IN THE
SUPREME COURT OF FLORIDA

Case No.: SC17-1434

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

vs.

STATE OF FLORIDA,
Respondent.

On Petition for Discretionary Review of the
Opinion of the First District Court of Appeal
Case No.: 1D16-618

JURISDICTIONAL ANSWER BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Page**

FLORIDA CONSTITUTION

FLORIDA STATUTES

ATTORNEY GENERAL OPINIONS

FLORIDA RULES

STATEMENT OF THE CASE AND FACTS

The Florida State Fire Service, International Association of Fire Fighters ("Local S-20)" is the certified bargaining representative for a unit of certified firefighting personnel employed by the State of Florida ("State") (collectively referred to as the "parties"). For Fiscal Year 2015-2016, Local S-20 proposed a $1,500 competitive pay adjustment during bargaining which the State did not support. Therefore, the parties reached impasse on this pay increase issue pursuant to section 447.403, Florida Statutes.

As a result of the impasse, the parties proceeded to the Legislature pursuant to section 447.403(2)(b), Florida Statutes. During its 2015 regular session the Legislature included a proviso within the 2015-2016 General Appropriations Act ("GAA"), providing firefighters employed by the Department of Agriculture and Consumer Services with a $2,000 competitive pay adjustment, $500 over the originally proposed pay adjustment. Pursuant to Article III, Section 8(a), of the Florida Constitution, Governor Rick Scott vetoed the proviso. The Legislature then had the opportunity to overturn the Governor's veto by a two-thirds vote pursuant to Article III, Section 8(c), of the Florida Constitution but did not do so. As such, no competitive pay increase was included in the proposed collective bargaining agreement offered to Local S-20 for a ratification vote, as the issue at impasse had been resolved through the Legislature without such increase.

On November 25, 2015, Local S-20 filed an unfair labor practice complaint with Florida's Public Employees Relations Commission ("PERC") and asserted that the Governor's veto violated sections 447.501(1)(a) and (c) and sections 447.403(5)(a) and (b), Florida Statutes. On February 1, 2016, PERC affirmed its Designated Agent's summary dismissal and rejected Local S-20's contention that the parties were bound by the Legislature's GAA resolution of the competitive pay adjustment, notwithstanding the Governor's subsequent veto of that appropriation. PERC noted that provisions in section 447.403(5)(a) and (b), Florida Statutes, acknowledge that both the Governor, as the public employer, and Local S-20, as the bargaining representative, are bound by the Legislature's appropriation of funds in accordance with the GAA. However, PERC explained that the GAA is not final when presented to the Governor. The Governor may sign the GAA as presented, allow the GAA to become law by failing to exercise his veto authority within the prescribed time-period, or veto any specific appropriation within the GAA. PERC also recognized that the Legislature could override the veto with a two-thirds vote.

Local S-20 appealed PERC's order to Florida's First District Court of Appeal ("lower court"). The lower court affirmed PERC's order and held in pertinent part that "the Florida Constitution clearly articulates the Governor's authority to veto the GAA, or specific appropriations therein," and "the Governor's veto did not displace the Legislature's power to resolve the impasse in this case." Additionally, the lower

court was not persuaded by Local S-20's reliance on *Dade County Police Benevolent Association v. Miami-Dade County Board of County Commissioners*, 160 So. 3d 482, 483 (Fla. 1st DCA 2015), in which the court held that the Mayor's veto was pursuant to the County's Charter which was governed by language that "makes clear that general law [ch. 447, Florida Statutes] supersedes any conflicting provision of the County Charter. See art. VIII, § 11(6), Fla. Const. (1985) . . . ."

SUMMARY OF THE ARGUMENT

In this case, Local S-20 seeks this Court's discretionary review because the lower court expressly construed a constitutional provision. However, the lower court did not expressly construe a constitutional provision but merely applied a clearly articulated constitutional right, the latter of which is not sufficient to invoke this Court's discretionary jurisdiction. Local S-20 also argues that *Chiles v. United Faculty of Florida*, 615 So. 2d 671 (Fla. 1993) conflicts with the lower court's decision in the instant case. However, this Court in *Chiles* did not contemplate the Governor's constitutional right to veto a specific appropriation within the GAA, but scrutinized the Legislature's unilateral action to modify a preexisting agreement.

Additionally, Local S-20 argues that *Dade County Police Benevolent Association v. Miami Dade County Board of County Commissioners*, 160 So. 3d 482 (Fla. 1st DCA 2015) conflicts with the lower court's decision in the instant case. However, the Mayor's veto authority in *Dade County Police Benevolent*

Association, pursuant to County Charter, is not analogous to the Governor's veto authority pursuant to Article III, Section 8(a), of the Florida Constitution.

Local S-20 has also failed to identify a class of constitutional officers who were allegedly affected by the lower court's decision for the purposes of invoking this Court's discretionary jurisdiction and erroneously relies upon *League of Women Voters of Florida v. House of Representatives*, 132 So. 3d 135 (Fla. 2013). Furthermore, this Court should not invoke jurisdiction because Petitioner's request is moot.

JURISDICTIONAL STATEMENT

The State urges this Court to deny Local S-20's petition for discretionary jurisdiction review of the opinion of the district court of appeal. Contrary to Local S-20's assertions, the lower court's opinion did not expressly construe a constitutional provision, nor did it expressly and directly conflict with a decision of this Court or another district court of appeal on the same point of law and does not expressly affect a class of constitutional officers. Accordingly, this Court should not invoke its discretionary jurisdiction available under Article V, Section 3(b)(3) of the Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A).

ARGUMENT

I. The Lower Court Did Not Expressly Construe The Florida Constitution But Applied It.

Local S-20 seeks to invoke this Court's discretionary jurisdiction because the lower court *expressly construed* a constitutional provision. However, the lower court did not expressly construe a constitutional provision but simply applied it. "*Applying* ... is NOT a basis for our jurisdiction, while the *express* construction of a constitutional provision is." *Rojas v. State*, 288 So. 2d 234, 236 (Fla. 1974) (emphasis in original). "It is not sufficient merely that the [lower court] examine . . . the facts of a particular case and then apply a recognized, clear-cut provision of the constitution." *Armstrong v. City of Tampa*, 106 So. 2d 407, 409 (Fla. 1958); *Ogle v. Pepin*, 273 So. 2d 391 (Fla. 1973) (stating "in cases claiming that a decision construed the constitution, we adhere to the *Armstrong* rule").

Contrary to Local S-20's contentions, the lower court in this case simply acknowledged the plain language of Article III, Section (8)(a) as applied to the facts of this case, stating, "[t]he Florida Constitution [Article III, Section 8] clearly articulates the Governor's authority to veto the GAA, or specific appropriations therein. It authorized him to veto the raise appropriation here." It is not the lower court's construction of Section (8)(a) with which Local S-20 takes issue, but rather the application of that provision in circumstances under which Local S-20 believes

the procedures set forth in a collective bargaining statute should take precedence over the Governor's constitutional veto authority.

II. The Lower Court's Decision Does Not Conflict With This Court's Decision in *Chiles v. United Faculty of Florida*, 615 So. 2d 671 (Fla. 1993).

The lower court's decision does not conflict with this Court's decision in *Chiles v. United Faculty of Florida*, 615 So. 2d 671 (Fla. 1993). Local S-20 incorrectly relies upon *Chiles* to suggest that the Governor must have a compelling state interest to veto a fully funded pay raise. However, *Chiles* did not involve the Governor's express constitutional authority to veto a specific appropriation pursuant to Article III, Section 8(a), of the Florida Constitution. Rather, this Court in *Chiles* scrutinized the Legislature's action in modifying a ratified collective bargaining agreement by subsequent unilateral action. The Governor does not require a compelling state interest to exercise his constitutional veto authority pursuant to Article III, Section 8(a), of the Florida Constitution.

III. The Lower Court's Decision Does Not Conflict With Its Decision in *Dade County Police Benevolent Association v. Miami Dade County Board of County Commissioners*, 160 So. 3d 482 (1st DCA 2015).

Nor does the lower court's decision conflict with its decision in *Dade County Police Benevolent Association v. Miami Dade County Board of County Commissioners*, 160 So. 3d 482 (Fla. 1st DCA 2015), and this Court should not invoke its discretionary jurisdiction on that basis. In *Dade County Police Benevolent Association*, the Mayor of Miami-Dade County ("County") and his bargaining

representatives reached agreement with the union and its bargaining representatives on all bargaining issues except a percentage increase towards employee health insurance contributions, which resulted in impasse. *Id.* The County Commission ("Commission") adopted a resolution which ratified and settled the impasse by requiring no additional employee health insurance contributions. *Id.*

Subsequently, the Mayor vetoed the Commission's Resolution pursuant to the Home Rule Amendment and the Miami-Dade County Charter, which allowed the Mayor to veto any legislation or quasi-judicial decision of the Commission. *Id.* at 484. In March of 2012, the union filed an unfair labor practice complaint with PERC and argued that the Mayor's veto of the Resolution violated section 447.203, Florida Statutes, which requires the "legislative body" to resolve the impasse. *Id.* PERC determined that there was no violation of chapter 447, Florida Statutes. However, Florida's First District Court of Appeal did not agree and held in part that the Mayor's veto authority was derived from the Miami-Dade County Charter and that "***general law [Ch. 447, Florida Statutes] supersedes any conflicting provision of the Charter....***" (emphasis added). *Id.* at 487.

Dade County Police Benevolent Association is distinguishable from the instant case because the Mayor's veto authority was derived from the Miami-Dade County Charter, which is subservient to Ch. 447. However, in this case the Governor's veto authority derives from Article III, Section 8(a), of the Florida

Constitution, which recognizes no comparable limitation. The lower court recognized this distinction when it correctly stated in its analysis on *Dade County Police Benevolent Association*, "here, by contrast, the Governor possessed explicit constitutional authority to veto appropriations within the GAA. See Art. III, § 8(a), Fla. Const."

Local S-20 nevertheless contends that "the Legislature crafted PERA to implement the right to bargain, fully aware that the Governor (the employer) possessed the authority to veto, yet structured PERA in such a way as to end the involvement of the employer (whether it be state or local "employer") after the legislative body issued its decision. . . ." However, the Legislature also drafted PERA knowing that resolving competitive pay adjustment issues could be resolved through the GAA, and that the Governor's veto, pursuant to Article III, Section 8(a), was a potential step in that resolution process, preceding the Legislature's decision whether to override a veto.

IV. Petitioner Has Not Identified a Class of Constitutional Officers And Erroneously Relies Upon *League of Women Voters of Florida v. Fla. House of Representatives*, 132 So. 3d 135 (Fla. 2013).

Local-S 20 has not identified a class of constitutional officers allegedly affected by the lower court's decision, as is necessary to invoke this Courts discretionary jurisdiction. This Court lacks jurisdiction to review a district court of

appeal's decision that affects a government officer who does not hold a constitutional office. *Hakam v. City of Miami Beach*, 108 So. 2d 608 (Fla. 1959). Although Florida's Constitution does not expressly define a constitutional officer, this Court has recognized the phrase constitutional officer for the purposes of invoking its discretionary jurisdiction to include those officers created by Florida's Constitution such as ***school board members***, *School Bd. Of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So. 3d 1220 (Fla. 2009); ***sheriffs***, *Ramer v. State*, 530 So. 2d 915 (Fla. 1988); ***public defenders***, *Behr v. Bell*, 665 So. 2d 1055 (Fla. 1996); ***court clerks***, *Ludlow v. Brinker*, 403 So. 2d 969 (Fla. 1981); or ***state attorneys***, *Jenny v. State*, 447 So. 2d 1351 (Fla. 1984).

In this case, Local S-20 asserts that its bargaining unit members are constitutional officers solely because they are employees with the State. However, its members are not created by, nor referenced in, Florida's Constitution, and therefore cannot be deemed constitutional officers for the purposes of invoking this Court's discretionary jurisdiction. Local S-20 also erroneously asserts that the lower court's decision "affects a class of constitutional officers – namely legislators. *See League of Women Voters of Florida v. Fla. House of Representatives*, 132 So. 3d 135 (Fla. 2013)." However, the lower court's decision in this case had no impact on the rights of Florida's legislators, unlike the lower court's decision in *League of Women Voters of Florida*, in which the Legislature was a party to the action. *See*

Spradley v. State, 293 So. 2d 697, 701-02 (Fla. 1974). Local S-20 brought this action on behalf of its in-unit bargaining members. If the Legislature believed its right to resolve the competitive pay adjustment at impasse was infringed upon by the Governor's veto, it could have intervened on that basis. Thus, Petitioner's reliance on *League of Women Voters of Florida* is misplaced as it has no bearing on this case.

V. This Court Should Not Invoke Its Discretionary Jurisdiction Because Local S-20's Request is Now Moot.

Local S-20 asks this Court to invalidate the Governor's Article III, Section 8(a), veto of the $2,000 proviso within the 2015-2016 GAA. However, the Governor has already filed his signed objections to the GAA with the Secretary of State under Article III, Section 8(a), of the Florida Constitution and has no authority to take further action on the legislation. *See, e.g.,* Op. Att'y Gen. Fla. 67-55 (1967) ("When the executive passes the bill beyond his control, his constitutional power is exhausted and he may no longer deliberate or retract....[W]hen he has exercised his power over it, either by approval or veto, then the action is final and irrevocable."). The funds appropriated by the GAA at issue (as well as a subsequent GAA) were allocated to be spent during the one year that law was effective. In addition, the Legislature cannot now be reconvened to address a veto.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court deny Local S-20's petition to invoke this Court's discretionary jurisdiction.

Respectfully submitted this 26th day of September, 2017.

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I HEREBY CERTIFY, that the foregoing, which utilizes Times New Roman 14-point font, complies with the font requirements of the Florida Rules of Appellate Procedure.

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