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001 25 1991
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

LAWTON CHILES, ETC., ET AL.,

Petitioners,

vs.

Case Number: 78,792

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

Respondents.

_____ /

BRIEF OF AMICI CURIAE

FLORIDA TEACHING PROFESSION-NATIONAL EDUCATION
ASSOCIATION (FTP-NEA)

AND

FLORIDA EDUCATION ASSOCIATION/UNITED (FEA/U)

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I.
STATEMENT OF INTEREST

The Florida Education Association/United, American Federation of Teachers (hereinafter referred to as "FEA/U") and the Florida Teaching Profession-National Education Association (hereinafter referred to as "FTP-NEA") are unincorporated associations comprised of public education employees who are employed within the sixty-seven school districts, the Community Colleges and State University System throughout the State of Florida.

FEA/U and FTP-NEA have combined membership in excess of 125,000 employees and in the exercise of their collective bargaining representational duties, represent in excess of 225,000 education employees employed within the Kindergarten through twelfth grade and higher educational institutions.

The FTP-NEA and the FEA/U and their members and the persons they represent are profoundly and directly impacted by the actions of the Administration Commission undertaken on October 22, 1991.

As part of the \$579 million total State budget reduction undertaken by the Administration Commission under the putative authority of Section 216.221, Florida Statutes (1989), the Administration Commission withheld monies from the funding of K-12 school operation (\$211,992,056), the community colleges (\$21,808,946) and the State University System (\$45,141,507) totaling \$278,942,509 of reductions. As a direct result of such action, individuals represented by the FEA/U and FTP-NEA are suffering a diminution in the wages and terms and conditions of employment accorded them, being required to teach in overcrowded classes and being deprived of adequate supplies and equipment to perform their jobs effectively.

Pursuant to Article IX, Section 1 of the Constitution of Florida, the Legislature of Florida is required to provide a uniform system of free public schools and to provide for the operation

of institutions of higher learning such as the people of the State may require. Article IX, Section 4(b) of the Constitution of Florida creates elected school boards charged with the operation, control and supervision of the public schools and invests them with constitutional and statutory powers regarding the funding needs of the school districts.

Pursuant to Article I, Section 6 of the Constitution of Florida, the employees represented by the FTP-NEA and the FEA/U are constitutionally guaranteed the right to bargain collectively on all matters relating to the wages, hours and terms and conditions of employment accorded by the respective school districts.

The action undertaken by the Administration Commission, in addition to violating the separation of powers requirement of Article II, Section 3 of the Constitution of Florida, also exceeds the express statutory authorization set forth in Chapter 216, Florida Statutes (1989), and offends the express language of Article IX, Section 1 of the Constitution of Florida investing the Legislature with sole powers relating to educational funding.

II. SUMMARY OF ARGUMENT

The amici curiae contend that the action of the Administration Commission undertaken on October 22, 1991, cannot be sustained on three separate bases.

First, the express grant of authority to the Florida Legislature set forth in Article IX, Section 1 of the Constitution of Florida requiring it to establish and maintain a system of public schools and institutions of higher learning constitutes an express selection by the people of the State of Florida of the branch of government to whom decisions regarding public school financing have been delegated. A legislative attempt at delegation such as is set forth in Section

216.221, Florida Statutes (1989), offends the express grant of authority set forth in Article IX, Section 1 of the Constitution of Florida and therefore is unconstitutional.

Second, the School Districts of the State of Florida created within Article IX, Sections 1 and 4 of the Constitution of Florida are not agencies of government as defined in Section 216.011(II), Florida Statutes (1989), and therefore, the powers claimed by the Administration Commission expressed in Section 216.221, Florida Statutes (1989), do not on their face authorize the Administration Commission to take action to reduce school district budgets since the budgets of constitutionally created school districts are not "approved State agency budgets" which Chapter 216 attempts to regulate.

Third, the delegation of appropriation authority purportedly made in Section 216.221, Florida Statutes (1989), is clearly repugnant to the separation of powers requirement expressed in Article II, Section 3 of the Constitution of Florida, establishing three branches of government.

For any or all of the foregoing reasons, the action of the Administration Commission was in direct violation of constitutional provisions and cannot be sustained. Accordingly, the amici curiae urge the Court to affirm the decision of Judge Ferro entered in this cause below.

III.
ARGUMENT

A.

The Florida Constitution Directly Delegates to the Florida Legislature the Requirement for Establishment of a Uniform System of Free Public Schools and the Operation of Institutions of Higher Learning

The people of the State of Florida since 1868 have in their Constitution directly delegated to the legislative branch of government the authority and duty to operate the public schools.

Thus, Article VIII, Section 2 of the Constitution of 1868 provided:

The Legislature shall provide a uniform system of common schools, and a university, and shall provide for the liberal maintenance of the same, instruction in them shall be free.

The constitutional revision in 1885 carried forward a similar delegation and thus provided in Article XII, Section 1:

The Legislature shall provide for a uniform system of public free schools, and shall provide for the liberal maintenance of the same.

When the Constitution was revised in 1968, although the wording was modified, once again the people delegated to the Legislature the duty to operate a system of public schools.

Thus, in Article IX, Section 1, Constitution of 1968, it is provided:

Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

It is the unambiguous will of the people that the legislative branch is the agency of government granted the power to regulate the funding of public schools. In United Teachers of

Dade, etc. v. Dade County School Board, 472 So.2d 1269 (Fla. 1st DCA 1985), aff'd 500 So.2d

508 (Fla. 1986), the Court recognized such grant of authority to the Legislature holding:

There can be little doubt that the Florida Legislature has the predominant role in Florida's scheme of public education. It must make "adequate provision by law" - "as the needs of the people may require" and appropriate funds for the "support and maintenance of free public schools."

Id p. 1270.

The Court noted further that

It is axiomatic that the Legislature and the State Board of Education, the latter acting at the direction of the former, subject only to constitutional limitation, have the constitutionally mandated authority, indeed the responsibility, to unilaterally establish, in the public interest, uniform statewide standards of quality for Florida's public school system. (Emphasis added)

Id

The First District, as well as this Court in affirming the decision, recognized that the executive branch of government [the State Department of Education acting pursuant to its powers conferred by Section 20.15, Florida Statutes (1989)] may only act "at the direction of" the Legislature in matters relating to the funding and operation of public schools.

It has been repeatedly recognized that the Constitution permits only the Legislature to determine issues relating to funding of public schools. In United Faculty of Florida, etc. v. Board of Regents, 365 So.2d 1073 (Fla. 1st DCA 1979), the Court noted:

Article VI, Section 1(c) of the Florida Constitution dictates that "[n]o money shall be drawn from the treasury except in pursuance of appropriation made by law." That provision, and the vesting of "the legislative powers of the State" in the Florida Legislature by Article III, Section 1, renders the appropriation of State funds the exclusive constitutional prerogative of the Legislature. (Emphasis added)

Id p. 1074.

Thus, in the instance of public schools, in addition to the general prohibition against delegating such function, the Constitution in Article IX, Section 1 makes an express grant to the Legislature of funding decisions. The usurpation of authority by the Administration Commission purporting to alter legislatively determined budget decisions violates fundamental constitutional precepts. As held in FTP-NEA v. Turlington, 490 So.2d 142 (Fla. 1st DCA 1986):

The constitutional prohibition against the unlawful delegation of legislative authority is designed to prevent the exercise by anyone but the Legislature of the sovereign power to enact laws. It is also designed to safeguard against the exercise of unrestricted discretion in the application of the law by an administrative agency charged with this enforcement.

Id p. 146.

B.

Section 216.221, Florida Statutes (1989), Which Authorizes the Administration Commission to Reduce "All Approved State Agency Budgets" Does Not Allow the Commission to Reduce School Board Budgets

In the event that Section 216.221, Florida Statutes (1989), is not declared facially unconstitutional as an unlawful delegation of legislative power, it is the position of the FTP-NEA and FEA/U that this statute cannot be interpreted to grant the Administration Commission the ability to reduce school board budgets. Section 216.221 authorizes the Commission to reduce "all approved state agency budgets." State agency is defined as

. . . any official, officer, commission, board, authority, council, committee, or department of the executive branch, or the judicial branch, as herein defined, of state government.

Section 216.011(1)(II), Florida Statutes (1989).

School boards are not State agencies of the executive branch or judicial branch of State government. School boards are constitutionally created entities which are required by the Constitution to "operate, control and supervise all free public schools within the school district.

..."¹

In order to fulfill their constitutional obligation, school boards have been granted the statutory power to take steps to assure children adequate educational opportunities. School boards have the ability to levy taxes to raise revenue for their operation of schools within their district.² School boards employ necessary personnel and contract for goods. School boards must prepare, adopt and submit to the Department of Education an annual school budget.³

In addition to the funds raised locally by school districts, the Legislature annually appropriates money in the general revenue fund to be used for financing public education. The Legislature is constitutionally required to make adequate provision for a uniform system of free public schools.⁴ The Legislature has enacted statutes which determine how much general state revenue each district receives.⁵ In addition, the Legislature created the Department of Education, headed by the State Board of Education, as part of the executive branch to "insure the greatest possible coordination, efficiency, and effectiveness of Kindergarten through twelfth grade education."⁶

¹ Article IX, Section 4, Florida Constitution.

² Article IX, Section 4, Florida Constitution.

³ Section 230.23(10), Florida Statutes (1989).

⁴ Article IX, Section 1, Florida Constitution.

⁵ See, generally, Chapters 234, 235 and 236, Florida Statutes (1989).

⁶ Section 20.15(4)(a), Florida Statutes (1989).

In sum, the Legislature annually appropriates funds to provide for the financing of education and funnels this money, for administrative purposes, through the Department of Education to the individual school districts. The school boards, which are distinct constitutional entities - not State agencies, then administer those funds in accordance with their adopted budgets and negotiated collective bargaining agreements.

The Administration Commission, which purported to reduce the budget of the Department of Education has, in actuality, attempted to reduce the budgets of the sixty-seven school districts in the State of Florida. Section 216.221, Florida Statutes (1989), cannot be interpreted so broadly.

C.

Florida's Constitution Vests all Affirmative Lawmaking and Appropriation Powers in the Legislative Branch of Government

Article II, Section 3, of the Florida Constitution divides the powers of State government among legislative, executive and judicial branches and further states that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

All lawmaking power in Florida is vested in the Legislature. Article III, Section 1, Florida Constitution. Article VII, Section 1(d) of the Florida Constitution requires that provisions be made by law for raising sufficient revenues to pay the expenses of the State. Thus, the Legislature has the duty to appropriate the funds necessary to meet the State's obligations. Constitutionally, legislative control over appropriations is limited by the Governor's power to

veto bills and to selectively veto portions of general appropriations bills. Article III, Section 8, Florida Constitution; Martinez v. Florida Legislature, 542 So.2d 358 (Fla. 1989).

Section 216.221, Florida Statutes (1989), is an unconstitutional attempt to delegate legislative power to the executive branch. That provision gives the Governor and Cabinet, acting as the Administration Commission,⁷ the authority to perform State agency budget reductions where budget deficits exist or are imminent.

In granting this statutory power to the executive branch of government, the Legislature has delegated its exclusive appropriation authority in violation of Article II, Section 3. Op. Atty. Gen. 87-57 (Sept. 28, 1987). As the Appellees correctly note,⁸ if the Governor wishes to resolve the deficit in a manner consistent with the Constitution, he must issue a proclamation for the convening of the Legislature. See, Article III, Section 3(c), Florida Constitution and Op. Atty. Gen. 87-57 (Sept. 28, 1987).

In Askew v. Cross Key Waterways, 372 So.2d 913, 925 (Fla. 1978), this Court endorsed the viability of the doctrine of non-delegation in Florida with respect to fundamental policy decisions. Absent specific, governing standards set forth by the Legislature in an enactment, the delegation of such policy decisions to the executive branch is inconsistent with the non-delegation mandate of Article II, Section 3. Id

Section 216.221, Florida Statutes (1989), gives deficit reduction authority to the Administration Commission without providing any guidelines or standards for the exercise of that authority. Clearly, issues of funding and operation of State agencies represent fundamental

⁷ Section 14.202, Florida Statutes (1989), establishes the Administration Commission, consisting of the Governor and the six Cabinet members.

⁸ Brief of Children A, B, C, D, E and F at 7.

policy concerns within the scope of legislative authority. The Legislature has the exclusive power to decide how, when and for what purpose public funds shall be applied in carrying on the government. State ex rel Kurz v. Lee, 163 So. 859, 868 (Fla. 1935). Once appropriations have been enacted and approved by the Governor, the Legislature alone retains the constitutional power to alter them. Id at 869.

Attorney General Butterworth directly addressed the issue of the constitutionality of Section 216.221, Florida Statutes (1989), in his opinion letter of September 28, 1987, to Governor Martinez. The Attorney General concluded that only the Legislature could constitutionally act to balance the budget under circumstances similar to those involved at the case at bar. Op. Atty. Gen. 87-57 (Sept. 28, 1987). The trial court, therefore, properly found Section 216.221, Florida Statutes (1989), to constitute an impermissible delegation of legislative authority.

IV.

CONCLUSION

The amici curiae respectfully submit that Judge Ferro's decision was correct and should be affirmed.

In the alternative, in the event the Court determines the decision below to have been too broadly stated, then, and in that event, the amici curiae respectfully suggest that the reductions of revenue attempted by the Administration Commission which relate to the funding and operation of public schools must be treated differently from the reductions attempted by the Administration Commission relating to "state agencies" which are within the statutory ambit of Chapter 216, Florida Statutes (1989).

Stated differently, school boards, community colleges and the State University System have a separate constitutional distinctiveness which imposes different constitutional limitations and issues of applicability of Chapter 216 upon them than non-constitutionally created State agencies within the definition of Chapter 216.

The Court is respectfully requested to uphold the decision below invalidating reductions in funding to educational entities.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished on this 25th day of October, 1991, via Facsimile to: Karen A. Gievers, Esquire, 750 Courthouse Tower, 44 West Flagler Street, Miami, Florida 33130; by Hand Delivery to: Peter Antonacci, Esquire, Deputy Attorney General, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050; Phyllis Slater, Esquire, General Counsel, Secretary of State, The Capitol, Tallahassee, Florida 32399; and, Sydney McKenzie, Esquire, General Counsel, Department of Education, The Florida Education Center, Tallahassee, Florida 32399; and, by U.S. Mail to: Robert Butterworth, Attorney General, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050; Charles Finkel, Esquire, Assistant Attorney General, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050; Michael Neimand, Esquire, 401 Northwest Second Avenue, Suite 921N, Miami, Florida 33128; Richard Doran, Esquire, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050.



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