

IN THE SUPREME COURT
STATE OF FLORIDA

RAFFIELD FISHERIES, INC.
and EUGENE RAFFIELD,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

FILED

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Sup. Ct. Case No: 71,677
First DCA Case No: BP-439

PETITIONERS' BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioners, Raffield Fisheries and Eugene Raffield were charged with criminal violations of §370.08(3), F. S. in County Court, Gulf County, Florida on July 16, 1986.

The specific charges alleged they possessed red drum for sale and shipment, caught by purse seine in violation of §370.08(3), F.S. which states:

No person may take food fish within or without the waters of this state with a purse seine, purse gill net, or other net using rings or other devices on the lead line thereof, through which a purse line is drawn, or pound net, or have any food fish **so** taken in his possession for sale or shipment. The provisions of this section shall not apply to shrimp nets or to pound nets or purse seines when used for the taking of tuna or menhaden fish only.

The fish in question had been caught off the coast of Louisiana, well outside the territorial limits of Louisiana and several hundred miles away from the nearest territorial waters of the State of Florida.

The fish were landed in Venice, Louisiana and from there trucked to Port St. Joe, Florida where the arrests were made and charges filed.

All the fish in question were caught in the Exclusive Economic Zone (EEZ) created by the Magnuson Fishery Conservation and Management Act (16 USC 1801, et. seq.)

All the fish caught by the Petitioners were caught pursuant to a permit issued by the U.S. Department of Commerce, which specifically authorized the Petitioners to catch red drum, by purse seine in the E.E.Z.

On September 25, 1986, Gulf County Judge David L. Taunton, on motion of the Petitioners, dismissed all charges against the Petitioners. As the basis for doing **so**, Judge Taunton found the statute in question, §370.08(3), F.S., to be unconstitutional.

In an eight page Order, Judge Taunton held that the statute violated both state and federal constitutional provisions, and violated the Commerce Clause of the U.S. Constitution. A more detailed statement of these facts is contained in Judge Taunton's Order, attached as Appendix "A."

The State appealed Judge Taunton's order of dismissal to the District Court of Appeal, First District of Florida.

On October 20, 1987 the First District Court of Appeal issued an opinion overturning Judge Taunton's Order.

Petitioners' Motion for Rehearing was denied on December 7, 1987. A copy of the Court's opinion and the Order denying rehearing is attached as Appendix "B."

SUMMARY OF A []

The decision of the District Court of Appeal expressly holds §370.08(3), F.S. to be valid.

It also directly construes provisions of the State and Federal Constitutions. Those provisions are: (a) supremacy clause of the U.S. Constitution and when state action is preempted by that clause; (b) the commerce clause of the U.S. Constitution; (c) due process provisions of State and Federal Constitutions; (d) equal protection clauses of the State and Federal Constitutions.

Further, the decision is in direct conflict with a decision of this Court, Southeastern Fisheries Association v. Dept. of Natural Resources, 453 So.2d 1351 (Fla. 1984).

Therefore, Petitioner's argument in favor of this Court accepting jurisdiction contends that jurisdiction can be based on three separate and independent grounds in Rule 9.030 (a)(2)(A), Florida Rules of Appellate Procedure.

The first, Rule 9.030(a)(2)(A)(i) allows this Court to review decisions of district courts of appeal that "expressly declare valid a state statute"; next, subpart (ii) of that rule allows jurisdiction where that court decision expressly construes a provision of the State or Federal Constitution; finally, subpart (iv) may be invoked where the decision expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law.

ARGUMENT

(a) The decision expressly declares valid a state statute.

The decision of the District Court of Appeal clearly and unequivocally does hold a state statute to be valid. The appeal from County Judge Taunton's Order was a challenge to his holding that the statute was invalid.

The District Court of Appeal stated in the last sentence of its opinion: "We therefore reverse the order of the county court granting appellee's motion to dismiss and declaring Section 370.08(3) unconstitutional."

Clearly, then, the grounds in Rule 9.030(a)(2)(A)(i) are met in this case. The entire body of the court's opinion is devoted to the constitutional validity of Florida's "purse seine law" §370.08(3), F.S. and whether it can be applied in an extraterritorial manner.

(b) The decision expressly construes provisions of the State and Federal Constitutions.

The opinion of the District Court of Appeal is divided into four separate numbered holdings. In holding number I, the supremacy clause of the Federal Constitution is construed as to whether the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et. seq., preempts the

State of Florida from enforcing its purse seine law where the Federal Act, among other things, states, at 16 U.S.C. 1812: "The United States shall have exclusive fishery management authority . . . over all fish within the fishery conservation zone.

The District Court held that Florida's ability to enforce the purse seine statute was not prohibited by the supremacy clause of the U. S. Constitution - a holding that expressly construes a provision of the Federal Constitution.

Next, in holding 11, the District Court's opinion specifically states: "We find also that the trial court erred in holding that §370.08(3) violates the federal commerce clause in that we are unable to perceive that the statute's provisions involve any undue burden on interstate commerce."

In holding III the court stated: The County Court Judge concluded also the statute was void for vagueness and violated the due process provisions of the United States and Florida Constitutions, . . . We disagree."

The last holding, IV, contains the following language: "The County Court also stated that there were equal protection problems with the Statute since, apparently, it was his belief that there was selective enforcement of the statute against Florida citizens, not others. We disagree."

Each of the separate four numbered holdings of

the lower court's opinion is devoted to construction of various clauses of the State and Federal Constitutions.

(c) The decision is in direct conflict with a decision of this Court on the same question of constitutional law.

The decision of the District Court of Appeal holds that the State of Florida may enforce criminal sanctions against the petitioners under Florida's purse seine law, despite the fact that under the Federal Magnuson Act the Petitioners were given a specific permit, to catch the red drum in question by purse seine, from the government of the United States of America.

In this case the Petitioners' use of the purse seine was specifically authorized by the Federal Government. Yet it is the use of that equipment that creates the basis for these criminal charges.

This holding directly conflicts with Southeastern Fisheries Association v. Department of Natural Resources, 453 So.2d 1351 (Fla. 1984). That case dealt with the attempted enforcement of a Florida statute prohibiting the use of fish traps in Federal waters. This court found that as the federal government had allowed the use of fish traps in those waters, the state could not prohibit the use of

that apparatus, outside the territorial boundaries of the state. In their brief, Petitioners cited the Southeastern Fisheries decision to the District Court of Appeal on several occasions. Yet that court did not address itself to the issues decided in that opinion.

In this case the federal government specifically allowed the use of purse seines in federal waters for the catch of these red drum. The state seeks to enforce a statute that would ban their use and the possession of fish **so** caught. The District Court of Appeal upheld this enforcement in its opinion. This is in direct conflict with Southeastern Fisheries, supra, as the fish were all caught in federal waters, under a specific Federal permit issued for that purpose.

Why this court should accept jurisdiction

The decision of the District Court of Appeal, First District of Florida, should be reviewed by this Court as it raises fundamental questions of the power of a state to impose criminal sanctions against activities far beyond its territorial boundaries. The decision is more compelling in view of the specified authorization of the fishing by the United States Government.

In this case the District Court allowed the enforcement of a statute prohibiting the use of a purse seine and possession of the fish caught thereby, where the fishing took place hundreds of miles from the State of Florida.

The fish were caught in Federal waters, which, according to the Magnuson Act, 18 U.S.C. 1801, et. seq., are under the exclusive control of the United States Government.

Yet, the statute in question, as written, prohibits the use of this equipment world wide and makes the possession of *any* food fish so caught, a crime.

The purse seine is a commonly used apparatus, in many of the world's fisheries. Most of the world's sardines and anchovies are caught by purse seine, and a large proportion of the world's salmon catch is accomplished by purse seine. Many other fish are caught, over the four corners of the globe, by purse seine.

This statute, upheld by the District Court of Appeal, makes it illegal for anyone to sell any fish, such as sardines, if caught by purse seine, no matter where in the world they were taken.

Neither the statute nor the decision of the District Court of Appeal limits the application of the statute to fish indigenous to Florida, but imposes the law regardless of the species of fish, or the location and circumstances of the use of the purse seine.

Fishermen, processors, importers, distributors and vendors of the multitudes of fish caught by purse seine are in jeopardy of being prosecuted under this law if they take or possess fish caught by purse seine even if the fish were caught in the Pacific or Indian Oceans.

It is a fact of life that every day in Florida restaurants and food stores possess and sell purse seined fish caught from various parts of the world. Every Publix and Winn Dixie store in this state has, on its shelves, cans and jars of herring, sardines, salmon and anchovies all caught by purse seine, all illegal under this law. Does Florida have a legitimate interest in making foreign fish contraband? Can it prohibit the use of fishing equipment specifically allowed by the Federal Government? This case presents issues that go to the question of the limits of the power of a state to impose sanctions that stretch the nexus between the activity prohibited and the state's limitations on its police powers.

This law has rarely been invoked. Its confirmation by the District Court of Appeal has a very chilling impact on the state's entire seafood industry. Many types of fish which are staples of the present scope of products routinely sold in Florida now are put in a questionable status. The issue needs determination by this Court.

CONCLUSION

WHEREFORE, the Petitioners respectfully request that the Florida Supreme Court, after review of the reasons presented herein, accept jurisdiction of this case and after doing **so**, review whether the District Court of Appeal was correct in its decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief on Jurisdiction has been furnished by hand delivery to Bradford L. Thomas, Assistant Attorney General, The Capitol, Tallahassee, FL 32399-1050 and to Charles R. McCoy, Assistant General Counsel, Department of Natural Resources, 3900 Commonwealth Boulevard, Suite 1003, Douglas Building, Tallahassee, FL 32399 on this 8th day of January, 1988.



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