

IN THE SUPREME COURT OF FLORIDA

LAWTON CHILES, as Governor  
of the State of Florida,

Petitioner,

vs.

Case No.: 92,474

JOHN B. PHELPS, as the Clerk  
of the Florida House of  
Representatives, &  
DANIEL WEBSTER, as the Speaker  
of the Florida House of  
Representatives,

Respondents.

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**BRIEF OF AMICUS CURIAE**

SANDRA B. MORTHAM, as the Secretary of State,  
on behalf of  
JOHN B. PHELPS, as the Clerk of the  
Florida House of Representatives,  
and  
DANIEL WEBSTER, as the Speaker of the  
Florida House of Representatives

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## SUMMARY OF ARGUMENT

Upon a review of the applicable law relied upon by the Governor, including section 15.07, Florida Statutes (1997), the Secretary of State believes that the House of Representatives has the discretion to consider the vetoed bills from the 1997 regular legislative session and corresponding veto messages until the conclusion of the 1998 regular session for the purpose of providing the Legislature with the opportunity to override the Governor's vetoes. Accordingly, mandamus should not lie in this case.

ARGUMENT

**THE HOUSE OF REPRESENTATIVES HAS THE DISCRETION TO DETERMINE WHEN IT HAS CONCLUDED ITS ACTION UPON "OTHER ORIGINAL PAPERS" UNDER SECTION 15.07, FLORIDA STATUTES (1997). ACCORDINGLY, MANDAMUS IS INAPPROPRIATE IN THIS CASE.**

On or about October 29, 1997, the Secretary of State presented to the House of Representatives the vetoed bills from the 1997 regular session along with the Governor's veto messages. The Governor argues that under section 15.07, Florida Statutes (1997), the Respondents were under the ministerial duty to return those documents to the Department of State at the conclusion of the intervening special session on November 7, 1997. Section 15.07, Florida Statutes (1997), provides that:

All original acts and resolutions passed by the Legislature, and all other original papers acted upon thereby, together with the Journal of the Senate, and the Journal of the House of Representatives, shall, immediately upon the adjournment thereof, be deposited with, and preserved in, the Department of State, by which they shall be properly arranged, classified, and filed, provided that the journal of the executive session of the Senate shall be kept free from inspection or disclosure except upon the order of the Senate itself or some court of competent jurisdiction.

(Emphasis added.)

All original acts and resolutions passed by the 1997 Legislature were properly deposited with the Department of State under that section. See Exhibit "1," Affidavit of Liz Cloud. The remainder of section 15.07 applies to other original papers acted upon by the Legislature. All other original papers acted upon by the Legislature have also been transmitted to the Department of State as required by section 15.07. Id. It is the Department of State's understanding that at the time of this writing, the vetoed bills and objections at issue have not been acted upon by both houses of the Legislature. Section 15.07 does not require that these documents be transmitted to the Department of State until those documents have been acted upon and the Legislature has adjourned.

The overall purpose of section 15.07 is to assure that, after enactment, the laws of the State and other important related documents are safeguarded for posterity. The statute was not intended to impose any obligations on the House of Representatives with regard to how it conducts its internal

procedures.<sup>1</sup> In that regard, it is noted that historically, the House of Representatives has fully complied with its moral and legal duty to cooperate with the Secretary of State in assuring that its records were protected while in that body's custody. The Secretary of State has no reason to believe that the House of Representatives will refuse to return the 1997 vetoed bills and objections currently under consideration in the Legislature at the appropriate time.

The Governor argues that under article III, section 8(b) of the Florida Constitution, the House of Representatives was required to, but failed to, consider the vetoed bills and objections during the special session on school overcrowding; and therefore, was required under section 15.07, Florida Statutes (1997), to deposit those documents with the Secretary upon adjournment of the special session on November 7, 1997.

Article III, section 8(b) of the Florida Constitution provides that:

When a bill or any specific appropriation of a general appropriation bill has been vetoed by the governor, he shall transmit his signed objections thereto to the house in which the bill originated if in session. If that house is not in session, he shall file them with the secretary of state, who shall lay them before that house at its next regular or special session, and they shall be entered on its journal.

Contrary to the Governor's assertions, article III, section 8(b) does not require the Legislature to consider vetoed bills in a special session; and therefore, the House of Representatives has the discretion to determine whether vetoed bills and objections should be deposited with the Department of State at

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<sup>1</sup> If the Governor's claim succeeds, a large body of pending House legislation may be extinguished. Rule 96 of the Rules the House of Representatives provides that "[a]ll bills filed shall be available for consideration pursuant to these Rules for the entire two-year term of the Legislature except special session." That is, bills introduced in the first regular session of the 1997-98 biennium may be subject to action at any time in the first or second regular session. At the convening of the 1998 regular session, there were 594 bills that were carried over from the 1997 regular session. See Exhibit "2," Affidavit of Carol Jo Beaty. If section 15.07 is read to conclude action on all "original papers" at the adjournment of the session in which such papers originated, it would destroy all "carry over" legislation. Petitioner's interpretation, if adopted, restricts the authority of the House to adopt rules of procedure under article III, section 4(a) of the Florida Constitution, and would result in a very substantial unwarranted intrusion on the internal affairs of the House of Representatives.

the conclusion of the special session or retained for further consideration until the next regular session. Mandamus will not lie to compel a discretionary act. See Holland v. Wainwright, 499 So. 2d 21 (Fla. 1st DCA 1986) (The writ may be used to compel the performance of a ministerial duty imposed by law where it has not been performed as the law requires, but discretionary authority cannot be the subject of the writ.); Martin v. Marko, 564 So. 2d 518 (Fla. 4th DCA 1990) (Writ of mandamus may only be issued to command the performance of an act involving no exercise of discretion.)

Although article III, section 8 requires the Secretary of State to make the veto messages available to the Legislature for consideration during a special session, this provision does not mandate that the Legislature act upon those messages during a special session. In Attorney General Opinion 76-243, the history of article III, section 8(b) of the Florida Constitution was reviewed. Under the 1885 Florida Constitution, article III, section 28 provided that:

If the Legislature, by its final adjournment prevent (sic) such action, [return of vetoed bill, within five days] such bill shall be a law unless the Governor within twenty (20) days after adjournment shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session . . .

(Emphasis added.)

Article III, section 8(b) of the current constitution is substantially similar to article III, section 28 of the 1885 Constitution. In construing the differences between the two provisions, the Attorney General concluded that the insertion of the word "special" in the 1968 Constitution was done in order to give the Legislature the power to consider vetoed bills during a special session if it desired to do so. The Attorney General further opined that:

To flatly state, however, that such action is required or mandated is a different matter, and I am unable to construe s. 8(b), Art. III in such a manner in the absence of unequivocal evidence of an intent to impose such a constitutional requirement upon the Legislature.

(Emphasis in original.)

For the past 22 years, the Attorney General's opinion has guided the Legislature on the issue of whether it must address vetoed bills in an intervening special session or whether it may wait until the next regular session. As this Court stated in Florida Society of Ophthalmology v. Florida Optometric Assn., 489 So. 2d 1118, 1121 (Fla. 1986), established constructions of constitutional provisions are presumptively correct unless

manifestly erroneous. It is the Secretary of State's opinion that the construction of article III, section 8(b) as espoused by the state's chief legal officer is well-founded and should not be disturbed.

Furthermore, adopting the Governor's construction of the constitution would impair the Legislature's ability to address matters pending before it in an orderly manner. Unlike the regular 60 day session, a special session is limited in scope and the Legislature may only address those matters within the purview of the Governor's proclamation, unless the Legislature by a two-thirds vote of each house decides to address other matters. Art. III, § 3(c )1., Fla. Const.

Although the Legislature has the constitutional authority to address veto messages on matters outside of the proclamation if the procedural requirements of the constitution are met, such action should be discouraged as a matter of policy. A special session is normally convened by the Governor to address a particular issue that has in his opinion reached a crisis level. In the recitals of the most recent proclamation, the Governor used the words "critical" and "urgent" to describe the problems concerning school overcrowding.

By their nature, veto overrides are contentious. The appropriate time in which to consider these issues is a policy decision left to the Legislature. Requiring the Legislature to address matters in a special session, which may have nothing to do with the subject matter of the proclamation, may detract from the debate on the critical issues which precipitated the special session and could operate to extend the length of a special session at significant cost to the taxpayers of this state.

It is also noted that this Court has previously determined that article III, section 8 should be liberally construed to provide the Governor with adequate opportunity to consider whether bills should be vetoed. Florida Society of Ophthalmology, 489 So. 2d at 1118-19. For similar reasons, article III, section 8 must be liberally construed so as to respect the internal procedures of the House of Representatives and provide that body with adequate opportunity to consider whether to override vetoes.

#### CONCLUSION

Based upon the argument set forth in this brief, the Secretary of State believes that the Governor's request for a writ of mandamus should be denied.

WHEREFORE, the Secretary of State respectfully requests that the requested writ not issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the individuals listed on the attached service list this \_\_\_\_\_ day of March, 1998.

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