

SUPREME COURT OF FLORIDA

CASE NO.: SC01-1222

UNITED HOME CARE SERVICES, INC.,
a Florida non-profit corporation, and JOSE
R. FOX, as a Citizen and Taxpayer of Florida,

Petitioners,

vs.

ROBERT F. MILLIGAN, in his official
capacity as Comptroller, KATHERINE
HARRIS, in her official capacity as
Secretary of State, and GEMA G.
HERNANDEZ, in her official capacity
as Secretary, Florida Department of
Elder Affairs,

Respondents.

PETITION FOR CONSTITUTIONAL STAY WRIT

Petitioners, United Home Care Services, Inc., a Florida non-profit corporation ("United Home Care") and Jose R. Fox ("Fox"), petition, pursuant to Art. V, § 3(b)(7), Fla. Const., for issuance of a constitutional stay writ to preserve the status quo pending this Court's resolution of the Petition for Writ of Mandamus filed in these proceedings to remedy the unconstitutionality of §§ 430.204(1)(b) and 205(1)(b) amended by the Florida Legislature's 2001-2002 implementation bill (SB 2002).

I. INTRODUCTION

Petitioners seek an order staying implementation of the amendments attempted to §§430.204-205 in the recent legislative session pending resolution of the issues raised in the Petition for Writ of Mandamus previously filed in these proceedings. Notwithstanding the constitutional challenge raised in these proceedings, the Florida Department of Elderly Affairs (the "Department") now seeks to require United

Home Care, through a proposed contract between United Home Care and the Alliance for Aging, Inc. (the Alliance), the area agency aging from Miami-Dade County, to acknowledge that it will “comply” with the unconstitutional amendments contained in §§430.204(1)(b) and 205(1)(b) (See, proposed CCE Contract, p. 8 (the “CCE Contract”; Appendix). The Department also seeks to compel the Alliance to submit a plan by July 15, 2001 for implementing the amendments (CCE Contract, p. 10; Appendix). In requiring that action be taken based on the unconstitutionally enacted provisions of §§430.204-205, the Department threatens to undermine this Court's jurisdiction invoked by the Petition for Writ of Mandamus and seeks to jeopardize United Home Care's ability to pursue the challenge by compelling it to acknowledge compliance with the very provisions it believes are unconstitutional.

II. JURISDICTION

Petitioners seek to invoke the Florida Supreme Court's jurisdiction ancillary to the pending Petition for Writ of Mandamus pursuant to Fla. R. App. P. 9.030(a)(3) and 9.100 and Art. V, §3(b)(7), Fla. Const., authorizing the Florida Supreme Court to issue “all writs necessary to the complete exercise of its jurisdiction.” See e.g. Highridge Management Corp. v. State, 354 So. 2d 377 (Fla. 1977) (issuing constitutional stay writ staying implementation of challenged statute pending review to determine constitutionality). The exercise of the Court's discretion to issue a constitutional stay writ is necessary to prevent the Department from requiring action based on the unconstitutionally passed provisions of §§430.204-205 prior to a determination by this Court of the validity of these provisions.

III. FACTUAL BACKGROUND

At the conclusion of the 2001-2002 legislative session, the legislative implementing bill (SB 2002) attempted to amend §§430.204-205 by adding provisions applicable to counties having a population of over two million (i.e. Miami-Dade County). These amendments threaten to change the system of delivery of community based care to the elderly in Dade County by requiring a second community care system to be put in place in Miami-Dade, whereas previously only one system was required. United Home Care and Fox filed, in these proceedings, a Petition for Writ of Mandamus challenging the constitutionality of these provisions as the legislature attempted to enact these provisions in violation of both the "single subject rule" set forth in Article III, § 6 of the Florida Constitution and the limitations of Article III, § 10 of the Florida Constitution prohibiting the passage of special laws applicable to specific counties absent sufficient notice. (See Petition for Writ of Mandamus).

For nearly thirty years only one community care service system served Miami-Dade County. Now, based on the Legislature's amendments to §§430.204-205, the Department seeks to implement a second community based care system to be put in place in Miami-Dade. In fact, on July 29, 2001, United Home Care received the proposed CCE Contract indicating that the Department seeks to require the Alliance to "submit a plan including tasks, timelines and staff responsible for each task no later than July 15, 2001 to implement the state fiscal year 2001--2002 amendments to Florida Statutes, Section 430.204(1)(b) and 430.205(1)(b)." Moreover, through the CCE Contract, the Department seeks to have United Home Care contractually agree to "comply" with the "amendments to Florida Statutes, Section 430.204(1)(b) and 430.205(1)(b)"—despite the fact that they are unconstitutional and United Home Care has challenged the statutes in these proceedings.

IV. ARGUMENT

In Highridge Management Corp. v. State, 354 So. 2d 377, 379 (Fla. 1977), the Court noted that during the pendency of a challenge to the constitutionality of provisions of the Nursing Home Reform Act of 1976 it "granted a constitutional writ staying implementation of the rating system" that was being challenged. The power to do so flows from the "all writs" provision of the Florida Constitution pursuant to which this Court "is empowered to and may issue injunctive or any other writs essential to the complete exercise of its jurisdiction. . ." Paramount Enterprises, Inc. v. Mitchell, 140 So. 328, 330 (Fla. 1932). The Court in Paramount Enterprises noted that such a remedy was appropriate on "a showing made that the writ sought is indispensable to protect the rights of the party seeking it . . . or that some constitutional or statutory provision is about to be violated, or that the rights in litigation are of such a peculiar or intrinsic value or nature that the facts of the case make it imperative that they are held in status quo . . ." Id. at 330.

Here, despite the failure of constitutional requirements being adhered to in the passage of the amendments to §§430.204-205, the Department seeks to move forward with mandates predicated on these statutory provisions. Plainly, in light of the passage of these provisions in contravention of the protections of the Florida Constitution, any attempt at enforcement also runs afoul of the Florida Constitution. To allow the Department to pursue action under the authority of these statutes would render these constitutional protections virtual nullities. Moreover, the need for immediate action does not exist in light of the fact that the elderly in Miami-Dade County have been serviced with one community care service system for nearly thirty years. Accordingly, no unfair prejudice will flow from staying the Department's efforts during the pendency of these proceedings.

Moreover, given the core constitutional rights involved, an appropriate order preserving the status quo is imperative to prevent the Department from obtaining the procedural advantage it apparently seeks.

By attempting to bind United Home Care to an agreement to "comply" with the acts, the Department appears to be trying to set the stage for an arguments to limit this Court's consideration based on waiver, estoppel or similar grounds. Indeed, as United Home Care does not have responsibility for creating community care service systems, the requirement that it acknowledge that it will "comply" with the unconstitutional amendments is dubious at best and threatens to undermine these proceedings.

At a minimum, the efforts by the Department to require compliance with §§430.204-205 should be limited during the pendency of the Court's review of the constitutional infirmities underlying the passage of the amendments.

V. CONCLUSION

Petitioners, United Home Care and Fox request that the Court issue a stay prohibiting the Department from taking any action based on the proposed amendments to §§ 430.204 and 430.205 contained in Section 17 of House Bill 2002, the act implementing the 2001-2002 General Appropriations Act until the constitutional challenge to these enactments has been resolved.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing and the following Appendix have been furnished by United States Mail to: ROBERT F. MILLIGAN, COMPTROLLER, Office of the Comptroller, The Capitol, Tallahassee, Florida 32399-0250; THE HONORABLE KATHERINE HARRIS, SECRETARY OF STATE, The Capitol, Tallahassee 32399-0250 and GEORGE WAAS, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this 3rd day of July, 2001.

RASCO, REININGER & PEREZ, P.A.
Co-Counsel for Petitioners
283 Catalonia Avenue

Coral Gables, Florida 33134
Telephone: (305) 476-7100
Facsimile: (305) 476-7102

By: _____
PAUL HARALSON
Florida Bar No. 832571

and

BERMUDEZ & TOME, P.A
Co-Counsel for Petitioners
2701 Ponce De Leon Boulevard
Mezzanine Level
Miami, Florida 33134
Telephone: (305) 567-1099
Facsimile: (305) 567-1003

By: _____
JAY R. TOME
Florida Bar No. 769400