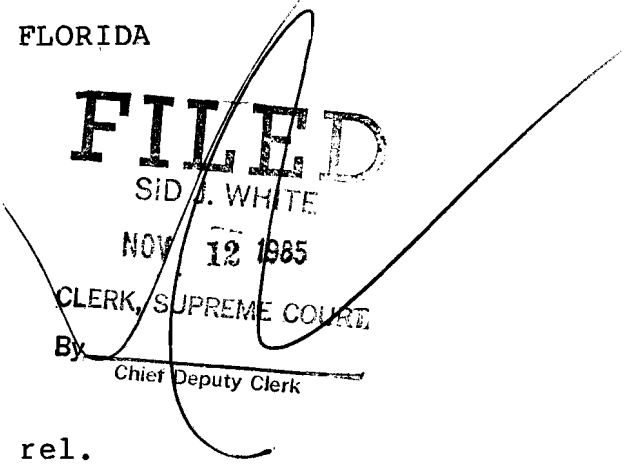
IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,630



MAURICE FERRE,

Petitioner,

vs.

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

Respondent.

* * * * * * * * * * * * * * * *

ON DISCRETIONARY REVIEW

* * * * * * * * * * * * * * * *

BRIEF OF RESPONDENT ON JURISDICTION

JIM SMITH
Attorney General

JANET RENO
State Attorney for the Eleventh
Judicial Circuit of Florida

ANTHONY C. MUSTO
Assistant State Attorney
1351 Northwest 12th Street
Miami, Florida
(305) 547-7093

TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTRODUCTION

Petitioner was a defendant in the trial court and the appellant, cross-appellee on appeal. Respondent was the plaintiff in the trial court and the appellee, cross-appellant on appeal. Parties will be referred to in this brief as "Defendant" and "the State." The symbol "A" will constitute a reference to the appendix filed along with Defendant's brief on jurisdiction.

STATEMENT OF THE CASE AND FACTS

Defendant is the mayor of the City of Miami. Following his reelection to office on November 10, 1981, Defendant accepted and retained $35,000.00 in $1,000.00 post-election contributions. The contributions were obtained for Defendant by one Ben Leon, Jr.

On November 3, 1983, the State filed a civil complaint against Defendant and his deputy campaign manager, Maria C. Petit, alleging violations of Chapter 106 of the Florida Statutes, dealing with campaign financing. Subsequently, an amended complaint was filed. The amended complaint charged that Defendant violated Florida Statutes §106.141(10) by accepting the $35,000.00 in contributions and that Defendant violated Florida Statutes §106.08(2) by not returning the contributions. The complaint asked that the trial court enter an order assessing civil penalties in the amount of $1,000.00 for the violation of Florida Statutes §106.141(10) and, as provided in Florida Statutes §106.08(5), in the amount of $70,000.00, a sum equal to twice the amount of contributions unlawfully accepted and not returned, for the violation of Florida Statutes §106.08(2).

Defendant, by means of motion to dismiss, motion to strike and answer and affirmative defenses, challenged the constitutionality of Florida Statutes §§106.08(2) and 106.141(10), asserted that the money received did

not constitute contributions under the law and argued that the mandatory penalty provision of Florida Statutes §106.08(5) violated the separation of powers provisions of the Florida Constitution.

The court denied Defendant's motion to dismiss and reserved ruling on the motion to strike. The State moved for summary judgment and the motion was granted. The trial court found Florida Statutes §§106.08(2) and 106.141(10) constitutional. The court imposed a $1,000.00 penalty for the violation of Florida Statutes, §106.141(10). As for the violation of Florida Statutes §106.08(2), the court imposed a penalty of $35,000.00. A final judgment was entered reflecting these conclusions.

On appeal, the Third District Court of Appeal upheld the trial court's finding that the statutes in question were constitutional. Additionally, the court agreed with the position taken by the State on cross-appeal that the trial court was required to impose a fine of $70,000.00 and the case was therefore reversed in part and remanded with directions to modify the penalty.

ISSUES PRESENTED

POINT ONE

WHETHER THE DECISION OF THE DISTRICT COURT EXPRESSLY DECLARES VALID A STATE STATUTE?

POINT TWO

WHETHER THE DECISION OF THE DISTRICT COURT EXPRESSLY CONSTRUES A PROVISION OF THE FEDERAL CONSTITUTION, OR CONFLICTS WITH THE DECISION IN SADOWSKI v. SHEVIN, 345 So.2d 330 (FLA. 1977)? (DEFENDANT'S POINTS TWO AND THREE)

SUMMARY OF ARGUMENT

The State recognizes that there does exist a basis upon which this court can exercise its discretionary jurisdiction, inasmuch as the district court decision does expressly declare valid Florida Statutes §§106.08(2) and 106.141(10).

The State submits, however, that this court should decline to exercise its discretionary jurisdiction because the district court's decision that the statutes are valid is so plainly correct that there is no reason for this court to engage in a full review of this case.

The statutes in question prohibit the acceptance and retention by a political candidate of contributions made after an election. Such a restriction is clearly supported by at least two compelling state interests, the prevention of corruption and the appearance of corruption and the goal of allowing the public to be informed before an election of the identities of persons contributing to the campaign of a particular candidate.

As detailed in the district court's decision, these interests have been recognized by the United States Supreme Court and cannot be disputed. Given the existence of these interests, there can be no doubt that the statutes in question are valid. Thus, full review by this court would serve no purpose. This court should therefore decline to accept jurisdiction or should summarily affirm the district court's decision.

ARGUMENT

POINT ONE

THE DECISION OF THE DISTRICT COURT EXPRESSLY DECLARED VALID A STATE STATUTE.

The State agrees that the decision of the Third District Court of Appeal in the present case expressly declared valid Florida Statutes

§§106.08(2) and 106.141(10) and that this fact can properly form the basis for the exercise of this court's discretionary jurisdiction. Art. V, § 3(b)(3), Fla. Const.; Fla.R.App.P. 9.030(a)(2)(A)(i).

The State submits, however, that this court should decline to exercise its discretion and should deny the petition for review or should summarily affirm the district court's decision.

The State's argument is based upon the fact the district court's decision is so plainly correct on its face that there is no point in engaging in full review of Defendant's claims. Such action would only cause a significant waste of time, effort and resources by both parties and by this court.

The statutes that were held valid prohibit the acceptance and retention by a political candidate of contributions made after an election. The district court opinion makes very clear the existence of two compelling state interests that support the statutes.

The first of these, which, as the district court noted "should be obvious (A 4)," is the prevention of corruption and the appearance of corruption. This interest has been plainly recognized as legitimate and compelling by the United States Supreme Court. In this respect, the district court stated:

> What, then, are the sufficiently important or compelling state interests which are advanced by the statutes under consideration? The first, as should be obvious, is the prevention of corruption and the appearance of corruption. Surely, the Legislature could determine that a post-election contribution to a winning candidate could be a mere guise for paying the officeholder for a political favor. At the least, such a contribution, if not in fact corrupt, could be viewed by the public as corrupt. As the United States Supreme Court recently noted in Federal Election Commission v. National Conservative Political Action Committee, 53 U.S.L.W. 4293, 4298 (U.S. March 18, 1985), "[t]he hallmark of

corruption is the financial quid pro quo: dollars for political favors." Indeed, in Buckley v. Valeo, the Court solely relied on the governmental interest in preventing corruption and the appearance of corruption as its basis for upholding the limitations on the amount of contributions:

> "It is unnecessary to look beyond the Act's primary purpose--to limit the actuality and appearance of corruption resulting from large individual financial contributions--in order to find a constitutionally sufficient justification for the $1,000 contribution limitation . . . . To the extent that large contributions are given to secure political quid pro quos from current and potential office holders, the integrity of our system of representative democracy is undermined. . . .
>
> "Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in financial contributions."
>
> Buckley v. Valeo, 424 U.S. at 26-27, 96 S.Ct. at 638-39, 46 L.Ed.2d at 692.

(A 4-5; footnote omitted)

The other compelling interest relied on by the district court, the goal of allowing the public to be informed before an election of the identities of persons contributing to the campaign of a particular candidate, has also been recognized by the United States Supreme Court. As stated in the decision below:

> A second compelling governmental interest is the goal of allowing the public to be informed before an election of the identities of persons contributing to the campaign of a particular candidate. In the absence of the challenged statutes, a candidate could conceal the identity of supporters until after the election when it is too late for the revelation to be considered by the voters in casting their ballots. Again, the State's interest in this regard, as recognized in Buckley v. Valeo, is significant:
>
> > "[D]isclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office."
> >
> > Buckley v. Valeo, 424 U.S. at 66-67, 96 S.Ct. at 657, 46 L.Ed.2d at 715 (footnote omitted).
>
> (A 5-6; footnote omitted)

The compelling nature of these interests is so clear that the conclusion that the challenged statutes are valid is one that is plainly compelled. Thus, the State submits that no purpose would be served by full review of Defendant's claims and that this court should decline to exercise its discretionary jurisdiction or should summarily affirm the decision of the district court.

POINT TWO

THE DECISION OF THE THIRD DISTRICT COURT DOES NOT EXPRESSLY CONSTRUE A PROVISION OF THE FEDERAL CONSTITUTION, NOR DOES IT CONFLICT WITH THE DECISION IN SADOWSKI v. SHEVIN, 345 So.2d 330 (FLA. 1977). (DEFENDANT'S POINTS TWO AND THREE)

Since the decision of the district court did, as discussed in the argument to the first point of this brief, expressly declare valid a state statute, there does exist a basis for the exercise of this court's discretionary jurisdiction and the question for this court's consideration is therefore whether or not to exercise its discretion. Given this fact, it is really of no concern whether either or both of Defendant's other points also provide a basis for jurisdiction. Obviously, if this court agrees with the State's position that the district court's decision is so plainly correct that there is no reason to exercise jurisdiction, it will deny the petition regardless of how many bases for jurisdiction might exist. Conversely, if this court decides to accept jurisdiction, it is immaterial if jurisdiction can be based on one ground or a greater number of grounds.

Nonetheless, it should be briefly pointed out that the jurisdictional claims made by Defendant in his second and third points are without merit.

The decision under review does not construe a provision of the federal consitution. It finds that the statutes in question are valid under the First Amendment, but does not explain, define or eliminate any doubt about the constitutional provision itself. Thus, it does not construe the provision. See Rojas v. State, 288 So.2d 234 (Fla. 1974); Armstrong v. City of Tampa, 106 So.2d 407 (Fla. 1958).

Additionally, the decision under review does not conflict with the decision in Sadowski v. Shevin, 345 So.2d 330 (Fla. 1977). The distinctions between the two cases were discussed by the district court:

Ferre, however, argues that Sadowski v. Shevin, 345 So.2d 330 (Fla. 1977), dictates a contrary result. There, the Florida Supreme Cout invalidated a statute that precluded a candidate from making major political expenditures prior to qualifying for office. We find Sadowski plainly distinguishable from the present case. First, the statute in Sadowski, being directed to expenditures, was a much more severe intrusion into First Amendment rights than are the present statutes. Indeed, this very distinction between expenditures, as in Sadowski, and limitations on contributions, as here, formed the basis for the Court in Buckley to find unconstitutional limits on expenditures by candidates, while upholding limits on conributions. See Federal Election Commission v. National Conservative Political Action Committee, 53 U.S.L.W. at 4296.

> "[A]lthough the Act's contribution and expenditure limitations both implicate fundamental First Amendment interests, its expenditure celings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions."
>
> 424 U.S. at 23, 96 S.Ct. at 636, 46 L.Ed.2d at 690.

Second, none of the compelling governmental interests which support the statutes here under consideration were involved in Sadowski, and, indeed, the governmental interest advanced in support of the statute in Sadowski--to prevent less than serious candidates from seeking office--was found not to be served by the statute limiting expenditures.

(A 6-7; footnote omitted)

Thus, it is apparent that neither Defendant's second or third points provide a basis for jurisdiction.

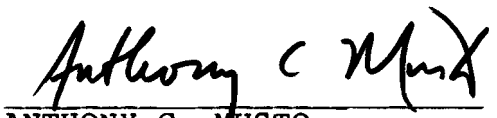
CONCLUSION

Based upon the foregoing argument and authorities, the State respectfully submits that the petition for review should be denied or the district court's decision should be summarily affirmed.

Respectfully submitted,

JIM SMITH
Attorney General

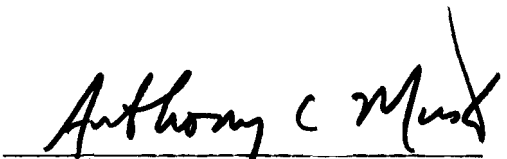
JANET RENO
State Attorney



ANTHONY C. MUSTO
Assistant State Attorney
1351 Northwest 12th Street
Miami, Florida
(305) 547-7093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was forwarded to Mitchell R. Bloomberg, Esquire, Fine Jacobson Schwartz Nash Block and England, P.A., 777 Brickell Avenue, Suite 700 Flagship Center, Miami, Florida 33131, on this the 8 day of November, 1985.



ANTHONY C. MUSTO
Assistant State Attorney