In the Supreme Court of Florida

RICK SCOTT, *et al.*,
Defendant/Appellants,

vs.

GEORGE WILLIAMS, *et al.*,
Plaintiffs/Appellees

Case No.: SC12-520
LT Case Nos.: 2011 CA 1584
1D12-1269

THE FLORIDA SENATE'S AND FLORIDA HOUSE OF REPRESENTATIVES'S AMICUS BRIEF IN SUPPORT OF RICK SCOTT, PAM BONDI AND JEFF ATWATER, IN THEIR CAPACITIES AS THE STATE BOARD OF ADMINISTRATION, AND SCOTT STEWART, IN HIS CAPACITY AS INTERIM SECRETARY OF THE DEPARTMENT OF MANAGEMENT SERVICES

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PRELIMINARY STATEMENT

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SUMMARY OF THE ARGUMENT

The Florida Senate and Florida House of Representatives file this brief in full support of the Appellant. The Florida Legislature is responsible for enacting the state budget and has a substantial interest in this matter.

The decision below that Ch. 2011-68, Laws of Fla., violates Appellees' contractual and collective bargaining rights directly conflicts with longstanding precedents of this Court. The trial court's order misconstrues the Legislature's power to make prospective changes to the FRS and the primacy of the Legislature's appropriations power with respect to public collective bargaining. The opinion below fails to follow this Court's interpretation of the FRS preservation of rights provision, §121.011(3)(d), Fla. Stat., a precedent undeniably supported by legislative enactments since that provision was enacted in 1974.

The Legislature relied on those precedents in making critical budget decisions. Since 2007, Florida has faced substantial economic challenges. An adverse ruling would have significant and severe financial repercussions to the state. This Court should follow its prior precedents and reverse the decision below.

ARGUMENT

I. LEGISLATIVE HISTORY DEMONSTRATES § 121.011, FLA. STAT., WAS INTENDED ONLY TO PREVENT RETROACTIVE CHANGES TO FRS PENSION BENEFITS, NOT PROHIBIT PROSPECTIVE CHANGES TO BENEFITS OR REINSTATEMENT OF EMPLOYEE CONTRIBUTIONS AT A FUTURE TIME.

> Legislative intent is the polestar that guides a court's statutory construction analysis. In attempting to discern legislative intent, we first look to the actual language used in the statute. If the statutory language is unclear, we apply rules of statutory construction and explore legislative history to determine legislative intent. To discern legislative intent, courts must consider the statute as a whole, including the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence on the statute.

Bautista v. State, 863 So. 2d 1180, 1185 (Fla. 2003) (internal citations and quotations omitted). Enactment of the 1974 preservation of rights provision in §121.011(3)(d), Fla. Stat., was only intended to prevent retroactive changes to vested pension benefits earned by a public employee, not to memorialize and forever bind the state to an inviolable, noncontributory retirement system providing unalterable future benefits for employees.

The Florida Legislature created the Florida Retirement System (FRS) in 1970, consolidating retirement systems for state and county officers and employees, teachers, and highway patrolman through the enactment of Ch. 70-112, Laws of Fla. The objectives of the new, consolidated retirement system were to provide greater equity and consistency among governmental employees in Florida, permit the free transfer by employees among governmental employers in Florida

without loss of service credit, promote a more efficient utilization of the skills, experience and talent of governmental employees, and provide for a general upgrading of service to the members of the public. *See* Information Report of the Florida House of Representatives Standing Sub-Committee on Personnel and Retirement, January 24, 1972, APP. A, p. 29 (referencing the guiding principles behind creation of the FRS). As noted in Appellants' brief, the consolidated plan enacted by the Legislature was a mandatory, contributory system; however, in 1975 the Legislature began eliminating the employee contributions by various participants. *See* Appellants' Brief, pp. 3, 17-18.

The shift to a partially noncontributory system was to address the actuarial condition of the FRS at that time. *See* Ch. 74-302, at 907, Laws of Fla. (legislative findings). The changes limited refunds of contributions by employees leaving public employment as employer contributions were nonrefundable and made all funds paid into the FRS available to pay vested retirement benefits. In addition, Ch. 74-302, at 907, Laws of Fla., provided that no member's salary could be reduced as a result of FRS becoming noncontributory and "guarantee[d] the legal right of members to all benefits *earned*." *See* Fla. Div. of Retirement, "FRS to become Non-Contributory", *The Florida Retirement Bulletin*, Vol. 1, No. 1 (August 1974), APP. B, p. 1. (*emphasis added*). By not making FRS contributions, regular class employees realized "take-home" pay increases of 4 percent; special

risk employees realized 8 percent increases. *See id.* The obvious result would be to leave more funds in the system, making it more actuarially sound.

Courts may look to the legislative history of a statute, including acts passed at subsequent sessions to determine legislative intent. *Murphy v. Singha Corp.*, 644 So. 2d 983, 986 fn. 8 (Fla. 1994). Legislative actions contemporaneous with and after the enactment of §121.011(3)(d), Fla. Stat., demonstrate the statute was *not* intended to preclude employee contributions after July 1, 1974.

Chapter 74-302, Laws of Fla., made the FRS noncontributory for regular class and special risk employees of state agencies, state universities, community colleges and district school boards on January 1, 1975, and for employees of counties and other local government agencies on October 1, 1975, and contained the preservation of rights clause at issue in this case. The 1974 Legislature also enacted Ch. 74-376, Laws of Fla., which, effective October 1, 1974, increased the contribution required from special risk members and their employers from 6 percent to 8 percent, and increased the special risk retirement credit from 2 to 3 percent.[1] The 1974 Legislature plainly did not see its enactment of Ch. 74-302 and

[1] To resolve the inconsistency between the switch to a partially noncontributory system and the requirement of increased employee contributions, the Attorney General opined that effect should be given to both Ch. 74-302 and Ch. 74-376, Laws of Fla., by increasing contributions required from special risk employees and their employers from 6 percent of gross compensation to 8 percent (i.e., from a total of 12 percent to 16 percent), effective October 1, 1974, and continuing until the date when FRS became noncontributory for the agency which employed the special risk member. Op. Att'y Gen. Fla. 74-196 (1974). Under Ch. 74-302 when

continued or renewed employee contributions as inconsistent with the preservation of rights clause because employee contributions were already required of participants when Ch. 74-302 took effect.

In 1977, the Legislature enacted a requirement that all FRS employees contribute 1 percent of their gross compensation to FRS beginning October 1, 1978, to offset changes that allowed regular class employees to retire and collect benefits after 30 years of service, but before the employee reached the age of 62. [2] *See* Ch. 77-467, §§ 1 and 2, at 2055, Laws of Fla. The 1977 Legislature clearly demonstrated it had the authority to amend the FRS prospectively without impairing any participant's vested rights.

A year later, the legislative debate and consideration of the Conference Report on CS/HB 1140 and 2093, enacted as Ch. 78-308, Laws of Fla., illustrate the Legislature still viewed its authority to prospectively impose a participant contribution requirement as consistent with FRS members' vested rights. The 1978 Legislature repealed the law that required 1 percent employee contributions and made other changes to the system, including the reduction of the special risk retirement credit from 3 percent to 2 percent. *See* Ch. 78-308, § 5 and 6, at pp.

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employee contributions ceased, the employer contribution for special risk members became 13 percent of gross compensation.

[2] Significantly, the requirement for the 1 percent employee contribution applied to all FRS members, yet, the benefit of 30 year retirement in Ch. 77-467 largely applied only to regular class members. Special risk class members could retire after 25 years of service. *See* §121.021(29)(d), Fla. Stat. (1975).

893-93, Laws of Fla.[3] During the floor debate on the Conference Report, Representative Hyatt Brown explained to the House of Representatives the purpose of the 1974 preservation of rights provision was to provide FRS members' assurance that their previously earned, vested retirement benefits could not be taken away, even though the employer would be making the entire retirement contribution. *See* Transcript of Floor Debate of the Florida House of Representatives on the Conference Report on CS/HB 1140 and 2093, May 30, 1978, APP. C, p. 11, ln. 3 through p. 14, ln. 6.[4] While the Conference Report was adopted and passed,[5] there were dissenters on the conference committee who filed a Minority Report. *See* Excerpt of *Journal of the Fla. House of Rep.*, May 30, 1978, APP. E, p. 885-86; and Excerpt of *Journal of the Fla. Senate*, May 31, 1978, APP. F, p. 673. In that Minority Report, the dissenters argued for member contributions as one option for making the FRS actuarially sound. *See id.* While the views expressed in the Minority Report did not prevail, the 1978 debate establishes that the Legislature believed it had the authority to prospectively

[3] The reduction of special risk service credit was the issue in *Florida Sheriffs Ass'n v. Dept. of Administration*, 408 So. 2d 1033 (Fla. 1981).

[4] For the informal Attorney General opinion to Representative Jerry Melvin addressing the Legislature's authority to make prospective changes to the retirement system which is referenced by Representative Thomas Hazouri and Representative Brown during debate, *see* Transcript, APP. C, p. 9., l. 18, through p. 10, l.4, is included in the Appendix at APP. D.

[5] The Senate passed CS/HB 1140 & 2093, as amended by the Conference Report, 20 to18. *See Journal of the Fla. Senate* (May 31, 1978) at p. 677; the House of Representatives passed it 73 to 44. *See Journal of the Fla. House of Rep*. (May 30, 1978) at p. 886.

require member contributions without impairing the contract rights of FRS participants.[6]

Since 1978, the Legislature has amended the FRS numerous times in addition to those instances cited above. S*ee* Ch. 79-377, §2, at 1883-85, Laws of Fla. (making the FRS noncontributory for judges, state attorneys and public defenders); Ch. 81-214, § 2, at 844-46, Laws of Fla. (making the FRS noncontributory for county elected officers); Ch. 81-307, §3, at 1461-63, Laws of Fla. (making the FRS noncontributory for legislators and elected state officers); Ch. 83-197, §1, at 748-52, Laws of Fla. (creating the State University System Optional Retirement Program, an alternative defined contribution plan, effective July 1, 1984); Ch. 86-149, §§13-14, at 504-08, Laws of Fla. (creating a new Senior Management Service Class in the FRS as well as the Senior Management Service Optional Annuity Program, an alternative defined contribution plan, effective February 1, 1987); Ch. 95-338, § 3, at 2996-97, Laws of Fla. (allowing cities and special districts a one-time opportunity to withdraw from the FRS); Ch. 97-154 §§ 1-2, at 2955-66, Laws of Fla. (establishing the Deferred Retirement Option Program (DROP)); Ch. 2000-169, §§1-3, 4-7, and 15, Laws of Fla. (establishing the Public Employee Optional Retirement Program, also known as the Investment

[6] The Minority Report questioned the constitutionality of reducing the special risk retirement credit from 3 percent to 2 percent on the grounds that it violated Art. I, § 10, *Fla. Const.*, and the proscription against impairing contracts, citing § 121.011(3)(d). This position was ultimately rejected in *Florida Sheriffs Ass'n v. Dept. of Administration*, 408 So. 2d 1033 (Fla. 1981).

Plan; reducing the vesting requirement to six years for all FRS membership classes, and upgrading the special risk annual retirement credit to 3 percent for certain qualifying members).

By enacting these changes, every Legislature since 1974 recognized a fundamental principle: one legislature cannot bind a future legislature and interfere with that body's exercise of its legislative power. "That this cannot be done is too academic to discuss." *Ware v. Seminole County*, 38 So. 2d 432, 433 (Fla. 1949). This Court has long held that the powers of each Legislature are not limited by its predecessors unless the act of the earlier body implicated constitutional limitations on subsequent action. *Gonzalez v. Sullivan* 16 Fla. 791, 819 (1878). The Court found that principle applied to subsequent amendments prospectively altering benefits for future state service. *Florida Sheriffs Ass'n v. Dept. of Administration*, 408 So. 2d 1033 (Fla. 1981). Applying *Florida Sheriffs*, the First District Court of Appeal found that the 1978 changes to the criteria for qualification as a "special risk" member of the FRS, prospectively affecting future retirement benefits, were not an unconstitutional impairment of vested rights. *Hillman v. Division of Retirement*, 446 So. 2d 158, 162 (Fla. 1st DCA 1984).

In adopting the Plan Amendment, the 2011 Legislature understood the 1974 enactment did not create an inviolable non-contributory retirement plan. The court below should have construed §121.011(3)(d) consistent with this Court's interpretation in *Florida Sheriffs*, the legislative intent behind that section, and in a

manner that recognized the 2011 Legislature's authority to prospectively alter the FRS.

II. THE LEGISLATURE, EXERCISING ITS APPROPRIATIONS POWER, DID NOT IMPAIR COLLECTIVE BARGAINING OR CONTRACT RIGHTS OF PUBLIC EMPLOYEES.

Simply put, by enacting Ch. 2011-68, Laws of Fla. (passed as Senate Bill 2100 (2011)), the Legislature did not abridge any rights of public employees because such rights were prospective, conjectural, and subject to the Legislature's appropriations power. The trial court erroneously and summarily dismissed the notion that such benefits are subject to the Legislature's appropriations power because Ch. 2011-68 was enacted as a bill conforming substantive law to the general appropriations act rather than as "an appropriations act." *See* Order, p. 10 (". . . [*State v. Florida Police Benevolent Ass'n, Inc.*, 613 So. 2d 415 (Fla. 1992)] does not and could not authorize the legislature to unilaterally change a mandatory subject of bargaining in substantive legislation."). The court, making this distinction, ignored the constitutional limitations that have been placed on the Legislature when it enacts appropriations and that the Legislature's appropriations power extends well beyond the confines of the general appropriations bill.[7]

[7] The Legislature's appropriations power extends to other forms of legislation: substantive laws which include appropriations for their implementation, claim bills, and legislation to conform substantive laws to the general appropriations bill. Art. VII, § 1(c), Fla. Const., provides that "[n]o money shall be drawn from the treasury except in pursuance of appropriation made by law." Appropriations may be made by law, not just in "an appropriations act."

Article III, § 12, Fla. Const., directs that "[l]aws making appropriations for salaries of public officers and other current expenses of the state *shall contain provisions on no other subject*." (*Emphasis added.*) Interpreting this provision, the Court has held that a general appropriations law may not change existing law on subjects other than appropriations, notwithstanding the fiscal relation to the expenditure. *See Brown v. Firestone*, 382 So. 2d 654 (Fla. 1980); *Florida Defenders of the Environment v. Graham*, 462 So. 2d 59 (Fla. 1st DCA 1984); *Gindl v. Department of Education*, 396 So. 2d 1105 (Fla.1979). The court below narrowly interpreted the *appropriations power* to encompass only an *appropriations act* itself. Interestingly, the court recognized the fiscal aspects of the Legislature's decisions – "[a]ll indications are that the Florida Legislature chose to effectuate the challenged provisions of Senate Bill 2100 in order to make funds available for another purpose" – but ignored the fundamental directive on how the Legislature must enact separately general appropriations laws and the revisions to substantive law to conform to such appropriations.

For 20 years, this Court has recognized that collective bargaining is "inherently different" for public sector employees because exclusive control over public funds rests solely with the Legislature. *Florida Police Benevolent Ass'n, Inc.*, 613 So. 2d at 418 (Fla.1992). Where the Legislature has not provided funding, no contract right to such benefits can exist. *See Florida Police Benevolent Ass'n, Inc.*, 613 So. 2d at 420-21; *see also Police Benevolent Ass'n, Inc.*

v. State, 818 So. 2d 584 (Fla. 1st DCA 2002). Conversely, where the Legislature has provided sufficient funding for a benefit, the state will be bound to that benefit. *See Chiles v. United Faculty of Florida*, 615 So. 2d 671, 678 (Fla.1993)(" The act of funding through a valid appropriation is the point in time at which the contract comes into existence."). Undeniably, Ch. 2011-68, SB 2100, reduced the appropriations required to fund FRS beginning July 1, 2011.

This logic is consistent with this Court's longstanding recognition of the exclusive appropriations authority of the Legislature, the resulting limitations on the collective bargaining rights of public employees, and fundamental principles of contract. The Legislature is presumed to be aware of prior judicial constructions of laws which are being amended and adopts such constructions unless otherwise indicated. *See Jones v. ETS of New Orleans*, 793 So. 2d 912, 914-5 (Fla. 2001); and *City of Hollywood v. Lombardi*, 770 So. 2d 1196, 1202 (Fla. 2000). Moreover, the Legislature should be entitled to rely on the precedents of this Court when it enacts laws. *See Greater Loretta Imp. Ass'n v. State ex rel. Boone*, 234 So. 2d 665 (Fla. 1970)(upholding a bingo statute where the Legislature relied on previous decisions of the Court).

This Court's precedent in *Florida Sheriffs* plainly held "the Legislature has the authority to modify or alter prospectively the mandatory, noncontributory retirement plan for active state employees." 408 So. 2d at 1037. Making no distinction between appropriations for benefits and describing the benefits, this

Court later held the collective bargaining rights of public employees are subject to the Legislature's appropriations power. *Florida Police Benevolent Ass'n, Inc.*, 613 So. 2d at 418, fn 3 (recognizing the fiscal implications of collective bargaining extend beyond wages to include benefits which necessarily implicate the expenditure of public funds).

These precedents clearly control; the Legislature relied on these longstanding precedents when it enacted Ch. 2011-69, Laws of Fla., the 2011-2012 General Appropriations Act (GAA), and when it enacted Ch. 2011-68 to conform the FRS law to the budget decisions made in the 2011-12 GAA. The state would be significantly and severely impacted if the Court reverses its precedent. In these circumstances, the doctrine of stare decisis dictates adherence to the well established precedent of this Court. *See N. Fla. Women's Health & Counseling Servs., Inc. v. State,* 866 So. 2d 612, 637–38 (Fla. 2003) (adhering to precedent where the prior decision has not proven to be unworkable due to an impractical legal fiction, where there has been reliance that would result in serious injustice and result in instability in the law, and where no premise of fact changed in the intervening years so as to render the holding utterly without legal justification). Accordingly, this Court should reverse the court below.

III. DECLINING REVENUES AND BUDGET SHORTFALLS HAVE PRESENTED SIGNIFICANT CHALLENGES TO THE STATE BUDGET.

The legislative budget process is a complex balancing of interests and difficult decisions. The Legislature must produce a balanced state budget within available revenues. *See* Art. VII, § 1(d) Fla. Const. Further, Florida's annual budget must balance recurring and nonrecurring revenues with recurring and nonrecurring expenditures to prevent an inherent budget imbalance in future years. *See* Art. III, § 19(a)(2), Fla. Const. (requiring a super majority vote if appropriations made for recurring purposes from nonrecurring General Revenue funds exceed three percent of the total General Revenue funds estimated to be available when the appropriation is made.) Additionally, by September 15 of each year, the Legislative Budget Commission must issue a Long Range Financial Outlook (Outlook), which includes a forecast of major workload and revenue estimates. Annual budget development considers the multi-year outlook which includes a comparison of estimated revenues against estimated funding needs. *See* Art. III, § 19(c)(1) and (j), Fla. Const. These duties are vested exclusively in the Legislature, and its decisions should not be second guessed by the courts. *Sebring Airport Auth. v. McIntyre,* 783 So. 2d 238, 246–48 (Fla. 2001)("The courts have no veto power, and do not assume to regulate state policy; but they recognize and

enforce the policy of the law as expressed in valid enactments, and decline to enforce statutes only when to do so would violate organic law.").

By modifying provisions of the FRS during the 2011 Session, the Legislature made the difficult decision to reallocate limited General Revenue funds to other critical state functions. *See* Ch. 2011-68, Laws of Fla.; and Ch. 2011-69, Laws of Fla. The cost savings achieved by these modifications must be viewed in the context of the state's ongoing, multi-year fiscal situation and the solutions adopted throughout the downturn before such decisions were made. The Order's narrow focus on a single year's budgeting decisions, and citation to the amount of the state's reserves, completely ignored the complexity of assembling a balanced state budget that preserves a sound financial outlook in future years.

Since 2007, the state has faced the most severe and prolonged economic downturn since the 1930s and experienced a combination of declining revenues as well as budget deficits and shortfalls. *See* General Revenue Collections Summary, APP. G. Resolving those fiscal challenges required multiple strategies: significant budget reductions, revenue increases, and redirecting trust fund revenues to the General Revenue Fund.

In Fiscal Year (FY) 2007-2008 and again in FY 2008-2009, declining revenue collections failed to meet projections, and revenue estimates were adjusted downward numerous times. *See* Revenue Estimating Conference Executive

Summaries, 2007-2009, APP. H. Emergency measures were passed to ensure the state maintained a balanced budget in those fiscal years.[8]

Since FY 2009-2010, revenues stabilized in part due to legislative actions, but a sizeable gap persisted between expected revenues and expected fiscal needs in the state's General Revenue Fund in each succeeding year. The Outlooks for FYs 2009-2010, 2010-2011, and 2011-2012 estimated shortfalls of $3.3 billion, $2.7 billion, and $2.5 billion; these amounts represented 13.4%, 11.8%, and 10.0% of the General Revenue expected in each respective year. *See* Long-Range Financial Outlook Reports, Fall 2008, p. 11, Fall 2009, p. 12, and Fall 2010, p. 11, available at http://edr.state.fl.us/Content/long-range-finacial-outlook/index.cfm.

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[8] *See* Ch. 2007-326, Laws of Fla., passed in Special Session C in 2007 (reducing appropriations by $766.8 million and transferring $184.6 million from trust funds for FY 07-08); Ch. 2008-1, Laws of Fla., passed in 2008 Regular Session for FY 2007-2008 (reducing General Revenue appropriations by another $453.5 million); Ch. 2008-152, Laws of Fla. (transferring $468.6 million from trust funds on a one-time basis; authorizing the transfer of one half of the balance from the Budget Stabilization Fund to the General Revenue Fund ($672.4 million was transferred pursuant to this authorization); authorizing the transfer of up the $1.0 billion from the Lawton Chiles Endowment Fund ($700 million was transferred pursuant to this authorization); and implementing $1.9 billion in budget reductions across all policy areas); Ch. 2008-114 and 2008-132 Laws of Fla. (permanently redirecting $364.5 million in recurring trust fund revenues and raising $194.7 million through other revenue enhancements for FY 2008-2009); and Ch. 2009-1, Laws of Fla., passed in Special Session A in 2009 (making additional trust fund transfers of $291.5 million; transferring an additional $400 million from the Budget Stabilization Fund; transferring $190 million from the Florida Housing Finance Corporation; and budget reductions across all policy areas totaling over $978 million). *See also* Measures Affecting Revenue and Tax Administration, 2008 Regular Session, APP. I, available at http://edr.state.fl.us/Content/revenues/reports/measures-affecting-revenues/index.cfm.

When the Legislature began developing the budget for FY 2009-2010, the shortfall had ballooned to $5.6 billion because forecasted expenditures had increased and revenue forecasts had declined.[9] Drastic action had to be taken to produce a balanced budget.[10]

In FY 2010-2011, the Legislature again faced a shortfall of $3.2 billion, *see* House Full Appropriations Council on Education & Economic Development January 14, 2010 Meeting Packet, APP. M. Again, expenditure reductions and additional revenues were required.[11]

When the Legislature was considering the FY 2011-2012 budget, it faced a $3.6 billion budget shortfall. *See* House Appropriations Committee February 10, 2011 Meeting Packet, APP. O. To resolve that shortfall, the Legislature enacted

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[9] On February 10, 2009, there was a projected shortfall of $3.3 billion. *See* House Full Appropriations Council on Education & Economic Development February 10, 2009 Meeting Packet, APP. J. A month later, revenue forecasters reduced the expected revenue estimate by $2.3 billion. *See* General Revenue Estimating Conference Executive Summary, March 13, 2009, APP. K.

[10] This included transferring $600.0 million from trust funds, *see* Ch. 2009-81, Laws of Fla.; increasing motor vehicle and other highway safety fees generating $675.6 million, *see* Ch. 2009-71, Laws of Fla.; creating a tobacco surcharge generating $944.6 million, *see* Ch. 2009-79, Laws of Fla.; utilizing $2.9 billion of federal stimulus, and $290.6 million in various revenue measures, all while making $1.4 billion in reductions across the various sectors of state government. *See also* Measures Affecting Revenue and Tax Administration, 2009 Regular Session, APP. L.

[11] This included transferring $367.5 million from trust funds, *see* Ch. 2010-152, Laws of Fla.; authorizing a gaming compact with the Seminole Tribe that added $433.0 million, *see* Ch. 2010-29, Laws of Fla.; and supplementing $44.8 million in various other revenue measures, while making an additional $736.8 million in budget reductions across all sectors of state government. *See* Measures Affecting Revenue and Tax Administration, 2010 Regular Session, APP. N.

$1.1 billion of reductions associated with the reduced employer retirement contribution that was partially offset by employee contributions, *see* Ch. 2011-68, Laws of Fla.; transferred $538.5 million from trust funds, *see* Ch. 2011-69, Laws of Fla.; and implemented an additional $1.2 billion in reductions across all policy areas, while reserving $1.2 billion dollars in nonrecurring general revenue. *See* General Revenue Fund Financial Outlook Statement, June 29, 2011, APP. P.

During the last five fiscal years, the Legislature cumulatively depleted $1.8 billion of state reserves, transferred $3.0 billion from trust funds, enhanced revenues by $2.6 billion and reduced state expenditures by $7.4 billion: all totaled $14.8 billion in budget actions to maintain balanced budgets, excluding the $1.1 billion reduction related to FRS in FY 2011-2012.

The critical purpose of the $1.2 billion reserves in the context of the state's history of financial hardship was ignored by the trial court. Given the state's recent fiscal history, prudent financial management does not allow spending all General Revenue funds as the state has yet to fully recover financially and unexpected challenges may be ahead. As noted above, use of non-recurring funds for recurring purposes is limited to 3 percent of available General Revenue, absent a three-fifths vote of each chamber. Using the state's nonrecurring $1.2 billion of reserves to solve recurring shortfalls would exceed that constitutional limitation and exacerbate any future budget shortfalls. Furthermore, the reserves are needed to preserve the state's bond rating. *See* Outlook Reports of Fitch, Moody, and

Standard & Poor's, Composite APP. Q. The trial court, showing no deference to the policy making role of the Legislature and its sound policy choices, second guessed the Legislature's decision to maintain the reserves and wrongly concluded there was no compelling interest for doing so.

IV. THE IMPACT TO THE STATE BUDGET IS SIGNIFICANT.

The prospects of an adverse ruling against the state are significant, posing both non-recurring and recurring fiscal challenges. The projected non-recurring impacts relate to the one time repayment of the three percent employee contribution for the state would be $466.3 million[12] or 41.6 percent of the state reserves, including the retirement costs for school district, university and college employees.[13] In addition, counties and participating municipalities and special districts would be responsible for returning approximately $257.1 million for the same 12-month period. Only non-recurring impacts could potentially be resolved with reserves.

[12] The financial impacts of the elimination of the cost of living adjustment would not begin until July 1, 2012, when the first eligible retirees are impacted.

[13] In the event of an adverse court ruling, the retirement contribution would need to be increased which would require funding and appropriations. The state budget typically funds incremental increases in retirement costs, not only for state employers, but for school districts, state universities and community colleges. Based upon this practice, the savings from the changes made to the FRS in 2011 included these employer groups. If the Legislature were to respond to an adverse ruling consistent with past funding practice, it would fund those employers for the repayments and for prospective increased costs, but the state is under no obligation to do so. Accordingly, school districts, state universities, and community colleges may also be directly impacted by an adverse decision.

Resolving the non-recurring payback in this manner has two negative consequences. First, the state's reserves would be significantly depleted and unavailable for emergency expenditures such as natural disasters. Second, reserves would not be available for unexpected declines in revenue collections. The state has faced both of these scenarios in recent years.

Recurring impacts must be resolved with recurring funds, either recurring spending reductions to the various areas of the budget or recurring revenue increases. The projected recurring General Revenue impact of an adverse ruling (including both the COLA reduction and 3 percent employee contribution) to the state would be $861.2 million,[14] assuming the continued funding of incremental increases in retirement costs for school district, university, and college employees. The impact would be 3.3 percent of all General Revenue available for FY 2012-2013. In addition, counties, participating municipalities and special districts would experience a recurring fiscal impact of approximately $ 523.0 million.

All recurring funds have been appropriated. There are no recurring General Revenue funds available to address an $861.2 million recurring obligation. To provide context, this amount roughly equates to all of the state education funds appropriated in the FY 2012-2013 General Appropriations Act for Hillsborough

[14] An adverse ruling on COLA would result in an estimated recurring General Revenue impact of $404.8 million. An adverse ruling on the 3 percent employee contribution would result in an estimated recurring General Revenue impact of $456.4 million.

County, or the total amounts budgeted next year for the Judicial Branch and the clerks of court combined. *See Chiles v. United Faculty of Florida*, 615 So. 2d at 675 (Overton, J., dissenting) (observing a budget shortfall that was three times the total judicial budget was "significant and substantial" when one considered how little flexibility the Legislature had in reducing the entire state budget).

CONCLUSION

The Legislature, as the branch of state government responsible for state fiscal matters, carefully weighed the alternatives available in preparing the 2011-12 General Appropriations Act, Ch., 2011-69, and found it necessary to require employee contributions associated with the FRS. These reductions affected every agency and branch of state government, including state universities, colleges, and school districts. In measuring the alternatives available, the Legislature was mindful of and carefully followed this Court's precedents concerning prospective changes in FRS benefits and collective bargaining issues as well as the legislative intent behind §121.011(3)(d). The Legislature, as a coordinate and co-equal branch of state government, must be able to rely on this Court's precedents in arranging the state's fiscal priorities. Accordingly, this Court should defer to the Legislature's fiscal decisions, the legislative intent behind statutory enactments, and the Legislature's balancing of its constitutional obligations, and reverse the ruling below.

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I hereby certify that this brief complies with the font requirements of Fla. R. App. P. 9.210(a) and is submitted in Times New Roman 14 point font.

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