IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO: 67,630

DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT, CASE NO: 84-2102

MAURICE FERRE,

Petitioner,

vs.

THE STATE OF FLORIDA, ex rel.
JANET RENO, as State Attorney
of the Eleventh Judicial Circuit,

Respondent.

DISCRETIONARY PROCEEDINGS TO REVIEW A
DECISION OF THE DISTRICT COURT OF
APPEAL OF FLORIDA, THIRD DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF AUTHORITIES

[1]Throughout this brief the statutes in issue, §106.08(2), and §106.141(10) Fla. Stat. are cited as 1981 statutes. This is because the District Court in its opinion, cited to the 1981 statutes. §§106.08(2) and 106.141(10) Fla. Stat. as set forth in the 1983 statutes are identical to the 1981 statutes.

TABLE OF AUTHORITIES (Continued)

I.

JURISDICTIONAL STATEMENT

Petitioner, MAURICE FERRE ("FERRE") invokes the discretionary jurisdiction of this Court pursuant to Art. V, §3(b)(3), Fla. Const. and Fla. R. App. P. Rule 9.030(a)(2)(A)(i)(ii)(and iv)

Jurisdiction is invoked because the decision of the District Court of Appeal of Florida, Third District ("District Court") in Ferre v. The State of Florida, ex rel. Janet Reno, as State Attorney of the Eleventh Judicial Circuit, No. 84-2102, (Fla. 3d DCA August 13, 1985):

(a) expressly declares valid a state statute, to wit: §106.08(2), Fla. Stat. (1981) and §106.141(10), Fla. Stat. (1981);

(b) expressly construes a provision of the federal constitution, to wit: U.S. Const. amend I; and

(c) is in express and direct conflict with the decision of this Court in Sadowski v. Shevin, 345 So.2d 330 (Fla. 1977).

A conformed copy of the decision in Ferre v. State, supra, is contained in the appendix attached hereto.

II.

STATEMENT OF THE CASE AND FACTS

Ferre is the Mayor of the City of Miami and was re-elected to that office in November, 1981. Following his re-election in 1981, FERRE accepted, retained and expended $35,000 in post-election contributions of $1,000 each. (A.1).

Thereafter, Respondent filed this action against FERRE, alleging that his acceptance and retention of the post-election contributions violated §§106.141(10) and 106.08(2), Fla. Stat. (1981) and sought the imposition of a $1,000 civil penalty for FERRE's acceptance of the contributions and a penalty of twice the amount contributed for his failure to return the contributions. (A.2).

FERRE asserted that §§106.141(10) and 106.08(2) Fla. Stat. (1981), which prohibit a candidate from accepting post-election contributions and require their return to the contributers without regard for the reasons for the contributions, infringe upon the free exercise of his political speech and association and thus violate rights guaranteed him by the First Amendment to the Constitution of the United States ("First Amendment"). FERRE also asserted that mandatory imposition of a penalty of twice the amount contributed violated the constitutional prohibition against excessive fines of Art. I, §17 of the Florida Constitution. (A.3).

The trial court entered summary judgment for Respondent, but limited the civil penalty imposed for the violation of §106.08(2) Fla. Stat. (1981), to $35,000. (A.3).

FERRE timely filed an appeal, and Respondent cross-appealed. On August 13, 1985, the District Court filed its decision affirming the trial court's ruling that the statutes were constitutional, reversing that portion of the judgment limiting the civil penalty to $35,000 and remanding the cause to the trial court with directions to modify the penalty from $35,000 to $70,000. (A.1-11).

III.

ISSUES PRESENTED FOR REVIEW

A

WHETHER THE DECISION OF THE DISTRICT COURT THAT §106.08(2) AND §106.141(10), FLA. STAT. (1981) ARE VALID, EXPRESSLY DECLARES VALID STATE STATUTES AND PROVIDES THIS COURT WITH DISCRETIONARY JURISDICTION TO REVIEW THE DECISION?

B

WHETHER THE DECISION OF THE DISTRICT COURT EXPRESSLY CONSTRUED A PROVISION OF THE FEDERAL CONSTITUTION AND PROVIDES THIS COURT WITH DISCRETIONARY JURISDICTION TO REVIEW THE DECISION?

C

WHETHER THE DECISION OF THE DISTRICT COURT THAT §106.08(2) AND §106.141(10), FLA. STAT. (1981) WHICH CREATE A DESIGNATED POLITICAL SEASON ARE CONSTITUTIONAL IS IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISION IN SADOWSKI v. SHEVIN, 345 So.2d 330 (FLA. 1977) AND PROVIDES THIS COURT WITH DISCRETIONARY JURISDICTION TO REVIEW THE DECISION?

IV.

SUMMARY OF THE ARGUMENT

The District Court's decision held that §§106.08(2) and 106.141(10), Fla. Stat. (1981) were constitutional. In so doing, the District Court expressly declared the statutes valid. The District Court explained and defined the impact of the First Amendment on the statutes in issue thereby expressly construing a provision of the federal constitution. Further, by declaring the statutes constitutional, the decision of the District Court approved the creation of a "political season" which is in express and direct conflict with this Court's

decision in Sadowski v. Shevin, 345 So.2d 330 (Fla. 1977).

Accordingly, this Court's discretionary jurisdiction is properly invoked pursuant to Art. V. §3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(i), (ii) and (iv). Because of the fundamental importance to our political system of the decision, this Court should exercise its jurisdiction to review the decision.

V.

ARGUMENT

A

THE DECISION OF THE DISTRICT COURT THAT §106.08(2) AND 106.141(10), FLA. STAT. (1981) ARE VALID EXPRESSLY DECLARES VALID STATE STATUTES AND PROVIDES THIS COURT WITH DISCRETIONARY JURISDICTION TO REVIEW THE DECISION.

The District Court expressly declared that §§106.08(2) and 106.141(10) Fla. Stat. (1981) were valid, concluding that "the statutes under attack are not unconstitutional" (A.4). Accordingly, the jurisdiction of this Court is properly invoked pursuant to Art. V, §3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(i).

B

THE DECISION OF THE DISTRICT COURT EXPRESSLY CONSTRUED A PROVISION OF THE FEDERAL CONSTITUTION AND PROVIDES THIS COURT WITH DISCRETIONARY JURISDICTION TO REVIEW THE DECISION.

In reaching its decision in the instant case, the District Court expressly construed the First Amendment. The District Court opined that:

> [B]ecause even a significant interference with the freedom of political association will be sustained when the State, as here "demonstrates a sufficiently important interest and means closely drawn to avoid unnecessary abridgment of associational freedoms," we conclude that the statutes under attack are not unconstitutional. (A. 4) (citations omitted).

The District Court then went on to explain how, in its opinion, the statutes in issue were supported by compelling state interests and were sufficiently narrow and concluded:

> [W]hen we weigh these compelling governmental interests against the minimal impact on First Amendment rights, we can only conclude that the regulations are not constitutionally infirm. (A. 6).

Rule 9.030(a)(2)(a)(ii) provides that this Court may exercise jurisdiction when a district court has construed a constitutional provision. In this context, construe means "to explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision." Armstrong v. City of Tampa, 106 So.2d 407, 409 (Fla. 1958); Ogle v. Pepin, 273 So.2d 391, 392 (Fla. 1973). The District Court's opinion "explains, defines or overtly expresses a view which eliminates some existing doubt as to a constitutional provision...." Rojas v. State, 288 So.2d 234, 236 (Fla. 1974).[2]

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[2]Although Armstong, Ogle and Rojas were decided at a time when construing a constitutional provision was within this Court's mandatory jurisdiction, "(t)he shift of this provision from the Court's mandatory jurisdiction provides no reason to suggest that prior judicial interpretations of the term "construe" will not remain applicable." England Hunter & Williams, Constitutional Jursidiction of the Supreme Court of Florida: 1980 Reform, 32 U. Fla. L. Rev. 147, 185 (1980).

The decision in the instant case dealt with a question of first impression. It did not merely apply a constitutional provision to a given set of facts. Instead, the District Court decision interpreted and expressly construed the First Amendment as it applied to campaign finance laws. Accordingly, jurisdiction of this cause is properly invoked pursuant to Art. V, §3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(ii).

C

THE DECISION OF THE DISTRICT COURT THAT §106.08(2) AND 106.141(10) FLA. STAT. (1981) WHICH CREATE A DESIGNATED POLITICAL SEASON ARE CONSTITUTIONAL IS IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISION IN SADOWSKI v. SHEVIN, 345 So.2d 330 (Fla. 1977) AND PROVIDES THIS COURT WITH DISCRETIONARY JURISDICTION TO REVIEW THE DECISION.

In Sadowski v. Shevin, supra, this Court held that a statute which imposed time bars on political activity was an unconstitutional violation of a candidate's right of free speech.[3] The statute at issue in Sadowski, prohibited a candidate from making political expenditures relating to advertising or rental of halls to address the public prior to the candidate's qualification. The district court had upheld

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[3]Although not a basis for conflict jurisdiction, the Attorney General of Florida has opined that "any other statutory provision which constitutes a limitation on campaign spending by confining expenditures to a designated and limited time period or 'political season' would appear to suffer from the same constitutional infirmity." 1984 Op. Attorney General Fla. 84-31 (March 30, 1984).

the statute because it did not prohibit all forms of political communication prior to qualification. Sadowski v. Shevin, 351 So.2d 44 (Fla. 3d DCA 1976). Although the statutory prohibition in Sadowski was a limited one, this Court held it unconstitutional as "a restraint of free speech and a restriction on the quantity of a candidate's communication and diversity of political speech ...." Sadowski v. Shevin, 345 So.2d at 332. Moreover, this Court held that a statute which creates a designated "political season" is unconstitutional.

Contrary to the mandate of this Court's Sadowski decision, the District Court approved statutes which create a "political season". The District Court's position that Sadowski was simply an expenditure case misapplies Sadowski. This Court found the statute in Sadowski unconstitutional because it "denies to candidates their fundamental right to speak to political issues ...." Sadowski v. Shevin, 345 So.2d at 332. Although contributions are afforded less constitutional protections than expenditures, it is clear that even contribution limitations would be invalid "if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." Buckley v. Valeo, 424 U.S. 1, 21, 96 S.Ct. 612, 46 L.Ed. 2d 659 (1976). Since a political candidate needs contributions to make expenditures, the prohibition on post-election contributions effectively reduces expenditures and thus limits political speech.

The decision of the District Court is in express and direct conflict with this Court's decision in Sadowski v.

Shevin, supra, and jurisdiction of this Court is properly invoked pursuant to Art. V. §3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(iv).

VI.

REASONS FOR ACCEPTING JURISDICTION

The decision of the District Court upheld the constitutional validity of §§106.08(2) and 106.141(10) Fla. Stat. (1981). Those sections prohibit the acceptance, retention and expenditure of post-election political contributions. The District Court decision prevents both defeated candidates and elected officials from accepting post-election contributions for the purpose of defraying a campaign deficit.

Campaign "contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities." Buckley v. Valeo, 424 U.S. at 14. The protections afforded by the First Amendment are afforded their broadest scope in the context of political campaigns. "[I]t can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." Monitor Patriot Co. v. Roy, 401 U.S. 265, 272, 91 S.Ct. 621, 28 L.Ed. 2d 33 (1975).

Because it deals with an issue of first impression, the District Court decision impacts on all state, county and municipal candidates and elected officials throughout the State of Florida. By upholding a prohibition on the acceptance and use of post-election contributions, even where they are used to defray a campaign deficit, the instant decision severely

impacts both the quantity and quality of political advocacy throughout the state, because:

> virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio and other mass media for news and information has made these expensive modes of communications indispensable instruments of effective political speech.

Buckley v. Valeo, 424 U.S. at 19.

The Buckley Court's observation is of even greater significance when post-election contributions are used to defray a campaign deficit because "[f]ew candidates finish campaigns in the black." The National Association of Attorneys General, Campaign Finance Laws: Legislative Approaches and Constitutional Limitations (1977).

The issues raised in this case go the very heart of our system of financing political campaigns. The importance of those issues is exemplified by the procedural posture of Sadowski v. Shevin, supra. At the time of this Court's decision in Sadowski, the questions raised had become moot. However, this Court felt constrained to retain jurisdiction because the constitutionality of the statute under attack in Sadowski was "a matter of great public importance in the administration of the law and is of general interest to the public." Sadowski v. Shevin, 345 So.2d at 331-32. Because of the statewide impact of the District Court's decision on fundamental First Amendment activities and because the matters

are of great importance and interest, it is respectfully submitted that this Court should exercise its discretionary jurisdiction to review the decision of the District Court.

CONCLUSION

Any one of the foregoing reasons provides a basis upon which this Court may exercise its discretionary jurisdiction. The Petitioner respectfully requests this Honorable Court to accept jurisdiction of this cause to review the decision of the District Court.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFIY that a true and correct copy of the foregoing Petitioner's Brief on Jurisdiction and attached Appendix was furnished by mail this 18th day of September, 1985 to Jim Smith, Esquire, Attorney General, Department of Legal Affairs, 701 N. W. 2nd Avenue, Miami, Florida 33128, and Anthony C. Musto, Esquire, Assistant State Attorney, Office of the State Attorney, 1351 N.W. 12th Street, Miami, Florida 33125.

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