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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
CHILDREN FIRST: A JOINT PROJECT IN LAW, MEDICINE, AND EDUCATION
AND
FLORIDA LEGAL SERVICES, INC.

Submitted by:

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II. STATEMENT OF INTEREST OF AMICUS CURIAE, CHILDREN FIRST

CHILDREN FIRST is a Florida Bar Foundation funded joint project in law, medicine, and education. Its purpose is to enhance children's legal rights by taking into consideration their medical and educational needs. Participating in this brief are the following CHILDREN FIRST partners: Legal Services of Greater Miami, Inc; Central Florida Legal Services, Inc.; the University of Miami School of Law; the Florida State College of Law Child Advocacy Clinic; and the Dade County Bar Association with the support of the Eleventh Judicial Circuit Guardian ad Litem Program and Florida Legal Services.

The impact of the proposed gubernatorial budget cuts on children and families in Florida is of vital concern to CHILDREN FIRST. Florida's children and families cannot afford to bear a disproportionate brunt of the state's fiscal crisis through cuts in education and HRS funding and through diminution of the Guardian ad Litem Program.

Florida has grown and changed dramatically during the past several decades. It is estimated that, by the year 2000, fifty percent of Florida's children will be considered at risk (abused, neglected, dependent, delinquent, dropouts, poor, or handicapped).[1] Current statistics regarding the condition of Florida's children are appalling. An estimated 700,000 Florida children live in families with incomes below the poverty level; 280,000 of these

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[1]Florida House of Representatives, **Save Our Children**, 4 (1990).

children are under the age of 5. Only one out of three of these children receive AFDC benefits.

A state's quality of life must be measured by the well-being of its children. Whether our children grow up to reward us, disappoint us, trouble us, or scare us in their adult years will be directly related to how Florida responds to children's needs in their formative years. Florida's babies, however, are at greater risk of dying during the first year of life than babies born in 27 foreign countries because 30% of Florida's pregnant mothers do not receive proper prenatal care. More than 13% of Florida's births are to teenagers, and ninety percent of teenage mothers are not in school. In 1986, Florida ranked fourth in the nation in the percent of infants born to teen mothers who received late or no prenatal care. Florida is third nationally in the number of pediatric AIDS cases.

In 1988-89 over 138,000 reports of child abuse or neglect were received by HRS. Nearly two-thirds were for neglect; 38% were for physical, sexual or mental abuse. As a result, 7,799 children were placed in emergency shelter and 3,036 were placed in foster care.

Florida houses a greater percentage of its teenage population in foster care than ever before; the proportion of foster care children in Florida age 12 and older increased from 35 percent in 1972 to 51 percent in 1987. And teenage foster children are increasingly troubled youth; over 80% of the adolescent foster children age 13 and older have a behavioral, medical or developmental problem. Of the 12,516 children in Florida who need

residential mental health treatment, only 3,984 will receive treatment; Florida can treat only 3,756 of the 16,104 children who need residential substance abuse treatment. It is little wonder that Florida has the nation's highest youth suicide rate.

Rather than treat children appropriately, Florida holds more than 1,650 juveniles in secure detention each day, twice the national average, exceeded only by three states. And Florida even prefers adult jails to house children: the daily population of juveniles housed in adult jails doubled between December, 1986 and December, 1989.[2]

In 1983, the National Commission on Excellence in Education declared that our nation is at risk of erosion of the educational foundations of our society due to rising educational mediocrity.[3] Despite this forewarning, Florida has the highest school dropout rate in the country. In 1988-89, 49,192 Florida children dropped out of school, 65,060 were paddled, and 142,895 were suspended for a total of 6,001,590 hours of out-of-school suspension. Dropping out of school is directly related to family poverty: 75% of school dropouts come from poverty circumstances. These dropouts are ill-prepared to join the ranks of Florida's productive citizens, for 22% of Florida's adult population lacks essential literacy skills

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[2]Florida Center for Children and Youth, **Key Facts About the Children** (1990).

[3]National Commission on Excellence in Education, **A Nation at Risk: The Imperative for Educational Reform** (1983).

to achieve self-sufficiency.[4]

The Governor's October 22, 1991 Alternative Revenue Reduction Plan[5] does not take into consideration the already grim status of children in this State and, if effectuated, will worsen the lives of our already vulnerable young population.

III. STATEMENT OF INTEREST OF AMICUS CURIAE, FLORIDA LEGAL SERVICES, INC.

Florida Legal Services, Inc. (FLS) is the statewide support office for all legal services and legal aid offices serving Florida's poor. The overall mission of FLS is to serve as a leader in the delivery of high quality legal services to the poor and to organize and provide support to legal services providers throughout the state.[6] A significant role of FLS is to assist providers in identifying problems having a statewide impact on the poor, and to coordinate strategies for addressing these issues. In this capacity FLS is keenly aware of the damaging impact proposed budget

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[4]Florida Center for Children and Youth, **Key Facts About the Children** (1990).

[5] A true and correct copy of relevant portions of Petitioner Chiles' recommended budget reductions, which were approved by Petitioners on October 22, 1991, is contained in the Appendix filed simultaneously with this brief. Reference to the Appendix in this brief will be made by "App."

[6] In Florida, there are 12 federally funded legal services programs and 10 bar sponsored programs providing general legal services to the poor in their local service areas. Report of the Florida Bar/Florida Bar Foundation, Joint Commission on the Delivery of Legal Services to the Indigent in Florida, Opening The Doors To Justice - The Quest To Provide For The Poor In Florida at 19,(February, 1991).

cuts in the Governor's October 22, 1991 Alternative Revenue Reduction Plan will have on Florida's poor.

The clientele for legal services providers are individuals or families living at or below 125% of the poverty level.[7] According to the 1980 census 1,777,097 persons or approximately 18.6% of the total population in Florida meet this financial standard. Projections from the 1990 census indicate that this number has substantially increased.[8] Among Florida's poor are an estimated 365,105 elderly,[9] and 28,790 homeless.[10] No doubt, these numbers will substantially increase as a result of the proposed gubernatorial budget cuts. Florida's poor include the young, elderly, disabled, homeless, institutionalized--those individuals who through no fault of their own must rely on the State of Florida to meet their subsistence needs. It is these most defenseless individuals who will be hardest hit by the proposed cuts.

IV. SUMMARY OF ARGUMENT

The trial court correctly enjoined Petitioners from making the

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[7]. This is the client eligibility standard used by legal assistance providers in Florida. Id. at 16.

[8]. Id. at 17.

[9] Florida Pepper Commission On Aging, Master Plan On Aging For Florida, Volume I Part A at 9, citing Aging and Adult Services, HRS (September 1990).

[10] The Florida House of Representatives, Committee On Health and Rehabilitative Services, Discrepancies In Enumerating The Homeless-An Interim Project Report, citing Homeless Coalition in Florida, Third Annual Report to the Governor and Legislature (June 30, 1991).

budget cuts proposed by the Governor. The Governor and the Cabinet have unconstitutionally usurped uniquely legislative functions to make or amend law, to formulate policies, to mandate programs and projects and to establish priorities for the State. In addition, it is the duty of the Legislature to raise sufficient revenue to defray the expenses of the state. This duty cannot be delegated to Petitioners. To the extent that §216.221, Fla. Stat. (1990), has delegated such authority to the Governor and other Petitioners, that statute is unconstitutional.

Section 216.221, Fla. Stat., is also unconstitutional because it fails to limit the Governor's powers to deprive Florida citizens of their fundamental constitutional rights. Florida children have a constitutional right to an adequate education and families have a fundamental right to family integrity. When, as here, a statutory provision is in conflict with a constitutional right, the statute must fail.

V. ARGUMENT

A.

DOCTRINE OF SEPARATION OF POWERS VESTS POLICY-MAKING WITH THE LEGISLATURE NOT WITH THE CHIEF EXECUTIVE

A basic tenet of our constitutional system of government is that political power is inherent in the people, exercised under a Constitution adopted by them. State ex rel. Ayres v. Gray, 69 So.2d 187 (Fla. 1953); Collier v. Gray, 157 So. 40 (Fla. 1934). Separation of governmental power among the executive, the legisla-

ture, and the judiciary is essential to prevent the encroachment of one branch of government upon another. Pepper v. Pepper, 66 So.2d 280 (Fla. 1953). The branch of government closest to the people is the legislative branch, and thus it is wise to have the legislature exercise ultimate control over the purse strings. Green v. Rawls, 122 So.2d 10 (Fla. 1960); Petition of the Florida Bar, 61 So.2d 646 (Fla. 1952).

The legislature has exclusive power to formulate policies, mandate programs and projects, and establish priorities for the State. Lee v. Edwards Corp. v. Carlton, 191 So. 453 (Fla. 1939). Florida's scheme of separation of powers is analogous to the federal scheme. Morgan County Commission v. Powell, 293 So.2d 830 (Ala. 1974) (quoting 16 C.J.S. Constitutional Law § 215). Great power is given under this scheme to the legislative branch, which is subject to control by the electorate. The power to legislate carries with it the power of passing practical judgment upon the needs of a complex society. Polish National Alliance v. National Labor Relations Board, 322 U.S, 643 (1944); Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978).

The functions of the Governor in the lawmaking process are to recommend and sign laws he thinks are good and to veto laws he thinks are bad.[11] Art. III, § 8, Fla. Const. He cannot alter or

[11]Indeed, Florida has one of the strongest legislatures in the nation. Constitutionally, Florida's governor is at a disadvantage vis-a-vis the legislative branch. Rosenthal, The State of the Florida Legislature, 14 Fla. St. U. L. Rev. 399, 418 (Fall, 1986). An example of the limited power of the Governor of Florida is the fact that each Cabinet officer and each Department head may submit budget requests directly to appropriate legislative committees and

amend the will of the Legislature. Brown v. Firestone, 382 So.2d 654 (Fla. 1980). This Court explained in Brown, for example, that when the Legislature designates $5,000,000 for salaries for the Department of Education, the Governor cannot veto the appropriation for salaries and use the money for another purpose. If he did so, the Governor would be legislating by altering the purpose for which the money was intended. Id. at 664-65. Similarly, the appointment by the Supreme Court of an administrative officer for the State Board of Law Examiners has been held to be an impermissible exercise of legislative powers by the judiciary. Petition of the Florida Bar, 61 So.2d 646 (Fla. 1952).

Governor Chiles and the Cabinet have encroached upon and altered the practical judgment of the Legislature, as influenced by the electorate, in adopting the Alternative General Revenue Reduction Plan on October 22, 1991. The Governor and the Cabinet have set policy and program priorities for the State of Florida and thus exercised a legislative function. It is for the legislature to set priorities for education needs, financial assistance payments under the Aid to Families with Dependent Children Program, mental health initiatives, substance abuse prevention programs, children and youth initiatives, child care market increases, and the Guardian ad Litem Program, among all the other needs of this State. These determinations are not within the province of the

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may make presentations directly to the legislature on such budget requests. §216.172, Fla.Stat. (1990).

Governor.[12]

In fact, the Florida Constitution forbids any branch of government other than the Legislature from making or amending law. It gives authority to make and change law solely to the Legislature. Art.II, §3, Art. III, §§6-9, Fla. Const. No other branch of government has constitutional authority to exercise that power. Fla. Welding & Erection Service, Inc., V. American Mutual Ins. Co.,, 285 So.2d 386, 388 (Fla. 1973); Knight & Wall Co., v. Bryant, 178 So.2d 5,7 (Fla. 1965); Mahon v. County of Sarasota, 177 So.2d 665, 667(Fla. 1965).

Despite this constitutional prohibition on lawmaking by branches other than the legislative, Petitioners have changed law. For example, the Florida Legislature mandates the Emergency Financial Assistance for Housing program (EFAHP), the only direct assistance program for homeless families with children in Florida. Ch.91-193, §1 at Appropriation 825, Laws of Fla. (the 1991-92 General Appropriations Act); §§ 409.2351, 420.627, Fla. Stat. (1989). In 1991, the Florida Legislature appropriated $4,449.428 in General Revenue explicitly for the EFAHP program. Ch.91-193, §1 at Appropriation 825, Laws of Fla. This appropriation, like the

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[12]The process by which such critical needs in Florida are determined by the Legislature is very open. Appropriations committees of the respective houses sit in open sessions to consider the budget. These committees may cause the attendance of agency heads or representatives to furnish information and answer questions. All persons interested shall have the right to be heard. §216.172(1) Fla.Stat. (1990).

EFAHP statute, is law[13]. Both the statute and the appropriation have been enacted pursuant to the mandated procedures set forth at art. III, §§7-9, Fla. Const. Yet Petitioners have eliminated EFAHP. App. 1. With complete disregard for the Legislature's mandate, Petitioners have unilaterally abolished this desperately needed program.[14]

There is wisdom in a constitutional scheme which gives to the Legislature the power to pass judgment on the critical needs of society. Faced with this State's current fiscal crisis, only the Legislature has the power to decide to raise revenue rather than cut programs. In fact, it is the Florida Legislature's duty as

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[13]Specific appropriations and provisos contained in general appropriation acts are constitutionally enacted law. Art. III, §12, Fla. Const.; Martinez v. Fla. Legislature, 542 So.2d 358, 361 (Fla. 1989); Brown v. Firestone, 382 So.2d 654, 663-664, 668 (Fla. 1980); In re Advisory Opinion to the Governor, 239 So.2d 1, 10 (Fla. 1970).

[14] Furthermore, at least one of budget cuts imposed by Petitioners may violate federal Medicaid law. Under 42 U.S.C. 1396a(a)(30)(A), states which, like Florida, participate in the Medicaid program are required to insure that payments to Medicaid providers are "sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area".

However, Petitioners have reduced reimbursement for physician services. According to the Department of Health and Rehabilitative Services (HRS), this particular cut "will impact patients in every type of recipient category to the extent that they may be denied access to care." App. 42. Furthermore, in a recent survey of state Medicaid programs conducted by the National Governors' Association and Physician Payment Review Commission, the Florida Medicaid office acknowledges low physician participation in rural areas and in the specialties of allergy, gerontology, pathology, child psychiatry and rheumatology. The reductions in payment for physician services made by Petitioners will only exacerbate the access problem already encountered by many Florida Medicaid recipients. Adequate health care will become an impossible dream.

lawmakers to provide "for raising sufficient revenue to defray expenses of the state for each fiscal period." Art.VII, § 1(d), Fla. Const. The Constitution does not permit the Legislature to delegate this duty to the Executive or any other branch of government. Fla. Welding & Erection Service, Inc., 285 So.2d at 388; Knight & Wall Co., 178 So.2d at 7; Mahon, 177 So.2d at 667.

Neither the Governor nor any of the Petitioners have the authority they have exercised here. In Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S, 579 (1951), the President of the United States was counseled not to bear the burden of a national catastrophe by legislating a solution to a national steel strike. So, too, Governor Chiles should be counseled by this Court that solving this state's fiscal crisis is not his burden but that of the Legislature. Section 216.221, Florida Statutes, is therefore unconstitutional in that it impermissibly delegates legislative functions to the executive.

B.

SECTION 216.221, FLORIDA STATUTES IS UNCONSTITUTIONAL IN THAT IT FAILS TO PROTECT FUNDAMENTAL CONSTITUTIONAL RIGHTS

The Alternative Budget Reduction Plan proposed by the Governor and the Cabinet infringes on fundamental constitutional rights in two areas: children's right to an education and their right to family integrity. Section 216.221, Fla. Stat., is unconstitutional in that it fails to set limits on the power of the Governor and the Cabinet when constitutional rights are at stake. Amos v. Mathews,

126 So. 308 (Fla. 1930). Courts must uphold the Constitution when an applicable provision of the Constitution is in conflict with a statute. State ex rel. West v. Butler, 69 So. 771 (Fla. 1915).

When the people have spoken through their organic law concerning their basic rights, the ways and means for enforcement of those rights must be provided by the legislature. In the absence of appropriate legislative action, the courts must step in and order the necessary relief. Dade County Classroom Teachers Association, Inc. v. The Legislature, 269 So.2d 684 (Fla. 1972) (quoting Marbury v. Madison, 5 U.S. 137 (1803)). In Dade County, this Court cites numerous examples of judicial orders when other branches of government have failed or refused to protect, implement and enforce the Constitution. Id. at 687.[15]

1.

CONSTITUTIONAL RIGHT TO AN ADEQUATE EDUCATION

The Florida Constitution affords the children of this State the right to an education. By providing for the establishment, maintenance and operation of education programs which serve the

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[15]Federal courts governing Florida have made it perfectly clear that the right of the people of this State to be secure in their constitutional rights cannot be made dependent on the willingness of the government to appropriate sufficient money. Costello v. Wainwright, 525 F.2d 1239 (5th Cir. 1976); Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974). The Fifth Circuit has been emphatic that the State is not at liberty to afford its citizens only those constitutional rights which fit comfortably within its budget. Pugh v. Locke, 406 F. Supp. 318, 330 (M.D. Ala. 1976), aff'd in part, rem'd on other grounds, 559 F.2d 283 (5th Cir. 1974); Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977).

needs of the people the Florida Constitution has vested rights which must be protected. Art. IX, §1, Fla. Const.

Provision of an education must be "adequate" to meet "the needs of the people." Art. IX, §1, Fla. Const. "Adequate" schools are an important constitutional right because they enable children to "advance and maintain proper standards of enlightened citizenship." State ex rel. Clark v. Henderson, 188 So. 351 (Fla. 1939). Caps on school funding that deny children an "adequate program" are constitutionally impermissible. Scavella v. School Bd. of Dade County, 363 So.2d 1095 (Fla. 1978).[16] "Adequate" has been defined by this Court as that which affords a child "a reasonable opportunity to receive a free education." Id. at 1099. An "adequate" school program has also been defined as one that contemplates the development of skills that flow from the head, the hand and the heart. It must offer training in the laws of health, sanitation, dietetics and recreation in addition to cultural subjects. Public school funds must be safeguarded and kept inviolate for the purpose designed. Taylor v. Board of Public Instruction of Lafayette County, 26 So.2d 181 (Fla. 1946).

In establishing a system of free public education and making school attendance mandatory, the State of Florida has created an expectation in students that constitutes a property interest: a state created understanding that secures certain benefits and that supports claims of entitlement to those benefits. Debra P. v.

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[16]Children who are disabled have an even stronger entitlement to adequate programs because art. I, §2, Fla. Const. rights to freedom from discrimination are implicated.

Turlington, 644 F.2d 397 (1981) rehr'g denied 654 F.2d 1079 on remand 564 F. Supp. 177, (1983) aff'd 730 F.2d 1405 (1984).

The education budget cuts which the Governor and the Cabinet propose place Florida in the position of no longer providing an adequate program designed to create a reasonable opportunity for Florida's children to advance and maintain proper standards of enlightened citizenship. Class sizes over 40, layoffs of teachers particularly trained in special education or to work with limited English proficient students, and reduced school periods all threaten the ability of Florida to meet its constitutional mandate. Section 216.221, Florida Statutes, is unconstitutional in that it does not limit the powers of the Governor and the Cabinet with respect to the protection of the constitutional right of children to an education.

2.

CONSTITUTIONAL RIGHT TO FAMILY INTEGRITY

The sanctity of family rights under the Federal Constitution has been recognized beyond refute. Prince v. Massachusetts, 321 U.S. 158 (1944); Pierce v. Society of Sisters, 208 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923); . The right to family integrity is one that is shared by parent, child and state alike. Santosky v. Kramer, 455 U.S. 745 (1982).

In view of the unique and privileged position which the family unit historically enjoys in our society and the panoply of rights associated with family life in our jurisprudence (including the

right to privacy),[17] the state cannot interfere in the family unit without showing a countervailing and superior interest. Franklin v. White Egret Condominium, 358 So.2d 1084 (4th DCA 1977). When the State does interfere in family life, triggering a special custodial or other relationship between the child and the state, the state has a constitutional duty to provide certain services to the child and protect the child from further harm. Deshaney v. Winnebago County Department of Social Services, 109 S.Ct. 998 (1989); Taylor v. Ledbetter, 818 F.2d 791 (11th Cir. 1987).

Proposed cuts by the Governor and the Cabinet of the Emergency Housing Assistance Program, child welfare programs in the Children, Youth and Families Program Office, and the Guardian ad Litem Program strike at the very heart of the ability of at-risk family units to gain access to critical services so that they may remain intact. Section 216.221, Fla. Stat., is unconstitutional in that it does not limit the ability of the Governor and the Cabinet to reduce programs that preserve family integrity.

VI. CONCLUSION AND RELIEF REQUESTED

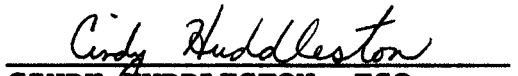
The trial court correctly enjoined the Governor and the Cabinet from making proposed budget cuts and correctly ruled Section 216.221 to be an unconstitutional delegation of legislative authority to the executive branch. This section is also

[17]Under Fla. Const. article I, § 23, families have even greater rights to privacy than under the federal Constitution. See In Re T.W., 551 So.2d 1186 (Fla. 1989).

unconstitutional because it fails to limit the authority of the Governor to affect the fundamental constitutional right to an education and to family integrity.

Amicus Curiae, CHILDREN FIRST and FLORIDA LEGAL SERVICES, INC. request this Court to affirm the decision of the trial court.

Respectfully submitted,



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VII. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Curiae Brief of CHILDREN FIRST: A Joint Project in Law, Medicine, and Education and Florida Legal Services, Inc. was hand-delivered on this 25th day of October, 1991 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 Sydney McKenzie, General Counsel for Commissioner Betty Castor, General Counsel Commissioner of Education, and Phyllis Slater, General Counsel for Secretary Smith, the Capitol, Tallahassee, FL and Karen Gievers, Esq., Attorney for Respondents, 750 Courthouse Tower, 44 West Flagler Street, Miami, FL 33130.

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