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IN THE SUPREME COURT OF FLORIDA

LAWTON CHILES, ETC., ET AL.,

Petitioners,

vs.

Case No.: 78,792

CHILDREN, A, B, C, D, E, and
F, ETC.,

Respondents.
-----------------------------------/

AMICUS CURIAE BRIEF
OF
THE ORANGE AVENUE UNITED TENANTS ASSOCIATION, INC.
AND
OLIVER HILL, SR.

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STATEMENT OF INTEREST

The Orange Avenue United Tenants Association, Inc. (OAUTA) is a nonprofit organization, incorporated since 1973, under the laws of the State of Florida. OAUTA represents 627 tenant households in all four public housing sites and is managed by a board of tenant directors. Membership in OAUTA is automatic to all residents of public housing in Leon County, Florida. The members elect the board of directors annually in staggered terms.

Over the course of its existence, OAUTA has been active in efforts toward improving conditions in public housing by articulating the problems and needs of tenants, serving as liaison between management and tenants, operating several tenant oriented programs and projects and initiating legal action to protect and secure the rights of its tenant members.

Its membership, in part, consists of 197 families currently on Aid to Families with Dependent Children (AFDC). These families are directly affected by the October 22, 1991 action of the Governor and Cabinet which significantly reduced and altered a legally appropriated increase in AFDC payments for these families. (The AFDC program is a joint state and federal program which provides assistance to certain needy families to enable them to meet basic needs. For every general revenue dollar of AFDC payment, the federal government provides matching funds.)

Oliver Hill, Sr. is a disabled father who receives AFDC for a minor child and a resident of Florida, a taxpayer and the President of OAUTA.

The appropriations law, Ch. 91-193, §1, line item 831, Laws of Fla., provided specific appropriation language for the AFDC program. It provided $4,173,774 from the general revenue funds and $4,951,224 from the direct assistance trust fund (federal funds) to provide a three percent AFDC payment level increase effective January 1, 1992. This specific legislative appropriation would raise for a family of one parent and two children the AFDC payment assistance from $293.61 per month to $303.00 per month.[1]

This specific legislative appropriation was the first step in an overall strategy presented to the Legislature by the Department of Health and Rehabilitative Services[2] to increase AFDC payments by the year 2000 to 42.5% of the official poverty level exclusive of food stamp contribution.[3] Currently the payment level is 30.1% of the current poverty level.

The Governor and Cabinet altered this specific appropriation and disturbed the overall legislative planning process for AFDC payments in its action of October 22, 1991. It specifically delayed any payments to increase AFDC payments to June 1, 1992,

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[1]Survival 1999, A Plan for Florida's Children. August, 1991.

[2]Enchancing Family Spending Power prepared by the Department of Health and Rehabilitative Services.

[3]Survival 1999, A Plan for Florida's Children. August, 1991.

reduced appropriation of general revenue funds by $3,464,232, and reduced federal funding by $4,109,516. This improper action of the Governor and Cabinet altered the intent of the Legislature; disturbed the legislative strategy to raise the level of AFDC payments to 42.5% of the poverty level in payment assistance by the year 2000; and, reduced the ability of these 197 families to shelter and to clothe their children.

SUMMARY OF ARGUMENT

Section 216.221, Fla. Stat. (1989), is a violation of Art. II, §3 and Art. III, §1 of the Florida Constitution in that:

1) it abdicates to the Governor and Cabinet lawmaking authority, a power appertaining exclusively to the Legislature, by allowing the Governor and Cabinet to disproportionately change appropriations passed by the Legislature; or

2) it invalidly delegates legislative power to an agency without providing criteria or guidance in the performance of its duties, thereby allowing the Governor and Cabinet sitting as the Administration Commission to exercise unbridled discretion in developing priorities for the funding of competing state programs.

ARGUMENTS

I. SECTION 216.221, FLA. STAT. (1989), ABDICATES ESSENTIAL LEGISLATIVE POWERS IN VIOLATION OF THE STATE CONSTITUTION.

Section 216.221, Fla. Stat. (1989), is unconstitutional in that Art. II, §3 of the Florida Constitution provides that "no person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein". In interpreting this provision of the Constitution, it has been long established by the courts that the Legislature may not, absent constitutional authority to the contrary, delegate or abdicate its legislative powers including its law making functions to others and any attempt to do so is void. Rosslow v. State, 401 So.2d 1107 (1981); Pursley v. Ft. Myers, 87 Fla. 428, 100 So.366 (Fla. 1924). In other words, the Legislature cannot delegate its power to make law or to declare what law is or to exercise unlimited discretion in applying law, Robbins v. Webb's Cut Rate Drug Co., 16 So.2d 121 (Fla. 1943); Richardson v. Baldwin, 124 Fla. 233, 168 So.255 (1936); Ex Parte Lewis, 101 Fla. 624, 135 So.147 (1931). Stated yet another way, power appertaining exclusively to the legislative department cannot be lawfully delegated. Spencer v. Hunt, 109 Fla. 248, 147 So.282 (1933).

As pointed out in Benyard v. Wainwright, 322 So.2d 473 (Fla. 1975), the lawmaking power of the legislature is inherent: "the responsibility to make substantive law is in the legislature within the limits of the state and federal constitutions." at

475. Article III of the Florida Constitution recognizes that the legislative power of this state is vested in the state Legislature and provides the framework for passage of laws including laws making appropriations for current expenses of the state. Art. III, §12, Fla. Const.. Further provisions for appropriations are located in Art. VII, §§(1)(c) and (d), Fla. Const. providing:

> (c) No money shall be drawn from the treasury except in pursuance of appropriation made by law.
>
> (d) Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period. [Emphasis Added]

Clearly appropriations constitute lawmaking and are solely within the purview of the Legislature who may not abdicate its power. State ex rel. Davis v. Green, 95 Fla. 117, 116 So. 66 (1928).

The only constitutional limitation on the legislative power to appropriate is found in Art. III, §8 Fla. Const. allowing the executive to approve or veto a bill. The constitutional framers carefully crafted this limited incursion into the legislative power to appropriate. Art. III, §8 empowers the executive branch to nullify certain appropriation actions of the Legislature. The executive can veto (1) line item appropriations in a general appropriation bill and (2) any qualification or restriction together with the identified appropriation. This court in delineating the scope of this constitutional restriction on the executive's veto power has previously stated: "[T]he veto power is intended to be a negative power, the power to nullify, or at

least suspend, legislative intent. It is not designed to alter or amend legislative intent". [Emphasis Added.] Brown v. Firestone, 382 So.2d 654, 664 (Fla. 1980). Thus, the Constitution provides no authority to alter or amend the legislative intent. Brown , supra, and Thompson v. Graham, 481 So.2d 1212 (Fla. 1985).

Section 216.221, Fla. Stat. (1989),[4] operates to enlarge the Governor and Cabinet's authority to alter or amend the legislative intent beyond the constraints expressly stated in the Constitution under the guise of balancing the budget. Section 216.221, Fla. Stat. (1989), is an ineffectual attempt to abdicate the legislative appropriation power in violation of the organic law of the State of Florida. State ex rel. Davis v. Green, 95 Fla. 117, 116 So.66 (1928), City of Jacksonville v. Bowden, 67 Fla. 181, 64 So.769 (1914). The power to appropriate state funds is purely legislative and can only be exercised in the manner contemplated by the Constitution. Green at 69.

Section 216.221, Fla. Stat. (1989), gives the Governor and Cabinet greater and more intrusive budgetary authority than the Constitution gives the executive branch. See Art. III, §8. For example, the Governor and Cabinet under the purported authority of Section 216.221, Fla. Stat. (1989), reduced the specific appropriation for AFDC by 83% in the amounts of $3,464,232 in

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[4]Section 216.221, Fla. Stat. (1989), identifies the executive office of the Governor--specifically the Governor and Cabinet sitting as the Administration Commission--to implement its provisions. Section 216.011(2)(b), Fla. Stat (1989).

state funds and $4,110,516 in federal funds thereby altering the intent of the specific proviso language in Ch. 91-193, §1, line item 831, Laws of Fla. Indeed, the Governor and Cabinet also altered the effective date for the increase contained in the proviso language of the AFDC specific appropriation clause from January 1, 1991 to June 1, 1992, one month before the end of the fiscal year. The Constitution specifically forbids such executive intrusion into the appropriation process.

In some cases, the Governor and Cabinet eliminated specific proviso appropriations, such as with Elderly and Adult Services Initiatives (Line Item 840A of the appropriations bill) and Children and Youth Initiatives (Line Item 889A of the appropriations bill); in some cases it appears they ignored the specific direction in the proviso language, such as with the Graduate Medical Education Program (Line Item 1015 of the appropriations bill); and in most cases, they reduced specific line item appropriations by varying percentages in the general appropriations bill. All of these actions in total altered the intent of the Legislature in violation of the State Constitution.

Further, an examination of the Governor and Cabinet's action of October 22, 1991 reveals that the reductions in the appropriations bill were not uniform. While overall budget reductions of particular departments were generally uniform, the Governor and Cabinet's intrusion into more than 60% of the 2,080 line items in the budget in the manner described above is unconstitutional. To allow the Governor and Cabinet to effect

varying reductions in specific appropriations within the general appropriations bill would effectively allow them to alter or amend the legislative intent, a power neither they nor the governor himself possess. <u>See</u> Art. III, §8, Fla. Const. The Governor and Cabinet cannot rewrite as it did the general appropriations law because such acts are purely legislative and cannot be delegated by the Legislature. <u>Lewis v. Florida State Board of Health</u>, 143 So.2d 867 (Fla. 1st DCA 1962), <u>cert</u>. <u>den</u>., 149 So.2d 41 (Fla. 1963).

II. SECTION 216.221, FLA. STAT. (1989), IS AN UNLAWFUL DELEGATION OF LEGISLATIVE POWER IN VIOLATION OF THE STATE CONSTITUTION.

Assuming this Court determines that the power delegated to the Governor and Cabinet in §216.221, Fla. Stat. (1989), is not a power that appertains exclusively to the Legislature, §216.221 nevertheless constitutes an invalid delegation of legislative power in that the Governor and Cabinet were provided no criteria or guidance in the performance of their duties.

The most often quoted principle for deciding the question on unlawful delegation of legislative power is:

> The Legislature may not delegate the power to enact a law or to declare what the law shall be or to exercise an unrestricted discretion in applying a law; but it may enact a law, complete in itself, designed to accomplish a general public purpose, and may expressly authorize designated officials within definite valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.

State v. Atlantic Coast Line Railway Co., 56 Fla. 617, 47 So.969 at 976 (Fla. 1908), and Conner v. Joe Hatton, Inc., 216 So.2d 209 (Fla. 1968).

The degree of the completeness of the statute as it appears when it leaves the hands of the legislative body is paramount to a determination of whether or not a particular statute amounts to an invalid delegation of legislative power to an administrative agency, State ex rel. Davis v. Fowler, 94 Fla. 752, 114 So.435 (1927). Where a statute contains no standard or no sufficient standard for its administration and an administrative agency has

no guidance in the performance of its duties, as is the case with §216.221, an unlawful delegation results. Statutes granting power to administrative agencies must clearly announce adequate standards to guide the agencies in the execution of the powers delegated and must so clearly define the power delegated that the agency is precluded from exercising unbridled discretion. Lewis v. Bank of Pasco County, 346 So.2d 53 (Fla. 1976). The statute at issue in Lewis was §658.10(1), Fla. Stat. (1975), providing that various bank records were confidential communications and would not be made public "unless with the consent of the department" [referring to the Department of Banking and Finance of which the Comptroller was head]. The Comptroller interpreted that statute to allow him to deliver bank records to the news media and to the public generally. While the court agreed that the literal meaning of the words used by the Legislature gave the Comptroller that right, the statute as written gave the Comptroller unrestricted and unlimited power from day-to-day to say what the law was in reference to the confidential nature of certain bank records. The court therefore held that the portion of §658.10(1), Fla. Stat. (1975), purporting to authorize the publication of records which were otherwise confidential was an invalid delegation of legislative power.

Similarly, this court in Husband v. Cassel, 130 So.2d 69 (Fla. 1961), determined that §490.04(1), Fla. Stat. (1957), conferred upon the Florida State Board of Examiners of Psychology discretionary powers without definite limitations (by failing to

define or delimit the field of psychology and by failing to provide any standards to guide the board in its approval of a university). The court again found that the failure to provide sufficient standards to be applied effectively delegated the application of the statute without sufficient limitations on the discretion of the board.

Section 216.221, Fla. Stat. (1989), was not complete when it left the hands of the Legislature. The objective of this statute, as with the statutes in the preceding cases, is clear; however, this statute, similar to the others discussed in the cases herein cited, provides no guidance on how to achieve this objective.

Perhaps most instructive in the case at issue is another case involving the Governor and Cabinet sitting as the Administration Commission, Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1978). In that case, this Court found that the criteria for designation of an area of critical state concern set forth in §380.05(2)(a) and (b), Fla. Stat. (1975), reposited in the Administration Commission "the fundamental legislative task" of determining which geographic areas and resources were in greatest need of protection. In finding that section of the statute constitutionally deficient, the court explained that the existing deficiency was the "absence of legislative delineation of priorities among competing areas and resources which require protection in the state interest." Id. 919. This court went on to explain that in order for a statute to be constitutional,

primary policy decisions must be made by members of the legislature and administration of legislative programs must be pursuant to some minimal standards and guidelines[5] that can be ascertained by reference to the enactment that establishes the program.

Section 216.221 contains no standard for the Governor and Cabinet in making reductions in state agency budgets. It allows the Governor and Cabinet unbridled discretion in developing priorities for funding competing programs, removing the primary policy decisions from the Legislature and placing them with the Administration Commission. For example, the Governor and Cabinet reduced some line item appropriations by as much as 83% and others by as little as 1%. Still others such as the Regional Perinatal Intensive Care Center, Ch. 91-193, §1, Line Item 1041, Laws of Fla. and the Developmental Services Initiative, Ch. 91-193, §1, Line Item 922A, Laws of Fla. were eliminated in their entirety. Section 216.221, Fla. Stat. (1989), should be declared unconstitutional as an unlawful delegation of legislative authority in violation of Art. II, §3 and Art. III, §1 Fla. Const.

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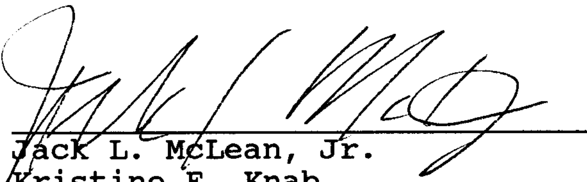
[5]Even when an emergency exists, the law requires sufficient guidelines where non-essential legislative powers are delegated. McRae v. Robbins, 9 So.2d 284, 290 (Fla. 1942).

CONCLUSION

Section 216.221, Fla. Stat. (1989), should be held unconstitutional as a violation of Art. II, §3 and Art. III, §1 of the Florida Constitution and, therefore, the budget reductions passed by the Governor and Cabinet should be declared invalid.

Respectfully submitted,



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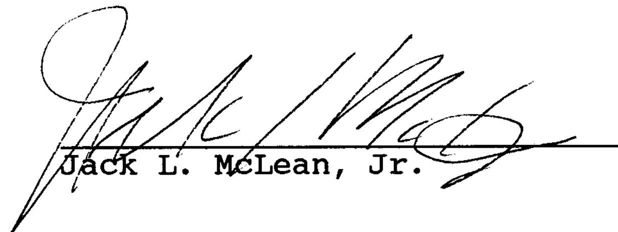
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Curiae Brief has been delivered on this 25th day of October, 1991 by hand delivery to Peter Antonacci, Deputy Attorney General, Robert Butterworth, Attorney General, Charles Finkel, Assistant Attorney General, all as attorneys for Petitioners Chiles, Butterworth, Lewis, Gallagher and Crawford; and to Syd McKenzie, General Counsel for Betty Castor, Commissioner of Education, and Phyllis Slater, General Counsel for Jim Smith, Secretary of State, all at The Capitol, Tallahassee, Florida, and by overnight mail to Karen Gievers, Esquire, Attorney for Respondents, 750 Courthouse Tower, 44 West Flagler Street, Miami, Florida, 33130.



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