

IN THE SUPREME COURT OF FLORIDA

RICK SCOTT, JEFF ATWATER, and
PAM BONDI, in their capacities as
the STATE BOARD OF ADMINISTRATION,
JEFF ATWATER, as Chief Financial Officer
of Florida, and JOHN P. MILES, Secretary
of the Department of Management Services and
Administrator of the Florida Retirement
System,

Appellants,

v.

Case No: SC12-520
LT Case No: 2011 CA 1584

GEORGE WILLIAMS, MEGAN ALLEN,
KEVIN DOYLE, LORI GOODWIN,
ADAM TEICHNER, BRIAN ENGLAND,
MARTHA BAKER, MAGALIE VANCOL PENA,
ROLANDO TABARES, ALLEN JONES,
and JUAN BASO,

Appellees.

**APPELLEES' OBJECTION TO FLORIDA TAXWATCH'S
MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE AND
MOTION TO STRIKE AMICUS CURIAE BRIEF**

Appellees object to the Motion for Leave to Appear as Amicus Curiae by Florida TaxWatch and move to strike the Amicus Curiae Brief filed simultaneously with the motion as untimely, unauthorized, and prejudicial.

Amicus briefs are to be filed within 10 days of filing of the brief supported, and only by leave of court. Fla. R. App. P. 9.370(a),(b). The amicus brief filed by Florida TaxWatch (movant) fails on both counts. Pursuant to the court's order dated May 3, 2012, Appellants' initial brief was filed June 8, 2012; therefore any

amicus briefs in support of Appellants—where leave of court had been obtained—were due June 18, 2012. Indeed two amicus briefs in support of Appellants were filed on this date. A third amicus brief is anticipated to be filed on June 21, 2012, pursuant to the Court’s order granting a motion to appear as amicus by the Florida House and Florida Senate which was filed on June 7, 2012. In contrast to the three amicus parties who properly sought and obtained leave prior to filing their briefs and prior to the deadline for doing so, movant waited until two days after the deadline to seek leave of court for the first time, and then filed its substantive amicus brief without the court’s approval. Such gamesmanship should not be countenanced by this Court.

Furthermore, movant’s motion misrepresents statements by Appellees’ counsel Ron Meyer regarding Appellees’ position as to the proposed amicus brief. Movant’s president (not its counsel) placed what he termed a “courtesy call” to “inform” Mr. Meyer of movant’s intention to seek to file an amicus brief. At no time during that call did movant’s president ask Mr. Meyer whether Appellees objected to the proposed filing; nor did Mr. Meyer offer, unsolicited, that Appellees did not or would not object. If Mr. Meyer had been asked, he would have informed the president that Appellees did indeed object to the proposed amicus brief (as did Appellees’ counsel Lynn Hearn when communicating directly

with movant's counsel). This mischaracterization of movant's communication with Appellees' counsel is additional evidence of improper gamesmanship.

Given the expedited briefing schedule, Appellees already have an extremely short time frame within which to respond to the three amicus briefs for which leave of court has been granted and would be unfairly prejudiced by having to respond to a fourth amicus brief filed out of time. Appellees' brief is due June 28, 2012, just ten days after the first two amicus briefs were filed, and seven days after the filing of the third amicus brief.¹ Appellees are reluctant to request an extension of the deadline for the answer brief, recognizing that any additional time granted to Appellees would detract from the time available to the Court to prepare for the oral argument.

Finally, the movant's proposed amicus curiae brief constitutes an improper use of an amicus brief and presents arguments that have no place in this proceeding. The first section of the brief is wholly redundant to the arguments of Appellants (and their three supporting amicus curiae) and adds no new or special

¹The Florida Rules of Appellate Procedure were amended in 2011 to allow an amicus to file a brief ten (10) days after the filing of the brief supported; previously amicus briefs were due five (5) days after service of the brief supported. Fla. R. App. P. 9.370(c). It appears this change was not intended to change the filing deadline in practice because the rules provide for an additional five (5) days to be added to deadlines when service is by mail. *See* Fla. R. App. P. 9.420(e). In this case, however, because the court-ordered briefing schedule did not allow additional time for service by mail, the later filing deadline for amicus brief effectively shortened Appellees' time for responding to amicus briefs by five (5) days.

perspective. Such a brief should not be permitted. *Ciba-Geigy Ltd. v. Fish Peddler, Inc.*, 683 So. 2d 522, 523 (Fla. 4th DCA 1996) (“Since the parties are limited as to the number and length of briefs, amicus briefs should not be used to simply give one side more exposure than the rules contemplate.”) The remainder of the proposed brief addresses issues not before the court: the purported effect of the case upon Florida taxpayers, the “reasonableness” of the challenged law in light of policies in other states, and comparisons of the Florida pension system with those for private employees. The brief extensively and one-sidedly injects factual assertions (some accompanied by citations, many not, and none of which are contained in the record below) purporting to demonstrate the wisdom of the challenged legislation. It is improper for an amicus to introduce any factual matters not in the record below. *Dade County v. Eastern Air Lines, Inc.*, 212 So. 2d 7, 8 (Fla. 1968). More importantly, however, the wisdom of legislative policy is not before the Court; the only issue before the Court is whether the challenged statutes violate the Florida Constitution. *E.g., Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 244-45 (Fla. 2001). The movant’s proposed untimely, unauthorized amicus brief offers nothing to assist the Court on this central issue and would only serve to prejudice Appellees.

Wherefore, Appellees respectfully request that this Court deny the Motion for Leave to Appear as Amicus Curiae by Florida TaxWatch, strike the proposed

Amicus Curiae Brief filed by Florida TaxWatch, and grant such further relief as the Court deems appropriate.

DATED this 20th day of June, 2012.

Respectfully submitted,

s/
RONALD G. MEYER

On Behalf of:

RONALD G. MEYER
Florida Bar No. 0148248
Email: rmeyer@meyerbrookslaw.com
JENNIFER S. BLOHM
Florida Bar No. 0106290
Email: jblohm@meyerbrookslaw.com
LYNN C. HEARN
Florida Bar No. 0123633
Email: lhearn@meyerbrookslaw.com
Meyer, Brooks, Demma and Blohm, P.A.
131 North Gadsden Street
Post Office Box 1547 (32302)
Tallahassee, FL 32301
(850) 878-5212
(850) 656-6750 facsimile
(850) 222-1840 facsimile

PAMELA L. COOPER
General Counsel
Florida Bar No. 0302546
Email: pam.cooper@floridaea.org
Florida Education Association
213 South Adams Street
Tallahassee, FL 32301
(850) 201-2800

Counsel for Appellees

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Amended Motion has been furnished via electronic and U.S. mail on this 20th day of June, 2012, to:

Counsel for Appellants:

Raoul G. Cantero
T. Neal McAliley
White & Case LLP
Southeast Financial Center
200 South Biscayne Boulevard
Suite 4900
Miami, Florida 33131-2352
raoul.cantero@whitecase.com
nmcAliley@whitecase.com

Jonathan G. Rose
David R. Godofsky
Richard S. Siegel
Alston & Bird LLP
950 F Street, N.W.
Washington, DC 20004
jonathan.rose@alston.com
david.godofsky@alston.com
richard.siegel@alston.com

Louis F. Hubener
Blaine Winship
Timothy D. Osterhaus
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
lou.hubener@myfloridalegal.com
blaine.winship@myfloridalegal.com
timothy.osterhaus@myfloridalegal.com

H. Douglas Hinson (*pro hac vice*)
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309
doug.hinson@alston.com

<p>Counsel for Intervenors/Appellees John Park and Randall Haire:</p> <p>G. Hal Johnson 300 East Brevard Street Tallahassee, Florida 32301 hal@flpba.org</p>	<p>Counsel for Intervenor/Appellee Brett Sandlin:</p> <p>Richard A. Sicking 1313 Ponce de Leon Blvd., #300 Coral Gables, Florida 33134 sickingpa@aol.com</p>
<p>Counsel for Intervenors/Appellees Charles E. Brookfield, Lodge #86, Fraternal Order of Police, and LIUNA, Local 517:</p> <p>Jill S. Schwartz Jill S. Schwartz & Associates, PA 180 North Park Avenue, Suite 200 Winter Park, FL 32789-7401 jschwartz@schwartzlawfirm.net</p>	<p>Counsel for Intervenors/Appellees Steven Helmer, Michael Agostinis, Frederick McCrone, and Mark Tarver:</p> <p>Osnat K. Rind Kathleen M. Phillips Phillips, Richard & Rind, P.A. 9360 SW 72nd Street, Suite 283 Miami, FL 33173 orind@phillipsrichard.com</p>
<p>Counsel for Intervenors/Appellees International Union of Police Associations, AFL-CIO Jason Cannon, Joseph Paduano, and Gary Penny:</p> <p>Aaron Nisenson International Union of Police Associations 1549 Ringling Blvd., Suite 600 Sarasota, Florida 34236 gcounsel@iupa.org</p>	<p>Counsel for Intervenors/Appellees Government Supervisors Association of Florida, Office and Professional Employees International Union, Local 100, Gregory L. Blackman, Florida Nurses Association and Deborah Hogan:</p> <p>Donald D. Slesnick II Law Offices of Slesnick & Casey, LLP 2701 Ponce De Leon Blvd., Suite 200 Coral Gables, Florida 33134 donslesnick@scllp.com</p>

<p>Counsel for Intervenor/Appellee Rodney Durbin:</p> <p>Richard Siwica Egan, Lev & Siwica, P.A. Post Office Box 2231 Orlando, Florida 32802 rsiwica@eganlev.com</p>	<p>Attorneys for Amicus Florida League of Cities, Inc.:</p> <p>James W. Linn Glenn E. Thomas Lewis, Longman & Walker 315 South Calhoun Street, Suite 830 Tallahassee, Florida 32301 jlinn@llw-law.com gthomas@llw-law.com</p> <p>Kraig A. Conn Florida League of Cities, Inc. 301 South Bronough Street, Suite 300 Tallahassee, FL 32301</p>
<p>Attorneys for Amicus the Florida Senate and the Florida House of Representatives:</p> <p>Craig A. Meyer meyer.craig@flsenate.gov Thomas Ross McSwain mcswain.ross@flsenate.gov Leah L. Marino marino.leah@flsenate.gov The Florida Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100</p> <p>George T. Levesque george.levesque@myfloridahouse.gov Don Rubottom don.rubottom@myfloridahouse.gov Teresa Ward teresa.ward@myfloridahouse.gov Florida House of Representatives Suite 422, The Capitol Tallahassee, Florida 32399-1300</p>	<p>Attorneys for Amicus Florida Association of Counties, Inc.:</p> <p>Gregory T. Stewart Nabors, Giblin & Nickerson, P.A. 1500 Mahan Drive, Suite 200 Tallahassee, Florida 32308 gstewart@ngnlaw.com</p> <p>Virginia Delegal General Counsel Florida Association of Counties 100 S. Monroe Street Tallahassee, Florida 32301 gdelegal@fl-counties.com</p>

**Attorneys for Proposed Amicus Florida
TaxWatch:**

Robert Weissert
Florida TaxWatch
106 N. Bronough Street
Tallahassee, Florida 32301
rweissert@floridataxwatch.org

s/ _____
Lynn C. Hearn