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THE IMPACT OF FLORIDA STATUTE 800.03 ON LOCAL REGULATION OF NUDE DANCING FACILITIES.

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***361** THE IMPACT OF FLORIDA STATUTE 800.03 ON LOCAL REGULATION OF NUDE DANCING FACILITIES.

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Local governments throughout the country have enacted adult entertainment codes regulating, among other things, massage parlors, adult movie theaters, adult video stores and adult toy stores. Local governments have not forgotten live performances particularly nude or topless dancing. Regulations throughout the country require facilities to get licenses before they operate; [\[FN1\]](#) require that the dancers get licenses; [\[FN2\]](#) regulate the location of these facilities; [\[FN3\]](#) and regulate their interiors, [\[FN4\]](#) These regulations are often challenged, with the challenge being based on the First Amendment. [\[FN5\]](#) The assumption behind all these cases is that the First Amendment protects nude dancing. That assumption is now unassailable but perhaps irrelevant. In 1991, in *Barnes v. Glen Theatre*, eight justices unequivocally stated that the First Amendment protects nude dancing. [\[FN6\]](#) At the same time, the Court (with five members concurring in the result) in *Barnes* held that a statute that prohibited all public nudity could be constitutionally prohibited. [\[FN7\]](#) These positions were reinforced in 2000 in *City of Erie v. Pap's A.M.* In *City of Erie*, seven members of the Court agreed that the First Amendment protects nude dancing. [\[FN8\]](#) Different justices agreed that a ban on public nudity could be constitutionally applied to nude dancing. [\[FN9\]](#) More importantly, six of the seven agreed (in two separate opinions) that a general public nudity ban is always constitutional even if ***362** applied to nude dancing. [\[FN10\]](#) This paper is based on the assumption that a public nudity ban is constitutional as applied to nude dancing. [\[FN11\]](#)

THE PROBLEM

For the purposes of this paper it is assumed that, at least in some circumstances, a statute banning public nudity can be constitutionally applied to nude dancing. [\[FN12\]](#) If that is true, one question raised is why local governments that regulate nude dancing don't simply ban public nudity? This, of course, the essence of a legislative policy choice. Indeed, a number of municipalities have, subsequent to *Barnes*, banned public nudity. [\[FN13\]](#)

But what about those local governments which already have in place ordinances which regulate nude dancing? Suppose a state statute banned public nudity. Why, then, should they defend their ordinance when the statute itself makes the nude dancing illegal? To rephrase the question in a constitutional sense, the issue to be raised by this paper is whether a nude dancing facility has standing to challenge a local ordinance where state law prohibits public nudity.

That question assumes the existence of a state law that bans public nudity, including nudity at a dance facility. Using Florida's public nudity statute as an example, this paper will review the question of whether state law indeed prohibits public nudity, including nude dancing. In particular, the paper will review the difficulties raised by applying the statute to nude dancing facilities. While the questions raised may be answered differently for each state, the paper will provide an outline for analysis for statutes from other states.

STANDING

The paper will be based on the existence of [Section 800.03, Florida Statutes](#), [FN14] which makes public nudity, including nude dancing at a commercial establishment, illegal. Essentially, the argument is that if nude dancing is illegal under [Section 800.03](#), then nude dancing facilities have no standing to sue. This *363 argument is premised on the conclusion that [Section 800.03, Florida Statutes](#) indeed makes nude dancing illegal.

[SECTION 800.03, FLORIDA STATUTES](#)

Currently, [Section 800.03](#) reads as follows:

It is unlawful to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. Violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A mother's breast-feeding of her baby does not under any circumstances violate this section. [FN15]

The question becomes whether [Section 800.03](#) indeed prohibits public nudity. This review will consider the language of the statute as well as the cases that have construed (or misconstrued its meaning). In particular, the paper will review a Florida Supreme Court case that specifically dealt with the question of whether an earlier version of [Section 800.03](#) prohibited nude dancing. [FN16]

Hoffman v. Carson

The 1971 version of [Section 800.03](#) was worded slightly differently and did not contain the current breast-feeding exception. The statute read as follows:

It shall be unlawful for any person to expose or exhibit his sexual organs in any public place or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or so to expose or exhibit this person in such place, or to go or be naked in such place. Provided, however, this section shall not be construed to prohibit the exposure of such organs or the person in any place provided or set apart for that purpose. Any person convicted of a violation hereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for a period of not more *364 than six months, or by both such fine and such imprisonment, in the discretion of the court.

The Florida Supreme Court applied this statute to nude dancing and seemingly answered the question whether [Section 800.03](#) prohibits nude dancing in a private dance club. *Hoffman (II)* addresses three problems raised by applying [Section 800.03](#) to nude dancing

in a commercial establishment. Those three problems are (1) whether a commercial establishment is a public place or alternatively, whether it is a place set aside for the purpose of being nude or exposing sexual organs; (2) whether nudity violates the statute; and (3) whether intentional exposure or nudity must be accompanied by an additional act of lewdness or lasciviousness in order to violate [Section 800.03](#). With regard to each of these questions, the Florida Supreme Court provides both answers and questions. The confusion is caused by both the court's rendition of the facts, and its rationale for its holding.

Facts

In order to best understand the difficulty the court's opinion creates, it is best to simply restate the court's virtually nonexistent factual statements. The court began the opinion: On three successive nights in 1970, appellant Hoffman, a 'go-go' dancer by trade, was arrested for violating [Fl. Stat. s 800.03](#), F.S.A., by going nude and exposing her sex organs in the course of her performances at a Jacksonville cocktail lounge. [\[FN17\]](#) Toward the end of the opinion, the court discussed the facts concluding that [Hoffman's] performance falls short of presenting a 'speech' issue sufficiently important to outweigh that state's interest in curtailing lascivious exposure in certain places.

Contributing to this conclusion is the fact that the appellant admits that she usually was tipped a certain amount for removing her brassiere and was tipped an additional substantial sum for removing her pants. [\[FN18\]](#)

These three sentences are the sum and substance of the facts related by the court. The brevity of the language used creates confusion with two of the problems to be ***365** addressed, the meaning of lewd and lascivious and whether nudity alone violates the statute.

A review of the facts as found by the trial court provides a backdrop against which to review the Florida Supreme Court's statements of fact. The trial court wrote that Hoffman sought to restrain the State Attorney from prosecuting her "for dancing" in the nude in violation of [Section 800.03, Florida Statutes](#). [\[FN19\]](#) She had been "arrested ... while dancing nude (except for a pair of boots)." [\[FN20\]](#) The trial court later gave a little more detail of Hoffman's performance.

The plaintiff in this case was dancing on tables around which were seated patrons of the bar. She testified she wore a brassiere and bikini type briefs, that during the dance she felt she should be free to 'express herself' and this feeling resulted in her removing her bra then her briefs. She related to the Court that while enraptured in her dance she spontaneously removed all of her clothing as a method of 'freedom of expression.'

[\[FN21\]](#)

Both the facts set out by the Florida Supreme Court and those set out by the trial court will be used to attempt to resolve the three problems raised by applying 800.03 to nude dancing.

Public place

[Section 800.03](#) currently prevents "be[ing] naked in public." [\[FN22\]](#) It provides,

however, an exception permitting nudity “in any place provided or set apart for that purpose.” [FN23] This exception is unchanged from the version of [Section 800.03](#) that the Florida Supreme Court reviewed in *Hoffman (II)*. [FN24]

It is this exception that provided Hoffman with what appeared to be one of her best arguments. She argued that 800.03 could not apply to her nudity because she was nude in a bar where the patrons knew she would be nude, the owner expected her to be nude and she intended to be nude. In other words, the *366 bar was a “place provided or set apart” for the purpose of being nude. [FN25] The court unequivocally rejected that position: Within the ambit of the proviso in our Florida statute, we find public restrooms, bathing and locker room facilities, and those places in which nudity or exposure is necessarily expected outside of the home and the sphere of privacy protected therein. We cannot say that a public lounge falls within this provision. [FN26]

The Supreme Court’s holding that a lounge is a public place as opposed to a place set apart for nudity is consistent with the holdings of other Florida courts in other areas. For example, in *State v. Perry*, the Florida Fourth District Court of Appeal held that where a residence was used as a business, albeit an illegal business, it became a public place.

[FN27] The Florida Third District Court of Appeal held that a bar is a “public place.”

[FN28] In addition, a restaurant is a “public place.” [FN29] In sum, a public place is a place where the public is invited to transact business. [FN30]

Indeed, the Florida Supreme Court’s holding is akin to the United States Supreme Court’s decision in *Paris Adult Theatre (I) v. Slaton*, wherein the Court rejected the argument that citizens have a right of privacy to watch a movie at a public place. [FN31] As the Court put it, “The idea of a ‘privacy’ right and a place of public accommodation are, in this context, mutually exclusive.” [FN32] Similarly, the Florida Third District Court of Appeal rejected the argument that a “lingerie model” and a patron had a right of privacy in a locked, private room at a public establishment. [FN33]

The conclusion is inescapable that 800.03 applies to places such as nude dancing facilities. The Florida courts would not construe such an establishment as a place set apart for nudity. This is particularly true in light of the Florida Supreme Court’s decision in *Hoffman (II)*.

***367 Nudity or Sex Organs**

The Florida Supreme Court’s discussion in *Hoffman (II)* creates some confusion as to what body parts must be displayed before 800.03 is violated. As noted before, the Florida Supreme Court wrote that Hoffman “was arrested for violating [Fla. Stat. s 800.03](#) F.S.A., by going totally nude and exposing her sex organs.” [FN34] This statement has at best three different translations. First, Hoffman was nude, and while nude, went further and exposed her sex organs, and then violated the statute. Second, Hoffman violated the statute by being nude and she also, and as a separate violation, exposed her sex organs. Third, Hoffman was nude and such nudity in and of itself constitutes exposure of sex organs and therefore, a violation of the statute. [FN35]

For a number of reasons, the most appropriate interpretation is the third. In the Florida Supreme Court’s only other mention of Hoffman’s routine it said she removed her brassiere and her pants. It does not indicate that she did anything further. [FN36]

Second, the trial court’s rendition of the facts does not indicate any activity beyond

disrobing. Again, the trial court simply indicates that she removed her bra and bikini. The trial court did not indicate that she did anything further.

Third, this was a lawsuit brought by Hoffman. She was a dancer who asked the court to protect her nudity, not her exposure of her sex organs. The heart of her claim was that the First Amendment protected her nude dancing. The United States Supreme Court had not yet indicated that the First Amendment might protect nude dancing. [\[FN37\]](#) Clearly, in 1970 a plaintiff would not argue that she had the First Amendment right to dance nude and, further, to expose her sex organs in public.

That *Hoffman (II)*'s discussion of Section 800.07 concerned nudity is further buttressed by the Florida Supreme Court's discussion of the legal issues. *368 In rejecting Hoffman's First Amendment claim the court relied on an Oregon Supreme Court decision [\[FN38\]](#) in holding

Where nudity is employed as a sales promotion in bars and restaurants, nudity is conduct. As conduct the nudity of employees is a fit subject for governmental regulation

[\[FN39\]](#)

While the Florida Supreme Court's conclusion as to the First Amendment may have been in error, its discussion of nudity again demonstrates that the issue was nudity and not nudity plus exposure of sexual organs.

For the reasons set out above it appears as though nudity alone would violate Section 800.07. *Hoffman (II)*, however, is not without its confusion. More importantly, the cases subsequent to *Hoffman (II)* have added confusion.

The misunderstanding of *Hoffman (II)* began in 1978 with *G & B of Jacksonville, Inc. v. Dep't of Business Regulation*. [\[FN40\]](#) The Florida Department of Business Regulation sought to revoke G & B's liquor license on the grounds that its employees were engaged in lewd and lascivious activities in violation of law, including [Section 800.03](#). [\[FN41\]](#)

The first District Court in finding no violation on the facts proved distinguished *Hoffman (II)* in that the go-go dancer was arrested for "going totally nude *and* exposing her sex organs." [\[FN42\]](#) While this is indeed an exact quote from *Hoffman (II)* it clearly implies something more than being nude is required for [Section 800.03](#) to be violated.

The First District once again requires more than nudity three years later in *Duvalton v. State*. [\[FN43\]](#) The First district relying on *Hoffman (II)* expressly distinguishes nudity from nudity plus exposure of sex organs. [\[FN44\]](#) *Duvalton's* conclusion is based on a misunderstanding of two sentences in *Hoffman (II)*.

At the time of *Hoffman (II)*, [Section 800.03](#) read as follows:

*369 It shall be unlawful for any person to expose or exhibit his sexual organs in *any public place or on the private premises of another, or so near thereto as to be seen from such private premises*, in a vulgar or indecent manner, or so to expose or exhibit his person in such place, or *to be naked in such place*. [\[FN45\]](#)

On its face the statute at the time prohibited being naked (1) in any public place and (2) on the private premises of another or (3) so near to the private premises of another so as to be seen from the private premises of another.

The plaintiff in *Hoffman (II)* challenged the facial validity of [Section 800.03](#), urging that the words vulgar and indecent were vague. To which the court responded:

Because of the nature of the statute, the terms in question must be construed as necessarily relating to a lascivious exhibition of those private parts of a person which common propriety requires to be customarily kept covered in the presence of others. This

construction necessarily applies also to the language, 'or so to expose or exhibit his person in such place, or to go or be naked in such place.' [FN46]

In *Duvallon*, the First District interpreted this passage as follows:

We take this language to mean that in order for nudity to be prosecutable under [section 800.03, Florida Statutes](#), there must be a lewd or lascivious exhibition or exposure of the sexual organs. [FN47]

By this conclusion the First District held that the above quoted passage of *Hoffman (II)* not only required that [Section 800.03](#) only proscribed nudity where (1) the nudity was accompanied by a separate exposure of sexual organs and (2) the exposure was lewd or lascivious. Not only that, the First district substituted "sexual organs" for "those private parts of a person which common propriety requires to be customarily kept covered in the presence of others."

The First District completely misinterpreted the Florida Supreme Court's holding. The higher court intended to apply lewd and lascivious to nudity. Otherwise the statute on its face would have prohibited a person from being naked anywhere except on that person's own premises.

*370 In 1984, the Second District, relying on *Duvallon*, followed suit in *Goodmakers v. State*. [FN48] The court disallowed a conviction under [Section 800.03](#) where

Goodmakers "was lying face up, without the benefit of clothing" on a dock. [FN49]

Relying on the same misinterpretation of *Hoffman (II)* held:

Hence, in order for there to be a violation of [Section 800.03](#), there must be, coupled with mere nudity, 'lascivious' exposition or exhibition of the defendant's sexual organs.

[FN50]

In applying the misunderstood [Section 800.03](#) to the facts, the court held that *Goodmakers* did not violate [Section 800.03](#) because "he did not engage in a lewd or lascivious exhibition or exposition of his private parts *while* naked." [FN51]

Both *Duvallon* and *Goodmakers* base their misunderstanding of on the same passage. But, assuming that intended to add an exposure beyond nudity, what did it intend to add.

Both *Duvallon* and *Goodmakers* rely on the term "sexual organs." [FN52] The passage they rely on, however, does not refer to the term "sexual organs." As noted earlier it refers to "those private parts of a person which common propriety requires to be customarily kept covered in the presence of others." [FN53] Five years after *Hoffman* and five years before *Duvallon*, the Florida Supreme Court, in interpreting [Section 877.03, Florida Statutes \(1975\)](#) and quoting from Genesis wrote: "Since the beginning of civilization public nudity has been considered improper." [FN54] The Florida Supreme Court wrote this in connection with holding that topless sunbathing violates [Section 877.03](#). The holding, and the rationale that public nudity has been considered improper since the beginning of civilization support the proposition that nudity also violates the "common propriety" standard referred to in *Hoffman (II)*.

Similarly, in 1986, the Florida Supreme Court held to be constitutional as applied to topless sunbathing a park rule that required, "All bathing costumes shall conform to commonly accepted standards at all times." [FN55] This rule is effectively no different than the *Hoffman (II)* standard. The park rule requires a standard of clothing; *Hoffman (II)* holds that [Section 800.03](#) prohibits certain exposure. One *371 says what must be wrong; the other says what must not be shown. The park rule provides that the clothing standard is tied to "commonly accepted standards." In *Hoffman (II)*, the court refers to

“common propriety.” Again, these two standards are indistinguishable. That the park rule (like [Section 877.03, Florida Statutes](#)) is properly applied to a topless female indicates that 800.07 should also apply to a topless or nude female.

Indeed, in light of these two Florida Supreme Court decisions, it cannot be seriously questioned that nudity unnecessarily exposes what *Hoffman (II)*, refers to as “those private parts of a person which common propriety requires to be customarily kept covered in the presence of others.” Both *Duvallon* and *Goodmakers* ignored the language of *Hoffman (II)* and, more importantly, significantly modified its meaning. If private parts that should be covered are uncovered when a person is naked, then *Duvallon* and *Goodmakers* erroneously found that 800.03 required nudity plus exposure of “sexual organs.”

In *South Florida Free Beaches, Inc. v. City of Miami* (“South Florida II”) Free Beaches and another sought a declaratory judgment that [Section 800.03](#), among other laws, “unconstitutionally infringed on their right to sunbathe in the nude.” [\[FN56\]](#) According to the court, the plaintiffs “regularly swam and sunbathed in the nude on a public beach.” [\[FN57\]](#) According to plaintiffs, “[n]ude sunbathing, ..., is the practice by which they advocate and communicate their philosophy that the human body is wholesome and that nudity is not indecent.” [\[FN58\]](#)

Plaintiffs, like Hoffman, were asserting a constitutional right to be nude in public. They were not, again like Hoffman was not, asserting the constitutional right to “engage in a lewd or lascivious exhibition or exposition of [their] private parts while naked.” [\[FN59\]](#) Such an assertion would be, to say the least, cutting edge.

Instead, *South Florida II* dealt with public nudity, no more, no less. The Eleventh Circuit held “[Section 800.03](#) makes it unlawful ... to appear naked in public. There is nothing vague about this language in the context of nude sunbathing on a public beach.” [\[FN60\]](#) The Eleventh Circuit noted that *Hoffman (II)* limited the reach of 800.03 interpreting the statute so that it did not “impinge upon *372 constitutionally protected expression.” [\[FN61\]](#) The Eleventh Circuit did not agree with the Florida lower courts and hold that *Hoffman (II)* revised [Section 800.03](#) so as to require “nudity plus.”

These cases, which dealt with *Hoffman (II)*, concerned themselves with the older version of [Section 800.03](#). Both *Hoffman (II)*, and the cases that interpret it create confusion because of the words used and the apparent conflict in their holdings. The confusion has been effectively eliminated by the amendment to [Section 800.03](#). [\[FN62\]](#)

As noted earlier, [\[FN63\]](#) [Section 800.03](#) currently has a breast-feeding exception. [\[FN64\]](#) Breast-feeding needs to be exempted, then other public exposure of female breasts is prohibited. As explained by the Florida Fifth District Court of Appeal:

The fact that the legislature [sic] limited the exclusion to breast feeding implies that the exposure or manipulation of the female breast for other than nutritive purposes is sexual or indecent. Applying the maxim *expressio unis est exclusio alterius* (the inclusion of one thing implies the exclusion of another), it can be concluded that generally, the Legislature considers breast feeding an appropriate public act, while the gratuitous exposure or handling of female breasts constitute inappropriate public behavior. The impropriety in the latter case stems from the fact that the female breast is, as a matter of common sense, a sexual organ [\[FN65\]](#)

This explanation is particularly compelling in this case, because the Florida Legislature, in a separate law, inserted the breast-feeding exception. [\[FN66\]](#) Consequently, if public

exposure of female breasts violates [section 800.03](#), then complete nudity would as well. The final demonstration that [Section 800.03](#) prohibits nudity without anything more is that it now simply and explicitly makes it “unlawful ... to be naked in public.” [\[FN67\]](#) The statute no longer prohibits nudity on the premises of another. It was this provision that added confusion to the meaning of the statute.

*373 Vulgar and Indecent

The final question or misunderstanding in *Hoffman (II)* is both the application and meaning of the terms ‘vulgar and indecent.’ As noted earlier, at the time that the Florida Supreme Court decided *Hoffman (II)*, [Section 800.03](#) read as follows:

It shall be unlawful for any person to expose or exhibit his sexual organs in *any public place* or *on the private premises of another*, or *so near thereto as to be seen from such private premises*, in a vulgar or indecent manner, or so to expose or exhibit his person in such place as *to be naked in such place*. [\[FN68\]](#)

Again as noted earlier, the statute on its face prohibited being naked on the private premises of another. Clearly, this would be over broad. Without clearly being asked to, the Florida Supreme Court amended or rather construed the statute to cure this potential problem, holding:

Because of the nature of the statute, the terms [vulgar and indecent] must be construed as necessarily relating to a lascivious exhibition This construction necessarily applies to the language, ‘... to go or be naked in such place.’ [\[FN69\]](#)

Properly understood, the court was indicating that being naked “in such place,” i.e., “on the premises of another,” violated the statute only if the nakedness was lascivious. The lasciviousness requirement was necessary to make sense of a statute that would otherwise prohibit nudity on another's property.

The first question to ask is whether the amendments to [Section 800.03](#) obviate the need for the same Florida Supreme Court construction to save it. Currently, [Section 800.03](#) simply prohibits being “naked in public.” [\[FN70\]](#) Again as noted before, the Florida Supreme Court has recognized the authority of the state to proscribe public nudity. In upholding the constitutionality of [Section 877.03, Florida Statutes](#), to topless sunbathing the court noted, “Since the beginning of civilization public nudity has been considered improper.” [\[FN71\]](#)

*374 The Florida Supreme Court repeated that quote in *McGuire v. State* when it upheld the constitutionality of a park rule that prohibited, in somewhat unclear terms, public nudity. [\[FN72\]](#)

The court emphasized its recognition of the state's authority to prohibit public nudity holding that “the regulation of public nudity is within the ambit of the state's police power.” [\[FN73\]](#) More importantly for the purposes of understanding the current [Section 800.03](#), the court added, “[W]e will not second-guess the specific language that the state may use in regulating [public nudity] where that language is not constitutionally infirm.” [\[FN74\]](#)

The language of the current [Section 800.03](#) is not “constitutionally infirm.” It clearly and concisely states, “It is unlawful ... to be naked in public.” [\[FN75\]](#) The language cannot be asserted to be vague or unclear. Consequently, *McGuire* would hold that [Section 800.03](#) validly prohibits public nudity.

The earlier [Section 800.03](#) did not simply regulate public nudity. It regulated nudity on the premises of another as well. It is because of this regulation of non-public nudity that the Supreme Court needed to clarify the former [Section 800.03](#), to provide that the statute implicitly applied the terms “vulgar and indecent” and “lascivious” to the prohibition of nudity in the statute.

Once again a number of courts subsequent to *Hoffman (II)* construed the opinion as requiring not only public nudity but also indecent actions in addition to the public nudity. The Florida First district, in *Duvallon*, [\[FN76\]](#) and Second District, in *Goodmakers*, [\[FN77\]](#) agreed that *Hoffman (II)* required that “in order for nudity to be prosecutable under [Section 800.03, Florida Statutes](#), there must be a lewd and lascivious exhibition or exposure of the sexual organs.” [\[FN78\]](#) As restated by the Second District, 800.03 requires “a lewd or lascivious exhibition ... while naked.” [\[FN79\]](#) In 1993, the District Court for the Middle District of Florida agreed, describing a person naked on a public beach as “nude but not lewd.” [\[FN80\]](#) Finally, the standard jury *375 instruction also require a finding that the “[Defendant] intended the ... [nakedness] to be in a vulgar, indecent, lewd or lascivious manner.” [\[FN81\]](#)

These courts and the jury instructions misconstrue *Hoffman (II)*. While *Hoffman (II)* does require that in order to violate [Section 800.03](#) it must be lewd, when the nudity is in public, nude *is* lewd. This is actually an overstatement. The accurate statement is that when the public nudity is intentional it is lewd.

Any other understanding would be inconsistent with the posture of the *Hoffman (II)* case. The plaintiff was arguing for the First Amendment right to be a nude dancer not a lewd dancer. In 1971, the Florida Supreme Court would have scoffed at the idea that the First Amendment protected nude dancing that had an additional lewdness component.

The Eleventh Circuit, in *South Florida*, recognized that public nudity violated [section 800.03](#) and upheld the constitutionality of 800.03 as it applied to nude sunbathing. [\[FN82\]](#) Additionally, it held that “the words ‘indecent’ and ‘lewd’ have been upheld in cases involving public exposure of the naked body.” [\[FN83\]](#) *South Florida*, like *Hoffman (II)*, involved plaintiffs seeking the right to be naked in public, not to be nude and lewd. Each recognizes that with public nude sunbathing and nude dancing in a public bar, nude is lewd.

This conclusion is consistent with the Florida courts' understanding of lewdness. Lewd, lascivious, indecent, vulgar and wanton are often used interchangeably by the Florida courts. “‘Lewd’, ‘lascivious’ and ‘indecent’ are synonymous and connote wicked, lustful, unchaste, licentious or sensual design on the part of the perpetrator.” [\[FN84\]](#) “The words ‘lewd’ and ‘lascivious’ behavior, when used in a statute to define an offense, have [sic] been held to have the same meaning, that is, an unlawful indulgence in lust, eager for sexual indulgence.” [\[FN85\]](#) “It would be, of course, difficult or impossible to detail in a statute book all the acts which would constitute lewd and lascivious behavior, but there is a large body of case law on the meaning of the words ‘lewd’ and ‘lascivious’ ...” [\[FN86\]](#) *376 With regard to public nudity the issue is intent. The question is whether the person intended to be naked in public. As stated by the Florida Supreme Court in *Schmitt v. State*:

For example, deliberately exhibiting one's nude body to passers-by in a shopping mall would be “lewd” and “lascivious.” Being stripped naked against one's will in the same location is neither ‘lewd’ nor ‘lascivious’ because it is not intentional. [\[FN87\]](#)

The key factor is the deliberateness. *Schmitt, Hoffman (II)* and *South Florida* stand for the proposition that deliberately displaying one's naked body to strangers in a public place is lewd and lascivious. [FN88]

With regard to [Section 800.03, Florida Statutes](#) [FN89] the Florida Second District Court of Appeal, in *Egal v. State* held that the term “lewd and lascivious” “imports more than a negligent disregard of the decent proprieties and consideration due others.” [FN90] The Second District emphasized the distinction between innocent exposure and deliberate or intentional exposure. Without deliberateness or intentionality then the exposure is not lewd and lascivious. On the other hand, where nudity is intentional it is lewd and lascivious. [FN91] The conclusion that intentional public nudity is lewd and lascivious is consistent with common law.

PUBLIC NUDITY/INDECENT EXPOSURE

As recognized by the United States Supreme Court, “Acts of gross and open indecency or obscenity, injurious to public morals, are indictable at common law, as violative of the public policy that requires retribution for acts that flaunt accepted standards of conduct.” [FN92] Public nudity was considered an act *malum en se*. *LeRoy v. Sidley*, 1 Sid. 168, 82 Eng. Rep. 1036 (KB 1664).” [FN93] “Public indecency — including public nudity — has long been an offense at common law.” [FN94] *377 It is now settled that acts of public indecency, such as lewdness ... standing naked on a balcony in a public place ... and the like, are indictable and punishable at common law.” [FN95] The “elements of common law offense known as indecent exposure” are “a willful exposure of nudity in a public place in the presence of others.” [FN96]

The Florida Supreme Court has recognized public nudity as an offense at common law. “Since the beginning of civilization public nudity has been considered improper.” [FN97] In discussing nudity as “a matter of conduct thought to be a crime under the common law,” in *Hoffman (II)* [FN98] the Florida Supreme Court relied on *Commonwealth v. Broadland* [FN99] and *Noblett v. Commonwealth*. [FN100] Both of these cases recognize the existence and elements of “the common law offense of indecent exposure.” [FN101] Those elements are (1) the intentional exposure, (2) of private parts of the naked body, (3) at a time and place where, as a reasonable person, he knows or ought to know his act is open to the observation of others. [FN102]

The Supreme Court of Iowa, in 1970, provided an excellent explanation of the relationship between public nudity and lewdness in *State v. Nelson*. [FN103] The court considered the meaning and application of an Iowa statute that prohibited “an open and indecent or obscene exposure of his or her person (sic)” [FN104] The defendants had intentionally disrobed to complete nudity at a public meeting.

The thrust of the arguments advanced in support of defendants' first assignment of error is that public nudity alone or per se does not constitute the crime of indecent exposure. They argue inferentially that a violation of the statute requires (a) open, public nudity and (b) an indecent intent as opposed to the simple intent to do the act complained of, and that the two elements are exclusive of each other. They seem to insist that reversal is required because while the record is clear that the defendants were nude in public and intentionally so, the record also shows that they did nothing *378 further in the way of conduct that was indecent, obscene or suggestive of sexual conduct or behavior. They reason that the

conjunctive wording of the statute (open and indecent) means that mere open nudity is not enough, nor is the general intent to expose one's self in public enough to justify conviction. They contend that there must be a present intent to do something indecent or obscene while publicly unclothed. On the other hand, the State argues that public nudity per se is a violation of the statute, conceding that there are some limited exceptions such as being unclothed in the office of a doctor, or while posing as an artist's model and, of course, accidental nudity. We come up against similar problems with both of the above positions, that is to say, the position of the defendants and that of the State. The defendants' position is too broad and would permit behavior that obviously was intended to have been proscribed by the statute. The State's view that nudity per se is a violation is likewise too broad because it could conceivably encompass behavior that is not in fact objectionable to the public concept of morality or violative of the ordered functioning of society. We conclude the statute prohibits public nudity that is not accidental when the public exposure occurs in a context in which firmly accepted norms or rules of public behavior or decency require that people remain covered or clothed. Hence, if an individual intentionally disrobes in a public meeting and the ordinary rules of societal behavior dictate that persons in public meetings remain clothed, the statute has been violated. The violation is the Act of public nudity, combined with the intent to perform the act in a place or in a context in which the act violates recognized and accepted norms of social behavior.

We find this rationale acceptable because it still requires more than mere public nudity. It requires public nudity or exposure that is intentionally undertaken to violate the accepted rules of behavior as those rules relate to the particular factual situation in which the exposure occurs. Thus it is not the nudity alone, but it is the act of disrobing, plus the intent to do it in a place where social norms would be knowingly violated that provides the illegality. Such a rationale concentrates not on the person's actions before, during, or after his public exposure, but rather this interpretation centers primarily on the context or factual circumstances in which the exposure occurs. It does require intent to do the exposure with the design of violating well-recognized rules of behavior for the specific context.

This rationale also appears implicit in the so-called exceptions to this statute, that is, artists' models, patients before doctors and nurses, accidental nudity, etc. These exceptions seem to mean that in certain *379 contexts where normal behavior allows nudity, the statute has no application. Our interpretation of the statute adopts the logic of the exceptions and makes such logic the basic criterion for determining whether the statute has been violated in all other cases of exposure or nudity. As examples, the same rules or norms, which permit nudity in doctors' offices, nudist camps, on the stage, or in the artists' studios are not applicable to public behavior on the streets, in parks or in public gatherings. Our view of the statute requires a consideration of the norms of behavior for the setting in which the nudity occurs. If an individual intentionally exposes his body, or the private parts thereof, with the concomitant intent to breach the public rules of behavior, then the statute in question is violated.

It is conceded that the exposure of the defendants was before a mixed audience at a meeting advertised as being open to the general public. Thus, the record shows the defendants intentionally set out to break the well-recognized rules regarding the wearing of apparel at public meetings when they disrobed. They were devoid of clothing in

public, and such nudity was undertaken with the intent of violating the normal and accepted rules of behavior at public meetings. [\[FN105\]](#)

This (perhaps excessively) long passage from the Iowa Supreme Court explains in detail the proper understanding of nude and lewd. The Florida Supreme Court in *Hoffman (II)* indicated that [Section 800.03](#) required lasciviousness and public nudity. This is essentially no different than the Iowa requirement for “open and indecent (sic) ... exposure.” [\[FN106\]](#) The holding of the Iowa court is that intentional public nudity is both open (public) and indecent. This is precisely what the Florida Supreme Court said in *Schmitt*, i.e., “deliberately exhibiting one's nude body to passers-by in a shopping mall would be ‘lewd’ and ‘lascivious.’” [\[FN107\]](#)

The conclusion is that dancing naked at a public nude dance hall violates [Section 800.03](#). First, the nude dance occurs in public. Second, the nudity exposes those parts of the body the exposure of which is prohibited. Not only is nudity expressly prohibited, breast-feeding is exempted thereby clearly implying that exposure of female breasts is otherwise prohibited. Third, the fact that the nudity is in public sufficiently demonstrates a violation, but even if the nudity must be *380 accompanied by lasciviousness, the nudity is lascivious because it is in public. Nude dancing, then, violates state law.

STANDING

The requirement for standing is based on the constitutional requirement for separation of powers. [\[FN108\]](#) Separation of powers requires that federal courts adjudicate only cases and controversies. [\[FN109\]](#) The Supreme Court has stated that as between mootness, ripeness, political question and other similar Article III requirements, “‘standing’ to invoke the power of a federal court is perhaps the most important.” [\[FN110\]](#) One reason is that “Art. III judicial power exists only to redress or otherwise protect against injury to the complaining party.” [\[FN111\]](#) The fact that the judgment “may benefit others collateral” does not obviate the need for the plaintiff to show that she herself “has suffered ‘some threatened or actual injury resulting from the putatively illegal action ...’” [\[FN112\]](#)

The Court will require that the plaintiff demonstrate that “the asserted injury was the consequence of the defendants' actions or that prospective relief will remove the harm.” [\[FN113\]](#) In *Warth v. Seldin*, the Court focused on causation, i.e., whether “the facts alleged ... support an actionable causal relationship between [the defendant's] practices and the petitioner's asserted injury.” [\[FN114\]](#) The Court also looked for what it termed “the line of causation.” [\[FN115\]](#) The Court also asked a plaintiff to show that “he personally would benefit in a tangible way from the court's intervention.” [\[FN116\]](#) Put another way “[t]he necessity that the plaintiff who seeks to invoke judicial power stand to profit in some personal interest remains an Art. III requirement.” [\[FN117\]](#)

*381 [I]t must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” [\[FN118\]](#)

Redressibility is one of the three “irreducible constitutional minimum[s] of standing.” [\[FN119\]](#) It is the redressibility requirement that makes [Section 800.03](#) so important to local governments.

In *Lujan v. Defenders of Wildlife*, Defenders challenged the Secretary of the Interior's interpretation of the Endangered Species Act. [\[FN120\]](#) Defenders did not attack any other

federal agency or federal rule. The plurality found that Defenders did not have a redressible injury, because the Secretary of the Interior could not bind other federal agencies nor could the court's order bind other federal agencies not before the court. The federal courts could redress Defenders' perceived injury only if all agencies were bound. *Lujan* supports the proposition that in order to have a redressible injury when challenging a regulation, the plaintiff must challenge the entire regulatory scheme so that at the end of the lawsuit, if plaintiff prevails, then plaintiff will accomplish its goal, e.g., lawfully operating its business.

The Eleventh Circuit has reached essentially that result in the field of criminal law. The Eleventh Circuit has held that a plaintiff does not have standing to have a *county* statute declared unconstitutional where a *state* statute would require the plaintiff to suffer the same harm caused by the allegedly unconstitutional county statute. [\[FN121\]](#) Penn urged that he was improperly tried as an adult under a county statute. The Eleventh Circuit found that under a statewide statute Penn still would have been tried as an adult.

Consequently, "Penn suffered no constitutional harm. Therefore, he has no standing to challenge the constitutionality of [the county statute]." [\[FN122\]](#)

An undistinguishable result was reached in *Harp Advertising Illinois, Inc. v. Village of Ridge Illinois*, [\[FN123\]](#) where Harp wanted to build a 100-square-foot billboard. The Village's sign code and zoning code prohibited the erection of the sign. Harp argued that its First Amendment rights were violated. The Seventh Circuit held that Harp did not have standing to challenge the sign and zoning code because another ordinance prohibited the erection of a sign in excess of 200 square *382 feet. Even if Harp had a total victory in the filed lawsuit, it could not erect the 100-square-foot sign it wanted. The court concluded that Harp did not have standing.

In *Ward v. C.I.R.*, [\[FN124\]](#) Ward claimed that an Internal Revenue Code exemption violated equal protection. The Fifth Circuit held that Ward had no standing because the court could not grant Ward an injunction granting the exemption. Consequently, the court could not redress Ward's injury. Ward's taxes would be the same either way; therefore, Ward did not have standing to challenge the tax exemption. [\[FN125\]](#)

In *South Florida*, the Eleventh Circuit, without expressly relying on the concept of standing, used [Section 800.03](#) as a reason to deny a request to enjoin a local ordinance. [\[FN126\]](#) The plaintiffs in *South Florida* sought the right to sunbathe nude in violation of [Section 800.03](#), local ordinances and other statutes. The court held that [Section 800.03](#) constitutionally prohibited nude sunbathing. Consequently, the court refused to address the constitutionality of the remaining statute and ordinances. The court held, "There being other constitutionally valid laws to preclude plaintiffs' conduct, examination of [[Section 877.03, Florida Statutes](#)] in this context is unnecessary." [\[FN127\]](#) The Eleventh Circuit applied this reasoning to a local ordinance that had been challenged at the same time. [\[FN128\]](#)

CONCLUSION

While cases on this subject are difficult to find, they tend to agree and are consistent with the general concepts of standing. These courts recognize that a plaintiff whose actions are illegal gains nothing if a court declares one law invalid but another valid or unchallenged law continues to make a plaintiff's conduct illegal. The question for local governments is

whether a state statute already makes nude dancing illegal. As shown herein, the better argument is that [Section 800.03](#), particularly as it now reads, prohibits nude dancing at clubs or businesses open to the public. Indeed, [Section 877.03, Florida Statutes](#), indisputably prohibits public nudity. [\[FN129\]](#) [Section 800.03](#) is important, however, because at least one court has suggested 877.03 might be invalid. [\[FN130\]](#) Furthermore, [Section 800.03](#) is a general law *383 which prohibits all public nudity, and, in light of *Barnes v. Glen Theatre* [\[FN131\]](#) and *City of Erie v. Pap's A.M.*, [\[FN132\]](#) such a law has an excellent chance to be held constitutional. In sum, [Section 800.03](#) protects local governments from challenges to their adult entertainment codes by nude dancing facilities. [\[FN133\]](#)

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[\[FN1\]](#). See [FW/PBS, Inc. v. Dallas, 493 U.S. 215 \(1990\)](#) and the multitude of cases applying *FW/PBS*.

[\[FN2\]](#). See [KEV, Inc. v. Kitsap County 793 F.2d 1053, 1059-1060 \(9th Cir. 1986\)](#).

[\[FN3\]](#). See *Renton v. Playtime Theatres, Inc.*, 475 U.S. 42 (1986).

[\[FN4\]](#). See e.g., [J. Lingerie Inc. v. City of Jacksonville, 176 F.3d 1358 \(11th Cir. 1999\)](#).

[\[FN5\]](#). See [FW/PBS, 493 U.S. 215](#); *Renton*, 475 U.S. 42; [KEV, 793 F.2d 1053](#).

[\[FN6\]](#). See [Barnes v. Glen Theatre Inc., 501 U.S. 560 \(1991\)](#).

[\[FN7\]](#). See *id.*

[\[FN8\]](#). See *City of Erie v. Pap's A.M.*, No. 98-1161, [2000 WL 3133381 \(U.S. March 29, 2000\)](#).

[\[FN9\]](#). See *id.*

[\[FN10\]](#). See *id.*

[\[FN11\]](#). This paper will not go into the complexities of the various opinions in *Barnes* and *Erie*. For the purposes of this article, it is sufficient to conclude that a state law prohibiting public nudity can, under some circumstances, constitutionally prohibit nude dancing.

[\[FN12\]](#). See discussion *supra* note 11.

[\[FN13\]](#). See e.g., [Cafe 207, 66 F.3d 272 \(11th Cir. 1995\)](#), *cert. den.* [517 U.S. 1156](#)

[\(1996\)](#).

[FN14]. See [FLA. STAT. ch. 800.03 \(1999\)](#).

[FN15]. [FLA. STAT. ch. 800.03 \(1999\)](#).

[FN16]. See *Hoffman v. Carson*, (“*Hoffman II*”), [250 So. 2d 891 \(Fla. 1971\)](#) appeal dismissed for want of substantial federal question, [404 U.S. 981 \(1971\)](#).

[FN17]. *Hoffman II*, [250 So. 2d at 892](#).

[FN18]. *Id.* at 894.

[FN19]. See [FLA. STAT. ch. 800.03 \(1969\)](#); *Hoffman v. Carson*, (“*Hoffman I*”) 70-5969 (Fla. 1st DCA 1970), p.1.

[FN20]. *Hoffman I*, 70-5969 at p.1.

[FN21]. *Id.* at p.5.

[FN22]. [FLA. STAT. ch. 800.03 \(1997\)](#).

[FN23]. *Id.*

[FN24]. See *Hoffman v. Carson*, (“*Hoffman II*”), [250 So. 2d 891 \(Fla. 1971\)](#).

[FN25]. See *id.* at [893](#).

[FN26]. *Id.*

[FN27]. See [State v. Perry](#), [398 So. 2d 959 \(Fla. 4th DCA 1981\)](#), *reh. den.*, [421 So. 2d 68 \(1981\)](#).

[FN28]. See [City of Miami v. Howard](#), [280 So. 2d 7 \(Fla. 3d DCA 1975\)](#).

[FN29]. See [Cooper v. Rogers of Orlando](#), [266 So. 2d 372 \(Fla. 4th DCA 1972\)](#).

[FN30]. See [Modlin v. Washington Ave. Food Ctr., Inc.](#), [178 So. 2d 596 \(Fla. 3d DCA 1965\)](#).

[FN31]. See [Paris Adult Theatre v. Slaton](#), [413 U.S. 49 \(1973\)](#).

[FN32]. *Id.* at [66](#).

[FN33]. [State v. Davis](#), [623 So. 2d 622 \(Fla. 4th DCA 1993\)](#).

[FN34]. Hoffman v. [Carson](#), (“*Hoffman II*”), 250 So. 2d 891 (Fla. 1971).

[FN35]. The correct interpretation of the Florida Supreme Court's statute is essential to determining whether Adult Dancers will violate Florida Statute chapter 800.03. It can be assumed that Adult Dancers will provide completely nude dancers, but its dancers will not separately and apart further expose their sex organs. The question then is whether nudity violates Florida Statute chapter 800.03.

[FN36]. See [Hoffman II](#), 250 So. 2d at 894.

[FN37]. The Supreme Court first indicated that nude dancing might be protected by the First Amendment in [California v. LaRue](#), 409 U.S. 109 (1972).

[FN38]. See [City of Portland v. Derrengrton](#), 451 P.2d 111 (Or. 1969), cert. den., 90 U.S. 901 (1969).

[FN39]. [Hoffman II](#), 250 So. 2d at 894, (quoting [Portland](#), 451 P.2d at 111).

[FN40]. See [G & B of Jacksonville, Inc. v. Department of Bus. Regulation](#), 362 So. 2d 951 (Fla. 1st DCA 1978).

[FN41]. See *id.*

[FN42]. *Id.* at 957 (emphasis added).

[FN43]. See [Duvallon v. State](#), 404 So. 2d 196 (Fla. 1st DCA 1981).

[FN44]. See *id.*

[FN45]. [FLA. STAT. ch. 800.03 \(1997\)](#) (emphasis added).

[FN46]. Hoffman v. [Carson](#), (“*Hoffman II*”), 250 So. 2d 891 (Fla. 1971).

[FN47]. [Duvallon](#), 404 So. 2d at 197.

[FN48]. See [Goodmakers v. State](#), 450 So. 2d 888 (Fla. 2d DCA 1984).

[FN49]. *Id.* at 890.

[FN50]. *Id.* at 891.

[FN51]. *Id.* (emphasis added).

[FN52]. The Fifth District specifically held that the term “sexual organ” includes female breasts in [Kitts v. State](#), No. 98-2957, [1999 WL 741169 \(Fla. 5th DCA September 17, 1999\)](#).

[FN53]. [Hoffman II](#), 250 So. 2d at 893.

[FN54]. [Moffett v. State](#), 340 So. 2d 1155, 1156 (Fla. 1976) *reh.den.* (1977).

[FN55]. [McGwire v. State](#), 489 So. 2d 729, 730 (Fla. 1986).

[FN56]. [South Florida Free Beaches, Inc. v. City of Miami](#), 734 F.2d 608, 609 (11th Cir. 1984).

[FN57]. *Id.*

[FN58]. *Id.*

[FN59]. [Goodmakers v. State](#), 450 So. 2d 888, 891 (Fla. 2d DCA 1984).

[FN60]. [South Florida](#), 734 F.2d at 611.

[FN61]. *Id.*

[FN62]. *See* 1993 Fla. Laws ch. 93-4.

[FN63]. *See* [FLA. STAT. ch. 800.03 \(1999\)](#).

[FN64]. *See id.*

[FN65]. [Kitts v. State](#), No. 98-2957, [1999 WL 741169 \(Fla. 5th DCA September 17, 1999\)](#).

[FN66]. *See* 1993 Fla. Laws ch. 93-4.

[FN67]. [FLA. STAT. ch. 800.03 \(1999\)](#).

[FN68]. [FLA. STAT. ch. 800.03 \(1999\)](#) (emphasis added).

[FN69]. [Hoffman v. Carson \(Hoffman II\)](#), 250 So. 2d 891, 893 (Fla. 1971).

[FN70]. *See* [FLA. STAT. ch. 800.03 \(1999\)](#).

[FN71]. [Moffett v. Florida](#), 340 So. 2d 1155, 1156 (Fla. 1976).

[FN72]. *See* [McGwire v. State](#), 489 So. 2d 729, 731 (Fla. 1986).

[FN73]. *Id.* [at 732](#).

[FN74]. *Id.*

[FN75]. [FLA. STAT. ch. 800.03 \(1999\)](#).

[FN76]. *See* [Duvallon v. State, 404 So. 2d 196 \(Fla. 1st DCA 1981\)](#).

[FN77]. *See* [Goodmakers v. State, 450 So. 2d 888 \(Fla. 2d DCA 1984\)](#).

[FN78]. *Id.* [at 891](#) (quoting [Duvallon, 404 So. 2d at 197](#)).

[FN79]. *Id.*

[FN80]. [United States v. A Naked Person, 841 F. Supp. 1153, 1154 \(M.D. Fla. 1993\)](#).

[FN81]. Florida [Standard Jury Instructions, 697 So. 2d 84, 91 \(Fla. 1997\)](#).

[FN82]. *See* [South Florida Free Beaches, Inc. v. City of Miami, 734 F.2d 608, 609 \(11th Cir. 1984\)](#).

[FN83]. *Id.* [at 611](#).

[FN84]. [Boles v. State, 27 So. 2d 293, 294 \(Fla. 1946\)](#).

[FN85]. [Chesebrough v. State, 255 So. 2d 674, 677 \(Fla. 1971\)](#).

[FN86]. *Id.* [at 678](#) (quoting [Buchanan v. State, 111 So. 2d 51 \(Fla. 1st DCA 1959\)](#)).

[FN87]. [Schmitt v. State, 590 So. 2d 404, 410 \(Fla. 1991\)](#).

[FN88]. *See also* [State v. Davis, 623 So. 2d 622 \(Fla. 4th DCA 1993\)](#).

[FN89]. *See* [FLA. STAT. ch. 800.03 \(1984\)](#).

[FN90]. [Egal v. State, 469 So. 2d 196, 197 \(Fla. 2d DCA 1985\)](#) (quoting [McKinley v. State, 244 P. 208 \(Okla. Crim. App. 1926\)](#)).

[FN91]. *See id.* [at 198](#).

[FN92]. [Winters v. New York, 333 U.S. 507, 515 \(1948\)](#).

[FN93]. [Barnes v. Glen Theatre, 501 U.S. 560, 568 \(1991\)](#) (plurality opinion).

[FN94]. *Id.* [at 572](#) (Scalia, J., concurring); *see also* [Erznoznik v. City of Jacksonville, 422 U.S. 205, 211 \(1975\)](#) (holding that “public nudity traditionally” has been “subject to indecent exposure laws”); [Roth v. United States, 354 U.S. 476, 512 \(1957\)](#) (Douglas J., dissenting) (“No one would suggest that the First Amendment permits nudity in public places”).

[\[FN95\]. State of Oregon v. Franzone, 415 P.2d 16, 20 \(Or. 1966\).](#)

[\[FN96\]. LongBridge Inv. Co. v. Moore, 533 P.2d 564 \(Ariz. App. Div. 1975\) \(citing Yauck v. State, 514 P.2d 709 \(Ariz. 1973\)\).](#)

[\[FN97\]. McGwire v. State, 489 So. 2d 729, 731 \(Fla. 1986\) \(quoting Moffett v. State, 340 So. 2d 1155, 1156 \(Fla. 1976\)\).](#)

[\[FN98\]. See Hoffman v. Carson \(Hoffman II\), 250 So. 2d 891, 893 \(Fla. 1971\).](#)

[\[FN99\]. See Commonwealth v. Broadland, 51 N.E.2d 961 \(Mass. 1943\).](#)

[\[FN100\]. See Noblett v. Commonwealth, 194 Va. 20, 72 S.E.2d 241 \(Va. 1952\).](#)

[\[FN101\]. Id. at 243.](#)

[\[FN102\]. Broadland, 51 N.E. 2d at 963 \(quoting State v. Martin, 101 N.W. 637, 638 \(Iowa 1904\)\).](#)

[\[FN103\]. See State v. Nelson, 178 N.W. 2d 434 \(Iowa 1970\).](#)

[\[FN104\]. Id. at 436.](#)

[\[FN105\]. Id. at 438-39.](#)

[\[FN106\]. Id. at 436.](#)

[\[FN107\]. Schmitt v. State, 509 So. 2d 404, 410 \(Fla. 1991\).](#)

[\[FN108\]. See Allen v. Wright, 468 U.S. 737, 750, \(1984\). Indeed, the last reported decision which FLA. STAT. ch. 800.03 \(1999\) definitely was enforced against a nude dancer was Hoffman v. Carson \(Hoffman II\), 250 So. 2d 891, 893 \(Fla. 1971\).](#)

[\[FN109\]. See id.](#)

[\[FN110\]. Id.](#)

[\[FN111\]. Warth v. Seldin, 422 U.S. 490, 499 \(1975\).](#)

[\[FN112\]. Id.](#)

[\[FN113\]. Id. at 505.](#)

[\[FN114\]. Id. at 507.](#)

[\[FN115\]](#). *Id.* at 509.

[\[FN116\]](#). *Id.* at 508.

[\[FN117\]](#). [Allen v. Wright, 468 U.S. 737, 766 \(1984\)](#).

[\[FN118\]](#). [Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 \(1992\)](#).

[\[FN119\]](#). *Id.* at 560.

[\[FN120\]](#). *See id.*

[\[FN121\]](#). *See* [Penn v. Attorney Gen. of the State of Ala., 930 F.2d 838 \(11th Cir. 1991\)](#).

[\[FN122\]](#). *Id.* at 841.

[\[FN123\]](#). *See* [Harp Adver. Ill. Inc. v. Village of Ridge Ill., 9 F.3d 1290 \(7th Cir. 1993\)](#).

[\[FN124\]](#). *See* [Ward v. C.I.R., 608 F.2d 599, 601 \(5th Cir. 1979\)](#).

[\[FN125\]](#). *Accord*, [Templeton v. C.I.R., 719 F.2d 1408 \(7th Cir. 1983\)](#).

[\[FN126\]](#). *See* [South Florida Free Beaches, Inc. v. City of Miami, 734 F.2d 608, 612 \(11th Cir. 1984\)](#).

[\[FN127\]](#). *Id.*

[\[FN128\]](#). *See id.*

[\[FN129\]](#). *See* [Moffett v. Florida, 340 So. 2d 1155, 1156 \(Fla. 1976\)](#).

[\[FN130\]](#). *See* [South Florida Free Beaches, 548 F. Supp. at 59-62 \(1982\)](#).

[\[FN131\]](#). *See* [Barnes v. Glen Theatre Inc., 501 U.S. 560 \(1991\)](#).

[\[FN132\]](#). *See* [City of Erie v. Pap's A.M., No. 98-1161, 2000 WL 3133381 \(U.S. March 29, 2000\)](#).

[\[FN133\]](#). The type of analysis used in this article can be cased for indecent exposure statutes throughout the country.