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IN THE SUPREME COURT
STATE OF FLORIDA

Case No. 01766

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

Petitioner,

v.

FLORIDA PUBLIC EMPLOYEES COUNCIL, 79, AFSCME

Respondent.

BRIEF OF AMICUS CURIAE, JEB BUSH, GOVERNOR OF THE STATE OF FLORIDA, IN SUPPORT OF PETITIONER, THE ATTORNEY GENERAL, STATE OF FLORIDA

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INTEREST OF THE AMICUS CURIAE

Governor Jeb Bush files this brief in support of the petition for a writ of prohibition of the Attorney General, State of Florida ("Attorney General"), for two reasons. First, the Governor shares the petitioner's view that the issues presented implicate matters of tremendous importance to the public interest. Second, the Governor is the official in whom Article IV, section 1(a) of the Florida Constitution has vested the supreme executive power of our State. Accordingly, no less than the Legislature or the Attorney General, the Governor has an institutional interest in seeing that courts respect and preserve the separation of powers principle explicitly set forth in the Florida Constitution. See, e.g., Kirk v. Baker, 229 So. 2d 250, 252 n.11 (Fla. 1969) (citing numerous cases involving restraints upon judicial intervention into the Governor's executive functions).

STATEMENT OF THE CASE AND THE FACTS

The Governor adopts the statement of the case and the facts set forth in the petition of the Attorney General.

SUMMARY OF ARGUMENT

The challenged orders of the trial court (L. Ralph Smith, Circuit Judge) violate the fundamental separation of powers principle that "under our form of government providing for three discrete branches . . . no one of them has the right to invade the sphere of operation of either of the others." White v. Johnson, 59 So. 2d 532, 534 (Fla. 1952). This Court long ago found this precept "too well established to require citation of authority." Id. In the face of this venerable rule of law, the trial court has lawlessly and irresponsibly sought to dictate to the Legislature the conditions under which it may meet to conduct its business. To vindicate the integrity of our constitutional system and to prevent the trial court from further interfering with the conduct of the ongoing legislative session, this Court must grant the petition of the Attorney General.

ARGUMENT

The orders of the trial court constitute a judicial invasion of the constitutionally-granted powers of the Legislature, and accordingly violate Article II, section 3 of the Florida Constitution.

The issues presented are so fundamental that their resolution requires a resort to constitutional first principles.* The powers of the state government are

* Although the Governor asks the Court to decide this matter on the constitutional grounds asserted herein, the Court should also be aware that the trial court's decision to issue a temporary restraining order

divided into legislative, executive and judicial branches. See Art. II, § 3, Fla. Const. Moreover, "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided" in the Florida Constitution. Id.

This Court's own commentary on these basic tenets of our constitutional order demonstrates that it would be difficult to overstate their significance. In this Court's words, "[t]he preservation of the inherent powers of the three branches of government, free of encroachment or infringement by one upon the other, is essential to the effective operation of our constitutional system of government." In re Advisory Opinion to the Governor, 276 So. 2d 25, 30 (Fla. 1973).

Perhaps the most basic of the inherent powers of the Legislature is the authority to decide for itself when and how to conduct its business. This commonsense notion is reflected in the constitutional provision that explicitly

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was premised on a fundamental misreading of Section 447.403, Fla. Stat. (2000). The trial court apparently interpreted that provision as requiring a 20-day "cooling off" period between the issuance of the report of the special master in this matter and the Governor's submission of the impasse to the Legislature. Put simply, the trial court erroneously read a statutory requirement that action take place within 20 days after receipt of the special master's recommended decision as a mandate that action take place no earlier than 20 days after receipt of such decision. Correctly understood, the 20-day period contained in the statute simply establishes the maximum amount of time granted the parties to object to the contents of the special master's report. The statute clearly does not require the Governor to wait 20 days before he can submit an impasse to the Legislature.

confers upon each house of the Legislature the right to determine its own rules of procedure. See Art. III, § 4(a), Fla. Const. A concern for legislative autonomy in matters of internal process also underlies the constitutional provision that makes each house of the Legislature "the sole judge for the interpretation, implementation, and enforcement" of those rules. Art. III, § 4(e), Fla. Const.

That the Legislature has the authority to conduct its business without judicial interference is further suggested by this Court's conclusion that "the judiciary cannot compel the Legislature to exercise a purely legislative prerogative." Dade County Classroom Teachers Ass'n v. Legislature, 269 So. 2d 684, 686 (Fla. 1972). If courts lack the power to compel the Legislature to perform acts within the Legislature's exclusive authority, then surely they also lack the power to prevent such acts.

It is against the backdrop of these foundational principles that this Court must consider the challenged orders of the trial court. The first of those orders "directed" members of the Legislature "to cancel any meeting, hearing, or conference [then] scheduled for April 3, 2001, or to be scheduled later on any matter implicated in a bargaining dispute . . . between the Governor and [Florida Public Employees Council 79, AFSCME]." Florida Public Employees Council 79, AFSCME v. Florida Legislature, No. 01-842 (Fla. 2d Cir. Ct. Apr. 3, 2001). The second order commanded several members of the Florida Legislature (including

the President of the Senate and the Speaker of the House of Representatives) to appear before the trial court to show cause why they should not be held in indirect criminal contempt. See Florida Public Employees Council 79, AFSCME v. Florida Legislature, No. 01-842 (Fla. 2d Cir. Ct. Apr. 10, 2001). Surely these actions of the trial court are unprecedented both in their intrusion into the workings of the Legislature and in their violation of the separation of powers principle outlined above.

The position advocated herein in no way denies the courts' ultimate authority to interpret statutes and to pass on the constitutionality of legislative enactments. See, e.g., Chiles v. Phelps, 714 So. 2d 453, 456 (Fla. 1998) (separation of powers not violated by judicial assessment of constitutionality of laws). The interest at stake in this matter is the protection of the legislative process from unwarranted judicial interference. It is assuredly not the goal of the Governor or the Attorney General to insulate substantive legislative enactments from judicial review.

It is important to emphasize that it is the interests of the citizens of our State, not any personal prerogatives of legislators, that justify the protection of the legislative process. As the First District Court of Appeal noted in assessing a claim of legislative privilege, " '[l]egislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but

for the public good.' " Girardeau v. State, 403 So. 2d 513, 516-17 (Fla. 1st DCA 1981), quoting Tenney v. Brandhove, 341 U.S. 367, 377 (1951).

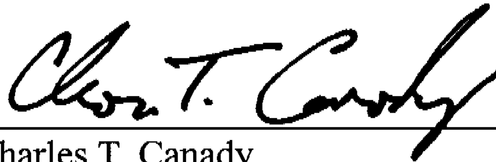
Through its actions, the trial court has jeopardized the ability of the Governor and the Legislature to effectively serve the people of our State. This dispute is not an academic dispute. The 2001 legislative session is ongoing, and the actions taken and threatened by the trial court have the potential to seriously disrupt and impede the work of the legislative process. All of the Governor's myriad legislative priorities—the reform of our State's election system, civil service reform, growth management, and long-term health care, to name just a few—are put at risk by the trial court's interference with the work of the Legislature, as are the legislative goals of all of the people's elected representatives.

For all of the above-stated reasons, this Court must undo the actions of the trial court. As the highest court in our State, this Court is uniquely positioned to rectify the damage that the trial court has done to the principle of the separation of powers and to the concrete interests of the people. As this Court itself once observed, "[t]he Courts should be . . . diligent . . . to safeguard the powers vested in the Legislature from encroachment by the judicial branch of the government." Pepper v. Pepper, 66 So. 2d 280, 284 (Fla. 1953).

CONCLUSION

As this Court considers this matter, it likely will be impressed by the dearth of clearly applicable judicial precedents. This absence of authority is attributable to the fact that "the respective branches of government in our country have throughout our history assiduously avoided any encroachment on one another's authority." Kirk v. Baker, 229 So. 2d 250, 253 (Fla. 1959). Unfortunately, the trial court has shown no such discretion in its handling of the instant matter. Instead, its actions have been lawless and irresponsible. This Court must therefore remedy those actions by granting the petition of the Attorney General.

Respectfully submitted,

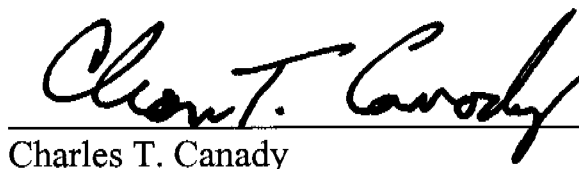


Charles T. Canady

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded via facsimile or hand delivery this 13th day of April, 2001, to: **ROBERT A. BUTTERWORTH, Attorney General; THOMAS E. WARNER, Solicitor General,** The Capitol, PL01, Tallahassee, Florida; and **BEN R. PATTERSON, III**, Patterson and Traynham, 315 Beard Street, Tallahassee, Florida; and **HONORABLE L. RALPH SMITH,** Circuit Judge, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida, 32301.

This brief complies with the requirement of Florida Rule of Appellate Procedure 9.100 in that all portions of this brief are generated in Times New Roman 14-point font.



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