IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

vs.

WILLIAM S. GRASSI,

Appellee

Case No. 69,359

ANSWER BRIEF OF APPELLEE

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STATEMENT OF CASE AND FACTS

Appellee accepts Appellant's statement of the Case and facts as a generally accurate account of the proceedings below.

POINT ON APPEAL

Appellee respectfully rephrases Appellant's issue on appeal as follows:

> Whether Florida Statute 99.032 (1977) is unconstitutional because it prescribes qualifications for the office of County Commissioner not contained in the FLORIDA CONSTITUTION?

SUMMARY OF THE ARGUMENT

The trial court and the Fourth District Court of Appeal correctly held that Florida Statute 99.032 (1977) is unconstitutional because it prescribes qualifications for the office of County Commissioner that are not contained in the Florida Constitution. The constitution requires that, at the time of election, County Commissioners must reside in the district for which elected. The statute in question adds the requirement that a candidate must reside within the district at the time of qualification. The legislature is without the authority to add qualifications to constitutional offices. As a result, this added residency requirement is unconstitutional. The amendment to the Constitution in November, 1984 that adds the phrase "as provided by law" has no effect on the residency requirement as evidenced by the intent of the amendment made clear in the ballot summary.

ARGUMENT

FLORIDA STATUTE 99.032 (1977) IS UNCONSTITUTIONAL BECAUSE IT PRESCRIBES QUALIFICATIONS FOR THE OFFICE OF COUNTY COMMISSIONER NOT CONTAINED IN THE FLORIDA CONSTITUTION.

The trial court correctly ruled that Florida Statute 99.032 (1977) is unconstitutional because it prescribes qualifications for the Office of County Commissioner which are inconsistent with the Florida Constitution (1968). This decision was affirmed by the Fourth District Court of Appeal. State vs. Grassi, 492 So. 2d 474 (Fla. 4th DCA 1986). The constitution, Article VIII, Section 1(e) merely requires residency in the district at the time of election, whereas, Florida Statute 99.032 (1977) goes beyond that to require residency in the district at the time of qualifying. Contrary to the position of the State, the trial court did not misplace its reliance on Wilson v. Newell, 223 So.2d 734 (Fla. 1969) and 1974 Op. Att'y Gen., Fla., 074-293 (September 23, 1974). Although Wilson, supra, dealt with the 1885 Florida Constitution and Op. Att'y Gen., 074-293, supra, dealt with the 1968 constitution prior to enactment of Florida Statute 99.032 (1977), the applicable principals of constitutional law are the same.

In Wilson, supra, the Florida Supreme Court invalidated a statute requiring six months residency in a district before qualifying. The 1885 Constitution set no residency requirement. Thus, the addition of a residency requirement set by Statute was prohibited and the statute was unconstitutional. The 1968

Constitution sets a specific residency requirement; at the time of election. Thus, the addition by the legislature of the requirement of residency, prior to the election and at the time of qualifying, is an act which is equally as prohibited and renders the statute unconstitutional. In effect, the legislature has done exactly what this Court said it could not do in Wilson, supra.

The State relies heavily in their argument on State ex rel. Askew v. thomas, 293 So.2d 40 (Fla. 1974). However, Thomas, supra, does not support the State's argument and in fact bolsters Appellee's position. Thomas, supra, dealt with a statute that created a vacancy on the school board when a board member moved from the area "from which he was elected". The provisions of the Constitution creating the school board did not set any residency qualification but contained the provision that the board would be elected "as provided by law". Art. IX, Section 4(a), Fla. Const. (1968). The provision of the Constitution at Bar did not contain the phrase "as provided by law" until it was amended in November, 1984, at a time after the Defendant in this case qualified as a candidate. As will be seen by discussion later in this brief, the 1984 amendment to Article VIII, Section 1(e) Florida Constitution was a substantive change in the law which was not intended to have any effect on the residency qualifications of County Commissioners or candidates. In Thomas, supra, the court states:

> "We have consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth the requirements." Id. at 42.

The provision of the constitution dealt with in Thomas, supra, contained no qualifications, and therefore the above constitutional principle was not applicable. But, in the case at Bar, Article VIII, Section 1(e) does set forth a specific residency requirement and thus the above principle does apply. This position gains further support from the interpretation of Article VIII, Section 1(e) contained in 1974 Op. Att'y Gen. Fla. 074-293, supra,:

> "It seems clear from the quoted language that the person elected to the Office of County Commissioner must be a resident of the district at the time of his election, but there is nothing in the Constitution which requires that he be a resident of the district prior to the day of his election..."
>
> "Although the constitutional provision discussed above requires that a person elected to the Office of County Commissioner be a resident of the district he seeks to represent at the time of his election, it does not prescribe qualifications upon a person's eligibility or qualification to become a candidate for the office."

The Office of County Commissioner is a constitutional office provided for by the 1968 Florida Constitution in Article VIII, Section 1(e). The legislature is powerless to prescribe qualifications for County Commissioners. The Florida Supreme Court emphasized this principle of law in Nichols v. State, 177 So.2d 467 (Fla. 1965). In that case the court differentiated between municipal office and constitutional office. The court indicated that the legislature does have the power "to impose qualifications for municipal office" but "may not prescribe qualifications for a constitutional office unless specifically authorized by the constitution." Id. at 469.

In addition to the prohibition of the legislature adding to the qualifications for the Office of County Commissioner,

the legislature is also without authority to pass laws that regulate who can become a candidate for that office. In Ervin v. Richardson, 70 So.2d 585 (Fla. 1954), the Florida Supreme Court held a statute, that attempted to regulate the manner in which County Commissioners are nominated, unconstitutional. The court indicated that the statute was inconsistent with the constitution and on page 588 stated that when "the Constitution prescribes a method by which County Commissioners shall be elected, that said method is exclusive and that the legislature was powerless to unduly restrict it." Even though this decision dealt with the 1885 Constitution, the provision in the 1968 Florida Constitution is sufficiently similar with regard to County Commissioners, that the holding of this court would be just as applicable under the new constitution.

In the case at Bar, the Defendant, was a candidate for the Office of County Commissioner of Broward County. Although the Defendant was a resident of the county, and otherwise qualified to be a candidate and hold the office, he was not, at the time of qualifying, a resident of the district he sought to represent. In other words, the Defendant met all of the constitutional qualifications to be a County Commission candidate but he did not meet the additional qualifications prescribed by the legislature in Florida statute 99.032, that "at the time he qualifies, be a resident of the district from which he qualifies". In this manner, the legislature has attempted to unduly restrict who can be a candidate for a constitutional office, much the same as in Ervin, supra.

The Defendant relies on strong precedent for the position that Article VIII Section 1(e) of the Constitution sets a residency requirement that applies from the date of election and not from the date of qualifying. In State v. Adams, 139 So.2d 879 (Fla. 1962) the Florida Supreme Court reiterates its holding in an earlier case, Davis ex rel. Taylor v. Crawford, 95 Fla. 438, 116 So.41 (1928) that:

> "The Statutory requirement that a candidate shall make oath 'that he is qualified under the constitution and laws of Florida to hold the office for which he desires to be nominated' has reference to qualifications applicable when elected and the term of office begins". Id. at 43.

Similarly, quoting from the first paragraph of the summary of 1972 Op. Att'y Gen. Fla. 072-224 (July 17, 1972):

> "The requirement of Art. III Section 15(c), State Const., that each legislator shall be 'an elector and resident of the district from which elected' prescribes a qualification for office and refers to eligibility or qualification for the office of legislator at the time of assuming office and not at the time of qualification as a candidate for nomination or election to office".

This same position was taken in 1974 Op. Att'y Gen. Fla. 074-293 (September 23, 1974) which deals with the 1968 Constitutional provision at issue in the case at Bar. Additionally, Defendant relies on the principle stated in Ervin v. Collins, 85 So.2d 852 (Fla. 1956) and City of Miami Beach v. Richard, 173 So.2d 480 (Fla. 3d DCA 1965) that if there is doubt as to the eligibility of the candidate, "...under every accepted rule of interpretation, the doubt or ambiguity must be resolved in favor of eligibility..." Ervin at 856; City at 482.

Contrary to the State's position, "that courts, in determining the constitutionality of legislation, must give the legislation a construction which will uphold rather than invalidate the legislation", the correct statement in State v. Keaton, 371 So.2d 86 (Fla. 1979 is):

> "Fundamental principles of statutory construction dictate than an enactment should be interpreted to render it constitutional if possible. However, the courts may not vary the intent of the legislature with respect to the meaning of the statute in order to effect this result". Id. at 89.

Therefore, the court may only hold this statute constitutional if it does not add qualifications to those prescribed in the constitution.

The State contends that by substituting the phrase "as provided by law", for the phrase, "by the electors of the country," there was not a substantive change in the constitution but merely an interpretation of the original constitution. Appellants initial brief, pages 7 and 8.

The ballot summary for the amendment, Art. VIII Section 1(e) (Appendix B) states that the sole purpose of this amendment was to remove:

> "the constitutional restriction that county commissioners must be elected at large by the electors of the county, and allows the Board of county commissioners to be composed of either five or seven members."

The State uses Lowry v. Parole and Probation Commission, 10 FLW (Fla. June 13, 1985) and Gay v. Canada Dry Bottling Co., 59 So.2d 788 (Fla. 1952) as authority for considering subsequent legislation to properly interpret a constitutional amendment. These cases refer only to statutes and have no relevancy to interpreting constitutional amendments. In construing a constitutional amendment, the court is obliged to

ascertain and effectuate the intent of the people, Gallant v. Stephens, 358 So.2d 536 (Fla. 1978), not subsequent legislation.

The ballot summary for a proposed constitutional amendment must state in clear and unambiguous language the purpose of the amendment. Askew v. Firestone, 421 So.2d 151 (Fla. 1982). This is to assure that the electorate is fully aware of the meaning and ramifications of the amendment. Gross v. Firestone, 422 So.2d 303 (Fla. 1982). In construing a constitutional amendment the court's duty is to ascertain and effectuate the intent of the electors. Baily v. Ponce de Leon Port Authority, 398 So.2d 812 (Fla. 1981). A constitutional amendment cannot be viewed or considered in any light other than the purpose made clear by the amendment. State ex rel. Landis v. Thompson, 163 So. 270 (Fla. 1935).

The summary of Constitutional Amendment, Art. VIII, Section 1(e) distinctly states that its only purpose was to remove the constitutional restriction that county commissioners be elected at large, and it allows the board of commissioners to consist of either five or seven members.

The courts are required to give words in constitutional amendments the meaning accorded them in common usage. Gaulden v. Kirk, 47 So.2d 567 (Fla. 1985); Swartz v. State, 316 So.2d 618 (Fla. 1st DCA 1975). The phrase, "as provided by law," in Constitutional Amendment to Article VIII, Section 1(e) speaks to whether the county has chosen to have five or seven members of the commission and whether they are to be elected at large or from districts. To read any other meaning into this would

require the court to find a purpose to this amendment that was not divulged to the electorate in the ballot summary.

CONCLUSION

Based on the foregoing argument and citations of authority, The Appellee respectfully submits that the trial court correctly declared Florida Statute 99.032 (1977) unconstitutional and the Fourth District Court of Appeal properly affirmed the trial court.

Respectfully submitted,

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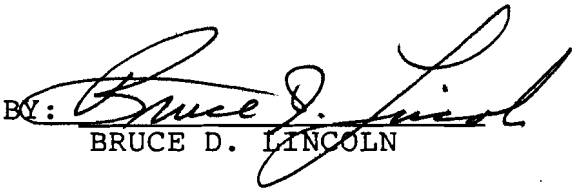
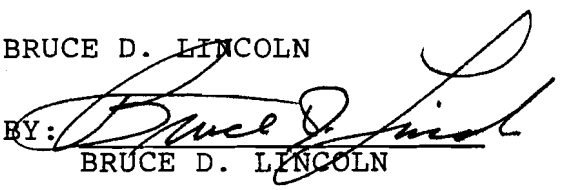
BY: 
BRUCE D. LINCOLN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing brief was furnished by mail this 18th day of February, 1987, to Diane Leeds, Assistant Attorney General, 111 Georgia Avenue, Room 204, West Palm Beach, Florida 33401.

BRUCE D. LINCOLN

BY: 
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