

# ORIGINAL

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.: 96910

STATE OF FLORIDA,

Petitioner,

vs.

CHARLES BRADFORD,

Respondent.

**FILED**  
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PETITIONER'S BRIEF ON JURISDICTION

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CERTIFICATE OF INTERESTED PERSONS

Counsel for the State of Florida, Petitioner herein, certifies that the following persons and entities have or may have an interest in the outcome of this case.

1. Honorable **Joyce A. Julian**, Circuit Court Judge, Seventeenth Judicial Circuit in and for Broward County, Florida
2. **Robert R. Wheeler, Esq., Assistant Attorney General**  
**Celia Terenzio, Esq., Assistant Attorney General, Bureau Chief**  
Office of the Attorney General, State of Florida  
**Robert Butterworth, Attorney General**  
(Appellate counsel for the State of Florida, Petitioner)
3. **Cynthia G. Imperato, Assistant Statewide Prosecutor**  
(Prosecuting Attorney)
4. **Michael E. Dutko, Esq.**  
(Trial counsel for Respondent)  
(Appellate counsel for Respondent)
5. **Charles Bradford**  
(Respondent)

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for the State of Florida, Appellant herein, hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the prosecution in the trial court and Appellee in the Fourth District Court of Appeal below. Petitioner will be referred to herein as "Petitioner" or the "State". Respondent, Charles Bradford, was the defendant in the trial court and Appellant in the District Court below. Respondent will be referred to herein as "Respondent" or "Defendant". Reference to the Appendix will be by the symbol "A".

STATEMENT OF THE CASE AND FACTS  
(Limited to the issue of jurisdiction)

Petitioner seeks discretionary review of the decision of the Fourth District Court of Appeal in Bradford v. State, 24 Fla. L. Weekly D1515 (Fla. 4th DCA, June 30, 1999), rendered final on September 24, 1999 (A-1). This Court's discretionary jurisdiction, pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(i), is invoked to review the district court's decision that expressly declared valid a state statute.

On July 10, 1998, Respondent filed a Notice of Appeal appealing several of the trial court's orders denying various motions to dismiss (A-2). In the appeal, Respondent challenged the constitutionality of Florida Statute §817.234(8) on several grounds, claiming that it was: (1) overbroad; (2) void for vagueness; (3) not sufficiently narrowly drawn to justify a legitimate restriction; and (4) underinclusive, violating the equal protection clauses of the United States and Florida Constitutions. Additionally, Respondent alleged that the State's Traverse and Amended Traverse were legally insufficient (A-3). In its Answer Brief, the State asserted that Florida Statute §817.234(8) was constitutional and refuted each of Respondent's constitutional challenges (A-4).

In an opinion filed June 30, 1999, the Fourth District Court of Appeal concluded that Florida Statute §817.234(8) was

constitutional, and affirmed on the basis of a previous case, Barr v. State, 24 Fla. L. Weekly D999 (Fla. 4th DCA, April 21, 1999) (A-1). On July 12, 1999, Respondent filed a motion for rehearing, motion for clarification, and suggestion for en **banc** consideration (A-5). Petitioner filed a motion for rehearing and motion for rehearing en **banc** on July 29, 1999 (A-6).

On September 24, 1999, the Fourth District Court of Appeal denied both Petitioner's and Respondent's motions for rehearing or rehearing en **banc** (A-7). Notice to invoke this Court's discretionary jurisdiction was filed on October , 1999.



SUMMARY OF THE ARGUMENT

This Court has jurisdiction, under Article V, Section 3(b)(3) of the Florida Constitution to review Bradford v. State, 24 Fla. L. Weekly D1515 (Fla. 4th DCA, June 30, 1999) because the Fourth District Court of Appeal expressly declared valid a state statute.

## ARGUMENT

JURISDICTION LIES WITH THIS COURT BECAUSE THE  
FOURTH DISTRICT COURT OF APPEAL EXPRESSLY  
DECLARED VALID A STATE STATUTE.

Florida Rule of Appellate Procedure 9.030(a)(2)(A)(i) provides that "[t]he discretionary jurisdiction of the supreme court may be sought to review decisions of the district court of appeal that expressly declare valid a state statute." This Court has jurisdiction, under Article V, Section 3(b)(3) of the Florida Constitution, of district court of appeal decisions that expressly declare valid a state statute. Avatar Development Corp. v. State, 723 So. 2d 199, 200 (Fla. 1998). See also Rogue v. State, 664 So. 2d 928 (Fla. 1995) (Florida Supreme Court has jurisdiction to review district court decision declaring statute valid); Cuda v. State, 639 So. 2d 22, 23 (Fla. 1994) (Florida Supreme Court, pursuant to Article V, Section 3(b)(3), has jurisdiction to review district court decision expressly declaring statute valid).

Because the Fourth District Court of Appeal expressly declared valid a state statute in Bradford v. State, 24 Fla. L. Weekly D1515 (Fla. 4th DCA, June 30, 1999), this Court has jurisdiction. Respondent challenged the constitutionality of Florida Statute §817.234(8) on several grounds (A-3). The Fourth District Court of Appeal concluded that Florida Statute §817.234(8) was constitutional, and affirmed on the basis of a previous case, Parr v. State, 24 Fla. L. Weekly D999 (Fla. 4th DCA, April 21, 1999) (A-

1). The district court's holding constituted an express declaration that Florida Statute §817.234(8) is valid.

The district court wrote "only to clarify why subsection (8) does not punish purely innocent activity." The court noted that in Barr, they applied the four part Central Hudson test to determine that the statute did not violate Respondent's First Amendment protections. In explaining its holding, the court stated that 'the legislature in enacting subsection (8) intended to punish only solicitations made **for the sole purpose of defrauding that patient's PIP insurer .**" (emphasis added) It added: "In other words, a chiropractor may solicit any prospective patient even if that chiropractor happens to get paid for his services by the patient's PIP insurance, **as long as he does not solicit with intent to defraud the insurer.**" (emphasis added)

The Fourth District Court of Appeal expressly declared valid Florida Statute §817.234(8), but at the same time erred by construing this statute to require proof of the additional element of fraud for prosecution under the statute. The district court's finding that subsection (8) prohibits only solicitation that was made with the purpose of "defrauding the patient's PIP insurer" or "with the intent to defraud the insurer", is directly contrary to the same court's holding in Barr, where the court did not require any proof of fraud or fraudulent intent to convict one under the statute. A review of the legislative history proves that the

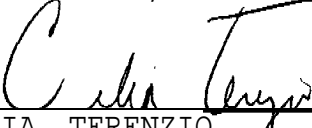
Legislature did not intend to require the element of intent to defraud in subsection (8) of this statute.

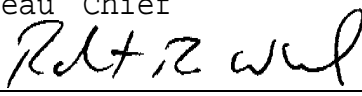
This holding has overwhelming ramifications, now requiring the State to allege and prove fraud in order to prosecute and convict a violator of Florida Statute §817.234(8), when such an element is not required by the statute. Although the Fourth District Court of Appeal correctly and expressly declared Florida Statute 817.234(8) valid, the court stripped the statute of any effectiveness by judicially creating this additional element of fraud. This Court should accept jurisdiction to rectify this error, and announce clearly that fraud is not a necessary element for the prosecution and conviction of one who violates Florida Statute §817.234(8).

CONCLUSION

Wherefore, based on the foregoing, Respondent respectfully requests that this Court ACCEPT jurisdiction.

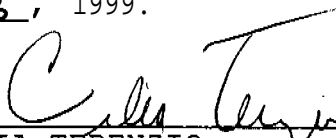
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on Jurisdiction has been furnished by U. S. Mail to: Michael E. Dutko, Esq., Bogenschutz & Dutko, P.A., Colonial Bank Building, Suite 500, 600 South Andrews Avenue, Fort Lauderdale, FL 33301 on October 26, 1999.

  
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