SC17-1434

In the Supreme Court of Florida

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL S-20,
FLORIDA STATE FIRE SERVICE ASSOCIATION,
Petitioners,

v.

STATE OF FLORIDA,
Respondent.

RESPONDENT'S ANSWER BRIEF

ON DISCRETIONARY REVIEW FROM THE
FIRST DISTRICT COURT OF APPEAL
Case No. 1D16-618

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A. Background

Under the Florida Constitution, the Governor plays a central role in the appropriations process. "Every bill passed by the legislature," including a general appropriation bill, "shall be presented to the governor for approval and shall become a law if the governor approves and signs it, or fails to veto it within seven consecutive days after presentation." Art. III, § 8(a), Fla. Const. "The governor may veto any specific appropriation in a general appropriation bill, but may not veto any qualification or restriction without also vetoing the appropriation to which it relates." *Id.* The Governor may also veto the entire appropriation bill. *See id.* In turn, the Legislature retains the power to override the Governor's veto by a two-thirds vote in each house. Art. III, § 8(c), Fla. Const. Such an override supplies the exclusive mechanism by which a vetoed bill may "become law" or by which a vetoed appropriation may be "reinstated." *See id.*

Article I, section 6 of the Florida Constitution provides that "[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." Soon after that section was adopted, this Court construed it to include public employees. *Dade Cty. Classroom Teachers' Ass'n v. Ryan*, 225 So. 2d 903, 905 (Fla. 1969). Three years later, the Court rejected a mandamus petition seeking to compel the Legislature to enact standards regulating public employees'

right of collective bargaining, but in so doing the Court suggested that it might "impose judicial guidelines if the Legislature failed to pass legislation." *State v. Florida Police Benev. Ass'n, Inc.*, 613 So. 2d 415, 417 (Fla. 1992) ("*Florida PBA*") (citing *Dade Cty. Classroom Teachers Ass'n v. Legislature*, 269 So. 2d 684 (Fla. 1972)). As a result, the Legislature enacted Part II of Chapter 447, pertaining to public employees.

Under that statute, the Governor is considered the public employer in collective bargaining negotiations with state employees. § 447.203(2), Fla. Stat. If the Governor and state employees reach an impasse in such negotiations, the Legislature must convene a committee to review impasse issues and recommend a resolution to the Legislature. § 447.403(5)(a), Fla. Stat. The Legislature must then "take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impasse issues." § 447.403(4)(d), Fla. Stat.

B. Procedural History

Petitioners Local S-20 are the certified bargaining agent for a unit of certified firefighters employed by the State of Florida. The parties bargained over wages, hours, and conditions of employment for fiscal year 2015-2016, but they reached an impasse on several issues, chiefly wages. The State proposed no pay increase, to which Petitioners responded with a counterproposal of a $1,500-per-member raise.

Pet. App. 42, 44. The parties then submitted their positions on the disputed issues to the Legislature pursuant to Section 447.403(5), Fla. Stat. *See* Pet. App. 46.

In response, the Legislature passed an act specifically resolving several of the impasse issues—but not wages—and providing that unresolved impasse issues would be resolved "by maintaining the status quo under the applicable current bargaining agreement." Ch. 2015-223, § 1, Laws of Fla. The Legislature then passed the 2015-2016 General Appropriations Act ("GAA"), which included a specific appropriation that would grant a $2,000 raise—$500 more than Petitioners had requested—but only to those bargaining unit members who were employed by the Department of Agriculture and Consumer Services. Pet. App. 58.

When the GAA was presented to the Governor, he vetoed the specific appropriation related to the $2,000 raise pursuant to his line-item veto power provided in Article III, section 8(a), explaining that "this issue should be addressed at a statewide level for all employees." Pet. App. 8. Because the Legislature did not seek to override the veto, the impasse was automatically resolved pursuant to the provision maintaining the status quo. Ch. 2015-223, § 1, Laws of Fla. Accordingly, the Governor then presented Petitioners with a proposed collective bargaining agreement that did not include the vetoed pay adjustment. Pet. App. 8.

Petitioners filed an unfair labor practice charge with the Public Employees Relations Commission's Designated Agent, citing the Governor's veto and his

submission of the proposed agreement for ratification. Pet. App. 5. Among other things, Petitioners sought an order directing the Governor to grant the pay adjustment. Pet. App. 8. The Designated Agent summarily dismissed the charge, however, relying on Article III, section 8(a) of Florida's Constitution. Pet. App. 130. Petitioners appealed the dismissal to the Commission, but the Commission affirmed. Pet. App. 136. The Commission explained first that it was authorized to address constitutional issues, and then rejected Petitioners' arguments that the Governor's veto was unlawfully exercised and that the Governor had encroached upon the powers of the Legislature. Pet. App. 139, 143-46.

Petitioners appealed to the First District, but the First District also affirmed. The court held that the Governor's exercise of his veto power "comported with his constitutional authority." *Int'l Ass'n of Firefighters Local S-20 v. State*, 221 So. 3d 736, 739 (Fla. 1st DCA 2017). Moreover, the court explained, following his veto, the Legislature retained the power to resolve the impasse, and it exercised that power: it "effectively resolved the impasse by choosing not to override the Governor's veto and maintaining the status quo." *Id.* And while the court acknowledged that "public employees possess important, constitutionally protected collective bargaining rights," it pointed out that "the Legislature cannot force the Governor's hand to approve and sign the GAA, or specific appropriations therein." *Id.* Relying primarily on *Chiles v. United Faculty of Florida*, 615 So. 2d 671, 673

(Fla. 1993) ("*United Faculty*"), Judge Thomas dissented, explaining that he would require the Governor to "demonstrate a compelling public interest, such as a budgetary emergency, to sustain a gubernatorial veto of a legislative resolution of impasse." *Int'l Ass'n of Firefighters*, 221 So. 3d at 740 (Thomas, J., dissenting).

This Court accepted discretionary jurisdiction.

While this case has been pending, the Legislature has appropriated—and the Governor has approved—two subsequent pay raises for Petitioners' members. *See* Ch. 2016-66, § 8, at 417, Laws of Fla. (appropriating recurring funds to provide a $2,000 annual salary increase to each member of the Florida State Fire Service bargaining unit, including the same specified job classes identified in the line item vetoed in 2015); Ch. 2018-9, § 8, at 415, Laws of Fla. (appropriating funds to grant a competitive pay adjustment of $2,500 to the June 30, 2018 base rate of pay for each firefighter in specified job classes, including the same job classes identified in the line item vetoed in 2015). The Governor has therefore approved raises for all state firefighters in the amount of $2,000—and in the aggregate amount of $4,500 for most of them—since vetoing the proposed $2,000 pay adjustment in 2015.

SUMMARY OF ARGUMENT

The Governor did not violate Petitioners' right to collectively bargain when he exercised his constitutional authority to veto the specific appropriation at issue here. The right to bargain does not include the right to have an appropriation made

by law, and salaries paid to public employees require public appropriations. Petitioners contend that, when it comes to funding benefits for state employees, only the Legislature should have a say in appropriations. Consistent with the constitutional text, however, this Court has explained that the Governor's constitutional line-item veto authority is a part of the process that results in an appropriation made by law.

The collective bargaining process does not, as Petitioners assert, limit the Governor's constitutionally prescribed role in the enactment of an appropriation bill. As this Court has repeatedly recognized, the Governor's veto power is limited only by the specific, textual constraints in Article III, section 8. And although Petitioners maintain that the Legislature has enacted a statute purporting to limit the Governor's veto power, that is not what the statute does. Indeed, interpreting that statute as limiting the Governor's veto power would raise serious constitutional concerns. Because the Governor properly exercised his veto here, and because Petitioners seek only relief that is categorically unavailable, this case should be dismissed or, in the alternative, the First District's decision should be approved.

I. The Court should dismiss this case because Petitioners seek a judicial appropriation to fund a salary increase. This Court has made clear, however, that the appropriations power is committed to the Legislature and to the Governor. Ordering the Legislature and Governor to make a specific appropriation of public funds would

thus violate the separation of powers.

II. The Court should also dismiss this case because Petitioners request the invalidation of the Governor's line-item veto. This Court has made clear that this relief, too, is unavailable: the Governor may exercise his veto for any reason whatsoever, and the Court therefore may not invalidate a particular veto unless it was exercised in an unconstitutional manner. Here, though, the Governor exercised his line-item veto precisely as the Constitution directs.

III. Even if Petitioners' requested relief were not categorically unavailable, the right to bargain does not constrain the Governor's veto power. The veto power is a primary check on the Legislature's powers, and this Court has explained that when the right to bargain was added to the Constitution, it did not affect the separation of powers. State action affecting a proposed pay increase is not subject to heightened scrutiny if that action occurs *before* the agreement is funded by a valid appropriation enacted into law. Until then, a proposed pay increase remains inchoate.

IV. The Governor's veto here did not "subvert" the impasse resolution process. Instead, the entire process played out as the statute contemplates. Petitioners' contrary argument is not just unpersuasive; it would needlessly construe a presumptively valid state law in such a way as to render the law unconstitutional. As between a statute and a constitutional power, the constitutional power prevails. Thus, any purported statutory restriction on the Governor's veto power would be

unconstitutional.

STANDARD OF REVIEW

Issues of statutory and constitutional interpretation are subject to de novo review. *See Headley v. City of Miami*, 215 So. 3d 1, 5 (Fla. 2017).

ARGUMENT

I. PETITIONERS SEEK RELIEF THAT THIS COURT CANNOT GRANT: THE JUDICIAL APPROPRIATION OF PUBLIC FUNDS.

When a petitioner seeks relief that this Court cannot grant due to the separation of powers, this Court either denies or dismisses the petition. *E.g.*, *Bogorff v. Scott*, 223 So. 3d 1000, 1001 (Fla. 2017); *id.* at 1002 (Pariente, J., concurring) (concurring in order dismissing petition "because the only relief sought in this Court . . . is not legally permissible"); *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 408 (Fla. 1996) (per curiam) (affirming dismissal); *Dade Cty.*, 269 So. 2d at 686, 688 (denying petition and dismissing cause). Because the separation of powers prevents this Court from ordering the Legislature to appropriate and the Governor not to veto funds for a salary increase (a salary increase that Petitioners' members have now received), the Court should discharge jurisdiction and dismiss Petitioners' case entirely.

Under the Florida Constitution, "[n]o money shall be drawn from the treasury except in pursuance of appropriation made by law." Art. VII § 1(c), Fla. Const.; *see*

Graham v. Haridopolos, 108 So. 3d 597, 603 (Fla. 2013). "[T]he Governor's constitutional line-item veto authority . . . is part of the process that results in 'an appropriation made by law.'" *Bogorff*, 223 So. 3d at 1001. The judiciary may not intrude on the appropriations power. *E.g.*, *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Cir. Pub. Def.*, 561 So. 2d 1130, 1136 (Fla. 1990) ("[I]t is not the function of this Court to decide what constitutes adequate funding and then order the legislature to appropriate such an amount. Appropriation of funds for the operation of government is a legislative function." (citing Art. VII, § 1(c), Fla. Const.)). Indeed, "[i]t is too well settled to need any citation of authority that the judiciary cannot compel the Legislature to exercise a purely legislative prerogative." *Dade Cty.*, 269 So. 2d at 686; *see also Order on Prosecution*, 561 So. 2d at 1139 (recognizing that "this Court may not be able to order the legislature to appropriate those funds"); *Dep't of Health & Rehab. Servs. v. V.L.*, 583 So. 2d 765, 766 (Fla. 5th DCA 1991) ("the legislature's appropriations power is . . . off limits to the courts").

This Court's decision in *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996) (per curiam) reinforces that this Court may not—consistent with the separation of powers—order the Legislature to appropriate funds. There, appellants contended that the State was violating students' constitutional right to an adequate education by failing to allocate adequate

resources. *Id.* at 402. The State countered that granting appellants relief "would violate the separation of powers doctrine," because "what appellants want[ed] is for the trial court to order the appropriation of more money for education." *Id.* at 407. This Court agreed that appellants' requested relief would "mea[n] that the judiciary would be intruding into the legislative power of appropriations," which would be inappropriate "in view of [this Court's] obligation to respect the separation of powers doctrine." *Id.* As a result, the Court refused to intrude on the Legislature's "well settled . . . power to appropriate state funds." *Id.* at 408; *see also id.* at 407 (rejecting plaintiffs' argument because "in order to grant the relief sought by [p]laintiffs," the Court would have to "usurp and oversee the appropriations power, either directly or indirectly" (citing Art. II, § 3, Fla. Const.)).

The Court's decision in *United Faculty* similarly illustrates the point. 615 So. 2d at 672. There, the Legislature appropriated, and the Governor approved, funds for a pay raise pursuant to a collective bargaining agreement. *Id*. The Court rejected the Legislature's subsequent attempt to retract that raise based on a budgetary shortfall, and ordered the Legislature to implement the pay raise. *Id.* at 673. The Court was careful to note, however, that the facts there did *not* "present a violation of separation of powers, nor [was the Court] attempting a judicial appropriation of public money." *Id.* That is because—unlike here—the money had already been appropriated by the Legislature and approved by the Governor. *Id.* at 672. By

contrast, where no valid appropriation has been enacted into law (as in *Coalition for Adequacy & Fairness*), this Court may not usurp the roles of its coordinate branches and "judicial[ly] appropriat[e] public money." *United Faculty*, 615 So. 2d at 673.

Here, to obtain the only remaining relief that they have not received, Petitioners would need an appropriation to fund a retroactive salary increase. Unlike in *United Faculty*, no funds have been appropriated for this purpose; the 2015 appropriation was vetoed. *See* Ch. 2015-223, § 1, Laws of Fla. Therefore, Petitioners seek the judicial appropriation of public funds. Because such relief would plainly represent a grave judicial intrusion on the Legislature's and Governor's exclusive powers, the separation of powers bars the relief that Petitioners seek. *See State v. Ashley*, 701 So. 2d 338, 342 (Fla. 1997) ("[N]o branch of state government can arrogate to itself powers that properly inhere in a separate branch.").

Granting Petitioners the relief they seek—a judicial appropriation—could also invite claims that either the Legislature or the Governor has infringed on some other constitutional right by exercising the appropriations power. *Cf. Order on Prosecution*, 561 So. 2d at 1132 (challenging inadequate funding of public defenders' office leading to violations of constitutional rights of indigent appellants); *Coalition for Adequacy & Fairness*, 680 So. 2d at 402 (seeking declaration that State failed to appropriate sufficient funds to provide "adequate" education under Florida Constitution).

For all these reasons, the Court should dismiss the petition.

II. THE GOVERNOR LAWFULLY EXERCISED HIS POWER TO VETO THE SPECIFIC APPROPRIATION HERE.

The unavailability of a judicial appropriation is only the first of many problems with Petitioners' claim. Even if this Court could judicially appropriate funds, it cannot invalidate the Governor's veto, because the Governor exercised his line-item veto in a constitutional manner.

When presented with a General Appropriations Act, the Governor has three options under Florida's Constitution. He may sign the GAA, he may veto it in its entirety, or he may veto specific appropriations within it. Art. III, § 8(a), Fla. Const. As Petitioners admit, "[u]nder the Florida Constitution, the governor may exercise his veto power *for any reason whatsoever*." *Brown v. Firestone*, 382 So. 2d 654, 668 (Fla. 1980) (emphasis added); *see* Pet. Br. 26.

This power is "[p]rimary among executive checks on unfettered legislative power." 382 So. 2d at 664.[1] In *Firestone*, this Court "define[d] and delimit[ed] the relationship between the gubernatorial veto power and the legislature's authority to

[1] Despite the importance of this check on unfettered legislative power, amici request that this Court reduce it to a "strictly ministerial" exercise that the Governor "ha[s] to do." Br. of Florida Professional Firefighters, Inc. et al., at 14. For this proposition, however, amici rely on *Willits v. Askew*, which is inapposite: it did not involve the Governor's veto power but instead a constitutional provision expressly providing that "[t]he governor shall countersign [a]s a ministerial duty subject to original mandamus." 279 So. 2d 1, 4 (Fla. 1973).

enact general appropriation law." 382 So. 2d at 663. The *sole* restriction on the Governor's power to veto specific appropriations is that he must "exercise the veto power in a constitutional manner." *Id.* at 668. The Court explained that "[i]f [the Governor] seeks to veto any qualification or restriction in a general appropriations bill, . . . he must also veto the appropriation to which it relates." *Id.* Here, when the GAA was presented to the Governor, he vetoed the $2,000 raise-specific appropriation, and the Legislature did not override the veto. Thus, under *Firestone*, the Governor exercised his power to veto "any specific appropriation in a general appropriation bill," Art. III, § 8, Fla. Const., in a constitutional manner.

Because the Governor exercised his veto precisely as the Constitution directs, the relief that Petitioners seek—the invalidation of his veto—is unavailable. *E.g.*, *Bogorff*, 223 So. 3d at 1002 (Pariente, J., concurring) ("the only relief sought in this Court is a request to invalidate the Governor's veto on the specific appropriations, which is not legally permissible").

Even so, Petitioners repeatedly contend that the Governor did not properly exercise his veto because the labor organizations statute, Section 447, does not "authorize," "contemplate," "state," or "mention" the Governor's power to veto a specific appropriation following the Legislature's attempt to resolve an impasse. Pet. Br. 18, 20, 21, 25. Yet it need not do so: the Governor's veto is expressly provided in the *Constitution*. Art. III, § 8, Fla. Const. In other words, it is of no moment that

the impasse resolution process does not expressly contemplate the possibility that the Governor may veto a specific appropriation intended to resolve an impasse, because the Constitution does.

As the First District recognized, that is precisely why *Dade County Police Benevolent Ass'n v. Miami-Dade County Board of County Commissioners*, 160 So. 3d 482 (Fla. 1st DCA 2015), on which Petitioners rely, is irrelevant in this context. *See Int'l Ass'n of Firefighters*, 221 So. 3d at 739. There, the First District held that a local mayor could not veto the legislative body's impasse resolution. But *Dade County Police* was a statutory case: as Petitioners themselves note, the court "based its holding upon a plain reading of the unambiguous" statutory language, which "contemplated that the legislative body would resolve the impasse and the mayor would play no role in the impasse resolution process beyond that of an advocate for the public employer." Pet. Br. 22. Thus, because the statute did not authorize a veto and because the mayor "did not have constitutional authority to veto the impasse resolution," his veto was invalid. *Int'l Ass'n of Firefighters*, 221 So. 3d at 739. "Here, by contrast, the Governor possessed explicit constitutional authority to veto appropriations within the GAA." *Id.* (citing Art. III, § 8(a)). Put simply, that the mayor in *Dade County Police* lacked statutory authorization to veto an impasse resolution is not instructive as to the Governor's constitutional power to exercise his line-item veto.

Because the Governor properly exercised his constitutional line-item veto power, Petitioners' requested relief—the invalidation of his veto—is "legally impermissible," and the Court should dismiss the petition for this reason as well. *Bogorff*, 223 So. 3d at 1002 (Pariente, J., concurring).

III. THE CONSTITUTIONAL RIGHT TO BARGAIN DOES NOT LIMIT THE GOVERNOR'S POWER TO VETO SPECIFIC APPROPRIATIONS.

Setting aside that the relief Petitioners seek is categorically unavailable, Petitioners' core premise is wrong. Despite Petitioners' urging to the contrary, Article I, section 6 of the Florida Constitution, which protects the right to bargain, does not "impliedly limit" the Governor's veto power under Article III, section 8. Pet. Br. 29. In fact, the veto power is an inherent feature of the collective bargaining process for state employees.

A. The passage of Article I, section 6 did not narrow the Governor's line-item veto power, even impliedly. *See Florida PBA*, 613 So. 2d at 418 (explaining that the amendment adopting the right to bargain "[s]urely . . . was not intended to alter fundamental constitutional provisions, such as the separation of powers doctrine").

Indeed, "it is settled that implied repeal of one constitutional provision by another is not favored." *Jackson v. Consol. Gov't of City of Jacksonville*, 225 So. 2d 497, 500 (Fla. 1969); *see Wilson v. Crews*, 34 So. 2d 114, 117 (Fla. 1948) (same). "Implied repeals, amendments, and modifications of organic provisions occur only

when the provisions as adopted are positively and irreconcilably repugnant to each other, and then only to the extent of the repugnancy." *Wilson*, 34 So. 2d at 118; *Advisory Op. to Atty. Gen. re Standards For Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 190 (Fla. 2009) (constitutional provision would be "considered repealed by implication *only if* it cannot be harmonized" with proposed amendment). "Distinct provisions of the Constitution are repugnant to each other only when they relate to the same subject, are adopted for the same purposes, and cannot be enforced without material and substantial conflict." *Wilson*, 34 So. 2d at 118.[2] Thus, "[u]nless the later amendment expressly repeals or purports to modify an existing provision, the old and new should stand and operate together unless the clear intent of the later provision is thereby defeated." *Jackson*, 225 So. 2d at 500-01.

None of the requirements for implied repeal or modification is present here. First, the Governor's line-item veto and the right to bargain are not "positively and irreconcilably repugnant to each other": the amendment adopting the right to bargain

[2] *See also Jackson*, 225 So. 2d at 501 ("a later general provision of the Constitution does not impliedly repeal a prior one of special application unless the two provisions are utterly inconsistent and repugnant to each other"); *In re Advisory Op. to Atty. Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 808 (Fla. 2014) (where proposed amendment did not "explicitly repeal" or "mention" particular constitutional and statutory provisions, those "provisions would remain in full effect if the amendment were to pass").

did not relate to the same subject as the Governor's line-item veto; it was not adopted for the same purpose; and it can be enforced without material and substantial conflict. *See Wilson*, 34 So. 2d at 118. The right-to-bargain provision does not even mention, let alone explicitly limit or purport to modify, the Governor's line-item veto. *See Jackson*, 225 So. 2d at 501 (distinguishing *Wilson* by explaining that there, "the later amendment not only involved the same subject matter but also the same section of the Constitution"). And the Legislature retains the option to override the Governor's veto in favor of an impasse resolution adopted pursuant to the right to bargain.

In short, these two constitutional provisions easily stand and operate together without "material and substantial conflict," *Wilson*, 34 So. 2d at 118, and the amendment adopting the right to bargain did not impliedly limit the Governor's line-item veto power.

B. Petitioners' argument fails to take into account that "public and private bargaining [are] inherently different," *Florida PBA*, 613 So. 2d at 418, and particularly so when the public employer is the Governor, who possesses unique constitutional powers. *See id.* at 419 (explaining that the right to bargain "does not increase the right as commonly understood"; instead, it merely "guarantee[s] that the right may not be taken away or limited"). "Myriad distinctions, not just those of procedures, exist between public and private collective bargaining." *Id.* at 417

(quoting *United Teachers of Dade FEA/United AFT, Local 1974, AFL-CIO v. Dade Cty. Sch. Bd.*, 500 So. 2d 508, 512 (Fla. 1986)); *see also id.* (noting that "analogies [between private and public bargaining] have limited application and the experiences gained in the private employment sector will not necessarily provide an infallible basis for a monolithic model for public employment" (quoting *Penn. Labor Relations Bd. v. State Coll. Area Sch. Dist.*, 337 A.2d 262, 264-265 (Pa. 1975))).[3]

The most important distinction between public and private bargaining is that Florida's right to bargain "does not and cannot . . . give to public employees the same rights as private employees to require the expenditure of funds to implement [a] negotiated agreement." *Id.* That is because "the enforcement of the monetary terms of the agreement is subject to the appropriations power of the legislature." *Id.* In implementing the right to bargain, the Legislature recognized this reality by providing that "[a]ll collective bargaining agreements entered into by the state are subject to the appropriations power of the Legislature." § 447.309(2)(b), Fla. Stat. Put another way, "a wage agreement with a public employer is obviously subject to the necessary public funding which, in turn, necessarily involves the powers, duties and discretion vested in those public officials responsible for the budgetary and fiscal

[3] Amici are thus incorrect in stating that "Article I, Section 6 guarantees public employees the same rights to collectively bargain as enjoyed by private employees with the exception of the right to strike." Br. of Florida Police Benevolent Ass'n, at 5.

processes inherent in government." *Florida PBA*, 613 So. 2d at 419 (quoting *Pinellas Cty. Police Benev. Ass'n v. Hillsborough Cty. Aviation Auth.*, 347 So. 2d 801, 803 (Fla. 2d DCA 1977)).

The Governor is one such officer. *See Bogorff*, 223 So. 3d at 1001 (explaining that "the Governor's constitutional line-item veto authority . . . is a part of the process that results in 'an appropriation made by law'"). Similarly, the Legislature is "free" to refuse to "appropriate enough money to fund a negotiated benefit" or even to impose "conditions . . . on the use of the funds," even if those conditions are "contradictory to the negotiated agreement." *Florida PBA*, 613 So. 2d at 421. The right to collectively bargain does not limit the Governor's power to veto an appropriation, just as it does not limit the Legislature's power to pass an appropriation.

Petitioners nevertheless insist that negating the Governor's veto here is necessary to preserve "*meaningful* collective bargaining." Pet. Br. 32 (emphasis added); *see also Int'l Ass'n of Firefighters*, 221 So. 3d at 742 (Thomas, J., dissenting) (contending that negating veto is necessary "to preserve any meaningful constitutional right of public employees to collectively bargain"). Yet this is not the case, as state employees' right to collectively bargain is always subject to the government's appropriations power. Until an agreement is funded through a valid appropriation enacted into law, it remains subject to nullification: the Legislature is

always at liberty to refuse to appropriate funds necessary for a negotiated benefit; that the Governor (a co-party in the appropriations process) may also do so is of no consequence. And despite Petitioners' contention that the Governor's veto power allows him to "ultimately dictate terms," pretermitting "good faith negotiation" (Pet. Br. 32), the Legislature retains the ultimate authority to override his veto or to resolve the impasse in some other fashion, as it did here—the Legislature, not the Governor, remains the "final arbiter" (Pet. Br. 18).

Amici similarly argue that if the veto is upheld, "there can be no effective collective bargaining" (Br. of Florida Police Benevolent Ass'n, at 2); the right to bargain would be "eliminate[d]" and "nullif[ied]" (*id.*); and the "veto override 'option' is . . . no option at all" (*id.* at 9). To be effective, amici contend, collective bargaining "has to be an effective process that works," and in this case there purportedly "was no effective collective bargaining with the Governor at all." Br. of Florida Professional Firefighters, Inc. et al., at 9.

These arguments are meritless. Amici confuse "effective" with "successful for the union," and "effective process" with a "process that works in the union's favor." It is undisputed that the parties here bargained over wages, hours, and conditions of employment for fiscal year 2015-2016—i.e., there was "effective collective bargaining with the Governor." When the parties were unable to resolve their differences during negotiations, the Legislature—as provided in the statute—

resolved the impasse in favor of the Governor by providing that the status quo would prevail. The entire collective bargaining process, from bargaining to submission of the impasse to resolution of the impasse, occurred here. Finally, despite the suggestion that the veto override process is not practical, it is undisputed that overriding the veto is a legally available option. Notwithstanding the Governor's line-item veto and lack of override, moreover, all of Petitioners' members have now obtained a raise of $2,000 (and in many cases, $4,500) in the three years since the $2,000 raise was vetoed.

C. A "legislatively mandated change" to a negotiated benefit may "constitute an abridgment of the right to bargain" if that change "fall[s] outside the appropriations power." *Id.* at 419 n.6. As two cases decided by this Court demonstrate, those circumstances were not present here.

In *Florida PBA*, the Governor had entered into collective bargaining agreements setting forth a leave policy for certain public employees. 613 So. 2d at 416. When the Legislature enacted its General Appropriations Act, it altered that leave policy. *Id.* The unions contended that the Legislature thereby abridged their right to collectively bargain, but this Court disagreed. *Id.* at 421. The Court held that even though "public employee bargaining is protected under Florida's Constitution, . . . the exercise of legislative power over appropriations is not an abridgment of the right to bargain, but an inherent limitation." *Id.* at 418, 419 n.6.

The only remaining question was whether the provision at issue fell "under the exclusive domain of the legislature's appropriations power" and, because it did, the provision was valid. *Id.* at 420.

United Faculty further delineated the contours of public employees' rights vis-à-vis the appropriations power. 615 So. 2d at 673. In 1991, the Legislature authorized—and the Governor approved—a pay raise to certain classes of public employees, effective January 1, 1992, by passing a general appropriations bill. *Id.* at 672. Because of a projected revenue shortfall, however, the Legislature subsequently postponed those raises until February 1992 and, in the 1992 session, eliminated them altogether. *Id.* But unlike in *Florida PBA*, the employees successfully argued that the Legislature had violated their right to bargain. This Court held that once an agreement has been funded by an appropriation, "the state and all its organs are bound by that agreement under the principles of contract law." *Id.* at 672-73. Thus, the Legislature could not subsequently eliminate the raises absent a "compelling state interest." *Id.* at 673.

Together, *Florida PBA* and *United Faculty* establish two complementary propositions. First, negotiated benefits in public employee collective bargaining agreements are wholly conditional upon the appropriation of sufficient money to fund the negotiated benefit. Thus, changes to negotiated benefits made *within* the appropriations process are valid. Second, if enough money to implement the benefit

as negotiated is appropriated, the negotiated benefit will be enforced against subsequent legislative attempts to change the benefit unless the Legislature establishes "a compelling state interest justifying the abridgment of the right to collectively bargain." *Florida PBA*, 613 So. 2d at 421 n.11; *see United Faculty*, 615 So. 2d at 673. But negotiated benefits are enforceable only so far as the agreements and appropriations provide; for example, in *United Faculty* the Legislature was free to eliminate the negotiated raises once the agreements and appropriations expired. *See Chiles (Lawton) v. United Faculty of Fla.*, No. 81,252, 1993 WL 13650259, at *1 (Fla. Mar. 23, 1993).

When public funding is required to resolve a collective bargaining dispute, no final agreement exists before sufficient funds are appropriated in the manner prescribed by law. That is why in *United Faculty*, the Court distinguished *Florida PBA*, noting that "no final agreement had been reached between the parties" because money had not been appropriated to fund the negotiated benefit; by contrast, in *United Faculty*, the Legislature attempted to change the benefit after "an agreement was reached and funded" by both the Legislature *and* the Governor. 615 So. 2d at 672.

Florida PBA, not *United Faculty*, is instructive here. Petitioners' proposed pay raise was never agreed to by the State; that proposal could not have been implemented without a valid appropriation; and the specific appropriation at issue

here was not made in the manner prescribed by law. *See* Art. III, § 8, Fla. Const.; *Bogorff*, 223 So. 3d at 1001 ("[T]he Governor's constitutional line-item veto authority . . . is a part of the process that results in 'an appropriation made by law.'"). As in *Florida PBA*, therefore, Petitioners' right to collectively bargain was not violated.

Below, Judge Thomas argued in dissent that *United Faculty*, not *Florida PBA*, is on point, and thus the "compelling state interest" test should apply—and Petitioners argue the same. *Int'l Ass'n of Firefighters*, 221 So. 3d at 740 (Thomas, J., dissenting); Pet. Br. 32. In *United Faculty*, however, there was a valid "appropriation made by law," Art. VII § 1(c), Fla. Const., inasmuch as the Legislature passed, and the Governor approved, the appropriation at issue. *See* Ch. 91-272, Laws of Fla. Here, the Governor exercised his constitutional power to veto a proposed pay raise.[4] Thus, *United Faculty*, involving subsequent legislative action that reduced negotiated benefits for which funds had actually been appropriated, is inapposite.

[4] Amici similarly refuse to acknowledge this critical distinction. In their view, "[t]he only material difference between [*United Faculty*] and this case is the particular section of Article III involved." Br. of Florida Police Benevolent Ass'n, at 4; *see also id.* at 3 ("Where, as here, the Legislature creates a contract by resolving an impasse and funding the agreement . . .").

D. Petitioners next contend that this Court should require the Governor to identify a "compelling state interest" before vetoing a specific appropriation adopted pursuant to the impasse resolution process. The "compelling state interest" test does not apply here for two reasons.

First, although Petitioners admit that under existing precedent, the Governor may exercise his veto power "for any reason whatsoever," *Firestone*, 382 So. 2d at 668, they argue that he should not be allowed to do so in this instance. Petitioners maintain that the Governor did not exercise his veto "over any constitutional principle," "to avoid a financial emergency," or "for any economic rationale." Pet. Br. 32. Even if that were true, this Court may not inquire (nor has it previously inquired) as to the Governor's reason for exercising his veto or require that he exercise it for any particular reason. *See Firestone*, 382 So. 2d at 668; *cf. Coal. for Adequacy & Fairness*, 680 So. 2d at 408 (setting forth scenarios in which cases present political questions "outside the scope of the judiciary's jurisdiction," including "a textually demonstrable commitment of the issue to a coordinate political department" (citing *Baker v. Carr*, 369 U.S. 186, 209 (1962)).[5]

[5] Citing *Bogorff*, amici erroneously contend that this Court has previously inquired into the Governor's reasoning when deciding whether to uphold a particular veto. Br. of Florida Professional Firefighters, Inc. et al., at 13 (characterizing this Court's refusal to "interfere" in *Bogorff* as resulting from its purported "recogni[tion] [of] the reason given by the Governor for the veto"). Yet nothing in *Bogorff* indicates that the Court relied on the Governor's proffered justification for

Second, application of the "compelling state interest" test in the budget context is limited to a particular factual scenario: where the Legislature seeks to reduce appropriations previously enacted "to pay public workers' salaries made pursuant to a collective bargaining agreement." *United Faculty*, 615 So. 2d at 673; *see Headley v. City of Miami*, 215 So. 3d 1, 6 (Fla. 2017) (explaining that the "compelling state interest" test is "the standard that must be followed where a government entity attempts to change a bargaining agreement to address a revenue shortfall"). It is the "right to contract" that "limits the Legislature's ability to alter a contract" to scenarios where it can demonstrate a compelling state interest. *Headley*, 215 So. 3d at 6. But "a fully enforceable contract" arises only after "the Legislature has accepted *and* funded an agreement," which requires a valid appropriation enacted into law. *United Faculty*, 615 So. 2d at 672. Here, by contrast, the appropriations process had not been completed and no enforceable contract had arisen, and thus the standard is inapplicable. *See Florida PBA*, 613 So. 2d at 419 n.6.

Relatedly, citing *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999), amici contend that "[w]henever the government acts adversely to [the right to bargain], the government's action is subject to the strict scrutiny test." Br. of Florida Professional Firefighters, Inc. et al., at 6. Yet *State Employees* provided for

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the veto; the Court instead rejected the mandamus petition as seeking relief that could be sought in circuit court. 223 So. 3d at 1001.

strict scrutiny only of a "*statute* that interferes with public employees' right to bargain collectively"; it said nothing about the applicable standard for reviewing the Governor's proper exercise of his constitutional power to veto a specific appropriation. 734 So. 2d at 1033 (emphasis added).

To sum up, although limits exist on the State's ability to modify collective bargaining agreements with state employees *after* they have been funded by valid appropriations enacted into law, the constitutional powers of the Legislature and the Governor regarding the appropriation of public funds are not constrained by the right to bargain. Moreover, limiting the Governor's veto power—the "primary . . . executive chec[k] on unfettered legislative power," *Firestone*, 382 So. 2d at 664—in the fashion that Petitioners suggest would significantly shift the separation of powers established in Florida's Constitution.

IV. THE LEGISLATURE HAS NOT ATTEMPTED TO RESTRICT THE GOVERNOR'S CONSTITUTIONALLY ASSIGNED ROLE IN THE APPROPRIATIONS PROCESS, AND INTERPRETING CHAPTER 447 AS SUCH A RESTRICTION WOULD RAISE SERIOUS CONSTITUTIONAL CONCERNS.

Finally, Petitioners maintain that upholding the Governor's exercise of his veto power "would subvert the impasse resolution process" and would sanction a result that "is not permitted by the statute." Pet. Br. 18-19. But the statute does not purport to restrict the Governor's veto power, and any purported restriction would raise serious constitutional concerns.

To start with, the Governor's exercise of his veto power did not "subvert," "effectively eliminat[e]," render "meaningless and inoperative," or "entirely displac[e]" the impasse resolution process. Pet. Br. 18, 26, 27, 29. Petitioners are simply mistaken in asserting that "the mandatory impasse resolution procedure was never resumed" after the Governor vetoed the specific appropriation and that the impasse resolution procedure "was never used to address the issue of wages." Pet. Br. 25. Confronted with the impasse following the Governor's veto, the Legislature "retained and exercised its ultimate authority to resolve the impasse," but "chose not to override the veto" and instead chose "to maintain the status quo." *Int'l Ass'n of Firefighters*, 221 So. 3d at 739; Ch. 2015-223, § 1, Laws of Fla. In other words, the entire impasse resolution procedure was followed here. The Legislature was presented with an impasse regarding the issue of wages, and the Legislature resolved the impasse regarding the issue of wages by providing that the status quo would be maintained. As a result, the Governor's veto did not somehow "subvert" the impasse resolution process.[6]

[6] That the Legislature went on to resolve the impasse belies the chief argument made by amici. As amici explain, "the legislative body . . . is an appropriate body to resolve an impasse in collective bargaining," because the legislative body "is not the employer." Br. of Florida Professional Firefighters, Inc. et al., at 10. That is precisely what happened here: the Legislature had the "last word," and therefore there was "effective collective bargaining," even under amici's formulation. *Id.* at 10-11.

Section 447.403(5)(b), which provides that "[a]ny actions taken by the Legislature" after review of an impasse "shall bind the parties," does not and cannot limit the Governor's constitutional veto authority. Because Section 447.403 is susceptible of an interpretation that does not purport to limit the Governor's veto power, though, this Court should adopt that interpretation under the principle of constitutional avoidance. *See In re Holder*, 945 So. 2d 1130, 1133 (Fla. 2006) (This Court has "long subscribed to a principle of judicial restraint by which [it] avoid[s] considering a constitutional question when the case can be decided on nonconstitutional grounds."). Put differently, the statute does not provide that if the Legislature resolves an impasse by including a specific appropriation, the Governor may not veto that appropriation. Instead, it provides that the parties will be bound by the action that the Legislature takes to resolve the disputed impasse issues. And the Legislature's actions are binding only when effective. Here, the only action that the Legislature took regarding the raise that was legally binding was to provide it would be resolved by resort to the status quo. Thus, the Court need not reach the constitutional question of whether the Legislature could limit the Governor's veto power.

If the Court nonetheless interprets Section 447.403 as purporting to limit the Governor's veto power, it should also hold that the purported limitation is

unconstitutional.[7] It is beyond dispute that "[t]he provisions of the Constitution will always prevail over statutes where there is conflict between the two." *State ex rel. Curley v. McGeachy*, 6 So. 2d 823, 827 (Fla. 1942) (en banc); *Notami Hosp. of Florida, Inc. v. Bowen*, 927 So. 2d 139, 142 (Fla. 1st DCA 2006), *aff'd sub nom. Florida Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478 (Fla. 2008). Thus, to the extent that Section 447.403(5)(b) purports to limit the Governor's discretion to exercise his veto, this Court should hold that the Governor's constitutionally granted veto authority prevails. *Cf. Bayonet Point Reg'l Med. Ctr. v. Dep't of Health & Rehab. Servs.*, 516 So. 2d 995, 999 (Fla. 1st DCA 1987) (Ervin, J., concurring in part and dissenting in part).

Basic separation-of-powers principles reinforce this proposition. Article II, section 3, which establishes Florida's separation of powers, provides that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." This Court has interpreted that provision to require "a strict separation of powers doctrine." *State v. Cotton*, 769 So. 2d 345, 353 (Fla. 2000). That doctrine "encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is

[7] Amici apparently favor this constitutionally problematic reading, arguing that "Section 447.403(5)(b) expressly prohibits" the Governor from exercising his veto in these circumstances. Br. of Florida Police Benevolent Ass'n, at 8.

that no branch may delegate to another branch its constitutionally assigned power." *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991) (citing *Pepper v. Pepper*, 66 So. 2d 280, 284 (Fla. 1953); *Smith v. State*, 537 So. 2d 982, 987 (Fla. 1989)). Accepting Petitioners' arguments would violate both prohibitions.

"Under Florida's constitutional form of government, no branch of state government can arrogate to itself powers that properly inhere in a separate branch." *Ashley*, 701 So. 2d at 342. Under Article III, section 8, specific appropriations within appropriations bills require both legislative and gubernatorial approval. If an appropriation lacks legislative approval, it fails; if an appropriation lacks gubernatorial approval, the Legislature can reinstate the specific appropriation only by overriding the veto. Yet under Petitioners' view, a simple majority of the Legislature may arrogate the Governor's power to approve a specific appropriation by resolving an impasse in whatever fashion it desires, thereby preventing him from vetoing it. The result would be to allow the Legislature to unilaterally approve specific appropriations without any veto override. *But see B.H. v. State*, 645 So. 2d 987, 992 (Fla. 1994) ("If a statute purports to give one branch powers textually assigned to another by the Constitution, then that statute is unconstitutional.").

Moreover, although Section 447.503(5)(b) provides that "actions taken by the Legislature" to resolve impasses "shall bind the parties," that provision cannot restrict the Governor's veto power. *See Clinton v. Jones*, 520 U.S. 681, 701 (1997)

("[E]ven when a branch does not arrogate power to itself . . . the separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties."). The Governor has the exclusive constitutional power to veto specific appropriations; the Legislature can no more pass a statute restricting the Governor from vetoing appropriations that are intended to resolve impasses than it can pass a statute restricting him from vetoing specific appropriations for any other purpose.

In short, Petitioners' statutory argument is meritless because the statute does not purport to restrict the Governor's exercise of the line-item veto. Adopting an interpretation that would restrict that power, moreover, would raise serious constitutional concerns.

CONCLUSION

For the foregoing reasons, the Court should dismiss the petition. In the alternative, the Court should approve the First District's decision.

Respectfully submitted.

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