IN THE SUPREME COURT
STATE OF FLORIDA

THE STATE OF FLORIDA ex rel.
ROBERT A. BUTTERWORTH,
ATTORNEY GENERAL

Petitioner,

v. **CASE NO. 01-766**

FLORIDA PUBLIC EMPLOYEES
COUNCIL, 79, AFSCME

Respondent.

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STATE OF FLORIDA'S REPLY

The question presented by the Petition for Writ of Prohibition is whether a circuit court has jurisdiction to entertain a suit directed at the legislative process and to enjoin a legislative meeting. As stated in the Petition, the circuit court's attempt to enjoin a legislative committee meeting presents an immediate and serious interference with the annual legislative session and a direct challenge to the separation of powers doctrine of Article II, section 3 of the Florida Constitution. Respondent does not directly address the issues of interference with the legislative session or the separation of powers doctrine in its Response. Instead, Respondent essentially raises two points in opposition to the Petition for Writ of Prohibition: 1) that the circuit court has subject-matter jurisdiction to construe and enforce a statutory right (impasse procedures under Ch. 447, Fla. Stat.); and 2) a

"party" to a proceeding must obey even an "erroneous order" until it is set aside. Neither of these points are relevant to the constitutional issues presented by the Petition, nor do they support judicial intrusion into the internal proceedings of the Legislature.

In reply to Respondent's first point, regardless of whether a statutory right is involved, the circuit court has no subject matter jurisdiction under the Florida Constitution to enter injunctions against the Legislature and direct its committees not to meet. See Art. III, § 4, Fla. Const.; and see, Crawford v. Gilchrist, 64 Fla. 41, 59 So. 963 (Fla. 1912); Moffitt v. Willis, 459 So. 2d 1018 (Fla. 1984). The primary power of the judicial branch is to invalidate the acts or products of the legislative process, not to direct the process itself. See General Motors Acceptance Corporation v. State, 11 So. 2d 482 (Fla. 1943); Carlton v. Mathews, 103 Fla. 301, 137 So. 875 (Fla. 1931). Respondent provides no constitutional authority for its position that the circuit court could enforce a statutory right by ordering a legislative committee not to meet.

Furthermore, the complaint filed by Respondent did not ask the circuit court to construe any statute. The complaint was for temporary and permanent injunctive relief,[1] directed at "The

[1] Respondent titled the pleading filed below as "Complaint For Declaratory and Injunctive Relief"; however, the pleading contains no substantive allegations to support a declaratory judgment under Chapter 86, Fla. Stat.

Florida Legislature." Respondent did not claim to be in doubt about its rights under any statute. Indeed, a temporary restraining order, issued ex parte and without notice, could only issue if Respondent had a "clear legal right to relief." Naegele Outdoor Advertising Company, Inc. v. City of Jacksonville, 659 So. 2d 1046 (Fla. 1995); Eastern Federal Corporation v. State Office Supply Company, Inc., 646 So. 2d 737, 741 (Fla. 1st DCA 1994), reh'g denied, rev. denied, 659 So. 2d 271 (Fla. 1995) (parties seeking injunction must demonstrate clear legal right to relief); Millennium Communications & Fulfillment, Inc. v. Office of the Attorney General, 761 So. 2d 1256, 1260 (Fla. 3d DCA 2000). Moreover, an alleged statutory right cannot be enforced through a violation of the separation of powers doctrine by the circuit court.

Finally, Hawkes v. Locke, 595 So.2d 32 (Fla. 1992), does not provide any authority for the circuit court to enforce a constitutional or statutory right by enjoining the Legislature. In Locke, this Court recognized that one of the court's primary judicial functions is to interpret statutes and constitutional provisions. In carrying out that function, a court may construe a statute in a manner that incidently has an adverse effect on either the executive or the legislative branch; however, nothing in Locke allows a court to directly interject itself into the legislative process. Respondent completely ignores the Court's discussion in

Locke of Moffitt v. Willis, 459 So. 2d 1018 (Fla. 1984), and McPherson v. Flynn, 397 So. 2d 665 (Fla. 1981), which uphold this Court's longstanding principle that "the control or influence by one branch of another branch's internal operating procedures could interfere with the independence of the second branch and possibly place the enforcing branch in a superior position." Locke, 595 So. 2d at 36. The Locke Court recognized the danger represented by a violation of the separation of powers provision such as that demonstrated in this case.

Here, the circuit court went beyond merely construing the statute or passing upon the validity of action taken by the Legislature; it sought to prohibit the scheduling and convening of a legislative committee meeting. This is not, as in Locke, a judicial determination that the statute applies to the Legislature. Nothing in Section 447.403, Fla. Stat., prescribes the procedures for scheduling the public hearing other than to require that a public hearing be held after either party files a written rejection of some or all of the special master's recommendations. The scheduling and convening of a legislative committee meeting, however, is essentially a procedural matter subject to legislative rule and goes to the heart of the internal operating procedures of the Legislature. While a court, in construing the statute, may pass upon the validity of any action taken at such a meeting in violation of the statute, nothing in either the Constitution nor

the statute authorizes the judiciary to interfere in the Legislature's internal operating procedures in the convening of such meeting.

In regard to Respondent's second point, the circuit court's orders are not merely "erroneous", they are void. These orders are not directed at individuals who might otherwise be subject to the jurisdiction of the court. These orders are directed at a separate, but equal sovereign branch of government: "The Florida Legislature". As such, these orders do not just "erroneously" intrude on the rights of individuals: they interfere with the exclusive powers of another branch of government, during its annual legislative session. These orders violate the constitution's provisions on separation of powers and are void.

The cases cited at pages 12 and 13 of the Response regarding a duty to obey "erroneous" orders are easily distinguishable because none of those cases involve orders directed at the Legislature.[2] Moreover, in each of those cases, the court's jurisdiction and authority to enter the order was not at issue. Here, the circuit court's authority to enter an order enjoining the legislative process is the issue; and, because the court had no

[2] See McQueen v. State, 531 So.2d 1030 (Fla. 1st DCA 1988) (order entered against mother in child dependency case); Estate of Coveny v Coveny, 324 So.2d 681 (Fla. 4th DCA 1976) (order requiring attorney to give testimony at a deposition); Rubin v. State, 490 So.2d 1001 (Fla. 3rd DCA 1996) (order requiring attorney to continue to represent criminal defendant); Walker v. City of Birmingham, 388 U.S. 307 (1967) (order precluding certain groups from demonstrating on public property).

authority to enter such an order, the "duty" cited by Respondent does not apply. Indeed, one of the cases cited by Respondent recognizes that there is no duty to obey an order which is "transparently invalid or [has] only a frivolous pretense to validity." See Walker v. City of Birmingham, 388 U.S. 307, 315 (1967). Accord Sandstrom v. State, 309 So.2d 17, 20 (Fla. 4th DCA 1975), cert. discharged 336 So. 2d 572 (Fla. 1976). Such is the case here.

Respondent errs in its characterization of this proceeding as a matter of statutory construction; rather it concerns issues of vital importance to the people of the State of Florida and the functioning of Florida government and implicates the ability of the Legislature to function as one of the three branches of government. The 2001 Legislative Session concludes May 6, 2001. In order to complete its work on the Appropriations Act, the Legislature must furnish the Appropriations Act to each member of the Legislature, the Cabinet, the Governor and the Chief Justice no later than May 3, 2001. See Art. III, § 19(d), Fla. Const. There are less than three weeks remaining for the Legislature not only to complete its budgetary work, but also work on a multitude of other significant issues relating to the welfare of the people of Florida. It is highly inappropriate for the members of the Legislature to be diverted from their constitutional duties by judicial intrusion on their internal proceedings. This Court has long-recognized that

"(t)he preservation of the inherent powers of the three branches of government--legislative, executive, and judicial--free from encroachment or infringement by one upon the other, is essential to the safekeeping of the American system of constitutional rule." Simmons v. State, 36 So. 2d 207, 208 (Fla. 1948).

In conclusion, it is respectfully submitted, that when the Legislature enacts legislation that "erroneously" intrudes upon the exclusive authority of the courts, the courts exercise their constitutional prerogative to either ignore the legislation or strike it down. See Simmons, supra. The courts do not go to the Legislature, first, and request repeal or modification. The same constitutional deference should be afforded the Legislature in the exercise of its constitutional prerogatives.

Petitioner respectfully requests that this Court issue the writ of prohibition and grant the relief requested.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to BEN R. PATTERSON, Patterson & Traynham,, Post Office Box 4289, Tallahassee, FL 32315; REPRESENTATIVE TOM FENNEY, Speaker of the Florida House of Representatives, Room 420, The Capitol, 404 S. Monroe Street, Tallahassee, FL 32399-1100; SENATOR JOHN McKAY, President of the Florida Senate, Room 409, The Capitol, 404 S. Monroe Street, Tallahassee, FL 32399-1100; STEVEN KAHN, Esq., General Counsel for the Florida Senate, Room 409, The Capitol, 404 S. Monroe Street, Tallahassee, FL 32399-1100; TOM TEDCASTLE, Esq., General Counsel for the Florida House of Representatives, Room 826, The Capitol, 404 S. Monroe Street, Tallahassee, FL 32399-1100; SENATOR RODOLFO "RUDY" GARCIA, 212 Senate Office Building, Tallahassee, FL 32399-1100; REPRESENTATIVE FREDERICK C. BRUMMER, 303 House Office Building, 402 S. Monroe Street, Tallahassee, FL 32399-1100; HONORABLE L. RALPH SMITH, Leon County Courthouse, 301 S. Monroe Street, Tallahassee, FL 32301; BARRY RICHARD, Esq., 101 E. College Avenue, P. O. Box 1838, Tallahassee, FL 32302-1838; WILLIAM N. MEGGS, State Attorney, Second Judicial Circuit, Leon County Courthouse, 301 S. Monroe Street, Tallahassee, FL 32301 and CHARLES T. CANADY, General Counsel, Executive Office of the Governor, Room 209, The Capitol, Tallahassee, FL 32399-1050 this _____ day of April 2001.

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THOMAS E. WARNER