

761383

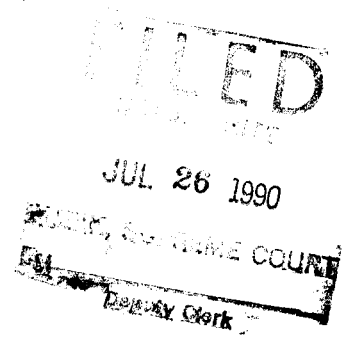
IN THE SUPREME COURT OF FLORIDA

Case No.

KATHY MURRAY,
Petitioner,

-vs-

GERALD LEWIS, in his official capacity as
Comptroller, JIM SMITH, in his official
capacity as Secretary of State and
BETTY CASTOR, in her official capacity as
Commissioner of the Department of Education,
Respondents.



PETITION FOR WRIT OF MANDAMUS

Petitioner KATHY MURRAY petitions this Court by and through undersigned counsel pursuant to Rules 9.030(a)(3) and 9.100 of the Florida Rules of Appellate Procedure and Article V, §3(b)(8) of the Florida Constitution for issuance of a writ of mandamus to require the Secretary of State to expunge unconstitutional proviso language in the 1990 - 91 General Appropriations Act from the official records of the state and to require the Comptroller and the Commissioner of the Department of Education ("DOE") to ensure that these expunctions are reflected in the financial operations of the state.

I

INTRODUCTION

1. This action concerns the constitutionality of a proviso in Florida's 1990 - 91 General Appropriations Act, Ch. 90-209, Laws

of Florida. App. 5-6.

2. The proviso destroys the unconditional right of welfare recipients who are participating in the education and training program authorized by §409.029 of the Florida Statutes ("Project Independence") to waiver of community college fees under sections 2 and 3 of Ch. 89-334, Laws of Fla. at §§230.645 and 240.35 Fla. Stat. App. 10. The proviso, contained in Florida's 1990-91 General Appropriations Act, changes 1989 statutory law that mandates waiver of a §409.029 Project Independence participant's community college fees. App. 5-6. Without any corresponding substantive lawmaking, the proviso requires:

The exemption of community college fees as provided by sections 230.645(2)(f) and sections 240.35(3), Florida Statutes, insofar as they relate to students enrolled under the provisions of s. 409.029, Florida Statutes, may apply only if those fees cannot otherwise be paid by funds available through state or federal student financial aid, the Job Training Partnership Act, the Vocational Rehabilitation Act, Wagner-Payser, the Carl Perkins Act, or through funds provided by the Welfare Reform Act and the Florida Employment Opportunity Act. App. 5-6.

3. Because the change to a §409.029 participant's right to waiver of fees was made in a general appropriations act, not through substantive statutory amendment procedures, welfare recipients -- the persons affected by the proviso -- were denied the opportunity for input into and debate over the change. As a result, their right to waiver of community college fees has been summarily destroyed and their ability to get the education they

need to escape poverty has been jeopardized. If the change had been proposed through normal channels of substantive lawmaking, welfare recipients would have had an opportunity to voice their concerns. They would have been given the chance to protect their interests and settle the many uncertainties caused by the proviso. Welfare recipients who, like Petitioner Murray, are struggling to better themselves, provide a better life for their children, and break the cycle of poverty are harmed by the proviso.

4. Changing law in an appropriations bill violates Article III, §§6 and 12 of the Florida Constitution. The proviso is, therefore, unconstitutional. This Petition seeks expunction of the proviso and direction to the Comptroller and Commissioner of DOE to comply with the expunction.

II

FACTS

A.

Background of HRS' Project Independence Program for Welfare Recipients

5. The Aid to Families with Dependent Children ("AFDC" or "welfare") program is a joint federal-state program providing financial assistance to indigent families with dependent children who are deprived of the parental support or care of at least one parent. 42 U.S.C. §602 et seq. The AFDC program in Florida is administered by the Department of Health and Rehabilitative Services (HRS). §409.026, Fla. Stat. (1989); Fla. Admin. Code Rule 10C-1.077.

6. As a condition of eligibility for AFDC, all applicants and recipients, unless they qualify for an exemption, are required to participate in the federally mandated education, training and employment program called Job Opportunities and Basic Skills Training Program ("JOBS") under the Family Support Act of 1988, Pub. L. 100-485 ("the FSA" or "Family Support Act"). 45 C.F.R. §250.30. App. 12, 14.

7. The JOBS program provides welfare recipients "the opportunity to acquire the education and skills necessary to qualify for employment." 45 C.F.R. §250.0(a)(2). The purpose of JOBS is to break the cycle of poverty. It is designed to assure that "needy families with children obtain the education, training and employment that will help avoid long-term welfare dependence." 45 C.F.R. §250.0(a)

8. Florida's education, training and employment program, which carries out JOBS, is Project Independence. App. 15.

9. Project Independence is administered by HRS. §409.029, Fla. Stat. (1989). App. 13, 15. State legislation governing Project Independence is at §409.029, Fla. Stat. (1989) ("the Florida Employment Opportunity Act").

B.
Background of the Fee Waiver Provisions
for Welfare Recipients in
§§230.645 and 240.35, Fla. Stat.

10. The Florida Legislature enacted Ch. 89-334, Laws of Fla., in 1989 to implement JOBS. App. 9-10.

11. As part of its JOBS legislation, the 1989 Florida Legislature amended §§230.645 and 240.35, Fla.Stat., in Ch. 89-334, Laws of Fla., to require that community colleges waive the fees of AFDC recipients participating in Project Independence. App. 10. HRS implemented JOBS in Florida in October 1989, an option permitted under the Family Support Act. 54 Fed. Reg. 42146 (1989). App. 12, 15.

12. Section 2 of Ch. 89-334 (App. 10), which unconditionally requires waiver of a Project Independence community college fees, states:

Section 2. Paragraph (g) is added to subsection (2) of section 230.645, Florida Statutes, 1988 Supplement, to read:

230.645. Postsecondary student fees

(2)The following students are exempt from any requirement for the payment of fees for instruction:

(g) Students who are enrolled in an employment and training program pursuant to s. 409.029.

Paragraph (g) was redesignated as (f) by the Division of Statutory Revision upon publication of the 1989 Florida Statutes. §230.645, n.2, Fla. Stat. (1989). App. 56.

13. Likewise, Section 3 of Ch. 89-334 (App. 10) also states:

Section 3. Subsection (3) of section 240.35, Florida Statutes, 1988 Supplement, is amended to read:

240.35. Student fees

(3) Any student whose fees are waived in excess of the authorized number of waivers shall not be included in calculations of fulltime equivalent enrollments for state funding purposes. Students enrolled in dual

enrollment and early admission programs pursuant to s. 240.116 or employment and training programs pursuant to s. 409.029 shall be exempt from the payment of registration, matriculation, and laboratory fees; however, such students shall not be included within calculations of fee-waived enrollments.

14. §§230.645(2)(g) (hereafter referred to in its redesignated form of 230.645(2)(f)) and 240.35(3) at sections 2 and 3 of Ch. 89-334 require that welfare recipients who want an opportunity for economic independence be given that chance. Project Independence participants are guaranteed, by statute, waiver of community college fees.

C.
The Proviso in Florida's 1990-91
General Appropriations Act

15. In 1990, the Florida Legislature did not enact any substantive amendments modifying the statutory right of Project Independence participants to waiver of fees at community colleges. However, on June 26, 1990, House Bill 3701 was signed into law as Florida's General Appropriations Act ("the Act") for fiscal year 1990-91 as Ch. 90-209, Laws of Fla. App. 1, 55.

16. Proviso language in the 1990-91 General Appropriations Act summarily destroys the unconditional mandate in §§230.645 and 240.35. The proviso requires Project Independence participants to pay community college fees if they are able to obtain state or federal aid or assistance from various other sources. App. 5-6.

17. The 1990 appropriations proviso (App. 5-6) states:

The exemption of community college fees as provided by sections 230.645(2)(f) and sections 240.35(3), Florida Statutes, insofar as they relate to students enrolled under the provisions of s. 409.029, Florida Statutes, may apply only if those fees cannot otherwise be paid by funds available through state or federal student financial aid, the Job Training Partnership Act, the Vocational Rehabilitation Act, Wagner-Payser, the Carl Perkins Act, or through funds provided by the Welfare Reform Act and the Florida Employment Opportunity Act [Project Independence].

Thus, the proviso requires welfare recipients in Project Independence to seek payment of fees from virtually any financial aid program available, including federal and state student loan programs as well as Project Independence itself, which operates under the Florida Employment Opportunity Act. App. 43.

D.

The Proviso Harms
Welfare Recipients

18. Project Independence participants, who are welfare recipients struggling to better themselves, will be harmed by the proviso.

i.

Welfare recipients will be forced to pay processing fees

19. Because of the proviso, all Project Independence participants planning to attend community college will be advised to apply for a Florida Student Assistance Grant ("FSAG"). App. 44-46. Many of these participants will be forced to pay a processing charge of at least \$7.00. App. 37-38.

20. For example, to apply for a FSAG at Tallahassee Community College, applicants are instructed to apply through the American College Testing Program ("ACT"), a processing center for various student financial aid programs. App. 39. ACT charges a minimum fee of \$7.00 for processing State financial aid applications. App. 37-38.

21. \$7.00 is a significant amount of money to welfare recipients, whose AFDC check keeps them living at only about one-third (1/3) of the federal poverty guidelines. See Fla. Admin. Code Rule 10C-1.103; §409.185(4)-(5), Fla. Stat. (1989). Welfare recipients cannot afford to spend \$7.00 on a processing fee when they are already scrimping on necessities.

ii.

Welfare recipients with Pell Grants face special verification requirements or loss of food stamps

22. Participants who are forced to get Pell Grants because of the proviso will be required to comply with special stringent federal verification requirements or lose needed food stamp benefits. 7 C.F.R. §273.9(c)(11)(xi). App. 26-27. If a participant is unable to verify the portion of her Pell Grant which is for expenses other than room, board and dependent care costs, her entire Pell Grant may be counted as income to her for purposes of calculating her food stamp eligibility. Id. App. 26-27. As a result, a participant's food stamp benefits will be denied, reduced or terminated and she may be unable to provide nutritious meals for her family.

23. For example, in L.T. v. HRS, Appeal No. 87F - 2225 (HRS Office of Public Assistance Appeal Hearings, Feb. 2, 1988) (Final Order) (App. 47-51), HRS denied L.T. and her daughter food stamps because they were unable to verify, to HRS' satisfaction, how their Pell Grant was used. In determining whether their income was low enough to qualify for food stamps, HRS refused to exclude, from their income, portions of their Pell Grants used to pay certain education-related transportation and personal expenses. As a result, HRS determined that L.T. was financially ineligible and denied her food stamps. App. 47-51. L.T. appealed and the Hearing Officer reversed HRS' decision. App. 50. Welfare recipients forced to apply for Pell Grants face similar verification obstacles jeopardizing their food stamps.

iii.

Welfare recipients may be forced to take out loans.

24. Because the proviso requires Project Independence participants to seek "state or federal financial aid" to pay community college fees, some welfare recipients may be forced to take out loans. Both state and federal student financial aid plans include loan programs. See 34 C.F.R. §668.1(c)(1989) (describing the federal grant, scholarship and loan programs under the Higher Education Act of 1965, as amended); §§240.415(2), 240.439 - .453, 240.474 (7) - (8), Fla. Stat. (1989). If participants are forced to take out loans, they will be saddled with a large financial obligation upon graduation. This obligation will come at a time when many are, for the first time, struggling to be and remain

financially self-sufficient.

25. In a June 25, 1990 memorandum from the Florida State Board of Community Colleges ("the Board") to Community College Financial Aid Officers, the Board refuses to assure that Project Independence participants will not be required to take out government student loans to pay fees. App. 52. While Mr. Leppert, author of the memorandum, states that his own "personal interpretation" of the proviso is that participants should not be required to get loans, he notes that there may be "further discussion and interpretation of this issue." App. 52.

26. Although both HRS and DOE envision Project Independence participants obtaining a financial aid package consisting of a Pell Grant and a Florida Student Assistance Grant (FSAG) (App. 44-45), many participants will be unable to get a FSAG. Welfare recipients who become Project Independence participants after September 14, 1990 will be unable to get a FSAG. September 14, 1990 is the cut off date for applying for a FSAG for the coming school year. App. 45.

27. Since Pell Grants only cover 60% of a student's cost of attendance, 20 U.S.C. §1070a(b)(3), welfare recipients wanting to enroll in community college after September 14, 1990, will be forced to turn to one of the other sources identified by the proviso as appropriate for payment of fees. Nothing precludes a community college from requiring welfare recipients to apply for a loan to cover the remainder.

Participants may be denied needed support services

28. Even those participants who get full educational grants, instead of loans, may be harmed by the proviso. Like other States nation-wide, Florida's Project Independence program may deny these participants needed support services, such as child care and transportation, because it assumes, as a cost saving measure, that these services can be paid out of the participant's educational grant.

29. Project Independence does not pay the child care and transportation expenses for every activity that enhances a participant's education. However, in the event that a participant who gets an educational grant needs child care or transportation for an education-related activity not covered by Project Independence, she should be able to use money from her grant to pay for it. The funds a participant receives in an educational grant can be used for the education-related child care and transportation expenses not covered by Project Independence. This should allow a participant, who is indigent, to maximize her scarce resources and take part in the activities she feels will improve her academic success.

30. Unfortunately, employment and training programs in other States have terminated their participants' necessary child care and transportation benefits, which would otherwise have been paid by their States' program, simply because the participant receives an educational grant. App. 22-25.

31. For example, until a law suit was filed, welfare recipients participating in Maine's education, training, and employment program were being denied child care and transportation benefits they needed to go to school because they received educational grants. 23 Clearinghouse Rev. 1355 (Feb. 1990). App.

22. Likewise, AFDC recipients with financial aid grants who participate in California's program are also facing reduction or termination of needed child care and transportation services due to their receipt of an educational grant. App. 23-25.

III

JURISDICTION

32. Petitioner seeks to invoke the jurisdiction of this Court on the basis of Rules 9.030(a)(3) and 9.100 of the Florida Rules of Appellate Procedure and Article V, §3(b)(8) of the Florida Constitution, which authorize this Court to issue writs of mandamus to state officers.

33. Jurisdiction is appropriate. This action challenges the constitutionality of a proviso in a general appropriations act. It seeks to have that proviso expunged. The proviso affects hundreds of indigent women in Florida struggling to be free of welfare. See discussion supra at (D) (i)-(iv). In addition, functions of the government will be adversely affected without an immediate determination by this Court. It is proper for this Court to exercise jurisdiction. Florida House of Representatives, et al., v. Martinez, 555 So.2d 839 (Fla. 1990); Thompson v. Graham, 481 So.2d 1212 (Fla. 1985); Brown v. Firestone, 382 So.2d 654, 662

(Fla. 1980); Dickinson v. Stone, 251 So.2d 268, 271 (Fla. 1971).

A.
The Proviso Adversely Affects
Functions of Government

i.

Project Independence has no funds to pay community college fees

34. The functions of the government will be adversely affected because Project Independence, which is designated in the proviso as a source for payment of fees, does not have funds budgeted to pay community college fees. App. 43.

35. As HRS' Assistant Secretary for Economic Services states about the proviso and HRS' ability to pay community college fees in a July 12, 1990 letter:

. . . The proviso language identifies "funds provided by the (federal) Welfare Reform Act and the Florida Employment Opportunity Act" as one of several sources to be considered in the effort to pay the student's fees rather than grant the fee exemption. Such a payment of fees would be a legitimate expenditure from Project Independence funds. However, we are not budgeted for this purpose.

All of the Project Independence support services funds last year were needed for child care, transportation, books and supplies, work-related expenses (e.g., tools, uniforms), etc. These types of expenditures support not only Project Independence participants enrolled in formal college programs but other program components such as GED studies, customized training, work experience and adult basic education. We anticipate that these demands on our 1990-91 support services budget will exhaust all the funds allocated to us. Thus, none would be available to pay instructional fees. App. 43.

36. If Project Independence is required to pay fees, its budget will be jeopardized and its ability to provide participants other needed support services will be endangered. It may be forced to comply with the proviso and either deny welfare recipients other budgeted support services or face a budget short fall.

ii.

Federal funding is jeopardized.

37. The proviso will also adversely affect functions of the government because it puts Florida's federal JOBS funding, millions of dollars, in jeopardy. The proviso requires fees to be paid from funds under the §409.029 "Employment Opportunity Act" (i.e., the Project Independence JOBS program). App. 43. This violates the federal requirement that prohibits States from either reducing or terminating the funding of existing activities or services or providing services that are otherwise available on a non-reimbursable basis in order to get federal JOBS funding for the same activity or service. The FSA at §482(a)(3); 45 C.F.R. §250.72 (1989). See also 54 Fed. Reg. 42194 (1989) (App.40); 45 C.F.R. §§250.0(a), 250.12(b), 250.13(a) and 250.21(a)(10) (1989).

38. This federal prohibition, known as the "Maintenance of Effort" requirement, is designed to prevent exactly what the proviso attempts to do. It is designed to prohibit the use of federal JOBS funds to either supplant State and local funds or pay for a service otherwise available free-of-charge. App. 40-42. Yet, here, despite Florida's unconditional statutory mandate that community colleges waive the fees of Project Independence

participants, the 1990 proviso limits waiver to instances in which participants are unable to secure payment from one of various sources, including the JOBS program. The proviso attempts to supplant State money with federal JOBS funds. It also seeks to obtain federal JOBS funds for services otherwise available free-of-charge. Florida's JOBS funding is contingent on HRS complying with federal law. The proviso, which would have HRS violate federal law, places those millions of dollars in jeopardy.

IV

RELIEF SOUGHT

39. Petitioner seeks issuance of a writ of mandamus to require the Secretary of State to expunge unconstitutional proviso language in the 1990-91 General Appropriations Act restricting a Project Independence participants' right to waiver of community college fees from the official records of the state and to require the Comptroller and Commissioner of DOE to ensure that these expunctions are reflected in the financial operations of the state.

V

PARTIES

40. Petitioner KATHY MURRAY is an AFDC recipient. She resides at 240 N.W. 21st, #32, in Miami, Florida, 33127. Petitioner has volunteered for Project Independence and hopes to begin community college soon. Petitioner wants to be free of welfare and to provide a better life for herself and her children. She is directly harmed by the proviso. Under the proviso, she will be forced to seek financial aid from various sources to pay for

community college fees. As a result of the requirement, Petitioner faces possible reduction in her food stamps, loss or reduction of Project Independence support services, a substantial loan obligation, payment of application processing fees or stringent verification requirements. She is also affected by the proviso and seeks this Court to take jurisdiction as a citizen and taxpayer of Florida.

41. GERALD LEWIS, Comptroller for the state of Florida, is the chief fiscal officer of the state. As Comptroller, he is responsible for settling and approving accounts against the state. Funds may be disbursed only upon his order. Art. IV, §4(d)-(e), Fla. Const.; §17.03 Fla. Stat. (1989). As Comptroller, Gerald Lewis authorizes all expenditures to be made from the appropriations in accordance with legislative authorizations. §216.192(1) Fla. Stat. (1989).

42. JIM SMITH, Secretary of State, keeps the records of the official acts of the legislative and executive departments of Florida. Art. IV, §4(b), Fla. Const. §15.01 Fla. Stat.

43. BETTY CASTOR, Commissioner of DOE and chief educational officer of the state, is responsible for supervising the public education system in the manner prescribed by law. Art. IV, §4(g), Fla. Const. The proviso language at issue here is contained in appropriations for DOE.

VI

ARGUMENT

44. Proviso language in the 1990-91 General Appropriations Act (App. 5-6) changes existing law set forth at §§230.645 and 240.35, Fla. Stat. at Ch. 89-334. Law of Fla. (App. 10) in violation of Article III, §§6 and 12 of the Florida Constitution.

45. Article III, §12 of the Florida Constitution provides:

Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.

46. Article III, §6 of the Florida Constitution requires that "all laws be limited to a single subject and matters properly related to that subject." Dept. of Education v. Lewis, 416 So.2d 455, 459 (Fla. 1982). Article III, §6 is a corollary of article III, §12. Id. Together they require that general appropriations bills deal only with one subject -- "appropriations and matters properly connected therewith." Brown v. Firestone, Inc., 382 So.2d 654, 663 (Fla. 1980). See also Lewis, 416 So.2d at 459.

47. The purpose of the "one subject" requirement for appropriations bills is "to ensure that every proposed enactment is considered with deliberation and on its own merits." Lewis, 416 So.2d at 459. As the Court in Brown v. Firestone, Inc., 382 So.2d. 654, 664, (Fla. 1980), reasons:

. . . The . . . reason behind the one subject requirement is to ensure the integrity of the legislative process in substantive lawmaking. The enactment of laws providing for general appropriations involves different procedures than does the enactment of laws on other subjects. **Our state constitution demands that**

each bill dealing with substantive matters be scrutinized separately through a comprehensive process which will ensure that all considerations prompting legislative action are fully aired. Provisions on substantive topics should not be ensconced in an appropriations bill in order to logroll or to circumvent the legislative process normally applicable to such action. (emphasis added).

See also Lewis, 416 So.2d at 460; Thomas, et al., v. Askew, et al., 270 So.2d 707, 710 (Fla. 1973).

48. Because of the constitutional "one subject" requirement, an appropriations bill "must not change or amend existing law on subjects other than appropriations." Brown, 382 So.2d at 664. See also Lewis, 416 So.2d at 460. Although it may allocate funds for previously authorized purposes in different amounts than those previously allocated, an appropriations bill cannot change existing law. Brown, 382 So.2d at 664; Dept. of Education, et al., v. Collier, et al., 394 So.2d 1010, 1012 (Fla. 1981). As the Court in Brown, 382 So.2d at 664, notes:

. . . Were we to sanction a rule permitting an appropriations bill to change existing law, the legislature would in many instances be able to logroll, and in every instance the integrity of the legislative process would be compromised . . .

49. Any qualification or restriction in an appropriations bill which "go[es] to the extent of changing other substantive law" is unconstitutional. In Re Advisory Opinion to the Governor, 239 So.2d 1, 10 (Fla. 1970). See also Lewis, 416 So.2d at 460; Brown, 382 So.2d at 664.

50. Here, the proviso circumvents substantive lawmaking procedures by amending state law in an appropriations bill.

51. This 1990 appropriations proviso changes statutory law enacted in 1989 that unconditionally mandates waiver of a \$409.029 Project Independence participant's community college fees. Without any corresponding substantive lawmaking and its accompanying public debate, input, and deliberation, the proviso summarily destroys a participant's right to fee waiver. It requires participants to seek payment of their fees from various sources, including state and federal student financial aid programs as well as Project Independence. The proviso changes an existing statute and, therefore, is unconstitutional.

VII

CONCLUSION

52. The proviso, part of Florida's 1990-91 General Appropriations Act, unconstitutionally changes existing law. It destroys a Project Independence participant's unconditional statutory right to waiver of community college fees. Because change to the statute was made by proviso in an appropriations act, welfare recipients were denied the opportunity for input into and debate over it. As a result, a myriad of problems, which could have been avoided if this change had been made with proper deliberation, has emerged. The proviso adversely affects the very persons most in need of our State's help: welfare recipients who are struggling to better themselves and their children and break the cycle of poverty. The proviso also adversely affects the

functions of the government. It places Florida's federal JOBS funding in jeopardy and threatens to overwhelm Project Independence's budget. Petitioner asks that this Court order the expunction of the proviso and compliance with the expunction.

Respectfully submitted,

Cindy Huddleston
Attorneys for Petitioner
CINDY HUDDLESTON, ESQ.
Florida Legal Services,
Inc.
2121 Delta Way
Tallahassee, Fl. 32303
(904) 385-7900
Bar No. 383041

SUZANNE HARRIS, ESQ.
Florida Rural Services,
Inc.
P.O. Drawer 1499
Bartow, Fl. 33830
(813) 534-1781
Bar No. 0547050

CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been furnished to Office of General Counsel for Comptroller, Office of the Comptroller, Suite 1302, The Capitol, Tallahassee, Fl., 32399-0250; Office of General Counsel for the Secretary of State, Office of the Secretary of State, LL-10, The Capitol, Tallahassee, Fl., 32399-0250; and Office of General Counsel for the Commissioner of Education, Plaza Level, Room 8, Office of Commissioner of Education, The Capitol, Tallahassee, Fl., 32399 by mail this 26 day of July, 1990.

Cindy Huddleston
ATTORNEY FOR PETITIONER