IN THE SUPREME COURT OF FLORIDA

MARILYN SPIEGEL, et al.,

Petitioners,

vs.

JAMES E. KING, JR. IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE FLORIDA SENATE, et al.,

Respondents.
_____________________________________/

Case No. SC06-2368

DCA Case Nos. 1D05-4521, 1D05-4524, 1D05-4526 (Consolidated)

L.T. Case No. 04-1647

RESPONDENTS' JURISDICTIONAL BRIEF
On Review from the First District Court of Appeal

WILLIAM C. GENTRY
Fla. Bar No. 137134
Law Office of W.C. Gentry, P.A.
One Independent Drive, Suite 1701
Jacksonville, Florida 32202
Telephone:(904)356-4100
Facsimile:(904)358-1895
COUNSEL FOR JAMES E. KING, JR., AS PRESIDENT OF THE FLORIDA SENATE

LOUIS F. HUBENER
Fla. Bar No. 0140084
LYNN C. HEARN
Fla. Bar No. 0123633
Office of the Attorney General
PL-01, The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1050
Telephone:(850)414-3300
Facsimile:(850)488-4872
COUNSEL FOR THE DEPARTMENT OF EDUCATION and the STATE BOARD OF EDUCATION

SYLVIA H. WALBOLT
Fla. Bar. No. 003604
DANIEL C. BROWN
Fla. Bar No.0191049
CHRISTINE R. DAVIS
Fla. Bar No. 569372
CARLTON FIELDS, P.A.
P.O. Drawer 190
Tallahassee, FL 32302
Telephone:(850)224-1585
Facsimile:(850) 222-0398
COUNSEL FOR THE FLORIDA SENATE AND THE FLORIDA HOUSE OF REPRESENTATIVES

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STATEMENT OF THE CASE AND FACTS

Petitioners are Marilyn Spiegel, Taxpayer, and the Citizens' Coalition for Public Schools, who entered this litigation as Intervenors. The School Boards of Miami-Dade, Palm Beach, and Broward Counties, the Plaintiffs who brought the Complaint in the trial court, do not seek review.

Petitioners challenged the Florida Price Level Index used for the 2004-2005 fiscal year, a component of the District Cost Differential which was used to allocate funds among the school districts for the statewide system of public schools. "Because of a change in the method used to calculate the Florida Price Level Index (FPLI), [Petitioner School Boards] received a smaller increase in their K-12 school funding than they would have received if the previous method of calculating the FPLI had been used." School Bd. of Miami-Dade County v. King, 940 So. 2d 593 (Fla. 1st DCA 2006).

For jurisdictional purposes, Respondents rely on the facts and procedural history set forth by the First District Court of Appeal in its decision. Id.

SUMMARY OF THE ARGUMENT

The First District's decision in this case does not expressly and directly conflict with any of the decisions cited by Petitioners, nor does it expressly construe a provision of the Florida Constitution or expressly affect a class of state or

constitutional officers. No proper basis exists for this Court to review the First District's decision.

ARGUMENT

I. THE FIRST DISTRICT'S DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH DECISIONS ANALYZING STATUTORY AMENDMENTS

In both cases cited by Petitioners for supposed conflict, this Court considered only whether an amendment to a statute could be used to clarify what the Legislature intended when it originally enacted the statute. No conflict exists between those cases and the decision below, which neither held contrary to those precedents nor construed the effect of a statutory amendment in clarifying a statute.

In State Farm Automobile Insurance Co. v. Laforet, 658 So. 2d 55 (Fla. 1995), this Court considered whether a statutory amendment was substantive or procedural in order to determine whether the amendment could apply retroactively. This Court recognized that, although a clarifying amendment to a statute that is enacted soon after the controversies as to the interpretation of a statute arise may be considered as a legislative interpretation of the original law and not a substantive change, courts should not consider legislation enacted more than ten years after the original act as clarification of original intent. Applying that principle, this

Court held that the statutory amendment at issue in that case was substantive. Id. at 62.

In Parole Commission v. Cooper, 701 So. 2d 543, 544-45 (Fla. 1997), this Court applied the principle set forth in Laforet in construing an ambiguous statute. In that case, the statute at issue was amended after the cause of action arose, and the Parole Commission urged the Court to consider the subsequent amendment as a clarification of the Legislature's original intent. This Court rejected that argument because the amendment was enacted many years after the original enactment; it could therefore not be considered to clarify original intent. Cooper, 701 So. 2d at 544-45.

Unlike these cases, the First District's decision nowhere considered whether a statutory amendment could be used to clarify original legislative intent. Indeed, this case does not even involve an amendment to a statute. Rather, Petitioners improperly seek to equate (1) the First District's discussion of how the statute has been implemented over the years with (2) cases construing whether a statutory amendment clarified a statute. But these are two entirely different issues. Accordingly, no conflict exists between the First District's decision and Cooper and Laforet.

Nor is conflict created by the First District's affirmance, without comment, of the trial court's dismissal of Petitioners'

claim that section 1011.62, Florida Statutes, established a specific methodology that must be used to calculate the Florida Price Level Index. Miami-Dade, 940 So. 2d at 599. The First District did not interpret section 1011.62 or otherwise discuss its requirements. Petitioners' argument is no different from an attempt to seek conflict with a per curiam affirmed opinion on this issue.

Even if an affirmance of a trial court's ruling without discussion could create express and direct conflict between decisions (which it cannot), the First District's decision does not conflict with Cooper and Laforet. Here, the trial court rejected Petitioners' argument that section 1011.62 specified a particular methodology that must be used by Respondents to the exclusion of any other methodology and that the language of the statute required the use of only a market-basket index. Miami-Dade, 940 So. 2d at 599. The trial court therefore ruled that Respondents' choice of index was within their prerogative in applying the statute they were charged with implementing and entitled to great weight. Id. Neither the trial court nor the First District addressed an issue of whether a subsequent statutory amendment may clarify the original intent of a statute, nor could either court have done so since the statute in question had not been amended.

II. THE DECISION UNDER REVIEW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH ST. JOHNS COUNTY V. NORTHEAST BUILDERS ASS'N

Petitioners' argument that the First District's decision conflicts with St. Johns County v. Northeast Builders Association, 583 So. 2d 635 (Fla. 1991), is the same argument raised by the Volusia and Monroe County School Boards ("School Boards") in Point III of their Jurisdictional Brief, Case No. SC06-2367. Respondents have responded to that argument in Point III of their Response Jurisdictional Brief filed in that case. Respondents incorporate that response here. For the reasons explained there, no conflict exists between the First District's decision and St. Johns.

To the extent Petitioners contend that the First District's decision expressly construes a provision of the Florida Constitution (although Petitioners fail to demonstrate that the decision does so), Respondents have responded to that argument in Point I of its Response Jurisdictional Brief to the School Boards' Jurisdictional Brief. Resp. Br. 3. Respondents incorporate that response here. The First District's decision does not expressly construe the Florida Constitution.

III. THE DECISION UNDER REVIEW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH SIMON V. CELEBRATION CO.

Petitioners' argument that the First District's decision conflicts with Simon v. Celebration Co., 883 So. 2d 926 (Fla. 5th DCA 2004), is the same argument raised by the School Boards

in Point II of their Jurisdictional Brief, Case No. SC06-2367. Respondents have responded to that argument in Point II of their Response Jurisdictional Brief filed in that case. Respondents incorporate that response here.

For the reasons explained there, the First District's decision does not expressly and directly conflict with Simon. Contrary to Petitioners' assertion, there is no reason for this Court to consider in this case whether the Fifth District's language in Simon -- which is wholly unrelated to this case and was not followed below -- "is or is not dicta." Pet. Br. 9. Any such analysis of Simon plainly should be done only in a case where this Court has a need and jurisdictional basis to review that language.

To the extent Petitioners argue that the First District's decision expressly construes a provision of the Florida Constitution (although Petitioners again fail to demonstrate that the decision does so), Respondents have responded to that argument in Point I of its Response Jurisdictional Brief to the School Boards' Jurisdictional Brief. Resp. Br. 3. Respondents incorporate that response here. For the reasons explained there, the First District's decision does not expressly construe a constitutional provision.

IV. THE FIRST DISTRICT'S DECISION DOES NOT EXPRESSLY AFFECT A CLASS OF STATE OR CONSTITUTIONAL OFFICERS

In this section, Petitioners adopt the arguments set forth by the School Boards in Point IV of their Jurisdictional Brief, Case No. SC06-2367. Respondents have responded to that argument in Point IV of their Response Jurisdictional Brief filed in that case. Respondents incorporate that response here. For the reasons explained there, the First District's decision does not expressly affect a class of state or constitutional officers.

V. THIS COURT SHOULD NOT EXERCISE ITS DISCRETION TO GRANT REVIEW EVEN IF A JURISDICTIONAL BASIS DID EXIST

A jurisdictional basis for this Court's review does not exist, as demonstrated above. Moreover, even if one did, the opinion below presents no reason for this Court exercise its discretion to grant review. This case involves a technical, econometric issue as to the calculation of the index used to fine tune the allocation of funds among Florida's sixty-seven school districts for the 2004-2005 fiscal year. It has no bearing as to the total amounts appropriated to the statewide school system, and therefore a zero sum impact as to Florida's total per-student funding. As such, Petitioners' arguments are circumscribed by the discrete, technical confines of the First District's affirmation that the legislature distributed funds in a legally and econometrically appropriate manner. The decision below does not address any broad issue pertaining to the

interpretation of article IX, section 1. Rather, it merely affirmed the trial court's ruling dismissing the complaint "because the allegations did not state such a cause of action, but rather merely challenged the method of distribution of state education funds." It has no significant impact outside of the technical issue in the case.

CONCLUSION

Respondents respectfully request that this Court decline review of this case.

Respectfully submitted,

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WILLIAM C. GENTRY
Fla. Bar No. 137134
Law Office of W.C. Gentry, P.A.
One Independent Drive, Suite 1701
Jacksonville, Florida 32202
Telephone:(904)356-4100
Facsimile:(904)358-1895
COUNSEL FOR JAMES E. KING, JR., AS PRESIDENT OF THE FLORIDA SENATE

LOUIS F. HUBENER
Fla. Bar No. 0140084
LYNN C. HEARN
Fla. Bar No. 0123633
Office of the Attorney General
PL-01, The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1050
Telephone:(850)414-3300
Facsimile:(850)488-4872
COUNSEL FOR THE DEPARTMENT OF EDUCATION and the STATE BOARD OF EDUCATION

SYLVIA H. WALBOLT
Fla. Bar. No. 003604
DANIEL C. BROWN
Fla. Bar No.0191049
CHRISTINE R. DAVIS
Fla. Bar No. 569372
CARLTON FIELDS, P.A.
P.O. Drawer 190
Tallahassee, FL 32302
Telephone:(850)224-1585
Facsimile:(850) 222-0398
COUNSEL FOR THE FLORIDA SENATE AND THE FLORIDA HOUSE OF REPRESENTATIVES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Theodore Doran, Doran, Wolfe, Rost, Ansay, Kundid & Dyer, P.O. Box 15110, Daytona Beach, Florida, 32115-5110, Attorney for The School Boards of Volusia and Monroe Counties; Larry K. White and Fred H. Flowers, Flowers & White, 1501 East Park Avenue, Tallahassee, Florida, 32301, Attorneys for Marilyn Spiegel and Citizens' Coalition for Public Schools, this 2d day of January, 2007.

____
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY FURTHER CERTIFY that the type size and style used throughout this brief is 12-point Courier New double-spaced, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

____
Attorney