

In the
Supreme Court of Ohio

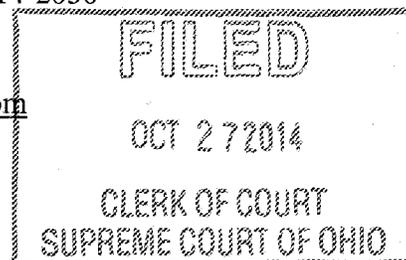
State ex rel. OHIO CIVIL SERVICE	:	Case No. 2014-0319
EMPLOYEES ASSOCIATION, et al.,	:	
	:	
Plaintiffs-Appellees/Cross-Appellants,	:	On Appeal from the
	:	Franklin County
	:	Court of Appeals,
v.	:	Tenth Appellate District
	:	
STATE OF OHIO, et al.,	:	Court of Appeals
	:	Case No. 12 AP 1064
	:	
Defendants-Appellants/Cross-Appellees.:	:	

**AMICUS BRIEF OF AFSCME INTERNATIONAL IN SUPPORT OF THE MERIT
BRIEF OF APPELLEES/CROSS-APPELLANTS OCSEA, ET AL.**

MICHAEL DEWINE (0009181)
Attorney General of Ohio

ERIC MURPHY (0083284)
State Solicitor
*Counsel of Record**
30 East Broad St, 17th Floor
Columbus, OH 43215
614-466-8980
614-466-5087 fax
eric.murphy@ohioattorneygeneral.gov

JAMES E. MELLE (0009493)
*Counsel of Record**
167 Rustic Place
Columbus, OH 43214-2030
614-271-6180
419-332-1488 fax
jimmelle43@msn.com



Attorneys for Appellants/Cross-Appellees:

State of Ohio, Governor John R. Kasich,
Attorney General Mike DeWine, Secretary of
State Jon Husted, Auditor of State David Yost,
Ohio Department of Rehabilitation and
Correction, and Director Gary C. Mohr, Ohio
Department of Administrative Services and
Director Robert Blair, Treasurer Josh Mandel,
Office of Budget and Management and
Director Timothy S. Keen

CHARLES R. SAXBE (0021952)
*Counsel of Record**

Attorney for Appellees/Cross-Appellants:

Ohio Civil Service Employees Association,
David Combs, Clair Crawford, Lori Leach
Douce, Margo Hall, Sheila Herron, Daniel
Karcher, Rebecca Sayers, Angela Schuster,
Troy Tackett, Kathy Tinker, Lisa
Zimmerman and ProgressOhio.org

ADAM W. MARTIN (0077722)
*Counsel of Record**

JAMES D. ABRAMS (0075968)
CELIA M. KILGARD (0085207)
Taft, Stettinius & Hollister LLP
65 E. State St., Suite 1000
Columbus, OH 43215-3413
614-221-2838
614-221-2007 fax
rsaxbe@taftlaw.com
jabrums@taftlaw.com
ckilgard@taftlaw.com

Attorneys for Appellees Corrections
Corporation of America and CCA
Western Properties, Inc.

NICHOLAS A. IAROCCI (0042729)
*Counsel of Record**
Ashtabula County Prosecuting Attorney
25 West Jefferson Street
Jefferson, OH 44047
440-576-3662
440-576-3600 fax
naiarocci@ashtabulacounty.us

Attorney for Appellees: Dawn M. Cragon,
Roger A. Corlett and Judith A. Barta

KEVIN W. KITNA (0088029)
Sutter O'Connell
3600 Erieview Tower
1301 East 9th Street
Cleveland, OH 44114
216-928-2200
216-928-3636 fax
amartin@sutter-law.com

Attorneys for Appellant/Cross-Appellee
Management & Training Corporation

NICHOLAS A. SERRANO
PHV Registration Number: 5420-2014
Associate General Counsel
American Federation of State, County and
Municipal Employees, AFL-CIO
Office of the General Counsel
1101 17th Street, NW, Suite 900
Washington, DC 20036
(202) 775-5900
nserrano@afscme.org

Attorney for Amicus Curiae: AFSCME
International

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INTEREST OF *AMICUS CURIAE*

The American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME International”) is an international labor organization representing approximately 1.6 million working men and women and retirees throughout the United States and Puerto Rico, including approximately 85,000 members who work in corrections, providing important services at maximum- and minimum-security facilities, state prisons, and county jails throughout the country.

STATEMENT OF THE CASE AND FACTS

Amicus curiae AFSCME International adopts the statement of the case and facts in the Merit Brief of Appellees/Cross-Appellants Ohio Civil Service Employees Association (OCSEA) et al.

INTRODUCTION

A number of states have a single-subject rule¹ in their constitution. The rule is meant to prevent legislatures from combining multiple subjects, each of which would not pass on its own merits, into one bill that only then can gain sufficient overall support to be enacted: a practice known as “logrolling.” In addition to prohibiting logrolling, the single-subject rule also helps clarify for the public what each bill encompasses, often by restricting the title of the bill to one subject, and the rule also helps legislatures avoid unintentionally and unknowingly enacting provisions that have been inconspicuously inserted into bills. *See, e.g., South Dakota Educ. Association/NEA By and Through Roberts v. Barnett*, 582 N.W.2d 386, 393 (S.D. 1998).

¹ The rule is also referred to as the “one-subject rule.” This amicus brief uses the term “single-subject rule” merely for purposes of consistency.

The single-subject rule is sometimes implicated in the context of a state’s appropriations bill, which authorizes the state to spend money on a list of programs, projects, and other needs. The issue that arises, which is the focus of this amicus brief, is that in addition to appropriations legislatures sometimes attempt to insert provisions of substantive law into these bills. By including substantive prison-privatization provisions in the 2011 Ohio appropriations bill, the state legislature ran afoul of the single-subject rule set out in the Ohio Constitution, which states: “No bill shall contain more than one subject, which shall be clearly expressed in its title.” OHIO CONST. art. 2, § 15(D).

This amicus brief compares the 2011 prison privatization in Ohio with cases in several other states where legislatures have attempted to use the appropriations process to enact substantive law. The Florida Legislature tried to do this, also in 2011, in an exceedingly similar attempt to pass prison-privatization provisions in an appropriations bill, but a state court prevented the legislature from doing so under both the single-subject rule and the confinement clause in the Florida Constitution.² In Washington State, the single-subject rule uses language very similar to the Ohio rule, and the Washington Supreme Court has held that the rule prohibits the legislature from weaving substantive policy provisions into an omnibus appropriations bill. The Washington Supreme Court has also held that the single-subject rule prevents the legislature from inserting corporate income tax and revenue bond provisions into appropriations bills, despite the fact that both of these measures could generate revenue for the state—a practice that the State Appellants/Cross-Appellees in this case urge ought to be permissible under the Ohio

² Among the states that have a single-subject rule in their constitution, there are some states that also include a “confinement clause” in their constitution stating specifically that appropriations bills must be confined to the subject of appropriations. *See, e.g.*, FLA. CONST. art. III, § 12, and S. DAK. CONST. art. XII, § 2. The Florida and South Dakota decisions discussed in this brief both held that the provisions at issue violated each state’s single-subject rule and its confinement clause.

single-subject rule. In Kansas, the single-subject rule actually contains an exception for appropriations bills, but the Kansas Supreme Court has held that the rule still does not permit amendments to various sections of the state code that are unrelated to the main purpose of an appropriations bill: authorizing the spending of specific sums of money for specific purposes. And the South Dakota Supreme Court has held that provisions to change, amend, or repeal collective bargaining rights violated both the state's single-subject rule and confinement clause because the provisions were unrelated to the setting aside of necessary funds for the use and maintenance of state government departments. While AFSCME International supports Appellees/Cross-Appellants OCSEA et al. in all aspects of this case, this amicus brief focuses on the single-subject rule issue.

ARGUMENT

The Ohio Legislature included substantive law in an appropriations bill when it inserted the prison-privatization provisions at issue in this case into H.B. 153 (the "appropriations bill").³ This practice is unconstitutional under the Ohio single-subject rule. The cases discussed below, from states outside Ohio, provide examples of how the single-subject rule prevents legislatures from including substantive provisions in an appropriations bill, like the prison privatization and sale here at issue.

³ Although outside the scope of this amicus brief, at least two other major substantive programs were also included in the appropriations bill even though they are unrelated to appropriations or to each other. In addition to authorizing the sale of five state-owned prisons, the appropriations bill also authorized the sale or lease of the Ohio Turnpike, and the transfer of the state-regulated liquor distribution system and the state's merchandising operations, including all of its capital and assets, for a period of 25 years to JobsOhio. OCSEA et al. Merit Brf. at pg. 9.

A. The Florida Legislature Made a Similar Attempt at Prison Privatization in 2011 “Using the Hidden Recesses of the General Appropriations Act,” which Violated the Single Subject Rule in the Florida Constitution

One of the most strikingly similar cases to the Ohio privatization was another unconstitutional attempt at prison privatization, in Florida during 2011. The Florida Legislature made an indirect attempt at privatizing prisons through the Florida appropriations process by including a proviso in a general appropriations bill that required the Florida Department of Corrections (DOC) to privately contract for the operation and maintenance of 29 existing state correctional facilities in South Florida. Baiardi v. Tucker, Case No. 2011 CA 1838 (Second Judicial Circuit, Leon County 2011), appeal dismissed Bondi v. Tucker, 93 So.3d 1106 (2012).

The Florida Police Benevolent Association challenged the proviso in state circuit court, citing two provisions of the Florida Constitution: Art. III, § 6 and § 12. The first provision, Art. III, § 6, is the Florida single-subject rule, which, similar to the Ohio rule, states: “Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” And Art. III, § 12 is Florida’s confinement clause, under which: “Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.”

While Ohio does not have a confinement clause in its constitution, the Florida court held that the proviso violated both the Florida single-subject rule and the confinement clause. The circuit court held that although Florida law did authorize the privatization of state prisons, in this case the legislature had violated the Florida Constitution by trying to privatize the facilities through the appropriations process. Baiardi, Case No. 2011 CA 1838. “Based on the record before it, this Court concludes that if it is the will of the Legislature to itself initiate privatization of Florida prisons, as opposed to DOC, the Legislature must do so by general law, rather than

‘using the hidden recesses of the General Appropriations Act.’” *Baiardi*, Case No. 2011 CA 1838 (quoting *Dickinson v. Stone*, 251 So.2d 268, 273 (Fla. 1971) (emphasis added). The court found that the proviso violated the state constitution in several ways. “The proviso changes the statutory process for privatizing prison facilities and directs DOC to replace state employees at particular prisons with private operators, and is not rationally related to the appropriations for DOC generally. *See Brown v. Firestone*, 382 So. 2d 654, 663-64 (Fla. 1980) (appropriation provisos are invalid if they either alter substantive law or address subjects not directly and rationally related to the specific appropriation item or are not a major motivating factor for the appropriation).” *Id.* (emphasis added). The proviso was unconstitutional under the single-subject rule and confinement clause because “the Legislature may not change existing substantive law by a proviso in an appropriations act.” *Id.*

This is precisely what the Ohio Legislature did in 2011. Despite their inclusion in an appropriations bill, the prison-privatization provisions were substantive law, not appropriations. The Ohio Supreme Court has defined appropriations as “an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes. Similarly...the ordinary and common meaning of the phrase ‘appropriation bill’ is a measure before a legislative body which authorizes the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure.” *LetOhio Vote.Org v. Brunner*, 916 N.E.2d 462, 471 (Ohio 2009) (internal quotations and citations omitted) (emphasis added). The Ohio prison-privatization provisions did not authorize expenditures and obligations for specific purposes; rather, they substantively changed the privatization process under the Ohio statutes by allowing the state to sell prisons outright, which could not have been done before the appropriations bill when the statutes had allowed only the contracting out and leasing of prisons to private entities.

Moreover, although the Florida Constitution does contain a confinement clause, the Florida rule against the altering of substantive law in an appropriations bill is far less permissive than the “rational basis” rule that the State Appellants/Cross-Appellees are proposing in this case, under which the legislature would be able to “include all matters in appropriation bills that could rationally affect the State’s budget.” State’s Brf. at pg. 2. In Florida, however, to be valid the prison-privatization provisions would have needed to be both directly and rationally related to a specific appropriation item. Baiardi, Case No. 2011 CA 1838 (citing *Brown v. Firestone*, 382 So. 2d 654, 663-64 (Fla. 1980)). And with respect to the prison-privatization provisions, the Florida court ruled that these provisions failed to meet this requirement because they were not even rationally related to appropriations for the Florida DOC in general. Baiardi, Case No. 2011 CA 1838.

Additionally, in the Ohio Court of Appeals below, the Appellant/Cross-Appellee Management and Training Corporation (MTC) tried to distinguish Baiardi by claiming that, as opposed to the Florida appropriations bill, the Ohio provisions require the prison privatization to achieve a five-percent cost savings. MTC Ct. of App. Brf. at pg. 24 (“In short, unlike the case at bar – which requires the contractor to realize a minimum of 5% savings to the State of Ohio – the statute at issue in Baiardi would permit the legislature to usurp the power of the DOC and force privatization regardless of cost effectiveness.”). This was inaccurate for two reasons. First, the prison-privatization provisions in the Ohio appropriations bill did not introduce the five-percent savings requirement; that requirement was codified in Ohio law well before the appropriations bill. OCSEA et al. Merit Brf. at pg. 29. And second, the Florida proviso did include a minimum savings requirement, which was actually larger than five percent: “The [DOC] also must submit a cost-benefit analysis which delineates [its] current costs of providing the services and the

savings that would be generated by the transition plan yielding a minimum actual savings of 7 percent.” Baiardi, Case No. 2011 CA 1838 (quoting the proviso in General Appropriations Act) (emphasis added). Even assuming arguendo that the minimum savings requirements in Ohio and Florida made the states’ prison-privatization efforts to any extent “cost effective,” the Florida proviso would have required an even higher percentage of savings and yet the Baiardi court still struck the proviso down as unconstitutional under that state’s single-subject rule.

B. The Single Subject Rule in the Washington State Constitution Uses Virtually the Same Language as the Ohio Rule, and the Washington Supreme Court has Held that the Rule Prohibits the State Legislature from Weaving Substantive Policy Provisions into an Omnibus Appropriations Bill

The Washington State Supreme Court has held that its legislature cannot weave substantive policy provisions into an omnibus appropriations bill, and the single-subject rule in the Washington State Constitution uses language very similar to the rule in Ohio. The Washington State rule reads as follows: “No bill shall embrace more than one subject, and that shall be expressed in the title.” WASH. CONST. art. II, § 19. And as stated above, the Ohio single-subject rule reads: “No bill shall contain more than one subject, which shall be clearly expressed in its title.” OHIO CONST. art 2 § 15(D). Neither state’s rule includes an exception for appropriations bills, nor do the two state constitutions have confinement clauses.

The Washington State Supreme Court’s interpretation of that state’s similar single-subject rule is that the rule prohibits the legislature from inserting “substantive law” into an appropriations bill. Washington State Legislature v. State, 985 P.2d 353, 362 (Wash. 1999) (“In numerous prior decisions, we have construed art. II, § 19 to forbid inclusion of substantive law in appropriations bills.”). The Ohio Court of Appeals has interpreted its rule similarly: “A bill may establish an agency, set out the regulatory program, and make an appropriation for the agency

without violating the one-subject rule, but a general appropriations bill cannot constitutionally establish a substantive program related to the subject of appropriations only insofar as it impacts the budget.” State ex rel. Ohio Civ. Serv. Emps. Assn. v. State, 2 N.E.3d 304, 313 (Ohio Ct. App., 2013) (“OCSEA II”) (emphasis added) (internal citations and quotations omitted).

The Washington Supreme Court has interpreted its rule more specifically, further developing what amounts to the “substantive law” prohibited in appropriations bills. For example, on separate occasions the court has determined that corporate income tax provisions and revenue bonds each were substantive law that could not be included in appropriations bills. Washington State Legislature, 985 P.2d at 363. In holding that these types of provisions were substantive law, the court has determined that raising revenue for the state is not the purpose of an appropriations bill. *See* Power, Inc. v. Huntley, 235 P.2d 173, 281 (Wash. 1951) (holding that the corporate income tax measure was one of two unrelated subjects in the appropriations bill, violating the single-subject rule); State ex rel. Washington Toll Bridge Auth v. Yelle, 342 P.2d 588, 592 (Wash. 1959) (holding that revenue bond provisions in a supplemental appropriations bill violated the single-subject rule). In this case in Ohio, a central theme of the State Appellants/Cross-Appellees’ argument is that the prison-privatization provisions are related to the subject of appropriations because the provisions ostensibly generate revenue for the state.⁴

The Washington Supreme Court has not interpreted its similar single-subject rule in this fashion.

While the court in Washington State Legislature declined to adopt a categorical definition of “substantive law,” the court did hold that—although not providing an exclusive list of

⁴ The State Appellants/Cross-Appellees claim that ComTech Sys., Inc. v. Limbach, 570 N.E.2d 1089 (Ohio 1991) is an example of the Ohio Supreme Court finding a rational connection to the budget that allowed revenue raising through the enactment of a new tax in an appropriations bill. But the challenged provision in that case did not enact a new tax—it only amended the definition of a retail sale—and was also expressly mentioned in the title of the bill. OCSEA et al. Merit Brf. at pg. 28-29. Retail sales and use transactions had been taxable in Ohio for 50 years. OCSEA et al. Merit Brf. at pg. 28.

factors—“where the policy set forth in the budget has been treated in a separate substantive bill, its duration extends beyond the two year time period of the budget, or the policy defines rights or eligibility for services, such factors may certainly indicate substantive law is present.”

Washington State Legislature, 985 P.2d at 363.

Under this analysis, the Ohio prison-privatization provisions would amount to substantive law. First, in addition to the sale of the Lake Erie Correctional Facility (LECF) property, the provisions in the appropriations bill also altered the text of R.C. § 9.06 specifically so that the duration of prison-privatization contracts can now exceed two years. Prior to the appropriations bill, R.C. § 9.06(A)(1) stated: “A contract entered into under this section shall be for an initial term of not more than two years with an option to renew for additional periods of two years.” The bill amended this provision so that it now states: “A contract entered into under this section shall be for an initial term specified in the contract with an option to renew for additional periods of two years.” (emphasis added). By removing the initial two-year limit, the appropriations bill expressly allowed the duration of prison-privatization contracts to last any number of years beyond the two-year appropriations cycle. And second, while there were no proposals from contractors to purchase the North Central facility, MTC did bid for and receive an Operations and Management Contract (“O & M Contract”), and the state’s Request For Proposals and revised code R.C. § 9.06(j) allow the state to sell and convey this property to MTC at any future date as long as the O & M Contract is still in effect. OCSEA et al. Merit Brf. at pg. 2.

The changes in prison-privatization policy also defined collective bargaining rights with respect to OCSEA. Under its collective-bargaining agreement with the state, OCSEA represented bargaining unit employees at North Central before the privatization. OCSEA et al. Merit Brf at pg. 41-42. The Ohio Code permitted labor organizations such as OCSEA to

represent both “rank and file” workers and guards in the public sector, but because MTC is a private-sector employer its labor relations are regulated under the National Labor Relations Act (“NLRA”), which prohibits labor organizations from representing both of these groups. 29 U.S.C. § 151-169. OCSEA et al. Merit Brf at pg. 41-42. The result of this was a significant loss of collective-bargaining rights for OCSEA because the privatization prohibited it from representing both of these groups of employees at North Central.

C. Even though the Kansas Single-Subject Rule contains an Exception for Appropriations Bills, the Kansas Supreme Court has Still Interpreted the Rule Such that it does not Permit Amendments to Various Sections of the State Code that are Unrelated to the Primary Purpose of an Appropriations Bill: Authorizing the Expenditure of Specific Sums of Money for Specific Purposes.

Despite the fact that the single-subject rule in the Kansas Constitution contains an exception for appropriations bills, the Kansas Supreme Court has still interpreted the rule to prohibit the legislature from inserting amendments to diverse and unrelated sections of state statutes into appropriations bills. State ex rel. Stephan v. Carlin, 631 P.2d 668, 673 (Kan. 1981). The primary purpose of an appropriations bill, the Kansas Supreme Court has held, is to authorize the spending of specific sums of money for specific purposes. Carlin, 631 P.2d at 673. The Ohio prison-privatization provisions, described by the State Appellants/Cross-Appellees as a measure to “generate revenue and reduce spending,” do not authorize the expenditure of any specific sums of money for any specific purpose. State’s Brf. at pg. 1.

The Kansas single-subject rule did not always include an exception for appropriations bills. “Since statehood, Section 16 of Article 2 of the Constitution of this State has read: ‘No bill shall contain more than one subject ...’ To that phrase was added in 1974: ‘(E)xcept appropriation bills and bills for revision or codification of statutes.’” Carlin, 31 P.2d at 672. The question in Carlin was whether the 1974 amendment allowed the legislature “to include in an

appropriations bill, without limitation, any subject which it wishes to address? May it include therein subjects entirely foreign to appropriations? We think not.” Id. at 672-73. The court in Carlin reviewed the appropriations bills enacted by the legislature at the time of and immediately before the 1974 revision to the single-subject rule, and found “no attempt by the legislature to include within those appropriation bills amendments to general legislation, wholly unrelated to the setting apart of state funds and the authorization of the expenditure thereof for specific purposes. The primary content is language appropriating specific sums of money for specific purposes; authorizing the transfer of sums of money from one fund to another; increasing or decreasing expenditure limitations; directing certain state officials to draw warrants; and reappropriating unencumbered balances in certain funds.” Id. at 673.

The section of the appropriations bill at issue in Carlin amended the School District Equalization Act in Kansas, which limited school district budgets and expenditures for school years starting after June 30, 1980. Carlin, 31 P.2d at 671. The court found that this section had “no direct connection with appropriations.” Id. at 671. The section “does not appropriate state funds; it does not establish expenditure limitations on state funds; it does not authorize the transfer of state moneys from one fund to another. It does fix budget limitations for school districts. It bears no more relationship to the appropriation of state funds than do statutes fixing the budget limitations of cities, counties, or other taxing districts, or various other statutes which could be cited. Clearly, it adds a second subject to the bill.” Id. at 673 (emphasis added).

The Carlin court provided guidance on what types of provisions appropriations bills in Kansas are permitted to contain under the single-subject rule. Appropriations bills can “direct the amounts of money which may be spent, and for what purposes,” “express the legislature’s direction as to expenditures,” “transfer funds from one account to another,” and “direct that prior

unexpended appropriations lapse.” *Id.* at 673. Despite the fact that the provisions at issue did fix budget limitations for school districts, these provisions amending the School District Equalization Act were unconstitutional under the single-subject rule because “appropriation bills may not include subjects wholly foreign and unrelated to their primary purpose: authorizing the expenditure of specific sums of money for specific purposes.” *Id.*

The Ohio prison-privatization provisions would be unconstitutional under this analysis. To begin with, the Ohio single-subject rule does not contain an exception for appropriations bills. But more to the point, the prison-privatization provisions at issue in Ohio do not authorize the expenditure of specific sums of money for specific purposes. In fact, the prison-privatization provisions did not authorize any expenditures at all, but rather did the exact opposite; as the State Appellants/Cross-Appellees state in their brief, the privatization measures allow the sale of prison facilities, and the contracting out of facility operations, ostensibly for the purpose of generating revenue and reducing spending. State’s Merit Brf. at pgs. 1, 5-7. Generally laudable though these two goals may be, neither carries out what the Kansas Supreme Court has held is the essential function of an appropriation: authorizing the spending of a specific amount of money for a specific purpose. Appropriations bills are meant to authorize the spending of money, not to increase revenue by selling state assets or to privatize correctional operations in the hope of cutting costs.

D. The South Dakota Supreme Court has Held that a Measure to Change, Amend or Repeal Collective Bargaining Rights Violated the State’s Single-Subject Rule because the Measure was Unrelated to the Setting Aside of Funds Necessary for the Use and Maintenance of the Departments of State Government

The 1998 general appropriations bill in South Dakota contained a section providing that salary increases for certain public employees would be determined at the sole discretion of the

state,⁵ despite the fact that the employees were represented by a union under South Dakota's public-employee collective bargaining law, codified at chapter 3-18. South Dakota Educ. Association/NEA By and Through Roberts v. Barnett, 582 N.W.2d 386, 388-89 (S.D. 1998).

The provision stated: "It is the intent of this Act that the distribution of salary increases to non-CSA employees of the Board of Regents be made in a manner to be determined at the sole discretion of the Board of Regents, any other provisions of chapter 3-18 notwithstanding." Barnett, 582 N.W.2d at 389.

After the appropriations bill passed, the state then took the position that it was no longer required to engage in negotiations with the union on the issue of the salary increases. Barnett, 582 N.W.2d at 389. In response, the union challenged the salary provisions under the single-subject rule and the confinement clause⁶ of the South Dakota Constitution. Set out in S. DAK. CONST. art. III, § 21, the South Dakota single-subject rule states that "[n]o law shall embrace more than one subject, which shall be expressed in its title."

The South Dakota Supreme Court held that attempts by the legislature to "change, amend, or repeal" collective-bargaining rights in an appropriations bill violated the single-subject rule. Barnett, 582 N.W.2d at 393. The court found that while the vast majority of the appropriations bill did embrace only appropriations, the portion of the bill attempting to change, amend or repeal the collective bargaining rights under Chapter 3-18 was not "subsumed within the general subject of the bill." Barnett, 582 N.W.2d at 393. The section at issue did not "relate directly to the subject of appropriations," "have a natural connection to that subject," or "relate to

⁵ The specific state entity that was given discretion to make this determination was the Board of Regents, which controlled the state universities and special schools where the public employees worked. Barnett, 582 N.W.2d at 388-89.

⁶ Also in the decision, the South Dakota Supreme Court held that the 1998 general appropriations bill violated the confinement clause as well, S. DAK. CONST. art XII, § 2. Barnett, 582 N.W.2d at 390-93.

that subject as stated in the title.” *Id.* at 393. The collective-bargaining rights had been codified elsewhere in the state statutes, and changing, amending or repealing those provisions had “nothing to do with setting apart funds necessary for the use and maintenance of the departments of state government.” *Id.* 393.

The Ohio prison-privatization provisions did not meet the definition of appropriations in LetOhio Vote.Org v. Brunner, 916 N.E.2d at 471. The Ohio provisions drastically changed and amended the existing, substantive prison-privatization provisions in the Ohio code. As the Tenth District Court of Appeals held below, an Ohio “general appropriations bill cannot constitutionally establish a substantive program related to the subject of appropriations only insofar as it impacts the budget.” State ex rel. OCSEA v. State, 2 N.E.3d 304, 313 (Ohio App. 2013). Before the appropriations bill, the existing prison-privatization law allowed only the leasing and contracting out of prison facilities, but the provisions inserted into the appropriations bill drastically changed this policy by allowing the outright sale of prisons to private entities. Not only was this change dramatic, it was also unprecedented; when it did so in 2011, Ohio became the first state in the nation to sell a prison to a private company.⁷

CONCLUSION

While the focus of this amicus brief is on the single-subject rule, AFSCME International supports Appellees/Cross-Appellants OCSEA et al. in all aspects of this case. The judgment of the Court of Appeals reversing dismissal of the claim in Plaintiffs’ complaint based upon Ohio Constitution, Article II, Section 15(D) should be affirmed and the matter should be remanded with instructions to allow Plaintiffs and Defendants to make a complete record and, where

⁷ Julie Carr Smyth, *Ohio Becomes First American State To Sell Prison To Private Company*, ASSOCIATED PRESS, Sept. 1, 2011.

appropriate, to sever all provisions which offend the Single-Subject Rule. The judgment of the Court of Appeals affirming dismissal of the claim in Plaintiffs' complaint based upon Ohio Constitution, Article VIII, Section 4 should be reversed because the complaint stated a claim upon which relief may be granted. The judgment of the Court of Appeals dismissing Plaintiffs' claim that the Franklin County Common Pleas Court, and not the State Employment Relations Board, possessed jurisdiction to determine whether the employees working for Management & Training Corporation at North Central and the employees working for Corrections Corporation of America at Lake Erie are public employees as defined in R.C. 4117.01(C) should be reversed.

Respectfully Submitted,



Nicholas A. Serrano
PHV Registration Number: 5420-2014
Associate General Counsel
American Federation of State, County and
Municipal Employees, AFL-CIO
Office of the General Counsel
1101 17th Street, NW, Suite 900
Washington, DC 20036
(202) 775-5900
nserrano@afscme.org

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Amicus Brief of AFSCME International was served via ordinary mail upon the following persons this 27th day of October, 2014:

ERIC MURPHY (0083284)
State Solicitor
*Counsel of Record**
30 East Broad St, 17th Floor
Columbus, OH 43215

ADAM W. MARTIN (0077722)
*Counsel of Record**
KEVIN W. KITNA (0088029)
Sutter O'Connell
3600 Erieview Tower
1301 East 9th Street
Cleveland, OH 44114

JAMES E. MELLE (0009493)
*Counsel of Record**
167 Rustic Place
Columbus, OH 43214-2030
614-271-6180
419-332-1488 fax
Jimmelle43@msn.com

CHARLES R. SAXBE (0021952)
*Counsel of Record**
JAMES D. ABRAMS (0075968)
CELIA M. KILGARD (0085207)
Taft, Stettinius & Hollister LLP
65 E. State St., Suite 1000
Columbus, OH 43215-3413

NICHOLAS A. IAROCCI (0042729)
*Counsel of Record**
Ashtabula County Prosecuting Attorney
25 West Jefferson Street
Jefferson, OH 44047



Nicholas A. Serrano
PHV Registration Number: 5420-2014
Associate General Counsel
American Federation of State, County and
Municipal Employees, AFL-CIO
Office of the General Counsel
1101 17th Street, NW, Suite 900
Washington, DC 20036
(202) 775-5900
nserrano@afscme.org