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IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

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CASE NO: 91,533

ROBERT F. MILLIGAN, Comptroller,
Florida Office of the Comptroller, and
Head of the Department of Banking
and Finance,

Appellant,

vs.

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS,
BURT AARONSON, Chairman.

Appellee

BRIEF OF AMICUS CURIAE BROWARD COUNTY

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County Attorney for Broward County

✓ ANTHONY C. MUSTO
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TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	i
Table of Citations , , . . . ,	ii
Introduction	1
Summary of Argument , , , , , ,	2
Argument	3
WHETHER THE STATE OF FLORIDA CAN COMPEL THE COUNTIES OF THE STATE TO PAY IT A FEE EVERY TIME AN INDIGENT CRIMINAL DEFENDANT EXERCISES HIS OR HER CONSTITUTIONAL RIGHT TO AN APPEAL?	3
Conclusion	9
Certificate of Service . . . , , ,	10

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<i>Amendment to Fla. Rules of Appellate Procedure</i> , 685 So. 2d 773 (Fla. 1996).	6
<i>Batson v. State</i> , 22 Fla. L. Weekly D2492 (Fla. 5th DCA Oct. 24, 1997)	8
<i>Gallant v. Stephens</i> , 358 So. 2d 536 (Fla. 1978) ,	4
<i>Hoffman v. Haddock</i> , 695 So. 2d 682 (Fla. 1997)	8
<i>Orange County v. Williams</i> , 22 Fla. L. Weekly S552 (Fla. Sept. 11, 1997)	8
<i>Plante v. Smathers</i> , 372 So. 2d 933 (Fla. 1979).	6
<i>Williams v. Smith</i> , 360 So. 2d 417 (1978)	4

INTRODUCTION

This brief is being submitted by Amicus Curiae Broward County on behalf of Appellee Palm Beach County Board of County Commissioners. Broward County relies on the Statement of the Case and Facts set forth in Appellee's brief.

SUMMARY OF ARGUMENT

The state is responsible for the criminal justice system, By requiring the counties to pay it an appellate filing fee whenever an indigent criminal defendant exercises his or her constitutional right to appeal, the state is doing nothing more than shifting a portion of the financial burden of the criminal justice system to the counties, Such a fee is not an actual cost in the sense of costs associated with specific goods and services, such as transcripts, necessary to the proper functioning of the system, Rather, it is simply the price of admission to the appellate courts, a price determined by the state, imposed by the state, collected by the state and used by the state. Since the state has the constitutional obligation to provide that admission to the indigent defendants, the cost of the system itself is also a state obligation. The state cannot sidestep that obligation by passing it on to the counties through filing fees. The counties have no interest in the cases being considered and no obligation to assist in underwriting the system. In simplest terms, it is the state's system; therefore it is the state's burden.

ARGUMENT

WHETHER THE STATE OF FLORIDA CAN
COMPEL THE COUNTIES OF THE STATE TO
PAY IT A FEE EVERY TIME AN INDIGENT
CRIMINAL DEFENDANT EXERCISES HIS OR
HER CONSTITUTIONAL RIGHT TO AN
APPEAL?

Can the state of Florida create a cost and compel its counties to pay that cost in order to avoid part of its constitutional burden to fund the criminal justice system? That question lies at the heart of this appeal and it should be answered in the negative.

The “cost” involved here, appellate filing fees, is not an actual cost in the sense of a specific charge for a specific product or service, such as the charge for a transcript or the fee to an attorney for a certain number of hours of work. Rather, it is the price of a ticket, a ticket to the state’s appellate courts. The cost of the ticket is determined by the state, imposed by the state, collected by the state and used by the state

Because the Florida courts have been strictly creatures of the state since 1972, the ticket that an appellate filing fee provides allows for admission to a state system. The counties of the state play no role in running or maintaining the system. Moreover, they have no interest in the criminal proceedings at issue here, Rather, such cases are brought by the state and in the name of the state.

It is therefore clear that requiring the counties to pay appellate filing fees for indigent criminal defendants would constitute nothing more than shifting a portion of the very cost of having a criminal justice system, a cost that is clearly placed squarely on the shoulders of the state, to a group of 67 political entities that have no interest or involvement in the

process. The state's argument, therefore, is simply an effort to shirk part of its responsibility to provide a criminal justice system.

Indeed, carrying the state's argument to its logical extreme, the state could escape its financial obligations altogether by simply raising the appellate filing fee so high that the counties' contributions would cover the entire cost of the system. Legally, there is no difference between a filing fee of \$250 and one of \$2,500 or even \$25,000.

The state's effort to sidestep its obligations is contrary to the Florida Constitution. It is well established that in construing the Constitution a court must "first seek to ascertain the intent of the framers and voters, and [then] interpret the provision before [it] in a way that will best fulfill that intent, *Williams v. Smith*, 360 So.2d 417, 419 (1978). In addition, the court must also be "guided by the circumstances leading to the adoption of a provision." *Gallant v. Stephens*, 358 So.2d 536, 539 (Fla. 1978). Thus, both the rationale for a provision and the intent of the voters in passing such provision must be considered by the court.

In 1972, the voters approved a revision of Article V to the State Constitution that had the effect of consolidating all of Florida's courts under one umbrella, that of the state. In order to muster the support needed for voter approval, the revision was presented as a measure that would provide tax relief to property taxpayers. Florida's voters were told in newspaper articles and political leaflets supporting the proposed Article V revision that the state would assume the responsibility of funding the court system and, that, they would

therefore be relieved of the burden of funding the courts.’ Representative Talbot “Sandy” D’Alemberte, then Chairman of the Judiciary Committee of the Florida House of Representatives, made similar statements in his many letters to local government leaders, judges, lawyers, and interested citizens.²

This promise of complete state funding for the new state court system was the cornerstone to obtaining voter approval, despite the absence of any provision within the

¹ State Archives, series 19, box 191. In describing to voters how the proposed 1972 version to Article V would provide more local revenue, a League of Women Voters of Florida leaflet (Appendix, hereinafter referred to as “A”, I) stated, “The new article provides for total state funding of the courts, thus relieving local property taxpayers from this burden and releasing more money for local services.”

² State Archives, series 19, box 191. In a letter to Tampa Mayor Dick Greco, Jr., dated August 27, 1971, concerning the proposed revision, Rep. D’Alemberte wrote, ‘Under this proposal, cities would continue to receive the proceeds from fine and forfeitures. However, the state would assume the cost of the court system (A 2).’ Moreover, a handwritten note (A 3) on the copy of Rep. D’Alemberte’s letter found in the archives indicates that the same letter was sent to the Hon. Jay Dermer and the Hon. David Kennedy (the mayors of Miami Beach and Miami). Other correspondence includes a letter dated October 5, 1971, to Werner Buntmeyer, City Manager of Coral Springs, which states that “[t]he court structure would be financed by the state (A 4),” and that “[t]he state would assume the cost of the court system while returning fines and forfeitures to the cities, thus providing for much needed financial assistance to the cities (A 4-5).” Likewise, in a letter dated September 15, 1971, to Theresa M. Callahan and E. C. (Tony) Wilcox of the City of Miami, Association of Retired Employees, Rep. D’Alemberte stated, “Under this proposal, the state would take over financial responsibilities for all court functions . . . (A 6).”

1972 revision expressly stating the state would be responsible for funding the entire judicial system. Accordingly, this promise is part of the spirit of Article V to the Florida Constitution; a spirit that is as “obligatory as the written word.” See, *Plante v. Smathers*, 372 So.2d 933, 936 (Fla. 1979). See also Amendments to Fla. Rules of Appellate Procedure, 685 So.2d 773 (Fla. 1996) (relying upon legislative history of Article V to read into Article V a constitutional right to appeal).

During the past 25 years, the state has shunned its obligation to provide full funding for Florida’s state court system consistent with the intent of the framers and the voters who approved Article V. Rather, it is the local ad valorem taxpayers of Broward and the other 66 counties who have been increasingly burdened with the responsibility of paying for Florida’s state court system. Broward County has continuously expended increasing amounts of property taxes to fund the needs of the state courts, including expenditures for capital facilities and equipment, personnel, and operational needs. An example of the financial magnitude is seen in the level of county Article V expenditures during the 1994-95 fiscal year. During that time period, for example, the cost of funding the state court system totaled \$1,034,554,252. Florida’s counties expended \$561,479,607,³ roughly 55%, of the total costs necessary to operate the courts. State appropriations for the same period totaled \$473,074,645.⁴ Since the 1988-1989 fiscal year, Article V expenditures by Florida

³ Major county expenditures went to fund personnel services (27% - \$287,692,996), court operations (15.8% - \$163,562,897), and capital outlay (10.4% - \$108,077,053). Another \$2,146,661 was spent by counties for other court-related costs.

⁴ State appropriations covered funding for the Supreme Court (\$11,025,627), district courts of appeal (\$26,455,595), circuit courts (\$91,137,863), county courts (\$37,283,321),

counties have greatly exceeded the funds appropriated by the state for the state's court system.

In Broward County, Article V costs have risen from \$51 million (net)" in the 1993-1994 fiscal year to \$62.1 million (net) during 19951996 fiscal year. Broward County expects its Article V costs to increase as a result of the capital, operational, and personnel needs of the circuit and county courts of the 17th Judicial Circuit in the recently completed fiscal year 1996-1997. During the 19951996 fiscal year period, Broward County expended \$3.1 million and \$3.7 million, respectively, for the court-appointed attorneys to represent indigent criminal defendants due to public defender conflicts. It is estimated that similar expenditures for fiscal year 1996-1997 exceeded \$4.3 million. Based on its 1995-1996 fiscal year expenditures, Broward County was forced to commit almost 1.180 mills, out of the county's total millage rate of 7.088, to pay for Article V costs.

The magnitude and level of the state's unfunded mandate continues to escalate each year with little relief from the Legislature. The tax and revenue structure for counties under our Constitution is not designed to have county budgets underwrite the foundation of our court system or access to our court services. Article V costs are absorbing larger amounts of county budgets at the expense of other local needs, and the state's continuous

judicial administration (\$7,269,352), state attorneys (\$191,115,690), and public defenders (\$95649,473). They also appropriated \$13,137,724 for other state court system expenses.

⁵ All figures are "net" amounts, i.e., offsetting revenues have already been deducted to reach the stated total.

attempts at shifting the Article V cost burden to counties is placing counties at financial risk.⁶

Most of the state's efforts over the years have been in the form of attempting to have the counties pay specific costs arising from specific aspects of cases, such as the previously noted costs of transcripts and fees of court-appointed counsel. The present case goes far beyond the previous efforts, however. It is totally unconcerned with any specific aspect of any case. Rather, it unabashedly seeks to require the counties to participate in underwriting the very cost of having a system. Rather than seeking to have the counties pay costs to individuals or entities for providing goods and services necessary to the proper functioning of the system, it seeks to have the counties help pay for the system itself. This fact distinguishes the present case from cases such as *Orange County v. Williams*, 22 Fla. L. Weekly S552 (Fla. Sept. II, 1997), *Hoffman v. Haddock*, 695 So. 2d 682 (Fla. 1997), and *Batson*, which indicate that counties may be obligated by statute to pay certain case-specific costs. No extension of those cases can logically, or

⁶ It is ironic that the Fifth District Court of Appeal, in *Batson v. State*, 22 Fla. L. Weekly D2492 (Fla. 5th DCA Oct. 24, 1997), found the fact that the counties have been paying appellate filing fees over the years to lend support to its conclusion that the state can by statute require such payment. The fact that the counties have been able to shoulder this burden in the past should not be held against them now that the financial situation is nearing crisis proportions. There are many reasons why a matter such as this might not be litigated until no other options remain. Efforts have been made to work out political solutions to the situation and litigation certainly would have dampened those efforts. Counties may have also made the determination when the amount of money involved was not as great that litigation might have caused political consequences more severe than the benefits from the potential savings. Whatever the reason, the matter has not been litigated previously and that fact should not be held against either side.

constitutionally, expand their holdings to encompass payment of a part of the very cost of having a system. That obligation can only belong to the state.

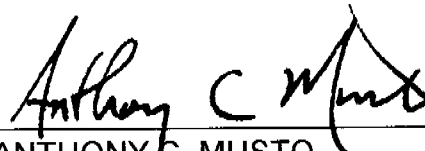
On his desk in the Oval Office, Harry S Truman had a sign that read, "The buck stops here." In the present case, the buck stops with the state of Florida. It cannot be passed to the counties. It is the state's system; therefore it is the state's burden. The circuit court correctly determined that the counties cannot be compelled to pay filing fees for indigent criminal defendants. Its decision should be upheld.

CONCLUSION

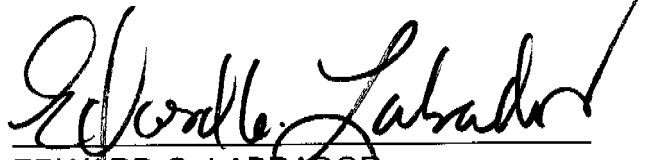
Based upon the foregoing argument and authorities, Amicus Curiae Broward County respectfully submits that the decision of the circuit court in this case should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to **DEBORAH GULLER, ESQ., OFFICE OF THE COMPTROLLER**, 110 SE 6TH Street, Suite 1400, Ft. Lauderdale, Florida 33301 and **DANIEL P. HYNDMAN, ESQ., PALM BEACH COUNTY**, P.O. Box 1989, West Palm Beach, Florida 33402 on this 13th day of November, 1997



ANTHONY C. MUSTO
Chief Appellate Counsel

IN THE SUPREME COURT OF FLORIDA

ROBERT F. MILLIGAN, Comptroller,
Florida Office of the Comptroller, and
Head of the Department of Banking
and Finance,

CASE NO: 91,533

Appellant,

vs.

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS,
BURT AARONSON, Chairman.

Appellee.

APPENDIX TO BRIEF OF AMICUS CURIAE BROWARD COUNTY

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Florida Needs -

ORDER IN THE COURTS

Series 19
Box 191

REVISION OF ARTICLE V OF THE CONSTITUTION WILL BRING ORDER TO THE PRESENT COURT "HODGE PODGE"

IT WOULD:

ELIMINATE DUPLICATION

Instead of 15 kinds of trial courts, there will be 2.

Circuit — Civil \$2500 and over, juvenile, probate, guardianship, competency and all felonies.

County — Civil less than \$2500, misdemeanors, traffic, and violations of all ordinances.

As an example, at present, if a citizen sues for damages under \$2500 he may either enter his case in a small claims court, a county court, a county judge's court, a Justice of the peace court, a magistrate's court, a court of record, a civil court of record, or a circuit court, depending upon the county where he resides.

In the proposed system he would go to a county court.

ESTABLISH RULES FOR ALL COURTS

For the first time there will be clear cut lines of responsibility and accountability.

SPEED JUSTICE

More efficient use will be made of judicial manpower by assignment of judges to the courts that need them.

New judges may be created by the legislature on the basis of need, not population.

Professional court administrators may be used allowing judges more time to dispense justice.

BRING LOCAL JUSTICE CLOSER TO THE PEOPLE

Branch courts may be established throughout the county as needed.

Grievance procedures are provided for citizens to lodge complaints against trial judges of lower courts.

REMOVE LOCAL POLITICS FROM JUDICIAL APPOINTMENTS

Judicial nominating commissions will remove patronage power which is sometimes used by elected officials to reward unqualified supporters.

PROVIDE MORE LOCAL REVENUE

The new article provides for total state funding of courts thus relieving local property taxpayers from this burden and releasing more money for local services.

ELIMINATE PART-TIME JUSTICE

All judges must serve full time removing the possibility of conflicts of interest.

PHASE OUT ALL NON-LAWYER JUDGES

Except in counties under 40,000, all non-lawyer judges will eventually be phased out.

ABOLISH THE FEE SYSTEM

In many courts fees collected from fines are used to determine judges' salaries and other court costs. This has been called a "justice-by-the-dollar" system. This practice will be abolished. Any fines and forfeitures collected will be returned to the city or county where the offense occurred.

PROMOTE COURT ROOM DECORUM & DIGNITY

At present, many municipal and justice of the peace courts are conducted in garages, auto repair shops, etc. What defendants see in such cases they use as a basis for judging all the courts in the land. The proposed revision would ensure that all courts will be state courts with appropriate judicial procedures.

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Series _____ Carton _____

Vote **FOR** Amendment I

ARTICLE V REVISION . . . on March 14

LEAGUE OF WOMEN VOTERS OF FLORIDA
1310 W. Colonial Drive • Orlando, Florida 32804

Sanay

August 27, 1971

The Honorable Dick A. **Greco, Jr.**
Mayor, City of Tampa
City **Hall**
Tampa, Florida

Dear Mayor **Greco**:

One of the major issues **the legislature will** face next session is the revision of Article V, the judicial article of the state constitution. When the remainder of the constitution was revised in 1968, we failed to act on the judicial article. In 1969, **the** legislature finally adopted a revision of Article V which was defeated at the polls by the people in November 1970.

All concerned with **the** administration of justice agree that Florida urgently needs a modern court system in order to meet the demands placed **on our** judicial system.

I *am* also aware of the cities' great need for financial assistance to meet the ever increasing demands **placed** on local government,

With these thoughts in mind, the Judiciary Committee has suggested the establishment of a uniform trial court system throughout the state, composed of two levels of trial courts. These courts would try all offenses including violations of municipal and chartered county ordinances, Under this proposal, cities would continue to receive the-proceeds from fine and **forfeitures**. **However**, the state would assume the cost *of the* court system.

We are very aware of the value of "neighborhood" courts. Under **the** proposed court system, we envision branch locations

The Honorable Dick A. Greco, Jr.
August 27, 1971
Page Two

for the courts so that police officers, witnesses and defendants would not have to travel great distances or be unduly inconvenienced,

I would be very grateful for your views on this proposal and would like to work with you in developing a proposal along these lines which would be sound and acceptable to all concerned.

Sincerely,

Talbot "Sandy" D'Alemberte

*This letter was also sent to
The Hon. Jay Byrnes and the
Hon. David Kennedy.*

TD'A:ph



FLORIDA HOUSE OF REPRESENTATIVES
TALLAHASSEE

JUDICIARY COMMITTEE
Room 203 Capitol Building
Tallahassee, Florida 32304
October 5, 1971 .

Mr. Werner Buntmeyer
City Manager
City of Coral Springs
9500 W. Sample Road
Coral Springs, Florida 33060

Dear **Mr. Buntmeyer**:

Thank you for your letter of October 1, 1971, together with the resolution of the City Commission of Coral Springs opposing the abolition of municipal courts.

The proposed revision of Article V contemplates a uniform two tier trial court structure throughout the state. The county court would try violations of municipal ordinances. **Branch courts** could be established throughout the county to avoid lost time and expense to witnesses and police officers.

The court structure would be financed by the state and would be adequately staffed by lawyers. The revision of Article V will provide for a flexible and full use of our judicial talent and end the logjam to which you refer. This logjam has been caused by the archaic, piecemeal constitutional provision now in effect.

The much needed revision **will** eliminate the hodge-podge of courts which are arbitrarily limited in jurisdiction and number.

The state would assume the cost of the court system while returning fines and forfeitures to the cities, thus

Members

David C. Clark
Granville If. Crabtree, Jr.
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Page 2 - October 5, 1971

· providing for much needed financial assistance to the cities. Although many cities have responded, we have not received the information from Coral Springs concerning the cost of your municipal court and the revenue from fines and forfeitures. This information would be helpful to us in estimating the financial assistance which would accrue to the cities if this revision were adopted.

So far as municipal courts are concerned, I cannot justify the inherent conflict between a court which is supposed to dispense justice and yet imposes fines and forfeitures which most cities are dependent upon as a source of revenue.

I would be happy to discuss this matter with you in greater length.

Sincerely,

Talbot "Sandy" D'Alemberte

TDA:njd



FLORIDA HOUSE OF REPRESENTATIVES
TALLAHASSEE

September 15, 1971

TALBOT "SANDY" D'ALEMBERTE
REPRESENTATIVE, 98TH DISTRICT
ROOM 203, CAPITOL
TALLAHASSEE, FLORIDA 32304

COMMITTEES:
JUDICIARY, CHAIRMAN
APPROPRIATIONS
RULES & CALENDAR
• • • • • & TAXATION

Mrs. Theresa M. Callahan
Mr. E. C. (Tony) Wilcox
City of Miami.
Association of Retired Employers
2487 S.W. 23rd Street.
Miami, Florida

Dear Mrs. Callahan and Tony:

Thank **you** so much for **the copy** -of your letter to Governor Askew **calling** for financial assistance to -the cities.

I agree that we **must** provide assistance to **local** government. **One of** the means of assistance which has 'been proposed is the state taking over the **costs** of our entire judicial system.

The Judiciary Committee has proposed a revision of Article V, the judicial article of the State Constitution. The proposed revision **would** establish a uniform two tier trial court system financed by the state. Cities would continue to receive the fine and forfeitures. Provision is made in **the revision** for branch courts to avoid inconvenience to police officers and **witnesses** having to attend **court**. Under this pr'oposal, the state would take over financial **responsibilities for** all court functions and municipal courts as they are now **organized** would be abolished.

I would be delighted to have the opportunity to discuss this matter with you further. Please don't hesitate to let me know your further views on this or any other legislative matter of concern to you.

Sincerely yours,

Talbot "Sandy" D'Alemberte

TD'A:11