

IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

CASE NO. SC02-386

Appellant,

vs.

ROBERT CRITCHFIELD,

Appellee.

_____ /

ANSWER BRIEF OF APPELLEE

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STATEMENT OF CASE AND FACTS

On July 14, 1987, the Appellee received his fourth conviction for driving under the influence and his driver's license was revoked. At the time of sentencing, he was informed that he would be eligible for a hardship license after five years. (Record volume II, page 209) (herein after referred to as R. vol. #, pg.). In 1995, Appellee attempted to obtain his hardship license only to be told that he would have to demonstrate he had been drug free for at least five years (R2:290). On May 24, 1998, Chapter 98-223 was enacted. In 1999, Appellee attempted to complete his application for a hardship license, but was informed the he was no longer qualified for a hardship license under the new amended law. (R2:291).

On April 4, 2000, Appellee filed a complaint for Declaratory Judgment, alleging that Chapter 98-223 was unconstitutional because it violated the single subject requirement of the Florida Constitution. (R1:1-49). Both parties moved for summary judgment. (R1:86-971; R2:188-271). The trial court granted Appellee' motion as to the single subject issue. (R2:272-77). Final judgment was entered May 10, 2001.

The Department of Highway Safety and Motor Vehicles ("the Department") appealed the decision of the trial court to the

Fifth District Court of Appeal. The Fifth DCA affirmed the trial court's decision, holding that Section 98-223 is unconstitutional because it violates the single subject rule of the Florida Constitution. *Department of Highway Safety and Motor Vehicles v. Critchfield*, 805 So. 2d 1034 (Fla. 5th DCA 2002). The Department filed a motion for clarification which was denied. This appeal ensued.

SUMMARY OF ARGUMENT

Section 2 of Chapter 98-223 lacks a natural and logical connection with the other sections of the law. The other sections all specifically address driver's licenses, registrations, or the operation of motor vehicles. Nothing in Section 2 relates to driver's license or the operation of motor vehicles. Additionally, the circumstances surrounding the passage of Chapter 98-223 are strongly indicative of the logrolling that the single subject rule is designed to prevent.

ARGUMENT

I. CHAPTER 98-223, LAWS OF FLORIDA, CONTAINS MORE THAN ONE UNRELATED SUBJECT IN VIOLATION OF ARTICLE III, SECTION 6, OF THE FLORIDA CONSTITUTION

Article III, Section 6 of the Florida Constitution provides that:

[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

This constitutional provision is commonly referred to as the single subject rule. See *State v. Thompson*, 750 So. 2d 643, 646 (Fla. 1999). The purpose of the single subject rule is "(1) to prevent hodge podge or "log rolling" legislation, i.e., putting two unrelated matters in one act; (2) to prevent surprise or fraud by means of provisions in bills of which the title gives no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and (3) to fairly apprise the people of the subjects of legislation that are being considered, in order that they might have opportunity of being

heard thereon." See *id.*

The Florida Supreme Court has previously stated that "[t]he purpose of this constitutional prohibition against a plurality of subjects in a single legislative act is to prevent "logrolling" where a single enactment becomes a cloak for dissimilar legislation having no necessary or appropriate connection with the subject matter." *Martinez v. Scanlan*, 582 So. 2d 1167, 1172 (Fla. 1991). An act may be as broad as the legislature chooses as long as all the matters included have a natural or logical connection. *Id.* (citing *Chenoweth v. Kemp*, 396 So. 2d 1122 (Fla. 1981)).

To determine the constitutionality of Chapter 98-223, it is necessary to examine the various sections of the law. Chapter 98-223 is titled "Crimes - Worthless Checks," and is comprised of fifteen sub-sections. 1998 Fla. Laws ch. 98-223.

Section 1 creates Fla. Stat. § 832.09, which provides for the suspension of the driver's license of a defendant who fails to appear in court in connection with a prosecution for passing a worthless check.

Section 2 creates Fla. Stat. § 832.10, which permits the payee of a dishonored check to use a private debt collection service to try to collect the debt prior to presenting a complaint to the State Attorney's Office. (emphasis added).

Section 3 amends Fla. Stat. § 322.251 to provide for notice to a licensee whose driving privileges are suspended pursuant to § 832.09.

Section 4 amends Fla. Stat. § 322.142 to permit the Department to sell copies of photographs or digital imaged driver's licenses under certain circumstances.

Section 5 provides the funding mechanism for the legislation.

Section 6 amends Fla. Stat. § 318.18 to modify the fine schedule for speeding.

Section 7 amends Fla. Stat. § 320.07 to revise the penalties for operating a vehicle or mobile home with an expired registration.

Section 8 amends Fla. Stat. § 322.26 to provide for the permanent revocation of the driver's license of an individual convicted of murder resulting from operation of a motor vehicle, DUI manslaughter where the conviction is a subsequent DUI related conviction, and for a fourth conviction for DUI.

Section 9 amends Fla. Stat. § 322.271 to preclude an individual with four DUI convictions from petitioning for reinstatement of their driving privilege after five years of revocation. This is the provision which now precludes Plaintiff from obtaining a hardship driver's license.

Section 10 amends Fla. Stat. § 322.28 to provide for the permanent revocation of the driver's license of an individual convicted of murder resulting from the operation of a motor vehicle, and modifies the revocation period for a person convicted of DUI involving serious bodily injury.

Section 11 creates Fla. Stat. § 322.283, which relates to the commencement of the period of suspension or revocation of driver's licenses for incarcerated offenders.

Section 12 amends Fla. Stat. § 322.34 to provide for a rebuttable presumption of knowledge for the offense of driving with a canceled, suspended or revoked driver's license.

Section 13 creates Fla. Stat. § 322.341, which makes it a third degree felony to drive with a permanently revoked driver's license pursuant to Fla. Stat. § 322.26 or 322.28.

Section 14 amends Fla. Stat. § 627.733 to delete a provision which had previously revoked the driver's license of the owner or registrant of a motor vehicle being operated without the required insurance.

Finally, Section 15 provides an effective date of July 1, 1998, for the legislation.

As both the trial court and the Fifth DCA concluded, there is no natural or logical connection between Section 2 of Chapter 98-223 and the other sections of the law. *See Department of*

Highway Safety and Motor Vehicles v. Critchfield, 805 So. 2d 1034 (Fla. 5th DCA 2002). The other sections all specifically address driver's licenses, registrations, or the operation of motor vehicles. Section 2 relates to the collection of debts evidenced by bad checks by private debt collectors. Nothing in section 2 relates to driver's license or the operation of motor vehicles.

The multi-subject nature of Chapter 98-223 is similar to the legislation ruled unconstitutional in *Thompson, supra*. In *Thompson*, the Florida Supreme Court examined Chapter 95-182. Sections 2 through 7 of the law addressed various aspects of career criminal sentencing. However, sections 8 through 10 of the law addressed the subject of domestic violence. The Court found that the law violated the single subject rule because it addressed two different subjects: career criminals and domestic violence. Specifically, the Court noted that:

Nothing in sections 2 through 7 addresses any facet of domestic violence and, more particularly, any civil aspect of that subject. Nothing in sections 8 through 10 addresses the subject of career criminals or the sentences to be imposed upon them.

Thompson, 750 So. 2d at 648. Moreover, the Court noted that the legislature had not identified "a broad crisis encompassing both career criminals and domestic violence." *Id.* Rather, the

Court found the law unconstitutional because the legislature had addressed two different subjects in one chapter law.

The Florida Supreme Court has also struck down other similar multi or dual subject pieces of legislation. For example, in *Martinez, supra*, the Court found Chapter 90-201 unconstitutional because it addressed both worker's compensation and international trade. The Court rejected the argument that the two subjects were logically related to the topic of comprehensive economic development, finding instead "a tangential relationship at best." *Martinez*, 582 So. 2d at 1172.

Likewise, in *State v. Johnson*, 616 So. 2d 1 (Fla. 1993), the Court struck down Chapter 89-280 on single subject grounds. Chapter 89-280 was designated an act relating to criminal law and procedure, yet the bulk of its provisions dealt with private investigation and patrol services, and the repossession of motor vehicles and motorboats. *Johnson*, 616 So. 2d at 4. The Court found no logical and natural connection between career criminal sentencing and repossession of motor vehicles by private investigators. *See id.* Specifically, the Court stated:

These two concerns have absolutely no cogent connection; nor are they reasonably related to any crisis the legislature intended to address. No reasonable explanation exists as to why the legislature chose to join these two subjects within the same legislative act, and we find that we must

reject the State's contention that these two subjects relate to the single subject of controlling crime.

Id. (citations omitted). See also *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984) (chapter 82-150 violated single subject rule because one provision created crime of obstruction of justice and other two provisions made amendments regarding the Florida Council on Criminal Justice); *Taylor v. State*, 2002 WL 80256 (Fla. 2d DCA 2002) (chapter 99-188 violated single subject rule, in part, because one section of the act addressed an administrative function of the court clerk, unrelated to the subject of criminal sentencing discussed in the remaining sections).

Appellant's contention that all the substantive provisions of Chapter 98-223 relate to conditions legislatively required in return for the privilege of driving a motor vehicle lacks merit. Appellant argues that Section 2 indirectly provides an incentive for a person confronted by a private debt collector to make good on a bad check in order to avoid license suspension. (Appellant's Brief at 11-12). Appellant contention does not change the fact that Section 2, unlike all the other sections of Chapter 98-223, makes no reference to driver's licenses or the operation of motor vehicles. Section 2 merely gives individuals who have received bad checks alternatives to filing a complaint

with the state attorney. The other sections of the act all address the rights and privileges of drivers. Any connection between Section 2 and the rest of the act in this manner is a "tangential relationship at best." *Martinez*, 582 So. 2d at 1172.

Appellant also contends that Section 2 is logically connected with the rest of the act because driver's licenses are often used to facilitate acceptance of worthless checks. This claim clearly fails to establish the logical connection necessary to save Chapter 98-233 from being declared unconstitutional. Driver's licenses, as the primary source of identification for most individuals, are used every day for countless reasons, including the purchase of alcohol, cigarettes, and lottery tickets. The Department's argument would permit the Legislature to include almost any subject in Chapter 98-223.

Finally, Appellant's continued reliance on *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969), is misplaced. In *Doran*, this Court merely approved an enactment which provided for criminal penalties and injunctive relief to enforce its provisions that required certain meetings to be held in public.

Section 2 of Chapter 98-223 clearly lacks a natural and

logical connection with the other sections of the act. Nothing in section 2 relates to driver's license or the operation of motor vehicles, the subject of all the other sections of the act. Accordingly, Chapter 98-223 violates Article III, Section 6 of the Florida Constitution. This Court should declare Chapter 98-233 unconstitutional.

II THE CIRCUMSTANCES SURROUNDING THE LEGISLATURE'S PASSAGE OF 98-223 ARE STRONGLY INDICATIVE OF THE "LOG ROLLING" THAT THE SINGLE SUBJECT RULE IS DESIGNED TO PREVENT.

Appellant's contention that there is no legitimate fear that section 2 of the act was enacted through "log rolling" also lacks merit. The legislative history of Chapter 98-223 is strongly indicative of the "log rolling" that the single subject rule is designed to prevent.

The original version of the law, House Bill 3275, was introduced by Representative Arnall, and contained only the substantive sections eventually numbered 1 and 3. See H. B. 3275, 15th Leg., 2d Reg. Sess. (Fla. 1998) (R1:137). Both of these sections related, as indicated in the title, to worthless checks. Thereafter, the House Committee On Crime and Punishment added three amendments, and on April 23, 1998, the House Transportation and Economic Development Appropriations Committee added an additional three amendments. See Bill Research & Economic Impact Statement, H. B. 3275, 15th Leg., 2d Reg. Sess.

(Fla. 1998) (R1:142). All but one of these amendments were likewise related to worthless checks.

However, towards the end of the regular session, the Senate substantially amended the House version of the law to include the provisions unrelated to worthless checks. See Senate Amendment to H. B. 3275, 2nd Eng. (R1:154). Moreover, the House concurred with the Senate's amended version of the law on April 30, 1998, see Fla. H. R. Jour. 1713, 1937-1940 (Reg. Sess. 1998) (R1:176), just one day before the end of the regular session. See Florida Session Law Service, 1998 Laws (West 1998) (R1:182).

The circumstances surrounding the passage of Chapter 98-223 are analogous to those surrounding the passage of Chapter 95-182, the law struck down by the Florida Supreme Court in *Thompson, supra*. As the Court then noted:

Importantly, the amendments made by the House of Representatives which, among other things, changed the title as stated above and added the domestic violence provisions to chapter 95-182, were made on the floor of the house on May 4, 1995, very near the end of the regular legislative session. We agree with the Second District's observation that '[i]t is in circumstances such as these that problems with the single subject rule are most likely to occur.'

Thompson, 750 So.2d at 648 (citation omitted) (emphasis added).

As in *Thompson*, the circumstances surrounding the passage of Chapter 98-223 are strongly indicative of the logrolling that

the single subject rule is designed to prevent. Accordingly, this Court should declare that Chapter 98-223 is unconstitutional as violative of the single subject rule contained in Article III, Section 6 of the Florida Constitution.

CONCLUSION

Section 2 of Chapter 98-223 clearly lacks a natural and logical connection with the other sections of the act. Nothing in section 2 relates to driver's license or the operation of motor vehicles, the subject of all the other sections of the act. Additionally, the circumstances surrounding the passage of Chapter 98-223 are strongly indicative of the logrolling that the single subject rule is designed to prevent.

Accordingly, this Court should declare that Chapter 98-223 is unconstitutional as violative of the single subject rule contained in Article III, Section 6 of the Florida Constitution, and furthermore that the provision relied upon by Appellant for precluding Robert Critchfield from applying for a hardship driver's license is thereby null and void.

DATED this _____ day of March, 2002

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail delivery to Assistant Attorney General Charlie McCoy, Office of the Attorney General, The Capitol, Suite PL-01, Tallahassee, FL 32399-1050, on this _____ day of March, 2002.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition is submitted in Courier New 12-point font and thereby complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

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