

SUPREME COURT OF LOUISIANA

No. 2000-KK-1266

STATE OF LOUISIANA

VERSUS

SCOTT B. BREWSTER

consolidated with

STATE OF LOUISIANA

VERSUS

ROBERT J. O'REILLY

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FIRST CIRCUIT, PARISH OF ST. TAMMANY**

CALOGERO, Chief Justice, dissents from the action of the court and would docket this matter as an appeal.

Commissioner Gleason presided in these two criminal matters. The district court separately affirmed the convictions and sentences. On writs to the court of appeal, the First Circuit consolidated the cases and asked the parties to brief the issue of the constitutionality of La Rev. Stat. 13:719, which created a commissioner in the 22nd Judicial District Court and authorized the commissioner inter alia to conduct trials, accept pleas, and impose sentences in misdemeanor criminal cases. After the court of appeal declared the statute unconstitutional, the State took an appeal to this court. As is customary, we reviewed the filing to determine whether the judgment is properly appealable. In the meantime, at the request of the judges of the 22nd Judicial District Court, and exercising our supervisory authority, we assigned a judge to replace Commissioner Gleason, at least until these cases and the issue concerning his jurisdictional authority are resolved.

Now, this court's majority vacates the court of appeal judgment and remands the cases to the district court for further proceedings (because the court of appeal reached the issue of constitutionality on its own motion without the issue having been raised by the parties). Surely, upon remand the defense attorneys in these cases will attack the constitutionality of the statute, armed as they are, now, with a favorable opinion from the court of appeal. Thus, what we effectively do is hold for another day the validity of the now-vacated opinion of the court of appeal, which has found La. Rev. Stat. 13:719 unconstitutional.

Deciding not to resolve an issue now that will surely return to this court seems to be a waste of judicial resources. We have the power under the constitution to take up and review the ruling of the court of appeal finding the statute unconstitutional. The unnecessary delay of the resolution of this issue prompts me to dissent from the action of the court today. I would allow the court of appeal ruling to stand for now, docket the State's appeal, and decide whether La. Rev. Stat. 13:719 is constitutional.