OA 7-5-95

IN THE SUPREME COURT OF FLORIDA

LAWTON CHILES, as a Citizen and Taxpayer and as Governor of Florida,

Petitioner,

v. Case No. 85,870

ROBERT MILLIGAN, as Comptroller, and SANDRA MORTHAM, as Secretary of the State of Florida,

Respondents.

BRIEF OF AMICI CURIAE FLORIDA TEACHING PROFESSION-NATIONAL EDUCATION ASSOCIATION AND FLORIDA EDUCATION ASSOCIATION/UNITED, AMERICAN FEDERATION OF TEACHERS

THOMAS W. BROOKS, ESQUIRE
MEYER AND BROOKS, P.A.
2544 Blairstone Pines Drive
Post Office Box 1547
Tallahassee, Florida 32302
(904) 878-5212
Florida Bar No. 0191034

SALLY C. GERTZ, ESQUIRE
FEA/UNITED
118 North Monroe Street
Tallahassee, Florida 32399-1700
(904) 224-7818
Florida Bar No. 504180

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STATEMENT OF THE CASE AND OF THE FACTS

The amici curiae adopt the Statement of the Case and of the Facts as set forth in the Petition for Writ of Mandamus.

SUMMARY OF THE ARGUMENT

Applying the principles of Brown v. Firestone, 382 So.2d 654 (Fla. 1980), this Court held in Gindl v. Department of Education, 396 So.2d 1105 (Fla. 1981), that the funding formula set forth in Section 236.081, Florida Statutes (1979), was a substantive matter separate from making appropriations which could not be altered in the General Appropriations Act. As a result, the Legislature simply does not have the authority to determine in the appropriations act substantive matters related directly to implementation of the command of Article IX, Section 1 of the Florida Constitution that "[a]dequate provision shall be made by law for a uniform system of free public schools . . . ." Any substantive change in the Florida Education Finance Program funding formula which implements this provision is a policy matter separate and distinct from the subject of making appropriations which must be enacted separately as general law.

To the extent that it can be argued that the 1988 amendment to the prefatory language of Section 236.081, Florida Statutes (1979), authorized the Legislature to determine or alter the funding formula in the General Appropriations Act, such an interpretation of this language would render the statute unconstitutional pursuant to Article III, Section 12 of the Florida Constitution and, therefore, should be rejected.

The challenged provision is also unconstitutional because it is not directly and rationally related to a lump-sum appropriation for funding the Florida Education Finance Program. Rather, class size in the public schools is a separate policy matter which must be enacted

by general law. Any funding for implementing such a policy must be a separate line item appropriation to preserve the Governor's veto power. Nor does the challenged proviso form the major motivation for appropriation 150. Rather, complying with Article IX, Section 1 is the motivating factor for this appropriation.

ARGUMENT

THE CHALLENGED PROVISO VIOLATES ARTICLE III, SECTION 12 OF THE FLORIDA CONSTITUTION

In Brown v. Firestone, 382 So.2d 654 (Fla. 1980), this Court held that to be valid under Article III, Section 12 of the Florida Constitution, an appropriations bill cannot change or amend existing law on subjects other than appropriations and must, in addition, directly and rationally relate to the purpose of the appropriation and be a major motivating factor underlying the enactment of that appropriation. The challenged proviso does not satisfy either of these conditions.

Without question, the challenged proviso amends the funding formula for the Florida Education Finance Program set forth in Section 286.081, Florida Statutes (1993). As this Court held in Gindl v. Department of Education, 396 So.2d 1105 (Fla. 1981), alteration of the FEFP distribution formula through an appropriations act violates Article III, Section 12. Consequently, unless there is a basis for distinguishing Gindl from this case, a violation of the single subject rule is apparent.

The Legislature seeks to distinguish Gindl on the basis of its 1988 amendment to the prefatory language to Section 286.081, Florida Statutes (1979). According to the Legislature, this language permits it to determine the allocation formula on a year-by-year basis in the General Appropriations Act, circumventing the problem identified by this Court in Gindl and rendering Section 286.081 merely a contingent, back-up provision which cannot constitute existing law. Such an

interpretation, even if intended by the Legislature, cannot be adopted by this Court because it renders this provision unconstitutional under Article III, Section 12.

Brown and Gindl make it clear that the funding formula enacted to implement the requirement in Article IX, Section 1 of the Florida Constitution that there be a uniform public school system among all counties both rich and poor is a separate, substantive legal issue from the lump-sum amount appropriated for distribution under the FEFP formula. If, as the Legislature argues, Article III, Section 12 permits the amendment of existing law on the subject of appropriations in a general appropriations bill, this Court could not have reached the result set forth in Gindl. There, just as in this case, the challenged proviso altered the funding formula otherwise found in state statute. By finding this action violative of the single subject rule in Gindl, this Court necessarily determined that the funding formula constituted a subject other than appropriations according to the Legislature's own theory.

Moreover, the Legislature simply cannot through its own act authorize that which the Constitution prohibits. Article IX, Section 1 makes determination of the funding formula an important substantive policy decision which must be considered and debated separate from the appropriations process. The Legislature cannot magically transform this separate policy matter into an appropriations issue merely by resolving it in the appropriations act rather than a separate statute. Regardless of the type of bill in which it is decided, it is not the

type of appropriations decision contemplated by Article III, Section 12.

Accordingly, this Court should adhere to its decision in Gindl and find that the challenged proviso unconstitutionally amends existing law on a subject other than appropriations.

Application of the principles set forth in Brown also establish that the challenged proviso is not sufficiently related to the purpose of lump-sum appropriation 150 to avoid violating Article III, Section 12. In applying the principles developed in that case, this Court found that the following proviso did not directly and rationally relate to the appropriation for funding the salaries, expenses and capital outlay for the major penal institutions in the state:

> Provided that the department shall phase back the inmate count at Glades Correctional Institution to the design capacity of 609 inmates prior to June 30, 1980. Except, however, that should the statewide inmate population exceed maximum capacity then Glades Correctional Institution may exceed design capacity.

382 So.2d at 657, 669. Just as this appropriation was "designed to further a legislative objective (the phasing back of the inmate population at Glades) unrelated to the funding of all the major institutions," the proviso challenged in this case is designed to further a legislative objective (the reduction of class size, primarily in elementary schools) unrelated to the funding of all school districts in the state to ensure compliance with Article IX, Section 1. Consequently, the challenged proviso is invalid.

The Legislature has established wholly within the appropriations act a substantive public policy of lowering class size in the midst

of a shrinking of available revenue for public schools. Rather than encouraging this laudable objective by providing additional funds in a specific appropriation to the FEFP allocation as would be permissible under this Court's decision in Department of Education v. School Board of Collier County, 394 So.2d 1010 (Fla. 1981), the Legislature has impermissibly sought to redirect a portion of the FEFP allocation, without regard to its effect on the uniformity of the public school system, for a purpose which bears no direct or substantial relationship to that fundamental purpose. Whether and to what extent the state should use its resources to encourage the lowering of class size in public schools is an entirely separate matter from the FEFP allocation and should be considered and debated in wholly separate legislation and funded in a separate line item to preserve the Governor's veto power.

It is also apparent that establishing the classroom enhancement incentive was not the major impetus for appropriation 150. On the contrary, compliance with Article IX, Section 1 is the primary basis for funding the FEFP.

Consequently, the challenged proviso fails to satisfy any of the requirements of the test set forth in Brown.

CONCLUSION

By making the FEFP funding formula subject to the classroom enhancement incentive, the Legislature has unnecessarily and unconstitutionally injected a wild card into the uniformity of the public school system. School districts, already strapped by declining state revenues, will be forced to reallocate their limited resources to satisfy the classroom enhancement incentive to avoid losing even more state funding, even if such reallocation does not make sense in a particular district. Reduction of class size necessarily requires the hiring of additional teachers and aides which, in these times of declining revenues, inevitably leads to layoffs and program reductions in other areas. Whether school districts should be saddled with this type of dilemma is an important public policy decision which has nothing to do with the gross amount of money the Legislature should appropriate to fund the Florida Education Finance Program. It is an entirely separate and distinct policy matter which the Legislature has improperly logrolled into the General Appropriations Act and has deprived the Governor of his ability to veto a specific appropriation on that subject. Consequently, the challenged proviso presents a classic, textbook case of a violation of the single subject rule.

Accordingly, this Court should declare the challenged proviso in violation of Article III, Section 12 of the Florida Constitution and grant the Writ of Mandamus.

Respectfully submitted,

Thomas W. Brooks, Esquire
Attorney for FTP-NEA
Post Office Box 1547
Tallahassee, Florida 32302
(904) 878-5212
Florida Bar No. 0191034

Sally C. Gertz, Esquire by TWB
Attorney for FEA/United
118 North Monroe Street
Tallahassee, Florida 32399-1700
(904) 224-7818
Florida Bar No. 504180

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. mail this 30th day of June, 1995, to: W. Dexter Douglas, General Counsel and Deborah K. Kearney, Deputy General Counsel, Office of the Governor, 209 Capitol, Tallahassee, Florida 32399-0001; Rob Beitler, Department of Banking and Finance, PL 09, The Capitol, Tallahassee, Florida 32399; Don Bell, Office of the Secretary, PL 02, The Capitol, Tallahassee, Florida 32399; Robert L. Shevin and Richard B. Simring, Stroock & Stroock & Lavan, 200 South Biscayne Boulevard, 33rd Floor, Miami, Florida 33131-2385; D. Stephen Kahn, Kahn & Dariotis, P.A., Post Office Box 10032, Tallahassee, Florida 32301; B. Elaine New and Gerald B. Curington, Room 319, The Capitol, Tallahassee, Florida 32399-1100.

THOMAS W. BROOKS

TWB/sc