

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA HOUSE OF REPRESENTATIVES:
TOM GUSTAFSON, as Speaker of the
Florida House of Representatives and
as a citizen and taxpayer of the
State of Florida; and T. K. WETHERELL,
as Chairman of the Committee on
Appropriations, as Speaker-Designate
of the Florida House of Representatives
and as a citizen and taxpayer of the
State of Florida,

Petitioners,

CASE NO.

v.

BOB MARTINEZ, Governor of the State of
Florida; JIM SMITH, in his capacity as
Secretary of the State of Florida;
and Gerald Lewis, in his capacity as
Comptroller of the State of Florida,

Respondents.

-----/

PETITION FOR WRIT OF MANDAMUS

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JURISDICTION

This action challenges the validity of executive vetoes of the 1989 General Appropriations Act as contrary to Article II, section 3 and Article III, section 8(a) of the Florida Constitution. This Court has jurisdiction pursuant to Article V, section 3(8), Florida Constitution and under Rule 9.100, Florida Rules of Appellate Procedure.

The petitioners challenge certain gubernatorial vetoes on the basis that they are not directed to any specific appropriation in a general appropriation bill; that they purport to veto qualifications and restrictions without vetoing the specific appropriations to which they relate; and in one instance the gubernatorial veto purports to create an appropriation for an expenditure of public funds contrary to express legislative direction.

Again, within a short period of time, the Court is called upon to exercise its power as the constitutional arbiter between the legislative power to enact an appropriations bill and the governor's authority to veto portions of the spending enactment. The Court has previously entertained original mandamus proceedings to determine the validity of executive vetoes. Brown v. Firestone, 382 So.2d 654 (Fla. 1980). Thompson v. Graham, 481 So.2d 1212 (Fla. 1985). In Brown, the Court observed that mandamus was the proper vehicle to obtain immediate determination of the issue, reasoning that "lingering uncertainty hampers the state's ability to finance ongoing state projects", 382 So.2d at 662. Here, gubernatorial veto action has caused uncertainty to linger over current operations and programs, including certain senior management benefits which must be paid or withheld on an ongoing basis and designated state employee salary

adjustments scheduled to take effect January 1, 1990. Recent experience has shown that the declaratory judgment process is inadequate to expunge invalid vetoes in a timely manner. In Martinez v. Florida Legislature, 542 So.2d 358 (Fla. 1989), the challenge to five executive vetoes of the 1988 General Appropriations Act was initially filed on September 12, 1988, but did not reach its final conclusion through the appellate process until May 16, 1989.¹ The 1988 General Appropriations Act expired just forty-five days later. Protracted litigation in the context of an act which by its terms lasts only one year ensures that gubernatorial vetoes will be given

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The case was initially filed in this Court through a Petition For a Writ of Mandamus (Case No. 73,034). Upon motion of the Governor, the case was transferred to Leon County Circuit for declaratory judgment. At the circuit court level, (Case No. 88-3976), the Governor counter-claimed against the Legislature and cross-claimed against the Secretary of State and Comptroller alleging the unconstitutionality of two separate enactments which he had previously allowed to become law. The Legislature was not made a party to this latter action. The circuit court rendered summary judgment in favor of the Legislature on December 29, 1988. The Governor, subsequently appealed to the First District Court of Appeal (Case No. 89-00090). Upon suggestion of the Legislature and over the objection of the Governor, First DCA certified the case back to this Court on January 24, 1989. This Court affirmed the judgment of the Circuit Court on March 23, 1989 which became final on May 16, 1989.

practical effect notwithstanding their constitutional infirmity. The Court should exercise its jurisdiction to resolve this fundamental constitutional issue between the legislative and executive branches of Florida government. There are not disputed issues of fact to be resolved in this case. The executive vetoes have cast doubt upon the expenditures of significant amounts of public funds creating confusion and uncertainty in state fiscal matters.

PARTIES

Petitioner, Florida House of Representatives, is the constitutional entity, with the Florida Senate, vested with the legislative power of the state under Article 111, section 1 of the Florida Constitution. Tom Gustafson is a citizen and a taxpayer of Florida, residing in Broward County. He is the Speaker of the Florida House of Representatives. T. K. Wetherell is a citizen and a taxpayer of Florida, residing in Volusia County. He is Chairman of the Committee on Appropriations of the Florida House of Representatives and is Speaker-Designate of the Florida House of Representatives. Gustafson and Wetherell, as citizens and taxpayers, have standing to bring this action. Brown v. Firestone, 382 So.2d at 662.

Gustafson has the same official capacity as did Messrs. Brown, Thompson and Mills in the three earlier veto challenge cases. All three were serving as Speaker of the House at the time mandamus proceedings were filed. House Rule 2.4, attached as Appendix 1, authorizes the Speaker to sue on behalf of the House. See also Thompson, 481 So.2d at 1216, n.2 (Boyd, C.J., concurring). Given the special injury which gubernatorial vetoes inflict on the legislature of Florida and historic legislative concerns over unconstitutional expansion of the veto power, the House of Representatives, as well as its Speaker, is a proper party to bring mandamus in this type of controversy.

FACTS

The 1989 Legislature duly adopted the General Appropriations Act of 1989, Senate Bill 1500, on June 2, 1989. Relevant extracts from the journals of the House and Senate are attached as Appendices 2 and 3, respectively. The General Appropriations Act of 1989 has been published by the Secretary of State as Chapter 89-253, Laws of Florida and contains over 3,500 specific appropriations subject to the governor's veto.

On June 29, 1989, the Governor filed his official veto message with the Secretary of State, expressing vetoes purportedly made under the authority of Article 111, section 8 of the Florida Constitution. A copy of the governor's official veto message is attached as Appendix 4. The vetoes which are challenged in this proceeding appear at pages 1, 13, 25, 31, 35, 36 and 46 of Appendix 4, but for ease of reference petitioners have set out below the precise language of the particular appropriations to which the challenged vetoes relate, followed by the corresponding text of the official veto message.

Veto Number One

Specific Appropriation 5

5 Lump Sum

Salary Increases

From General Revenue Fund.....	76,411,208
From Educational Enhancement Trust Fund..	6,433,236
From Trust Funds.	21,632,810

From funds provided in Specific Appropriation 5, sufficient moneys shall be transferred to the Judicial Branch to meet their requirements for the purposes for which the appropriation is made.

[Excerpt from General Appropriations Act, Appendix 5, pages 293, 294]:

Funds are provided in Specific Appropriation 5 for adjustments to selected legal positions in the Florida Department of Legal Affairs, to be distributed at the discretion of the Attorney General. The effective date of any salary adjustments given in accordance with this

provision shall be January 1, 1990. The Attorney General is authorized to exceed the maximum of the pay grade for up to eight Assistant Attorney General positions.

.....

Governor's Veto (on page 1 of Veto Message):

Proviso language in Section 1.1.2.D.2), paragraph 3, on pages 293 and 294, providing for salary adjustments to selected positions in the Department of Legal Affairs, is hereby vetoed. The funds appropriated for this purpose in Appropriation 5 are \$300,000 from the General Revenue Fund and \$61,070 from Trust Funds. These increases are in addition to the 4% pay increases provided for all Selected Exempt Service employees. It is inappropriate and inequitable to provide certain employees with extra benefits.

"Funds are provided in Specific Appropriation 5 for adjustments to selected legal positions in the Florida Department of Legal Affairs, to be distributed at the discretion of the Attorney General. The effective date of any salary adjustments given in accordance with this provision shall be January 1, 1990. The Attorney General is authorized to exceed the maximum of the pay grade for up to eight Assistant Attorney General positions."

Veto Number Two

Specific Appropriation 500

500 Special Categories

Grants and Aids - Dropout Prevention

From Educational Enhancement Trust Fund 11,494,153

From the funds provided in Specific Appropriation 500:

...

- 19. \$4,000,000 is for Florida First Start as described in CS/HB 1160 or similar legislation and \$100,000 shall be allocated for the Toddler Intervention Program (TIP) in Dade County.

...

Governor's Veto (on page 13 of Veto Message):

Proviso language following Appropriation 500 on page 84 appropriating \$3,900,000 from the Educational Enhancement Trust Fund for Florida First Start is hereby vetoed. This appropriation creates the Florida First Start Program for handicapped and at-risk children from birth to age three. The specific program objectives and services to be provided are not educational, but are social services more properly delivered by the Department of Health and Rehabilitative Services. The projected cost to fully implement this program is in excess of \$80 million. Before a new program of this magnitude is begun, an in-depth analysis of current programs at the local, state and federal levels should be conducted. Currently, the Department of Education is developing a comprehensive, coordinated system of early intervention services for handicapped and at-risk children aged 0 to 3 funded by a federal grant under PL99-457, Part H - Infants and Toddlers Program. First Start may duplicate and conflict with this effort.

"19. \$4,000,000 is for Florida First Start as described in CS/HB 1160 or similar legislation" [and \$100,000 shall be allocated for the Toddler Intervention Program (TIP) in Dade county.]

Veto Number Three

Specific Appropriation 749

749	Expenses	
	From General Revenue Fund.....	60,170
	From Bureau of Aircraft Trust Fund...	1,381,194
	From Motor Vehicle Operating Trust Fund.	1,157,970
	From State Infrastructure Fund.....	74,600
	

Governor's Veto (on page 25 of Veto Message):

Appropriation 749 on page 145 from the State Infrastructure Fund to provide expenses for the Division of Motor Pool is hereby vetoed. With the reduction of the State Infrastructure Fund from \$500 million to \$350 million, it is vital that the projects funded from this source be only the most critical priorities of the State,

such as constructing correctional and public facilities and protecting the State's environmental resources.

**"749 Expenses
From State Infrastructure Fund 74,600"**

Veto Number Four

Specific Appropriation 956

956 Special Categories
Start-up Funds/Group Fund
From General Revenue Fund.....80,000
From Intermediate Care
Facilities/Mentally Retarded/Group
Living Home Revolving Trust Fund..... 80,000
.....

Governor's Veto (on page 31 of Veto Message):

Appropriation 956 on page 184 appropriating \$80,000 from the General Revenue Fund for Group Home Loans is hereby vetoed. Funding for this program is available in the Community Residential Training Category.

**"956 Special Categories
Start-up Funds/Group Homes
From General Revenue Fund 80,000"**

Veto Number Five

Specific Appropriation
(See Appendix 6 for enumeration of specific
appropriations entitled "Salaries and Benefits"
.....)

Governor's Veto (on page 46 of Veto Message):

Proviso language in Section 1.1.5., paragraph 4, on page 296, authorizing funds to be used for purposes other than for the payment for unused annual leave credits for employees in the Senior Management Service and Selected Exempt Service, is hereby vetoed, and no funds provided in an agency budget, to the extent they are identified by this language, shall be utilized for such purposes. Limiting this benefit would not only impair the contract

the State has with its present senior-level managers, but also would seriously undermine State government's ability to attract other high level senior managers.

"Upon termination of employees in the Senior Management Service, Selected Exempt Service, or positions with comparable benefits, payments for unused annual leave credits accrued on the member's last anniversary date shall be prorated at the rate of one-twelfth (1/12) of the last annual amount credited for each month, or portion thereof, worked subsequent to the member's last anniversary date."

Veto Number Six

Specific Appropriation 1539

1539 Lump Sum
Senate
From General Revenue Fund.....22,838,383

From the amount provided in Specific Appropriation 1539, \$250 shall be paid each month during Fiscal Year 1989-90 as a supplemental intradistrict expense allowance to each member of the Florida Senate who, in addition to two full time district staff employees, has a third district staff employee on 16 or more calendar days in any such month. This supplement was approved by the Joint Legislative Management Committee on February 6, 1989, pursuant to s. 11.13(4), Florida Statutes.

From the amount provided in Specific Appropriation 1539, \$250 shall be paid each month during fiscal year 1989-90 as a supplemental intradistrict expense allowance to each member of the Florida Senate who, in addition to two full-time district staff employees, has a third staff employee on 16 or more calendar days in any such month and who does not qualify for the allowance under the foregoing paragraph.

The Legislature may pay, from funds appropriated to the legislative branch, the reasonable costs that are incurred by members or employees of the Legislature in excess of the level of benefits available under the state health plan for alcohol dependency treatment and rehabilitation programs.

.....

Governor's Veto (on page 35 of Veto Message):

Proviso language in the third paragraph following Appropriation 1539 on page 248 and \$1 from the General Revenue Fund to allow members or employees of the legislative branch additional benefits for the treatment of alcohol dependency is hereby vetoed. This proviso language would permit unequal treatment of State employees and officials in regard to their health insurance since only members or employees of the legislative branch would be eligible for the additional benefits.

"The Legislature may pay, from funds appropriated to the legislative branch, the reasonable costs that are incurred by members or employees of the Legislature in excess of the level of benefits available under the state health plan for alcohol dependency treatment and rehabilitation program."

Veto Number Seven

Specific Appropriation 1578

1578 Other Personal Services	
From General Revenue Fund	3,113,503
From Forfeited Property Trust Fund....	333,444
From Internal Improvement Trust Fund..	970,752

Funds in Specific Appropriation 1578, include \$455,000 from the General Revenue Fund for a feasibility and needs assessment study to be conducted by the Florida Resources and Environmental Analysis Center of Florida State University concerning the implementation of a statewide Geographic Information System. The study shall be completed and its results reported to the Speaker of the House of Representatives and to the President of the Senate no later than December 31, 1990. In addition, an interim report shall be provided to the Speaker and President no later than March 15, 1990. The study shall include but not be limited to an assessment of short and long term implementation costs and objectives, impact and effects on local governments and appropriate state agencies, staffing and training requirements, technical specifications, and a timetable for implementation.

Governor's Veto (on page 36 of Veto Message):

Appropriation 1578 and associated proviso language on pages 253 and 254 appropriating \$3,113,503 from the General Revenue Fund for modernization of State land records and a feasibility and needs assessment study by Florida State University concerning the implementation of a statewide Geographic Information System is hereby vetoed. The Department of Natural Resources' Legislative Budget Request stated that the modernization project would be done in three phases at a total cost of \$8.1 million. With the \$959,600 appropriated for this project in Fiscal Year 1988-89, the Department contracted with Florida State University to conduct a needs assessment to determine the scope of the project, design the project, and complete a pilot demonstration project. The needs assessment, dated May 5, 1989, reveals that the total project is estimated to cost \$32,315,000, and will take eleven years to complete. Before any further State funds are appropriated for this purpose, the Trustees of the Internal Improvement Trust Fund and the Legislature should thoroughly review the proposed scope and timing of the project to determine if it is in the best interest of the State. If it is determined that such a project is warranted, it should be funded from trust funds set aside for land management purposes, and competitively bid to allow participation from the private and public sector. The proviso language appropriates \$455,000 for a feasibility and needs assessment study which is duplicative of the purpose of the Growth Management Data Network Coordinating Council created in section 282.043, Florida Statutes. The Council, composed of nine State agencies, is charged by statute with developing criteria, policies and procedures for the prescribed and preplanned transmission of growth management data among State and local agencies. In an October 1988 report adopted by the Governor and Cabinet, the Council specified procedures which are being implemented to develop a Statewide Geographic Information System.

"1578 Other Personal Services
From General Revenue Fund 3,113,503"

"Funds in Specific Appropriation 1578, include \$455,000 from the General Revenue Fund for a feasibility and needs assessment study to be conducted by the Florida Resources and Environmental Analysis Center of Florida State University concerning the implementation of a statewide

Geographic Information System. The study shall be completed and its results reported to the Speaker of the House of Representatives and to the President of the Senate no later than December 31, 1990. In addition, an interim report shall be provided to the Speaker and President no later than March 15, 1990. The study shall include but not be limited to an assessment of short and long term implementation costs and objectives, impact and effects on local governments and appropriate state agencies, staffing and training requirements, technical specifications, and a timetable for implementation."

Under Florida's Constitution, the governor may veto any specific appropriation in a general appropriations act but may not veto any qualification or restriction without vetoing the appropriation to which it relates. Article 111, section 8(a), Florida Constitution. In the case of vetoes 1, 5, 6 and 7, above, the governor purports to veto proviso language i.e. qualifications or restrictions, without vetoing the specific appropriation to which each pertains. Additionally, in the case of vetoes 1, 2, 3, 4, 6 and 7, the governor improperly seeks to alter the amounts of specific appropriations.

ARGUMENT

The action of the governor in vetoing proviso language in the appropriations bill without also vetoing the specific appropriations to which the proviso relates and his effort to alter the amounts of specific

appropriations constitute an unconstitutional intrusion into the legislature's power to make law. Article 111, section 1 of the Florida Constitution plainly states, "The legislative power of the state shall be vested in a legislature of the State of Florida...". The legislative power includes the power to enact appropriations. Brown v. Firestone. The Florida Constitution further provides in Article 11, section 3 that one branch of government may not intrude on the powers of another branch:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

It is within the framework of the separation of powers doctrine that the scope of the governor's veto power must be determined. Article 111, section 8(a) provides in pertinent part:

The governor may veto any specific appropriation in a general appropriation bill, but may not veto any qualification or restriction without also vetoing the appropriation to which it relates.

The challenged vetoes fail constitutional muster because they are not directed to "specific appropriations" as that term is used and has been construed in Article 111, section 8 of the Florida Constitution and because

they seek to eliminate qualifications or restrictions without eliminating the related appropriation. The term "specific appropriation" has attained settled meaning through this Court's recent rulings. The Brown Court stated:

A specific appropriation is an identifiable, integrated fund which the legislature has allocated for a specified purpose. 382 So.2d at 668.

This definition was reaffirmed most recently in Martinez v. Florida Legislature, 542 So.2d at 360. Thus, if a specific dollar amount is not identified in the appropriations act, it is not a specific appropriation and cannot be vetoed. Moreover, the appropriation must be integrated, i.e. containing all parts necessary for the whole. Finally, each specific appropriation carries with it a stated purpose.

Applying these principles, the Court in Brown declared two vetoes invalid because they were directed to proviso language which did not constitute a specific appropriation because of the absence of an identified fund. 382 So.2d at 669, 670. Moreover, in Martinez, the Court expunged five vetoes because they were directed not to identifiable allocations in the appropriations act but to legislative workpapers.

Mindful of the judicial construction of "specific appropriation" and attentive to the plain language of the constitution's proscription against vetoing proviso without vetoing the related specific appropriation, each of the 1989 vetoes under challenge is analyzed in turn.

Veto Number One here challenged relates to Specific Appropriation 5 of the General Appropriations Act totaling \$104,477,254 for "salary increases" for state employees. The proviso language which the governor purports to veto is that which gives the attorney general discretion to award salary increases to selected legal positions and authorizes him to exceed the maximum of the pay grades for up to eight assistant attorneys general. This proviso language acts as a qualification of and a restriction upon line item number 5. As such the governor is constitutionally required to accept the proviso or to veto all of Specific Appropriation 5. ~~Brown v. Firestone~~. Accordingly, this veto of proviso language without veto of the appropriation to which it relates is invalid.

The governor's veto is defective for an additional reason. The comment contained in the governor's veto message indicates an apparent attempt to reduce Specific Appropriation 5 by \$361,070.00. This sum does not appear in the appropriations act. Presumably the figure chosen by the governor derives from some compilation of figures

found in budget workpapers. Accordingly, the veto must fail on the same grounds as the partial vetoes which were expunged in Martinez v. Florida Legislature. Florida's Constitution grants no gubernatorial authority to reduce or alter the amounts of specific appropriations.

Veto Number Two under challenge likewise is defective as an attempt to veto a portion of a specific appropriation. Item number 19 of Specific Appropriation 500 is a specific appropriation of \$4,000,000 for a program called "Florida First Start." The governor's veto message recites that:

"Proviso language following appropriation 500 on page 84 appropriating \$3,900,000.00 from the educational enhancement trust fund for Florida First Start is hereby vetoed".

(Appendix 4, Page 13).

The governor had the option to veto the entire \$4,000,000 appropriation or to veto \$100,000. Instead, he seeks to reduce the appropriation by \$3,900,000. Once again, the governor has run afoul of the principle enunciated in Brown and in Martinez v. Florida Legislature that a veto may not reduce or alter the amount of a specific appropriation.

Veto Number Three under challenge is invalid because it too purports to reduce a specific appropriation. The dollar amount of Specific Appropriation 749 is \$2,599,334.

This item is consistent with the Brown definition of specific appropriation as "an identifiable, integrated fund which the legislature has allocated for a specified purpose". 382 So.2d at 668. The four different sources from which these funds are to be drawn reflect the "integrated" nature of the appropriation. There is one, specified purpose to which these funds are to be applied: Expenses of the Division of Motorpool within the Department of General Services. Thus, the governor had the option of vetoing all or none of Specific Appropriation 749, denominated as such, because it is the integrated fund which the legislature has allocated for the specified purpose of providing expense dollars to the division. The enumeration of the sources from which a particular appropriation shall be paid does not represent a legislative purpose but rather, reflects a fiscal management technique for assigning dollars from several accounts to implement one, specified legislative purpose.

The 1989 General Appropriations Act contains over 700 Specific Appropriations which require that funds to implement the appropriation be drawn from multiple state depositories. For instance, Specific Appropriation 250 for salaries and benefits to the Division of Housing and Community Development will be implemented by dollars taken from thirteen different sources within the state treasury.

Specific Appropriation 1141 for judicial branch salaries will be paid from three different trust accounts. Specific Appropriation 2110 is for the construction of a records storage facility in Leon County, a portion of the funds to be drawn from the Public Facilities Financing Trust Fund and a portion to be drawn from the State Infrastructure Fund. Specific Appropriation 2138 to the Department of Transportation for right-of-way land acquisition will be drawn from both the State Transportation (Primary) Trust Fund and the Right-of-way Acquisition and Bridge Construction Trust Fund.

Each of the enumerated specific appropriations above represents: a) an identified sum of money in the appropriations act, b) which is in integrated form, i.e. composed of its necessary parts, c) for a singular and express public purpose.

If the governor has the constitutional authority to pierce the specific appropriation and alter the manner in which the appropriation will be funded, then he has indeed achieved the power to legislate. He could, under such an analysis, reduce the number of employees and their salaries of the Division of Housing and of the Supreme Court by the expedient of eliminating one or more of the sources from which the appropriation is to be funded. Likewise, he could alter the size, scope and cost of the

proposed new storage facility in Leon County and he could reduce the amount the legislature has decided should be spent on new road acquisitions. These are inherently legislative functions under Florida's Constitution. To permit gubernatorial intrusion into this function under the mistaken rationale that the sources of an appropriation are appropriations themselves is to dramatically change the balance of power in Florida's government. It would give the governor the power to annually rewrite the appropriations act.

It is axiomatic that the governor's constitutional power to veto specific items within the appropriations act is an exception to the general constitutional principle that a gubernatorial veto must extend to the entire legislative act or to none of it. The constitution allows the governor to veto "specific appropriations" in order to avert the consequences of "logrolling", i.e. the linking together of diverse legislative projects and goals so as to make veto of the entire act unlikely. Brown and Green v. Rawls, 122 So. 2d 10 (Fla. 1960). The governor's authority to veto individual items within an appropriations act is designed to preclude such logrolling. Significantly, the governor's inability to veto one or more treasury sources from which an item of appropriation will be funded has no impact on the salutary

goal of preventing logrolling. The purpose, project or program embodied in a particular appropriation is by definition singular. It is illogical to consider that the multiple sources to fund an appropriation are in themselves specific appropriations, within the meaning of Article 111, section 8. This is so because such authority is ineffectual to have any impact on the undesirable consequences of logrolling -- the rationale for the governor's veto authority in the first place.

In sum, the ability to pick and choose among the funding sources for an appropriation by the executive is tantamount to the power to rewrite the appropriations act and to reorder and rearrange the state's spending scheme. Moreover, there is no historic or constitutional rationale for a judicial grant of such unprecedented power. Accordingly, the governor's attempted veto of \$74,600 out of a total appropriation of \$2,599,334 must fail as a prohibited partial veto.

Veto Number Four, like Veto Number Three, is invalid because it purports to reduce a specific appropriation. The dollar amount of Specific Appropriation 956 is \$160,000. The governor had the option of vetoing this entire item or accepting it. Instead he chose to veto \$80,000, an amount which does not constitute a specific appropriation but which represents one account from which

the appropriation will be funded. Accordingly, the veto must fail as a prohibited partial veto.

Veto Number Five under challenge has reference to proviso language relating to 229 line items allocating "salaries and benefits" to various sub-units of state government (See Appendix 6). The governor's veto purports to eliminate a legislatively imposed restriction on the amounts appropriated for certain annual leave benefits. The proviso language at issue prevents the use of appropriated funds to compensate departing senior managers and members of the Selected Exempt Service for annual leave they have not earned. The governor's veto of this restrictive language ostensibly would allow these high-level managers leaving state government to be compensated for annual leave without any proration of leave credits in relation to time worked. The governor's action constitutes the veto of a restriction in a specific appropriation without veto of the specific appropriation itself. Furthermore, the governor's action actually creates a new appropriation since it would require the expenditure of additional public funds, funds which the legislature has expressly withheld. Such gubernatorial lawmaking is prohibited by Article 111, section 1, Florida Constitution which vests the legislative power of the state with the legislature.

Similarly, Veto Number Six represents a deliberate disregard for this Court's instruction on the proper scope of the governor's veto authority. Specific Appropriation 1539 of Chapter 89-253, Laws of Florida, allocates a lump sum of \$22,838,383.00 for Senate operations. In defiance of Brown and Martinez v. Florida Legislature, the governor "creates" a \$1.00 appropriation from this amount and then proceeds to veto his creation together with associated proviso language. Once again, the action of the governor is invalid in that it seeks unconstitutionally to reduce a specific appropriation and at the same time purports to veto proviso without vetoing the line item to which it relates.

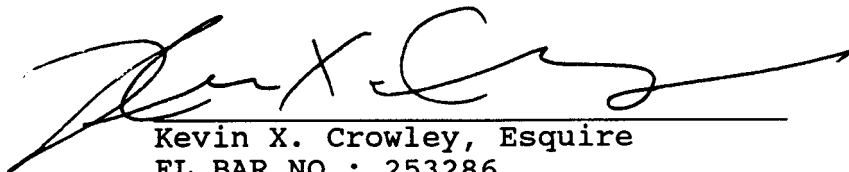
Veto Number Seven, like Vetoes Number Three and Four, is invalid because it purports to reduce a specific appropriation. Moreover, it violates the constitutional proscription against vetoing a qualification or restriction without vetoing the appropriation to which it relates. The dollar amount of Specific Appropriation 1578 is \$4,417,699. Of this amount, \$455,000 together with associated proviso was subject to veto under Brown. Thus, the governor had the option of vetoing all of Specific Appropriation 1578 or \$455,000. Instead, the governor chose to veto \$3,113,503, an amount which does not constitute a specific appropriation but which represents

an account which will be drawn upon to implement the appropriation. Accordingly, the veto must fail as a prohibited partial veto. Additionally, the veto must fail as an unconstitutional extension of the governor's authority to veto a qualification or restriction and the specific appropriation to which the qualification or restriction relates.

CONCLUSION

In last year's challenge to Governor Martinez' vetoes of the 1988 General Appropriations Act, the legislature came before this Court cognizant that the separation of powers doctrine is dynamic and that a bright line demarcating the authority of the executive and legislative branches is not always readily apparent. Martinez v. Florida Legislature illuminated to a significant extent the relationship between gubernatorial veto power and the legislature's authority to enact appropriations laws. The gubernatorial vetoes here under challenge, coming only 43 days after Martinez v. Florida Legislature became final, evidence a disregard of the principles enunciated in that case. The Court should direct the Secretary of State to expunge the invalid vetoes from the official records of the State and direct the Comptroller to take appropriate action consistent with such order.

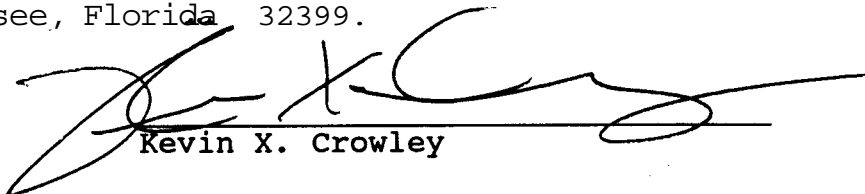
Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery on this 19th day of September, 1989, upon Honorable Bob Martinez, Office of the Governor, The Capitol, Tallahassee, Florida 32399; Honorable Jim Smith, Office of the Secretary of State, The Capitol, Tallahassee, Florida 32399; and, Honorable Gerald Lewis, Office of the Comptroller, The Capitol, Tallahassee, Florida 32399.



Kevin X. Crowley