

# Supreme Court of Florida

80,682

FEDERATION OF PHYSICIANS AND DENTISTS,  
NATIONAL UNION OF HOSPITAL AND HEALTH  
CARE EMPLOYEES, Petitioner,

vs .

LAWTON CHILES, GOVERNOR, STATE OF FLORIDA,  
FLORIDA HOUSE OF REPRESENTATIVES AND  
ITS SPEAKER, T.K. WETHERELL, AND THE  
FLORIDA SENATE AND ITS PRESIDENT,  
GWEN MARGOLIS, Respondents,

---

[March 4, 1993]

PER CURIAM.

The Petition for Writ of Mandamus filed by Petitioner, in the above cause, is hereby denied and the Motion to Dismiss filed by Respondents is denied as moot.

It is so ordered,

BARKETT, C.J., and OVERTON, McDONALD, SHAW, CRIMES and HARDING, JJ., concur.

KOGAN, J., concurs specially with an opinion, in which BARKETT, C.J. and SHAW, J., concur,

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

KOGAN, J., specially concurring.

I agree that mandamus cannot lie to compel the Governor to take discretionary actions, nor can it lie in the absence of a clear and preexisting legal right, which is absent here. See Florida League of Cities v. Smith, 607 So. 2d 397 (Fla. 1992). However, I would dismiss this petition without prejudice for the parties to litigate these same issues in a proper lawsuit under the principles announced in my dissent in State v. Florida Police Benevolent Association, Inc., 18 Fla. L. Weekly S1 (Fla. Dec. 24, 1992) (Kogan, J., dissenting).

I reiterate my belief that the majority in Police Benevolent has eviscerated the collective bargaining guarantee of article I, section 6, Florida Constitution, as it affects public employees. This has stripped every public employee in this state of any meaningful right to bargain collectively.

BARCKETT, C.J. and SHAW, J., concur.

Original Proceeding - Mandamus

Ronald G. Meyer of Meyer and Brooks, P.A., Tallahassee, Florida,  
for Petitioner

Deborah Kaveney Rearney, Deputy General Counsel of the Office of  
the Governor, Tallahassee, Florida; D. Stephen Kahn, General  
Counsel for the Florida Senate, Tallahassee, Florida; and Thomas  
Ross MCSwain, General Counsel for the Florida House of  
Representatives, Tallahassee, Florida,

Respondents