IN THE SUPREME COURT OF FLORIDA

IRMA RAMIREZ, :

Petitioner, :

vs. : Case No. 86,905

THE HONORABLE E. RANDOLPH BENTLEY, Circuit Judge of the Tenth Judicial Circuit, :

Respondent. :

_____ :

DISCRETIONARY REVIEW OF DECISION OF THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT

INITIAL BRIEF OF PETITIONER ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The Petitioner, IRMA RAMIREZ, is the respondent in two (2) separate but related cases in which Injunctions for Protection Against Repeat Violence have been entered. The Respondent, the Honorable E. Randolph Bentley, Circuit Judge, has issued Orders to Appear and Show Cause Re: Indirect Criminal Contempt in both cases.

On November 21, 1994, Rosa and Blanca Guerra, sisters, each filed Petitions for Injunctions for Protection Against Repeat Violence. (App. 1-4) The Respondent scheduled hearings on both petitions for November 30, 1994. After hearing, two Injunctions for Protection Against Domestic/Repeat Violence were issued on November 30, 1994. (App. 7-14)

On December 27, 1994, both Rosa and Blanca Guerra filed Motions for Contempt. (App. 15-16) The Respondent entered two Orders to Appear and Show Cause Re: Indirect Criminal Contempt on February 15, 1995. (App. 17-18) Petitioner was ordered to appear before the Respondent on March 1, 1995, to show cause why she should not be found in indirect criminal contempt of court. Said Orders also appointed the State Attorney of the Tenth Judicial Circuit to serve as prosecuting attorney.

On March 1, 1995, Petitioner appeared before the Respondent without an attorney. The Respondent found Petitioner insolvent and appointed the Public Defender of the Tenth Judicial Circuit to represent her. (App. 19-20) Both cases were set for arraignment on the charge of indirect criminal contempt on March 15, 1995.

On March 14, 1995, Petitioner filed a Petition for Writ of Prohibition in the Second District Court of Appeal arguing that Respondent should be restrained from engaging in any further proceedings in the nature of indirect criminal contempt. Petitioner argued that section 784.046(9)(a), Fla. Stat. (Supp. 1994), took the power of indirect criminal contempt away from the trial court when injunctions for protection against repeat violence are issued pursuant to section 784.046, Fla. Stat. (Supp. 1994).

On October 25, 1995, the Second District Court of Appeal issued an opinion denying the writ. In doing so it relied on its opinion in Walker v. Bentley, 20 Fla. L. Weekly D2019 (Fla. 2d DCA Aug. 30, 1995) (attached as Appendix B), and Lopez v. Bentley, 20 Fla. L. Weekly D2147 (Fla. 2d DCA Sept. 13, 1995) (attached as Appendix C).

SUMMARY OF THE ARGUMENT

The word "shall" in Section 748.046(9)(a), Florida Statutes (Supp. 1994), should be interpreted as mandatory because it is clear from the statute that the legislature wished to enforce violations of repeat violence injunctions through civil contempt proceedings only instead of through criminal contempt proceedings. In doing so the legislature did not encroach on the power of the judiciary. The regulation of repeat violence overlaps the constitutional domain of the legislature and the judiciary, and taking this regulation away from the judiciary's indirect criminal contempt power did not deprive the courts of any essential power. Thus, the legislature did not unconstitutionally encroach on the judiciary's powers by enacting this statute. Because there is no encroachment, the courts must honor the unambiguous statute.

ARGUMENT

ISSUES

IS THE WORD "SHALL" AS USED IN SECTION 784.046 (9) (A), FLORIDA STATUTES (SUPP. 1994), TO BE INTERPRETED AS MANDATORY RATHER THAN AS PERMISSIVE OR DIRECTORY?

IF INTERPRETED AS MANDATORY, IS SECTION 784.046 (9) (A), FLORIDA STATUTES (SUPP. 1994), AN UNCONSTITUTIONAL ENCROACHMENT ON THE CONTEMPT POWER OF THE JUDICIARY IN VIOLATION OF ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION?
(Certified Questions presented in Walker but modified by undersigned counsel for Ramirez.)

The issue in Ms. Ramirez's case, the Lopez case, and the Walker case is whether the legislature statutorily took away the power of the trial court to proceed with indirect criminal contempt action when an injunction has been issued pursuant to the domestic violence statute--§741.30, Fla. Stat. (Supp. 1994)--or the repeat violence statute--§784.046, Fla. Stat. (Supp. 1994). The next issue, if the first issue is answered in the affirmative, is whether the legislature can do this without encroaching on the authority of the judiciary. Ms. Ramirez's case and the Lopez case involve the repeat violence statute and the Walker case involves the domestic violence statute.

The Second District Court addressed the Walker case first and issued a lengthy opinion on these two issues. It specifically found the domestic violence statute valid, but issued the following two questions as being of great public importance:

IS THE WORD "SHALL" AS USED IN SECTION 741.30 (8) (a), FLORIDA STATUTES (SUPP. 1994), TO BE INTERPRETED AS MANDATORY RATHER THAN AS PERMISSIVE OR DIRECTORY?

IF INTERPRETED AS MANDATORY, IS SECTION 741.30 (8) (a), FLORIDA STATUTES (SUPP. 1994), AN UNCONSTITUTIONAL ENCROACHMENT ON THE CONTEMPT POWER OF THE JUDICIARY IN VIOLATION OF ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION?

When it came to the Lopez case (and Ms. Ramirez's case), the Second District noted a different statute than the one at issue in Walker was involved; but the repeat violence statute (784.046(9)(a)) also seemed to infringe on the trial court's criminal contempt powers by using the same language as 741.30: "The court shall enforce, through a civil contempt proceeding...." Thus, the Second District found the trial court still had inherent powers of indirect criminal contempt, in spite of the statutory language, based on its earlier decision in Walker.

Because the Second District relied on its opinion in Walker, it has adopted the same certified questions set forth in the Walker opinion. Those same issues are at issue in Ms. Ramirez's case. Therefore, Ms. Ramirez adopts the same arguments set forth in the Walker brief filed in this Court[1], which consists mainly of Judge Altenbernd's dissent in the Walker opinion.

Petitioner notes that Judge Altenbernd's dissent in this case is thoroughly researched and very well reasoned in setting forth Petitioner's position. Petitioner cannot improve on Judge Altenbernd's dissenting opinion and adopts it in almost its

[1] Walker v Bentley, Case No. 86,568.

entirety. Petitioner does not believe that the entire statute would be unconstitutional merely because the nonrefundable civil fine is unconstitutional, as suggested in subsection V. That portion can be struck and still leave the rest in tact. For the convenience of this Court, that dissenting opinion has been retyped exactly as it appears in the dissent (double spaced for easier reading) and placed on disc. Any inapplicable provisions due to a difference in statutes is noted in brackets. The dissent is set forth below. Where "domestic violence" however is used, the concept of "repeat violence" can be easily substituted for Ms. Ramirez's purposes.

The remainder of this brief is Judge Altenbernd's dissent: ALTENBERND, Acting Chief Judge, Dissenting.

The majority opinion is well researched and persuasively presented.[9] Nevertheless, I would grant this petition and issue a writ of prohibition. Domestic violence in our homes and on the streets of our communities is a serious social problem, but it is one within the overlapping constitutional domain of the legislature and the judiciary. Indirect criminal contempt is not an express constitutional power granted to the judiciary, but rather an implied power. As a result, the courts must honor this unambiguous

[9] I concur in the certified questions. Although this statute had a short duration, the majority's opinion will allow citizens throughout Florida to be prosecuted for indirect criminal contempt despite a statute expressly forbidding such prosecutions. As explained in the last section of this dissent, the supreme court also needs to clarify whether Florida courts are permitted to impose nonrefundable monetary assessments in civil contempt proceedings.

statute unless the legislature's action unquestionably deprives the courts of a contempt power essential to the existence of the judicial branch or to the orderly administration of justice. I agree that the legislature used poor judgment when it revised the enforcement procedures for this statutory injunction. Poor judgment is not unconstitutional. During this one-year experiment, the legislature's enforcement mechanism for misconduct outside the courtroom did not deprive the courts of any essential power. See In re Robinson, 23 S.E. 453 (N.C. 1895) (upholding statutory limitations on indirect contempt because such power was not "absolutely essential" to the judiciary).

I. A CLEAR INTRUSION INTO AN ESSENTIAL JUDICIAL POWER MUST EXIST BEFORE A COURT INVOKES SEPARATION OF POWERS AS A SWORD AGAINST THE LEGISLATURE IN A DOMAIN SHARED BY BOTH

> A clear violation of the constitutional provisions dividing the powers of government into departments should be checked and remedied; but where a reasonable doubt exists as to the constitutionality of a statute conferring power, authority, and duties upon officers, the legislative will should be enforced by the courts to secure orderly government and in deference to the Legislature, whose action is presumed to be within its powers, and whose lawmaking discretion within its powers is not reviewable by the courts.

State v. Atlantic Coast Line R.R., 56 Fla. 617, 47 So. 969 (1908). See also State v. Johnson, 345 So. 2d 1069 (Fla. 1977; 16 Am. Jur. 2d Constitutional Law §297-299 (1979).

In this case, the legislature did not confer added power to the circuit court, but rather conferred additional power to the

county court and limited a power of the circuit court. [Not applicable to Ramirez.] Even in this context, we should defer to the will of the legislature unless this allocation of power violates separation of powers beyond a reasonable doubt.

Separation of powers is not a doctrine comparable to res judicata, respondeat superior, or other well-established rules used to determine the outcome of a lawsuit. It is a political doctrine applicable to all three branches of government.

> At the bottom of our problem lies the doctrine of the separation of powers. That doctrine embodies cautions against tyranny in government through undue concentration of power. The environment of the Constitution, the debates at Philadelphia, the writings in support of the adoption of the Constitution, unite in proof that the true meaning which lies behind "the separation of powers" is fear of the absorption of one of the three branches of government by another. As a principle of statesmanship the practical demands of government preclude its doctrinaire application. The latitude with which the doctrine must be observed in a work-a-day world was steadily insisted upon by those shrewd men of the world who framed the Constitution and by the statesman who became the great Chief Justice.
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> In a word, we are dealing with what Sir Henry Maine, following Madison, calls a "political doctrine," and not a technical rule of law. Nor has it been treated by the Supreme Court as a technical legal doctrine. From the beginning that Court has refused to draw abstract, analytical lines of separation and has recognized necessary areas of interaction.

Felix Frankfurter & James M. Landis, Power of Congress Over Procedure in Criminal Contempts in "Inferior" Federal Courts -- A Study in Separation of Powers, 37 Harv. L. Rev. 1010, 1012-1014 (1924).

Although Justice Frankfurter was discussing separation of powers under the United States Constitution, I see no reason to conclude that the Floridians who expressly included separation of powers within our state constitution were less shrewd or less practical. This constitutional clause serves the major political purpose of deterring undue concentration of power in any one branch of government.[10] As discussed by Professor Tribe, the objective is to balance the "independence and integrity of one branch" against "the interdependence without which independence can become domination." Laurence H. Tribe, American Constitutional Law § 2-2 (2d ed. 1988).

Most of the Florida precedent discussing separation of powers concerns the allocation of power between the legislative and executive branches of government. When the judiciary arbitrates such a separation of powers dispute, it performs its usual task of constitutional judicial review. By contrast, when the judiciary invokes the separation of powers doctrine to declare that the legislative or executive branch is powerless to alter a judicial function, it performs the same review--but with a vested interest. This conflict of interest may be unavoidable, but it should compel courts to proceed with great caution and conservatism. In this political context, if there is any reasonable doubt concerning the constitutionality of legislation that curbs judicial power, then judges should defer to the wisdom of the elected representatives.

[10] See also 16 Am. Jur. 2d Constitutional Law §296 (1979); John E. Nowak, et al., Constitutional Law 135-37 (2d ed. 1983).

If the judiciary can honor the policy of the legislature with no substantial harm to its existence or operation, then it should not override the duly enacted policy or change a clear legislative "shall" into a judicial "may."

II. THE PUNISHMENT FOR VIOLATIONS OF THESE STATUTORY INJUNCTIONS IS AN OVERLAPPING CONSTITUTIONAL DOMAIN

The prevention and deterrence of domestic violence in places other than the courtroom are not matters exclusively within the powers of either the judicial or legislative branch of government. The overlap of power in this case has several dimensions.

First, the legislature created the injunction for protection against domestic violence because the existing judicial injunctive remedies were too slow and cumbersome to combat this social problem. The courts may have alternative nonstatutory theories upon which an injunction could be entered in some of these cases, allowing for enforcement through indirect criminal contempt. But if the court's order relies upon a statutory basis for an injunction, I see no constitutional reason why the court cannot limit its penalties to those mandated by statute.

Second, the legislature obviously has constitutional authority to enact statutes defining criminal offenses. The restrictions in chapter 94-134 prevent problems of double jeopardy. See Dixon, 113 S.Ct. 2849, 125 L. Ed. 2d 556; Fierro v. State, 653 So. 2d 447 (Fla. 1st DCA 1995); State v. Miranda, 644 So. 2d 342 (Fla. 2d DCA 1994); Richardson v. Lewis, 639 So. 2d 1098 (Fla. 2d DCA 1994); Hernandez v. [State], 624 So. 2d 782 [(Fla. 2d DCA 1993)]. The

1994 amendments established first-degree misdemeanors to punish a broad spectrum of acts that violate the statutory injunction.[11] There is a legitimate concern that a circuit court judge who exercises indirect criminal contempt authority could bar a county court judge from subsequently punishing the misdemeanor. The legislature has decided that a person whose conduct is a serious violation of a domestic violence injunction should have a criminal record. Such a conviction would clearly establish a "prior record" on any subsequent guidelines scoresheet. These decisions fall within the legislative domain. If its penalty structure is not perfect or should include more crimes, we should trust the legislature to change it. [May not be wholly applicable to Ramirez.]

Third, the judicial concept of indirect criminal contempt overlaps with legislative and executive functions. Indirect criminal contempt allows a judge considerable flexibility in deciding the elements of an offense against a victim for acts occurring outside the presence of the judge. The judge also

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[11] 741.31 **Violation of an injunction for protection against domestic violence.**--A person who willfully violates an injunction for protection against domestic violence, issued pursuant to s. 741.30, by:

(1) Refusing to vacate the dwelling that the parties share;

(2) Returning to the dwelling or the property that the parties share;

(3) Committing an act of domestic violence against the petitioner; or

(4) Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner, coupled with an apparent ability to do so, and through doing some act that creates a well-founded fear that such violence is imminent is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

determines who should be prosecuted, and then tries, convicts, and punishes. I do not suggest that this combination of legislative, executive, and judicial functions is prohibited by article II, section 3, of the Florida Constitution. See Johnson, 345 So. 2d 1069. Nevertheless, if separation of powers is intended to discourage a concentration of power in one branch, this political doctrine should discourage the avoidable use of indirect criminal contempt when the legislature provides alternative criminal and civil remedies. See Edward M. Dangel, Contempt, §42A (1939).

III. IN A SEPARATION OF POWERS ANALYSIS, "INHERENT POWERS" MUST BE LIMITED TO ESSENTIAL POWERS

Article V of the Florida Constitution expressly creates many judicial functions the legislature cannot limit or regulate. For example, the legislature cannot assume the power given to the supreme court in article V, section 2, to adopt rules of practice and procedure. See Haven Fed. Sav. & Loan Ass'n v. Kirian, 579 So. 2d 730 (Fla. 1991). Likewise, the power to discipline lawyers that was deemed an inherent contempt power in State ex rel. Oregon State Bar v. Lenske, 407 P. 2d 250 [(Or. 1965)], is an express power in article V, section 15, of the Florida Constitution.

No constitutional provision expressly gives circuit courts the power of indirect criminal contempt. As a result, we are forced in this case to delve into the judiciary's "inherent powers." With a smile, one might suggest that these are the powers that we judges would have included in the constitution if it had been our job to

write it. Because it was not our job, we should tread even more cautiously when invoking the separation of powers doctrine to exclude an inherent power from legislative regulation in an overlapping domain.

The phrase "inherent power" or "inherent judicial power" seems to have at least two distinct definitions for use in two different applications. There are times when courts need to exercise power but can find no express authority in the statutes or constitution. In these circumstances, courts invoke an inherent power "reasonably necessary for the administration of justice." See, e.g., State ex rel. Gentry v. Becker, 174 S.W. 2d 181, 183 (Mo. 1943). The supreme court drew upon this definition of "inherent power" to establish the integrated bar. Petition of Florida State Bar Ass'n, 40 So. 2d 902 (Fla. 1949); see also State, Dep't of Health & Rehab. Servs. v. Hollis, 439 So. 2d 947 (Fla. 1st DCA 1983). I fully agree that courts have certain inherent powers that arise from their very existence as constitutional institutions.

The fact that courts have "reasonably necessary" powers implied in the constitution does not automatically forbid the legislature from regulating or limiting those implicit powers. See e.g., State ex rel. Robeson v. Oregon State Bar, 632 P. 2d 1255 (Or. 1981). A Florida court has the "reasonably necessary" inherent power to sanction for disobedience of its orders, but "it is beyond question that the legislature has the power to determine how and to what extent the courts may punish criminal conduct,

including contempt." A.A. v. Rolle, 604 So. 2d [813] at 815 [(Fla. 1992)].

Thus, the issue in this case is not resolved by the "reasonably necessary" definition of "inherent power." Instead, it involves a more restrictive definition. There are cases that define "inherent powers" to include powers that are "essential" to the court's existence or to the due administration of justice. In re Robinson, 23 S.E. 453 (N.C. 1895); Ex parte Wetzel, 8 So. 2d 824 (Ala. 1942); 21 C.J.S. Courts §31 (1990). This is the scope of the judiciary's "inherent powers" that should be employed when evaluating the checks and balances between the legislature and the courts. The judiciary should rarely, if ever, find a need to shield its inherent powers from duly enacted legislation unless the legislation threatens to undermine the existence of the court or its due administration of justice. I am not convinced that the majority opinion has employed this narrower definition of inherent powers.

IV. ALTHOUGH INDIRECT CRIMINAL CONTEMPT IS A REASONABLY NECESSARY POWER OF THE COURTS, IT IS NOT AN ESSENTIAL POWER IN THIS CONTEXT

The majority opinion admits that the legislature can define a penalty for contempt, but apparently rules that the legislature cannot eliminate the court's ability to impose any type of contempt under any circumstance. I am inclined to agree that the legislature cannot eliminate the court's power to find a direct contempt.

I am not convinced that the legislature is powerless to limit findings of indirect contempt, at least in the context of domestic violence injunctions. Indirect criminal contempt is not an essential judicial power in this context for at least three reasons.

First, indirect criminal contempt is sufficiently similar to typical criminal law that the legislature should have the constitutional power to substitute criminal offenses for indirect criminal contempt to address specific problems. Conduct outside the courtroom is typically regulated by criminal statutes enacted by the legislature. Only rarely is such conduct a challenge to the authority and dignity of the court. As a result, it is easier for a permissible constitutional overlap of the two branches to occur in the context of an indirect contempt than with direct contempt. In North Carolina, for example, an enactment in 1871 that eliminated certain judicial power over contempt was approved in cases of indirect or constructive contempt, but not approved in cases of direct contempt. See In re Robinson, 23 S.E. 453; Ex parte Schenck, 65 N.C. 353 (1871) (quoted in Ex parte McCown, 51 S.E. 957 (N.C. 1905)). [These cases have been placed in the appendix for this Court's benefit.]

Second, a violation of this statutory injunction is more in the nature of traditional indirect civil contempt than indirect criminal contempt. "Indirect" contempt is "an act done, not in the presence of a court or of a judge acting judicially, but at a distance under circumstances that reasonably tend to degrade the

court or the judge as a judicial officer, or to obstruct, interrupt, prevent, or embarrass the administration of justice by the court or judge." Ex parte Earman, 95 So. [755] at 760 [(Fla. 1923)]. "Civil" contempt "consists in failing to do something ordered to be done by a court or judge in a civil case for the benefit of the opposing party therein." Id. This is in contrast to "criminal" contempt, which is "conduct that is directed against the authority and dignity of a court or of a judge acting judicially, as in unlawfully assailing or discrediting the authority or dignity of the court or judge or in doing a duly forbidden act." Id.

There is no question that these statutory injunctions normally result in "indirect" violations. While it can be argued that an act of domestic violence is directed against the authority and dignity of the court, such act is normally directed against the opposing party for whose benefit the injunction has been entered by a judge in a civil proceeding. The judge receives, at most, a glancing blow in these domestic battles. The legislature should be authorized to treat such violations as matters of civil contempt because these violations best fit within that legal category.

Third, the legislature has not eliminated all penalties for violations of these statutory orders. Concerning criminal penalties, the legislature has merely determined that these cases should be filed and litigated in a county criminal court and not in a circuit civil court. Indeed, it may be possible for the circuit

judge simply to act as a county judge. See, e.g., Bollinger v. Honorable Geoffrey D. Cohen, 656 So. 2d 205 (Fla. 4th DCA), review dismissed, No. 85,902 (Fla. July 18, 1995). The court's existence and its due administration of justice are not threatened by a statute that simply moves the proceeding to a different room in the courthouse. [Not applicable to Ramirez; however, the "violence" set forth in the repeat violence section consists of criminal acts which have their own statutory criminal provisions.]

Moreover, the statute does not prevent the use of indirect criminal contempt for orders entered in addition to or subsequent to the statutory injunction. It does not deprive the court of direct criminal contempt for misconduct in the presence of the judge. It applies to only one specific order that is designed to accomplish a particular legislative goal.

The legislature did not deprive the courts of civil contempt remedies. The power to impose compensatory fines should not be underestimated. Equally important, civil coercive fines, assessed for every day of noncompliance, are still available to compel actions required by the statutory injunction. See Habie v. Habie, 654 So. 2d 1293 (Fla. 4th DCA 1995).[12] Admittedly, it is more difficult to use jail as a sanction in civil contempt, particularly for some aspects of these injunctions, but the sanction can still

[12] For example, a spouse who refused to participate in treatment could be fined $100 every day until he or she actually participated.

be used in appropriate cases.[13] It is difficult for me to accept that when the legislature created new criminal offenses in county court and preserved a significant civil penalty for use by the circuit court, it deprived the courts of a constitutionally essential power.

I recognize that the supreme court in Ducksworth [v. Boyer, 125 So. 844 (Fla. 1960),] described punishment for contempt as an inherent judicial power. It did so in a case of civil contempt. If the legislature can constitutionally eliminate incarceration for juveniles who commit direct contempt of court, I find it hard to explain how the legislature violates separation of powers by proscribing incarceration for adults who commit indirect contempt in this context. See A.A. v. Rolle, 604 So. 2d 813.

V. THE CONFUSION CREATED BY NONREFUNDABLE CIVIL FINES

At the same time that the legislature restricted the circuit court's contempt penalties, it created nonrefundable civil monetary assessments. The relevant portion of chapter 94-134, Laws of Florida, states:

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[13] A trial judge may be able to jail a spouse who refused to participate in treatment until the spouse was willing to comply. Likewise, a spouse with ability to pay temporary support, who refused to pay, could be jailed until he or she complied with the support provision of the injunction.

> (8)(9)(a) The court shall enforce, through a civil or indirect criminal contempt proceeding, a violation of an injunction for protection which is not a criminal violation under s. 741.31. The court may enforce the respondent's compliance with the injunction by imposing a monetary assessment. The clerk of the court shall collect and receive such assessments. On a monthly basis, the clerk shall transfer the moneys collected pursuant to this paragraph to the State Treasury for deposit in the Displaced Homemaker Trust Fund established in s. 410.30 proceedings compliance by the respondent with the injunction, which enforcement may include the imposition of a fine. Any such fine shall be collected and disbursed to the trust fund established in s. 741.01.

The legislature passed this provision based on Johnson v. Bednar, 573 So. 2d 822 (Fla. 1991), which expressly permits such coercive assessments in civil contempt. If Bednar is correct, then Judge Fulmer's legitimate concerns for the effective enforcement of these injunctions should not be a major factor in this discussion.

The United States Supreme Court's decision in Bagwell may have implicitly overruled the portion of Bednar that authorizes these nonrefundable monetary assessments. See Marc Rohr, Revisiting Florida's Law of Civil Contempt, Fla. B. J., May 1995, at 22. This court must follow Bednar until the Florida Supreme Court determines its viability after Bagwell. If the supreme court recedes from Bednar, then at least a portion of the above-quoted 1994 amendment would probably be unconstitutional because it includes a nonrefundable civil fine. If it declares the entire subsection of the statute unconstitutional for this reason, then presumably the law would return to the pre-amendment condition and circuit courts would have indirect criminal contempt power. See Henderson v.

Antonacci, 62 So. 2d 5 (Fla. 1952). Thus, despite the extensive discussion of separation of powers both in the majority opinion and in this dissent, the supreme court may have the option to avoid the separation of powers issue and reinstate indirect criminal contempt for a much simpler reason.

CONCLUSION

Based on the foregoing argument and authorities, this Court should grant Petitioner's Writ of Prohibition.

APPENDIX