IN THE SUPREME COURT OF FLORIDA

Case No. 76,383

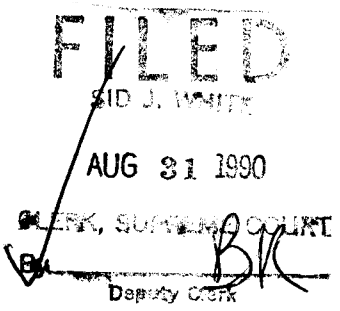
KATHY MURRAY,

Petitioner,

-vs-

GERALD LEWIS, et al.,

Respondents.



PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE ON PETITION FOR WRIT OF MANDAMUS

COMES NOW Petitioner, by and through undersigned counsel, and replies to Respondents' Response to Order to Show Cause on Petition for Writ of Mandamus ("the Response").

I

INTRODUCTION

Petitioner has filed a Petition for Writ of Mandamus ("the Petition") asking this Court for an order expunging unconstitutional language from Florida's 1990-91 General Appropriations Act. Both Petitioner and Respondents agree that this Court should fully consider the Petition on the merits.[1]

In their Response, Respondents have attempted to create uncertainty about Petitioner's clear right. However, none of their

[1] In their Response, Respondents conclude that, "notwithstanding the proceural [sic] objections and defenses raised to the Petition, counsel requests this Honorable Court to fully consider this matter on the mertis [sic] . . . Further procedural delay would not serve the interests of justice." Response at p. 9.

arguments are supported by law. Petitioner's entitlement to expunction of the proviso is clear. The proviso changes two existing statutes: §230.645(2)(f) and §240.35(3) of the Florida Statutes.[2] The proviso destroys the right to waiver of community college fees that these two statutes provide participants in Project Independence, Florida's education and training program for recipients of Aid to Families with Dependent Children ("AFDC" or "welfare"). Because the proviso changes statutory law in appropriations, it is unconstitutional.

II

THE PROVISO DOES NOT REITERATE EXISTING LAW

Respondents argue that the proviso simply reiterates §409.029(2)(i)(6), Fla. Stat. (1987) and §240.35(1)(a), Fla. Stat. (1987). Thus, Respondents reason, the proviso does not change law. Response at p.7-8. Respondents are mistaken.

Sec. 409.029(2)(i)(6), Fla. Stat. (1987)[3] does just the

[2] §§230.645(2)(f) and 240.35(3) are set out in footnotes 2 and 1 respectively of the 1989 Florida Statutes. They were enacted in sections 2 and 3 of Ch. 89-334, Laws of Fla. These two statutes explicitly state that the community college fees of Project Independence participants are to be waived. App. 10.

[3] Sec. 409.029(2)(i), Fla. Stat. (1987) (emphasis added) states:

> (i) In order to accomplish the goals . . . [of Project Independence], these principles shall be followed: . . .
>
> 5. Appropriate state and local agencies shall provide a sufficient level of training and services to meet the needs of applicants and recipients as well as undertake sufficient public information efforts to make applicants, recipients, employers, or other public or private entities aware of the components,

opposite of what Respondents claim. It explicitly provides that "state education and training funds" should be targeted for Project Independence purposes. Sec. 409.029(2)(i)(6) does not, as Respondents argue, require a Project Independence participant to exhaust the resources of every other state and federal financial aid program before their fees will be waived. Instead, it urges agencies, including education, to target their funds for Project Independence purposes, which involves training, child care, transportation, medical care, personal and employment counseling, and, as in the case of community colleges, tuition fees. See §§230.645(2)(f); 240.35(3)[4]; 409.029, Fla. Stat. (6)(a)(5), (6)(b)(1), (7)(a)(1) - (5) (1989).

The proviso essentially exempts community colleges from their statutory duty to contribute to the efforts of Project Independence. At the same time, the proviso places the burden for payment of community college fees on other state programs, such as

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> opportunities, and benefits of this act; and
> 6. Where possible, federal funds available through the Job Training Partnership Act [JTPA], Wagner-Peyser, and the Carl Perkins Act, **state education and training funds, and other applicable federal and state funds shall be targeted for the purpose of this act.**

Respondents incorrectly capitalize the phrase "state education and training funds" in their quotation of this statute. Response at p.8. The statute does not refer to a specific fund, as capitalization would imply.

[4]It is §230.645(2)(f) and §240.35(3), the statutes that the proviso destroys, that, in fact, effectuate legislative intent set out in §409.029(2)(i)(6). §230.645(2)(f) and §240.35(3) require community colleges to contribute to Project Independence purposes by waiving fees.

state grants and the Project Independence program itself, which bears a great financial burden already.[5] App. 43.[6] Far from encouraging education to do its part in assisting welfare recipients, as §409.029(2)(i)(6) provides, the proviso relieves education from bearing its part of the costs of education and training. By destroying a Project Independence participant's statutory right to fee waiver, the proviso releases education from its statutory duty to contribute to the purpose of Project Independence.

Likewise, Respondents misunderstand §240.35(1)(a), Fla. Stat. (1987).[7] They argue that §240.35(1)(a) is also equivalent to the

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[5]The proviso requires welfare recipients to seek payment of community college fees from Florida Employment Opportunity Act funds. App. 5-6. The Florida Employment Opportunity Act is at 8409.029, Fla. Stat. (1989). See §409.029(1), Fla. Stat. (1989). Project Independence implements 8409.029, Fla. Stat. (1989). App. 11-13, 43. See also the Response at II on p.3.

[6]"App." refers to Petitioner's Appendix to Petition for Writ of Mandamus filed with the Petition. "S.App." refers to Petitioner's Supplemental Appendix filed with this reply.

[7]Sec. 240.35(1)(a), Fla. Stat. (1989) (emphasis added) states:

> (1)(a) **Any student for whom the state is paying a foster care board payment** pursuant to **s.** 409.145(3) or parts III and V of chapter 39, for whom the permanency planning goal pursuant to part V of chapter 39 is long-term foster care or independent living shall be exempt from the payment of all undergraduate fees, including fees associated with enrollment in college preparatory instruction or completion of college-level communication and computation skills testing programs. Before a fee exemption can be given, the student shall have applied for and been denied financial aid, pursuant to s.240.404, which would have provided, at a minimum, payment of all student fees.

Respondents spacing of their quotation of this statute is inaccurate and misleading. Response at p.8. In addition,

proviso'. Respondents confuse "foster care board payments," to which that particular statute applies, with the **5409.029** education and training program for AFDC recipients, to which the proviso applies. App.5. AFDC is a separate program from foster care.[9]

Respondents apparently intended to cite to the **1989** -- not **1987** -- version of the Florida Statutes.

'Respondents contend that the proviso and **5240.35(1)**(a) "require . . . welfare students to seek financial aid before they are given a free ride on the state community college train." Response at **8.** Petitioner is certain that the tenor of Respondents' argument is not meant to offend. However, it is short-sided to overlook the long-term savings to the government and economy of providing welfare recipients the education they need to get and stay off AFDC permanently. See S.App. at **6-17.** The purpose of Project Independence is 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)(1989)** (emphasis added). As the federal Department of Health and Human Services states at **54** Fed. Reg. **42148 (1989) (S.** App. **5):**

> The JOBS program is expected to have an overall beneficial family impact. . . .
>
> (a) The objectives of the JOBS program, to provide training, education, job placement, and employment to end welfare dependency, will result in more secure and stable family units . . . The decrease in dependency and increase in self-sufficiency which the Statute is designed to achieve will help strengthen families and ameliorate the erosive effects of poverty . . .
>
> (f) The provisions in the Statute regarding the JOBS training program and . . . other supportive services emphasize that a strong family structure is critical for the nation's economic strength, and is an important source of values that promote the work ethic . . .
>
> (g) Finally, the emphasis on achievement in the JOBS program should send the right message to young people about the rewards of self-reliance and the direct connection between responsible behavior and their own economic success. S. App. 5.

'Foster care is care provided an abused, neglected or abandoned child "in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof." **§39.01(24),** Fla. Stat. **(1989).** It is "for children

Sec. 240.35(1)(a), Fla. Stat., only applies to students who are in foster care. It does not relate to the education and training program for AFDC recipients under §409.029.

A Project Independence participant's statutory right to waiver of community college fees, prior to implementation of the proviso, was clear. It was certainly clear to the Department of Health and Rehabilitative Services ("HRS") and DOE, the agencies responsible for carrying out the fee waiver statutes amended by the proviso. S. App. 1-3.

In 1989, when the Project Independence fee-waiver statutes first took affect, DOE itself issued an implementing memorandum to community colleges. S. App. 1-2. This November 1, 1989 memorandum states:

> With the passage of CS/HB 1245, the 1989 Legislature amended Chapters 230.645 and 240.35, Florida Statutes, to exempt certain students from the payment of fees.
>
> What students are exempted?
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> Those exempted are "students who are enrolled in an employment and training program pursuant to s.409.029" or Project Independence participants.

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whose own families are unable to care for them." Fla. Admin. Code Rule 10M-6.001(1). Service is provided these children by placing them "in foster homes, group homes or other residential facilities." Id. Foster care is administered by HRS' Children, Youth, and Families Program Office. §20.19(5)(b)(2)(e), Fla. Stat. (1989).

On the other hand, AFDC, also referred to as "welfare", provides financial assistance to indigent families with children who are deprived of the support or care of one or both parents. §§409.185 and 409.235, Fla. Stat. (1989). The AFDC program is administered by HRS' Economic Services Program Office. §20.19(5)(b)(2)(f), Fla. Stat. (1989).

What fees are included?

The exemption applies to all registration and tuition fees for instruction for adult basic, adult high school, adult job preparatory, vocational preparatory, vocational supplemental, or other adult programs reported under the FEFP. For community colleges, the exemption applies to registration, matriculation and laboratory fees for both credit and non-credit instruction pursuant to s.240.35(2) (a) and (b).

How are students eligible for exemptions to be identified?

It is incumbent upon the student claiming the exemption to identify himself or herself as a Project Independence participant and provide proper documentation (e.g., identification card, referral form).

When can these students begin claiming these exemptions?

CS/HB 1245 takes effect October 1, 1990 or earlier as permitted by the (federal) Family Support Act of 1988. The Department of Health and Rehabilitative Services has received approval of their Family Support Plan and has so notified the Department of Education (see attachment). Therefore, the exemptions should be implemented upon receipt of this memorandum. S. App. 1-2.

Likewise, HRS, which administers both the AFDC and Project Independence programs, also understood that Project Independence participants had a right to fee waiver prior to the proviso. App. 45; S. App. 3.

Respondents' argument that Project Independence participants have never had an absolute right to waiver of fees is without any basis in law and contradicts DOE's and HRS' own policy on fee waivers. As such, this argument should be disregarded. See Motor Vehicle Mfrs. Ass'n. v. State Farm Mut., 103 S.Ct. 2856, 2870 (1983); Burlington Truck Lines, Inc. v. U.S., 83 S.Ct. 239, 246 (1962); William Bros., Inc., v. Pate, 833 F.2d. 261, 265 (11th Cir. 1987).

III

THE PROVISO IS NOT A PERMISSIBLE QUALIFICATION OR RESTRICTION

Respondents argue that the proviso permissibly qualifies or restricts an appropriation. In support, they cite Brown v. Firestone, 382 So.2d 654 (Fla. 1980) and In re Advisory Opinion to the Governor, 239 So.2d, (Fla. 1970).

Respondents are mistaken. They overlook an underlying principle, enunciated in both Brown and In re Advisory Opinion to the Governor, that narrows the situations in which a proviso is permissible: it is unconstitutional for a proviso to change a statute.[10]

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[10] However, the proviso does not directly and rationally relate to the purpose of an appropriation. This Court states in Dept. of Education, et al., v. Lewis, et al., 416 So.2d 455, 460 (citing Brown, 382 So.2d at 664), that, in order for a proviso to be permissible, the appropriation "to which it applies" must be "worthwhile or advisable only if contingent upon" the proviso.

Here, the proviso, which is contained in the DOE section of the 1990-91 General Appropriations Act, does not "apply" to *any* specific appropriation at all. Instead, both it and a string of other provisos follow Appropriation 596, which was "not used". App.2. The majority of the provisos in this string explicitly relate to Appropriation 600. Yet the proviso that precedes the one at issue in this case is tied to Appropriations 597-599. App. 5. And the proviso at issue here is not linked to any specific appropriation at all. App. 5. There is, then, no appropriation to which the proviso can directly and rationally relate. Thus, the proviso cannot possibly "directly and rationally relate" to an appropriation.

Furthermore, even assuming that the proviso applies to DOE's community college appropriations, it is still not directly and rationally related to an appropriation. For a proviso to be constitutional, the appropriation to which a proviso applies must be "worthwhile or advisable only if contingent upon" the proviso. Id. Here, community college funding is, obviously, not worthwhile or advisable only if community colleges do not waive the fees of Project Independence participants.

As this Court holds in In re Advisory Opinion to the Governor, 239 So.2d at 10-11 (emphasis added):

> . . . The Constitution expressly recognizes the power of the Legislature to make appropriations subject to qualifications and restrictions. See Sec. 8 of Article 111. **Such qualifications and restrictions may not go to the extent of changing other substantive law,** but they may limit or qualify the use to which the moneys appropriated may be put and may specify reasonable conditions precedent to their use, even though this may leave some governmental activities underfinanced in the opinion of officers of other departments of government.

Likewise, in Brown, this Court also recognizes that an appropriations bill "must not change or amend existing law on subjects other than appropriations." Brown v. Firestone, 382 So.2d 654, 664 (Fla. 1980). See also Department of Education, et al., v. Collier, et al., 394 So.2d 1010, 1012 (Fla. 1981) (holding that, although an appropriations bill may allocate funds for previously authorized purposes in different amounts than those previously allocated, an appropriations bill cannot change existing law); Department of Education, et al., v. Lewis, et al., 416 So.2d 455, 459-400, (1982) (holding that if a provision in an appropriations bill changes existing law on any subject other than appropriations, it is invalid).

Thus, the proviso, which changes substantive law as discussed above at 11, is unconstitutional.

IV

WELFARE RECIPIENTS ARE HARMED BY THE PROVISO

Respondents deny that Project Independence participants are harmed by the proviso. Response at p.4. Respondents are wrong.

If the proviso, which is part of Florida's 1990-91 General Appropriations Act, had been proposed through normal channels of substantive lawmaking, AFDC recipients participating in Project Independence would have had an opportunity to voice their concerns and protect their interests. They would have been given the chance to settle, among other things, how their food stamps will be affected; whether and under what circumstances welfare recipients should be forced to take out loans; whether they should be forced to pay processing fees; how many loans or grants welfare recipients are required to apply for before they become entitled to waiver of fees; and the effect of grants on their eligibility for Project Independence - funded support services, such as child care and transportation. Because their statutory right to fee waiver was changed in an appropriations act, welfare recipients were denied this opportunity.

V

TRANSFER IS UNNECESSARY

Respondents state that they do not want this case transferred. Response at p.9. However, they note that the Petition for Writ of Mandamus ("the Petition") should be transferred to circuit court for an evidentiary fact-finding hearing. Response at p. 2-3.

Respondents are mistaken. The issue here is not factual.

While the Petition does allege facts, the issue in this action is purely legal. If the proviso changes statutory law, it is unconstitutional and subject to expunction. Regardless of the facts, the Court can decide this issue. It is not necessary for the Court to transfer this case.

Respondents rely on State ex. rel. Int. Ass'n. of Firefighters v. Board of Co. Com'rs., 254 So.2d **195** (Fla. 1971), to support their argument that this case should be transferred. Their reliance on this case is misplaced. Int. Ass'n. of Firefighters, a **1971** case, was decided based on an appellate rule that no lonser exists. That rule required the transfer of mandamus petitions raising substantial issues of fact.

Under **1977** revisions to the Florida Rules of Appellate Procedure, however, petitions for writs of mandamus can now be accompanied by an appendix containing documentation of factual allegations. As the Committee Notes concerning the **1977** revision to Fla. R. App. P. **9.100** state:

> . . . The appendix should contain any documents which support the allegations of fact contained in the petition. A lack of supporting documents may, of course, be considered by the court in exercising its discretion not to issue an order to show cause.
>
> Under Section (f), (h) and (i), if the allegations of the petition, if true, would constitute grounds for relief, the court may exercise its discretion to issue an order requiring the respondent to show cause why the requested relief should not be granted. A single responsive pleading (without a brief) may then be served . . .

Here, Petitioner, pursuant to Fla. R. App. P. **9.100**, documented her

factual allegations in an appendix. Although Respondents say that they are without knowledge of these facts, respondents have requested disposition of this case on its merits. Response at p. 9. Transfer is unnecessary.

VI

SUPPLEMENTAL FACTS

Petitioner Kathy Murray began working on about August 6, 1990 at a clothing store for 25-30 hours a week. S. App. 21. She makes $4 an hour. S. App. 21.

Petitioner's gross earned income is no more than $504 a month. S. App. 21. Yet the poverty guideline for a family of her size is $1058. 55 Fed. Reg. 5665 (1990). S. App. 19. Her job, without AFDC, would keep Petitioner and her three children living $554 below poverty guidelines.

Petitioner is still planning to attend community college so that she and her family can live above poverty and be economically independent. HRS has not yet made a new determination as to whether she is still financially eligible for AFDC. However, Petitioner does appear to still be AFDC-eligible. Fla. Admin. Code Rules 10C-1.103, -1.105, -1.107.

Petitioner has standing to file the Petition as an AFDC recipient participating in Project Independence who wants to enroll in community college. However, she also has standing as a citizen (S. App. 22) and a taxpayer (S. App. 23).

VII

CONCLUSION

In conclusion, Petitioner agrees with Respondents that the Court should resolve this case on its merits. Prompt resolution of this case is necessary to prevent harm to AFDC recipients who, like Petitioner, want an opportunity to break the cycle of poverty and to take control of their lives. The proviso is unconstitutional and should be expunged.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to Denis Dean, Assistant Attorney General, Dept. of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Fla. 32399-1050 as counsel for the Comptroller, the Secretary of State, and the Commissioner of Education; and Jo Ann Levin, Deputy General Counsel, Office of the Comptroller, Suite 1302, The Capitol, Tallahassee, Fla. 32399-0350 by mail this 31 day of August, 1990.

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