IN THE SUPREME COURT OF FLORIDA

RUTH ANN BLANKENSHIP, et al.,

Petitioners,

v.

STATE OF FLORIDA,

Respondent.

Case No. 74,176

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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SUMMARY OF THE ARGUMENT

Chapter 87-243, Laws of Florida, was not enacted in violation of the single subject rule of article III section 6 of the Florida Constitution. The Act has but a single subject, clearly expressed in its title: crime prevention and control. Although this enactment is broad and comprehensive, it satisfies the prevailing tests in that the provisions of the Act have a natural and logical connection, are fairly and naturally germane to the subject, or are necessary incidents to the objects and purposes of the Act. The legislature intended a unified, comprehensive attack on the state's burgeoning crime problem, and case law allows an enactment to be as broad as the legislature chooses. Therefore, the lower court properly denied appellant's Motion to Dismiss.

ARGUMENT

THE TRIAL COURT CORRECTLY HELD THAT CHAPTER 87-243, LAWS OF FLORIDA (1987) DOES NOT VIOLATE THE SINGLE SUBJECT RULE.

Appellant's argument would have this Court recede to the state of the law that existed in the first half of this century. The simple response to that has already been provided by this Court in In re Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987). In that case, the court noted dicta from Gaulden v. Kirk, 47 So.2d 567 (Fla. 1950), which implied that comprehensive legislative treatment of a subject essential to the general welfare (taxation in Gaulden) could not be accomplished within a single law because of the single subject rule. Here is how the court dealt with the problem:

> Although we acknowledge that the instant act [the sales and use tax on services] does seem to contravene this dicta [from Gaulden.], we point out that case law interpreting Florida's single subject rule has progressed since 1947 and that this Court has significantly refined the requirements necessary for a legislative enactment to satisfy the single subject requirement.

Advisory Opinion, 509 So.2d at 313. Thus, this Court recognizes that its cases over the past three decades have substantially altered the way in which single subject issues must be addressed. In discussion infra of some of the recent case law, it will become clear that the enactment under review sub judice is completely in harmony with the supreme court's current attitude regarding the single subject rule. On the other hand, some of

the case law from the lower courts has adhered to earlier principles. While some of those principles guided this court to its current position, others were sloughed away.

In particular, Williams v. State, 459 So.2d 319 (Fla. 5th DCA), appeal dismissed, 458 So.2d 274 (Fla. 1984), relied upon by appellant with lengthy quotation therefrom, is notable for its reliance upon older case law. In Williams, the Fifth District noted that the Florida Supreme Court has approved many legislative enactments which would appear to encompass multiple subjects, citing to several cases from the past few decades. 459 So.2d at 320-21 & nn. 6-10. The court distinguished those cases on the basis that they approved comprehensive legislative packages, while the statute at issue in Williams was limited in scope and had two separate and distinct subjects. The Williams panel then concluded that the holdings of Colonial Investment Co. v. Nolan, 100 Fla. 1349, 131 So. 178 (1930), and Albritton v. State, 82 Fla. 20, 89 So. 360 (1921), controlled and dictated invalidation for violation of the single subject rule.[1]

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[1] The acts found to violate unity of subject in these two other cases involved narrow, restricted subject matter, rather than broad, comprehensive legislation. Each act contained a few provisions relating directly to the restricted subject, with one provision disassociated from, or not directly related to, the subject of the act or its other provisions.

The subject of Chapter 7736, Acts of 1918, was the enforcement of the organic provision against the manufacture or the traffic in intoxicating liquors. This Court held that Section 8 of the Act, prohibiting drunkenness, was not a matter properly connected with the subject of the legislation, and the fact that the matter was referred to in the title did not cure its illegality. Albritton v. State, 89 So. 360 (Fla. 1921).

This Court, addressing the same issue in Bunnell v. State, 453 So.2d 808 (Fla. 1984), did not cite or discuss Williams or the comprehensive/non-comprehensive rationale utilized by the Fifth District. Instead, the Supreme Court presented its own analysis of the issue and concluded that "the subject of section 1 has no cogent relationship with the subject of sections 2 and 3 and that the object of section 1 is separate and disassociated from the object of sections 2 and 3." 453 So.2d at 809 (emphasis added).[2]

Despite the Bunnell court's reliance on principles other than comprehensiveness, the supreme court has considered the issue of comprehensive enactments:

> [T]he fact that the scope of a legislative enactment is broad and comprehensive is not

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Similarly, in Colonial Inv. Co. v. Nolan, 131 So. 178 (Fla. 1930), the court struck down chapter 14571 as unconstitutional. The Act contained two separate and distinct subjects expressed in the title and the body; one was a requirement of sworn tax returns, the other was a prohibition against recording deeds or bills of sale without the post office address of the grantee. The court noted that although an attempt was made in the body of the Act to connect the two subjects, such a connection was artificial rather than "natural, logical, or intrinsic." Id. at 181.

[2] The enactment at issue contained only four sections. Section 4 provided an effective date, sections 2 and 3 involved matters relating to the Florida Council on Criminal Justice, and section 1 created section 843.185, establishing a crime for obstructing justice by giving false information. This court held that section 1 was enacted in violation of the single subject rule. The court apparently found that the act contained two separate, restricted subjects in spite of the Second District's attempt to save the enactment's validity by inferring a broad, general subject, "the criminal justice system." State v. Bunnell, 447 So.2d 228, 231 (Fla. 2d DCA 1983).

> fatal under the single subject rule so long as the matters included in the enactment have a natural or logical connection. In the case at bar, all the provisions contained within [the] text of the statute have a logical and natural connection with the taxation of services in this state.

Advisory Opinion, **509** So.2d at **313**. This Court thus echoes the Williams court's thinking that comprehensive enactments, while seeming to encompass multiple subjects, may be properly brought within the ambit of the single subject limitation.

In reaching its conclusion that comprehensive enactments can pass muster, the Advisory Opinion majority looked to Smith v. Department of Insurance, **507** So.2d **1080** (Fla. **1987),** approving the massive, complex, and comprehensive Tort Reform Act of **1986.**

> The purpose of the constitutional prohibition against a plurality of subjects in a single legislative act is to prevent a single enactment from becoming a "cloak" for dissimilar legislation having no necessary or appropriate connection with the subject matter.

Advisory Opinion, **509 So.2d** at **313,** quoting Smith, **507** So.2d at **1085,** in turn quoting State v. Lee, **356** So.2d **276, 282** (Fla. **1978).** See also Chenoweth v. Kemp, **396** So.2d **1122** (Fla. **1981),** (approving comprehensive legislation with provisions having "a natural or logical connection." **396** So.2d at **1124).** Thus, in another form, this Court restates the logrolling rationale for the single subject rule.[3] In so doing, it recognizes that the

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[3] The constitutional single subject rule essentially serves two purposes. First, the rule prevents surprise or fraud by providing fair and reasonable notice of the contents of the enactment to both the public and legislators. Santos v. State,

rule guards against not only logrolling in the old-school sense, but also aggregation of legislation which, while not malum in se, opens the door for the perceived evil of logrolling. The Smith opinion then proposed a test to determine whether an enactment violates the "cloaking" principle:

> The test to determine whether legislation meets the single subject requirement is based on common sense. It requires examining the act to determine if the provisions "are fairly and naturally germane to the subject of the act, or are such as are necessary incidents to or tend to make effective or promote the objects and purposes of legislation included in the

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380 So.2d 1284 (Fla. 1980). The second purpose, the one appellant claims is contravened by Chapter 87-243, is to prevent logrolling or hodgepodge legislation. Logrolling is defined in State ex rel. X-Cel Stores, Inc. v. Lee, 166 So. 568 (Fla. 1936), as the "practice of bringing together into one bill subjects diverse in their nature, and having no necessary nor appropriate connections, with a view to combining in their favor the advocates of all, and thus secure the passage at one time of several unrelated measures, no one of which could succeed upon its own merits alone . . ." Id. at 571 (emphasis added). The court explained that the single subject rule was not designed to "embarrass legislation by making laws unnecessarily restrictive in their scope and operation and thus to multiply their number." Id.

In the instant case, appellant claims 16 separate subjects (not objects) are addressed by the Act. Appellant would, therefore, have the legislature enact 16 different acts, rather than the single comprehensive bill actually adopted. Who is to say, however, that some of the 16 separate subjects do not, themselves, encompass more than one subject? Some sort of rational test must be developed to prevent the legislature from being paralyzed by a multiplication of enactments which do nothing but satisfy even the most compulsive parser that only one subject is addressed. X-Cel Stores specifically holds this must not happen. The common sense approach of Smith, discussed in the text infra, guides the courts away from the paralysis of appellant's position.

> subject." State v. Canova, 94 So.2d 181, 184 (Fla. 1957) (citation omitted).

507 So.2d at 1087. Smith, in adopting a common sense approach, moved away from mechanistic application of the single subject rule. The shift was already underway nine years earlier, when the Lee opinion issued:

> This constitutional provision (the single subject rule), however, is not designed to deter or impede legislation by requiring laws to be unnecessarily restrictive in their scope and operation. This Court has consistently held that wide latitude must be accorded the legislature in the enactment of laws, and this Court will strike down a statute only when there is a plain violation of the constitutional requirement that each enactment be limited to a single subject which is briefly expressed in the title.
>
> The subject of a law is that which is expressed in the title, and it may be as broad as the legislature chooses provided ~~the~~ matters included in the law have a natural and logical connection.

356 So.2d at 282 (citations deleted, emphasis added).

Appellant argues that a broad subject, e.g., "criminal justice" (one of several subjects appellant urges is the subject of the instant legislation), would render the single subject rule essentially a nullity. The holding of Lee clearly permits the legislature to create a subject as broadly as it desires. This is recognized even in the quotation from Williams provided by appellant in his brief, wherein the Fifth District held that "approving such a general subject for a non-comprehensive law would write [the single subject rule] completely out of the constitution . . . ." Williams, 459 So.2d at 321 (emphasis

added). Clearly, the enactment in Williams and Bunnell was not comprehensive. The legislation sub judice is comprehensive, and thus, even under the holding of Williams, permissible under the single subject rule.

Appellant attempts to suggest several subjects to which the instant; enactment speaks. However, the title offers the best indicator of subject, and the first words of the title establish the subject: "An act relating to crime prevention and control . . . ." Further, the legislative history of the act bears out the validity and nature of the legislation. The legislative staff analysis states in its summary section:

> This act is known as the "Crime Prevention and Control Act." It is designed to deal in a comprehensive manner with Florida's crime problem by incorporating numerous changes in various areas of Florida's criminal code. The act not only increases penalties and creates new offenses in some areas, it also attempts to deal with the causes of crime by providing for comprehensive K-12 substance abuse education, the creation and maintenance of "Safe Neighborhoods," and the creation of study commissions to study the causes of crime and methods of coordinating and integrating criminal justice information systems.

Florida House of Representatives Committee on Criminal Justice, Staff Analysis of CS/HB 1467 (June 22, 1987).

In enacting Chapter 87-243, the Florida legislature recognized a crisis in the increasing crime rate in this state, particularly street crime caused in major part by the proliferation of drugs. That the lawmakers wished to present a

unified, comprehensive attack against crime, drawing upon the resources of all government departments, is clearly set out in the preamble to the Act:

> WHEREAS Florida is facing a crisis of dramatic proportions due to a rapidly increasing crime rate, which crisis demands urgent and creative remedial action, and
>
> WHEREAS, Florida's crime rate crisis affects, and is affected by numerous social, educational, economic, demographic and geographic factors, and
>
> WHEREAS, the crime rate crisis throughout the State has ramifications which reach far beyond the confines of the traditional criminal justice system and cause deterioration and disintegration of businesses, schools, communities and families, and
>
> WHEREAS, the Joint Executive/Legislative Task Force on Drug Abuse and Prevention strongly recommends legislation to combat Florida's substance abuse and crime problems, and asserts that the crime rate crisis must be the highest priority of every department of government within the State whose functions touch upon the issue, so that a comprehensive battle can be waged against this most insidious enemy, and
>
> WHEREAS, this crucial battle requires a major commitment of resources, and a non-partisan, non-political, cohesive, well-planned approach, and
>
> WHEREAS, it is imperative to utilize a proactive stance in order to provide comprehensive and systematic legislation to address Florida's crime prevention throughout the social strata of the State, and
>
> WHEREAS, in striving to eliminate the fragmentation, duplication, and poor planning which would doom this fight against crime, it is necessary to coordinate all efforts toward a unified attack on the common enemy, crime. . . .

The legislature obviously intended comprehensive treatment of crime problems, addressing prevention and control from a variety of different approaches. There can be no doubt that the subject of the act is crime prevention and control.

Some discussion of the distinction between the "object" or "objects" of an enactment, and its "subject," is appropriate. The supreme court has held:

> The "subject" of an act is the matter to which it relates: the "object" is its general purpose. Although the two terms are held to be equivalent by some authorities, the better view is that the word "subject" is a broader term than the word "object" as one subject may contain many objects.
>
> . . . .
>
> Whether [the multiple objects of the dentistry act under review] are *so* unrelated to the subject of the act [dentistry] as to be subject to the criticism that they are not germane . . . so that the subject as expressed in the title may be said to be misleading and a cloak for legislating upon dissimilar matters, is the question.
>
> Only the subject, and not matters properly connected therewith, is required by the Constitution to be expressed in the title to the act.
>
> . . . .
>
> There must be a plain violation of the requirements of the [single subject rule] before the court will nullify statutes as not being within the subject embraced in the title and of "matters properly connected therewith."
>
> Provisions that are necessary incidents to or tend to make effective or promote objects and purposes of legislation included in the title of an act may be regarded as matters properly connected with the subject.

Spencer v. Hunt, **109** Fla. **248, __, 147 So.** 282, **284-85 (1933)** (citations deleted). Also, while objects of legislation are not required to be put in the title,

> if a matter properly connected with the subject is also named in the title to the act, no material harm has been done. A title merely mentioning matters germane to one subject is not invalid as relating to more than one subject; amplification of the title does not vitiate it.

State ex rel. Flink v. Canova, **94** So.2d **181, 184** (Fla. **1957).** The Flink opinion is obviously referring to inclusion of objects of the enactment, as it expressly notes the distinction between subject and object, citing to Spencer, immediately following the citations accompanying the quoted material immediately supra. Thus, in the instant case, although the title of the bill contains **1,410** words, as counted by opposing counsel, only the first eight express the subject, i.e., "An act relating to crime prevention and control." The remainder of the title is merely an enumeration of the objects of the act, permitted under Flink, and probably desirable, given one of the purposes of the single subject rule, to avoid surprise (see footnote **3**, supra).

In the instant case, appellant, in attempting to show this Court the multiple subjects of the challenged legislation, has merely succeeded in providing a clear rendition of the multiple objects of the legislation, objects which were included in the title, but which do not, by their inclusion, render them subjects or vitiate the title by amplifying it with the detailed objects. Just as the Spencer court had a dentistry bill with multiple

objects, so too this court has before it a crime prevention and control bill incorporating numerous objects. By its very comprehensiveness, the act seeks to achieve many objects.

One of Appellant's "smoking gun" arguments at the trial court was inclusion of section 73 in the act. Section 73 created section 177.086, providing that rights-of-way rendered untravelled when a portion of the road is made a cul-de-sac shall not be deemed abandoned absent affirmative governmental action. While perhaps a non-sequitor at first blush, the relevance of the provision can be gleaned from the remainder of the Act. Section 62 provides for analysis of environmental factors relating to crime, such as "streets, alleys . . . traffic flow patterns and the existence of barriers . . . ." Section 63(13) gives neighborhood improvement districts the power to "privatize, close, vacate, plan or replan streets, roads, sidewalks and alleys . . . . Other portions of the Act make clear that changes in traffic patterns may be an effective tool in thwarting crime in neighborhoods.

Given that cul-de-sacs might be created under the safe neighborhoods portion of the Act, the legislature provided for governmental retention of the portions of roads left unused. The statutory section immediately preceding section 177.086, section 177.085, deals with reversionary clauses vis-a-vis dedication of streets and roads in plats. Considering the potential for reversion of unused roads if deemed abandoned, the creation of section 177.086 clearly falls within the permissible range of

inclusions "such as are necessary incidents to or tend to make effective or promote the objects and purposes of legislation included in the subject." State ex rel. Flink v. Canova, 94 So.2d 181, 184 (Fla. 1957). The remainder of the putative disparities appellant claims show more than one subject in the bill are, likewise, either collateral matters necessarily incident to or promoting of objects of the enactment, or are directly, "fairly and naturally germane to the subject of the act." Id.

The State agrees with petitioner that Bunnell and Smith are not inconsistent, and that the analysis of State v. Burch, No. 88-0904, 14 F.L.W. 382 (Fla. 4th DCA 1989), pending for review, No. 73,826 (Fla., oral argument scheduled Sept. 7, 1989), is, therefore, possibly flawed. However, the state disagrees with petitioner's argument implying that the state or the Fourth District believe Smith's holding on the instant point to be dicta. The argument and discussion supra, delineate a clear synthesis of this Court's opinions which conforms Bunnell, Smith, and the decision below in this case. The Burch court, by following Smith and remaining silent on Bunnell's viability, avoided deciding whether Smith overruled Bunnell. The better resolution of the problem is to confront the alleged appearance of conflict and adopt an overall approach as urged supra. The state sub judice has never conceded that Bunnell, standing alone, would mandate reversal in this case. Bunnell simply addresses circumstances demonstrably different from those in this case.

CONCLUSION

A careful review of all seventy-six (76) sections of Chapter 87-243 fails to disclose a single provision, including section 73 relating to the installation of cul-de-sacs, which violates the single subject rule. All provisions meet the prevailing tests because they are logically and naturally connected, or are fairly and naturally germane to the subject of the Act, crime prevention and control, or are necessary incidents to or tend to make effective or promote the objects and purposes of crime prevention and control. The Second District opinion should be approved.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Lawrence D. Shearer, Assistant Public Defender, Polk County Courthouse, P.O. Box 9000--Drawer PD, Bartow, Florida 33830, this 10th day of July, 1989.

OF COUNSEL FOR RESPONDENT