IN THE SUPREME COURT OF FLORIDA

Case No. 77,850

FLORIDA ASSOCIATION OF COUNTIES, INC., a non-profit Florida corporation; FLORIDA LEAGUE OF CITIES, INC., a non-profit Florida corporation; and SANDRA GLENN and ROBERT ANDERSON, citizens and taxpayers of the State of Florida and respectively of Seminole County and Sarasota County, Florida,

Plaintiffs/Petitioners,

vs.

DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT, an agency of the State of Florida; PROFESSIONAL FIRE FIGHTERS OF FLORIDA, a labor organization; and FLORIDA POLICE BENEVOLENT ASSOCIATION, a labor organization,

Defendants/Interveners/
Respondents.

BRIEF AND APPENDIX ON JURISDICTION OF RESPONDENT/INTERVENER, PROFESSIONAL FIRE FIGHTERS OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

In 1988-1989, the Florida Legislature amended the Florida Retirement System to provide that the service credit for special risk service (certain police officers, correction officers, and fire fighters) is:

> "3. Two percent of his average monthly compensation for all creditable years after September 30, 1978, and before January 1, 1989;
>
> 4. Two and two-tenths percent of his average monthly compensation for all creditable years after December 31, 1988, and before January 1, 1990;
>
> 5. Two and four-tenths percent of his average monthly compensation for all creditable years after December 31, 1989, and before January 1, 1991;
>
> 6. Two and six-tenths percent of his average monthly compensation for all creditable years after December 31, 1990, and before January 1, 1992;
>
> 7. Two and eight-tenths percent of his average monthly compensation for all creditable years after December 31, 1991, and before January 1, 1993; and
>
> 8. Three percent of his average monthly compensation for all creditable years after December 31, 1992;
>
> §121.091(1)(a)3-8, Fla. Stat. (1989).

This amendment restored the three percent service credit that existed prior to 1978.

At the same time it provided for this increase the Legislature provided for its funding by amending §121.071(1), Fla. Stat. (1989) by requiring employers covered by the Florida Retirement System to increase contributions over the same five-year period of time, as follows:

"The act provides for a phase-in of contributions and benefits over a five-year period as follows:

Period	% Increase in Contributions[3]
1989	1.6
1990	3.2
1991	4.8
1992	6.4
1993+	8.0

Florida Association of Counties, Inc. v. Department of Administration, Division of Retirement, 16 F.L.W. 932 (Fla. 1st DCA March 29, 1991).

The Florida Association of Counties and the Florida League of Cities and two taxpayers filed suit against the Department of Administration, Division of Retirement, seeking a declaratory decree that this increase in service credit for special risk members was facially invalid in that it violated Art X, §14 of the Florida Constitution, which provides:

> "SECTION 14. **State retirement systems benefit changes.** - A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis." [bold emphasis in title in original]

The Professional Fire Fighters of Florida, the fire fighters' union, and the Florida Police Benevolent Association, the police officers' union, intervened on behalf of the Defendant.

In the proceedings below, the Petitioners stated that they did not challenge "whether or not funds will eventually be generated by the funding provisions of the Act to pay the costs of these benefits". Rather, they stated that their challenge "concerns only the manner in which the Act provided for the funding of the cost of those increased benefits..." (Appellants' brief 1).

At the hearing before Circuit Judge J. Lewis Hall, a number of witnesses testified, including five actuaries.

There was no agreement among the actuaries as to the meaning of the phrase "sound actuarial basis". The trial court accepted a concensus definition and held that "sound actuarial basis" means that "a retirement program must be funded in such a way that the retirement fund is able to meet its continuing obligations as and when they mature." (Appendix 3).

At the hearing, a state pension actuary, Mr. Slavin, testified that this method of funding did provide enough money and that the contribution formula was sufficient to pay the benefits. (TR. 303-304).

Another witness, Lawrence Mitchell, a consulting actuary, testified that the benefit increase in Chapter 88-238 was funded on a sound actuarial basis. (TR. 432-434, 437, 438, 440-444, 445).

Another consulting actuary, Richard Daskas, testified to the same effect. (TR. 492-493).

Following the hearing and having heard the testimony, the Circuit Judge found that the benefit increase to special risk members contained in Chapter 88-238 was funded on a sound actuarial basis and was, therefore, constitutionally valid.

The Plaintiffs appealed to the First District Court of Appeal which unanimously affirmed. They now seek discretionary review of the District Court of Appeal's decision on the ground that it directly passes upon the constitutional validity of a Florida Statute.

SUMMARY OF ARGUMENT

Under Art. V, §(3)(b)3, Fla. Const., the Supreme Court may review any decision of a District Court of Appeal that expressly declares valid a state statute. This is discretionary review. Fla. R. App. P. 9.030(a)(2) is entitled "Discretionary Jurisdiction". It provides that discretionary jurisdiction of the Supreme Court may be sought to review decisions of District Courts of Appeal that expressly declare valid a state statute.

This should be contrasted with the appeal jurisdiction of the Supreme Court under Art. V, §(3)(b)1, Fla. Const., which is implemented by Fla. R. App. P. 9.030(a)(1) to provide that the Supreme Court shall review by appeal decisions of District Courts of Appeal declaring invalid a state statute.

The people of Florida in drafting their Constitution this way, distinguished between the jurisdiction of this Court to review the decisions of a District Court of Appeal holding a state statute to be valid or invalid. If the District Court of appeal held that the statute was invalid, then this Court has mandatory jurisdiction. Such a decision of a regional District Court of Appeal invalidating an act of the Legislature is subject to review by the state-wide jurisdiction of this Court. However, when the regional District Court of Appeal holds that an act of the Legislature is valid, then it is not mandated by the Constitution that this Court exercise its state-wide jurisdiction to review such a decision. The question then becomes whether the Petitioners have demonstrated any ground upon which this Court should exercise its discretion to review the decision of the District Court of Appeal.

One such reason could be that the decision of the District Court of Appeal is clearly erroneous. However, in that regard, the Petitioners fail.

Art. X, §14 of the Florida Constitution provides that the Legislature must perform an act--it must do something--in connection with the adoption of a law increasing pension benefits. The question whether the Legislature performed that act is a question of fact, not a question of law. The question of fact is a complex one. The words of the Constitution which require that the Legislature provide for funding of increases in pension benefits on a sound actuarial basis are not words of ordinary understanding or of ordinary meaning. This requires expert actuarial testimony. The trial court had before it the live testimony of various and numerous experts on this point. It was the function of the trial court to resolve such conflicts. Having done so, the question on appeal to the District Court of Appeal was whether there was evidence to support the trial judge's finding of fact that the Legislature had funded this pension increase on a sound actuarial basis. As there was such evidence, the decision of the District Court of Appeal is eminently correct.

Another possibility for this Court to exercise its discretion in such a case might exist when the Circuit Court had found that an act was invalid and on appeal the District Court of Appeal reversed and held that the act of the Legislature was valid. Based on such a dispute between the trial judge and the District Court of Appeal an argument could be made that this Court ought to exercise its discretion in such a case to review the decision of the District Court of Appeal. However, in the present case, there was no such division of opinion. The trial court held that the act was valid and the District Court of Appeal affirmed.

This court should decline to exercise its discretionary jurisdiction in the present case. The Petitioners have presented no reason for this Court to invoke it, other than they would like to have another appeal.

POINT INVOLVED

THE SUPREME COURT SHOULD NOT EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW A DECISION OF THE DISTRICT COURT OF APPEAL HOLDING A STATE STATUTE TO BE VALID WHEN:

THE DECISION OF THE DISTRICT COURT OF APPEAL AFFIRMS THE TRIAL COURT'S HOLDING THE STATUTE TO BE VALID AS THERE WAS EVIDENCE TO SUPPORT THE TRIAL JUDGE'S FINDING OF FACT THAT THE LEGISLATURE HAD PROVIDED FOR THE FUNDING OF THE PENSION INCREASE INVOLVED ON A SOUND ACTUARIAL BASIS.

The people of Florida, in framing Art. V, could have given the Supreme Court mandatory jurisdiction whenever the District Court passes on the constitutional validity of a state statute without regard to whether the District Court held the statute to be valid or invalid. However, the people of Florida did not write their Constitution that way. Instead, the people distinguished between those cases in which the District Court of Appeal held the statute to be invalid and those in which the District Court of Appeal held the statute to be valid. When the statute is declared invalid, this Court has mandatory jurisdiction. When the District Court holds the statute to be valid, this Court has discretionary jurisdiction. The people did not consider it necessary to their ordered scheme of liberty that the court of last resort should be required to review a decision of the District Court of Appeal which held an act of the Legislature to be constitutionally valid.

Plainly, then, the Petitioners have the burden of showing a compelling reason why this Court should exercise its discretion to take jurisdiction in this case, notwithstanding that the trial court found that the statute was valid and that the District Court of Appeal affirmed.

For example, this Court might exercise its jurisdiction if the Petitioners could demonstrate that the decision below was clearly erroneous. However, Petitioners admit that the statute which they challenge provides for the funding of the increase in the pension benefits. They do not dispute that the statute provides for enough money to accomplish its purpose. Rather, they challenge the manner by which the Legislature provided for the funding. The Petitioners concede that Art. X, §14 of the Florida Constitution is unique among the states in that it requires that the Legislature perform an act at the time that it increases pension benefits to employees covered by the Florida Retirement System. The Constitution requires that the Legislature provide for the funding of such increase on a sound actuarial basis. The question whether this act was performed by the Legislature is a complex question of fact. The Constitutional requirement that the Legislature provide for funding on a sound actuarial basis involves words which are not words of ordinary understanding. Indeed, the decision of the trial court and the opinion of the District Court of Appeal in affirmance point out that the expert witnesses disagreed as to what is the meaning of these words. Even though the actuaries were unable to agree how to define these terms, the trial court concluded that funding on a sound actuarial basis meant that "a retirement fund must be funded in such a way that the retirement fund is able to meet its continuing obligations as and when they mature." (Appendix 3).

The Petitioners do not dispute that the Legislature's method of funding accomplishes such an objective. Instead, the Petitioners argue:

> "In light of Article X, Section 14, both the legislative process followed here by the 1988 Legislature[3] and its questioned product,[4] deserve the scrutiny of the highest court of this state." (Petitioner's brief 4) (emphasis added)

They offer no authority, and surely there is none, by which this Court should scrutinize the legislative process along with the enactment.

Lastly, on page 6 of their brief the Petitioners argue that this Court should exercise its jurisdiction because the statute which the trial court and the Court of Appeal both determined to be constitutionally valid involves "hundreds of millions of dollars in public funds." Again they offer no authority for the proposition that that is a ground for this Court to exercise its discretionary review.

The people of Florida did not write their Constitution so that if a case involved a challenge to the constitutional validity of an act of the Legislature, the case should begin in the Florida Supreme Court, thereby dispensing with the proceedings in the Circuit Court and the District Court altogether. The people wrote their Constitution the way it reads because the people were of the view that when the District Court of Appeal held that the challenged act was valid, that was adequate review by the judicial branch of the government. For such a decision to be reviewed by this Court requires something more than the argument of the Petitioner that the statute involves a lot of money. Florida is a large state with a large population and a large budget, and most of the acts of the Legislature involve a lot of money.

Obviously the Professional Fire Fighters of Florida are of the view that the increase from 2% over 3% in the service credit for special risk members in which both the contributions and the benefits are phased in over a five-year period is constitutionally valid. This is another way of saying that they believe that the decisions of the Circuit Court and of the

District Court of Appeal in this regard are correct. The Petitioners present no compelling reason why this Court should review the decision of the District Court of Appeal holding this act of the Florida Legislature to be valid.

CONCLUSION

The request by the Petitioners that this Court invoke its discretionary jurisdiction to review the decision of the First District Court of Appeal in this case should be denied.

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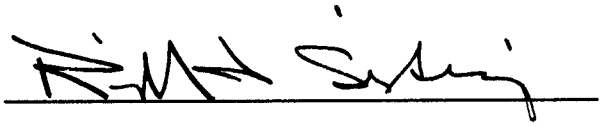

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was furnished by U. S. Mail this 23rd day of May, 1991, to:

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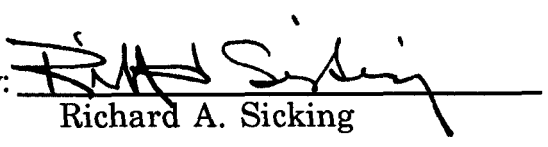
By: 
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