IN THE SUPREME COURT
STATE OF FLORIDA

BROWARD COUNTY, a political subdivision of the State of Florida, Petitioner, vs. CITY OF FORT LAUDERDALE and ROBERT O. COX, Respondents.	CASE NO.: 66,289 FOURTH DISTRICT COURT OF APPEAL NO. 84-527

BRIEF OF PETITIONER

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STATEMENT OF THE CASE

Petitioner, BROWARD COUNTY, seeks review by this Court of a decision which the Fourth District Court of Appeal has certified as involving a question of great public importance.

The case was commenced on February 16, 1984, when Respondents, City of Fort Lauderdale and Robert O. Cox, filed a complaint for injunctive relief in the Broward County Circuit Court. Respondents sought preliminary and/or permanent injunction to enjoin Petitioner, Broward County, from amending the Broward County Charter in the manner and through the procedure proposed and to enjoin the referendum election on the proposed referendum question. The referendum election and the proposed referendum question were provided and called for by the Board of County Commissioners of Broward County in Resolution No. 84-171, adopted on January 10, 1984. (Appendix Tab A.) The relevant grounds upon which Respondents sought to enjoin the proposed submission of amendment to the Broward County Charter to the electorate were that the referendum election provided for and called for in Resolution No. 84-171 violates and/or will violate the provisions of Article VIII, § 4, Fla. Const. (Complaint, Count I, paragraph 11), and that Resolution No. 84-171 violates Art. VIII, § 1, Fla. Const. (Complaint, Count II, paragraph 14.)

After notice, an evidentiary hearing was held on February 29, 1984. The circuit court issued a written opinion on March 1, 1984, denying Respondents' request for injunctive relief and holding that the adoption and sub-

stance of Resolution No. 84-171, the Notice of Referendum and the ballot summary language contained therein complied with the provisions of Art. VIII, § 1(c), Fla. Const., Art. VI, § 5, Fla. Const., and §§ 101.161 and 100.342, Fla. Stat. The Court also held that the ballot summary language of the proposed charter amendment did not mislead the voter or deny the voter the opportunity to know and be on notice as to the proposition for which he was to cast his vote (Final Judgment at page 4). As to Count II, the Court held that the proposed amendment to the Broward County Charter relating to handgun management did not effect a transfer of power in violation of Art. VIII, § 4, Fla. Const. (Final Judgment, pages 4 and 5).

On March 8, 1984, Respondents filed a Notice of Appeal to the District Court of Appeal, Fourth District of Florida, seeking review solely of that portion of the Final Judgment which passed upon the constitutionality of the Resolution No. 84-171 and, in their brief on the merits, limited the issue to the provisions of Art. VIII, § 4, Fla. Const. The Fourth District Court of Appeal heard oral argument on September 6, 1984, and on October 10, 1984, issued its opinion reversing the decision of the circuit court. (Appendix Tab B.)

On October 25, 1984, Petitioner filed a Motion for Rehearing and/or Request for the Fourth District Court of Appeal to Certify Question as One of Great Public Importance. (Appendix Tab C.) On December 5, 1984, the Fourth District Court of Appeal issued an opinion (Appendix Tab D) which denied the Petitioner's Motion for Rehearing but certified the question in the form suggested by Petitioner, Broward County, as one of great public importance throughout the State as follows:

QUESTION CERTIFIED

WHETHER, IN A CHARTER COUNTY, A TRANSFER OF POWER OCCURS, THEREBY INVOKING THE PROVISIONS OF ARTICLE VIII, SECTION 4 OF THE CONSTITUTION OF THE STATE OF FLORIDA, WHERE, PURSUANT TO CHARTER AMENDMENT, A COUNTY ORDINANCE PREVAILS OVER A MUNICIPAL ORDINANCE RELATING TO THE SAME SUBJECT MATTER TO THE EXTENT OF ANY CONFLICT.

On December 12, 1984, Petitioner filed a Motion to Stay the October 10, 1984 opinion reversing the judgment of the trial court (Appendix Tab E). Said Motion has not as yet been ruled upon by the Fourth District Court of Appeal. On the same day, Petitioner filed its Notice to Invoke the Discretionary Jurisdiction of the Supreme Court, bringing to this Court the question certified below.

STATEMENT OF FACTS

Petitioner, BROWARD COUNTY, is a political subdivision of the State of Florida operating under a charter form of government which was adopted by the voters of Broward County in a countywide referendum held on November 5, 1974. Pursuant to such voter approval, charter government went into effect in Broward County on January 1, 1975. (Appendix Tab F).

Respondent, City of Fort Lauderdale, is a lawfully incorporated municipality located within Broward County, Florida. Respondent, Robert O. Cox, is a resident, citizen, taxpayer, qualified elector and registered voter of the City of Fort Lauderdale and Broward County.

Section 8.01 of the Broward County Charter authorizes the Board of County Commissioners to propose amendments to the charter subject to referendum of the general electorate upon the affirmative vote of five of its seven members. Pursuant to this authority, on January 10, 1984, the Board of County Commissioners adopted Resolution No. 84-171 which provided and called for a referendum election on March 13, 1984, for the purpose of amending the Broward County Charter to add sections providing the county with the authority to enact an ordinance establishing minimum standards for the purchase, sale or transfer of a handgun in Broward County. (Appendix Tab A.) Specifically, the ordinance would provide for a criminal background investigation, to be completed within ten (10) working days, prior to the delivery of a handgun to the purchaser or transferee. Additionally, the ordinance would set forth procedures and standards for transfers of hand-

guns and licensing of handgun dealers. Broward County already had the power to enact such an ordinance and had, in fact, done so the previous year in Ordinance No. 83-1[1] (Appendix Tab G). However, in response to the enactment of this ordinance, the Respondent, City of Fort Lauderdale, enacted Ordinance No. C-83-16 (Appendix Tab H) providing that no requirements relating to the acquisition, transfer or management of firearms, as defined therein, shall be effective within the City of Fort Lauderdale other than those imposed by federal or state law or city ordinance.

In order to provide for countywide effectiveness of an ordinance relating to handgun management, Petitioner sought to amend Section 8.04 of the Broward County Charter to include this subject with those set forth therein as exceptions to the general provision that any county ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

On March 13, 1984, 62 percent of the electorate voting in the referendum election to amend the Broward County Charter approved the proposal (Appendix Tab I). A precinct-by-precinct breakdown of Fort Lauderdale precincts, furnished to Respondents by the Supervisor of Elections at their request, reveals that the majority of the electorate voting in the referendum election and residing in the City of Fort Lauderdale voted against the proposal (Appendix Tab J).

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1. Ordinance No. 83-1 was repealed by Ordinance No. 83-13, effective May 2, 1983 (Appendix Tab G-1).

On July 1, 1984, Petitioner enacted Ordinance No. 84-41, relating to handguns pursuant to, and within the parameters of, the amendment to the Broward County Charter. (Appendix Tab K.) Said ordinance remains effective on a countywide basis until such time as the Fourth District Court of Appeal denies Petitioner's Motion to Stay Pending Review and Petitioner exhausts all appellate remedies regarding said Motion or unless this Court responds in the affirmative to the question certified by the Fourth District Court of Appeal.

ARGUMENT

AMENDMENT OF A COUNTY HOME RULE CHARTER TO PROVIDE THAT A COUNTY ORDINANCE RELATING TO HANDGUN MANAGEMENT PREVAILS OVER A MUNICIPAL ORDINANCE RELATING TO THE SAME SUBJECT MATTER, TO THE EXTENT OF ANY CONFLICT, DOES NOT INVOKE THE PROVISIONS OF ARTICLE VIII, SECTION 4 OF THE CONSTITUTION OF THE STATE OF FLORIDA.

A. Charter Preemption versus Transfer of Power.

Clear differentiation of the distinction between an actual and complete transfer of a municipal function from the municipality to the county and a county ordinance legitimately superseding otherwise valid municipal ordinances, to the extent of any conflict between the two, pursuant to charter provisions preempting a given area to the county is absolutely critical to the proper resolution of the issue presented in this case. Unlike the state preemption doctrine which allows the legislature to retain exclusive control over regulation of a given area, charter preemption does not allow a charter county to unconditionally bind municipalities through county ordinances. Art. VIII, § 1(g) of the Florida Constitution, which states that the charter shall provide which shall prevail in the event of a conflict between a municipal and a county ordinance, establishes the basis of charter preemption.

In Miami Shores Village v. Cowart, 108 So.2d 468 (Fla. 1958), the Supreme Court affirmed the validity of a traffic control ordinance enacted by the Dade County Board of County Commissioners which, pursuant to the Dade County Home Rule Amendment to the Florida Constitution, adopted in 1957,

authorized regulation and control by the county on a countywide basis of municipal functions and services susceptible to and most effectively carried on under a uniform plan of regulation applicable to the county as a whole. This ordinance expressly nullified and superseded traffic ordinances of municipalities in the county. The rationale of the Cowart decision has been applied by the district courts of appeal on at least three occasions since the adoption of the 1968 Florida Constitution. Additionally, case law makes it clear that requirements of Article VIII, § 4, Fla. Const. are fully applicable to Dade County. Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.2d 981 (Fla. 1981).

In City of North Miami Beach v. Metropolitan Dade County, 317 So.2d 110 (Fla. 3rd DCA 1975), the court held that the charter county had the authority to control municipally-owned water systems to the extent of coordinating water management on an areawide basis. The Third District Court of Appeal rejected the city's contention that utility connections were purely a local matter subject only to municipal regulation.

The Third District Court of Appeal again upheld the preemptive effect of a charter county ordinance in City of Hialeah Gardens v. Dade County, 348 So.2d 1174 (Fla. 3rd DCA 1977). In a 1960 Dade County ordinance, the county had granted a 30-year nonexclusive franchise to Florida Power and Light Company (FP&L) to provide electricity to county residents. After 1960, five municipalities entered into separate franchise agreements with FP&L. One of these cities brought suit, alleging that FP&L was improperly paying a percentage of its revenue to the county. Claiming that the county had exceeded its authority in granting the 1960 franchise, the city sought

both damages and injunctive relief. Relying on Cowart, the court held that electric utility regulation is not a purely local matter but is, in fact, the kind of uniform regulation contemplated by the ordinance and authorized by charter home rule.

Based upon these decisions, it would appear that judicial recognition of charter preemption under the Dade County Home Rule Charter is indeed broad. Petitioner, Broward County, is most anxious to assure the Court that it neither seeks nor requires so broad an application of charter preemption to the Broward County Charter. Petitioner seeks only to have the Court apply the judicially recognized concept of charter preemption to the extent necessary to allow Petitioner to carry out its lawfully conferred ability to provide by charter, or by charter amendment, which shall prevail in the event of a conflict, a municipal or a county ordinance covering the same subject matter.

In City of Coconut Creek v. Broward County Board of County Commissioners, 430 So.2d 959 (Fla. 4th DCA 1983), the Fourth District Court of Appeal, without citing Cowart, affirmed the judgment of the Circuit Court which had held that the county may properly exercise the power of final plat approval without usurping municipal home rule powers. The Broward County Land Development Code, Ordinance No. 81-16, was adopted pursuant to Section 6.05(D) of the Broward County Charter, as amended in November, 1976. The ordinance vested the Board of County Commissioners with veto power over any plat previously approved by a municipality if the plat does not meet the minimum substantive requirements set forth in the ordinance. In reaching its decision, the Fourth District Court of Appeal examined the provisions of

Art. VIII, §§ 1(g) and 2(b), Fla. Const.; § 8.04 of the Broward County Charter which specifically deals with the problem of conflict between a municipal ordinance and a county ordinance; § 8.17 of the Broward County Charter and § 125.86(7), Fla. Stat. (1981), as well as the provisions of general law dealing with land use planning.

This concept of limited charter county dominance has also been approved by the Florida Legislature. Under Art. VIII, § 2(b), Fla. Const., municipalities may exercise any power for municipal purposes except as otherwise provided by law. The Municipal Home Rule Powers Act was enacted in 1973. Section 166.021(3)(d), Fla. Stat., specifically provides municipalities with the power to enact legislation concerning any subject matter upon which the legislature may act except:

> "any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3 and 6(e), Art. VIII of the State Constitution."

Furthermore, in enacting § 125.86(7), Fla. Stat. (1974), the legislature provided that in adopting a charter form of government under one of the options granted in Part IV, Chapter 125, Fla. Stat., the board of county commissioners shall have the power to:

> Adopt, pursuant to the provisions of the charter, such ordinances of countywide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform countywide enforcement and may provide the county government powers in relation to those areas as recognized and as may be amended from time to time by the people of that county.

The Supreme Court, in Sarasota County v. Town of Longboat Key, 355 So.2d 1197 (Fla. 1978), held that § 125.86(7), Fla. Stat. cannot supersede the procedural requirements of Art. VIII, § 4, Fla. Const. But that is not to say that full effect should not be given to the plain meaning of § 125.86 (7), Fla. Stat., where no transfer of power is involved, as in the instant case.

Based on charter preemption, as recognized by the Florida Supreme Court and approved by the legislature, Petitioner was acting well within its power in amending the Broward County Charter in the manner provided by the State Constitution and § 8.01 of the Broward County Charter to provide for the inclusion of the subject of handgun management in § 8.04, which sets forth those areas wherein a county ordinance shall prevail over a municipal ordinance covering the same subject matter to the extent of any conflict. The Broward County electorate has the right, under Art. VIII, §§ 1(c) and 1(g) of the Florida Constitution, to amend its charter with regard to conflict of county ordinances with municipal ordinances and has affirmatively expressed its approval of the determination by its governing body that a handgun management ordinance, if it is to be at all effective, must be enforced countywide.

The foregoing doctrine does not work to the detriment of the municipalities. The preservation of municipal control of municipal functions is also guaranteed in § 8.04 of the Broward County Charter. The first sentence thereof provides that a county ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of that conflict. It is important to remember that in Broward County, as in other

counties, the majority of county residents are also municipal residents. Accordingly, the county/municipal residents are the ultimate arbiters of precise terms of their charter.

Article VIII, Section 4 of the Florida Constitution, Transfer of Powers, provides that:

> By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

Former State Representative Talbot "Sandy" D'Alemberte in his commentary to this section wrote:

> This section was taken from the Revision Commission recommendation. It is an entirely new section which gives to the legislature and to the various local governing units, special districts included, the authority to transfer powers. Such transfers under the 1885 Constitution, when not provided by the general power of the legislature over municipalities and counties, was accomplished by special constitutional amendment (see Article VIII, Section 10(a), Sections 12-21, and Article XX, Section 1). All of these specific provisions related to the assessment and collection of municipal taxes. In 1954, the 1885 Constitution was amended by a general provision (Article VIII, Section 22, House Joint Resolution 851, 1953, adopted in 1954) providing that the tax assessor and the county tax collector may by special or general act, with the approval of the electors of a municipality, be authorized to assess and collect municipal taxes. 26A Fla. Stat. Ann. 331 (1970.)

Based on the foregoing commentary, it would appear that this section was intended to allow local units of government to transfer performance of governmental services without a special constitutional amendment. Since both § 1(g), relating to charter preemption, and § 4 of Article VIII were adopted with the 1968 constitutional revisions, it seems reasonable to conclude that one provision should not be interpreted in a manner which effectively precludes the operation of the other. Therefore, those actions which constitute a transfer of power must comply with the procedural requirements of Art. VIII, § 4, Fla. Const. While at the same time, legitimate exercise of the authority conferred upon a charter county to provide, pursuant to Art. VIII § 1(g), Fla. Const., which shall prevail in the event of a conflict between a county and a municipal ordinance does not require compliance with the procedural requirements set forth in Art. VIII, § 4, Fla. Const.

Charter preemption may be reconciled with the requirements of Art. VIII, § 4, Fla. Const. In keeping with the basic premise of construction of our State Constitution, both charter preemption and transfer of power are limitations rather than grants of power. Charter preemption limits the exercise of home rule authority by a charter county vis-a-vis municipalities to those areas specifically set forth in the county charter which allow for county-wide enforcement. A county charter is not carved in stone. Its provisions must be capable of responding to the changing needs of the citizenry. Accordingly, it may be amended upon a vote of the electors of the county in a special election called for that purpose as provided in Art. VIII, § 1(c), Fla. Const. The procedural requirements of Art. VIII, § 4, Fla. Const. limit

the ability of one taxing entity to transfer a function funded by tax revenues to another taxing entity without the consent of the electorate of each entity.

B. The Fourth District Court of Appeal Misapplied Sarasota County to the Case Sub Judice.

Much confusion in differentiating between legitimate charter preemption, to the extent of countywide enforcement of a county ordinance relating to a specific area, and a transfer of power from a municipality to a county has arisen since the Supreme Court of Florida first addressed the requirements of Art. VIII, § 4, Fla. Const. in Sarasota County v. Town of Longboat Key, 355 So.2d 1197 (Fla. 1978). The principles established by the Court in Sarasota County are first, that the dual referendum requirements of Art. VIII, § 4, Fla. Const., apply to charter as well as noncharter counties and second, that the provisions of Part IV, Chapter 125, Fla. Stat., are not sufficient to satisfy the requirements contained in Art. VIII, § 4, Fla. Const., which alternatively permits a transfer of power to be accomplished "as otherwise provided by law." The Court stated that this language contemplates a separate legislative act addressed to a specific transfer.

None of the parties in Sarasota County ever seriously disputed the fact that a transfer of powers would have been effected by the ordinance proposing five (5) amendments to the Sarasota County Charter. The amendments would have completely transferred the responsibilities of air and water pollution control, parks and recreation, roads and bridges, planning and zoning and police from four (4) Sarasota County cities to the county. The

proposed charter amendments provided that all such services and functions would be provided by county government rather than municipal government. Each proposed amendment also contained the following language:

> "The Board of County Commissioners shall have the power to carry out and enforce this section by appropriate ordinances which, notwithstanding any other provision of this Charter, shall prevail over any municipal ordinances in conflict therewith." Sarasota County, supra at 1198.

In Sarasota County, the county sought to avoid the requirements of Art. VIII, § 4, Fla. Const., by suggesting that charter counties are excluded from Art. VIII, § 4, by reason of Art. VIII, § 1(g), or alternatively, that the transfer requirements of Art. VIII, § 4, are met by § 125.86(7), Fla. Stat. (1975). Sarasota County, supra at 1200. That portion of the Broward County Charter involved herein specifically relates to that section entitled "CONFLICT OF COUNTY ORDINANCES WITH MUNICIPAL ORDINANCES." (Appendix, Tab B, p. 2, footnote 3.) The proposed amendments to the Sarasota County Charter read i.e., "CONSOLIDATION OF AIR AND WATER POLLUTION CONTROL SERVICES AND FUNCTIONS." Sarasota County, supra at 1198. Additionally, it should be noted that the amendments to the Sarasota County Charter dealt with the complete transfer of each of the five (5) functions to county government from the municipalities involved. As stated above, the subject amendment to the Broward County Charter makes no such attempt to transfer or consolidate a municipal function from the city to the county.

It is well established that a decisional conflict sufficient to invoke the jurisdiction of the Supreme Court pursuant to Art. V, §3(b)(3), Fla.Const.,

is created where a district court of appeal expressly accepts an earlier decision of the Supreme Court as controlling precedent in a situation materially at variance with the case relied on. McBurnette v. Playground Equipment Corporation, 137 So.2d 563, 565 (Fla. 1962).

Nowhere in Sarasota County does the Supreme Court define "transfer of power," yet the Fourth District Court of Appeal, expressly relying upon Sarasota County as controlling, found that the amendment to the Broward County Charter effected a transfer of power without compliance with the requirements of Art. VIII, § 4, Fla. Const. (Appendix, Tab B, p. 5.)

Subsequent cases have narrowed the application of Sarasota County. In the first of two cases decided after Sarasota County, the Florida Supreme Court expressly declared that Sarasota County is controlling only in those instances where the entire municipal function is absorbed by county government and where the city no longer would have any supervisory or other control of its police power function. In City of Palm Beach Gardens v. Barnes, 390 So.2d 1188 (Fla. 1980), the City of Palm Beach Gardens appealed the entry of a permanent injunction by the Circuit Court of Palm Beach County which enjoined the city from implementing a contract between itself and the Sheriff of Palm Beach County for the performance of law enforcement services for the city at a stated price on the grounds that the contract had only been approved in a referendum by city electors and was therefore violative of Art. VIII, § 4, Fla. Const., because it had not been separately approved by county voters.

Addressing the issue of whether law enforcement agreements between municipalities and sheriffs are governed by Art. VIII, § 4, Fla. Const., the Supreme Court of Florida stated:

> The sheriff, although a county official, is not the county taxing entity contemplated by section 4. In our opinion, the framers of section 4 had no intention of applying its provisions to a sheriff as a county official, and his contracting for services with a municipality is clearly different from a municipality transferring or contracting away the authority to supervise and control its police powers to the county government. This is why the instant case is not controlled by Sarasota County v. Town of Longboat Key, 355 So.2d 1197 (Fla. 1978), in which the entire police power function of the Town of Longboat Key was being absorbed by the county government and the town no longer would have had any supervisory or other control over its police power function. City of Palm Beach Gardens v. Barnes, supra at 1189.

Likewise, in Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.2d 981 (Fla. 1981), the Supreme Court of Florida stated:

> In Sarasota, the county sought to transfer certain functions or powers to itself from the cities. Had the ordinances been voted on and approved, the county would have acquired full responsibility for five functions exercised by the city. No longer would the cities involved have had any control over those functions, which would have become the responsibility of the county alone. Such is not the case here. Miami Dolphins, Ltd., supra at 984-985.

Twice since its decision in Sarasota County, the Florida Supreme Court has interpreted the phrase "transfer of power" to require the complete divestment of a certain power or function from one government entity coupled with the complete acquisition of said power or function by another government

entity. In narrowing the applicability of Sarasota County to complete divestment of a municipal function, the Supreme Court has preserved the viability of charter preemption. It is readily apparent that this interpretation was not applied by the Fourth District Court of Appeal in the instant case.

Review of the October 10, 1984 opinion of the Fourth District Court of Appeal demonstrates that it misapprehended the facts of this case, as well as the application of law to those facts, in concluding that Broward County sought to amend its charter to assume exclusive authority over certain aspects of handgun management within the entire county. Three times in the opinion of October 10, 1984, the Fourth District Court of Appeal refers to assumption by the county of "exclusive authority" concerning the regulation of handguns. (Appendix, Tab B, pp. 1, 2 and 5.) Nothing contained in § 8.04 of the Broward County Charter suggests or effects any exclusivity of power on the part of either the county or the municipalities.

Insofar as the facts of this case are concerned, at no time either before or after the charter amendment in question, did either Broward County or the municipalities located therein enjoy "exclusive power" to enact legislation concerning handgun management. The operative word in § 8.04 of the Broward County Charter is "prevail." Section 8.04 does not preclude the county or a municipality from enacting legislation regarding any subject matter. Its purpose is to determine which ordinance shall prevail in the event of a conflict, to the extent of such conflict.

The Fourth District Court of Appeal incorrectly rejected Petitioner's argument that § 8.04 of the Broward County Charter allows for the exercise

of concurrent and overlapping jurisdiction between municipalities and the county; that the cities would continue to retain the authority to legislate in the area of handgun management and that only in the event of a conflict between a municipal ordinance and the minimum standards set forth in the county ordinance would the county ordinance prevail. The set of facts presented in this case is clearly within the purview of charter preemption and does not involve the transfer of power.

The only point that Petitioner, Broward County, concedes is that as a result of the charter amendment, the Respondent, City of Fort Lauderdale, will no longer have the "power to opt out" of the Broward County Handgun Management Ordinance. However, it has never been established by the Respondents that a limitation upon a municipality's so-called "power to opt out," and thereby avoid the effectiveness of a county ordinance, is a municipal function contemplated by Art. VIII, § 4, Fla. Const.

CONCLUSION

Based upon the foregoing, it is readily apparent that the provisions of Art. VIII, §§ 1(c) and (g), Fla. Const., relating to charter governments, would be meaningless if indiscriminately governed by the procedural requirements of Art. VIII, § 4, Fla. Const. Application of the constitutionally prescribed procedural requirements governing the transfer of power to situations not contemplated by Art. VIII, § 4 of the Florida Constitution will surely result in the complete erosion of the distinction between charter preemption and a transfer of power.

This case involves much more than the continuing validity of Broward County's Handgun Management Ordinance. Affirmance of the opinion of the Fourth District Court of Appeal will effectively sound the death knell for charter preemption and thereby adversely affect home rule government throughout the State of Florida. Clarification, by this Court, of the distinction between legitimate charter preemption pursuant to Art. VIII, § 1(g), Fla. Const., as opposed to a transfer of power regulated by Art. VIII, § 4, Fla. Const., is essential to the continuing viability of home rule in Florida counties. Misapplication of the Sarasota County decision has and will seriously hinder home rule counties from fully exercising charter powers.

Based upon judicial and legislative recognition of charter preemption, amendment of a county charter to provide that a county ordinance relating to handgun management shall prevail over a municipal ordinance relating to the same subject matter, to the extent of any conflict, does not invoke the provisions of Art. VIII, § 4 of the Florida Constitution.

The question certified by the Fourth District Court of Appeal should be answered in the negative and the October 10, 1984 opinion of the Fourth District Court of Appeal should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States mail to EUGENE L. HEINRICH, ESQUIRE, McCune, Hiaasen, Crum, Ferris & Gardner, Attorneys for Respondents, Post Office Box 14636, Fort Lauderdale, Florida 33301; and SAMUEL S. GOREN, ESQUIRE, Josias and Goren, Attorneys for Appellee, Jane Carroll, 3099 East Commercial Boulevard, Fort Lauderdale, Florida 33308, on this 8th day of January, 1985.

By: Janet Lander
JANET LANDER
Assistant General Counsel

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