IN THE
SUPREME COURT OF FLORIDA

CASE NO. 68,986

STATE OF FLORIDA, DEPARTMENT OF CORRECTIONS, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, DEPARTMENT OF ADMINISTRATION,

Appellants,

v.

FLORIDA NURSES ASSOCIATION,

Appellee, Cross-Appellant.

On Appeal from the Circuit Court,
Second Circuit, Leon County, Florida and the
CERTIFIED QUESTION from the
District Court of Appeal, First District of Florida

BRIEF FOR APPELLEE, CROSS-APPELLANT

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INTRODUCTION

THE FLORIDA NURSES ASSOCIATION (FNA) was the Plaintiff in the trial court. THE FLORIDA NURSES ASSOCIATION will be referred to as "the Appellee" or "FNA". The Defendants below, STATE OF FLORIDA, DEPARTMENT OF CORRECTIONS, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, DEPARTMENT OF ADMINISTRATION, will be referred to as "the Appellants" or "the State".

After the commencement of the lawsuit, eight medical doctors presently employed by the State of Florida, were allowed to intervene as party plaintiffs. The Intervenors, MUNIR MADIWALE, M.D, ALEJANDRO CARRILLO, M.D, HEIDER HESHMATI, M.D., ANDEL GARRI, M.D., CARINA DE O CAMPO, M.D., LOUIS R. PEREZ, M.D., RENE ELDIDY, M.D. and JUAN M. FERNANDEZ, M.D., were not members of the Bargaining Unit represented by the FNA. In order to facilitate the briefs and oral argument, the position of the Intervenors will be represented by the argument of the FNA.

Citations to the Record on Appeal are designated as (R-). The R- of the designation is blank because the Clerk of the Circuit Court has not had an opportunity to paginate the Record on Appeal before this brief was prepare and filed. The Clerk of the Circuit Court is required to file the Record on Appeal by August 4, 1986.

References to Appellants'/Cross-Appellees' Appendix will be designated as (A-).

STATEMENT OF THE CASE

The Appellee accepts the Appellants' Statement of the Case with the following exceptions:

1. Chapter 85-318, Florida Laws, does not require greater pay benefits. In fact, it requires a pay plan consisting of salary ranges appropriate to the positions included, but rather, allows the agency head to determine reduction in pay, demotion and transfer. (A-3-12).

2. The nine doctors who were allowed to intervene had previously been members of the Florida Nurses Association Bargaining Unit, however they were exempted from the Bargaining Unit and reclassified as "supervisory" physicians. This determination by PERC has been challenged and a petition was filed. The Petition has been dismissed because of this pending lawsuit. The physician-intervenors did not change their job description and were not exempted from Career Service because they were "management". This collateral issue was not addressed in the lower court. It was agreed that since a separate challenge to the exclusion of these doctors from the Bargaining Unit was made through a proper petition to PERC, the physician members of the Bargaining Unit, together with these nine intervenors would be treated jointly without raising the issue that these nine physicians were "management" and therefore subject to exemption under other laws relating to F.S. §120.

SUMMARY OF THE ARGUMENT

The trial court properly concluded that the State could not assign any physician who achieved permanent status in the Career Service System prior to October 1, 1985, to the newly created State Selected Professional Services System unless that physician affirmatively chose such an assignment. However, the trial judge improperly concluded that the Selected Professional Service is constitutional in its applicability to physicians hired after October 1, 1985 or physicians who have not earned permanent status in Career Service as of October 1, 1985.[1]/

Chapter 85-318, Laws of Florida, transferred en masse all State employed doctors to the new category of Selected Professional Service. All newly employed State doctors would be directly assigned to the Selected Professional Services. No other health unit professional employed by the State is denied Career Service. Selected Professional Services, as it applies to State physicians, does not have a reasonable relationship to a valid public need and therefore violates substantive due process guarantees and is not a legitimate exercise of power by the State.

In its Summary of the Argument, Appellants erroneously stated that they are not aware of an incumbent who elicted not to join the Selected Professional Service. The Complaint in Intervention and prayer for immediate emergency relief (R-II-209.215) together with the testimony of the intervenor at the

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[1]/ The Appellee has challenged the constitutionality of Chapter 85-318, Laws of Florida in its Cross-Appeal. (R-II-310-311).

time of Final Hearing clearly indicates the refusal of the incumbent physicians to voluntarily relinquish their rights and protections under Career Service.

ARGUMENT

ISSUE I

THE LEGISLATURE HAS NO AUTHORITY TO EXEMPT, EN MASSE, THE CLASSIFICATION OF EMPLOYEES FROM THE CAREER SERVICE SYSTEM AFTER THAT CLASSIFICATION HAS OBTAINED PERMANENT STATUS IN THE CAREER SERVICE SYSTEM, WHEN THE STATE HAS NO VALID REASON FOR SUCH EXEMPTION.

Appellants seem to rely upon an Illinois case, Grobsmith v. Kempiners, 430 N.E.2nd 973 (Ill. 1981) to state that civil service status is not a vested right. In Florida however, it is clear that once permanent status is obtained, Career Service employees have a property right in their employment. Headley v. Baron, 228 So.2d 281 (Fla. 1969).[2] In 1972, the Supreme Court of the United States, issued two landmark decisions which established the now accepted principle that a public employee who has obtained "tenure" has established a property right to his/her employment. Board of Regions v. Roth, 408 U.S. 546, 92 S.Ct. 2701 (1972) and Perry v. Sindermann, 408 U.S. 725, 92 S.Ct. 2694 (1972).

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[2] Appellants do recognize that Career Service vests a property right in tenured employees in Issue II of its brief at pages 11-16.

Appellee recognizes the legislature's right to create positions and exempt positions. Whether the State can exempt, en masse, a Career Service classification, as attempted by Chapter 85-318, Florida Laws, is the question before the court. In Burgess v. Florida Dept. of Commerce, 436 So.2d 356 (Fla. 1st DCA 1983) the District Court allowed certain Career Service positions to be upgraded to "policy making positions" and thereby exempted them from Career Service. These exemptions were "individualized" and were based on a rational reason and need.

In other cases cited in Appellants' brief, the courts addressed the exemption of "positions" and not the "wholesale" reclassification of a job description. In Hall v. Strickland, 170 So.2d 827 (1964); City of Miami Beach v. Smith, 251 So.2d 290 (Fla. 3rd DCA 1971); City of Miami v. Rodriguez-Quesada, 388 So.2d 258 (Fla. 3rd DCA 1980) the Courts were concerned with the abolishment of elected and appointed positions which did not give rise to a vested property interest.[3]

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[3] In the Hall v. Strickland case, the Supreme Court acknowledged that the Charter Amendment was a change in the selection of the judges and their rights to continue as appointed officers under the home rule charter of Dade County. In the case of City of Miami v. Rodriguez-Quesada, the Third District Court of Appeal held that an elected official does not have a contractual or property interest in his elected office and therefore the office may be abolished at any time. (emphasis added).

In State v. Swank, 12 So.2d 605 (Fla. 1943), although the Legislature repealed the existing Civil Service Law, it created and placed in its stead a new Civil Service system for economic reasons and allowed those employees to proceed with all the protections afforded under the old Civil Service law.[4]/

The Attorney General on April 14, 1975, (075-95) stated:

> Career Service employees who have obtained permanent status in the Career Service System have acquired a property interest in their public positions and emoluments thereof such as job security and seniority which they may not be deprived of without due process of law. Rosenfelder v. Huttoe, 24 So.2d 108 (Fla. 1945)(en banc); Headley v. Baron, 228 So.2d 281 (Fla. 1969), reversed in part, Vining v. Florida Real Estate Commission, 281 So.2d 487 (Fla. 1973).

Once it has been established that a public employee has established an undeniable property interest in his position, which property interest guarantees that the substantive rights are protected by procedural safeguards, the Legislature must again follow procedural and substantive due process guarantees in order to abolish those rights.

Appellees are not raising the issue that the legislation was passed in violation of procedural due process.[5]/ The

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[4]/ It should be noted that in the State v. Swank case the burden was on the State to show a rational for abolishing positions. In the case sub judice, the trial court placed the burden on the Appellees. (R__).

[5]/ An issue could be made of the haphazard way in which the Legislature passed House Bill 1304 and Senate Bill 670 on the last day of the Session, however it is not an issue in this litigation nor was it raised in the lower court.

substantive due process requirements in passing this legisation is totally lacking. The substantive portion of due process guarantees require that the basis for the passage of Chapter 85-318, Florida Laws, be clear, specific and have, at a minimum, a reasonable relationship to a valid public need. In other words, the public employee classification which has been exempt under Chapter 85-318, must be founded on a rational basis. Antonio School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278 (1973). Even the First District Court of Appeal in State, ex rel. Department of HRS v. State, 472 So.2d 790 (1985) in a footnote at page 792, recognized the requirement that a State action must be premised on distinctions founded upon a rational basis.

Thus, the en masse reclassification of physicians from Career Service to Selected Professional Service must comply with substantive due process and without substantive due process, the Legislature does not have the authority to pass Chapter 85-318 which, as admitted by Appellants, leaves "no Career Service physician classifications remaining."

ISSUE II

THOSE DOCTORS PRESENTLY EMPLOYED BY THE STATE OF FLORIDA AND IN THE CAREER SERVICE SYSTEM, MAY NOT BE EXEMPTED FROM THEIR PROPERTY RIGHTS IN THEIR EMPLOYMENT IN THE MANNER PROVIDED BY CHAPTER 85-318.

The most important intangible piece of "property" that a person owns is his/her job position and its accompanying benefits. The courts have consistently held that an employee

accrues such an interest in a job when it can be established that there exists a justifiable legal expectation that employment will continue without interruption except for dismissal or discipline based on "proper cause". §110.227, Florida Statutes, provides that any employee who has permanent status in the Career Service may only be suspended or dismissed for cause. See also State v. Hunter, 323 So.2d 24 (Fla. 1st DCA 1975); Leventhal v. United States Department of Labor, 766 F.2d 1351 (9th Cir. 1985).

In Florida, when a Career Service Employee has obtained permanent status, he has acquired a property interest in his or her public position. That employee is thereafter guaranteed procedural due process (i.e., notice and hearing) and substantive due process by requiring the employer to establish "probable cause" for discipline and/or termination of employment. Florida recognizes and protects through its Career Service System the property interest public employees have in their public positions and emoluments such as job security and seniority. Rosenfelder v. Huttoe, Headley v. Baron, Vining v. Florida Real Estate Commission. Appellants' reliance on Burgess v. Department of Commerce, 400 So.2d 1258 (Fla. 1st DCA 1981) (and Burgess II, 436 So.2d 356 (Fla. 1st DCA 1983) is misplaced. In the Burgess cases, the court held that Lee Ann Burgess, in effect, could not get promoted and keep her new job within Career Service. The court gave her the option of being promoted out of Career Service because she was in a duly determined

"policy making position" or to remain in a different classification within the Career Service. (emphasis added) Nothing in those cases in any way indicates that Florida recognizes the legislator's right to reclassify Career Service positions without constitutional justification.

The case of Jones v. Board of Control, 131 So.2d 731 (Fla. 1961) merely upholds a university's firing of a faculty member for breaching his contract of employment by qualifying as a candidate for public office. The activities of the professor were found to be flagrant and serious and justified immediate suspension.

Appellants' continue to rely upon the case of State v. Swank, 12 So.2d 605 (1943) for the authority that the Legislature can give property rights and employment and also can take them away. In actuality the case does not stand for that convoluted interpretation. In 1939, the Civil Service Law provided that city governments can certify if there were excessive numbers of employees in any of their city departments. The city was entitled to dismiss excessive employees, without cause, and then rehire them, based on seniority, when positions opened. Between 1939 and 1940 the respondents in State v. Swank were discharged as being excessive employees. In 1941 the Florida Legislature repealed the old Civil Service Law and replaced it with a new Civil Service Law. Thereafter, when new personnel was hired by the City, the relators in State v. Swank sought

to have their jobs returned to them. The Supreme Court held that the 1941 Legislation repealed the 1939 Civil Service Law of Panama City and abolished the offices created under the 1939 Civil Service Law. Since the relators were not employees under the 1941 law, and they were not employed between 1940 and 1941, they did not have any vested or contractual right to office or employment after the Legislature had so acted to cut them off. What is being ignored in the interpretation of this case, is the fact that those employees hired in the 1939 Civil Service Law understood that their job position could be abolished if it was economically unfeasible to keep them employed. The abolishment of their position was known at the time of their employment.

The State physicians in the case sub judice have established a property interest in their positions under the present Career Service System. In order to take that away from them, the substantive due process requirements in passing Chapter 85-318, must be met; that is, due process guarantees require that the basis for the passage of Chapter 85-318 be clear, specific, and have as a minimum, a reasonable relationship to a valid public need.

The loss of Career Service by the Appellees, is further impacted by the loss of their constitutional right to collectively bargain. Although the Selected Professional Service does allow for the establishment of a Collective Bargaining Unit, there is nothing to bargain for! F.S. §447 et. seq. provides wage rates, promotions, transfers and disciplinary actions as mandatory subjects of Collective Bargaining. However, §110.603(1) and (2) state that "the department shall

adopt" a classification plan, pay plan and benefit package covering positions in the Selected Professional Service. This language, admittedly, is not as strong as that contained in §110.604, (i.e. "employees shall be subject to. . .personnel action at the discretion of the agency"). Nevertheless, a broad reading of §110.603 supports an interpretation that adoption of the respective plans is no longer subject to Collective Bargaining. More importantly, even if a Collective Bargaining Unit under the Selected Professional Service can guarantee procedural due process, termination without cause is a flagrant violation of substantive due process. Therefore, such interference with the Career Service and Collective Bargaining infringes upon the substantive rights of the physicians. Further, those physicians that are not presently members of the Bargaining Unit because of their "supervisory" position, would not even have those minimum safeguards as set forth in the Collective Bargaining Unit of the Selected Professional Service since they would not be eligible to join such a Bargaining Unit under the present system.

Appellees accept the fact that both State and Federal Governments may exempt positions from Civil Service and Career Service. However, these exemptions must be based on a legitimate exercise of legislative power. Powell v. State, 345 So.2d 724 (1977). The Supreme Court of the United States in Clemmons v. Fashing, 457 U.S. 957, 102 S.Ct. 2836 (1982), set forth the appropriate standard for justifying an employment classification:

> "The equal protection clause allows the States considerable leeway to enact legislation that may appear to similarly situated people differently. Legislatures are ordinarily assumed to have acted constitutionally. Under traditional equal protection principles, distinctions need only be drawn in such a manner as to bear some rational relationship to a legitimate state end. Classifications are set aside only if they are based solely on reasons totally unrelated to the pursuit of the State's goals and only if no grounds can be conceived to justify them." (emphasis added)

The fact that the State has 22 exempt positions under F.S. §110.205(2) indicates the rationale that Florida has adopted in previously exempting Career Service personnel. The proper justification for employment classification was reiterated in Melton v. Metropolitan Dade County, 773 F.2d 1548 (11th Cir. 1985). When reviewing the 22 exemptions under F.S. §110.205(2), it clearly shows on its face that the Legislature intended to exempt those positions which require confidentiality, policy making positions, State officers and heads of State departments, and judicial offices. In considering the Legislature's intent in exempting ALL doctors, the constitutional safeguard under the Fourteenth Amendment is offended since this exemption is wholey irrelevant to the achievement of any State objective. See McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101 (1961).

The only argument made by the Appellants is that the exemption of all physicians, en masse, is necessary in order to expediently fire the physicians. Thus, the passage of Chapter 85-318 as it affects the physicians is without legislative and/or constitutional authority.

ISSUE III

CHAPTER 85-318, LAWS OF FLORIDA, HAS NO RATIONALLY STATED PURPOSE RELATED TO ITS PASSAGE.

In order for the State to deprive the physicians of their property interest in their public position without violating substantive due process guarantees, the legislature must indicate a legitimate exercise of power in securing the health, safety, morals and general welfare of its citizens, or, at the very least, bear some rational relationship to a legitimate State end. Melton v. Metropolitan Dade County; Powell v. State; Clemmons v. Fashing.

In the case, sub judice, the legislature made a blanket exemption of all State physicians. They did not make a determination between those in a supervisory capacity, those in a managerial capacity or the type of job description and/or specialty each physician has. No other health unit professional was exempt from Career Service. The legislative intent to make a "blanket" exemption of all physicians cannot be based on reasons related to the pursuit of the State's goals. When considering the 22 exemptions under F.S. §110.205(2), it is clear the the legislature intended to exempt those positions which require confidentiality, policy making, State officers and heads of State departments, and judicial offices. The "across the board" exemption of all doctorscertainly offends the Fourteenth Amendment and the constitutional safeguard of

substantive due process in that such legislation is entirely irrelevant to the achievement of any State objective.[6]/

The trial court made a specific finding that the Legislative purpose sought to be achieved in exempting doctors and lawyers from career service is the "self-same legislatively stated employment policy the State under which State employed doctors and lawyers were assigned to Career Service in the first instance." (R-II-299-309)

The burden to justify the reasonable purpose of a classification in order to muster the traditional equal protection principles is upon the State. Ex Parte Lawinsky, 66 Fla. 324, 63 So.2d 577 (1913). More recently in the case of Melton v. Metropolitan Dade County, the Court held that the State bears the burden of proof to justify the classification.

The evidence presented clearly indicates that the security afforded Career Service employees is abolished. Further, what is and what is not a matter for Collective Bargaining is only guess work. It is clear from the testimony and the Statute that there will be no overtime, no compensable-time, and no discipline based on probable cause. Appellants cannot show what relevant purpose is achieved by a blanket exclusion of physicians from Career Service. Thus, the

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[6]/ Even an objective to be able to more freely discharge incompetent doctors is without basis since all physicians come within the scrutiny of the Florida Board of Medical Examiners and further, the constitutional safeguards of substantive and procedural due process do not allow incompetent physicians to remain on the public payroll since they can be discharged for cause.

substantive due process requirements in passing Chapter 85-318, is totally lacking.

ISSUE IV

THE LOWER COURT DID NOT GRANT EQUITABLE RELIEF IN PROHIBITING CHAPTER 85-318 FROM BECOMMING EFFECTIVE AS TO THE DOCTORS PRESENTLY EMPLOYED BY THE STATE OF FLORIDA.

Appellees do not see where the Final Judgment (A-24-32) is based on equitable principles. The trial court properly prohibited the Appellants from implementing Chapter 85-318, Florida Laws, against those tenured physicians presently employed by the State of Florida. The court failed to hold Chapter 85-318, unconstitutional, as applied to all State physicians, presently employed or to be employed by the State of Florida.

Public policy is not the gage in determining employment classifications. Although Appellants argue that the court ignored the public policy need in refusing to exempt tenured physicians from Career Service, Appellants ignore the fact that the appropriate standard for employment classification is the pursuit of a valid State goal. Public policy is not that goal. See Clemmons v. Fashing.

ISSUE V

CHAPTER 85-318, LAWS OF FLORIDA, CREATING THE SELECTED PROFESSIONAL SERVICE, VIOLATES SUBSTANTIVE DUE PROCESS AND IS UNCONSTITUTIONAL AS APPLIED TO STATE PHYSICIANS.

The employment policy of the State of Florida is set forth in F.S. §110.105 which states:

> (1) It is the purpose of this chapter to establish a system of personnel management. This system shall provide means to recruit, select, train, develop, and maintain an effective and responsible work force and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities. . .(App.1)

Prior to July 1, 1985, F.S. §110.205 (App.2) exempted 22 positions from Career Service. Those exempt classifications included elected officials, employees of the legislature, members of boards and commissions, heads of each State agency, judges and referees, the Chancellor of the University System, appointed secretaries of the judges, personal secretaries of department heads, employees of the Governor, policy making positions, academic administrative positions, patients and inmates in State institutions, military personnel, regional managers of the Department of Labor and Employment Security and the Capitol curator.

Until the passage of Chapter 85-318, Florida Laws, all State employed doctors, regardless of their classification, were afforded protection of Career Service. As a result of the enactment of Chapter 85-318, Laws of Florida, all State employed

doctors and lawyers were "exempted" from Career Service and transferred en masse to the new category of State Service, Selected Professional Services.[7]/

F.S. §110.601[8]/ sets forth the purpose for establishing the Selected Professional Service System, which is:

> It is the purpose of this part to create a system of personnel management which insures to the State the delivery of high quality performance in select exempt classifications by facilitating the State's ability to attract and retain qualified personnel in these positions, while also providing sufficient management flexibility to insure that the work force is responsive to agency needs. The Legislature recognizes that the public interest is best served by developing and refining the technical and managerial skills of its Selected Professional Service employees, and to this end, technical training and management development programs are regarded as a major administative function within the agencies. (App.3)

As pointed out by the trial judge in his Final Judgment (R-II-299-307), the purpose of F.S. §110.601 is "the self-same legislatively stated employment policy of the State under which State employed doctors and lawyers were assigned to the Career Service in the first instance."

Although the trial judge made a finding that no party to the present litigation was challenging the right of the legislature to exempt positions from the Career Service System,

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[7]/ The Appellee has not challenged the constitutionality of 85-318 as it effects State employed attorneys. Appellee's sole contention is that the classification exemption applied to doctors is unconstitutional and violative of procedural due process.

[8]/ Chapter 85-318, §§8,14, Florida Laws.

the Appellee does challenge the State's right to affect employment classifications which are based solely on reasons unrelated to the pursuit of the State's legitimate exercise of power in securing the health, safety, morals and general welfare of its citizens.

The duties and responsibilities of the State employed physicians are no different then any other health care provider, such as dentists, nurses, physical therapists, who are employed by the State and who have not been exempted.

In Clemmons v. Fashing, 457 U.S. 957, 102 S.Ct.2836 (1982), the Supreme Court sets forth the appropriate standard for justifying an employment classification. The same position was reiterated in Melton v. Metropolitan Dade County, 773 F.2d 1548 (11th Cir. 1985). When looking through the 22 exemptions under F.S. §110.205(2) is clear on its face that the legislature intended to exempt those positions which require confidentiality and policy making positions. In considering the legislature's intent in exempting all State employed doctors and no other health care provider, the constitutional safeguard under the Fourteenth Amendment is offended since this exemption is entirely rrelevant to the achievement of any State objective. See McGowan v. Maryland, 366 U.S. 420, 81 S.Ct.1101 (1961).

The State's lack of a legitimate State purpose in passing Chapter 85-318, Florida Laws, is violative of constitutional substantive due process. See, Antonio School District v. Rodriguez, 411 U.S. 1, 937 S.Ct. 1278 (1973).

The State must indicate a legitimate exercise of power in securing the health, safety, morals and general welfare of its citizens, or, at the very least, bear some rational relationship to a legitimate State end. Melton v. Metropolitan Dade County, 773 F.2d 1548 (11th Cir. 1985); Powell v. State, 345 So.2d 724 (Fla. 1977); Clemmons v. Fashing, 457 U.S. 957, 102 S.Ct.2836 (1982). The burden to justify the reasonable purpose of an employment classification is upon the State. Exparte Lawinsky, 66 Fla. 324, 63 So.577 (1913).

In the case sub judice, the State made a blanket exemption of all State employed physicians. The State did not make a determination between those in a supervisory capacity, those in a managerial capacity, or the type of job description and/or specialty each physician has. No other health unit professional was exempt from Career Service. The State's intent to make a "blanket" exemption of all State employed physicians cannot be based on reasons related to the pursuit of the State's goals. The only reason is to satisfy the State's desire to fire State employed physicians without probable cause.[9]/ This type of classification certainly offends the Fourteenth Amendment and the constitutional safeguard of substantive process in that such legislation is wholely irrelevant to the achievement of any State objective. See McGowan v. Maryland, 366 U.S. 420, 81 S.Ct.1101 (1961).

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[9]/ See footnote 6, page 13, supra.

The Florida Supreme Court in Powell v. State, 345 So.2d 724 (1977) has held that:

> "The inhabitions of the Constitutions of the United States upon the depravation of property without due process, or the equal protection of the law by the states, are not violative by the legislative exercise of legitimate power in securing the health, safety, morals and general welfare."
> [emphasis added]

In Melton v. Metropolitan Dade County, supra, the court held that the State bears the burden of proof to justify the classification created. The "across the board" classification of State employed physicians omits any justification for this exemption based upon job description, professionalism, education, or any other legitimate basis which could relate to the State's goals. The burden is then upon the State to justify this "suspect" classification. See also, Ex Parte Lawinsky, and Clemmons v. Fashing. The record is devoid of any such evidence.

Therefore, Chapter 85-318, as it purports to exempt all State employed physicians from Career Service, is violative of the substantive rights of physicians to be hired by the State and does not serve any legitimate State purpose and is therefore violative of substantive due process and unconsitutional.

CONCLUSION

The Appellee, Cross-Appellant, respectfully requests that this Court declare Chapter 85-318, Florida Laws, unconstitutional as it effects all present State employed physicans and those to be hired by the State and in the alternative, uphold the trial judge's determination that Chapter 85-318, Florida Laws cannot apply to those State employed physicians presently within the Career Service on or before October 1, 1985.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellee's Brief has been furnished to: George Drumming, Jr., Esq., Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32301, by mail, this 1 day of Aug, 1986.

Respectfully submitted,

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