Filing # 16049837 Electronically Filed 07/17/2014 04:08:05 PM

RECEIVED, 7/17/2014 16:08:40, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

WILLIAM R. CREWS

Petitioner,

v. CASE NO. SC14-319

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

BRIEF OF *AMICUS CURIAE* FLORIDA EDUCATION ASSOCIATION IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST

Amicus Curiae Florida Education Association is a statewide organization of professional educators and education support personnel employed by public employers in 65 of 67 Florida counties, in numerous community and state colleges and all state universities. Through its state and local affiliates, FEA represents approximately 270,000 public school teachers, educational support personnel and paraprofessionals as the certified bargaining agent for purposes of collective bargaining pursuant to Section 447.307, Florida Statutes. The decision under appeal and its overly broad interpretation of Section 775.15(12)(b), Florida Statutes, has the potential to adversely affect these individuals, as well as all of Florida's public sector employees, and thus they have a direct interest in this appeal.

SUMMARY OF ARGUMENT

The extended statute of limitations for "offenses based upon misconduct in office by a public officer or employee" set forth in Section 775.15(12)(b), Florida Statutes, does not apply to public school teachers. Under Chapter 1012, Florida Statutes, the Florida Education Code, teachers are specifically classified as "Instructional Personnel," and are not included within the "School Officer" classification of Chapter 1012. Nowhere in Florida Statutes are public school teachers classified as "public officers" as that term has been defined, or as public employees who hold any type of office. Therefore, this Court should answer the certified question in the negative.

ARGUMENT

THE EXTENDED STATUTE OF LIMITATIONS FOR "OFFENSES BASED UPON MISCONDUCT IN OFFICE BY A PUBLIC OFFICER OR EMPLOYEE" IN SECTION 775.15(12)(B), FLORIDA STATUTES, DOES NOT APPLY TO PUBLIC SCHOOL TEACHERS.

Amicus Curiae Florida Education Association is in agreement with the arguments set forth in Petitioner's Initial Brief on Appeal. The extended statute of limitations for "offenses based upon misconduct in office by a public officer or employee" set forth in Section 775.15(12)(b), Florida Statutes, does not apply to public school teachers. This Court should thus answer the certified question in the negative.

Chapter 1012, Florida Statutes, is also known as the Florida Education Code. Section 1012.01, Florida Statutes, is the "Definitions" section of Part I of Chapter 1012. This section provides in relevant part as follows:

> (1) SCHOOL OFFICERS. – The officers of the state system of public K-12 and Florida College System institution education shall be the Commissioner of Education and the members of the State Board of Education; for each district school system, the officers shall be the district school superintendent and members of the district school board; and for each Florida College System institution, the officers shall be the Florida College System institution president and members of the Florida College System institution Board of trustees.
>
> (2) INSTRUCTIONAL PERSONNEL. – "Instructional personnel" means any K-12 staff member whose function

> includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are the following K-12 personnel:
>
> (a) Classroom teachers. – Classroom teachers are staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers.

(emphasis added).

This definitional section clearly shows that within the context of the Florida Education Code itself, the Legislature declined to classify teachers as "school officers," instead specifically classifying said teachers as "instructional personnel" and, by explicit extension, "staff members." Unlike district school superintendents and district school board members, teachers do not hold any type of office, whether as public officers or as public employees holding an office, but rather, by statutory definition, are "staff members" who are "assigned the professional activity of instructing students in classroom situations…"

The terms "public officer" and "public employee" have been defined in Florida Statutes, particularly in Chapter 112, and the specific language provided in these definitions shows the Legislature's intention to include only a specific class

of positions within these respective terms, of which public school teachers are not one. Section 112.061(2), Florida Statutes, provides in relevant part as follows:

> (c) Officer or public officer. – An individual who in the performance of his or her official duties is vested by law with the sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.
>
> (d) Employee or public employee. – An individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.

Section 112.313(1), Florida Statutes, provides as follows:

> DEFINITION. – As used in this section, unless the context otherwise requires, the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory board.

Article II, Section 5, Florida Constitution, titled "Public officers," likewise sets forth certain restrictions upon, and requirements of, public officers, including the swearing of an oath of office.

The Legislature's specific use of the terms "instructional personnel" and "staff members" in Florida's Education Code, together with the lack of any statutory and constitutional references to public school teachers being defined as

public officers or public employees who hold any type of office, should lead this Court to conclude that Judge Padovano's reasoning below in narrowly construing Section 775.15(12)(b) is the more well-reasoned position, and thus should answer the certified question in the negative.

Judge Padovano relied on Judge Altenbernd's dissent in LaMorte v. State, 984 So.2d 548 (Fla. 2d DCA 2008). In this case, which also involved the statute of limitations provision at issue in the instant case, Judge Altenbernd addressed the ambiguities inherent in the term "misconduct in office," particularly as applied to public school teachers, as well as to all state employees, and whether such teachers and state employees actually hold an "office" as classified under Florida law. Judge Altenbernd reasoned as follows:

> Absent a definition in the criminal code, I would limit this special statute of limitations to persons who commit crimes based upon misconduct in a position that is defined as an "office" either in the Florida Constitution or in the Florida Statutes.
>
> The majority is holding that all state employees whose employment is governed by an employment agreement that allows the employer to terminate or reprimand them for "misconduct in office" as a matter of civil employment law are subject to a special statute of limitations for criminal offenses committed in connection with that employment. I frankly do not know how many government jobs in Florida have conduct codes that allow for discipline based on the civilian equivalent of conduct unbecoming an officer. It troubles me, however, that we would authorize a major extension of the period

> in which to commence a criminal proceeding based on such a provision.
>
> School teachers do not hold any "office" defined in the constitution or the statutes. *See* § 1.01(6), Fla. Stat. (2007) (requiring statutes referencing "office" or "officer" to be construed as including any person authorized by law to perform the duties of such office). Chapter 1012 specifically defines school officers separately from instructional personnel. § 1012.01(1), (2), Fla. Stat. (2007) (originally enacted as § 228.041(8), (9), Fla. Stat. (1981), *repealed by and renumbered by* ch. 2002–387, § 1058, Laws of Fla.). For the period relevant to this case, teachers in Florida were issued "certificates" and categorized as "personnel." *See* § 1012.55 (originally enacted as § 231.15, Fla. Stat. (1981), *repealed by and renumbered by* ch. 2002–387, § 1058, Laws of Fla.). They did not take the oath of office required of public officers. Art. II, § 5(b), Fla. Const.

Id. at 553, 554. *Amicus Curiae* believes that this Court should adopt Judge Altenberd's reasoning, and submits that the "misconduct in office" terminology that is included in Chapter 1012, Florida's Education Code, and by which school teachers are subject to employment discipline, does not, and was never intended to, elevate teachers to a classification under Florida law of holding an office of any type.

Further support for *Amicus Curiae's* position can be found in a number of other jurisdictions. In Jackson v. Roberts, 774 S.W.2d 860 (Mo. Ct. App. E.D.

1989), the Missouri Court of Appeals held, in a case involving the doctrine of official immunity, that a school teacher and an assistant principal were not immune from suit by reason of the doctrine of official immunity. In so holding, the Court discussed whether such individuals were "public officers" under Missouri law, and stated as follows:

> The parties have not cited, nor has our research disclosed, any Missouri case deciding whether public school teachers or principals are "public officers." There is, however, a substantial line of authority in other jurisdictions denying the status of "public officers" to teachers.

Id. at 860, 861.

In Harper v. Doll, 168 N.C.App. 728, 2005 WL 465569 (N.C.App. 2005), the North Carolina Court of Appeals addressed whether public official immunity should be extended to teachers. In holding that teachers are not public officers entitled to immunity, the Court noted as follows:

> This Court has, as defendant concedes, previously addressed whether public official immunity should be extended to teachers. In *Mullis v.* Sechrest, 126 N.C.App. 91, 98, 484 S.E.2d 423, 427 (1997), *rev'd on other grounds*, 347 N.C. 548, 495 S.E.2d 721 (1998), this Court characterized a defendant teacher as "a public employee [and] not a public official … because his duties at the time of the alleged negligence occurred [were] not considered in the eyes of the law to involve the exercise of the sovereign power [.]" Additionally, in *Daniel v. City of Morganton*, 125 N.C.App. 47, 55, 479 S.E.2d 263, 268 (1997), this Court observed a schoolteacher was

> "an employee and not an officer" with duties that were "purely ministerial" and did not "involve the exercise of sovereign power [.]"

The reasoning by the Missouri and North Carolina courts is consistent with how "public officers" are defined, characterized and classified in Florida Statutes, and this Court should adopt such reasoning in determining that public school teachers do not fall within the umbrella of "public officers." Although the North Carolina court did reason that teachers are public employees, and *Amicus Curiae* in the instant case does not dispute that Florida public school teachers are public sector employees, *Amicus Curiae* submits that nothing in Florida Statutes can be used as authority to define, characterize or classify Florida public school teachers as being public employees who hold any type of office. In fact, the statutory references cited earlier in this brief lead to the opposite conclusion: public school teachers in Florida are clearly defined and classified as "instructional personnel," as opposed to "school officers," and as "staff members." They are not "public officers," nor are they the type of public employees who hold any type of office. If this Court were to adopt the lower court's reasoning, then not only public school teachers would be affected by this flawed interpretation of Section 775.15(12)(b), but rather all public sector employees would be so affected, including janitorial staff, administrative staff, clerical staff, secretarial staff, drivers, utilities staff, legal assistants and even law clerks. This list, of course, is not exhaustive, but is meant

to plainly show the adverse consequences arising from the lower court's flawed interpretation of the subject statutory section, and how such interpretation cannot be consistent with the Legislature's intent.

Judge Altenbernd recognized as such in the LaMorte case, concluding his dissent as follows:

> I am troubled by the disparity created by the majority's holding between the treatment of state employees and the treatment of private employees. For example, a private school teacher who steals a $500 piece of equipment is subject to a three-year statute of limitations, *see* § 775.15(2)(b), Fla. Stat. (2007), while a public school teacher, or perhaps even a janitor, who commits the same act is subject to a statute of limitations that may not expire for thirty years. *See* § 775.15(12)(b). The teacher involved in this case has a limitations period in excess of twenty years for offenses that would have been barred after three years if he worked for a church or private school. I am not arguing that this statute of limitations violates equal protection; I simply believe this incongruity demonstrates the ambiguity that should require this court to narrowly construe this special statute of limitations.

LaMorte, 984 So. 2d at 554.

CONCLUSION

Therefore, based upon the foregoing arguments and authorities cited herein, *Amicus Curiae* Florida Education Association requests this Honorable Court answer the certified question in the negative.

CERTIFICATES OF SERVICE AND FONT SIZE

I hereby certify that a copy of the foregoing has been furnished via the Florida Courts E-Filing portal to Counsel for Petitioner, Glen P. Gifford, Office of the Public Defender, Leon County Courthouse, 301 S. Monroe Street, Suite 401, Tallahassee, Florida 32301, glen.gifford@flpd2.com; and Counsel for Respondent, Jennifer J. Moore, Office of the Attorney General, the Capitol, PL-01, Tallahassee, FL 32399-1050, crimapptlh@myfloridalegal.com, this 17th day of July, 2014. I hereby certify that this brief has been prepared using Times New Roman 14 point font.

Respectfully submitted,

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