IN THE SUPREME COURT OF FLORIDA

BOB GRAHAM, et al.,

Petitioners,

Case No.: SC11-2453
L.T. Case Nos.: 1D11-384
2007-CA-1818

v.

MIKE HARIDOPOLOS, President of the Florida Senate; and DEAN CANNON, Speaker of the Florida House of Representatives on behalf of the Florida Legislature,

Respondents.
_____/

RESPONDENTS' JURISDICTIONAL BRIEF

On Review from the District Court of Appeal
First District, State of Florida

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STATEMENT OF CASE THE AND FACTS

Petitioners' statement of the case and facts consists entirely of facts outside the First District's opinion and, indeed, does not even mention the opinion itself. This Court's discretionary review jurisdiction can be invoked only from district court decisions that expressly address a question of law within the four corners of the opinion itself. *Persaud v. State*, 838 So. 2d 529, 532-33 (Fla. 2003); *Fla. Star v. BJF*, 530 So. 2d 286 (Fla. 1988). The facts, as stated by the First District, are as follows.

Petitioners, bringing the action as citizens and taxpayers, challenged the constitutionality of several statutes and a provision of the 2007-08 General Appropriations Act that restrict state universities' expenditure of tuition and fees and condition the appropriation of funds to each university based on compliance with the tuition and fee policies established by the Legislature. *Graham v. Haridopolos*, No. 1D11-384, 2011 WL 4818046, at *1 (Fla. 1st DCA Oct. 12, 2011). Petitioners contended the challenged statutes are unconstitutional because they violate the Board of Governors' exclusive authority under article IX, section 7(d) of the Florida Constitution to establish and expend tuition and fees. *Id.*

In response, the Legislature asserted the statutes were constitutional because the Board's authority to manage the university system is expressly subject to its appropriation power. *Id.* The Board of Governors originally asserted claims as

well, but voluntarily dismissed them and is no longer a party. *Id.*

Applying longstanding precedent from this Court, the First District held that article IX, section 7(d) does not grant the Board the authority to set and appropriate tuition and fees; but rather, as has been the case since Florida's first constitution in 1838, the power to raise and appropriate funds remains exclusively with the Legislature. *Id.* at *2-4.

SUMMARY OF ARGUMENT

Although the First District construed a constitutional provision and declared statutes valid – grounds for this Court's jurisdiction – this Court should exercise its discretion to decline to review this case. The First District's decision constitutes a straightforward and correct application of longstanding, consistent precedent from this Court regarding the Legislature's historic "power of the purse." The decision did not create new law, alter existing law, or incorrectly construe the law. Rather, the court had the advantage of decades of precedent from this Court as guidance, and it correctly applied that law. This is not the type of case that warrants supreme court review.

ARGUMENT

Petitioners' jurisdictional brief does not address the First District's decision they seek to have this Court review. Nowhere do they explain the claims they raised, the actual issues the First District was called upon to consider, or what that

court actually decided. Consideration of those matters demonstrates why this Court should not exercise its discretion to review this case: the First District correctly applied long-established precedent from this Court. Thus, while jurisdictional grounds exist, this Court should not exercise its discretion to review this case.

In 2002, Florida's voters approved Amendment 11, which created article IX, section 7(d). That section provides, in pertinent part:

> The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but are not limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. ***The board's management shall be subject to the power of the legislature to appropriate for the expenditure of funds***, and the board shall account for such expenditures as provided by law. . . .

(Emphasis added).

Petitioners claimed article IX, section 7(d) granted the Board exclusive authority to establish and expend tuition and fees for the university system. The issue before the First District thus was whether Amendment 11 divested the Legislature of its power of the purse over state university tuition and fees by vesting that authority in the Board. *Graham*, 2011 WL 4818046, at *3.

Relying on long-established supreme court precedent regarding the

Legislature's power of appropriation, the First District held article IX, section 7 did not divest the Legislature of its authority over state funds – "powers that have been vested exclusively within the legislative branch since the time of the State's first constitution." *Id.* at *2 (citing art. VIII, §§ 1-3, Fla. Const. (1838)).

As the First District observed, decisions from this Court dating back to 1874 hold the Florida Constitution vests the "power of the purse" in the Legislature by granting it exclusive and plenary power to raise and appropriate funds, and the Legislature's power to raise funds is not limited to the imposition of taxes; it includes the power to impose fees necessary to offset the costs of using state government services. *Id.* at *2 (citing numerous, settled Supreme Court precedents). The Legislature's appropriations power extends to all funds in the State Treasury from whatever source, and tuition and fees are "unquestionably" state funds. *Id.* (citing § 215.31, Fla. Stat).

In light of this history and applying this Court's longstanding precedent on constitutional and statutory construction, the First District held that nothing in the language of the Amendment or its ballot summary suggests an unprecedented change to the "quintessential legislative power of raising and appropriating state funds" was intended or effectuated. *Id.* at *3-4. Indeed, as the First District pointed out, the Amendment expressly makes clear the Board's power is subject to the powers of the Legislature to appropriate for the expenditure of funds. *Id.*

The First District further observed that the ballot title and summary of Amendment 11 nowhere indicated – or even intimated – that the Legislature's appropriations power was to be limited in any way with respect to the state university system. As the court noted, the Amendment and its ballot summary do not make the supposed distinction advocated by Petitioners between "agency" funds and other funds, in respect to the appropriations power expressly reserved to the Legislature by the Amendment.

The First District's decision does not create "confusion and uncertainty" surrounding the allocation of responsibility for university tuition and fees. Pet. Br., at 8. Quite to the contrary, in light of this Court's longstanding precedents, the First District unsurprisingly held that the power to raise monies and appropriate for state university operations, including tuition and fees, continues to reside with the Legislature under our constitution. The decision simply applies decades of consistent precedent regarding the power of appropriation and the construction of constitutional and statutory provisions. This Court should not exercise its discretion to review a decision that correctly applies this Court's precedents.[1]

The remaining points Petitioners raise likewise do not merit review by this Court. Petitioners suggest the First District ignored its decision in *NAACP, Inc. v.*

[1] Nor does the First District's decision create any uncertainty regarding sections 1001.705 and 1001.706, Florida Statutes, though Petitioners seem to intimate so at pages 5 and 8 of their jurisdictional brief. The constitutionality of those statutes was not addressed at all by the First District's decision.

Florida Board of Regents, 876 So. 2d 636, 640 (Fla. 1st DCA 2004). But, as the First District expressly recognized in its opinion, *NAACP* has no applicability here. *NAACP* involved a challenge to Board rules governing admission standards that had originally been adopted by the Department of Education. The case had nothing to do with the appropriations power in relation to tuition and fees. Indeed, *NAACP* made clear that article IX, section 7 "'clearly contemplated a significant role in the management of the state university system for the Legislature, through its power over appropriations.'" *Graham*, 2011 WL 4818046, at *5 (quoting *NAACP*, 876 So. 2d at 639-40).

Finally, Petitioners assert that the First District's opinion is contrary to "every reported case in the country." Pet. Br., at 9. However, as the First District made clear, Petitioners relied on jurisprudence interpreting the constitutions of three states, which Petitioners suggested contain provisions similar to article IX, section 7 of the Florida Constitution; but in fact, the constitutional provisions of those states are not similar to Florida's. *Graham*, 2011 WL 4818046, at *4.

CONCLUSION

This Court should decline review of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail to the following on this 23d day of January, 2012.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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Attorney