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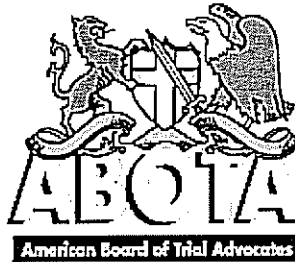
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TALLAHASSEE CHAPTER

The Senate President Mike Haridopolos and Governor Rick Scott have made unfounded personal attacks upon Judge Jackie Fulford which cross the line of appropriate discourse in a democracy. Labeling a judge "an activist judge" unfairly insinuates that she is not following the law and the facts of the case. It is an inappropriate and unfounded personal attack on a judge for doing her job. Further, the attacks by Senate President Mike Haridopolos were initiated prior to a ruling on the case, in an apparent attempt to threaten and intimidate. These tactics undermined the integrity of the judiciary and the public confidence in our system of justice, which is essential for our democracy to function.

In the American system of justice, parties bring cases to court for resolution. Our judges do not initiate investigations, file charges or create disputes. It is thus difficult to define what is meant by "activist Judge" when the term is used by politicians. It is the Judiciary's responsibility to require that the Executive Branch and Legislature follow the Constitution, and anything else violates the judges' sworn oath and jeopardizes the rights of all citizens.

This case presented the classic dispute between government on the one hand, and constitutionally protected individual property, contract and collective bargaining rights on the other. State employees challenged the validity of recent legislation mandating contributions to their pension in light of a prior legislative enactment stating that pension rights were of a "contractual nature" and that "such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way." Judge Fulford was not making law or substituting her own policy preferences for those of the Legislature, as Governor Scott says, but rather resolving conflicts between the 1974 Legislature and the 2011 Legislature in light of the Florida Constitution.

The issue in the case before Judge Fulford was whether the recent enactment was an unconstitutional impairment of the employees' contract with the State of Florida, an unconstitutional taking of private property without full compensation, and/or an abridgment of the rights of public employees to collectively bargain over conditions of employment. This is

an appropriate dispute for judicial resolution and Judge Fulford carefully limited her decision to the case presented, and the law applicable to the facts.

As Judge Fulford herself stated in her order: "This Court cannot set aside its constitutional obligations because a budget crisis exists in the State of Florida. To do so would be in direct contravention of this Court's oath to follow the law. This is one of the fundamental principles of our system of justice." Whether she decided correctly will be reviewed on appeal, but we should all respect the process and the hard working judge who must make the tough decisions required to make the system work.

It is certainly appropriate for the Governor and the Senate President to discuss the case, the merits, implications and the Legislature's reasoning in taking the approach it did in enacting the recent legislation. The fact that they disagree with the decision and may appeal is certainly appropriate commentary. But unfounded personal attacks and name-calling, perhaps in an attempt to intimidate, is simply wrong.

Few in public office work harder than Judge Fulford. She works early and stays late. She is always prepared. She is strong, fair and has unquestioned integrity. Most importantly, she takes seriously her oath to uphold the Constitution and does so to the best of her ability, regardless of whether her decisions are politically popular. Anyone suggesting her decisions are based on anything but the law should know she is a life-long Republican and spent her legal career as a prosecutor.

In the case under consideration, the parties raised legitimate issues about the propriety of the 2011 legislation. Judge Fulford was duty bound to determine the facts and apply the law in order to properly resolve the dispute without consideration for the popularity or political consequences of her actions. It is inappropriate for our elected officials to respond with unfounded personal attacks upon her and upon the integrity of our Judiciary.

Because Judge Fulford is prohibited by the rules of judicial ethics from responding to the unwarranted criticism, the American Board of Trial Advocates (ABOTA) has instituted a non-partisan procedure for responding to such attacks. ABOTA is an organization made up equally of plaintiff and defense lawyers who represent all segments of society, including major corporations, insurance companies, governmental entities, small businesses and individual citizens of all walks of life who endeavor to uphold professionalism, integrity and respect for the Constitution and rule of law.

It is our hope going forward that we can maintain a civil debate on the merits of any dispute without name calling and personal attacks.

Sincerely,

A handwritten signature in black ink, appearing to be 'KJM', written over a circular scribble.

Kathy J. Maus

President – Tallahassee Chapter ABOTA