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**FILED**

SID J. WHITE

**MAY 4 1999**

**SUPREME COURT OF FLORIDA**

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

**LINDA L. WATTENBARGER,**

Petitioner,

-vs-

CASE NO.: 95,228

**J. FRANK WATTENBARGER,**

Respondent.

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ON APPEAL FROM THE DISTRICT COURT OF APPEAL

FIRST DISTRICT

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**PETITIONER'S JURISDICTIONAL BRIEF**

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*Wattenbarger v. Wattenbarger*, 24 Fla.L. Weekly D352

*Boot v. Sapp*, 714 So.2d 579 (Fla. 4<sup>th</sup> DCA 1998)

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## CERTIFICATION OF TYPE STYLE AND SIZE

I hereby certify that 14 point proportionally spaced Times New Roman type has been utilized in this brief.

## BASIS FOR INVOKING JURISDICTION

The Petitioner seeks to invoke the discretionary jurisdiction of this court pursuant to Rule 9.030(a)(2)(A)(iv), *Fla.R.App.P.*, to review a decision of the district court of appeal that expressly and directly conflicts with the decision of another court of appeal on the same question of law.

## FACTUAL BASIS FOR INVOKING JURISDICTION

The issue before the court in this appeal is the interpretation of Florida Statute §743.07(2) which provides that a court may require child support for a dependent beyond the age of 18 years . . . if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.

The case below involved a child whose 19<sup>th</sup> birthday was to be on May 21, 1998 but whose graduation date was to be June 2<sup>nd</sup>, 1998, eleven days later. After an evidentiary hearing the trial court made a finding that the child would be entitled to and vested in his right to his diploma prior to his 19<sup>th</sup> birthday and thus ordered continued support. The District Court reversed holding that the “plain language” of the statute controlled and that actual graduation was required prior to

the child's 19<sup>th</sup> birthday.

The decision of the District Court in the instant case directly and expressly conflicts with the decision of the District Court of Appeal, Fourth District, in the case of *Boot v. Sapp*, 714 So.2d 579 (Fla. 4<sup>th</sup> DCA 1998). In that case the children's 19<sup>th</sup> birthday was to be May 31, 1999 with graduation in early June 1999, approximately two days after the children's 19<sup>th</sup> birthday. In *Boot* the Fourth District held that the term "graduation" as used in the statute should be liberally construed and specifically acknowledged that "[a] high school student may complete all requirements of an educational program a few days, or even several weeks, before the date that student participates in graduation ceremonies."

Both courts were interpreting exactly the same statute on virtually identical facts. The First District adopted a "plain language" interpretation and rejected the notion that a child can vest in his right to graduate prior to his actual graduation date. Whereas, the Fourth District determined the statute should be "liberally" construed and specifically recognized the concept of satisfying educational requirements in advance of actual graduation, i.e. vesting in the right to graduate in advance of the actual graduation.

Further, as the Fourth District noted, "to deny support for the entire year would not be within the spirit or intent of the law as it relates to child support . . .

and should be liberally construed to mitigate potential harm to children.” Due to the conflict in the two decisions, similarly situated children in the Fourth District will receive a mitigating benefit denied to similarly situated children in the First District.

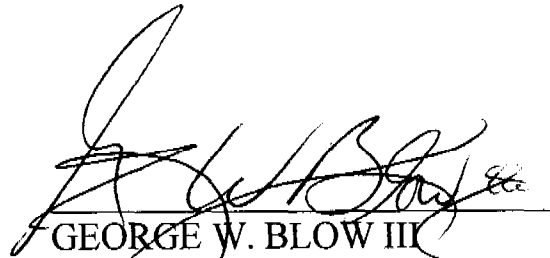
### RELIEF REQUESTED

WHEREFORE, the Petitioner moves this court to accept discretionary jurisdiction in this matter and resolve the conflicting decisions of the First and Fourth District Courts of Appeal.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been provided this date by United States mail to Scott T. Orsini, Esq., Post Office Box 118, St. Petersburg, Florida 33731.

DATED: May 4, 1999



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