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IN THE SUPREME COURT OF FLORIDA

H. LEE MOFFITT, as Speaker of the Florida House of Representatives, and CURTIS PETERSON, as President of the Florida Senate,

Petitioners,

vs.

HONORABLE BEN C. WILLIS, a Judge of the Circuit Court, Second Judicial Circuit of Florida,

Respondent.

PETITION FOR WRIT OF PROHIBITION

The Florida House of Representatives, on behalf of its Speaker, H. Lee Moffitt, and the Florida Senate, on behalf of its President, Curtis Peterson, as and constituting the Legislature of the State of Florida, petition this Court to issue its Writ of Prohibition to the Circuit Court of the Second Judicial Circuit of Florida, and in support thereof state:

1. Petitioner H. LEE MOFFITT is the duly elected Speaker of the Florida House of Representatives and a constitutional officer of the State of Florida pursuant to Article III, Section 2, Florida Constitution. Petitioner CURTIS PETERSON is the duly elected President of the Florida Senate and a constitutional officer of the State of Florida pursuant to Article III, Section 2, Florida Constitution.

2. The respondent, BEN C. WILLIS, is a duly elected and qualified Judge of the Second Judicial Circuit of Florida, holding office as such.

3. There is pending before the respondent in the Circuit Court of the Second Judicial Circuit of Florida a separate civil action for declaratory judgment styled The Miami Herald Publishing Company

v. Moffitt , Case No. 82-84 (Fla. 2d Cir.) wherein petitioners, H. LEE MOFFITT and CURTIS PETERSON, are defendants. A copy of the Complaint filed in that action is attached hereto as "Exhibit A." The Complaint in said action for declaratory judgment was filed on January 14, 1982, and alleged that during May and June of 1981, "secret meetings of committees of the Legislature" occurred in violation of legislative rules and section 11.142, Florida Statutes; Article II, section 8 of the Florida Constitution; Article I, sections 1 and 4 of the Florida Constitution; the First and Fourteenth Amendments to the United States Constitution; Article III of the Florida Constitution; and sections 286.011 and 286.012, Florida Statutes.

4. On April 22, 1982 petitioners filed a Motion to Dismiss the Complaint in the aforesaid civil case alleging as grounds therefor, inter alia, that the Circuit Court lacked jurisdiction over the subject matter of the Complaint as it relates to the Florida Senate and the Florida House of Representatives under the constitutional doctrine of separation of powers. A copy of the Motion to Dismiss is attached hereto as "Exhibit B."

5. A hearing was held on October 21, 1982 on petitioners' Motion to Dismiss before the respondent herein, the HONORABLE BEN C. WILLIS. Upon due notice to counsel for all parties, said motion was argued before respondent, who, by order dated Februrary 28, 1983 held that the plaintiffs in the aforesaid civil action were entitled to a ruling under chapter 86, Florida Statutes, as to the allegations in the complaint relating to the First Amendment to the United States Constitution and the corresponding provision of the Florida Constitution, and also as to section 11.142, Florida Statutes. A copy of the Order dated Febuary 28, 1983 is attached hereto as "Exhibit C."

6. On July 27, 1983 petitioners filed their Answer and Affirmative Defenses in the aforementioned civil action alleging as

an affirmative defense that the Circuit Court lacked jurisdiction over the subject matter of the complaint. A copy of the petitioners Answer and Affirmative Defenses is attached hereto as "Exhibit D."

7. On February 9, 1984, counsel for petitioners received written notice from counsel for plaintiffs in the aforesaid civil action of their intention to subpoena for deposition the petitioners, as well as other members of the Florida House of Representatives and the Florida Senate, other officers and employees of the Legislature, and former members of the Legislature.

8. An emergency hearing was held on February 10, 1984 on petitioners' Motion to Quash the Subpoenas before the respondent, the HONORABLE BEN C. WILLIS. Upon due notice to counsel for all parties, said motion was argued before respondent, who, by order dated February 15, 1984 denied petitioners' Motion to Quash and set the final hearing in the case for March 16, 1984. A copy of the Order dated February 15, 1984 is attached hereto as "Exhibit E." Respondent has stayed the effect of the Order of February 15, 1984 until midnight February 17, 1984 to permit petitioners to seek appellate review of the proceedings below. A copy of the transcript of the emergency hearing is attached as "Exhibit F."

9. Prohibition is the appropriate remedy for the following reasons, as further amplified and supported in paragraphs 10 through 27 of this petition:

a. The constitutional doctrine of separation of powers deprives the court of jurisdiction over the subject matter of this action, the internal operating procedures of the Legislature.

b. The subject matter of this action is moot; the only law that the Complaint alleges was discussed at "secret meetings of committees of the Legislature" was the 1981 General Appropriations Act, which expired on June 30, 1982; any future laws that are

allegedly passed in violation of constitutionally mandated processes can be challenged directly.

c. The court lacks jurisdiction over the parties because courts lack the power to impose compulsory process or civil liability against state legislators for purely legislative acts; any decision of the trial court would be unenforceable and advisory only.

d. The Declaratory Judgment Act, Chapter 86, Florida Statutes, is unavailable to provide an answer to abstract questions, to provide for judgments that serve no useful purpose, or to provide the parties with legal advice.

e. Petitioners have no other remedy that is complete, adequate, and available.

SEPARATION OF POWERS

10. This is a case of State. It goes to the very heart of the legislative process and the legislative power. In attempting to give declaratory relief on the basis of the Complaint, the courts invade the domain of the Legislature, a coordinate branch of government. The role of the judicial branch is not to substitute its judgment for that of the Legislature as to internal legislative proceedings and the respondent is without jurisdiction in permitting the plaintiffs in the aforesaid civil action to seek a declaration that the legislative meetings were in violation of legislative rules, statutes, or constitutional provisions. Petitioners' contention in this regard is supported by substantial authority.

11. The legislative power of the State of Florida is vested in the Florida Legislature consisting of the Florida Senate and the Florida House of Representatives. Article III, Section 1, Florida Constitution. In the implementation and furtherance of this provision, Article III, Section 4(a), Florida Constitution, provides

that "each house shall determine its rules of procedure." These provisions commit the determination of legislative procedure to the legislative branch of government.

12. Moreover, Article II, Section 3, Florida Constitution mandates the separation of the legislative, judicial, and executive branches of state government and directs that "no person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

13. The judiciary's role in regard to legislative powers is clearly defined: The judiciary is to measure enactments of the Legislature against the constitutional requirements for the making of laws. General Motors Acceptance Corp. v. State, 152 Fla. 297, 11 So.2d. 482, 485 (1943). In Carlton v. Mathews, 103 Fla. 301, 137 So. 815, 847-848, (1931), this Court stated:

> ...while it is the highest duty of the courts to enforce the principles of the Constitution, they should be careful not to invade the domain of the legislative department.

There is no statute whose constitutionality has been challenged in the proceedings below.

14. The parameters of judicial authority in legislative matters were examined in light of the separation of powers doctrine in Brewer v. Gray, 86 So.2d 799, 803 (Fla. 1956):

> The Legislature is a coordinate branch of the government and even though the performance of a duty is required by the constitution, the courts, being another coordinate brancyh of government, are not authorized to compel the Legislature to exercise a purely legislative prerogative.

See also Dade County Classroom Teachers Ass'n v. Legislature, 269 So.2d 684, 686 (Fla. 1972), stating, "...it is too well settled to need any citation of authority that the judiciary cannot compel the Legislature to exercise a purely legislative prerogative."

15. In McPherson v. Flynn, 397 So.2d 665 (Fla. 1981), this Court held that under the doctrine of separation of powers, it lacked jurisdiction to inquire into the qualifications of a duly elected member of the House of Representatives pursuant to Article II, Section 2, Florida Constitution. The court stated that:

> ...the doctrine of separation of powers requires that the judiciary refrain from deciding a matter that is committed to a coordinate branch of government by the demonstrable text of the constitution.

16. In Crawford v. Gilchrist, 64 Fla. 41, 59 So. 963, 968 (1912) this Court emphasized the broad power of each house of the Legislature to interpret and enforce its own procedures. Such power extends beyond the authority merely to adopt formal rules:

> The provision that each House "shall determine rules of its proceedings" does not restrict the power given to the mere formulation of standing rules, or to the proceedings of the body in ordinary legislative matters; when exercised by a majority of a constitutional quorum, such authority extends to the determination of the propriety and effect of any action as it is taken by the body as it proceeds in the exercise of any power, in the transaction of any business, or in the performance of any duty conferred upon it by the constitution.

Furthermore, in State ex rel. Landis v. Thompson, 120 Fla. 860, 163 So. 279, 281 (1935), this Court noted that:

> ...with mere violation of parliamentary rules in legislative proceedings, the courts have nothing to do, since under section 6 of article 3 of the [1885] Constitution the Legislature determines upon and enforces the rules of its own proceedings.

17. The respondent has stated an intention to determine the rules of the Legislature. See the Order of February 15, 1984, appended as Exhibit E and the transcript appended as Exhibit F. Courts are precluded from determining legislative rules, even where a statute such as section 11.142, Florida Statutes, provides the technical pretext for such a determination. Were such a pretext recognized by this Court, courts would be able to determine such

other legislative rules as those covering decorum, debate, form of bills, amendments, and parliamentary procedure. Form should not be allowed to prevail over substance, and in this case the respondent should not be allowed to use a pretext to invade what has always been recognized as the sole domain of the Legislature.

MOOTNESS

18. The issues in this case are moot. The Complaint alleges that "secret meetings of committees" occurred with respect to the 1981 General Appropriations Act; that act has been void since July 1, 1982. Where nothing can be accomplished by a particular decision, regardless of which party that decision would favor, the matter should be declared moot and the court should proceed no further. See Alabama Coal Co. v. Bowden, 44 Fla. 163, 31 So. 820 (1902).

19. Exceptions to the mootness doctrine should be made only in extremely rare cases, and this is not such a case. In a leading case in the area, Walker v. Pendarvis, 132 So.2d 186 (Fla. 1961), this Court held that the possibility of mootness would not preclude a decision where the case was a matter of great public importance, the duties of public officers and agencies were involved, and the case involved the possible liability of public officers for unlawful compensation. This case presents no such pressing need for a determination. The fundamental rule that courts should not decide moot questions can be overcome only in exceptional circumstances; a common formulation of such circumstances is that a challenged practice is "capable of repitition, yet evading review." See Moore v. Ogilvie, 394 U.S. 814, 23 L.Ed 2d 1, 89 S.Ct. 1493 (1969). No such claim could be made with respect to the practices alleged in the Complaint. If there is an error of constitutional dimension in the process of enacting some future law, that law could be challenged directly; this Court disposed of just such an attack less than a year ago in State v. Kaufman, 420 So.2d 904 (Fla. 1983).

JURISDICTION OVER THE PARTIES

20. The United States Supreme Court has recognized that state legislators enjoy a common law immunity from compulsory process or civil liability for legislative acts that predates the Constitution. Tenney v. Brandhove, 341 U.S. 367, 95 L.Ed 1019, 71 S.Ct. 783 (1951). Justice Frankfurter, speaking for eight members of the Court, noted that the privilege of legislators to be free from civil process for legislative acts has its source in the experiences of Parliament in the Sixteenth and Seventeenth Centuries. The common law immunity from compulsory process or civil liability applies even where the State Constitution specifically provides a more limited immunity, as in California, or where the State Constitution does not specifically address the subject of immunity, as in Florida. Even Justice Douglas, the lone dissenter in Tenney, expressed his agreement with the majority opinion "as a statement of general principles." See also Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 59 L.Ed 2d 401, 99 S.Ct. 1171 (1979), in which the Court held that the common law immunity recognized in Tenney applied to members of a regional body exercising legislative powers.

21. The question of jurisdiction is the question of the power of a court to act. Where a court has no power to act against a person, the court has no jurisdiction over that person. Under the common law immunity recognized in Tenney, a legislator could not be held civilly liable for any act mentioned in the Complaint, and the court could not employ any compulsory process to enforce its declaratory judgment. Lacking the power to act, the court lacks jurisdiction.

THE DECLARATORY JUDGMENT ACT

22. The Declaratory Judgment Act, Chapter 86, Florida Statutes, was enacted for a limited purpose. It should not be used beyond

that purpose and it should not be used to endow a court with jurisdiction to render useless judgments. This Court concisely stated its view of the power to render declaratory judgments in the oft-cited case of Ready v. Safeway Rock Co., 157 Fla. 27, 24 So.2d 808, 809 (1946), as follows:

> Viewed in its proper perspective, the Declaratory Judgments Act is nothing more than a legislative attempt to extend procedural remedies to comprehend relief in cases where technical or social advances have tended to obscure or place in doubt one's rights, immunities, status or privileges. It should be construed with this objective in view, but it should not be permitted to foster frivolous or useless litigation to answer abstract questions, to satisfy idle curiosity, go on a fishing expedition or to give judgments that serve no useful purpose. (emphasis supplied)

In this case no person's status had been put in doubt by technical or social advances, no concrete matter is in issue, save the curiosity of the plaintiffs below about abstract questions of internal legislative procedure, and no useful purpose could be served by the declaratory judgment demanded by the newspapers. In his concurrence in Ready, Justice Brown made an observation, adopted by this Court in Ervin v. City of North Miami Beach, 66 So.2d 235 (Fla. 1953), that is particularly appropriate to the issues before this Court. Justice Brown said:

> We may be sure that it was not the intention of the Legislature, in adopting our present Declaratory Judgments Act, to authorize or require the judiciary to give free legal advice to any party requesting it, nor to practice law without a license. 24 So.2d at 811.

Free legal advice is precisely what the plaintiffs request in this case; this conclusion is unavoidable in view of the powerlessness of the trial court to act and the mootness of the question, as demonstrated above.

23. A declaratory judgment is not a device to resolve a moot question. The justiciability requirement was stated in Grable v.

Hillsborough County Port Authority, 132 So.2d 423, 425 (Fla. 2d DCA 1961):

> It has been established that the declaratory judgment act may not be invoked unless there is a bona fide dispute between the adversaries to a cause as to a justiciable qustion, and judicial declarations as to questions which are moot are precluded.

24. Chapter 86 cannot be used to overcome the fundamental rule that courts must not render advisory opinions. This view was well summarized in Collins v. Horten, 111 So.2d 746, 751 (Fla. 1st DCA 1959):

> Courts do not have the power to give legal advice or opinions. The relief sought should not merely be legal advice by the courts or to give an answer to satisfy curiosity .... Under the Constitution, only the Supreme Court Justices (not the court itself) may be required by the Governor, to give their individual opinions on questions concerning the interpretation of the Constitution, and there such answer is specifically limited to such questions as affect the Governor's power and duties. (citiations omitted)

The plaintiffs below request an advisory opinion on a hypothetical question; this even the Governor cannot do. If the Circuit Court is allowed to proceed and render a declaratory judgment in this case, it will be issuing an advisory opinion on a moot or abstract question that invades the domain of a coordinate branch of government.

REMEDIES AVAILABLE TO PETITIONERS

25. Petitioners have no remedy other than prohibition that is adequate, complete, and available. No other remedy could spare the petitioners or the state the cost, extreme inconvenience, and undue burden involved in defending a lawsuit in which any result would be nugatory. Moreover, on the eve of the 1984 Regular Session of the Legislature, defense of this lawsuit inhibits the Legislature's ability to attend to the vital needs of the State of Florida.

26. Prohibition is the appropriate remedy when a court attempts to act without jurisdiction, in an excess of jurisdiction, or in the absence of judicial power. As stated by this Court in State ex rel. Marshall v. Petteway, 121 Fla. 822, 164 So. 872, 874 (1935):

> The rule is settled in this state that prohibition may be employed to restrain an excess of jurisdiction as well as to prohibit the exercise of judicial power where none exists. It may also be used to confine a court within his power when he attempts to exercise jurisdiction beyond the legitimate scope of his powers.

In this case, as demonstrated by the orders appended hereto, the respondent has every intention of proceeding to a decision which the respondent has no power to make or enforce.

WHEREFORE, the petitioners pray:

1. That this Court issue its Order forthwith staying all proceedings in the aforementioned civil action pending in the Second Judicial Circuit until final determination of this cause.

2. That this Court issue its Writ of Prohibition addressed to the respondent, HONORABLE BEN C. WILLIS, as Judge of the Second Judicial Circuit, directing dismissal of the aforementioned civil action pending in the Second Judicial Circuit or in the alternative that he show cause why he fails to do so.

Respectfully submitted,

MARK HERRON
Room 420, The Capitol
Tallahassee, Florida 32301
(904)488-1450

and

RICHARD A. HIXSON and
JERALD S. PRICE
208 House Office Building
Tallahassee, Florida 32301
(904)488-1450

Attorneys for the Florida House of Representatives

D. STEPHEN KAHN, of
Kahn & Dariotis, P.A.
227 East Virginia Street
Tallahassee, Florida 32301
(904)222-4000

and

LEONARD SCHULTE
Room 310, The Capitol
Tallahassee, Florida 32301
(904)488-1621

Attorneys for the Florida Senate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition and attached Appendix was forwarded to THE HONORABLE BEN C. WILLIS, Circuit Judge, Room 300, Leon County Courthouse, Tallahassee, Florida 32301, on this 16th day of February, 1984.

MARK HERRON