O/a 8-28-86

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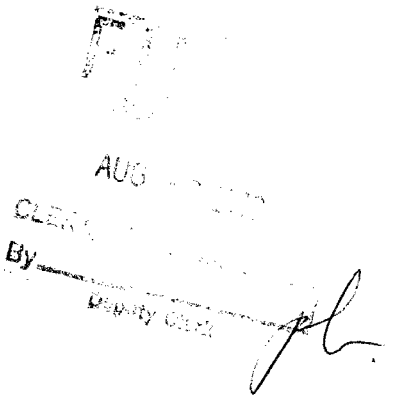
IN THE
SUPREME COURT OF FLORIDA



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

REPLY BRIEF FOR APPELLEE, CROSS-APPELLANT

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TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	iii
ARGUMENT:	
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.	1
CONCLUSION	2
CERTIFICATE OF SERVICE	3

TABLE OF CITATIONS

Case	Page
Clemmons v. Fashing, 457 U.S. 957, 102 S.Ct.2836 (1982)	2
Melton v. Gunter, 773 F.2d 1548 (11th Cir. 1985)	2
United Yacht Brokers, Inc. v. Gillespi, 377 So.2d 668 (Fla. 1979)	1, 2
Woods v. Holy Cross Hospital, 591 F.2d 1164 (5th Cir. 1979)	2

PRELIMINARY STATEMENT

The Plaintiff/Appellee, THE FLORIDA NURSES ASSOCIATION (FNA) has been given an opportunity to reply to Appellants' Reply Brief. Appellee will only reply to ISSUE V which was raised by the cross appeal filed by THE FLORIDA NURSES ASSOCIATION.

The Appellee does wish to correct one matter which consistently appears in the Initial and Reply Briefs filed by Appellants. THE FLORIDA NURSES ASSOCIATION has undertaken to challenge the constitutionality of Chapter 85-318 on behalf of State-employed physicians ONLY. Appellee has never taken the position that Chapter 85-318, Laws of Florida is unconstitutional as it applies to attorneys, nor has Appellee argued that position in its Brief. In fact, Appellee vigorously opposed the intervention by the attorneys in the trial court. (R.- Vol. 2, p.222-224)

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 Appellants agree that the legislature of the State of Florida must have a rational basis for the enactment of Chapter 85-318, Laws of Florida. The disagreement arises because Appellee claims there is no rational basis for the en masse exclusion of State-employed physicians from career service, and if there is a reasonable basis for such exclusion, the burden was and is on the Appellants to demonstrate it to the trial court. Appellants argue that the State had a rational basis for excluding physicians from career service and that the burden is on the Appellee (FNA) to show that the legislative classification was violative of due process guarantees.

The Appellants rely heavily upon United Yacht Brokers, Inc. v. Gillespi, 377 So.2d 668 (Fla. 1979). In thata case, the parties agreed that there were "no suspect classifications" and the court found that there were no "fundamental rights at stake."(at page 671)

In the case sub judice, there is a suspect classification in that all State employees, with the exception of the twenty two (22) specifically deleted confidential and supervisory positions, belong to career service. Every health care provider in Florida's employe has the protections of career service, whether or not they are allowed to engage in collective bargaining activities. To single out PHYSICIANS can be nothing

less than "SUSPECT". Additionally, F.S. 110.105 insures that State employees will be guaranteed the fundamental rights and protections of career service.

It is the burden of the State to prove that it made no suspect classification when enacting legislation that appears to affect similarly situated people differently. Melton v. Gunter, 773 F.2d 1548 (11th Cir. 1985). The burden is not so great when the legislation is enacted for purely economic reasons as in Woods v. Holy Cross Hospital, 591 F.2d 1164 (5th Cir. 1979). In Clemmons v. Fashing, 457 U.S. 957, 102 S.Ct. 2836 (1982), the Court stated

> The Equal Protection Clause allows the States considerable leeway to enact legislation that may appear to affect similarly situated people differently. Legislatures are ordinarily assumed to have acted consitutionally. Under traditional equal protection principle distinctions need only be drawn in such a manner as to bear some rational relationship to a legitimate state end. (at page 963).

Although Appellants argue that the Legislature determined a need to attract and retain qualified doctors and thereby enacted Chapter 85-318, Florida Laws, there is nothing in the record to indicate that this is a unique problem with the physicians employed by the State which does not affect other State health care providers, or for that matter any other State employee. See Woods v. Holy Cross Hospital and United Yatch Brokers, Inc. v. Gillespie.

CONCLUSION

Chapter 85-318, Florida Laws, bears no reasonable relation to a permissible legislative objective and is, therefore, discriminatory, arbitrary and oppressive as it is applied to State-employed physicians.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellee's Reply 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 15th day of August, 1986.

Respectfully submitted,

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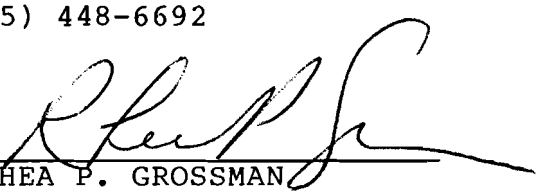
By 
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