O/a 9-22-86

FILED

SUPREME COURT OF FLORIDA

SAM FALZONE,

Petitioner,

vs. CASE NO: 68,178

STATE OF FLORIDA,

Respondent.
_____/

PETITIONER'S REPLY BRIEF

A. R. MANDER, III
GREENFELDER, MANDER, HANSON,
MURPHY & TOWNSEND
103 North Third Street
Dade City, Florida 33525
(904) 567-0411

TABLE OF CITATIONS

TOPICAL INDEX TO REPLY BRIEF

SUMMARY OF ARGUMENT

ISSUE I

Respondent is incorrect and without authority for the sequence in which it desires the Court to apply the rules of statutory construction in evaluating a criminal statute. The statute must be interpreted before its evaluated as to constitutionality.

Respondent's concession that a husband and wife are not excluded from registering as a political committee where the two of them support a political purpose serves to illustrate the overbreadth of the statute.

Respondent's effort to analogize the licensing of fishing and the anticipation of catching a fish to the registration of political committees and anticipation fund raising is misplaced.

ISSUE II

Respondent's request for the Court to expand the term "include" to mean "provide" based upon the Respondent's perception of legislative intend is violative of the rule that rules of statutory construction cannot be used to create doubt and violative of the rules of strict construction of criminal statutes.

ARGUMENT

ISSUE I

THE TRIAL COURT DID NOT ERR IN FINDING THAT §106.03 IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD AND FAILS TO PLACE ORDINARY CITIZENS ON NOTICE AS TO WHAT CONDUCT IS PROSCRIBED AND WHEN COMPLIANCE IS REQUIRED.

Respondent seems to be confusing presumptions and rules of statutory construction. Petitioner believes they are different. The only presumption that applies to our analysis of Chapter 106 is that statutes are presumptively valid and constitutional and must be given effect until judicially declared unconstitutional. State ex rel. Atlantic Coast Line R. Co. v. State Board of Equalizers, 94 So. 681 (Fla. 1922).

Respondent addresses what it calls the proper "sequence of operation" of presumptions. Without support of citation for any authority, Respondent advances the proposition at page 6 of its brief that:

> "In order to strictly construe a criminal statute in favor of an Appellant, one must first apply the presumptions to determine if the statute will continue to exist. After those presumptions have been applied, if the Court still determines that the statute is constitutional, then the statute is applied in favor of the Defendant."

Petitioner contests this proposition. Common sense dictates that before one can say whether a statute passes constitutional muster, one must determine what the statute says and means. Where the language is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resort to rules of statutory interpretation. Van Pelt v. Hillard, 78 So. 693 (Fla. 1918). The flip side of that statement is that where the language is not clear and unambiguous, the rules of statutory construction must be applied to resolve the questions and doubts.

Here, the State of Florida seeks to have penal ramifications flow from the application of Sections 106.011 (Definitions), Section 106.03 (Registration of Political Committees), and Section 106.19 (Violations by Candidates or Persons Connected with Campaigns and Political Committees). This calls into play a special rule of construction that would not have application if the statutes were only being used for civil non-penal purposes. This special rule of construction is also statutory law since the legislature has codified it and required its application in §775.021:

> "... offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused."

The legislature has thereby acknowledged that sometimes it doesn't articulate its intent clearly enough. It has no problem with the Court's applying the ordinary rules of statutory construction for determining legislative intent in civil cases. But when it comes to penal statutes, the legislature has directed the Courts to favor any potential accused who may not have been fairly warned due to the legislature's failure to clearly articulate. The legislature directs that its language be strictly construed; that is, taken literally and narrowly.

Petitioner vigorously submits that the other rules of construction must be subservient to this "special rule". A citizen is entitled to take a criminal statute literally. The words of the statute must clearly show to ordinary men the legislative purpose. A citizen cannot be expected to guess at legislative intent to figure what words of a statute should mean.

Respondent at page 6 of its brief suggests that:

> "If the Court determines that the statute is constitutional, then the statute is applied in favor of the Defendant."

That is not correct. In Ex parte Bailey, 23 So. 552 (Fla. 1897), one of the earliest cases to set forth the "special rule of construction in penal cases", the Court followed exactly the opposite sequence from the one Respondent desires.

The Court stated:

> From the view that we take of the statute alleged to have been violated, it becomes unnecessary, if not improper, for us to pass upon the constitutional questions raised, as the case can be fully disposed of without considering them. The established rule is that a penal law must be construed strictly, and according to its letter. Nothing is to be regarded as included within it that is not within its letter as well as its spirit; nothing that is not clearly and intelligently described in the very words of the statute, as well as manifestly intended by the legislature. And where a statute of this kind contains such an ambiguity as to leave reasonable doubt of its meaning, where it admits of two constructions, that which operates in favor of life or liberty is to be preferred."

The sequence of operation that Respondent desires is not supported by Florida case law in precedent. It must be remembered:

> "The Court cannot, in order to bring a statute within the fundamental law, amend it by construction."
>
> "A statute which requires the doing of an act so indefinitely described that men must guess its meaning violates due process of law." State v. Wershow, 343 So.2d 605 (Fla. 1977), Locklin v. Pridgeon, 30 So.2d 102 (Fla. 1947), Yu Cong Eng, et al v. Trinidad, 271 U.S. 500, 46 S.Ct. 619, 70 L.Ed. 1059.

At page 13 of its brief, Respondent cites Ball v. Branch, 16 So.2d 524, 525 (Fla. 1944) for the proposition that

> "If confronted by two theories of interpretation; interpretation of one which results in striking it down, while the other results in upholding it, it is the duty of the Court to adopt the later interpretation if consistent with reason."

If this appeal concerned a statute with only a civil implication, Ball v. Branch might have correct application. In our evaluation of a criminal statute, however, if the legislatures choice of words allows for two interpretations, the interpretation that must be adopted is the one that favors the accused.

McKibben v. Mallory, 293 So.2d 48 (Fla. 1974) is another civil case, and is cited by Respondent to say that a Court should not interpret a statute in a fashion that would lead to an absurd result. If the legislature has not carefully and clearly chosen their wording in a criminal statute, the citizens cannot bear the risk caused by that failure to properly articulate. Injustice and absurdity would occur for a citizen to be jailed due to a legislature's failure to clearly legislate.

In §106.03 (registration of political committees), the legislature does not say what a political committee is; it only says what it wants a political committee to do. Before the legislature can say members of a political committee can be subject to criminal penalties, it has

to clearly inform the citizens what a political committee is. §106.03 makes no effort to define that issue. Any ordinary citizen would look for the definitional section of the chapter to find what a political committee is. §106.011(1) is vague and overbroad on who it includes but it is specific on when those included constitute a political committee. Its when "they" accept or spend over $500.00. The language of §106.03 does not attempt to address when a political committee exists or what a political committee is; it only addresses what an existing political committee should do and when. Therefore it defies logic and common understanding to say the context of §106.03 clearly indicates a different definition for a political committee's existence than §106.011(1) when §106.03 offers no definition.

The Respondent and the Second District wish to ignore this and say:

> "where the wording of a statute taken literally conflicts with the plain legislative intent, the wording must yield to the legislative purpose".

citing Beebe v. Richardson, 23 So.2d 718 (Fla. 1945).

To do that, in a penal statute is to ignore the law. See §775.021.

The Court in Ex parte Bailey, supra quite clearly put the "special rule of construction" before the construction

akin to the one set forth in Beebe v. Richardson, supra. The Court stated:

> "Guided by these settled rules of construction, whatever may have been in the mind of the legislature in enacting the quoted section 8 of this act, that Petitioner is suppose to have violated, we do not think the language employed therein will permit the construction that it forbids ...".

Petitioner is intrigued by Respondent's analysis of the effect of the statute on husbands and wives at page 15 of its brief. Respondent concedes the statute does not exclude a combination of just a husband and wife from being a political committee! But then Respondent says not every husband and wife who contribute to a political campaign would be a committee unless they share the certain purposes set out. Petitioner is skeptical of that. Wouldn't it be a political campaign to "support or oppose any candidate, issue, or political party" (see §106.011(1), particularly if they are paid out of a joint checking account. Petitioner would dare say Respondent's hypothetical husband and wife are potentially caught in the "net" of this statute, particularly if they live in the same judicial circuit as Petitioner and criticize the state attorney.

Respondent answers Petitioner's attack against the legality of a statute imposing potential criminal conduct

hinged on a citizens anticipation of events, particularly fund raising; by trying to draw an analogy to fishing licenses. There is no analogy. One is not subject to jail based on anticipation of catching a fish. One is required to get a license prior to going and trying to catch a fish. The legislature in Section 106.03 did not state that a person must file a report before trying to collect money or trying to collect over $500.00.

ARGUMENT
ISSUE II

THE TRIAL COURT DID NOT ERR WHEN IT DISMISSED THIS CAUSE BECAUSE §106.19, DOES NOT INCLUDE §106.03 "VIOLATIONS" WITHIN ITS PROVISIONS

A simple reading of §106.19 (c), Fla. Stat., reveals to any person of common understanding that the terms of the statute do not say it is a crime to fail to file a report. The only thing that §106.19 (c), Fla.Stat., states to be a crime is where a political committee (1) falsely reports information, or (2) deliberately fails to include any information. As everybody knows "failing to include" something means that you have provided information and in doing so, failed to give it all. There is nothing confusing or ambiguous about the terms of this statute.

It is a basic rule of statutory construction that words of common usage, when used in an enactment, should be construed in their plain and ordinary sense Tatzel v. State, 356 So.2d 787 (Fla. 1978). Rules of statutory construction should be used only in case of doubt and should never be used to create doubt, only to remove it, Holly v. Auld, 450 So.2d 217 (Fla 1984).

At page 21 of its brief, respondent indicates it is unsatisfied with the meaning of the word chosen by the legislature and suggests that in light of what it thinks the legislature intended:

> "...the word "include" should be interpreted as "provide".

The Respondent is taking the novel position of trying to claim an unambiguous statute is ambiguous. Respondent tries to then bootstrap this alleged ambiguity and argue the court should search for legislature intent to expand the term used. Throughout the Respondent's brief it ignores the fact that the court is not construing statutes with only civil implications. Even if the Respondent were to be successful in convincing the court that §106.19 (c), Fla.Stat., is ambiguous and is susceptible of differing constructions, its strategy is directly destroyed by a statute that leaves no question as to the intent of the legislature, to-wit: §775.021, Rules of Construction,

> "The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused."

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been furnished by U.S. Mail to: William E. Taylor, Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Florida 33602, and to: Patricia Fields Anderson, McCLUNG & ANDERSON, 202 East Liberty Street, Post Office Box 877, Brooksville, Florida 34298-0877 this 10th day of July, 1986.

GREENFELDER, MANDER, HANSON,
MURPHY & TOWNSEND
103 North Third Street
Dade City, FL 33525

By: _____
Attorney for Petitioner