naim*, 87 S.E.2d 749 (Va.), *remanded*, 350 U.S. 891, 76 S. Ct. 151 (1955), *adhered to*, 90 S.E.2d 849 (Va. 1956); *In re Shun Takahashi's Estate*, 129 P.2d 217 (Mont. 1942). The

Supreme Court invalidated laws prohibiting interracial marriage in *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817 (1967).

*Racially Restrictive Covenants.* Asians have also been subjected to racially restrictive covenants in deeds preventing them from purchasing or occupying residential real estate. The frequency with which these covenants were once employed is suggested by their prevalence in court cases involving deeds but having nothing to do with the covenants themselves. *See, e.g., McRae v. Lois Grunow Memorial Clinic*, 14 P.2d 478, 479 (Ariz. 1932) ("no part of said premises shall ever be conveyed, transferred, let or demised to any person or persons of African, Mexican, Mongolian or Indian descent"); *Gamble v. Fierman*, 255 P. 269, 270 (Cal. App. 1927) ("Said land shall never be rented to any person of African or Oriental descent"); *Guyton v. Yancey*, 125 So. 2d 365, 367 (La. 1960) (property could not "be sold to any person of the Negro, Mexican or Mongolian races"); *Ringgold v. Denhardt*, 110 A. 321, 322 (Md. 1920) (house "shall not be given, sold, rented or subleased to a negro or person of African or Mongolian descent"); *Gillingham v. Timmins*, 104 S.W.2d 115, 118 (Tex. Civ. App. 1937) (prohibition on "ownership or leasing by African or Mongolian races"). Racially restrictive covenants were held invalid in *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836 (1948).

*Racial Violence.* Persons of Asian descent have also been subjected to violence on the basis of race. When the Chinese first immigrated to this country, they were met with violent resistance. As noted historian Roger Daniels wrote: "The late nineteenth century American West was a violent region; with the exception of the American Indians, no group there suffered as much from violence as did the Chinese. No one can ever know how many Chinese were murdered and brutalized . . ." ROGER DANIELS, *ASIAN AMERICANS: JAPANESE AND CHINESE IN*

THE UNITED STATES SINCE 1850, at 58-59 (1988). However, he identified "major anti-Chinese riots" in California, Idaho, Colorado and Wyoming, among other places. *Id.* at 58-66.

In the contemporary period, the record reflects organized and random racial violence against Asians. See ANTI-ASIAN VIOLENCE: OVERSIGHT HEARING BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES 100<sup>th</sup> Cong. (Serial No. 116, 1987); Jerry Kang, *Racial Violence Against Asian Americans*, 106 HARVARD LAW REVIEW 1926 (1993). The trouble Vietnamese refugees had with the Ku Klux Klan in Texas was widely publicized. *Vietnamese Fishermen's Association v. The Knights of the Ku Klux Klan*, 518 F. Supp. 993 (S.D. Tex. 1981).

Even more recently, Benjamin Nathaniel Smith, a member of a group that opposed "'Christianity, Judaism, blacks and immigrants with equal vehemence' and has declared a 'holy war' on minorities" shot at a number of African Americans, Jewish persons and Asian Americans, during a three day rampage in Illinois and Indiana, killing Ricky Byrdsong, an African American who had been the coach of Northwestern's basketball team, and a Korean graduate student, Won Joon Yoon. *Suspect in Racial Shootings Kills Self*, PALM BEACH POST, July 5, 1999, at 1A. See also Robin Mitchell, *Hate Group Tied to Slayings Got its Start in Florida*, ST. PETERSBURG TIMES, July 7, 1999, at 1A; *Supremacists Distributing Literature*, ALBUQUERQUE JOURNAL, Jan. 11, 2000, at 1. This year, in Pittsburgh, Richard Baumhammers, in "a racially motivated shooting spree" killed "a Jewish woman, an Indian man, a Chinese man, a Vietnamese man and a black man." *Suspect in Pa. Killings Called Incompetent*, PALM BEACH POST, May 10, 2000, at 13A.

*Internment of Japanese Americans.* Perhaps the best known race-based action against Asian Americans was the internment of United States citizens of Japanese ancestry during World

War II. The Supreme Court upheld a race-based curfew in *Hirabayashi v. United States*, 320 U.S. 81, 63 S. Ct. 1375 (1943), and race-based exclusion from the West Coast in *Korematsu v. United States*, 323 U.S. 214, 65 S. Ct. 193 (1944). See generally PETER IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES (1983); ROGER DANIELS, CONCENTRATION CAMPS NORTH AMERICA; JAPANESE IN THE UNITED STATES AND CANADA DURING WORLD WAR II (1981). In 1988, the U.S. Congress voted to pay reparations to Japanese Americans, and issued a formal apology:

The Congress recognizes that, as described by the Commission on Wartime Relocation and Internment of Civilians, a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. As the Commission documents, these actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission, and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership. The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made. For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.

50 App. U.S.C. § 1989a(a).

*Race-Based Immigration Laws.* Asians were a particular target of race-based federal immigration laws. Although there were no numerical limitations or other racial or national restrictions at that time, Congress banned Chinese immigration in 1882. Act of May 6, 1882, ch. 126, 22 Statutes at Large 58 (repealed 1943). See *Fong Yue Ting v. United States*, 149 U.S. 698, 13 S. Ct. 1016 (1893); *Chae Chan Ping v. United States*, 130 U.S. 581, 9 S. Ct. 623 (1889). As other Asian racial groups began to immigrate, they were excluded as well. In 1907, the "Gentleman's Agreement," a series of diplomatic notes between Japan and the United States,

stopped the issuance of passports to Japanese laborers. In 1917, Congress created the Asiatic Barred Zone; this provision excluded persons whose race was native to India, Southeast Asia, and the Pacific Islands from entering the United States. Act of Feb. 5, 1917, ch. 29, § 3, 39 Statutes at Large 874, 876. The Immigration Act of 1924 barred all aliens that were not eligible for citizenship from coming into the United States. Immigration Act of 1924, ch. 190, § 28(c), 43 Statutes at Large 153, 168. Because Asians were racially ineligible to be naturalized under the immigration laws, virtually all persons of Asian background could not immigrate to the United States.

Although the rules were liberalized over time, it was not until the Immigration and Nationality Act Amendments of 1965 that anti-Asian racial bias was fully eliminated from the immigration law. Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 NORTH CAROLINA LAW REVIEW 273 (1996), reprinted in 17 IMMIGRATION AND NATIONALITY LAW REVIEW 87 (1995-96) (discussing Pub. L. No. 89-263, 79 Stat. 911). See also 8 U.S. Code § 1152(a)(1)(A) (prohibiting discrimination in issuance of visas); 8 U.S. Code § 1422 (prohibiting discrimination in naturalization). U.S. immigration law was designed to limit the immigration of those of African ancestry, and indirectly discriminated against Mexicans, and Southern and Eastern Europeans, among others, as well. However, only Asians were explicitly discriminated against on the basis of race.

The ineligibility of Asians to immigrate and become United States citizens had a number of consequences. A major one was that Asians were unable to take advantage of privileges reserved for citizens, such as the ability to practice licensed professions. See, e.g., *In re Takuji Yamashita*, 70 P. 482 (Wash. 1902) (Japanese person could not practice law, in spite of his

naturalization and training); *In re Hong Yen Chang*, 24 P. 156 (Cal. 1890). Additionally, states passed many laws specifically targeting aliens ineligible to citizenship, such as the Alien Land Laws discussed earlier.

### **III. FLORIDA'S ALIEN LAND LAW IS NOW UNCONSTITUTIONAL**

Florida courts have treated the alien land provision as potentially valid. Florida courts, no doubt because of unfamiliarity with the history of laws targeting aliens ineligible to citizenship, have relied on the alien land provision in deciding cases. In *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So. 2d 64, 67 (Fla. 1990), the Court based its holding in part on the alien land clause. The Court concluded that its

reading of the language of article I, section 2 leads to a conclusion that the right to devise property is a property right protected by the Florida Constitution. Our conclusion is supported by the provision's express exception for aliens ineligible for citizenship. There would be no need to carve out an exception for "ownership, inheritance, disposition and possession of real property" unless those property rights already were subsumed in the clause modified by the exception. Furthermore, by narrowly limiting the class of persons whose rights may be restricted by the legislature, i.e., aliens ineligible for citizenship, it is clear that the framers intended all other people . . . to be free from unreasonable legislative restraint.

Similarly, in *In re Fernandez*, 335 So. 2d 829, 830 n.2 (Fla. 1976), the Supreme Court invalidated a statute discriminating against aliens, noting that "[o]n the facts of this case, the limitation in Article I, Section 2 of the Florida Constitution for 'aliens ineligible to citizenship' is not applicable," suggesting that they considered the provision potentially applicable in some situations.

However, Florida's Alien Land Law violates the principles of the United States Constitution for three independent reasons. First, it violates the equal protection guarantee

because it is designed to discriminate on the basis of race without any justification. Second, it violates equal protection because it discriminates on the basis of alienage without any justification. Third, it violates the supremacy clause of the United States Constitution because it interferes with the paramount immigration policy established by federal law.

*A. The Alien Land Law Violates Equal Protection Because It Discriminates On The Basis Of Race And Alienage Without A Compelling Justification*

The Fourteenth Amendment to the U.S. Constitution provides, in pertinent part, that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. Amend. XIV, § 1. As every modern court faced with the issue of the constitutionality of state laws prohibiting ownership and use of land by "aliens ineligible to citizenship" has held, state Alien Land Laws are an unconstitutional violation of the Fourteenth Amendment's equal protection clause because they discriminate based on race and alienage. *Sei Fujii v. State*, 242 P.2d 617, 630 (Cal. 1952) (holding California's Alien Land Law unconstitutional); *Montana v. Oakland*, 287 P.2d 39, 42 (Mont. 1955) (holding Montana's Alien Land Law unconstitutional); *Kenji Namba v. McCourt*, 204 P.2d 569, 614-15 (Or. 1949) (holding Oregon's Alien Land Law unconstitutional). *See also Takahashi v. Fish and Game Commission*, 334 U.S. 410, 68 S. Ct. 1138 (1948) (invalidating discrimination against "aliens ineligible to citizenship"); *Oyama v. California*, 332 U.S. 633, 68 S. Ct. 269 (1948) (holding California Alien Land Law unconstitutional as applied to facts).

1. A Law Classifying On The Basis Of Race Is Void Unless Narrowly Tailored To Meet A Compelling State Interest

The Florida Constitution's alien land provision is an unconstitutional violation of equal protection because it was intended to discriminate on the basis of race. As previously explained, the language with which the Florida Constitution classifies those whose right to real property in Florida is not protected, "alien ineligible to citizenship," was intended to apply to aliens who were racially ineligible to citizenship, in particular, Asians. The law thus creates a classification based on race as the basis for different legal protection and rights.

The equal protection clause of the Fourteenth Amendment to the U.S. Constitution provides all persons within United States jurisdiction equal protection of the laws. U.S. CONST. Amend. XIV, § 1. It places substantial limitations on a state's ability to classify on the basis of race because the "clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States." *Loving v. Virginia*, 388 U.S. 1, 10, 87 S. Ct. 1817 (1967) (citations omitted).

In 1954, the Supreme Court enforced the equal protection clause by prohibiting separate educational facilities for blacks. *Brown v. Board of Education* 347 U.S. 483, 74 S. Ct. 686 (1954); *Bolling v. Sharpe* 347 U.S. 497, 74 S. Ct. 693 (1954). In *Bolling*, the Court held that "Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect." 347 U.S. at 499.

Laws discriminating on the basis of race create "suspect classifications" and are therefore subject to the "strict scrutiny" standard of judicial analysis. *Loving v. Virginia*, 388 U.S. 1, 11, 87 S. Ct. 1817 (1967); *Korematsu v. United States*, 323 U.S. 214, 216, 65 S. Ct. 193 (1944).

"The use of these classifications will be invalid unless they are necessary to promote a 'compelling' or 'overriding' interest of government." 3 JOHN E. NOWAK & RONALD D. ROTUNDA, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 18.6, at 294-95 (3d ed. 1999). "To legitimate such a classification the end of the government action would have to outweigh the basic values of the Fourteenth Amendment. For this reason no such classification has been upheld since 1945 . . ." *Id.* Because the Florida Alien Land Law used a racial classification to discriminate on the basis of race, it is constitutional only if it is necessary to advance a compelling state interest.

2. A Law Classifying On The Basis Of Alienage Is Void Unless Narrowly Tailored to Meet a Compelling State Interest

The Florida Alien Land Law violates equal protection because it discriminates on the basis of alienage. In *Yick Wo v. Hopkins*, the Supreme Court invalidated discrimination against Chinese aliens, holding that the protections of the equal protection clause of the Fourteenth Amendment are "universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, color or of nationality." 118 U.S. 356, 369, 6 S. Ct. 1064 (1886). Since *Yick Wo*, the Supreme Court has consistently held that the equal protection clause of the Fourteenth Amendment applies to aliens as well as citizens. Discrimination based on alienage is subject to strict scrutiny. As the Supreme Court of Florida explained,

a statute will be regarded as inherently "suspect" and subject to "heightened" judicial scrutiny if it . . . primarily burdens certain groups that have been the traditional targets of irrational, unfair, and unlawful discrimination. . . . [A]lienage [is] one of the traditional suspect classes. . . . It is therefore subject to strict judicial scrutiny under . . . the fourteenth amendment's equal protection clause.

*De Ayala v. Florida Farm Bureau Casualty Co.*, 543 So. 2d 204, 206-07 (Fla. 1989) (citations omitted). *See also Leger v. Sailer*, 321 F. Supp. 250, 252 (E.D. Pa. 1970) (three judge court)

(citing *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 420 (1948)), *aff'd sub nom. Graham v. Richardson*, 403 U.S. 365, 91 S. Ct. 1848 (1971); 2A FLORIDA JURISPRUDENCE, *Aliens and Citizens*, ' 12 (2d ed. 1998); 10 FLORIDA JURISPRUDENCE, *Constitutional Law*, ' 408 (2d ed. 1997).

Applying these principles, the Florida and United States Supreme Courts have invalidated a number of laws denying aliens equal rights. Courts have invalidated discrimination in issuance of commercial fishing licenses to aliens ineligible to citizenship, *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 68 S. Ct. 1138 (1948), in granting welfare and workers compensation benefits, *Graham v. Richardson*, 403 U.S. 365, 378, 91 S. Ct. 1848 (1971); *De Ayala v. Florida Farm Bureau Casualty Co.*, 543 So. 2d 204, 207-08 (Fla. 1989), in eligibility for civil service employment, *Sugarman v. Dougall*, 413 U.S. 634, 93 S. Ct. 2842 (1973), in eligibility to practice law, *In re Griffiths*, 413 U.S. 717, 93 S. Ct. 2581 (1973), in eligibility to become a notary public, *Graham v. Ramani*, 383 So. 2d 634 (Fla. 1980); a union business agent, *Palm Harbor Special Fire Control District v. Kelly*, 516 So. 2d 249 (Fla. 1987), to administer an estate, *In re Estate of Fernandez*, 335 So. 2d 829 (Fla. 1976), or be eligible for state financial assistance for higher education programs. *Nyquist v. Mauclet*, 432 U.S. 1, 97 S. Ct. 2120 (1977). *See generally* Opinion No. 84-66, 1984 Op. Att'y Gen. Fla. 168 (July 24, 1984).

The United States Supreme Court has recognized an exception to the close analysis of state alienage classifications for classifications involving political functions or self-governance. 3 NOWAK & ROTUNDA, *supra* § 18.12, at 478. Thus, a state can allow only citizens to become police officers. But "[i]f the classification does not relate to the self-governance process, and, therefore, does not come under the political function exception, it will be subjected to strict

scrutiny and invalidated unless it is narrowly tailored to promote a compelling state interest." *Id.* § 18.12, at 483.

3. The Alien Land Law Does Not Further Any Legitimate State Interest And Therefore Violates Equal Protection.

Since the Supreme Court began to apply strict scrutiny, it has virtually never found justifications for discrimination on the basis of race or alienage compelling enough to pass strict scrutiny. In order to survive strict scrutiny analysis, a state bears the very heavy burden of presenting an interest so compelling that the nature of the interest justifies the classification. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322 (1969). We respectfully submit that there is no justifiable reason to discriminate in land ownership on the basis of race, or against particular categories of aliens, and so the cases have held.

In 1949, Oregon became the first state to hold its Alien Land Law unconstitutional. The law limited the rights of aliens ineligible to citizenship. *Namba v. McCourt*, 204 P.2d 569, 571 (Or. 1949). Oregon's Supreme Court noted that "state legislation which regulates alien land ownership is subject to the equal protection and due process clauses of the Fourteenth Amendment." *Id.* at 581. Under the Fourteenth Amendment, "color, as well as race and creed, is an unacceptable distinguishing characteristic." *Id.* at 583. The court concluded that "our Alien Land Law . . . must be deemed violative of the principles of law which protect from classifications based upon color, race and creed." *Id.*

In *Sei Fujii v. State*, 242 P.2d 617 (Cal. 1952), the California Supreme Court invalidated that state's Alien Land Law because it violated the Fourteenth Amendment. The Court explained that "[t]he California alien land law is obviously designed for and administered as an instrument for effectuating racial discrimination, and the most searching examination discloses no

circumstances justifying classification on that basis. . . . Accordingly we hold that the alien land law is invalid as in violation of the Fourteenth Amendment." *Id.* at 630.

The Montana Supreme Court held Montana's Alien Land Law unconstitutional in *State v. Oakland*, 287 P.2d 39 (Mont. 1955). The Court held that the law was

unconstitutional and void as being in contravention of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States for the reasons given . . . by the Supreme Courts of the State of California and of the State of Oregon in their very learned and extensive opinions wherein they found their respective Alien Land Laws, similar to those of Montana, invalid as infringements upon the equal protection clause of the Fourteenth Amendment.

*Id.* at 42.

Decisions of the United States Supreme Court also suggest that the anti-Asian land laws are unconstitutional. In *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 68 S. Ct. 1138 (1948), the Supreme Court held that a state statute discriminating against aliens ineligible to citizenship violated equal protection. In *Oyama v. California*, 332 U.S. 633, 68 S. Ct. 269 (1948), the Supreme Court held California's Alien Land Law unconstitutional as applied, so there was no need to decide whether the statute was unconstitutional as a whole. However, four concurring justices concluded that Alien Land Laws were unconstitutional. In his concurrence, Justice Murphy, joined by Justice Rutledge, noted that the California Alien Land Law was "spawned of the great anti-Oriental virus which, at an early date, infected many persons in that state." *Id.* at 651. Accordingly, such laws were invalid because of the "uncompromising opposition of the Constitution to racism, whatever cloak or disguise it may assume." *Id.* at 650. Justices Black and Douglas believed that Alien Land Laws were invalid under the Fourteenth Amendment, which "was designed to bar States from denying to some groups, on account of their race or color, any rights, privileges, and opportunities accorded to other groups." *Id.* at 649.

It is true that when *Plessy v. Ferguson*, 163 U.S. 537, 16 S. Ct. 1138 (1896), upholding racial segregation, was the governing law of the land, the Supreme Court upheld state laws prohibiting ownership of land by aliens ineligible to citizenship. See *Cockrill v. California*, 268 U.S. 258, 45 S. Ct. 490 (1925); *Frick v. Webb*, 263 U.S. 326, 44 S. Ct. 115 (1923); *Webb v. O'Brien*, 263 U.S. 313, 44 S. Ct. 112 (1923); *Porterfield v. Webb*, 263 U.S. 225, 44 S. Ct. 21 (1923); *Terrace v. Thompson*, 263 U.S. 197, 44 S. Ct. 15 (1923). However, since *Brown v. Board of Education* and *Bolling v. Sharpe* invalidated racial segregation, these cases can no longer be regarded as good law; "constitutional principles declared in recent years are irreconcilable with the reasoning of the earlier cases." *Sei Fujii v. State*, 242 P.2d 617, 624 (Cal. 1952) (refusing to follow *Plessy*-era Alien Land Law case). See also *Namba v. McCourt*, 204 P.2d 569, 581-82 (Or. 1949) (declining to follow old cases in light of recent developments in the law).

In summary, laws classifying on the basis of alienage or race are impermissible under the equal protection clause of the Fourteenth Amendment. Such classifications are analyzed under strict judicial scrutiny which requires a state interest compelling enough to justify the discrimination. Since developing the strict scrutiny test, the Court has never found a state interest compelling enough to justify discriminatory classifications against minorities based on race or alienage (other than those related to self-governance). The Florida Alien Land Law, which discriminates on both alienage and race, must be deemed to have been extinguished by the equal protection clause of the Fourteenth Amendment.

B. *The Alien Land Law Is Unconstitutional Under The Supremacy Clause Of The U.S. Constitution Because It Interferes With Federal Immigration Policy*

Laws promulgated by states prohibiting land ownership and use by "aliens ineligible to citizenship" are preempted by federal law and therefore invalid. The federal government possesses exclusive power to create laws controlling the process and terms of immigration. See *De Canas v. Bica*, 424 U.S. 351, 96 S. Ct. 933 (1976); *Fong Yue Ting v. United States* 149 U.S. 698, 13 S. Ct. 1016 (1893). The supremacy clause of the United States Constitution establishes that Federal law is "the supreme Law of the Land." U.S. CONST. Art. VI, cl. 2. "[T]he supremacy clause mandates that federal law overrides, i.e., preempts, any state regulation where there is an actual conflict between the two sets of legislation." 2 NOWAK & ROTUNDA, *supra* § 12.1, at 199-200.

The Supreme Court set forth the basic analytical standards for determination of preemption cases in *Hines v. Davidowitz*, 312 U.S. 52, 61 S. Ct. 399 (1941), and *Pennsylvania v. Nelson*, 350 U.S. 497, 76 S. Ct. 477 (1956). In *Hines*, the Court invalidated the Pennsylvania Alien Registration Act as preempted by federal law because the federal statute establishing regulations affecting the rights of aliens "is the supreme law of the land, and no state can add to or take from the force and effect . . . thereof." 312 U.S. at 63. The test set forth in *Hines* is whether under the particular circumstances, the state law "stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress." *Id.* at 67. "The progeny of *Hines* and *Nelson* have continually narrowed the scope of judicial inquiry to a determination of whether, under the particular facts of the case, the existence of the state regulatory scheme is facilitative or detrimental to the purposes and objectives of the federal statute." 2 NOWAK & ROTUNDA, *supra*, § 12.2, at 213.

Many courts have held that state laws discriminating against aliens are preempted by federal laws controlling immigration. In *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 419, 68 S. Ct. 1138 (1948), the Supreme Court held that "State laws which impose discriminatory burdens upon entrance of residence of aliens lawfully within the United States conflict with constitutionally derived federal power to regulate immigration and are invalid." Accordingly, it struck down discrimination in the issuance of fishing licenses against aliens ineligible to citizenship. Similarly, the Court held that "State laws restricting eligibility of aliens for welfare benefits merely because of alienage conflict with overriding national policies in an area constitutionally entrusted to federal government." *Graham v. Richardson*, 403 U.S. 365, 378, 91 S. Ct. 1848 (1971). "Read together, *Takahashi* and *Graham* stand for the broad principle that 'state regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to this country is impermissible if it imposes additional burdens not contemplated by Congress.'" *Toll v. Moreno*, 458 U.S. 1, 12-13, 102 S. Ct. 2977 (1982) (quoting *De Canas v. Bica*, 424 U.S. 351, 358 n.6, 96 S. Ct. 933 (1976)). See also *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382 (1982). State laws aimed at discouraging immigration by aliens of a particular race are impermissible because, as the Court concluded in *Takahashi*, they impose an additional burden on aliens whom Congress has determined may reside here.

In sum, the United States maintains a policy of admitting particular categories of aliens to this country, including certain aliens ineligible to citizenship. State laws inconsistent with that--which attempt to encourage such aliens to leave by making their lives more difficult--necessarily frustrate federal policy in the area. The Florida Alien Land Law is thus an unconstitutional violation of the supremacy clause due to preemption by federal law.

#### **IV. THE ALIEN LAND LAW IS INCONSISTENT WITH THE PUBLIC POLICY OF RACIAL EQUALITY EXPRESSED IN THE CONSTITUTION AND LAWS OF THIS STATE**

##### *A. Laws On The Books Send A Message Even If Unenforced*

The law at issue, though a part of the Florida Constitution, is apparently not now enforced on the basis of race or any other basis. It evidently serves no positive function or provides any benefit to the people of Florida. Its disuse is strong evidence that its importance, if any, is entirely symbolic. Yet, by remaining in force as a part of Florida's fundamental law, it creates the misleading suggestion that Florida endorses the racial attitudes of a bygone era. There is no reason to gratuitously insult the citizens of Florida and her sister states who, because of their race, may once have themselves been affected by the law, or have parents or grandparents who were.

There is ample precedent for repealing obsolete, racially discriminatory laws. The legislature repealed statutes prohibiting interracial marriage and requiring school segregation years after those practices had been declared unconstitutional. *See, e.g.*, Florida Statutes, ' 741.11 (1941) (prohibiting interracial marriage), *repealed by* 1969 Fla. Laws Ch. 69-195, ' 1; Florida Statutes, ' 228.09 (1941) (requiring school segregation), *repealed by* 1965 Fla. Laws ch. 65-239, ' 4.

Other states have done the same thing. During this election, the people of Alabama voted to remove an old provision of their constitution banning interracial marriages; South Carolina did the same in 1998. Idaho recently amended a provision of its constitution banning "Chinese, or persons of Mongolian descent, not born in the United States" from voting or serving as jurors. 1998 Idaho Session Laws 1361, amending Idaho Const. Art. VI, § 3. The U.S. Congress repealed laws regulating Asian "coolies" in 1974. Pub. L. 93-461, 88 Statutes at Large 1387.

Similarly, a number of states approved the Fourteenth Amendment years after its official ratification in 1868, even though such action was merely symbolic. *See* U.S. CODE ANNOTATED, CONSTITUTION: AMENDMENTS 14 TO END at 7 (West 1987) (listing states).

B. *The Public Policy Of This State Opposes Invidious Discrimination*

The Constitution's authorization for discrimination against Asian aliens who wish to purchase real property is wholly inconsistent with the principles of non-discrimination and equality which are pervasive in Florida law, to say nothing of the respect for immigrants demonstrated by the people of Florida. Indeed, the physical placement of the anti-Asian land law in the equal protection provision of the Florida Constitution, which otherwise prohibits invidious discrimination makes clear that it is an anachronism. Article I, § 2 provides:

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin or physical disability.

Fla. Const. art. I § 2. Thus, the Constitution prohibits discrimination on the basis of race and national origin, except in the single context of Asians who wish to purchase real property.

The Florida legislature has also passed a series of laws prohibiting racial discrimination.

The Florida Civil Rights Act of 1992

secure[s] for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

Fla. Stat. § 760.01 (2000). *See also* Fla. Stat. § 112.042(1) (1985) ("It is against the public policy of this state [for a county or municipality] solely because of race, color, national origin, sex, handicap, or religious creed of any individual to refuse to hire or employ, to bar, or to discharge from employment such individuals."); Fla. Stat. § 725.07 (2000) (prohibiting racial discrimination in the granting of credit).

Similarly, Florida law opposes other forms of arbitrary discrimination. For example, The Educational Equity Act outlaws sexual discrimination in all state educational settings. Fla. Stat. § 228.2001 (2000). As the Florida Supreme Court has said: "There can be no doubt at this point in time that both the state of Florida and the federal government have committed themselves strongly to outlawing and eliminating sexual discrimination in the workplace, including the related evil of sexual harassment." *Byrd v. Richardson-Greenshields Secs., Inc.*, 552 So. 2d 1099, 1102 (Fla. 1989). The Florida Legislature adopted the Hate Crimes Reporting act, requiring collection and publication of crimes motivated by race, religion, ethnicity, color, ancestry, sexual orientation and national origin. Fla. Stat. § 877.19 (1991).

Indeed, in several respects the protections of Florida law exceed that of the federal Constitution. For example, in 1980 the legislature added Article I, § 23, the right of privacy, which provides: "[e]very natural person has the right to be left alone and free from governmental intrusion into his private life except as otherwise provided herein." Fla. Const. Art. I, § 23.

In sum, the alien land provision of the Florida Constitution does not express a vital public policy of the state. To the contrary, it is inconsistent with the strong and clear public policy of the State against racial discrimination.

**V. CONCLUSION: THE ALIEN LAND PROVISION OF FLORIDA'S CONSTITUTION SHOULD BE REPEALED.**

For all of the foregoing reasons, the clause in Article 1, § 18 of the Florida Constitution authorizing discrimination against aliens ineligible to citizenship should be repealed.

Respectfully submitted,

**The Immigration and Nationality Law Review Association**  
Alien Land Law Project  
University of Cincinnati College of Law  
P.O. Box 210040  
Cincinnati, OH 45221-0040  
<http://www.law.uc.edu/inlr>  
(413) 254-1204

**NOTE ABOUT THIS PROJECT AND ITS STAFF**

The *Immigration and Nationality Law Review (INLR)* is a student-staffed academic journal at the University of Cincinnati College of Law which has been published for over twenty years. Students selected as members of the *INLR* are expected to perform significant research on legal topics, generally for publication. This project originated when, in the course of exploring potential research topics, *INLR* staff discovered that not all of the old anti-Asian land laws had been repealed. Consistent with the public mission of the College of Law, a state-supported institution, and the desire of the *INLR* staff to use their work to contribute to improvement of the legal system, the *INLR* staff decided to share its research findings with the decisionmakers who have authority to reform the law rather than simply write an academic paper about the topic.

*INLR* staff members working on this project include:

**Lashonda Bourgeois.** Book Review Editor, *Immigration and Nationality Law Review*. J.D. candidate (2001), University of Cincinnati College of Law, B.A., Oakland University.

**Gabriel J. Chin.** National Editor, *Immigration and Nationality Law Review*. Professor of Law, University of Cincinnati College of Law. LL.M., Yale Law School, J.D. *cum laude*, Michigan Law School, B.A., Wesleyan University.

**Megan Matsumura.** Staff Member, *Immigration and Nationality Law Review*. J.D. candidate (2002), University of Cincinnati College of Law, B.A., Purdue University.

**Makiedah Messam.** Note Editor, Immigration and Nationality Law Review. J.D. candidate (2001), University of Cincinnati College of Law, B.A., Kenyon College.

**James Muetzel.** Editor-in-Chief, Immigration and Nationality Law Review. J.D. candidate (2001), University of Cincinnati College of Law, B.A. *cum laude*, Cleveland State University.

**Elizabeth Mulcahy.** Staff Member, Immigration and Nationality Law Review. J.D. candidate (2002), University of Cincinnati College of Law, B.A. *magna cum laude*, University of Dayton.

**Kristina Sawyer.** Staff Member, Immigration and Nationality Law Review. J.D. candidate (2002), University of Cincinnati College of Law, B.A., George Washington University.

**Mark Zylka.** E.Text Editor, Immigration and Nationality Law Review. J.D. candidate (2001), University of Cincinnati College of Law, B.S., University of Michigan-Dearborn.