IN THE SUPREME COURT OF FLORIDA

KATHY MURRAY,

Petitioner,

v. CASE NO. 76,383

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.
_____/

RESPONSE TO ORDER TO SHOW CAUSE ON
PETITION FOR WRIT OF MANDAMUS

Comes now the Respondents, Gerald Lewis, Jim Smith, and Betty Castor through their undersigned counsel and file this response as follows:

I.

THE PETITION FOR WRIT OF MANDAMUS FAILS TO SET FORTH A CAUSE OF ACTION BEFORE THIS COURT.

It has been held that when an Order to Show Cause is issued, pursuant to a Petition for Writ of Mandamus, the Order becomes the Complaint, subject to the rules of pleading as in any civil proceeding. Bradenton v. State, 118 Fla. 838, 160 So. 506 (1935).

This Court has stated that objections for insufficiency should be directed to the Order to Show Cause once it has been issued. State Ex. Rel. Benevolent and P.O. of Elks v. Livingston, 159 Fla. 63, 30 So.2d 740 (1947). Notwithstanding the fact that the Order to Show Cause does not specifically

incorporate or adopt by reference the Petition, counsel will direct objections to the Petition itself.

The Petition must show, on its face, a clear legal right to the relief demanded. State ex. rel. Burr v. Jacksonville Terminal Co., 82 Fla. 255, 89 So. 651 (1921); State ex. rel. McCoy v. Bell, 91 So.2d 193 (Fla. 1956).

In State v. Gamble, 339 So.2d 694 (2d DCA 1976), the Court said:

> "A writ of mandamus is used to enforce a clear legal right to the performance of a clear legal duty, rather than to establish such a right. (Emphasis added)

Petitioner is trying to establish an unconditional right to a waiver of community college fees for welfare recipients in Florida. The law, prior to the actions of the 1990 legislature, did not provide such an unconditional right. Sec. 409.029(2)(i)6, F.S.; Sec. 240.35(1)(a), F.S.

In addition, almost one-half of Petitioner's allegations require an evidentiary hearing due to allegations of fact which require the taking of testimony. See paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 35, 36, 37, 38, and 40.

This Court in State ex. rel. Int. Ass'n of Fire v. Board of Co. Com'rs, 254 So.2d 195 (Fla. 1971), faced with a mandamus petition raising substantial issues of fact requiring the taking of testimony, refused to consider the petition and transferred the matter to the appropriate circuit court for further proceedings.

Based on the above, counsel requests this Honorable Court to decline further consideration of the Petition.

Notwithstanding the objections raised above, counsel submits to the Court that the Petition can be denied on the facts alleged as a matter of law.

II.

ANSWER

Petitioner has filed a confusing pleading format, however, Respondents file this Answer to the Petition for Writ of Mandamus:

1. Admitted.

2. Respondents admit the wording of the proviso Chapter 90-209. The remaining allegations are denied.

3. Denied.

4. Respondents admit that changing law in an appropriations bill may be unconstitutional, but deny that the proviso is unconstitutional. Respondents admit that Petitioner is seeking expunction.

5. Admitted.

6. Admitted.

7. Respondents admit as to what the JOBS program provides. Respondents deny the purpose and design of JOBS.

8. Admitted.

9. Respondents admit that Project Independence implements Sec. 409.029, F.S. (Florida Employment Opportunity Act).

10. Denied.

11. Respondents admit that there is a conditional waiver of community college fees for AFDC recipients.

12. Respondents admit the specific language of Sec. 230.640, F.S. but deny the Petitioner's interpretation.

13. Admitted.

14. Denied.

15. Admitted.

16. Denied.

17. Denied.

18. Denied.

19. Respondents are without knowledge since the allegation requires an evidentiary hearing.

20. Respondents are without knowledge since the allegation requires an evidentiary hearing.

21. Respondents are without knowledge since the allegation requires an evidentiary hearing.

22. Respondents are without knowledge since the allegation requires an evidentiary hearing.

23. Respondents are without knowledge since the allegation requires an evidentiary hearing.

24. Respondents are without knowledge since the allegation requires an evidentiary hearing.

25. Respondents are without knowledge since the allegation requires an evidentiary hearing.

26. Respondents are without knowledge since the allegation requires an evidentiary hearing.

27. Respondents are without knowledge since the allegation requires an evidentiary hearing.

28. Respondents are without knowledge since the allegation requires an evidentiary hearing.

29. Respondents are without knowledge since the allegation requires an evidentiary hearing.

30. Respondents are without knowledge since the allegation requires an evidentiary hearing.

31. Respondents are without knowledge since the allegation requires an evidentiary hearing.

32. Admitted.

33. Denied that jurisdiction is appropriate. Mandamus before the Supreme Court of Florida is not justified. As to the remainder of the allegations, Respondents are without knowledge since the allegations require an evidentiary hearing.

34. Denied.

35. Respondents are without knowledge since the allegation requires an evidentiary hearing.

36. Respondents are without knowledge since the allegation requires an evidentiary hearing.

37. Respondents are without knowledge since the allegation requires an evidentiary hearing.

38. Respondents are without knowledge since the allegation requires an evidentiary hearing.

39. Admitted.

40. Respondents are without knowledge since the allegation requires an evidentiary hearing.

41. Admitted.

42. Admitted.

43. Admitted.

44. Denied.

45. Admitted.

46. Admitted.

47. Respondents acknowledge the case law, but deny the Petitioner's characterization of same.

48. Admitted.

49. Admitted as to the incomplete quotation of the law cited by Petitioner.

50. Denied.

51. Denied.

52. Denied.

III.

RESPONDENTS ARGUMENT ON THE PETITION

Petitioner's have argued to this Court that prior to the adoption of Chapter 90-209 by the 1990 Florida Legislature, there was an unequivocal and automatic waiver of community college fees for persons coming under the provisions of F.S. 8402.029 (Florida Employment Opportunity Act (1987)). That was not the case and Chapter 90-209 changed no existing law.

The proviso here under attack in Chapter 90-209, an Appropriation's bill, reads as follows:

> "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-Peyser, the Carl Perkins Act, or through Funds Reform Act and the Florida Employment Opportunity Act."

In Brown v. Firestone, 382 So.2d 654 (Fla. 1980) this Court held as follows:

> "The Florida Legislature is vested with authority to enact appropriations and reasonably to direct their use. In furtherance of the latter power, the legislature may attach qualifications or restrictions to the use of appropriated funds." (Emphasis added)

The qualifications or restrictions must directly and rationally relate to the purpose of an appropriation. Brown v. Firestone, supra.

Earlier the Court established that:

> "Appropriations may constitutionally be made contingent upon matters or events related to the subject of the appropriation, but may not be made to depend upon entirely unrelated events. For example, an appropriation to a university might be contingent upon the registration of a minimum number of students who could benefit from the appropriation or contingent upon the state revenues reaching a certain level." In re: Opinion to the Governor, 239 So.2d (1970).

This Court went on to say that in an appropriations bill a proviso "may specify reasonable conditions precedent'' to the use of the money. In re: Opinion to the Governor, supra.

The Petitioner has not only failed to show that the proviso (qualification and restriction) does not relate to the appropriations in question, but existing law shows that the legislature did nothing but reiterate existing law on the subject.

The Florida Employment Opportunity Act §409.029(2)(i)6, Fla. Stat. (1987) provides that:

> "Where possible, federal funds available through the Job Training Partnership Act, 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."

The above provision directs that funds <u>from the same sources as mentioned in 90-209</u> be sought and used "where possible" to fund welfare programs of the State of Florida.

Florida Statute §240.35(1)(a)(1987) provides that:

> "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 permanently planning goal pursuant to part V of Chapter 39 is long-term foster care or independent living shall be exempt from the payments of all undergraduate fees, including fees associated with enrollment in college preparatory instruction or completion of college-level communication and computation skills testing programs.
>
> <u>Before a fee exemption can be given, the student shall have applied for and been denied financial aid</u>, pursuant to s. 240.404, which would have provided, at a minimum, payment of all student fees." (Emphasis added)

The above, once again, requires welfare students to seek financial aid before they are given a free ride on the state community college train.

The proviso provision in Chapter *90-209* only reiterates what is already on the statute books of Florida.

It is clear that the legislature wanted to emphasize the requirement of exploring other funding sources for community college tuition. Once those sources are explored, and if there

is no help forthcoming to the needy student, the community colleges of the State of Florida will absorb the cost. However, it would appear that funding is available, thereby reducing the financial burden on the State's community colleges. (See Exhibit A.)

There never has been an unconditional, absolute right to free community college tuition for welfare students as argued by Petitioner. All existing statutes have understandably placed conditions thereon.

The proviso's restrictions and qualifications relate directly and rationally to the appropriations in Chapter 90-209.

WHEREFORE, notwithstanding the proceural objections and defenses raised to the Petition, counsel requests this Honorable Court to fully consider t his matter on the mertis, which calls for a denial of the relief requested by Petitioner. Further procedural delay would not serve the interests of justice.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

DENIS DEAN
Assistant Attorney General
Florida Bar No. 096607

Department of Legal Affairs
The Capitol - Suite 1501
Tallahassee, Florida 32399-1050
(904) 488-1573
488-9935

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to CINDY HUDDLESTON, ESQUIRE, Florida Legal Services, Inc., 2121 Delta Way, Tallahassee, Florida 32303 and SUZANNE HARRIS, ESQUIRE, Florida Rural Services, Inc., Post Office Drawer 1499, Bartow, Florida 33830, this 17 day of August, 1990.

DENIS DEAN