IN THE SUPREME COURT OF THE STATE OF FLORIDA

THE FLORIDA SENATE, and TONI JENNINGS, in her official capacity as a Member of and as the President of The Florida Senate and as a citizen and taxpayer of the State of Florida,	/ / / / /
Petitioners,	/ / /
v.	/ / /
KATHERINE HARRIS, in her official capacity as Secretary of State of the State of Florida, and ROBERT MILLIGAN in his official capacity as Comptroller of the State of Florida,	/ / / / / / /
Respondents.	/

PETITION FOR WRIT OF MANDAMUS

Petitioners, THE FLORIDA SENATE, and TONI JENNINGS in her official capacity as President of The Florida Senate and as a citizen and taxpayer of the State of Florida, petition this Court, by and through their undersigned counsel, pursuant to Rules 9.030(a)(3) and 9.100 of the Florida Rules of Appellate Procedure and Article V, § 3(b)(8) of the Florida Constitution for issuance of a Writ of Mandamus directing the Respondent, KATHERINE HARRIS, in her

official capacity as Secretary of State of the State of Florida, to expunge from the official records of Florida the Governor's veto directed toward Line Item 117C, except for its final paragraph, in the 1999-2000 General Appropriations Act, Chapter 99-226, Laws of Florida, and to record as the official law of Florida that provision of the General Appropriations Act, notwithstanding the veto of that provision by the Governor of the State of Florida. Furthermore, the Petitioners request that a Writ of Mandamus issue to Respondent, ROBERT MILLIGAN, in his official capacity as Comptroller of the State of Florida, directing him to ensure that the expunction is reflected in the financial operations of the state. A copy of the Conference Report on Senate Bill 2500 (1999) which is the 1999-2000 General Appropriations Act, is filed with this Petition as Appendix 1.

I. JURISDICTION

This action challenges the validity of an executive veto of the 1999 General Appropriations Act as contrary to Article II, § 3, and Article III, § 8(a) of the Florida Constitution. This Court has jurisdiction pursuant to Article V, § 3(b)(8) of the Florida Constitution and Rules 9.030(a)(3) and 9.100 of the Florida Rules of Appellate Procedure.

The Court is again called upon to balance the Legislature's power to enact a General Appropriations Bill against the Governor's veto authority. This Court has previously entertained original mandamus proceedings to determine the validity of executive vetoes. Brown v. Firestone, 382 So. 2d 654 (Fla. 1980); Thompson v. Graham, 481 So. 2d 1212 (Fla. 1982); Chiles v. Milligan, 659 So. 2d 1055 (Fla. 1995); and specifically has done so when requested by one house of the Florida Legislature and its presiding officers. Florida House of Representatives v. Martinez, 555 So. 2d 839 (Fla. 1990). In *Brown*, the Court observed that mandamus is a proper remedy to obtain immediate determination of the issue, reasoning that "lingering uncertainty hampers the state's ability to finance ongoing state projects." 382 So. 2d 654, 662.

Here, the Governor's veto action has:

a) caused uncertainty and confusion in the extended school year program; and

b) cast doubt on the expenditure of significant amounts of state funds.

Declaratory relief in circuit court is neither necessary nor desirable because:

a) there are no material issues of fact to be found by a trial court; and

b) protracted litigation in circuit court and subsequent appellate review are unlikely to resolve this issue in sufficient time to allow the participating public

schools to meet the still "unvetoed" August 1, 1999, submission-for-participation deadline contained in paragraph 1 of the proviso to Line Item 117C.

Accordingly, this Court is again being asked to exercise its jurisdiction to resolve a fundamental constitutional dispute between the powers of the legislative and executive branches of Florida's government.

II. RELIEF SOUGHT

The Petitioners seek issuance of a Writ of Mandamus requiring the Secretary of State to expunge the Governor's veto of all of Line Item 117C, except its final paragraph, in the General Appropriations Act from the official records of the State; and requiring the Comptroller to ensure that this expunction is reflected in the financial operations of the state.

III. PARTIES

Petitioner, The Florida Senate, is a house of The Florida Legislature, a coordinate branch of government of the State of Florida. The Florida Legislature is vested with the legislative power of the State of Florida by Article III, § 1 of the Florida Constitution. Such power includes the mandate to make appropriations, by law, for the expenditure of state funds (Art. VII, § 1(c), Fla. Const.).

Petitioner, Toni Jennings, is a citizen and taxpayer of the State of Florida, is the duly elected Member of the Florida Senate from District 9, and has been designated by The Florida Senate to serve as its current President. Pursuant to Rule 1.4 of the Rules of the Senate, Toni Jennings, in her official capacity as President of the Florida Senate, "may authorize counsel to initiate … any suit on behalf of the Senate, a Member of the Senate (whether in the legal capacity of Senator or taxpayer) … or an officer or employee of the Senate when such suit is determined by the President to be of significant interest to the Senate and when it is determined by the President that the interests of the Senate would not otherwise be adequately represented." Petitioner, Toni Jennings, has authorized the filing of this Petition on behalf of The Florida Senate and on her own behalf as a Senator, as a Senate officer, and as a taxpayer.

Respondent, Katherine Harris, is the duly elected Secretary of State of the State of Florida. Pursuant to Article IV, § 4(b) of the Florida Constitution, the Secretary of State is the official record keeper of the official acts of the legislative and executive departments. In accordance with Article II, § 2 of the Florida Constitution, the office of the Secretary of State is maintained in Tallahassee, Leon County, Florida.

Respondent, Robert Milligan, is the duly elected Comptroller of the State of Florida. Pursuant to Article IV, § 4(d) of the Florida Constitution, the Comptroller is the chief fiscal officer of the state responsible for settling and approving accounts against the state. In accordance with Article II, § 2 of the Florida Constitution, the office of the Comptroller is maintained in Tallahassee, Leon County, Florida.

IV. INTRODUCTION

The rules, established by this Court, governing the delicate balance between Florida's legislative and executive branches dealing with the veto of specific appropriations, are clear and paraphrased as follows:

The Legislature can't logroll in appropriations bills, or use proviso language to change or amend existing law on a subject other than appropriations.

The Governor can't veto an unidentifiable amount, or unilaterally assign or create an amount for the purpose of a veto; or reduce a specific appropriation without taking *all* the money appropriated for a unified purpose.

The Senate and Jennings assert that its proviso fully complies with this Court's directions stated in *Brown*.

The Senate and Jennings further assert that the Governor's veto demonstrably violates the clear prohibitions announced in *Brown*; and in Florida House of Representatives v. Martinez, 555 So. 2d 839 (Fla. 1990).

Planning for, and operation of, an extended school year are inextricably tied, interrelated phases of a unified legislative purpose -- to offer up to 234 public schools the funds to extend their academic school year from a minimum of 180 to 210 school days beginning with the fiscal year that just commenced.

The Governor unilaterally assigned, created, and targeted an amount to veto; he artificially subdivided a $39,500,000 integrated fund for the unified purpose of funding extended school year education in public schools; and rather than *nullifying* it, he *reduced* the $39,500,000 appropriation for that unified purpose to $23,360,000.

During the 1999 Regular Session of the Florida Legislature, by the *unanimous* vote of each house, the Legislature enacted Senate Bill 2500 (Chapter 99-226, Laws of Florida), the General Appropriations Act for Fiscal Year 1999-2000 (hereinafter "the GAA").

Line Item 117C of the GAA and its accompanying proviso include the following:

117C AID TO LOCAL GOVERNMENTS
GRANTS AND AIDS - EXTENDED SCHOOL YEAR
FROM GENERAL REVENUE FUND..... 40,000,000

Funds appropriated in Specific Appropriation 117C are provided for schools that choose to extend the length of the academic year for students from 180 to 210 days. To be eligible to receive funds provided for an extended school year, a school must submit to the Commissioner of Education by August 1, 1999, a letter of commitment to extend the length of the school year. By January 1, 2000, the school must also submit an implementation plan, which includes, but is not limited to, 1) assurance that teacher training, individual and collaborative teacher planning time, and innovative use of technology are key elements of the school's implementation of an extended school year, and 2) assurance that additional time-on-task for students will be used to provide additional course content.

The school's letter of commitment must be accompanied by a letter of endorsement from the district school board, which acknowledges the school's commitment and expresses support for the school's extended school year implementation plan. Districts must also provide assurance that extended school year funds shall be used to provide twelve-month contracts for teachers in participating schools. The district must include schools implementing an extended school year in the district's controlled open enrollment plan. In addition, both the school and the district board must provide assurance that appropriate student performance data will be used to measure the extent to which an extended school year is associated with increased student performance. This measurement must include a comparison of the performance of comparable student populations in 180-day schools and 210-day schools. The Commissioner of Education is authorized to reduce a district's

2000-2001 FEFP funding entitlement by the amount of its 1999-2000 extended school year allocation if the district fails to submit 1999-2000 student performance data by September 1, 2000.

Funds in Specific Appropriation 117C are provided for both planning and operations grants. Schools with 500 or fewer students shall receive an $80,000 planning grant. Schools with a student population greater than 500 and less than or equal to 1,000 shall receive a planning grant of $100,000. Schools with a student population greater than 1,000 shall receive a planning grant of $120,000.

Each district shall receive an allocation for the operation of an extended school year which shall be calculated by (1) multiplying each district's FEFP base funding amount (2) times the number of weighted students participating in an extended school year divided by the total weighted student enrollment of the district, (3) times 1/6, and (4) times ½. If the amount required to fund planning grants and operations grants for all eligible schools exceeds the amount of the appropriation, the Commissioner shall fund the cost of extended school year operations on a first-come first-served basis. Only those ***234 [e.s.]*** *schools that indicated an interest in an extended school year in response to the Department of Education's February, 1999, extended school year survey shall be eligible to receive funds appropriated in Specific Appropriation 117C. In the event more than 50% of the* ***234 [e.s.]*** *eligible schools submit an implementation plan by the January 1, 2000 deadline, the Commissioner of Education shall consult with the President of the Senate and the Speaker of the House of Representatives regarding the full annualized cost of implementing an extended school year for the 2000-2001 year for all schools that have submitted their implementation plans.*

Italicized and underlined portion - vetoed by the Governor.

The Commissioner of Education shall not authorize the release of any funds for operations for any school until that school certifies that its planning process is complete and that it is ready to fully implement the extended school year.

Any school that operated a 210-day extended school year in 1998-1999 shall receive funds for the operation of an extended school year for the 1999-2000 school year, from the funds appropriated in Specific Appropriation 117C.

The Commissioner of Education shall report to the Executive Office of the Governor, the President of the Senate and the Speaker of the House of Representatives by August 15, 1999, and November 15, 1999 and January 15, 2000 regarding progress made by schools that are preparing to implement an extended school year. These reports shall include a projection of the full cost of extended school year implementation for all eligible schools that are expected to implement an extended school year during the 1999-2000 school year. The Commissioner of Education shall also report to the Executive Office of the Governor, the President of the Senate and the Speaker of the House of Representatives by July 15, 2000 regarding the effectiveness of school district planning and initial implementation of an extended school year.

From the funds appropriated in Specific Appropriation 1l7C, $500,000 is provided for a summer training program for persons representing schools which have chosen to implement an extended school year and which qualify for extended year planning funds for 1999-2000.

In his veto message, a full copy of which is filed with this petition as Appendix 2, the Governor, on page 16, stated:

Italicized and underlined portion - vetoed by the Governor.

> I hereby veto portions of proviso language following Specific Appropriation 117C on pages 50 and 51 appropriating $16,140,000 from the General Revenue Fund for operational grants for extended school year and $500,000 for a summer training program:

... (the Governor then quoted in full the four paragraphs of proviso noted as "vetoed" above.) ...

> However, I will let stand the $23,360,000, provided to the 234 eligible schools for extended year planning grants.

V. ARGUMENTS

A. THE GOVERNOR MAY NOT CREATE A SPECIFIC APPROPRIATION VETO TARGET BY UNILATERALLY ESTIMATING OR ASSIGNING A DOLLAR NUMBER TO VETO.

The Governor's veto attempts to reduce a $39,500,000 appropriation by $16,140,000, a sum which neither appears in the specific appropriation nor can be calculated at this time from the appropriation. Florida's Constitution grants no gubernatorial authority to reduce or alter the amounts of specific appropriations.

This Court's attention is drawn respectfully to its announced result regarding Veto number 1, discussed in Florida House of Representatives v Martinez, 555 So. 2d 839, 840, 844 (Fla. 1990). There, Specific Appropriation 5 in Chapter 89-253, Laws of Florida, was a lump sum for an across-the-board state employee salary

increase. The Item was followed by a proviso authorizing the Attorney General, out of the $104 million, to reward up to 8 attorneys in the Department of Legal Affairs with additional salary, above the maximum for their pay grade. In order to exercise a veto, the Governor, citing what he saw as the unfairness of giving certain employees extra benefits, unilaterally assigned a value of $361,070 to that proviso, apparently seeking to identify (or estimate) the dollar amount associated with pay and benefit raises for up to 8 employees of the department. This Court held that the veto of that proviso failed because the proviso, on its face, did not specify the dollars and identify the integrated fund.

Except for the passage of 10 years and the differing subjects, there isn't a dime's worth of legal difference between the outcome of the veto of the Attorney General's salary enhancement proviso in 1989 and the public school extended school year veto which is the subject of this Petition.

On the other hand, the Governor's veto of a "calculated" portion of Line Item 117C is far different from the "calculated" veto allowed by this Court in *Martinez.* Veto number 2 in *Martinez* involved the following proviso from Specific Appropriation 500 of Chapter 89-253, Laws of Florida:

> 19. $4,000,000 is for Florida First Start as described in CS/HB 1160 or similar legislation and $100,000 shall be allocated for the Toddler Intervention Program (TIP) in Dade County.

In that case, this Court allowed the Governor to subtract the *specified amount* of $100,000 from the *specified amount* of $4,000,000 to get the calculated amount of $3,900,000. That was simple arithmetic, requiring neither an assumption on the Governor's part nor reliance on any information not explicit in the budget.

In the instant case, in the Governor's attempt to dissect the proviso and to separate the operations component of the appropriation from the planning, reporting, and other components, the Governor may have made a good-faith effort to estimate or even to calculate the amounts he thought were attributable to each component, but because planning and operations hinge on express contingencies, and both are inextricably interwoven throughout paragraphs 1; 2; 3; 4 (vetoed); 5 (vetoed); and 7 of the proviso, the Governor's attempt cannot succeed. The Governor's veto of paragraph 4, the only paragraph of the proviso which limits the number of schools eligible for participation, renders his assumption that no more than 234 schools will apply for grants purely speculative. In fact, if the Governor's veto is permitted to stand, it will have the effect of authorizing an expenditure of extended school year funds by public schools that were not so authorized by the Legislature in the adoption of the GAA. Such a result is clearly an unconstitutional infringement by the Governor into the exclusive authority of the Legislature to make appropriations and to put qualifications or restrictions thereon.

B. THE GOVERNOR MAY NOT VETO JUST ONE ELEMENT OF AN INTEGRATED FUND FOR A UNIFIED PURPOSE RESULTING IN A REDUCTION, NOT A NULLIFICATION, OF A SPECIFIC APPROPRIATION.

With the exception of the veto of $500,000 specifically appropriated within the $40,000,000 provided in Line Item 117C, for a summer training program, the Governor's veto is contrary to the Provisions of Article III, § 8(a) of the Florida Constitution, in that Line Item 117C of the GAA authorized the maximum expenditure of $39,500,000 for the unified purpose of extending school year programs. The Governor's veto message attempts to leave the planning grants in place and carve out a fund of $16,140,000 that was not specified or identified in the specific appropriation, but which the Governor estimates will be the operations grants portion of the amount appropriated for planning and operations. Florida law is clear. The Governor can nullify, but cannot reduce, an integrated specific appropriation.

The proviso language clearly indicates a unified legislative purpose to provide an *opportunity* for *234 eligible, identified public schools* to extend the length of their academic year from 180 to 210 days. Planning and operations are interrelated phases of that unified purpose -- individual elements inextricably tied together financially -- necessary to achieve the stated legislative purpose of

extending the public school year. The proviso language is clear: to be eligible, the school must submit to the Commissioner of Education a letter of commitment to participate by August 1, 1999, and submit an implementation plan by January 1, 2000. To be eligible, the school must have been one of the 234 schools that expressed interest in response to a February 1999 Department of Education survey *("identified schools").* Funds are allocated for planning: $80,000, $100,000, or $120,000 per school, depending on the school's student population. Since it will not be known until August 1, 1999, how many, or which, of the 234 schools will seek planning grants, it cannot be ascertained either by the Legislature or the Governor at this time how much of the specific appropriation will be allocated for planning. After planning grants are allocated, the eligible schools will receive operations grants, *from the funds remaining*, which are calculated by formula, on a first-come, first-served basis. Since it is not known what funds will remain after planning grants are allocated or how many or which of the eligible schools will seek operations grants, it will not be possible until January 1, 2000, to calculate the amount available for operations grants.

The first seven paragraphs of text following specific appropriation 117C must be read as a single proviso (an integrated identifiable fund allocated for a specified purpose) relating to the $39,500,000 appropriated in Line Item 117C. The

Legislature stated the single unified purpose of these seven paragraphs in its very first sentence: "to extend the length of the academic year for students from 180 to 210 days" in identified eligible schools. The grammatical structuring of the text into seven paragraphs, no one of which identifies any specific amount of money, does not make these into seven distinct provisos. As this Court stated in Florida House of Representatives v. Martinez, 555 So. 2d 839, 844, (Fla. 1990):

> [N]othing in *Brown* authorizes the Governor to assign value to a proviso if the legislature itself has not done so. Investing the Governor with this power would permit him to fabricate an "integrated fund" out of virtually any proviso or portion of a proviso merely by supplying his own "estimate" of its monetary cost. This would intrude too greatly upon the legislative prerogative, no matter how accurate the Governor's monetary estimate might be. We thus conclude that, before the Governor may veto specific proviso language, that language on its face must create an identifiable integrated fund—an *exact sum* [e.s.] of money—that is allocated for a specific purpose.

Furthermore, the Legislature's single purpose is underscored by the intertwined nature of the seven paragraphs. The first and second paragraphs of the proviso relate to extending the school year from 180 to 210 days. The terminology in each of these paragraphs contemplates *both* planning *and* operations. The third paragraph provides for planning *and* operations grants, and specifies the amounts of planning grants to individual schools. The fourth paragraph (vetoed) allocates operations grants, reduces operations grants if planning and operations grants

exceed the appropriation, and limits the number of schools eligible for planning and operations grants. The fifth paragraph (vetoed) prohibits release of any operations grant prior to planning being completed. The sixth paragraph (vetoed) makes operational funds available to any school already operating a 210-day school year. The seventh paragraph requires reporting applicable to *both* planning *and* operations. The requirements of these seven paragraphs are interwoven because the Legislature considered an extended school year to be the unified purpose of the specific appropriation.

The result of the Governor's attempt to carve out and eliminate operations grants from planning grants underscores that planning and operations are phases of an inextricably interwoven purpose. In vetoing only 3 of the first 7 paragraphs of this proviso, the Governor's veto left numerous references to operations grants "unvetoed," including the 180-day vs. 210-day comparison requirement of paragraph 2, the requirement that funds are provided for operations grants in paragraph 3, and the reporting on planning and implementation of an extended school year in paragraph 7.

Further, there is an inherent defect in the methodology the Governor used in his attempt to "let stand the $23,360,000 provided to the 234 eligible schools for extended school year planning grants." The Governor vetoed paragraph 4 of the

proviso. This is the very paragraph of the proviso that limits the total appropriation to the 234 schools for which the Governor then attempted to let stand the planning grants. By vetoing the reference to the 234 eligible schools, the Governor's reference to the planning grants for those schools has no context and is rendered meaningless. This demonstrates the difficulty the Governor encountered in his attempt to legislate by piercing a specific, integrated appropriation and altering the manner in which it was to be funded, rather than vetoing it in its entirety. Despite the Governor's stated intent to "let stand the planning grants for the 234 eligible schools," his veto of paragraph 4 of the proviso has the consequence of *creating* a different use for the expenditure of public funds by any of Florida's approximately 2,600 public schools, a use that the Legislature neither contemplated nor authorized.

Finally, when the Governor vetoed some of the proviso language without also vetoing the entire $39,500,000 specific appropriation to which the proviso relates and thereby altered the amount of the specific appropriation, he unconstitutionally intruded into the Legislature's power to make law. In short, his veto fails constitutional muster because it is not directed to the "specific appropriation" as that term is used and has been construed in Article III, § 8 of the Florida Constitution and because it seeks to eliminate qualifications and restrictions without eliminating the

related $39,500,000 appropriation. The term "specific appropriation" has settled meaning in Florida. The *Brown* case states:

> A specific appropriation is an identifiable, integrated fund which the legislature has allocated for a specified purpose. 382 So. 2d 654, 668.

In Line Item 117C, that amount is $39,500,000 for implementation of an extended school year for certain identified schools. Line Item 117C has an integrated, unified purpose. The Legislature appropriated $39,500,000 for that purpose. The Legislature did not try to hide the $39,500,000 extended school year program--it put it right up there for the Governor to approve or nullify. Instead of doing one or the other, he created a third option, that of altering by partial reduction, a choice that is not available to him under the settled law as announced by this Court.

WHEREFORE, Petitioners, THE FLORIDA SENATE, and TONI JENNINGS, in her official capacity as a Member of and as the President of The Florida Senate and as a citizen and taxpayer of the State of Florida, request that this Court issue a Writ of Mandamus to KATHERINE HARRIS, in her official capacity as Secretary of State of the State of Florida, directing her to reinstate the vetoed portions of the initial seven paragraphs of the proviso following Line Item 117C of the GAA, increasing the amount of such Line Item to $39,500,000, and expunging the unconstitutional veto identified in Section IV of this Petition; and to ROBERT

MILLIGAN, in his official capacity as Comptroller of the State of Florida, directing him to ensure that this expunction and reinstatement are reflected in the financial operations of the state.

Respectfully submitted,

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