IN THE SUPREME COURT
OF THE STATE OF FLORIDA

SAMUEL C. WADHAMS, WILLIAM HADLEY,
ROBERT G. SIFF, RAYMON J. SWEEZY,
HONOR H. SANBORN, MAXINE B. HOLM,
ROBERT G. McGREGOR, KAZIMIR ZIELONKA,
JANET S. WILSON, CHARLES P. LEACH, SR.,
WALTER R. PIERSON and BESS C. KNOWLES,

FILED
SID J. WHITE
MAR 9 1987
CLERK, SUPREME COURT
By ______
Deputy Clerk

Plaintiffs/Petitioners,

v.

Case No. 70,078
Appeal No. 85-2957

BORAD OF COUNTY COMMISSIONERS OF
SARASOTA COUNTY, FLORIDA,

______________________________/

ON APPEAL FROM
THE SECOND DISTRICT
COURT OF APPEAL
STATE OF FLORIDA

PETITIONERS' JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

This Petition comes to this Court upon the claim by the Petitioners that the decision rendered by the Second District Court of Appeal of Florida, on January 21, 1987, expressly and directly conflicts with the decision of another District Court of Appeal or of the Supreme Court on the same question of law. A copy of the opinion is included in the appendix hereto. The rulings with which the 2nd DCA are in conflict mandate that the parties submitting a referendum to the voters must substantially comply with §101.161(1) Florida Statutes and that the voters who learned of the defect one week prior to election day 1984 are not barred as a matter of law from challenging the election and its results when they wait until after the election to commence their judicial challenge to the referendum.

In 1984, the Board of County Commissioners of Sarasota County submitted a referendum to the voters of the County by County Ordinance No. 84-72 wherein it ordered printed on the official ballot a proposed amended version of §2.11.A and §2.11.B of the Sarasota County Charter. The Board, on the advice of its legal counsel, did not provide a summary of the proposed changes as required by §101.161(1) Florida Statutes. The Board was advised that the statutory section was merely directory, rather than mandatory in nature. The Board ordered that the whole section be printed on the ballot, including portions which were to remain unchanged. The two changes contemplated by the Baord were included within the two charter sub-sections along with several other provisions which would not be changed.

Approximately two months after the election, the Plaintiffs, six of whom are elected members of the Charter Review Board of Sarasota County, commenced the challenge.

The Trial Court found for the Board and in doing *so* determined that **§101.161(1)** F.S. is mandatory; that the Board failed to comply with the requirements thereof; and that the Petitioners were precluded from the relief they seek because they failed to file suit until January, **1985.** The Second District Court of Appeal affirmed the Trial Court, with Judge Stephen Grimes dissenting.

ISSUES

I.

DOES THE SECOND DISTRICT HOLDING THAT A PARTY SUBMITTING A REFERENDUM BALLOT NEED NOT COMPLY WITH THE REQUIREMENTS OF SECTION **101.161(1)** F.S. CONFLICT WITH DECISIONS OF THIS COURT?

II.

DOES THE SECOND DISTRICT'S HOLDING THAT ELECTION AUTHORITIES NEED NOT COMPLY SUBSTANTIALLY WITH THE ELECTION LAW REQUIREMENTS CONFLICT WITH DECISIONS OF THIS COURT OR OTHER DISTRICT COURTS OF APPEAL?

111.

DOES THE SECOND DISTRICT'S HOLDING THAT THE ELECTION CURES THE FAILURE OF THE BOARD OF COUNTY COMMISSIONERS TO COMPLY WITH THE STATE ELECTION LAWS CONFLICT WITH PRIOR DECISIONS OF THIS COURT?

ARGUMENT

I.

DOES THE SECOND DISTRICT HOLDING THAT A PARTY SUMBITTING **A** REFERENDUM BALLOT NEED NOT COMPLY WITH THE REQUIREMENTS OF SECTION 101.161(1) F.S. CONFLICT WITH DECISIONS OF THIS COURT?

This Court has on several occasions held that the failure to comply with the requirements of §101.161(1) F.S. constitutes a fatal defect. That statutory section provides:

> 1. Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a **"yes"** vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in a joint resolution, constitutional revision commission proposal, constitutional convention proposal, or enabling resolution or ordinance. The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

This Court has minimally required that those who conduct elections comply substantially with the State Election laws. This particular election law governs the extremely sensitive method by which constitutional or charter issues and other public policy questions are submitted to the body politic. The Second District concluded that the Board of County Commissioners in

submitting the Charter proposal to the voters of Sarasota County failed to comply with §101.161(1) F.S. The effect of the Second District Court's decision is to create a conflict to the effect that a public authority with the power to conduct and control elections may decline, refuse, or fail to comply substantailly with the law without any consequence. This Court held in Askew v. Firestone, 421 So2d 151 (Fla. 1982) that §101.161(1) must be followed and that failure to do so constitutes a fatal defect.

II.

DOES THE SECOND DISTRICT'S HOLDING THAT ELECTION AUTHORITIES NEED NOT COMPLY SUBSTANTIALLY WITH THE ELECTION LAW REQUIREMENTS CONFLICT WITH DECISIONS OF THIS COURT OR OTHER DISTRICT COURTS OF APPEAL?

The Second District's holding that the Board of County Commissioners of Sarasota County, as the authorities charged with the conduct of this special election, need not comply substantially with State election law requirements conflicts with the decisions of this Court and with other District Courts of Appeal. In the 1963 case of State of Florida v. County of Sarasota, 155 So2d 543, this Court declined to invalidate an election on the grounds that the election authorities substantially complied with the statutory requirement that notice of the special bond election be published in a newspaper of general circulation at least once each week for four consecutive weeks prior to the election. Notice was published in the first, second and fourth weeks, but not during the third week. The Circuit Court validated the bonds and the Supreme Court affirmed.

But, the rule was clearly announced that the election authorities must substantially comply with the notice requirements. Section 101.161 is in a very precise way a statute concerned with giving notice to the voters. The Trial Court and the Second District Court of Appeal, while concluding that the Board of CountY Commissioners of Sarasota County failed to comply with the statute, each concluded that compliance was not necessary. Such a conclusion conflicts directly with the legal duty imposed on the Board of County Commissioners to have substantially complied with the statutory requirements. See also Hill v. Milander, 72 So2d 796 (Fla. 1954) and State v. Dade County, 39 So2d 807 (Fla. 1949).

III.

DOES THE SECOND DISTRICT'S HOLDING THAT THE ELECTION CURES THE FAILURE OF THE BOARD OF COUNTY COMMISSIONERS TO COMPLY WITH THE STATE ELECTION LAWS CONFLICT WITH PRIOR DECISIONS OF THIS COURT?

This Court and other District Courts of Appeal have rejected the proposition that the holding of the election cures electoral defects. In Special Tax School District #1 of Duval County v. State of Florida, 123 So2d 316 (Fla. 1960), this Court affirmed the invalidation of a bond election when the County's electoral authority failed to publish notice requiring the reregistration of voters once each week for four consecutive weeks prior to the election. The result was voided when the Court concluded that the authorities failed to comply with the stautory notice

requirement for voter reregistration. In another case, the First District Court of Appeal set aside an election result when the authorities had failed to comply with the requirement that notice be published once a week for four consecutive weeks prior to the election. See State ex rel Pope v. Shields, 140 So2d 144 (Fla. 1 DCA 1962) In Shields, the notice had been published three of four required weeks.

This Court addressed an appeal in Frank v. State ex rel Turk, 35 So2d 10 (Fla. 1948) from a Final Judgment wherein 698 absentee ballots cast in a municipal election were held void, because the prerequisite affidavit was not made according to statute. The Affidavit that was provided to would-be absentee voters was, the Court concluded, clearly defective in that the elector swore that he expected to be absent from the city, whereas the statute required that he state his expectation to be absent from the County. The Supreme Court found that the language of the statute was clear and mandatory, and as a result, concluded that the failure to comply with it rendered the ballots of no effect. The voiding of the absentee ballots changed the results of the election. In each case, the election was held and in each case, either this Court or a District Court of Appeal concluded that the holding of the election did not cure the electoral deficiency.

The Second District's holding in this case creates a conflict with the line of cases described. The Second District by holding as it did, has invoked a rule that an election result will cure substantial violations of the state election laws. One

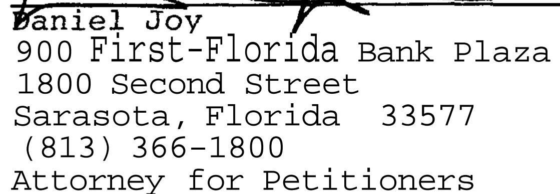
looking to the cases could not otherwise but be confused if the holding is allowed to stand as is represents precedential authority for the proposition that the electoral authorities can disregard the requirements of the statute and then have those defects cured if not disclosed to interested parties with sufficient time to object. This reduces election law requirements to something akin to toothless tigers.

CONCLUSION

The Petitioners respectfully suggest to this Court that conflict exists and that this Court should accept jurisdiction and review the merits of the Second District Court of Appeal's decision and the Petitioners' Complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by mail, to RICHARD NELSON, ESQUIRE, 2070 Ringling Blvd., Sarasota, Florida 33577 and RICHARD L. SMITH, ESQUIRE, 2070 Ringling Blvd., Sarasota, Florida 33577 this 17th day of February, 1987.



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