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To the Honorable Members of the Florida House of Representatives and the Florida Senate:

Re: ***Florida House Bill 775*** (referred to House Health Care Regulation Committee 2 February 2006)
myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=32729&SessionIndex=-1&SessionId=42&BillText=&BillNumber=775&BillSponsorIndex=0&BillListIndex=0&BillStatuteText=&BillTypeIndex=0&BillReferredIndex=0&HouseChamber=H&BillSearchIndex=0

and ***Florida Senate Bill 1560*** (filed in the Senate 25 January 2006)
www.flsenate.gov/Session/index.cfm?Mode=Bills&SubMenu=1&Tab=session&BI_Mode=ViewBillInfo&BillNum=1560&Chamber=Senate&Year=2006&Title=%2D%3EBill%2520Info%3AS%25201560%2D%3ESession%25202006

The foregoing (identical) bills would prohibit Florida-licensed psychologists from holding themselves out "as a board-certified specialist or diplomate" unless they have received that designation from one apparently well-connected organization, "the American Board of Professional Psychology, Inc., or another recognizing agency deemed equivalent by the board."

As presently drafted, these bills are susceptible to challenge as violative of the Constitution of the State of Florida and of the Constitution of the United States.

① A state may not delegate its governmental decision-making power to a private organization. Attempting to do so would violate any of the fifty state constitutions, including Florida's:

> The legislative power of the state shall be vested in a legislature of the State of Florida, consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district. . . . The supreme executive power shall be vested in a governor, who shall be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government. . . .

Fla. Const. art III, § 1; art. IV, § 1. No private organization may exercise legislative or executive power, especially based on unspecified standards that the organization can change at will.

② In addition, the First Amendment to the Constitution of the United States protects the right of any person to engage in truthful speech. As the Supreme Court of the United States has stated,

> [A] State's paternalistic assumption that the public will use truthful, nonmisleading commercial information unwisely cannot justify a decision to suppress it . . . . Precisely because bans against truthful, nonmisleading commercial speech rarely seek to protect consumers from either deception or overreaching, they usually rest solely on the offensive assumption that the public will respond "irrationally" to the truth. *Linmark*, 431 U.S., at 96, 97 S.Ct., at 1620. The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good. That teaching applies equally to state attempts to deprive consumers of accurate information about their chosen products:

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> "The commercial marketplace, like other spheres of our social and cultural life, provides a forum where ideas and information flourish. Some of the ideas and information are vital, some of slight worth. But the general rule is that the speaker and the audience, not the government, assess the value of the information presented. Thus, **even a communication that does no more than propose a commercial transaction is entitled to the coverage of the First Amendment.** See *Virginia State Bd. of Pharmacy, supra,* at 762 [96 S.Ct., at 1825]." *Edenfield v. Fane,* 507 U.S. 761, 767, 113 S.Ct. 1792, 1798, 123 L.Ed.2d 543 (1993).
> See also *Linmark,* 431 U.S., at 96, 97 S.Ct., at 1620 (1977); *Rubin v. Coors Brewing Co.,* 514 U.S., at 497-498, 115 S.Ct., at 1596-1597 (STEVENS, J., concurring in judgment); Tribe, American Constitutional Law § 12-2, at 790, and n. 11. . . .
> Instead, in keeping with our prior holdings, we conclude that **a state legislature does not have the broad discretion to suppress truthful, nonmisleading information for paternalistic purposes** that the *Posadas* majority was willing to tolerate. As we explained in *Virginia Bd. of Pharmacy,*"[i]t is precisely this kind of choice, between the dangers of suppressing information, and the dangers of its misuse if it is freely available, that the First Amendment makes for us." 425 U.S., at 770, 96 S.Ct., at 1829. . . .
> That teaching clearly applies to state attempts to regulate commercial speech, as **our cases striking down bans on truthful, nonmisleading speech by licensed professionals** attest. See, *e.g., Bates v. State Bar of Ariz.,* 433 U.S., at 355, 97 S.Ct., at 2694; *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). . . .

44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 497, 503-04, 510, 513, 116 S.Ct. 1495, 1505, 1508, 1511-13, 134 L.Ed.2d 711, 24 Media L. Rep. 1673, 64 USLW 4313 (1996) (emphasis added).

There are several reputable organizations through which psychologists may obtain board certification and/or diplomate status. Our American concept of liberty prohibits state governments from granting one of these organizations a monopoly and then proceeding to punish members of the other organizations for truthfully informing the public as to their achievements and affiliations.

It is no answer to say that these other organizations are welcome to approach the state board and ask to be "deemed equivalent." The Fourteenth Amendment requires that they and their adherents be accorded a pre-deprivation hearing *before* being barred from truthfully stating their qualifications:

> The Due Process Clause also forbids arbitrary deprivations of liberty. 'Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him,' the minimal requirements of the Clause must be satisfied. *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 510, 27 L.Ed.2d 515 (1971); *Board of Regents v. Roth*, supra, 408 U.S. at 573, 92 S.Ct. at 2707.

Goss v. Lopez, 419 U.S. 565, 574, 95 S.Ct. 729, 736, 42 L.Ed.2d 725 (1975).

I ask that this bill be defeated, or re-written with the benefit of legal advice.

Sincerely yours,

William Martin Sloane