

IN THE SUPREME COURT OF FLORIDA

BOB MARTINEZ, Governor of the State  
of Florida,

Appellant,

vs.

THE FLORIDA LEGISLATURE, etc., et al,

Appellees.

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CASE NO. 73,601

REPLY BRIEF OF APPELLANT, BOB MARTINEZ,  
GOVERNOR OF THE STATE OF FLORIDA, TO ANSWER BRIEF  
OF APPELLEES, JIM SMITH, SECRETARY OF STATE,  
AND GERALD LEWIS, COMPTROLLER

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## ARGUMENT

### I.

#### THE TRIAL COURT ERRED IN RULING THAT THE CROSS-CLAIM "FALLS", AND THE CASE SHOULD BE REMANDED FOR FURTHER PROCEEDINGS

Appellees contend in their Answer Brief that "the trial court properly declined to rule on the motions directed to the cross claim and there is no reason to remand this case for consideration of the merits of the cross claim." This is so, they argue, because the Cross-claim is not sufficiently related to the subject matter of the Amended Complaint and Counterclaim to survive. However, both the written pleadings submitted by the Appellees, and the trial court's ruling belie this contention.

In their motions to abate response to the Cross-complaint, the Appellees contended that disposition by the trial court of the Amended Complaint and Counterclaim would be dispositive of the entire case, including the Cross-claim. This confirms that they regarded the issues raised by the Cross-claim to be closely connected to the main claim and the Counterclaim. Moreover, the trial court's ruling that:

[b]y reason of the foregoing judgment and orders with respect to the Amended Complaint and Counterclaim, Governor Martinez' Cross Claim falls and Cross-defendants' motions responding to the Cross-claim are moot,

leaves no room to doubt that the issues raised in the Cross-complaint are so connected with the main action and Counterclaim that his disposition of those claims effectively rendered any decision on the Cross-claim unnecessary. In view of the foregoing, the illogic of the Appellees' conflicting positions is patent. On the one hand, they argue that the Cross-claim was so unrelated to the subject of the law suit as to be dismissable as an improper cross-claim; on the other hand, they contend that the court's resolution of the issues raised by the Amended complaint and the Counterclaim would be dispositive of the Cross-claim, rendering any need for further consideration moot.<sup>1</sup> While this reasoning is a masterpiece of sophistry, it surely cannot provide a principaled basis for denying the relief requested by the Governor.

This Court has held that a liberal construction of the rule regarding cross-claims is appropriate since "[i]t is a desirable policy to encourage the filing of cross-claims and permissive counterclaims so that all aspects of a given legal

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<sup>1</sup>In the statement of facts contained in Appellees' Answer Brief, it is stated that the Motion for Summary Judgment on the Cross-claim was never heard "as a consequence" of the Governor having failed to give the requisite 20-day notice of the hearing. It was as a result of the trial court's ruling that the Cross-claim "fell" upon his disposition of the Amended Complaint and Counterclaim, that the Motion for Summary Judgment was never heard or ruled upon.

dispute may be disposed of as expeditiously as possible." Wincast Associate, Inc. v. Hickey, 342 So.2d 77, 79 (Fla. 1977) (citations omitted). At issue in this case is the entire process of legislative appropriations, thus it is logically connected to the main claim and the Counterclaim. Nevertheless, the vitality of the Cross-claim survived the disposition of the Amended Complaint and Counterclaim and the issues raised were capable of resolution without regard to the merits of the Amended Complaint and Counterclaim. Therefore, the constitutionality vel non of the challenged laws is a live issue requiring expeditious resolution and, thus, should have been resolved by the court on its merits. North Miami General Hospital , Inc. v. Air Products and Chemicals, 216 So.2d 793 (Fla. 3d DCA 1968).

## II.

**THE CONSTITUTIONALITY OF CHAPTERS 88-556  
AND 88-557, BEING A PURE QUESTION OF LAW,  
IS PROPERLY BEFORE THIS COURT FOR  
RESOLUTION**

Appellees argue that, because the Cross-claim bore no relation to the main action, it was not supportable in this action. But, of course, the correctness of Appellees' position was subject to testing on their motion to dismiss which was never ruled upon. Moreover, because the trial court did not rule on

the issues raised by the Cross-claim, Appellees contend there is nothing for this Court to review. Appellees' reliance upon this hypertechnical procedural argument is in stark contrast to their willingness to see the Governor's Cross-claim consigned to a legal limbo without the benefit of even the most rudimentary procedural niceties, such as a ruling actually disposing of the claim.

This Court is ideally situated to rule on the constitutionality of the challenged provisions. This determination is not dependent upon the development of a factual record below, since the validity of the laws may be determined by simply applying Florida constitutional principles to the content of the bills.

It is axiomatic, as Appellees urge, that the Court will not rule upon the constitutionality of a statute unless it is necessary for the disposition of a case. Frink v. State ex rel. Turk, 120 Fla. 394, 35 So.2d 10 (Fla. 1948). Since the gravamen of counts one and two of the Cross-claim is the constitutionality of two Florida statutes, it is indisputable that the Court must pass on their validity in order to dispose of the claim.

CONCLUSION

At issue in this case is the entire legislative appropriations process for fiscal year 1988-1989, and its interaction with the executive veto power. The Cross-claim raises issues that bear directly upon this inquiry. Accordingly, this Court should either undertake to rule upon counts one and two of the Cross-claim or to remand the claim for further proceedings. Failure to take one of these actions will have the unjust and unjustifiable result of depriving a party litigant of his day in court without granting him the corresponding benefit of a reviewable final determination of his claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery, to CHARLES L. STUTTS, ESQUIRE, Office of the Comptroller, The Capitol, Suite 1302, Tallahassee, Florida 32399-0350; THE HONORABLE ROBERT A. BUTTERWORTH, Attorney General, The Capitol, Tallahassee, Florida 32399; MITCHELL D. FRANKS, ESQUIRE, Director, General Legal Services, Department of Legal Affairs, The Capitol, Suite 1601, Tallahassee, Florida 32399-1050; KEVIN X. CROWLEY, ESQUIRE, General Counsel, Florida House of Representatives, Suite 420, The Capitol, Tallahassee, Florida 32399-1300; KIMBERLY J. TUCKER, ESQUIRE, Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050; and by Federal Express, to ARTHUR J. ENGLAND, JR., ESQUIRE, of Fine, Jacobson, Schwartz, Nash, Block and England, One CentTrust Financial Center, 100 Southeast Second Street, Miami, Florida 33131, this 22<sup>nd</sup> day of February, 1989.

*Cynthia S. Tunnick*

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