Sam Falzone
vs.
STATE OF FLORIDA,

Appellant,

vs

~~ROSS J. GRECO, SUSAN GRECO,~~ SAM FALZONE, and ~~HEATHER EVERETT,~~

Appellees.

THE SUPREME COURT
STATE OF FLORIDA

FILED
SID J. WHITE
JAN 29 1986
CLERK, SUPREME COURT
By ______ Chief Deputy Clerk

Case No. 68,178

JURISDICTIONAL BRIEF

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JURISDICTION

The jurisdiction of this Court is invoked pursuant to Article V, Section 3 (b) (3) Florida Constitution and Rule 9.030 (a) (2) (A) (i) because the decision of the Second District Court of Appeal expressly and incorrectly declared valid state statutes §106.03 and §106.19. Appellee submits that said statutes are not valid and that the authority relied upon by the Second District Court of Appeal to uphold the statute is not on point, pertains to civil cases, and clearly disregards existing and correct legal authority as to statutory construction for penal statutes.

FACTS

Appellee, SAM FALZONE, was charged by indictment alleging:

> "That during the month of August, 1984, and continuing through the month of September, 1984 and on divers days in between, in Pasco County, Florida, Ross J. Greco, Susan Greco, SAM FALZONE, and Heather Everett, acting as a political committee, did anticipate receiving contributions or making expenditures during a calendar year in an aggregate amount exceeding $500.00, and did knowingly and willfully fail to file a statement of organization as provided by Florida Statute 106.03, within ten (10) days after its organization or within ten (10) days after the date on which it has information which causes the committee to anticipate that it will receive contributions or make expenditures in excess of $500.00 contrary to Chapters 106.03 and 106.19, Florida Statutes, and against the peace and dignity of the State of Florida."

Upon the motion of the County Court entered an Order dismissing the charges against them on the following grounds:

1. §106.03 is unconstitutionally vague and overbroad and fails to place ordinary citizens on notice as to what conduct is prescribed and when compliance is required.

2. The indictment does not charge a crime because §106.19 does not include §106.03 "violations" within its provisions.

3. The indictment is deficient in that it fails to charge that each Defendant knowingly and willfully acted as a political committee.

The portion of §106.03 germane to the issue on appeal states as follows:

> "Each political committee which anticipates receiving contributions or making expenditures during a calendar year in an aggregate exceeding $500.00 or which is seeking the signatures of registered electors in support of and initiative shall file a statement of organization as provided in subsection 3 within 10 days after its organization or, if later, within 10 days after the date on which it has information which causes the committee to anticipate that it will receive contributions or make expenditures in excess of $500.00..."

Subject to certain exceptions not pertinent to the issue on appeal §106.011 defines political committee as "political committee" means a combination of two or more individuals, or a person other than an individual, the primary or incidential purpose of which is to support or oppose any candidate, issue, or political party, which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of $500.00; "political committee" also means the sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors...

The State of Florida appealed the dismissal of the charges to the Second District Court of Appeal directly and specifically reviewed §106.03 and §106.011 and declared said statutes to be valid. The Appellate Court conceded in its opinion that there exists:

> "the anomaly that section 106.03 requires a political committee to file a statement of organization whenever it anticipates receiving contributions or making expenditures of more than $500.00; yet under the definition contained in section 106.11 (1), a political committee only comes into existence after it has accepted contributions or made expenditures of more than $500.00 within a calendar year"

Essential to the Appellate Court's rationale of upholding the constitutionality was the Court's reliance on Beebe v. Richardson, 156 Fla. 559, 23 So.2d 718 (1945) for the proposition that "where the wording of a statute taken literally conflicts with the plain legislative intent, the wording must yield to the legislative purpose. The Appellate Court went on to say:

> "unquestionably, the legislature intended that there be a public disclosure of persons who have organized to seek substantial contributions or make substantial expenditures for a political purpose. Thus, we hold that §106.03 applies to those who anticipate obtaining contributions or making expenditures in excess of $500.00 in a calendar year and who are otherwise defined in §106.011 (1), even though such contributions have not yet been obtained or such expenditures have not yet been made."

SUMMARY OF ARGUMENT

The rules of construction for interpreting a statute and the priorities for determining the constitutionality of a statute are not the same for a statute with only civil implications as opposed to a statute penal in nature. The Second District improperly relied on Beebe v. Richardson, supra in applying the rule of law stated above.

Legislative intent is not the primary rule of construction for interpreting penal statutes. Instead, the primary concern is that the citizens are clearly and specifically put on notice as to the prohibited conduct. This is true, because the legislature has so stated in §775.021 (1), Fla.Stat. (1975) and because this Court has consistently so stated for nearly a century. Ex parte Bailey, 23 So. 552 (Fla. 1897); Ex parte Amos, 112 So. 289 (1927); State v. Wershow, 343 So.605 (Fla. 1977); Earnest v. State, 351 So.2d 957 (Fla. 1977).

If one was to assume for the sake of argument that there exists a combination of two or more individuals whose primary or incidental purpose is to support or oppose any candidate, issue or political party, when do they actually become a "political committee" under Florida law and thereby subject to filing "a statement of organization" as set

out in §106.03, Fla.Stat.? The terms of §106.011 (1), Fla.Stat., which are supposed to be the definitions that apply to Chapter 106, Fla.Stat. say that the political committee actually exists when the combination of individuals "accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of $500.00... " A common understanding of the terms contained therein clearly means the combination of individuals must actually accept or spend $500.00 before it is considered a political committee and thereby subject to laws for political committees.

§106.011 (1), Fla.Stat., doesn't say they have become a political committee if they "anticipate" receiving or spending $500.00. Appellee thought anyone would agree that it would be unreasonable to have a statute in the United States create potential criminal conduct based on citizens "anticipation" of something happening. But that is exactly what the wording of the legislature has stated and now the Second District Court of Appeal has upheld. Appellee submits that §106.03, Fla.Stat., is not clear enough on its terms to support a criminal statute and a criminal penalty.

§106.03, Fla.Stat. can not be harmonized with §106.011 (1), Fla.Stat. §106.03, Fla.Stat. tries to require compliance

of a political committee before a political committee, by definition, exists. §106.03, Fla.Stat. requires conduct and disclosures based on a threshold of anticipating contributions or expenditures exceeding $500.00. Anyone who has done any type of fund raising be it political or for a church, knows that the use of the word anticipation in this setting is a joke that is without humor.

What does not word "anticipate" mean? Appellee submits it is nothing more than guessing or forecasting or prophesizing. We are confronted by a statute that is trying to base and hinge criminality on forecasting or guessing or prophesizing. Such a statute should not be able to stand under our constitution.

Appellee is prosecuted for not filing a statement of organization in a timely manner. What are the time limits under §106.03, Fla.Stat. and when do they begin to run? Appellee submits the time limits set out in the statute are not specific enough to clearly notice the public and therefore be a reasonable basis for a criminal statute. Appellee submits the time limits are to unclear and must guessed at.

Initially it seems that §106.03, Fla.Stat. requires that a political committee file a statement of organization

within 10 days after its organization but certainly it can not be a crime to fail to do so within that 10 day period since the statute says if you don't do it then you can do it later within 10 days after the political committee has information which causes it to anticipate (forecast?) that it will receive or spend over $500.00. So what it really comes down to is, if there is a crime, the crime occurs by not filing within 10 days after the committee has anticipated receiving or spending over $500.00. So we are now back to some of the same questions. What does anticipate mean? What if one of the members anticipates that the committee will receive over $500.00 but doesn't tell the rest of the committee? What if a person says they are going to contribute $501.00 but he committee knows that person always promises that and has never paid it before. Is it enough that the committee is hoping to receive the money? Do people involved in fund raising ever really know that they are going to get money until it is actually in their coffers?

The opinion of the Appellate Court holds that the definition set forth in §106.11, Fla.Stat., should be given precedence over §106.03, Fla.Stat., as to when a political committee comes into existence. That view is error for

two reasons. First, it ignores the rule of statutory construction that a more specific statute must always be given precedence over a more general one regardless of their temporal sequence Busic v. United States, 446 U.S. 398, 64 L.Ed. 2d 381, 100 S.Ct. 1747 (1980). Second, its patently unfair in a penal setting to be having citizens at peril based on statutes saying "unless the context clearly indicates otherwise". As in §106.011, Fla.Stat., there is nothing clear about any context of these statutes to justify penal enforcement.

CONCLUSION

Appellee respectfully requests this Court to take jurisdiction of this cause and to reverse the decision of the Second District Court of Appeal, reinstate the decision of the trial court and affirm that §106.03, Fla.Stat., is unconstitutional.

Respectfully submitted,

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By: ______________________
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to William E. Taylor, Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Flroida 33602, by U. S. Mail, this 22nd day of January, 1986.

By: ______________________