IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-413

COREY FRANKLIN,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

This case is before this Court because the Third District Court of Appeal in *State v. Franklin*, 836 So. 2d 1112 (Fla. 3d DCA 2003), certified a conflict with a decision of the Second District Court of Appeal, *Taylor v. State*, 818 So. 2d 544 (Fla. 3d DCA 2002). The question raised by *Franklin* and *Taylor* is whether the provisions of the "Three-Strike Violent Felony Offender Act" – which are wide-ranging and affect large numbers of criminal defendants throughout the state – are invalid because the session law that created them – Chapter 99-188, Laws of Florida – violates Article III, Section 6 of the state constitution by embracing more than one subject.

Appellant was charged with armed robbery and resisting arrest based on acts that occurred in November 1999. (Clerk's Record ["R."] 1-4) After a jury trial, he was convicted as charged. (R. 29-33) Pursuant to section 775.084, Fla. Stat. (1999), he was sentenced to 40 years in prison as a habitual felony offender. (R. 33A-33C)

The second district subsequently issued its decision in *Taylor*, holding that the "Three Strike Violent Felony Offender Act" was invalid because it was enacted in violation of the single-subject requirement of our state constitution. Through counsel, appellant filed a motion to correct sentence pursuant to Florida Rule of Criminal Procedure 3.800(b). (R. 34-35) Counsel explained that appellant's prior criminal history consisted of only one felony conviction (possession of cocaine) and one

felony for which adjudication was withheld (burglary of a dwelling). (R. 35) Counsel argued that appellant would not be eligible for sentencing as a habitual offender but for an amendment made to section 775.084 by the "Three-Strike Violent Felony Offender Act," which treated as a prior conviction the placing of a person on probation while withholding the adjudication of guilt. (R. 36, citing § 775.084(2), Fla. Stat. (1999)) Counsel noted that the prior law had not treated a "withhold" as a prior conviction for purposes of habitual offender sentencing, unless the offense for which the defendant was being sentenced was committed during the probationary period. (R. 36) Citing *Taylor*, counsel moved the court to re-sentence appellant without the habitual offender designation. (R. 36) The motion was granted. (R. 45) The State of Florida appealed, and the Third District Court of Appeal reversed in an *en banc* decision, with four judges dissenting. In its opinion certifying the question to this Court, the district court stated:

> **The issue of whether a multi-section statute violates the 'single subject' rule is one of those perplexing legal controversies in which general rules and decisions embracing them may be found, indeed multiplied, on each side of the particular controversy, and the group of cases to be cited in support of it lies ultimately in the eye of the judicial beholder**. Since this is true, and since the Supreme Court will necessarily itself resolve the conflict with *Taylor* anyway, it is necessary only rather summarily to announce that we believe that each provision of the statute is sufficiently related to the others and to the general purpose of the act as a whole, and that the constitution is

> therefore satisfied. *State v. Franklin*, 836 So. 2d 1112, 1113 (Fla. 3d DCA 2003), *emphasis added* (suggesting, in omitted citations, that the reader compare *Johnson* and *Thompson* and the cases cited therein with *Grant* and the result thereof).

A copy of the full opinion is contained in the Appendix ("A.") at pages 1-30.

SUMMARY OF ARGUMENT

The district court's order remanding this case for re-sentencing and restoration of the habitual felony offender designation under the "Three-Strike Violent Felony Offender Act" must be quashed, because the session law that created that act – Chapter 99-188, Laws of Florida – violates the single-subject requirement of the Florida constitution.

This Court's long-standing precedent establishes that the single-subject clause is breached where the legislature combines more than one subject in a chapter law and multiple subjects are not reasonably related to the same stated purpose. Contrary to the suggestion of the Third District in *Franklin*, the determination of whether a statute violates the single-subject rule is not a "perplexing controversy" with this Court's prior cases capable of supporting a victory for either side of the controversy. Rather, this Court's prior decisions clearly illustrate the proper application of the reasonable relationship test in this case.

Chapter 99-188, the "Three-Strike Violent Felony Offender Act," is "an act relating to sentencing." In a lengthy preamble to the Act, the legislature postulates a relationship between increased prison sentences and decreased crime rates. Following the preamble are 11 provisions relating to increased sentences for certain offenses and for repeat offenders. Two provisions concern additional subjects. Section 11 alters

the definition of conveyance in the burglary and trespass statutes, and section 13 creates an administrative reporting requirement that the clerk of courts turn over criminal records to the INS.

The Second District Court of Appeal in *Taylor v. State*, 818 So. 2d 544, 546-550 (Fla. 2d DCA 2002), concluded that Chapter 99-188 violates the single-subject clause. The court reasoned that the slight expansion of a substantive criminal definition in section 13 has only an "attenuated relationship" to the stated purpose of the Act, increasing sentences. The court found even less relationship between increased sentencing and section 11, the new duties of the clerk to report aliens to the INS. This section addresses a purely administrative provision. The *Taylor* court likened section 11's inclusion in the Act to the combination of civil and criminal provisions in *State v. Thompson*, 750 So. 2d 643 (Fla. 2000) and *State v. Johnson*, 616 So. 2d 1 (Fla. 1993).

The decision in *Taylor* follows this Court's cogent and extensive precedent in single-subject jurisprudence. This Court has also considered persuasive the legislative history of a particular act in determining whether the single-subject clause was breached. The legislative history in the instant Act mirrors the histories in *Thompson* and *Florida Department of Highway Safety and Motor Vehicles v. Critchfield*, 2003 WL 1089288 (Fla. March 13, 2003).

The decision in *State v. Franklin*, 836 So. 2d 1112 (Fla. 3d DCA 2003) (en banc) should be disapproved by this Court. First, the court's conclusion that the purpose of the Act is "to protect the public," and that sections 11 and 13 are reasonably related to this subject, is erroneous. The purpose of the Act is increasing prison sentences. The Act itself explains in a lengthy preamble the relationship between increased prison sentences and reduced crime. All previous attempts to save a law from a single-subject violation by claiming that its provisions serve the purpose of "protecting the public" or "controlling crime" have been rejected by this Court.

Second, this Court should reject the *Franklin* court's assertion that the Act did not in fact provide a "cloak" for dissimilar legislation. The *Franklin* court claims no "cloaking" occurred because the highly-popular enhanced sentencing law could have passed on its own without appending sections 11 and 13. The court reverses the correct analysis. The question is not whether the popular dominant legislation could have passed without the offending sections, but whether the offending sections were "cloaked" within the more popular bill and might not have passed on their own. In identical scenarios, this Court has invalidated highly popular sentencing laws, where unrelated provisions, which might not have passed on their own, were "logrolled" in.

Third, this Court has already rejected the *Franklin* court's suggestion that courts should consider the "political realities." This Court has concluded that it will

not venture into a factfinding mission to determine which provision could have survived on its own. To do this would thrust the Court into the legislative arena, which is a venture it has explicitly declined to undertake.

Fourth, the Third District misconstrues the "standing" or "harmlessness" doctrines. If an act violates the single-subject clause, the entire act is void. A defendant has standing or is harmed because he is prosecuted under a statute which, in effect, does not exist. A portion of a void law does not survive.

The only exception to this rule is created by the severability doctrine, which does not apply in the instant case. In *Colonial Investment Co. v. Nolan*, 100 Fla. 1349, 131 So. 178, 179-80 (Fla. 1930), *Heggs v. State*, 759 So. 2d 620 (Fla. 2000) and *Tormey v. Moore*, 824 So. 2d 137 (Fla. 2002), this Court explained that if an act embraces more than one subject and the title also contains more than one subject, the entire act is void. Since the title and body of Chapter 99-188, Laws of Florida contain more than one subject, the whole act is void and parts of the act cannot be severed.

ARGUMENT

APPELLANT CANNOT BE RE-SENTENCED UNDER THE "THREE-STRIKE VIOLENT FELONY OFFENDER ACT," BECAUSE IT WAS VOID AB INITIO. THE SESSION LAW THAT CREATED THE ACT VIOLATED THE SINGLE-SUBJECT REQUIREMENT OF OUR CONSTITUTION BY ADDRESSING THREE SUBJECTS: ENHANCED SENTENCING, IMMIGRATION/DEPORTATION, AND SUBSTANTIVE CRIMINAL LAW

A. Introduction

In 1999, the legislature enacted Chapter 99-188, Laws of Florida, the "Three-Strike Violent Felony Offender" Act. In a well-reasoned decision that considered the legislative history of the Act as well as this Court's previous single-subject cases, the court in *Taylor v. State*, 818 So. 2d 544, 546-550 (Fla. 2d DCA 2002), held that Chapter 99-188, Laws of Florida violated the single-subject provision of Article III, section 6 of the Florida Constitution.

In *State v. Franklin*, 836 So. 2d 1112 (Fla. 3d DCA 2003), the Third District Court of Appeal certified conflict with *Taylor*. In a discussion totaling two paragraphs, supplemented by five footnotes, the court announced that "the constitution is satisfied" because all of the provisions of Chapter 99-188 are "sufficiently related" to each other and to the general purpose of the Act as a whole which – according to the court – was to "protect the public" from repeat and serious

violent felony offenders. "In any event," the court concluded, "the statute as a whole is quite plainly not 'a "cloak" for dissimilar legislation. . . . and thus does not violate Article III, Section 6, of the Florida Constitution.'"

The *Franklin* court's conclusions are at odds with the principles and policies announced by this Court in single-subject decisions over the past seventy-three years. This Court should disapprove the *Franklin* decision, and quash the order of the district court.

B. This Court's Prior Decisions Clearly Illustrate the Proper Application of the Reasonable Relationship Test in Single-Subject Analysis

Article III, Section 6 of the Florida Constitution provides, *inter alia*:

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

This requirement has existed in the Florida Constitution since 1868. *See* Art. IV, § 14, Fla. Const. (rev. 1868). This Court has consistently and repeatedly held that a law which addresses more than one subject violates the single-subject clause and is void in its inception.

In *State ex rel. Flink v. Canova*, 94 So. 2d 181, 183-84 (Fla. 1957), this Court noted the reason why the requirement was placed within our constitution:

> (1) to prevent hodge podge or 'logrolling' legislation, i.e., putting two unrelated matters in one act; (2) to prevent surprise or fraud by means or provisions in bills of which

> the titles gave no intimation and which might therefore be overlooked and carelessly and unintentionally adopted; and (3) to fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

citing COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS 141-146 (3rd ed. 1874). "It is perfectly clear," this Court explained, "that if a matter is germane to or reasonably connected with the expressed title of the act, it may be incorporated within the act without being in violation of" the single-subject requirement. *Flink*, 94 So. 2d at 184. The test for whether the inclusion of a provision will violate the constitutional requirement is "whether the provision is a necessary incident to the subject expressed in the title or tends to make effective or promote the object of the legislation." *Tormey v. Moore*, 824 So. 2d 137, 141 (Fla. 2002), *citing State v. Physical Therapy Rehabilitation Center of Coral Springs, Inc.*, 665 So. 2d 1127 (Fla. 1st DCA 1996).

Applying these standards, this Court has enforced Florida's single-subject requirement in a series of cases that clearly illustrate the proper application of single-subject analysis:

! In *Bunnell v. State*, 453 So. 2d 808, 809 (Fla. 1984), this Court struck down a law which combined the creation of a new crime (obstruction by false information) with amendments to the Florida Council on Criminal Justice. This Court held that the

law violated Florida's single-subject provision because the two subjects have "no cogent relationship" and the objects of each section were "separate and disassociated." ! In *Martinez v. Scanlan*, 582 So. 2d 1167, 1172 (Fla. 1991), this Court held that the single-subject rule was breached where Chapter 90-201, Laws of Florida, combined two subjects, worker's compensation and international trade.

! In *State v. Johnson*, 616 So. 2d 1, 4 (Fla. 1993), this Court struck down the law which created the habitual offender statute, where the legislature inserted provisions into the law pertaining to the licensing of private investigators and their authority to repossess property. This Court explained, "These two concerns have absolutely no cogent connection; nor are they reasonably related to any crisis the legislature intended to address." *Citations omitted*.

! This Court struck down two laws for the same violation in *State v. Thompson*, 750 So. 2d 643 (Fla. 2000), *reh'g denied*, and *Heggs v. State*, 759 So. 2d 620 (Fla. 2000), *reh'g denied*.

In *Thompson*, this Court held invalid the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995," Chapter 95-182, Laws of Florida. This Court concluded that Chapter 95-182 addressed two subjects, career criminals and domestic violence. *Id.* at 645, 647; Ch. 95-182, §§ 8-10, at 1673-75, Laws of Florida (1995).

In *Heggs*, this Court held that Chapter 95-184, Laws of Florida (1995) was invalid for the "almost identical" reasons that invalidated the chapter law in *Thompson*. Inserted into Chapter 95-184, the "Crime Control Act of 1995," were the same three domestic violence provisions which this Court held voided the Career Criminal Act in *Thompson*. *Heggs*, 759 So. 2d at 624, 625. In fact, these domestic violence provisions were added to both Chapter 95-184 and Chapter 95-182 on the same day on the floor of the House of Representatives. *Id*; *See* H.R. Jour. 1207-12 (Reg. Sess 1995).

! In *Tormey v. Moore*, 824 So. 2d 137 (Fla. 2002), this Court found a single-subject violation where an amendment which abrogated gain time for an offender who commits the general crime of attempted first degree murder was inserted into the "Law Enforcement Protection Act," Chapter 89-100, Laws of Florida, a law which provided for enhanced penalties for those who commit certain offenses against law enforcement personnel. *Id*. at 140. This Court explained that abrogating gain time for the general offense of attempted first degree murder does not address the expressed subject, enhanced punishment for those who commit crimes against law enforcement officers. *Id*. at 141.

! Most recently, in *Florida Department of Highway Safety and Motor Vehicles v. Critchfield*, 2003 WL 1089288 (Fla. March 13, 2003), this Court held that Chapter

98-223, Laws of Florida violated the single-subject clause. The clause was violated when provisions pertaining to driver's licenses, operation of motor vehicles, and vehicle registrations were combined with provisions on private debt collection for worthless checks. Citing *Thompson* and *Johnson*, this Court voided the law because the subject of driver's licenses, operation of motor vehicles, and vehicle registrations has no relationship with private recovery for worthless checks.

! In contrast, this Court approved the legislation which created the "Prison Releasee-Reoffender" statute in *Grant v. State*, 770 So. 2d 655, 657 (Fla. 2000). Although some of the provisions did not pertain to prison releasees, this Court observed that each provision dealt in some fashion with reoffenders. *Id*. at 657, *citing Grant v. State*, 745 So. 2d 519 (Fla. 2d DCA 1999) (noting that the preamble to the legislation states that its purpose was to impose stricter punishment on reoffenders).

C. This Court's Prior Decisions Compel the Conclusion that Chapter 99-188 Violates the Single-Subject Provision

The Provisions of Chapter 99-188

This Court's cogent and extensive precedent supports the conclusion that the "Three-Strike Violent Felony Offender Act," Chapter 99-188, Laws of Florida, is also invalid. Chapter 99-188 addresses three subjects: (1) enhanced and increased penalties for repeat felony offenders and drug traffickers, (2) an administrative requirement that the clerk of courts and state attorney must report all aliens with

criminal records to the INS, and (3) a redefinition of the substantive crimes of burglary and trespass.

Chapter 99-188 is comprised of 13 sections. Seven sections address enhanced sentencing provisions.[1] Sections 7, 8, 10 and 12 also either address enhanced sentencing or conform other statutes to changes wrought by the Act.[2]

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[1]**Section 1** names the Act the "Three-Strike Violent Felony Offender Act." Ch. 99-188, § 1, at 735, Laws of Fla. **Section 2** makes changes to the prison releasee-reoffender statute. Ch. 99-188, §2, at 735-36, Laws of Fla. **Section 3** loosens the criteria for eligibility for habitual offender sentencing and creates the "Three-time violent felony offender" law, another form of enhanced sentencing. Ch. 99-188, §3, at 736-42. **Section 4** creates minimum mandatory sentences for the crimes of aggravated assault and battery of a law enforcement officer. Ch. 99-188, § 4, at 742, Laws of Fla. **Section 5** creates a minimum mandatory term for the crime of aggravated assault or battery on the elderly. Ch. 99-188, § 5, at 742, Laws of Fla. **Section 6** reflects the change made to the violent career criminal statute in the possession of a firearm by a violent career criminal statute. Ch. 99-188, § 6, at 742-43, Laws of Fla. **Section 9** makes changes to the drug trafficking statutes by creating numerous minimum-mandatory terms for drug traffickers, by changing the definition of cannabis to include **cannabis plants**, as defined, and by changing what elevates simple possession to trafficking from 50 pounds to 25 pounds or 300 plants. Ch. 99-188, § 9, at 745-50, Laws of Fla.

[2] **Section 7** created the enhanced designation of "repeat sexual batterer." Ch. 99-188, § 7, at 743-44, Laws of Fla. **Section 8** amended the sexual battery statute to conform to the new repeat sexual batterer designation. Ch. 99-188, § 8, at 744, Laws of Fla. **Section 10** conformed numerous sentencing statutes to the changes made by section 9. Ch. 99-188, § 10, at 750-62, Laws of Fla. **Section 12** provided for public service announcements to inform the public of the changes made by the Act. Ch. 99-188, § 12, at 762, Laws of Florida.

This Petition concerns the propriety of the legislature's inclusion of two additional sections in Chapter 99-188. **Section 11** creates a preemptive duty on the part of the clerk of court to furnish a copy of charging document, judgment, sentence and any other record in which an alien "is convicted of a felony or misdemeanor or enters a plea of guilty or nolo contendere to any felony or misdemeanor charge." Additionally, this section creates the obligation of the state attorney to assist in this process. Ch. 99-188, § 11, at 762, Laws of Florida. **Section 13** broadens the definition of "conveyance" in the burglary and trespass statute to include "railroad vehicle" as a conveyance.

The Taylor Analysis

The Second District Court of Appeal in *Taylor v. State*, 818 So. 2d 544 (Fla. 2d DCA 2002), *reh'g denied*,[3] held that the inclusion of sections 11 and 13 violated the single-subject clause of the Florida Constitution. The court rested its conclusion on several factors. The law's lengthy preamble indicates that the impetus for creating the Act was the legislature's concern with the crime rate, and the fact that felons, particularly violent and repeat offenders, are not being sentenced to the maximum prison terms allowed under Florida law. *See id.* at 547-48 and n.2. Indeed, most of the sections in the Act pertain to sentencing and minimum-mandatory terms. *Id.*

[3] The State's petition for review in this Court was subsequently voluntarily dismissed. 821 So. 2d 302 (Fla. 2002) (Table, No. SC02-177).

In contrast, the court concluded that sections 13 and 11 are not naturally or logically connected with the Act's remaining sections. First, regarding section 13, which changed the definition of "conveyance," the court explained:

> This slight expansion of a substantive criminal offense has only an attenuated relationship to sentencing or to the other sections of the act, in that it might be argued that under the broader definition of a conveyance more felons could be convicted of "armed burglary," one of the qualifying crimes of three-strikes sentencing. *See* ch. 99-188, § 3. But that relationship is so tenuous, so dependent on the happenstance of individual cases, that it simply cannot be characterized as natural or logical.

Taylor, 818 So. 2d 544.

The *Taylor* court further noted that the legislative history of Chapter 99-188 supports the conclusion that logrolling in fact occurred when section 13 was added. House Bill 121 was introduced in March, 1999 and contained what ultimately became sections 2 through 7 of Chapter 99-188. FLA. H.R. JOUR. 27-28 (Reg. Sess. 1999); *Taylor*, 818 So. 2d 544, 549; (A.31-32). After several amendments to the Bill, the House passed Committee Substitute for House Bill 121 on April 26, 1999. FLA. H.R. JOUR. at 1128-29 (Reg. Sess. 1999) (A.33-34). This version of House Bill 121 contained all of the sections in the Act other than section 13. *Id.* The *Taylor* court explained that the house bill then met with committee substitute for Senate Bill 1746, which also contained the same sections as the Act, with the exception of section 13. *Taylor*, 818 So. 2d at 549. The Committee on Fiscal Policy recommended the amendment that became section 13 of the Act. FLA. S. JOUR. 364-65 (Reg. Sess. 1999); (A.35-36). The *Taylor* court concluded:

> Thus, it appears the addition of section 13 was an afterthought. This is exactly the type of "log rolling" legislation that the single subject rule was intended to prevent. The inclusion of section 13 in chapter 99-188 violated the single subject rule and rendered the entire chapter unconstitutional.

Taylor, 818 So. 2d at 549.[4]

The court in *Taylor* found that section 11 bears even less relationship to the remainder of the Act's provisions. *Id*. at 549.

> Chapter 99-188 is a criminal law aimed primarily at imposing harsher sentences on violent felons, repeat felony offenders and drug traffickers. However, section 11 addresses a purely administrative subject that is far afield of the act's other provisions. This section amends section 943.0535, which requires the court clerk to provide documents concerning an alien's felony or misdemeanor convictions to immigration officers.

818 So. 2d at 549. The court analogized the inclusion of the INS administrative reporting requirement in an enhanced sentencing law to the combining of civil and

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[4] In a dissent in *Critchfield*, 2003 WL 1089288 at *4, Justice Cantero posits that this Court should take a broader view of single-subject claims under Article III, section 6 than under Article XI, section 3, the single-subject requirement for public initiatives, because in the legislative process, there is the "opportunity for legislative debate and public hearing which was not available under the initiative scheme for constitutional revision." (Quoting *Smith v. Department of Insurance*, 507 So. 2d 1080, 1085 (Fla. 1987)) However, in the instant case, just as in *Heggs* and *Thompson*, section 13 (pertaining to the definition of conveyance) was added at the last moment by the Senate Committee on Fiscal Policy, after H.B. 121 completed its progression through the House and before a final vote. FLA. S. JOUR. 351, 364-65 (Reg. Sess. 1999). Thus, the rationale for taking a broader view of the single-subject clause in Article III, section 6 does not exist in this case.

criminal penalties in *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984), where the legislature created the crime of obstruction of justice, then combined the law with provisions relating to the Florida Council on Criminal Justice. *Taylor*, 818 So. 2d at 550. The *Taylor* court explained that the combination of civil and criminal penalties in adding section 11 was also analogous to the amalgams created by the laws struck down in *State v. Thompson*, 750 So. 2d 643, 647-48 (Fla. 2000) and *State v. Johnson*, 616 So. 2d 1, 4 (Fla. 1993). The *Taylor* court concluded that the entire chapter law is unconstitutional. 818 So. 2d at 550.

The *Taylor* decision is in line with this Court's decisions in *Bunnell*, *Scanlan*, *Johnson*, *Thompson*, *Heggs*, *Tormey*, and *Critchfield*. Chapter 99-188 combined enhanced sentencing provisions and new minimum mandatory laws with an administrative reporting requirement to the INS and a broadened definition of the term "conveyance."

More About Legislative History and Logrolling

As noted above, the *Taylor* court reviewed the legislative history of the "Three-Strike" Act as part of its single-subject analysis. This Court found the legislative history particularly persuasive in its analysis of the single-subject issues in *Thompson* and *Critchfield*. In *Thompson*, this Court noted that in the enactment of the Gort Act, Chapter 95-182, the domestic violence amendments began as three separate bills which

failed to pass, which were then added to the career criminal bill on the House floor near the end of the legislative session. *Id*. at 648.

The legislative history in *Critchfield* also illustrated a single-subject/logrolling problem with a session law:

> When House Bill 3275 was sent to the Senate for consideration, the substantive provisions of the bill related to worthless checks and driver's licenses. *See* Fla. HB 3275 (1998) (Second Engrossed). The Senate returned the bill to the House after adopting an amendment, which added the language that eventually became sections 6 through 14 of chapter 98-223. *See Fla. S. Jour.* 1163-66 (Reg. Sess. 1998). Sections 6 through 14 all involve vehicle registrations, drivers' licenses, and civil penalties for speeding fines. Sections 6 through 14 do not relate to worthless checks, and therefore, the overall focus of the bill was shifted from worthless checks to drivers' licenses, vehicle registrations, and the operation of motor vehicles.

Critchfield, 2003 WL 1089288 at *3. In the instant case, just as in *Heggs* and *Thompson*, section 13, pertaining to the definition of conveyance, was added at the last moment by the Senate Committee on Fiscal Policy, after H.B. 121 completed its progression through the House and before a final vote. FLA. S. JOUR. 351, 364-65 (Reg. Sess. 1999); *see Taylor*, 818 So. 2d at 549. Thus, the same logrolling occurred in passing the "Three-Strike" Act as in passing the acts in *Thompson* and *Critchfield*.

The "Crisis/Comprehensive Solution" Rationale

This Court has held that what may appear to be multiple subjects may be contained within a single act only where the legislature identifies some crisis which logically links the subjects. For example, in *State v. Lee*, 356 So. 2d 276 (Fla. 1978), a majority of this Court held that there was no violation where the legislature enacted Chapter 77-468, Laws of Florida, the Insurance and Tort Reform Act of 1977. The Act addressed the inter-related subjects of insurance and tort reform. *Id.* at 282. In upholding the law, this Court concluded that Chapter 77-468 was "an attempt by the legislature to deal comprehensibly with tort claims and particularly with the problem of a substantial increase in automobile insurance rates and related insurance problems [associated with tort claims]." *Id.*

This Court has similarly approved other legislation where the legislature has identified a single broad crisis encompassing more than one issue and enacted a comprehensive solution. *See Chenowith v. Kemp*, 396 So. 2d 1122, 1124 (Fla. 1981), *receded from on other grounds in Sheffield v. Superior Insurance Co.*, 800 So. 2d 197 (Fla. 2001) (holding, over a two-person dissent, that Chapter 76-260 does not violate single-subject because reforms in medical malpractice law relate to issues of insurance); *Smith v. Department of Insurance*, 507 So. 2d 1080 (Fla. 1987) (concluding, over a three-person dissent, that 1986 Tort Reform and Insurance Act is a constitutionally acceptable legislative solution to commercial insurance liability

crisis resulting from problems in the insurance industry and tort litigation); *Burch v. State*, 558 So. 2d 1 (Fla. 1990) (holding, in a 4-3 decision, that numerous criminal law topics were properly joined as a single-subject where the legislature identified the climbing crime rate and drug abuse as a crisis and legislation addressed criminal regulations, money laundering and safe neighborhoods in response to the crisis).

In determining whether the legislature has identified some crisis that requires a comprehensive law to address, this Court often considers the language included by the legislature in the preamble to the law. In *Smith*, for example, this Court noted that the legislature explained in a lengthy preamble that there is a financial crisis in liability insurance, that increased tort litigation was responsible for much of the insurance price hikes, that recovery on claims is often arbitrary, and the tort and insurance systems are interrelated. 507 So. 2d at 1084 n.2. In *Burch*, this Court again noted the legislature's identification in a lengthy preamble of a broad crisis in crime increase, drug abuse, and the concomitant breakdown of neighborhoods and social structures. 558 So. 2d 1, 2-3.

In this case, there is no crisis which logically links the different subjects contained within Chapter 99-188. No reason exists to enact one piece of legislation which contains sentencing provisions, a reporting requirement to the INS, and a broader definition of a substantive crime. Indeed, the preamble to Chapter 99-188

focuses almost exclusively on issue of the relationship between increased sentences and a reduction in the crime rate and the need, therefore, for more sentencing enhancements. *See Taylor,* 818 So. 2d at 547 n.2. Under the analysis laid out by this Court in *Lee*, *Smith*, *Chenowith* and *Burch*, Chapter 99-188 should be declared violative of Florida's constitution.

The Franklin Court Misapplies the "Reasonable Relationship" Test

The *Franklin* court's conclusion that sections 11 and 13 are reasonably related to the subject of the "Three Strike Violent Felony Offender Act" is contrary to this Court's prior decisions, cited earlier, and is based on several fallacies.

First, the court incorrectly states that the single subject addressed by the legislation is "to protect the public from repeat and serious violent felony offenders." This is not the subject identified in Chapter 99-188. Chapter 99-188 explicitly states that it is a law addressing increased **prison sentences**. In its lengthy preamble, the legislature discusses the fact that many criminal defendants in Florida are not sentenced to the longest possible sentence, and cites examples that allegedly demonstrate **the relationship between long sentences and a reduction in the crime rate**. For this reason, the legislature explains, the provisions of the Three-Strike Violent Felony Offender Act have been enacted, including minimum mandatory prison terms for crimes such as aggravated battery on the elderly, aggravated battery on law

enforcement officers, and drug trafficking. The legislature has not, in this law or in any other, identified a generalized desire to "protect the public" as the subject of an act.

All previous attempts to save a law from a single-subject violation by claiming that its provisions serve the broad purpose of "protecting the public" or "controlling crime" have been rejected by this Court. For example, in *Johnson*, *Thompson* and *Heggs*, all involving sentencing laws, the State argued that the true subject of each act was the "protection of the public," and that the civil sections added to the act somehow served the function of protecting the public or controlling crime. This Court rejected this argument in each case.

In *Johnson*, the legislature combined the habitual offender act with provisions on the licensing of private investigators and their authority to repossess property. 616 So. 2d at 4. This Court stated, "We find that we must reject the State's contention that these two subjects relate to the single subject of controlling crime." *Id.*

In *Thompson*, this Court rejected the State's argument that the object of Chapter 95-182 was to reduce crime. 750 So. 2d at 648. *See*, Petitioner's Initial Brief on the Merits, Case No. 92,831, p. 16, *available at* http://www/flcourts.org/sct/sctdocs/index.html (arguing that there is a connection between the domestic violence provisions and the violent career criminal sections,

since "several of the crimes that constitute domestic violence are also qualifying forcible felonies for the career criminal classification").

In *Heggs*, this Court again rejected the State's argument that the Act addressed one primary object: "'the definition, punishment, and prevention of crime and the concomitant protection of the rights of crime victims.'" 759 So. 2d at 626 (quoting State's Answer Brief at 7-8). This Court was similarly unmoved by the State's argument that Chapter 95-182 was a "comprehensive crime bill." *Id.* at 626-27. The Court concluded that the provisions in the act embraced civil and criminal provisions that are not "naturally or logically connected." *Id*. at 626.

The *Franklin* court specifically concludes that section 11 is reasonably related to the goal of the other sections, i.e., "protecting the public," because a reporting requirement to INS would ensure removal of offenders from the country, presumably by deportation. But again, the subject is increased sentencing, not "protecting the public," and an administrative requirement that the clerk of courts transmit records to INS has nothing to do with sentencing.[5]

[5] Deportation is not part of a sentence. Before this Court promulgated Florida Rule of Criminal Procedure 3.172 requiring a judge to advise of the possibility of deportation, this Court held that deportation is a collateral consequence of a plea and not part of a sentence. *See State v. Ginebra*, 511 So. 2d 960 (Fla. 1987). *Ginebra* was later superceded by Rule of Criminal Procedure 3.172.

Finally, in a conclusion that it admits is "less obvious," the court in *Franklin* states that amending the definition of "conveyance" in the burglary and trespass statute is related to the purpose of the Act because it "effects the expansion of the definition of the crime of armed burglary, one of the offenses included in the Habitual Felony Offender Act." *Franklin*, 836 So. 2d at 1114. In other words, the public might be better protected under the new law if a criminal defendant (1) burglarized, not trespassed in, a railroad vehicle, (2) carried a weapon, (3) otherwise qualified for sentencing as a habitual violent felony offender, and (4) was sentenced to a longer sentence as a result of this designation. As the *Taylor* court aptly noted, "[T]hat relationship is so tenuous, so dependent on the happenstance of individual cases, that it simply cannot be characterized as natural or logical." 818 So. 2d at 549.

The Third District's conclusions in *Franklin* that sections 11 and 13 are related to the subject of the Act should be rejected.

The Franklin Court's Logrolling Analysis is Incorrect

The *Franklin* court's next assertion is that the statute did not provide "a 'cloak' for dissimilar legislation having no necessary and appropriate connection with the subject matter." *Id.* at 1114, *quoting State v. Lee*, 356 So. 2d 276, 282 (Fla. 1978). To support this conclusion, the court observes (in a footnote) that a highly popular enhanced sentencing law did not need sections 11 and 13 to pass the legislature. In

addition, the court notes that a subsequent legislature separately re-enacted all sentencing provisions (but not sections 11 and 13) three years later. *Id*. at 1114 n. 4, *citing* Ch. 2002-208 through 212, Laws of Florida (2002). The Third District in effect reverses the correct analysis.

The *Franklin* court assumes that log rolling involves a situation where the **dominant** piece of legislation could not pass without appending the lesser sections which address a different subject. However, the question is not whether the enhanced sentencing law would have passed without sections 11 and 13, but rather, whether the added sections, 11 and 13, could have passed on their own without being "cloaked" in the dominant enhanced sentencing law. The use of a "cloak" presumes that the greater piece has masked the lesser, not vice versa. The violation is that the added sections were hidden from the legislators and the public, and that they may not have passed on their own. Thus, the fact that a highly popular enhanced sentencing law did not need sections 11 and 13 in order to pass both Houses is not the true question. The focus, rather, is upon the addition of the anomalies, sections 11 and 13.

In virtually identical scenarios, this Court has invalidated highly popular enhanced sentencing laws where the legislature included unrelated provisions. The chapter laws in *Johnson*, *Thompson*, and *Heggs* all contained comprehensive sentencing provisions designed to enhance or increase prison sentences for repeat or

violent offenders. All three chapter laws also embraced civil provisions which were unrelated to the subject of sentencing. *See Johnson*, 616 So. 2d 1, 2 (Fla. 1993) (combining habitual offender statute with provisions on private investigators violates single subject); *Thompson*, 750 So. 2d 643, 647 (Fla. 2000) (inserting civil recovery provisions for domestic violence victims into career criminal "Gort" act violated single-subject); *Heggs*, 759 So. 2d 620, 626 (inserting the same civil recovery provisions into comprehensive sentencing law violated single-subject).

Similarly, in *Tormey*, 824 So. 2d 137, 141 (Fla. 2002), a minor addition barring provisional sentencing credits to attempted murderers probably would not have changed the vote on a highly popular piece of legislation designed to protect law enforcement officers. Nevertheless, this Court struck down the "Law Enforcement Protection Act" because the last-minute amendment did not address the stated subject.

The Third District appears to suggest in *Franklin* that this Court should consider the "political realities" of the way legislation is passed, as "several" courts in other states have done. *Franklin*, 836 So. 2d at 1114 n. 4, citing *Ohio Roundtable v. Taft*, 119 Ohio Misc. 49, 773 N.E. 2d 1113 (Com.Pl. 2002) and *Defenders of Wildlife v. Ventura*, 632 N.W.2d 707 (Minn. Ct. App. 2001). On more than one occasion, this Court has considered and explicitly rejected this approach:

> [E]ven if the provision could have passed as separate legislation, that is not the test. If a provision in an

> enactment relates to a different subject, as this one clearly does, the Legislature must enact it separately.

Tormey, 824 So. 2d at 142. *See also Heggs*, 759 So. 2d at 630 (Fla. 2000) (engaging in analysis of whether a provision could have passed on its own would thrust the court into the legislative arena, "a venture we care not to undertake in connection with this single-subject analysis").

The Franklin Court's Suggestions Regarding "Harmlessness" and "Standing" Must Be Rejected

In the same footnote, the Third District alternatively suggests that the "harmlessness" or "standing" doctrine should be applied to deny relief to all but those persons directly affected by sections 11 and 13. 836 So. 2d at 1114 n. 4. Under well-settled principles of statutory construction, Chapter 99-188 cannot be parsed in this fashion. As this Court observed in *Heggs*, 759 So. 2d at 628,

> "If an act embraces two or more subjects, and two or more of the same are expressed in the title, **the whole act is void."**

Emphasis added, quoting 1 JOHN LEWIS, STATUTES AND STATUTORY CONSTRUCTION 144 (2d ed. 1904), *as quoted in Colonial Investment Co. v. Nolan*, 100 Fla. 1349, 131 So. 178, 180 (Fla. 1930)). Similarly, in *Martinez v. Scanlan*, 582 So. 2d 1167, 1174 (Fla. 1991), this Court observed, "Clearly, a penal statute declared

unconstitutional is **inoperative from the time of its enactment** . . . ." *Emphasis added*.

If a penal law is void in its entirety, or inoperative from the time of its enactment, portions of that law cannot be said to survive. A person is harmed or has standing to allege error because he or she is prosecuted under a piece of legislation which is void. *See Heggs*, 759 So. 2d at 623 (holding that a person has standing to raise a claim under *Heggs* if he or she committed the offense after the enactment of Chapter 95-182 but before the biennial adoption of the Florida Statutes); *Johnson*, 616 So. 2d at 2-3 (holding that a person has standing to raise a claim if the offense was committed between the time of the enactment and the time of the biennial adoption of the Florida Statutes); *Thompson*, 750 So. 2d at 645 (same). The concept of standing in the single-subject context refers to the standing of a person who has been prosecuted under a law which, in effect, did not exist. The Third District's restrictive use of the standing doctrine is incorrect.

The only way a portion of a law that violates the single-subject rule may possibly be "saved" is by severing the offending section(s) from the remainder of the law. The severance doctrine has extremely limited applicability, and it does not apply to cases like this one.

The Severance Doctrine Does Not Apply to This Act

In *Colonial Investment Co. v. Nolan*, 100 Fla. 1349, 131 So. 178, 179-80 (Fla. 1930), this Court declared that if an act embraces more than one subject and the title also contains more than one subject, the entire act is void. This Court's recent decisions in *Tormey v. Moore*, 824 So. 2d 137 (Fla.2002) and *Heggs v. State*, 759 So. 2d 620 (Fla. 2000) establish without question that this rule still governs single-subject analysis in Florida. The single-subject violation in this case requires that the entire statute be declared invalid; severance of certain sections of the statute is not available because **both** the title and the body of Chapter 99-188 contain multiple subjects.

In *Heggs*, after concluding that Chapter 95-184 violated the single-subject rule because the sections that addressed civil remedies for victims of domestic violence were unrelated to the rest of the bill, which dealt with the criminal justice system, this Court considered whether the domestic violence sections could be severed, rendering the remainder of the law intact and valid. The Court concluded that severance was not appropriate. 759 So. 2d at 658, *citing, inter alia, Nolan*, 131 So. at 180 (finding that both the title and body of Chapter 14571 contained more than one subject and therefore invalidating the law in its entirety); *Sawyer v. State*, 100 Fla. 1603, 1611, 132 So. 188, 192 (1931) (relying on *Nolan* to invalidate entire chapter law because the law's **title and body** contained more than one subject); *Ex parte Winn*, 100 Fla. 1050, 1053, 130 So. 621, 621 (1930) (stating that "**both the act and the title dealt with**

more than one subject, and that the several subjects dealt with were not so properly connected as to conform with [the single-subject rule], and for this reason the entire act must fall").[6]

In reaffirming the rule set forth in *Nolan*, the Court in *Heggs* noted the cogent analysis of this issue set forth years ago by Professor Ruud:

> It is very doubtful that the doctrine of severability is applicable to an act containing two or more subjects adequately expressed by its title. Where a portion of an act is unconstitutional, the doctrine of severability saves the constitutional portions and gives them effect, where to do so will carry out the legislative purpose. Unconstitutionality, generally flows from lack of legislative power. The one subject rule is not concerned with substantive legislative power. It is aimed at log-rolling. It is assumed, without inquiring into the particular facts, that the unrelated subjects were combined in one bill in order to convert several minorities into a majority. The one-subject rule declares that this perversion of majority rule will not be tolerated. The entire act is suspect and so it must all fall.

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[6] In *Heggs*, 759 So. 2d at 629, this Court also considered the severability analysis applied *Moreau v. Lewis*, 648 So. 2d 124, 128 (Fla. 1995). There, this Court permitted severance of the unconstitutional portion of a general appropriations act, applying the test used in *Presbyterian Homes v. Wood*, 297 So. 2d 556, 559 (Fla. 1974). This Court concluded that *Moreau* should apply only in an **appropriations context**, for four reasons: (1) A separate constitutional provision provides that appropriations bills must address one subject and not amend substantive law; (2) As is clear from *Moreau*, when the legislature enacts a general appropriations act, the implementing bill must also relate only to appropriations; (3) Broadening the severability doctrine would "emasculate the single-subject provision;" and (4) Under *Presbyterian Homes*, the offending portion in *Moreau* was severable because the title contained one subject and the body contained two subjects, while in *Heggs*, the converse was true.

> If this is the rationale for the constitutional rule and it certainly is the principal one stated by the courts, then it is manifestly unsound to employ severability to save the provisions dealing with one of the subjects. The necessary assumption that this will carry out the legislative purpose, assented to by a majority of the legislators, cannot be made.

Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, 42 MINN L.REV. 389, 399 (1958).

This Court accordingly held the following:

> The title of chapter 95-184, in its entirety, spans almost two pages of text. See Ch. 95-184, at 1676-78. Clearly located within the lengthy title is a reference to amending sections 741.31, 768.35, and 784.06, Florida Statutes, see id. at 1677-78, which are the domestic violence provisions addressed in sections 36 through 38 of the chapter law. See id. §§ 36-38, at 1722-24. **Therefore, as it is clear that both the title and the body of chapter 95-184 contain more than one subject, the domestic violence provisions may not be severed from the Act to save its remaining sections. Accordingly, we hold chapter 95-184, Laws of Florida, void in its entirety, reverse the sentences imposed in this case, and remand this cause for resentencing in accordance with the valid laws [previously] in effect.**

Heggs, supra, at 630-31.

Since the title and the body of Chapter 99-188 both contain multiple subjects, the entire law must be declared invalid, and severability is not an option. This Court should approve the decision in *Taylor*, and declare Chapter 99-188 unconstitutional.

CONCLUSION

Based upon the foregoing, the defendant requests that this Court hold chapter 99-188, Laws of Florida, void in its entirety, and quash the decision of Third District which remanded this case to the trial court for re-sentencing under that law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to Michael J. Neimand, Assistant Attorney General, Office of the Attorney General, Criminal Division, 110 Tower, 110 SE 6th Street, 10th Floor, Fort Lauderdale, Florida 33301, this _____day of May, 2003.

_____
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CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times Roman.

_____
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