

IN THE SUPREME COURT OF FLORIDA

UNEMPLOYMENT APPEALS COMMISSION,  
Petitioner,

vs.

ZACHARY S. COMER,  
Respondent.

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UNEMPLOYMENT APPEALS COMMISSION,  
Petitioner,

vs.

PIERRE J. RENELUS,  
Respondent.

CASE NO.: 68,145

**FILED**  
SID J. WHITE

MAY 8 1986

CLERK, SUPREME COURT

CASE NO.: 68,442

Chief Deputy Clerk

PETITION FOR CERTIORARI  
FROM THE THIRD DISTRICT  
COURT OF APPEAL

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RESPONDENT PIERRE J. RENELUS'  
ANSWER BRIEF  
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TABLE OF CONTENTS

	Page
Table of Citations .....	ii-iv
Preface .....	v
Summary of Argument .....	1
Argument .....	2 - 9
I. Petitioner misconstrues the proper role of the court in statutory construction .....	2
II. To be reconciled with the purpose of the unemployment compensation program, section 443.151(6)(c), Fla. Stat. (1985), must be read to apply to recovery by repayment .....	5
III. The interpretation of the statute urged by Petitioner would render it unconstitutional as violative of the equal protection clause of the Florida and United States constitution .....	7
Conclusion .....	10
Certificate of Service .....	11

TABLE OF CITATIONS

<u>Cases</u>	<u>Page (s)</u>
<u>Baeza v. Pan American/National Airlines,</u> 392 So. 2d 920 (Fla. 3d DCA 1980) .....	4
<u>California Dept. of Human Resources v. Java,</u> 402 U.S. 121 (1971) .....	5, 7
<u>Comer v. State, Unemployment Appeals Commission,</u> 481 So. 2d 67 (Fla. 3d DCA 1985) .....	2
<u>Dunedin v. Bense,</u> 90 So. 2d 300 (Fla. 1956) .....	4
<u>Florida High School Activities Association,</u> <u>Inc. v. Thomas,</u> 434 So. 2d 306 (Fla. 1983) .....	7
<u>Florida Industrial Commission v. Ciarlante,</u> 84 So. 2d 1 (Fla. 1955) .....	4, 5
<u>Florida Jai Alai, Inc. v. Lake Howell</u> <u>Water and Reclamation Dist.</u> 274 So. 2d 522 (Fla. 1973) .....	3
<u>Garcia v. Dept. of Labor and Employment Security,</u> 426 So. 2d 1171 (Fla. 3d DCA 1983) .....	2, 3
<u>Getzen v. Sumter County,</u> 89 Fla. 45, 103 So. 104 (1925) .....	2
<u>Gilles v. Dept. of Human Resources Development,</u> 521 P. 2d 110 (Cal. 1974) .....	passim
<u>Glessner v. Duval County,</u> 203 So. 2d 330 (Fla. 1st DCA 1979) .....	4
<u>Good Samaritan Hospital Ass'n v. Simon,</u> 370 So. 2d 1174 (Fla. 4th DCA 1979) .....	2
<u>Haber v. State,</u> 396 So. 2d 707 (Fla. 1981) .....	7
<u>Johnson v. Presbyterian Homes of Synod</u> <u>of Florida, Inc.,</u> 239 So. 2d 256 (Fla. 1970) .....	3
<u>Losey v. Roberts,</u> 570 F. Supp. 1465 (N.D.N.Y. 1983) .....	6, 7

McKibben v. Malory,  
293 So. 2d 48 (Fla. 1974) ..... 2

Radio Tel. Communications, Inc. v. Southeastern Tel. Co.,  
170 So. 2d 577 (Fla. 1964) ..... 3

Renelus v. Florida Unemployment Appeals Commission,  
Case No.: 85-1556 (Fla. 3d DCA March 4, 1986) ..... 2

Sagaert v. State, Dept. of Labor,  
418 So. 2d 1228 (Fla. 3d DCA 1982) ..... 2, 3

Sheppard v. State, Dept. of Labor,  
442 So. 2d 1114 (Fla. 3d DCA 1983) ..... 3

Spaulding v. Florida Industrial Commission,  
154 So. 2d 334 (Fla. 3d DCA 1963) ..... 4

St. Joe Paper v. Gautreaux,  
180 So. 2d 668 (Fla. 1st DCA 1965) ..... 4

State v. Aiuppa,  
298 So. 2d 391 (Fla. 1974) ..... 4

State v. Reilly Enterprises, Inc.,  
298 So. 2d 405 (Fla. 1974) ..... 4

Sunshine State News Co. v. State,  
121 So. 2d 705 (Fla. 3d DCA 1960) ..... 5

Tyson v. Lanier,  
156 So. 2d 833 (Fla. 1963) ..... 3

Western, etc., Lbr. Co. v. Cal. Emp. Com.,  
137 P. 2d 76 (Cal. 1943) ..... 6, 7, 8

Wiggins v. City of Jacksonville,  
311 So. 2d 406 (Fla. 1975) ..... 7

Wilensky v. Fields,  
267 So. 2d 1 (Fla. 1972) ..... 3

Williams v. Florida Dept. of Commerce,  
326 So. 2d 237 (Fla. 3d DCA 1976) ..... 4

Williams v. State, Dept. of Commerce,  
260 So. 2d 233 (Fla. 1st DCA 1972) ..... 4

<u>Statutes.</u>	Page (s)
Section 443.021, Florida Statutes .....	4, 5, 8
Section 443.051 (2), Florida Statutes .....	4, 9
Section 443.151 (6), Florida Statutes .....	3
Section 443.151 (6)(b), Florida Statutes .....	2
Section 443.151 (6)(c), Florida Statutes .....	passim

Other Authority

H.R. Rep. No. 615, 74th Cong. 1st Sess. 7 (1935) .....	5
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## PREFACE

This Answer brief is submitted by Respondent, Pierre J. Renelus, in support of his contention that the order under review should be affirmed.

The Respondent, Pierre J. Renelus, was the Appellant in the District Court of Appeal, and shall be designated throughout this brief as "Respondent".

The Unemployment Appeals Commission shall be designated throughout this brief as "Petitioner".

The Division of Unemployment Compensation of the Department of Labor and Employment Security shall be designated throughout this brief as the "Division".

The record on appeal shall be designated R.1-146.

## SUMMARY OF THE ARGUMENT

To deny Respondent the opportunity to seek a waiver of the Division's demand that he repay a non-fraudulent overpayment would be illogical and absurd, and would pave the way for administrative abuse.

Moreover, the interpretation of the statute urged by Petitioner would thwart the purpose of the statutory scheme that benefits be paid when due and be freely available to meet necessary expenditures. Any blanket requirement that an overpayment be repaid without taking into account individual circumstances would inhibit the unemployed worker in his use of the benefits for immediate expenses.

Interpreting an ambiguous statute so as to give expression to the legislative purpose and public policy, while avoiding an unreasonable, illogical, absurd, and unconstitutional result is a proper role for the court and does not violate the doctrine of separation of powers.

An interpretation of Section 443.151(6)(c), Fla. Stat. (1985), which would separate those persons who had received overpayments of unemployment benefits into two classes, one who could raise defenses to an attempt by the Division to recover the overpayment, and another class denied the right to raise defenses, without a rational basis for such discrimination, would deny the latter class the equal protection of the laws and would be constitutionally impermissible.

## ARGUMENT

### I. PETITIONER MISCONSTRUES THE PROPER ROLE OF THE COURT IN STATUTORY CONSTRUCTION.

Sagaert v. State Dept. of Labor, 418 So. 2d 1228 (Fla. 3d DCA 1982), held that Section 443.151 (6)(c) Fla. Stat. "must be read to apply to recovery by repayment as well as recoupment from future benefits". Sagaert, at 1230. The Court stated,

We can discern no logical reason for granting the Section 443.151 (6)(c), supra, defenses of statutory purpose and equity and good conscience to someone who will still be receiving benefits, while withholding these defenses from someone whose benefits are terminated and who is required to repay a sum to the Division. A statute will not be interpreted to achieve an illogical or absurd result, McKibben v. Mallory, 293 So. 2d 48 (Fla. 1974); Good Samaritan Hospital Ass'n v. Simon, 370 So. 2d 1174 (Fla. 4th DCA 1979).

Additionally, Section 443.151(6)(b), supra, gives the Division the discretion to select either recoupment or repayment when it seeks to undo an overpayment error. If the defenses in Section 443.151(6)(c), supra, were meant to apply only to recoupment and not to repayment, then in every case where future benefits were still to be paid, the Division could avoid the application of these defenses merely by exercising its discretion in favor of seeking repayment. To follow such an interpretation would pave the way for administrative abuse, a road we refuse to follow. Getzen v. Sumter County, 89 Fla. 45, 103 So. 104 (1925).

The Court held in Sagaert that the Commission is required in every case to make the determination that recovery of an overpayment whether by repayment or recoupment would not be against equity and good conscience or defeat the purpose of the Unemployment Compensation Law.

The Sagaert holding was reaffirmed in Garcia v. Dept. of Labor and Employment Security, 426 So. 2d 1171 (Fla. 3d DCA 1983). Comer v. State, Unemployment Appeals Commission, 481 So. 2d 67 (Fla. 3d DCA 1985); Renelus v. Florida Unemployment Appeals Commission, Case No.: 85-1556 (Fla. 3d DCA, March 4, 1986).

In a directly conflicting decision Florida's Fourth District Court of Appeal held that the defenses of statutory purpose, equity, and good conscience



cannot be raised when the state demands repayment of an overpayment of unemployment benefits. Sheppard v. State, Department of Labor, 442 So. 2d 1114 (Fla. 4th DCA 1983). The court labelled the decisions in Sagaert and Garcia as "...inappropriate invasion (s) by the judiciary into the legislative arena ..." Sheppard, at 1116.

Sagaert and its progeny are not judicial encroachments into the legislative arena which offend the constitutional doctrine of separation of powers but are well-reasoned opinions based on the fundamental maxims of statutory construction.

Section 443.151 (6), Fla. Stat. (1985), is a poorly crafted and ambiguous piece of legislation. The words "recoupment" and "repayment" are not defined. Nor are they terms of art. They are used interchangeably together with "recover", "deduct" and "civil action" to denote the various methods by which the Division might seek to make the fund whole for an overpayment. The meaning of Section 443.151(6)(c) must, therefore, be ascertained primarily by determining the legislative purpose. Tyson v. Lanier, 156 So. 2d 833 (Fla. 1963).

The legislative purpose of Section 443.151(6)(c), Fla. Stat. (1985) must be determined by consideration of the entire Unemployment Compensation Law rather than from any single part thereof. Florida Jai Alai, Inc. v. Lake Howell Water and Reclamation Dist., 274 So. 2d 522 (Fla. 1973); Wilensky v. Fields, 267 So. 2d 1 (Fla. 1972).

While it is a well-settled, as Petitioner contends, that courts are not concerned with the wisdom of a statute, or its social justice, the courts must construe a statute so as to give effect to the legislative purpose and this must prevail over a literal reading of the words used. Radio Tel. Communications, Inc. v. Southeastern Tel. Co., 170 So. 2d 577 (Fla. 1964). Johnson v. Presbyterian Homes of Synod of Florida, Inc., 239 So. 2d 256 (Fla. 1970). Section 443.151 (6)(c), Fla. Stat. (1985), must be interpreted so as to give expression to the policy and

spirit of the Unemployment Compensation Law. Section 443.021, Fla. Stat. (1985); Florida Industrial Commission v. Ciarlante, 84 So. 2d 1 (Fla. 1955); Glessner v. Duval County, 203 So. 2d 330 (Fla. 1st DCA 1967).

The Unemployment compensation statute is remedial, humanitarian legislation. It is to be liberally construed to accomplish its purpose, Section 443.051, Florida Statutes (1985), and should be construed in favor of the claimant for whose benefit it exists. Baeza v. Pan American/National Airlines, 392 So. 2d 920 (Fla. 3d DCA 1980); Williams v. State, Dept. of Commerce, 260 So. 2d 233 (Fla. 1st DCA 1972); Spaulding v. Florida Industrial Commission, 154 So. 2d 334 (Fla. 3d DCA 1963). Doubts, where they exist, should be resolved in favor of the claimant. Baeza, Supra; Williams v. Florida Dept. of Commerce, 326 So. 2d 237 (Fla. 3d DCA 1976). Disqualifying provisions are to be narrowly construed. Baeza, Supra; St. St. Joe Paper Co. v. Gautreaux, 180 So. 2d 668 (Fla. 1st DCA 1965). The unemployment Compensation program was established to benefit the unemployed worker. That is the reason courts have felt compelled to construe the statute liberally in his favor. Baeza, supra; Spaulding, supra.

That interpretation of Section 443.151 (6)(c), Fla. Stat. (1985), which gives effect to the purpose of the unemployment compensation laws, and avoids an illogical, absurd, and unreasonable result must prevail over the literal interpretation urged by Petitioner.

Moreover, the interpretation urged by Petitioner would render the statute unconstitutional as violative of the equal protection clauses of the Florida and United States' constitutions. (See Section III).

A statute should be construed, not only to avoid a conclusion that it is unconstitutional, but also to avoid grave doubts on that score. Dunedin v. Bense, 90 So. 2d 300 (Fla. 1956); State v. Aiuppa, 298 So. 2d 391 (Fla. 1974); State v. Reilly Enterprises, Inc., 298 So. 2d 405 (Fla. 1974).

II. TO BE RECONCILED WITH THE PURPOSE OF THE UNEMPLOYMENT COMPENSATION PROGRAM, SECTION 443.151 (6)(c), FLA. STAT. (1985), MUST BE READ TO APPLY TO RECOVERY BY REPAYMENT AS WELL AS RECOUPMENT FROM FUTURE BENEFITS.

In construing a statute, courts are required to look to the history, objective and purpose of the legislation. Sunshine State News Company v. State, 121 So. 2d 705, 708 (Fla. 3d DCA 1960); California Dept. of Human Resources v. Java, 402 U.S. 121, 130-34 (1971).

The Florida legislature has stated that the objective of the Unemployment Compensation Law is to provide benefits during periods of unemployment in order to maintain purchasing power and limit the serious social consequences of unemployment. Section 443.021, Fla. Stat. (1985); Ciarlante, supra. The United States Supreme Court has stated of the federal unemployment scheme that: "The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed to enable workers to 'tide themselves over, until they get back to their old work or find other employment, without having to resort to relief'". Java, supra, 402 U.S. at 131, quoting H.R. Rep. No. 615, 74th Cong. 1st Sess., 7 (1935). The benefits provide money to the unemployed at a time when otherwise he would have no income; assists him to find other employment; and by maintaining purchasing power, stabilizes industries producing goods and services. Java, at 131-32.

This objective requires that the payments be promptly paid when due, Java, supra, and that they be freely available to meet current expenses. Gilles v. Department of Human Resources Development, 521 P. 2d 110 (Cal. 1974). The serious consequences of unemployment will not be limited, nor purchasing power maintained, if the unemployed worker is inhibited from using his benefits by the awareness that he may be required to repay them if he costs his claim on appeal. Gilles at 118.

Gilles, involved a challenge to a ruling of the California Appeals Board which had held that recoupment of overpayments would never violate equity and good conscience if the claimant received prior notice that benefits might have to be repaid. The court held that such an interpretation of the statute could not be reconciled with the purpose of the unemployment compensation program, and that while Congress did not intend to totally prohibit recovery of overpayments it did intend to limit recovery to cases where it would not defeat the statutory purpose nor contravene equity and good conscience. Gilles, supra, at 120.

While Gilles involved recovery of an overpayment by recoupment, the same argument can be advanced regarding recovery by repayment. If an unemployed worker feels obligated to retain the funds in order to make repayment if the award were reversed, then the purpose of the statute would be thwarted.

Prior to California's enactment of a statute providing for recoupment that state's Court of Appeal held that recoupment would defeat the objectives of unemployment compensation. "If the beneficiary of unemployment insurance payments be required to restore such payments to the state fund in the event of a later adverse decision by the courts, would not the very essence of the act which is its provision for the prompt payment of benefits for the immediate relief of those unemployed, at the time of their unemployment, be destroyed?" Western, etc., Lbr. Co. v. Cal. Emp. Com., 137 P. 2d 76, 79 (Cal. 1943).

In Losey v. Roberts, 570 F. Supp. 1465 (N.D.N.Y. 1983) an unemployed worker challenged New York's attempt to recover an overpayment when the state did not take into consideration whether the recovery would contravene the goals of the unemployment insurance program. The court found that New York's blanket imposition of a set-off thwarted the purposes of the statu-

tory scheme - supra, at 1468.

The interpretation of Section 443.151 (6)(c), Fla. Stat. (1985), urged by Petitioner allows the state to demand, without taking account of individual circumstances, that all overpayments be repaid. Such a blanket determination has a chilling effect on the unemployed workers ability to utilise unemployment compensation funds for the purpose for which they were intended. The objective of the statutory scheme is thwarted in exactly the same manner as the programs found wanting in Gilles, Western, and Losey.

The statute must be interpreted such that the unemployed worker upon receipt of his benefits will know that should his claim be reversed on appeal, he will be able to raise the defenses of against equity, good conscience, and statutory purpose to any demand from the state that he repay the overpayment.

III. THE INTERPRETATION OF THE STATUTE URGED BY PETITIONER WOULD RENDER IT UNCONSTITUTIONAL AS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE FLORIDA AND UNITED STATES CONSTITUTIONS.

An interpretation of Section 443.151 (6)(c), Fla. Stat., which would separate those persons who had received overpayments of unemployment benefits into two classes, one who could raise defenses to an attempt by the state to recover the overpayment, and one class who could raise no defenses to the state's attempt to recover the overpayment, would deny the latter class the equal protection of the laws and would be constitutionally impermissible.

This court has held on numerous occasions that to be constitutionally permissible a classification must apply equally and uniformly to all within the class and must bear some rational relationship to a legitimate state purpose. Florida High School Activities Association, Inc., v. Thomas, 434 So. 2d 306 (Fla. 1983); Haber v. State, 396 So. 2d 707 (Fla. 1981); Wiggins v. City of Jacksonville, 311 So. 2d 406 (Fla. 1975).

The statute, as interpreted by Petitioner, discriminates against those from whom the Division demands recovery of an overpayment, and who are not at that time receiving unemployment benefits, by denying them the opportunity to raise the defense that the recovery would be contrary to equity and good conscience and would defeat the purpose of the statute. The Division can advance no rational purpose for such discrimination.

The objective of the Unemployment Compensation Law is to provide benefits during periods of unemployment in order to maintain purchasing power and limit the social consequences of unemployment. Section 443.021, Fla. Stat. (1985). This objective requires that the payments be promptly made when due, Java, supra, and that they be freely available to meet current expenses. Gilles, supra, at 118.

The serious consequences of unemployment will not be limited, nor purchasing power maintained if the unemployed worker is inhibited from using his benefits by the awareness that he may be required to repay them as a result of an employer's appeal. Gilles, supra, at 118; Western, supra.

The purpose of the statute would be defeated equally whether the Division attempts to recover an overpayment from one who is currently receiving benefits, or from one not currently receiving benefits, unless the person's individual circumstances are taken into account.

The type of assets available for attachment by the Division are a relevant factor in determining whether recovery of an overpayment would defeat the purpose of the statute or would be against equity and good conscience. But to allow that defense only to one presently in receipt of benefits bears no reasonable relationship to a legitimate state interest.

Certainly one presently unemployed and receiving benefits, which barely cover necessary expenditures, would be entitled to the benefit of the Section 443.151 (6)(c) defense. But to deny that defense to one unemployed and receiving

no benefits, or to one whose sole assets are a minimum-wage weekly pay check is an irrational discrimination.

Section 443.051 (2), Fla. Stat. (1985), is not a rationale for discrimination, but is consistent with the purpose of the legislation that benefits received be freely available for immediate and necessary expenditures. Similarly, claimants cannot be charged any fees in connection with a claim, with the exception of attorney's fees, which are limited. Section 443.041 (2), Fla. Stat. (1985). A claimant is not required to pay filing fees at any stage of appellate proceedings. Claimants are entitled to free tapes of Appeals Referee hearings.

This concern of the legislature that benefits be available to the unemployed worker at the time they are most needed provides no reasonable basis for a later discrimination as to the manner of recovery of an overpayment. Each claimant must be given the opportunity to raise his individual circumstances as a defense to any attempt by the Division to recover an overpayment, whether by recoupment or repayment. To do less would be an irrational and unconstitutional discrimination.

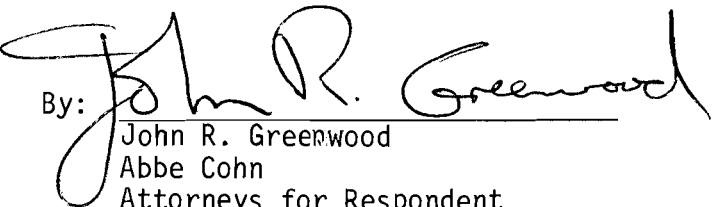
CONCLUSION

The Third District Court of Appeal in Sagaert, Garcia, Comer, and Renelus has interpreted Section 443.151(6)(c), Fla. Stat. (1985), consistent with its purpose and history. Such an interpretation furthermore preserves the constitutionality of the statute, and avoids an illogical and absurd result.

The decisions in Comer and Renelus should be affirmed.

Respectfully Submitted,

By:



John R. Greenwood

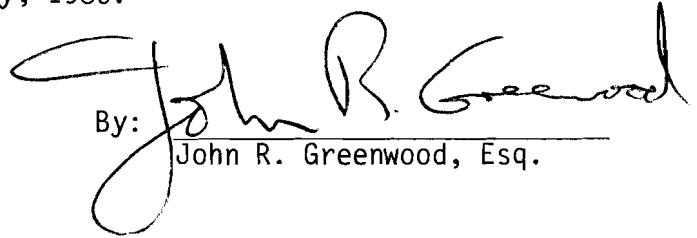
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief was mailed to John D. Maher, Esq., Unemployment Appeals Commission, Ashley Building, Room 221, Executive Center Drive, East, Tallahassee, Florida 32301-8247, and to Zachary Comer, 5920 SW 44th Terrace, Miami, Florida 33155, this 1st day of May, 1986.

By:   
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