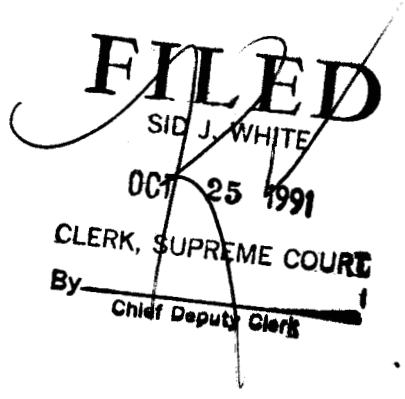
D+7 w/app

IN THE SUPREME COURT OF FLORIDA

LAWTON CHILES, as Governor of the State of Florida, JIM SMITH, as Secretary of State of the State of Florida, ROBERT BUTTERWORTH, as Attorney General of the State of Florida, GERALD LEWIS, as Comptroller of the State of Florida, TOM GALLAGHER, as Treasurer of the State of Florida, BOB CRAWFORD, as Commissioner of Agriculture of the State of Florida, BETTY CASTOR, as Commissioner of Education of the State of Florida, and all as members of the Administrative Commission,
Appellants



v. Case No. 78,792

CHILDREN A, B, C, D, E and F by and through their next friend and Guardian Ad Litem MICHAEL ROSSMAN,
Appellees
_____/

BRIEF OF AMICI CURIAE
T. K. WETHERELL, SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES
AND
RON SAUNDERS, CHAIRMAN OF THE COMMITTEE ON APPROPRIATIONS
OF THE FLORIDA HOUSE OF REPRESENTATIVES

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STATEMENT OF THE CASE AND FACTS

Amici Curiae adopt the Statement of the Case and Facts of Appellants, Lawton Chiles, et al.

SUMMARY OF ARGUMENT

The court below has declared unconstitutional a provision in Florida law which has existed, in one form or other, for nearly sixty years. This provision has been used to keep the state fiscal affairs in order and to avoid a deficit in the state treasury. It has served the state well, and it continues to provide a needed method for avoiding fiscal chaos.

In adopting the 1968 Constitution, the people of Florida provided that the Cabinet could be given additional powers "by law." The predecessor statute to section 216.211, Florida Statutes, was in effect at the time of the adoption of the 1968 Constitution, and was understood and recognized by the drafters of the 1968 Constitution as authority which had been granted to the executive by law. The people of Florida have, therefore, granted a specific exception to the separation of powers doctrine through the adoption of the 1968 Constitution.

Section 216.211, Florida Statutes, should be sustained not because of its historic place in Florida law, or because of its utility in meeting fiscal crises, but because it meets any test for a lawful delegation of legislative authority. The Legislature has provided substantial guidelines, limitations, and directives to the executive in exercising its authority under Section 216.211, Florida Statutes.

Unlike most executive action, performance by the Administration Commission of its duties under section 216.221, Florida Statutes, must be done with legislative consultation and

prior notice. Although the Legislature has granted authority to the commission, it retains its constitutional authority to reverse any decision of the commission through the enactment of subsequent appropriations.

The trial court erred in ruling that venue was proper in Dade County. Amici argue this important procedural point because a factual record and different result might have been obtained in the proper venue because they are more familiar with the operation of state government. The general rule of venue is that state agencies or boards may only be sued where they maintain their principal headquarters. Article II, section 2, of the Florida Constitution, provides the seat of government is in Tallahassee. The Governor and members of the Cabinet, individually and as members of the Administration Commission, maintain their headquarters in Tallahassee. Therefore, venue was proper only in Tallahassee, unless the narrow and extraordinary sword-wielder exception applied.

The sword-wielder exception did not apply. It only applies if there is: 1) an invasion of or imminent threatened invasion of, 2) constitutional property or liberty interests, 3) by agency action where plaintiffs live and 4) where the validity of the rules or regulations is a secondary issue.

Plaintiffs fail all four prongs of the test. First, the Administration Commission's action was not imminent in terms of its effect on Plaintiffs. Second, no property or liberty interests were involved. Plaintiffs interests are best described

as those of a citizen and taxpayer. Third, the Administration Commission did not venture into Dade County. Fourth, the main issue was a challenge to the constitutionality of Chapter 216. Any other concern was secondary.

Venue is not a hyper-technical requirement adhered to for the purpose of tripping unsuspecting plaintiffs. Rather, in cases involving the state, venue provides for orderly, economical, expeditious disposition of the state's business. It also allows for a more uniform body of law involving the business of state agencies.

ARGUMENT

I. INTRODUCTION

Amici Curiae, T. K. Wetherell serves as Speaker of the Florida House of Representatives, and Ron Saunders serves as Chairman of the Committee on Appropriations of the Florida House of Representatives. In that capacity, they are required to perform certain functions under the provisions of Chapter 216, Florida Statutes, including section 216.221, Florida Statutes. As the case before this Court affects the rights, powers, and duties of the three branches of state government, amici believe it is their duty to assist the Court in determining the appropriate balance of powers to be achieved in the interest of providing efficient and effective government to the citizens of this state.

In the interest of brevity, this brief will not repeat arguments made by the appellants, but rather will expound upon them where appropriate. This brief will also provide the Court with the legislative perspective of the interrelationship and operation of the coordinate branches of government in the administration of the general appropriations act. In this vein, amici adopt Parts I and II of the arguments contained in appellants' brief. However, in the spirit of comity among the branches of state government, amici decline to advise this Court as to the appropriate application of the separation of powers

doctrine as it may be applied between the executive and judicial branches.[1]

To best assist the Court in reaching its determination, amici will provide the Court with an historical perspective of the development of the budget reduction process and an overview of the workings of the budget process as defined in Chapter 216. Additionally, we will address the issue of whether the executive branch may exercise the authority given the Governor and Cabinet under section 216.221, Florida Statutes, without violating the doctrine of separation of powers.[2] Finally, we will address the issue of proper venue, as we believe that the failure to bring this action in the seat of state government has resulted in a decision based on limited and faulty knowledge of the necessarily complex and sophisticated workings of the legislative and executive branches of government.

Amici Curiae fully comprehend the difficult decisions which this case presents to the Court, although we believe that it may be disposed of on procedural grounds rather than on

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[1]Although we do not take any position on the constitutionality of Section 216.011(1)(kk), Florida Statutes, we would note that the inclusion of the judicial branch within the meaning of the term "agency" applies not only to the provisions of section 216.211, Florida Statutes, but also to other provisions within Chapter 216 which provide certain budgetary discretion to the judiciary. For example, this discretion allows for the ability to request the approval of budget amendments by the Administration Commission when the judiciary wishes to exceed the specific discretion provided to each governmental agency by Chapter 216.

[2]Unless otherwise specified, all citations to sections within Chapter 216 of the Florida Statutes are to the published 1989 Florida Statutes and the 1990 Florida Statutes Supplement versions as amended by Chapter 91-109, Laws of Florida.

constitutional grounds. Nonetheless, we recognize that this case is not only about procedural rules and laws, it is also about the operation of government and the people affected by these laws, rules, and operations. In particular, it concerns the interests of citizens who are most in need of the care and assistance of government. Amici understand the pain one feels when recognizing that government cannot meet all the needs of its citizens. We feel confident that each of the appellants has also felt that pain when determining which programs should be reduced to balance the state budget. We believe that the court below felt similar compassion for the children and other citizens of this state, but we are concerned that such feelings may have led to the misapplication of established legal principles.

II. THE LEGISLATIVE HISTORY OF SECTION 216.221, FLORIDA STATUTES, DEMONSTRATES THAT THE AUTHORITY GRANTED TO THE ADMINISTRATION COMMISSION IS ONE OF LONG STANDING AND RECOGNITION.

Chapter 216 is a complex, integrated plan for the operation of the state budget system. It is designed to implement and operationalize the requirements of the Florida Constitution for the general appropriations act and for the provision of sufficient revenues to defray the expenses of the state for each fiscal period. Chapter 216 is the product of almost sixty years of development through good economic times and bad.

Language very similar to that which appears today in section 216.221, Florida Statutes, first appeared in the biennial 1933-

35 General Appropriations Act. Section 8 of Chapter 15858, Laws of Florida (1933), provides:

> All appropriations provided for by this Act are maximum appropriations, based upon the collection of sufficient revenue to meet and provide for such appropriations. If, in the opinion of the Governor, the revenues to be collected will be insufficient to meet the appropriations herein provided for, he shall so certify to the Budget Commission, and the Budget Commission shall adjust and/or reduce the budget of any Department or Board by the consolidation of positions or duties to the end that efficiency and economy may result therefrom, and the appropriations kept within the revenues of the State. In the event the Budget Commission shall fail to adjust and/or reduce the Budgets of the several Departments, after the Governor has certified that the anticipated revenue will not permit of the maximum appropriation herein made, the Governor is hereby vested with power and authority to effect such changes by executive order, it being the intent and purpose of this Section to prevent any deficit in any Department of the State Government, and that the revenues available shall be used in the most efficient and economical manner. Provided, however, that this Section shall not be construed to mean that the Governor or the Budget Commission has the power to eliminate any department of Government.

The Budget Commission to which the 1933-35 General Appropriations Act made reference existed pursuant to Title VI, Chapter VI, Article 6, section 1366, Compiled General Laws of Florida (1927). Created in 1921, the Budget Commission consisted of the Governor, Secretary of State, Comptroller, State Treasurer, Attorney-General, Commissioner of Agriculture and Superintendent of Public Instruction. A majority vote of the commission was necessary for the commission to decide matters and

questions coming before the commission. Title VI, Chapter VI, Article 6, section 1366, Compiled General Laws of Florida (1927).

The reasons that the above language from the 1933-35 General Appropriations Act first appeared when it did can probably be found in the difficulties experienced in 1931. In 1931, the Legislature was unable to enact a general appropriations act at the then biennial regular session. Proclamation of the Governor, June 4, 1931. Fla. H.R. Jour. 1079 (Extra. Sess. 1931). Governor Doyle E. Carlton called two extraordinary sessions before a general appropriations act was finally enacted. The Legislature appeared to be deadlocked between raising revenues, which revenues to raise and whether the state budget should be reduced. Fla. H.R. Jour. 5-7 (2nd Extra. Sess. 1931) (July 7, 1931, Report of Special Committee of Twelve Appointed at First Extra Session). At the first Extraordinary Session, the Legislature passed a special emergency appropriations act which continued in effect for sixty days the salaries and current expenses of the state from the prior two years. Ch. 15602, Laws of Fla. (1931). Reports generated at the time showed that the shortfall between expected revenues and projected expenses was between $4.3 million and $7.4 million - on an expenditure base of approximately $16 million. See Fla. H.R. Jour. 5-7 (2nd Extra. Sess.) (July 7, 1931, Report of the Committee of Twelve Appointed at First Extra Session) and Fla. S. Jour. 1096-7 (2nd Extra. Sess.) (June 23, 1931, Remarks of Governor Doyle E. Carlton at Joint Session of Senate and House of Representatives). A general

appropriations act was passed on July 25, 1931. The first Extraordinary Session of 1931 lasted from June 6, 1931 until June 25, 1931 -- nearly three weeks. The Second Extraordinary Session of 1931 lasted from July 7, 1931 until July 25, 1931 -- nearly another three weeks.

The above quoted section of the 1933-35 General Appropriations Act was included in identical language in every general appropriations act from 1933-35 through 1953-55. Ch. 16772, § 8, Laws of Fla. (1935); Ch. 17707, § 9, Laws of Fla. (1937); Ch. 19280, § 9, Laws of Fla. (1939); Ch. 2608, § 9, Laws of Fla. (1941); Ch. 22071, § 12, Laws of Fla. (1943); Ch. 22827, § 10, Laws of Fla. (1945); Ch. 23915, § 10, Laws of Fla. (1947); Ch. 25370, § 10, Laws of Fla. (1949); Ch. 26859, § 11 (1951); and Ch. 28115, § 12, Laws of Fla. (1953). The only change in the language occurred in 1943 when the phrase "or to arbitrarily reduce any budget" was added to the last sentence of the section. Ch. 22071, § 12, Laws of Fla. (1943). Use of the former language resumed in the 1945-47 General Appropriations Act and continued through the 1953-55 General Appropriations Act.

In 1953, the Legislature enacted this section of these general appropriations acts as a general law. Ch. 28231, §§ 8 and 9, Laws of Fla. (1953). This language was codified at section 215.38, Florida Statutes (1953). Section 215.38, Florida Statutes (1953), provided:

> 215.38 Appropriations, maximum; adjustment of budgets. --
>
> (1) All appropriations provided in the general appropriations act are maximum appropriations, based upon the collection of sufficient revenue to meet and provide for such appropriations. If, in the opinion of the governor, the revenues to be collected will be insufficient to meet the appropriations provided for in said general appropriation act, he shall so certify to the state budget commission, and the state budget commission shall adjust the budget of any Department or Board to the end that efficiency and economy will result therefrom, and the appropriations kept within the revenues of the state. In the event the state budget commission shall fail to adjust the budgets of the several Departments after the governor has certified that the anticipated revenue will not permit of the maximum appropriation made, the governor is hereby vested with power and authority to effect such changes by executive order, it being the intent and purpose of this section to prevent any deficit in any department of the state government, and that the revenues available shall be used in the most efficient and economical manner; provided, however, that this section shall not be construed to mean that the governor or the state budget commission has the power to eliminate any department of government.
>
> (2) No additional funds shall be released by the budget commission to any revenue producing department in excess of the amounts provided in the general biennial appropriations act, or as provided by chapter 28231, 1953.

The language enacted as a general law differed in two ways from that which had been included in general appropriations acts for the previous twenty years. First, the power to be exercised by the Governor or the Budget Commission changed from "adjust and/or reduce" to "adjust." Second, a new sentence was added to this

delegation to the governor and budget commission to clarify that no funds were to be released to any "revenue producing department in excess of the amounts provided in the general biennial appropriations act . . . ."

At the 1967 Regular Session, the Legislature changed the name of the Budget Commission to the State Planning and Budget Commission, although the membership remained the same. § 216.01, Fla. Stat. (1967). This change was reflected in section 215.38, Florida Statutes, which was renumbered as section 216.211, Florida Statutes (1967). The 1967 Legislature was the same Legislature which placed the constitutional revisions on the ballot in 1968 which became the 1968 Constitution.

Six months after the Constitution of 1968 became effective, the Legislature enacted the Governmental Reorganization Act of 1969. The new Constitution commanded that the executive functions of state government be allocated among no more than twenty-five departments. Art. IV, § 6, Fla. Const. In addition, the Act consolidated and reorganized the role of the Governor, of the cabinet officers, and of the Governor and the Cabinet acting as collegial boards and commissions. By one count, the Governor and the cabinet officers together or in various combinations were members of thirty-five boards or commissions. McCollum, 43 Fla. Bar J. 156, 157 (March 1969). Following enactment of the Governmental Reorganization Act of 1969, that number had been reduced to eight.

The Governmental Reorganization Act of 1969 repealed all sections of the then-existing chapter 216. Ch. 69-106, § 31, Laws of Fla. Many of the duties previously assigned to the State Planning and Budget Commission were reassigned in the reorganization to the new Department of Administration. In the place of the State Planning and Budget Commission, a new entity, the Administration Commission, was created. Its membership was the same as the former State Planning and Budgeting Commission. The Administration Commission, in accordance with the command of article IV, section 6, was assigned to the newly created Department of Administration. Ch. 69-106, § 31(2), Laws of Fla. Subsequently, the Administration Commission has been moved to the Executive Office of the Governor. § 14.202, Fla. Stat. (1979). Section 31(4)(s) of the Governmental Reorganization Act of 1969 provided as follows:

> (s) Appropriations, maximums; adjustment of budgets. --
>
> 1. All appropriations provided in the general appropriations act are maximum appropriations, based upon the collection of sufficient revenue to meet and provide for such appropriations. It shall be the duty of the governor, as chief budget officer, to insure that the revenues collected will be sufficient to meet the appropriations and that no deficit shall occur in any state fund. If in the opinion of the governor a deficit will occur he shall so certify to the commission, and commission may, by affirmative action, reduce all state agency operating budgets and releases a sufficient amount to prevent a deficit in any fund.
>
> 2. The comptroller shall also have the duty to insure that the revenues being collected will be sufficient to meet the

> appropriations and that no deficit shall occur in any fund of the state. If, in his opinion, the revenues to be collected will be insufficient to meet appropriations, he shall report his opinion to the governor in writing. In the event the governor does not certify a deficit within ten (10) days from the comptroller's report or in the event the commission does not act within ten (10) days from certification of a deficit by the governor as provided by subsection (4)(s)1, the comptroller shall report his findings and opinion to the commission. The commission may, by majority vote, uniformly adjust all state agency operating budgets and releases by the same percentage as may be necessary to prevent any deficit in any fund.
>
> 3. All actions taken pursuant to subsection (4)(s) shall be reported to the legislative appropriations committees and the committees may advise the governor, the comptroller or the commission concerning such action.

These provisions were codified as Section 216.221, Florida Statutes (1969). Two years later, several technical changes were made to section 216.221 by Chapter 71-354, section 14, Laws of Florida.

In 1983, the first major substantive changes were made to section 216.221, Florida Statutes, since its enactment as a part of the 1969 governmental reorganization. Additional limitations on the exercise of the emergency powers provided to the Administration Commission were added, and continue to apply today. These include:

> 1. A requirement that the Governor consult with the Revenue Estimating conference prior to certifying a deficit in the general revenue fund;
>
> 2. A requirement that the Administration Commission comply with any directions for reducing the operating budget

of state agencies which is contained in the general appropriations act;

3. A requirement that the Administration Commission use only budget reductions or funds from the Working Capital Fund to prevent a deficit; and,

4. A prohibition on the Administration Commission restoring reductions in operating budgets after such reductions are made in anticipation of a deficit.

See, Ch. 83-49, § 18, Laws of Florida, codified as § 216.221, Fla. Stat. (1983).

During the 1991 Regular Session, the Legislature once again revised the requirements and restrictions which apply to the powers granted to the Administration Commission under section 216.221, Florida Statutes. These additional requirements included allowing the Administration Commission to consider funds appropriated to the Legislature and held in reserve by that branch in response to the deficit, limiting use of the Working Capital Fund to reducing any deficit in the General Revenue Fund, preventing the Administration Commission from making budget reductions to restore funds to the Working Capital Fund in excess of the amount set for the Working Capital Fund at the beginning of the fiscal year, requiring the Commission to submit its plan for budget reductions to the appropriations committees of the Legislature at least seven days before the Commission takes final action so that the Legislature may advise the Commission, and limiting the Commission's ability to restore reductions indirectly by requiring notice to the Legislature for review and possible objection pursuant to section 216.177, Florida Statutes. Ch. 91-109, § 21, Laws of Fla.

III. THE GRANT OF AUTHORITY TO THE ADMINISTRATION COMMISSION UNDER SECTION 216.221, FLORIDA STATUTES, DOES NOT CONSTITUTE AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY.

As stated in the Introduction, amici will not replicate appellants' arguments in this brief. We do, however, believe it essential to address the impact of the adoption of the 1968 Constitution on separation of powers and to further advise the Court in respect to the various limitations which are placed upon the executive branch when performing the authority granted to it under section 216.221, Florida Statutes.

A. The Legislature has placed significant limitations upon the exercise of authority under Section 216.221, Florida Statutes.

In addition to the limitations found in section 216.221, Florida Statutes, the power to reduce budgets in times of fiscal crises is further constrained by other provisions of law. All these provisions must be read in conjunction in order to understand the limited nature of the powers and duties placed in the executive branch by section 216.221, Florida Statutes.

Section 216.221, Florida Statutes, gives to the Governor and Cabinet, sitting as the Administration Commission, the authority to reduce approved state agency budgets and releases when a deficit is projected in the state's General Revenue Fund. The obligation of the executive branch to reduce approved operating budgets in the event of a revenue shortfall is necessarily flexible so as to permit the administrative discretion needed to

avoid undue burdens on particular governmental entities.[3] Nonetheless, the authority is provided with sufficient and substantial guidelines so as to assist the Governor and Cabinet in complying with the intent of the Legislature when it establishes funding guidelines through the appropriations process. These guidelines may be explicitly stated within the general appropriations act, may be inferred from the intent behind the adoption of specific appropriations as adduced from the act itself or from a statement of intent issued pursuant to the provisions of section 216.177, Florida Statutes. Additional limitations, directions, and guidelines are also provided in other provisions of Chapter 216, Florida Statutes.

Before A Deficit Is Certified

Section 216.136(3), Florida Statutes, creates the official state Revenue Estimating Conference. This conference is responsible for developing official information on anticipated state and local government revenues which the conference determines is required by the state planning and budgeting system. The state planning and budgeting system includes the processes and functions prescribed in Chapter 216, Florida Statutes. § 216.133(3), Fla. Stat.

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[3]Amici would note, for example, that certain constitutional concerns such as the impairment of access to courts or the right to vote may require an unequal distribution of budgetary reductions within an agency or within government as a whole. The Administration Commission must have the authority to make such judgment calls as may be necessary to avoid such concerns.

The four principals of the conference are the Executive Office of the Governor, the Division of Economic and Demographic Research of the Joint Legislative Management Committee, and professional staff of the Senate and of the House or Representatives who have forecasting expertise. This is a consensus conference which meets in public to reach its conclusions (§ 216.134, Fla. Stat.), and may be convened by any one of the four principals (§ 216.137, Fla. Stat.).

Understanding the authority granted in section 216.221, requires an understanding of the revenue estimating process. Section 216.221(2), Florida Statutes, requires that the Governor consult with the Revenue Estimating Conference before he can certify to the Administration Commission that a deficit will occur in the General Revenue Fund. In point of fact, it is in response to the Revenue Estimating Conference's estimate of receipts to the General Revenue Fund that the Governor has certified General Revenue deficits to the Administration Commission on at least the last six occasions:

1. In June 1991, the Administration Commission reduced budgets by $27.4 million in response to a projected deficit in the General Revenue Fund. These reductions included $174,304 allocated to the judicial branch.[4]

2. In March 1991, the Administration Commission used $172 million from the Working Capital Fund in response to a projected deficit in the General Revenue Fund.

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[4]For the purpose of this discussion, Amici Curiae in referring to the judicial branch, include all entities which are included within the judicial branch budget entity. Amici Curiae understand that the entity contains various executive agencies, such as the state attorneys and public defenders.

3. In January 1991, the Administration Commission reduced budgets by $270 million in response to a projected deficit in the General Revenue Fund. These reductions included $2,452,464 allocated to the judicial branch, plus a fund shift from trust funds of $67,325.

4. In October/November 1990, the Administration Commission reduced budgets by $479.9 million in response to a projected deficit in the General Revenue Fund. These reductions included $4,043,728 allocated to the judicial branch.

5. In FY 1989-90, the Administration Commission reduced budgets by $271.6 million in response to a projected deficit in the General Revenue Fund. These reductions included $7.6 million allocated to the judicial branch.

6. In the fall and winter of 1982, the Administration Commission reduced budgets by a total of $325.8 million in response to projected deficits in the General Revenue Fund. These reductions included at least $4.7 million allocated to the judicial branch.

In the 17 years from fiscal year (FY) 1974-75 through FY 1990-91, revenues were below estimates during eight years. In six of those years, the Governor and Cabinet acted to reduce budgets to prevent deficits. The years and amounts involved were:

FY 1974-75	$119.6 million
FY 1975-76	$ 44.6 million
FY 1981-82	$ 31.0 million
FY 1982-83	$325.8 million
FY 1989-90	$271.6 million
FY 1990-91	$791.9 million

In FY 1984-84 and FY 1988-89, revenues were below estimates by one percent or less and budgets were not reduced by the Administration Commission.

This revenue estimating process gives the Legislature notice and the ability to directly participate in the decision that

immediately precedes the Governor certifying a deficit in the General Revenue Fund.

Pursuant to the provisions of section 216.195, Florida Statutes, the Governor and each state agency is precluded from impounding any appropriation except to avoid a deficit, and then only pursuant to the provisions of section 216.221, Florida Statutes. This ensures that the decision to reduce budgets and releases can not be made by an agency or even a single elected official. The Legislature has thus limited the exercise of such authority to the Administration Commission, a body of statewide elected officials.

<u>During Consideration Of The Certified Deficit</u>

During the Administration Commission's deliberations on the General Revenue Fund deficit certified by the Governor, section 216.221(2), Florida Statutes, specifically requires that the Commission be guided by any provision or priority in the general appropriations act related to this section as a method for eliminating the deficit. Additionally, it provides that, absent direction to the Commission in the general appropriations act, the Commission may address the deficit either by reducing all approved state agency budgets and releases or by using the Working Capital Fund established in sections 216.272 and 215.32(1)(c) and (2)(c), Florida Statutes.

During its considerations, the Administration Commission is constrained by section 216.221(2), Florida Statutes. The Legislature has specifically limited its delegation to the

Commission by prohibiting the Commission from reducing approved operating budgets and release authority in order to build the Working Capital Fund above the level established for it at the beginning of the fiscal year. Thus the Administration Commission is constrained to reducing the deficit (either through budget reductions or use of the Working Capital Fund) and no more.

No less than 7 working days prior to its final action, the Commission must submit its proposed plan for budget cuts and use of the Working Capital Fund to the legislative appropriations committees for review and consultation. § 216.221(5), Fla. Stat. The committees are empowered to advise the Commission on its plan. Id. Further, under the provisions of section 216.177(2)(a), Florida Statutes, the consultation required gives the Appropriations Committee Chairs, the Speaker of the House of Representatives, or the President of the Senate, the chance to formally object and require the Administration Commission to act only by an extraordinary vote of two-thirds, which must include the Governor.

During its deliberations, the Commission is limited in the budget reductions it may make in the education area. Section 215.16(2), Florida Statutes, requires that reductions in General Revenue funding to education be in no greater proportion than that for all other appropriations made from the General Revenue Fund.

After Action On The Deficit Is Taken

The Legislature has specifically precluded the Administration Commission from restoring any reduction made in response to a General Revenue deficit without providing notice to the Legislature and providing the Legislature with a 7-day review period pursuant to section 216.177, Florida Statutes, with the same objection procedures set out above. § 216.221(6), Fla. Stat.

B. Section 216.211, Florida Statutes, is consistent with Florida's constitutional separation of powers.

The Court below erred in holding section 216.221, Florida Statutes, unconstitutional. In making its ruling the Circuit Court ignores the exception in the separation of powers clause. Art. II, § 3, Fla. Const. The separations of powers clause permits an entity belonging to another branch to exercise a power appertaining to another branch in limited circumstances when expressly provided under the Constitution. The powers delegated to the Administration Commission pursuant to section 216.221, Florida Statutes, are just such a limited circumstance.

It is beyond dispute that the Constitution Revision Commission of 1965-66 and the Legislature of 1967-68 were knowledgeable about the existence of the Budget Commission and, later, of the State Planning and Budget Commission. The existence of the powers held by the State Planning and Budget Commission were clearly known to the 1967 Legislature which had renamed the Budget Commission as the State Planning and Budget

Commission and renumbered section 215.38, Florida Statutes, as section 216.211, Florida Statutes (1967).

The Constitution itself authorizes the assignment of the functions placed in the Administration Commission, consisting of the Governor and the members of the Cabinet, pursuant to section 216.221, Florida Statutes. This express authorization is contained in Article IV. Section 4(a) of that article provides:

> (a) There shall be a cabinet composed of a secretary of state, an attorney general, a comptroller, a treasurer, a commissioner of agriculture and a commissioner of education. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. (emphasis added)

Section 1(a) of the same article provides, with respect to the governor, that "he shall . . . transact all necessary business with the officers of government." Certainly, transacting business with the other officers of government, as prescribed by a law designed to operationalize the command of the Constitution that the revenues of the state are sufficient to defray the expenses of the state, is within the provisions of Article IV of the Constitution.

That such was contemplated by both the Constitution Revision Commission of 1965-66 which authored these provisions and the 1967-68 Legislature which placed them before the electors as a constitutional revision is clear. First, the same Legislature which had renamed the former Budget Commission the State Planning and Budget Commission placed the revisions that became the

Constitution of 1968 before the voters. Second, the 1969 Legislature, in implementing the mandate that all executive functions be spread among not more than twenty-five departments, replaced the language of s. 216.211, Florida Statutes (1967), with very similar language passed as a part of the Governmental Reorganization Act of 1969. Third, in debating whether to continue with a statewide, elected cabinet and what form the new constitutional language pertaining to it would take, the members of the Constitution Revision Commission of 1965-66 made frequent reference to the collegial boards on which the cabinet officers served, particularly the Budget Commission.[5]

The alternatives considered by the Constitution Revision Commission also seem to indicate some intent to permit the delegation of more than mere executive duties to the Cabinet. The preliminary draft of a proposed revised constitution of Florida dated June 14, 1966, does not contain the language of article IV, section 4(a)[6]. Instead, the draft of June 14, 1966 lists each of the cabinet officers, describes their specific duties, and concludes "[t]hey shall perform such duties and other

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[5]Proceedings of the Constitution Revision Commission of 1965-66, volume 25, p. 444 (Comments of Commissioner Taylor regarding abolition of the elected Cabinet); p. 453-4 (Comments of Commissioner Crews regarding abolition of the elected Cabinet); and, p. 459-61 (Comments of Commissioner Jacobs regarding abolition of the elected Cabinet).

[6]"There shall be a cabinet composed of a secretary of state, an attorney general, a comptroller, a treasurer, a commissioner of agriculture, and a commissioner of education. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law." Art. IV, § 4(a), Fla. Const.

functions provided by law." Preliminary Draft of a Proposed Revised Constitution of Florida Prepared for Use at Public Hearings of The Florida Constitution Revision Commission, art. IV, § 2 (June 14, 1966). Later, the draft of November 10, 1966 changed the section of article IV dealing with the cabinet to include the existing language of article IV, section 4(a), "In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law."[7] A Draft of a Proposed Revised Constitution of Florida, art. IV, s. 2 (Released November 10, 1966).

That the provisions describing the powers to be exercised and the duties to be performed by the Cabinet, collectively and individually, under the Constitution of 1968, are intended to permit the exercise of authority such as that granted by section 216.221, Florida Statutes, is even more evident when considered in light of similar provisions in the Constitution of 1885 and the interpretations relating to separation of powers and the Governor and Cabinet under the former provisions. Similar to article II, section 3 of the 1968 Constitution, the 1885 Constitution provided that "[n]o person properly belonging to one of these departments shall exercise any powers appertaining to either of the other departments, except in cases expressly provided by this constitution." Florida's constitutions previous

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[7]This draft and the final recommendation of the Constitution Revision Commission of 1965-66 placed the section dealing with the Cabinet in article IV, section 2. The Legislature placed these provisions in article IV, section 4.

to the Constitution of 1885 have each contained similar provisions.[8]

Under the 1885 document, the Cabinet did not appear as a substantive part of the Constitution. The term cabinet appeared for the first time in the 1941 revision or codification of the 1885 Constitution and was used only as a publisher's or codifier's heading for several sections of Article IV. Attorney General Opinion 67-054 (August 14, 1967). The 1885 Constitution provided that the governor be assisted by a group of administrative officers. Specific duties were provided in the Constitution for each of the six cabinet officers. In addition, the descriptions of the duties for each of the cabinet officers, except those of the treasurer, called for each officer to perform such other duties as are provided by law. Fla. Const. of 1885, art. IV, §§ 21, 22, 23, 24, 25, and 26. In 1920, the Supreme Court found that the Legislature could assign additional duties to the treasurer, even though the Constitution did not specifically authorize it, stating:

> The Legislature, having all the law-making power of the state that is not withheld by the Constitution, may prescribe duties to be performed by officers expressly provided for by the Constitution, in addition to the duties of those officers that are defined in the Constitution, where not forbidden by the organic law; and the Constitution does not withhold from the Legislature the power to prescribe additional duties to be performed by the state treasurer, or others of "the

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[8]Fla. Const. of 1838, art. II, s. 2.; Fla. Const. of 1861, art. II, s. 2; Fla. Const. of 1865, art. II, s. 2; and, Fla. Const. of 1868, art. III.

> administrative officers of the executive department," that are not inconsistent with their duties as defined by the Constitution; and such duties may be to act as members of boards and commissions in conjunction with other officers who are provided by statute - the commissions issued to constitutional officers being sufficient to cover any duties imposed on them by law.

Whitaker v. Parsons, 80 Fla. 352, 354, 86 So. 247, 251 (1920). The Court in Whitaker also pointed out that numerous other boards included cabinet members and that legislation creating boards that included cabinet officers had existed for years "of unchallenged interpretation of the Constitution of the law-making power of the state, which would be persuasive in construction, if doubt existed as to the validity of such enactment." Id. at 252.

The 1885 Constitution, like the 1968 Constitution, committed control of making appropriations to the legislative branch of government. Under both the 1885 Constitution and the 1968 Constitution, appropriations could only be made by law. Article IX, section 4, of the 1885 Constitution, like article VII, section 1, of the 1968 Constitution, required, "No money shall be drawn from the Treasury except in pursuance of appropriations made by law." The object of this provision was:

> to prevent the expenditure of public funds already in the treasury, or potentially therein from tax sources provided to raise it, without the consent of the public given by their representatives in formal legislative acts. Such a provision secures to the Legislature (except where the Constitution controls to the contrary) the exclusive power of deciding how, when and for

> what purpose the public funds shall be applied.

State ex rel. Kurz v. Lee, 121 Fla. 360, 163 So. 859, 868 (1935) (interpreting the provision in the 1885 Constitution) (emphasis added).

It is against this background that the Supreme Court upheld in 1946 a statute authorizing the Budget Commission to provide additional funds to a tentative building program which had been appropriated the sum of $3 million. State ex rel. Caldwell v. Lee, 157 Fla. 773, 27 So. 84 (1946). Specifically, the Budget Commission was

> authorized and directed to examine into the funds of the state and funds and appropriations balances of state departments, boards, commissions, institutions and other state agencies from time to time to ascertain what surplus or balance, if any, will remain in any of said funds after the needs of the state and its agencies are provided for without interfering with the operations thereof and their normal services to the public, or hindering their normal carrying out of all duties imposed by law and the efficient conduct of their business. When such ascertainment and determination shall have been made, the said budget commission, by and with the approval of the governor, shall set aside timely for the purpose hereof such funds as the said budget commission determine as the unneeded balance or surplus, and shall cover the same into the state building fund to become a part thereof for use in providing suitable accommodations for such state agencies. Thereupon such monies shall be are they are appropriated to the purpose herein, available in like manner as moneys appropriated in section 1.

Ch. 22820, §2 (1945).

The Court found that no unlawful delegation had taken place because the Budget Commission's powers were limited to ascertaining whether or not surplus balances existed saying that the Act appropriates them and makes them available in like manner to the moneys appropriated elsewhere in the Act. State ex rel. Caldwell v. Lee, supra at 87. The Court added, "There is no line demarking the legislative, executive, and judicial powers in our scheme of constitutional government, though it is well known in many instances these powers overlap." Id. at 87. The Court found that, "Some discretion must be vested in those who execute large plans for public benefit (when ample safeguards are provided). So long as it is for a lawful public purpose, the Legislature has absolute power over the purse." Id. Finally, the Court found that "[t]he duties of the Comptroller as a member of the Budget Commission fall in the category of 'such other duties as may be prescribed by law.'" Id. at 88.

Thus it is clear that under the 1885 Constitution, the Governor and cabinet members, as the Budget Commission, could constitutionally exercise discretion, with appropriate safeguards, with regard to matters affecting the budgets of state agencies. The provisions establishing the cabinet as a collegial body to act with the Governor are far more explicit in the 1968 Constitution that under its predecessor. Additionally, the provisions of each document regarding separation of powers are virtually identical. Finally, given the facts that the Legislature renamed the Budget Commission shortly before placing

the constitutional revision before the voters which became the 1968 Constitution and that in 1969, in implementing the mandates of that new constitution, the Legislature carefully crafted a governmental reorganization act which empowered an administration commission with functions and powers remarkably similar to those exercised by the Budget Commission for thirty-five years, it is patently obvious that in exercising its powers as the Administration Commission under section 216.221, Florida Statutes, the governor and cabinet are acting within the four corners of the 1968 Constitution. As this Court observed in 1935:

> in construing a statutory or constitutional provision for the purpose of ascertaining and determining its intent and purpose, and legal effect, it is always permissible to look at the history of the constitutional or statutory provision involved to determine its proper construction. (citations omitted) It has likewise been held permissible to examine in the same spirit and for the same purpose the contemporaneous construction or interpretation that has been placed on a provision of the Constitution by affected officials of the state . . . charged with the duty of interpreting and observing it, in order to ascertain what judicial construction should be followed when they become involved in a controversy brought in the courts affecting same.

State ex rel Kurz v. Lee at 862-63 (citations omitted) (Emphasis added).

With respect to the 1991 General Appropriations Act, the Legislature has decided how, when, and for what purposes, the $29,352,859,859 appropriated in Chapter 91-193 will be spent. The

amounts appearing in the 1991-92 General Appropriations Act are maximum appropriations for each item, based upon the collection of sufficient revenues to meet and provide for such appropriations. § 216.221(1), Fla. Stat. Florida's Constitution forbids deficit spending. Art. VII, § 1(d), Fla. Const. Section 216.221, Florida Statutes, implements this constitutional mandate. Therefore, it is the duty of the Governor, as chief budget officer, to "ensure that revenues collected will be sufficient to the meet the appropriations and that no deficit occurs in any state fund." § 216.221(1), Fla. Stat.

C. Section 216.221, F.S., does not delegate to the Administration Commission the making of Appropriations.

The order below invalidated section 216.221, Florida Statutes, as an unconstitutional delegation of the Legislature's exclusive power to fashion Florida's budget. Judgement Declaring Certain Statutes Unconstitutional and Prohibiting Administration Commission From Reducing Budget, p. 2. Under section 216.221, Florida Statutes, the Administration Commission is authorized only to "reduce all approved state agency budgets and releases by a sufficient amount to prevent a deficit in any fund. §216.221, Fla. Stat., as amended by s. 21, Ch. 91-109, Laws of Fla. An approved agency budget is "the plan of operations consisting of the original approved operating budget and statement of intent." § 216.011(2)(a), Fla. Stat. (1989). The original approved budget is "the approved plan of operation of an agency consistent with the General Appropriations Act." § 216.011(1)(x), Fla. Stat. (1989). The original approved budget is not the General

Appropriations Act nor is it an appropriation. The general appropriations act is an act passed by the Florida Legislature which has become a law with the approval of the Governor, without the approval of the Governor or over the veto of the Governor by further action of the Legislature, consistent with the Constitution.

Chapter 216 defines the appropriations act as "the authorization of the Legislature, based upon legislative findings of necessity for an expenditure when no legislative budget is filed, for the expenditure of money by an agency and the legislative branch for stated purposes in the performance of functions it is authorized by law." § 216.011(1)(c), Fla. Stat. An appropriation is "a legal authorization to make expenditures for specific purposes within amounts authorized in the General Appropriations Act." § 216.011(1)(b), Fla. Stat. (1989).

The Court has recognized the difference between a disbursement and an appropriation:

> There is pronounced distinction between the appropriation, or setting aside of a sum of money for a particular thing, and the actual disbursement of funds to meet a particular object of such appropriation.

State ex rel. Kurz v. Lee, at 868.

Chapter 216 makes a further distinction. The Legislature enacts a general appropriations act consisting of specific appropriations. The general appropriations act is considered to be the original approved operating budget for operational and other expenditures. § 216.181(1), Fla. Stat. (1989).

Disbursements are necessarily made pursuant to the approved operating budget. As agency transfers are made pursuant to chapter 216 and as other events occur throughout the fiscal year, the original approved operating budget is necessarily changed. However, the general appropriations act does not change. Changes to the general appropriations act can be made only by the Legislature.

As has been clear for almost seventy years, all appropriations are maximum appropriations. § 216.221, Fla. Stat. Nothing in either chapter 216 or the Constitution mandates an agency to expend every last cent of its appropriations. However, to effectuate the legislative intent in making appropriations, chapter 216 forbids impoundment of lawfully made appropriations, except as provided in section 216.221. The only circumstance that triggers the operation of section 216.221, Florida Statutes, is the anticipation, by very sophisticated means established in Chapter 216, of a constitutionally prohibited deficit. Section 216.221, Florida Statutes, is the reasonable means the appropriating power has chosen to effectuate this constitutional mandate.

IV. SECTION 216.221, FLORIDA STATUTES, IS ESSENTIAL TO MAINTAINING THE ONGOING OPERATION OF GOVERNMENT, CONSISTENT WITH THE OVERALL PLAN FOR REPRESENTATIVE GOVERNMENT EMBODIED IN THE FLORIDA CONSTITUTION.

Amici does not contend that the grant of power under section 216.221, Florida Statutes, places an exclusive authority in the Administration Commission to reduce approved operating budgets in the event of a revenue shortfall. Clearly, under its

constitutional authority to enact laws, the Legislature may choose to remedy the problem through the enactment of further laws. This may be accomplished through the convening of a special legislative session for the purpose of legislatively enacting reductions in the Appropriations Act necessary to balance the state budget, even where the Administration Commission complies with the provisions of section 216.221, Florida Statutes. The lower court in noting this authority, errs, however, in seeing the Legislature's appropriations authority as the exclusive remedy, rather than as an alternative remedy.

Pursuant to the provisions of Article III, Section 3, of the Florida Constitution, as further implemented by sections 11.011 and 11.012, Florida Statutes, a special session could be convened by the Governor, by the Legislature's presiding officers, or by the membership of the two houses upon the request of only 32 of the 160 members of the Legislature. As of the filing of this brief, the authority to convene a special session has not been exercised.

That the Governor and the Legislature have, thus far, not chosen to preempt the Administration Commission in the exercise of its authority is understandable, however, nothing prevents the Governor or the Legislature from calling a special session subsequent to action by the Administration Commission. The executive branch is designed, both in terms of its constitutional powers and of its structure, to handle day-to-day operations and

to adopt and implement short-term solutions. The Legislature, on the other hand, is better suited to addressing budgetary concerns from a long-term perspective.

To call a special session each time a revenue shortfall is projected, where an alternative remedy is available, would serve little purpose and would contravene the clear intent of the Florida Constitution that the legislative branch remain a part-time body. This effect is even further exacerbated if one accepts the theory espoused by the Circuit Court that the authority to fashion Florida's budget is exclusive to the legislature and may not be delegated to the executive or the judiciary. Such a theory, carried to an extreme, would prohibit the Legislature from delegating the authority to approve budget amendments, to approve the implementation of new programs during a fiscal year, and to move funds within a budget entity from one line item to another.[9] If each of the budget amendments to the approved budgets of government must be approved by the Legislature and if no discretion may be given to executive or judicial agencies to move funds within their departments, as suggested by the ruling of the lower court, then the promotion of an orderly and economically efficient government would clearly require the Legislature to be in session on at least a monthly, if not weekly basis, for the sole purpose of approving minor

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[9]The court below did not limit its order to the application of Section 216.221, Florida Statutes. In issuing its restraining order, the court prohibited the Governor and Cabinet from "attempting to cut the budget (or take any other action) pursuant to the budget reduction procedure established in chapter 216."

budgetary alterations. Such cannot have been intended by the citizens of this state.

Amici are concerned that the court below, in essentially calling for the convening of a special session, has substituted its political judgment for that of the Governor and Legislature, who have the exclusive right to determine if, when, and for what purpose, a special session should be convened. As the two principal players in the adoption and approval of legislation, the Governor and the Legislature are in the best position to determine whether the convening of a special session would, in fact, lead to solution or to stalemate. As the representatives of the people, they are best able to forge the political consensus needed to address the problems which must be faced; they are also in the best position to know when such a consensus can be reached.

To await the development of a consensus sufficient to warrant the calling of a special session, or to await the convening of a regular session, before addressing the revenue shortfalls, will simply result in an even more devastating impact on governmental operations and services. Making the necessary budgetary reductions at a later date will decrease the remaining time within the fiscal year over which the reductions may be spread. To delay action is to increase the percentage cut that each entity must take in its then remaining appropriation authority. If the state is to minimize the impact on services, executive and judicial operations, and grants to local

governments and school boards, it must act quickly. To delay action is to invite disaster.

V. THE TRIAL COURT ERRED IN FINDING THAT VENUE WAS PROPER IN DADE COUNTY RATHER THAN WHERE THE GOVERNOR AND CABINET RESIDE

Amici feel compelled to address the trial court's finding of venue because a substantially different result might have been obtained had the action been brought in a venue where the courts are more familiar with the affairs of state government.

Section 47.011, Fla. Stat. (1989), provides the statutory prescription for where a lawsuit may be brought.

> Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located . . .

The statute's meaning is clear, positive and an expression of legislative discretion that cannot be rewritten by the courts. Copeland v. Copeland, 53 So.2d 637, 638 (Fla. 1951).

In this case, the Defendants' residence is a matter of state constitutional law. The Defendants are the Governor and Cabinet sitting as a collegial body -- the Administration Commission. Article II, section 2, of the Florida Constitution provides that "[t]he seat of government shall be the City of Tallahassee, in Leon County, where the offices of the Governor, lieutenant governor, cabinet members and the supreme court shall be maintained and the sessions of the Legislature shall be held...." It is in fulfillment of this constitutional provision that all of

the Defendants are headquartered in the Capitol in Tallahassee. McCarty v. Lichtenberg, 67 So.2d 655 (Fla. 1953). Admittedly, each department has field offices outside of Tallahassee. However, the long established common law of Florida is this: Venue in civil actions brought against the state or one of its agencies properly lies in the county where the state or agency maintains its principal headquarters. Smith v. Williams, 35 So.2d 844 (Fla. 1948); Star Employment Service, Inc. v. Florida Industrial Commission, 122 So.2d 174 (Fla. 1960); Carlile v. Game & Fresh Water Fish Commission, 354 So.2d 362 (Fla. 1977). Furthermore, while each cabinet member-headed agency has field offices in other cities, the Administration Commission is exclusively located in Tallahassee. The Administration Commission does not have any offices or staff, or conduct any official business, outside of Tallahassee. Therefore, any lawsuit brought on the basis of where the Defendants reside must be brought in Leon County because each cabinet member individually, as well the group collectively, has its principal headquarters in Tallahassee.

This venue law is not without good reason. It "promotes the orderly and uniform handling of state litigation and helps to minimize expenditure of public funds and manpower." Carlile, 354 So.2d at 364.[10]

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[10]Indeed, it would be ironic if in severe budget times like these, this long-standing venue policy were judicially abandoned in a case involving budget cuts and the Administration Commission was required to defend its actions in sixty-seven different counties.

Nor can it be said that a cause of action arose in Dade County. The cause of action was for a declaratory judgment that the Administration Commission's imminent action in Tallahassee was unconstitutional because the state's budget law, Chapter 216, was an unlawful delegation of legislative authority. Whatever the merits of the lawsuit, since all of the Administration Commission's activity takes place in Tallahassee, any cause of action must accrue here. It simply will not do to allege some generalized effect from Administration Commission actions in order to say that a cause of action accrued elsewhere.

Further evidence that a cause of action did not arise in Dade County can be discerned from a review of the trial court's order. No specific conduct in Dade County was found. Rather, the trial court enjoined the Administration Commission from taking action at its scheduled meeting.[11]

In the face of this overwhelming body of law, the Plaintiffs urged, and the trial court relied upon, the narrow and infrequently applied "sword-wielder" exception. The sword-wielder doctrine is a narrow exception that allows a suit to be brought where the plaintiff is affected if there is an invasion of or threatened invasion of constitutional rights by agency

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[11]Plaintiffs warned the trial court that the budget cuts were scheduled for Tuesday, October 22nd, only five days after the hearing below. Implicit in the warning, of course, was the fact that the action would take place in Tallahassee at the Administration Commission's duly noticed meeting. (Transcript of Hearing, P. 4). The trial court enjoined Administration Commission action. Which, as stated above and acknowledged by Plaintiffs and the trial court, occurs in Tallahassee. (Final Judgment, P. 3).

action and where the validity of the rules and regulations is a secondary issue. Smith, 35 So.2d 844; Henderson v. Gay, 49 So.2d 325 (Fla. 1950); Carlile, 354 So.2d at 365 (where this Court approved of the statement that the exception only applies "[u]nder exceptional circumstances"). In Smith, this Court distinguished between two classes of cases:

> The first is the type or class in which the primary purpose of the litigation is to obtain a judicial interpretation or a declaration of a party's rights or duties under the rules and regulations, where no unlawful invasion of a lawful right secured to the plaintiff by the Constitution or laws of the jurisdiction is directly threatened in the county where suit is instituted.
>
> The second is the type or class in which the primary purpose of the litigation is to obtain direct judicial protection from an alleged unlawful invasion of the constitutional rights of the plaintiff within the county where the suit is instituted because of the enforcement or threatened enforcement by a state agency of rules and regulations alleged to be unconstitutional as to the plaintiff, and where the validity or invalidity of the rules and regulations sought to be enforced comes into question only secondarily and as incidental to the main issue involved.

35 So.2d at 846, 847.

Florida courts have applied this doctrine in cases where an existing constitutional property or liberty interest was directly affected by an overt act of the state, e.g., an attempt to levy upon property for nonpayment of a tax levy. Cf. Department of Revenue v. First Federal Savings & Loan Association of Fort Myers, 256 So.2d 524 (Fla. 2d DCA 1971). The courts have refused to apply the doctrine where there was no overt act by the state

that directly affected the plaintiffs where they lived. As the court in First Federal Savings & Loan Association of Fort Myers stated:

> We understand Florida law to be that absent a waiver, the state or any of its agencies may be sued in a county other than that which is the situs of its official headquarters only when the official action complained of has in fact been or is being performed in the county wherein the suit is filed, or when the threat of such action in said county is both real and imminent.

256 So.2d at 525, 526, (Citations omitted) (Emphasis added).

In short, the minimum state conduct is "sword wielding" not "sabre rattling" and there must be an existing constitutional property or liberty interest directly affected. An existing property or liberty interest is some ownership, entitlement or freedom that the state's action directly threatens to take away.

Review of four cases is sufficient to illustrate how the doctrine is applied. For example, in Green v. Bob Louri Films, Inc. 133 So.2d 431 (Fla. 3d DCA 1961), the court held that venue was only proper in Leon County since the Comptroller had threatened, but not initiated, action to seize and sell property in Dade County.

Similarly, in Gauldin v. Gay, 47 So.2d 580 (Fla. 1950), the plaintiff was denied venue outside Leon County. In that case, the legislature had changed the sales tax law. The plaintiff challenged the law before it became effective and therefore

before the point in time that the Comptroller had the power to seize property or initiate prosecution.[12]

Again, in First Federal Savings & Loan Association of Fort Myers, 256 So.2d 524, the court held that formal notice assessment and demand were not sufficient state agency action for venue to be outside of Leon County.

Perhaps the most analogous situation involved the Governor and Cabinet sitting as another collegial body, the Board of Trustees of the Internal Improvement Trust Fund. In East Coast Grocery Co. v. Collins, 96 So.2d 793 (Fla. 1957), this Court ruled that a lawsuit against the Board must be maintained in Leon County. The Court rejected the plaintiff's claim that constitutional rights were being denied. It described the suit as follows:

> We consider the suit principally one to secure a restraining order against the Trustees . . . The appellant will suffer no loss, but merely inconvenience, by being required to litigate in the County of Leon instead of the County of St. Lucie and this is a bother he must undergo as a contribution to the orderly, economical, expeditious disposition of the state's business.

Id. at 795. Applying the holdings of these cases to the situation at hand would require that Plaintiffs meet a four-part test.

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[12]It would be a strange twist in logic if the Comptroller could be sued only in Leon County, but suits against the Administration Commission could be filed anywhere in the state.

First, Plaintiffs must allege an unlawful invasion of their constitutional rights in Dade County. Plaintiffs' explanation in the hearing below was as follows:

> They [Plaintiffs] are based in Dade County. They belong in Dade County. They live in Dade County. It is here in Dade County where their rights will be trampled by the executive branch of their government.

(Transcript of Hearing P.48.).

Since, the Plaintiffs did not make this allegation, they failed the first requirement. Of course, the allegation was not available to Plaintiffs because no action was being taken in Dade County. All they could say was that they lived in Dade County. The Administration Commission has not made any overt or sword-wielding behavior that justified its venue privilege being denied.

Second, the Plaintiffs have not alleged or proved[13] that they are directly denied freedom, entitlement or property.[14] The lower court's order describes the constitutional deprivation this

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[13]There was no fact finding below. There weren't any sworn statements or witnesses offered in support of the Plaintiffs' allegations. Clearly, this is a significant defect which this Court should consider in reviewing all the procedural and substantive questions raised on appeal.

[14]One of the most curious contradictions in Plaintiffs' position is this: For the purposes of venue, they are being denied a liberty or property interest. For the purposes of invalidating Chapter 216, however, there was an unlawful delegation. Plaintiffs insist that only the Legislature may cut the judicial branch's budget; only the Legislature may violate those constitutional guarantees they allege. This contradiction makes plain there was no invasion of Plaintiffs' property or liberty interest in Dade County. The wrong, if one exist, is in terms of an unlawful delegation for which venue is in Tallahassee.

way: "There is a genuine threat of infringement of the constitutional rights of the plaintiffs who are innocent children trying to protect themselves from the overwhelming power of the state." (Final Judgment, P. 2). The lower court never identified the constitutional rights being trampled upon. All the trial court really found or described was the harm that all taxpayers feel when there has been an unlawful delegation of legislative authority. While Plaintiffs could have had standing as citizens and taxpayers, they would have had to file in Leon County because a good faith claim to venue in Dade County could not have been made.

Third, there is no imminent deprivation. Announcements or, better yet, predictions that budget cuts are being considered for a particular program constitute mere speculation and do not rise to the level of invading or threatening constitutional rights so that venue may lie outside Tallahassee.[15] Statements by individual members of this collegial body - the Administration Commission -in advance of formal action do not constitute sword-wielding by the whole body. A long series of events must come true before there can be any effect on Plaintiffs. The last event in the series would be that the court-appointed guardian ad litem would be removed. There was no evidence presented as to

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[15]The first thing that must occur is that the Administration Commission must meet and then agree on which programs should be cut and in what amounts. Any observer of the cabinet system of state government can testify that the outcome would be, at best, uncertain.

the probability of this occurring, let alone all the other events that must precede it.

Fourth, the challenge to the validity of the rule sought to be enforced by the agency must "come into question only secondarily and as incidental to the main issue involved." Here, the Plaintiffs did not challenge the rule as secondary to the main issue. It is the main issue.[16] The entire basis of the lawsuit is to have Chapter 216 invalidated.

In sum, venue is not a hyper-technical requirement adhered to for the purpose of tripping unsuspecting plaintiffs. Rather, it serves the administration of justice by providing for an orderly distribution of cases. In cases involving the state, venue provides for orderly, economical, expeditious disposition of the state's business. It also allows for a more uniform body of law involving the business of state agencies. The cost to plaintiffs, of course, is inconvenience. However, it is the longstanding policy of this state to require inconvenience instead of suffering the vagaries of lawsuits all over the state. While forum shopping is permissible to the extent venue is

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[16]At the hearing below, Plaintiffs' Attorney Gievers introduced the matter as follows: "We are here today, Your Honor, on the children's complaint for declaratory relief and for an emergency restraining order. We are looking particularly to two statutes on which the governor and other defendants are relying with respect to their proposed budget cuts." (Transcript of Hearing, P. 8,9). The Court has summarized this aspect of the law: "[a] state agency with headquarters at the seat of government in Tallahassee has the privilege of demanding that suit be brought against it there in any situation involving a construction of the rules or regulations of the agency." Star Employment Services, Inc., 122 So.2d at 177.

proper, venue should not be expanded in a particular case so that a more amenable forum might be found.

CONCLUSION

As individual members of the Florida Legislature, amici have long regarded the separation of powers as an essential element to protecting the citizens of Florida from the tyranny of one person or one governmental branch exercising unbridled control over their lives and their destinies. Like others involved in government, they have observed firsthand the wisdom of providing a system of checks and balances and of limiting the authority of government officials; they have seen our system flourish while totalitarian governments around the world collapse. They do not take this case, or any other case involving the exercise of governmental authority lightly.

If amici believed that this case involved an attempt by the executive branch of government to amass authority granted by the people to the legislative branch, the appellees would not have had to file their action; amici would have done it for them. This, however, is not such a case. Rather, in respect to the question of separation between the executive and legislative branches, this case involves a statutory scheme which permits the reasonable exercise of appropriately shared authority between the executive and legislative branches. The need to maintain a balanced budget is one which is strongly ensconced in Florida's

history; it is a protection for the public, and particularly for future generations, which must be guaranteed to the greatest extent possible. Section 216.221, Florida Statutes, provides the framework for such protection.

As a matter of policy and law, amici believe that the order of the court below should be reversed because section 216.221, Florida Statutes, is constitutional and because venue for this case properly lies in Leon County.

Respectfully submitted,

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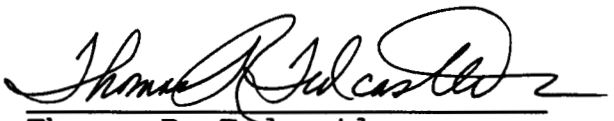
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail this 25th day of October, 1991, to Karen A. Gievers, Esq., 750 Courthouse Tower, 44 West Flagler Street, Suite 750, Miami, Florida 33130, and Louis F. Hubener, Assistant Attorney General, Department of Legal Affairs, Suite #1501, The Capitol, Tallahassee, Florida 32399-1050.



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