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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 72,697

CHARLES W. KANE, SHERIDAN PLYMALE,
PETER WALSON, LISA LYONS, E. CLARK
GIBSON, STEWART R. HERSHEY and
BETSY WALSON,

Plaintiffs/Petitioners,

vs.

PEGGY S. ROBBINS, as Supervisor of
Elections for Martin County, Florida,
and THE SCHOOL BOARD OF MARTIN COUNTY,
FLORIDA,

Defendants/Respondents.

FILED
JUL 22 1983
CLERK

APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

PETITIONER'S AMENDED
JURISDICTIONAL BRIEF FOR DISCRETIONARY REVIEW

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STATEMENT OF CASE

This Petition for Certiorari involves a decision of the Fourth District Court of Appeal which holds that Article III, Section 11(a) of the Florida Constitution (1968) does not prohibit special laws pertaining to the election of school board members.

On September 6, 1985 Petitioners, the Executive Board of the Republican Executive Committee of Martin County, Florida, filed suit against Peggy S. Robbins, as Supervisor of Elections. The suit challenged the constitutionality of a special law^{1/} providing for nonpartisan school board elections in Martin County. The Martin County School Board was permitted to intervene as a party defendant.

The basis for the challenge was that the special law violated Article III, Section 11(a) of the Florida Constitution which provides:

Section 11. Prohibited Special Laws.

(a) There shall be no special law or general law of local application pertaining to:

- (1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies.

Art. III, Section 11(a)(1), Fla. Const. (1968).

On June 7, 1986 the trial court entered an order upholding the validity of the special law and expressly holding

1/ Chapter 76-432, Laws of Fla. (1976).

that Article III, Section 11(a) of the Florida Constitution (1968) does not apply because school boards are special districts within the meaning of the Constitution and that their members are not officers. Petitioners appealed the trial court's order to the Fourth District Court of Appeal by Notice of Appeal dated June 24, 1986.

On April 6, 1988, the Fourth District Court of Appeal issued a 2 to 1 decision, affirming the trial court and upholding the constitutionality of the special law pertaining to school board elections. The Fourth District Court of Appeal expressly held that Article III, Section 11(a) (1) "is at best ambiguous with respect to whether a school board is included within the exceptions for special districts and local governmental agencies." (Pg. 3 of Opinion). In addition, the majority opinion cited School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977) for the proposition that this Court had previously upheld the constitutionality of a special law governing the election of school board members (See pg. 3 of Opinion attached).

On April 20, 1988, Petitioners filed a Motion for Rehearing with the Fourth District Court of Appeal arguing that:

1. The majority opinion overlooked expressed provisions of the Florida Constitution which distinguish between school boards and special districts (i.e., Article VII, Sections 9(a), 10 and 12);

2. The majority opinion relied on a misstatement of this Court's holding in School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977); and

3. The majority opinion disregarded or violated fundamental rules of constitutional construction in holding that the Constitution was "ambiguous".

Petitioners also requested a Motion for Rehearing En Banc on the basis that this was a question of great public importance and conflicting Circuit Court decisions in Escambia and Lake Counties. On June 7, 1988, the Fourth District Court of Appeal denied both Motions for Rehearing.

ISSUE PRESENTED

WHETHER THIS COURT SHOULD ACCEPT JURISDICTION TO REVIEW A DECISION OF THE FOURTH DISTRICT COURT OF APPEAL WHICH HOLDS THAT ARTICLE III, SECTION 11(a) OF THE FLORIDA CONSTITUTION DOES NOT PROHIBIT SPECIAL LAWS PERTAINING TO THE ELECTION OF SCHOOL BOARD MEMBERS; AND DETERMINES THAT ARTICLE III, SECTION 11(a) IS "AT BEST AMBIGUOUS" AS TO WHETHER SCHOOL BOARDS ARE SPECIAL DISTRICTS, WITHIN THE MEANING OF THE CONSTITUTION; AND THEREBY:

- (1) EXPRESSLY CONSTRUES A PROVISION OF THE STATE CONSTITUTION;
- (2) EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS; AND
- (3) EXPRESSLY CONFLICTS WITH THIS COURT'S DECISION IN School Board of Escambia County, v. State, 353 So.2d 834 (Fla. 1977).

SUMMARY OF ARGUMENT

This Court has jurisdiction to review the decision of the Fourth Court of Appeal because:

(a) the decision expressly construes Article III, Section 11(a) and Article IX, Section 4 of the Florida Constitution (1968) and holds that the Constitution does not prohibit special laws pertaining to the election of school board members;

(b) the decision expressly affects a class of constitutional officers (school board members - Article IX, Section 4 of the Florida Constitution (1968)); and

(c) the decision conflicts with this Court's decision in School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977).

This Court should review the decision of the Fourth District Court of Appeal because:

(1) the majority opinion disregarded fundamental rules of constitutional and statutory construction in holding that the Florida Constitution is "ambiguous";

(2) the majority opinion overlooks express provisions of the Florida Constitution and State Law which distinguish between school boards and special districts and makes it clear that there is no ambiguity in Article III, Section 11(a);

(3) the majority opinions relies on a misstatement of this Court's holding in School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977) (erroneously concluding that this Court previously upheld the

validity of special law pertaining to the election of school board members); and

(4) this case is of exceptional public importance (there are conflicting circuit court and attorney general opinions on this issue, which are applicable in other counties of this state).

ARGUMENT

The Fourth District Court of Appeal expressly construed Article III, Section 11(a) and Article IX, Section 4 of the Florida Constitution (1968) in affirming the trial court and upholding the validity of a special law pertaining to school board elections. In referring to Article IX, Section 4, the Appellate Court stated:

Had the drafters intended to restrict the authority of the legislature to enactments only by general law, this was the place to impose such a limitation. (See Opinion attached, pg. 2).

In regard to whether school boards are special districts and thus exempted from the prohibition against special laws as set forth in Article III, Section 11(a), the Appellate Court stated:

Further, Article III, Section 11(a)(1) is at best ambiguous with respect to whether a school board is included within the exceptions for special districts and local governmental agencies. (See Opinion attached, pg. 3). (Emphasis added).

The clear meaning of the Appellate Court's decision was either that Article III, Section 11 had no application to school boards under Article IX, Section 4, or, that school boards are special districts under Article III, Section 11.

In thus construing the Florida Constitution, the Appellate Court ignored the legislative history of the drafters which reveals that the terms "special districts" and "local government agency" were not meant to include school boards.^{2/} Furthermore, several provisions of the Florida Constitution expressly distinguish school boards from special districts and make it absolutely clear that there is no ambiguity as to the omission of school boards from the exceptions listed in Article III, Section 11(a): ^{3/}

2/ See Hayek v. Lee County, 231 So.2d 214 (Fla. 1970), for the legislative history pertaining to the addition of "special districts" to Article III, Section 11(a).

3/ Article VII Section 9(a) - Local taxes - Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes... (emphasis added).

Article VII Section 10 - Pledging credit - Neither the state nor any county, school district, municipality, special district, or agency of any of them shall become a joint owner with, or stockholder of, or give, lend or use its taxing power... (emphasis added).

Article VII Section 12 - Local bonds - Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds,... (emphasis added).

In addition, and as set forth in Justice Walden's dissent, several Florida Statutes specifically distinguish a school boards from special districts: ^{4/}

In holding that Article III, Section 11(a)(1) "is at best ambiguous," with regard to whether a school board is a special district, the Fourth District Court of Appeal violated fundamental rules of statutory construction. It was not proper to enlarge the exceptions to the prohibitions set forth in Article III, Section 11(a)(1) by declaring the exceptions ambiguous. See, Southern Bell Telephone & Telegraph Co. v. D'Alemberte, 21 So. 570 (Fla. 1897), and reaffirmed in Farrey v. Bettendorf, 96 So.2d 889 (Fla. 1957).

As an additional ground for jurisdiction and review, the majority opinion of the Fourth District Court of Appeal conflicts with this Court's decision in School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977). The majority opinion cited Escambia County, for the proposition that:

^{4/} "Section 165.031(5), Florida Statutes (1985), which provides a definition of "special district" within the meaning of Chapter 165 on Municipalities, indicates that a district school board is not a special district. §165.031(5) provides:

"Special district" means a local unit of special government, except a district school board, created pursuant to general or special law for the purposes of performing within limited boundaries.

(Emphasis added.) See Also, §165.031(5); §200.001(8)(c); and §218.403(5), Florida Statutes (1985).

"The Supreme Court has previously upheld the constitutionality of a special act governing the election of school board members." (Kane v Robbins, No. 4-86-1440 (4thD.C.A., April 4, 1988), at pg. 3).

This is a misstatement of this Court's holding in Escambia County. In Escambia County, the trial court struck down certain provisions of a special act which provided for nonpartisan school board elections. The trial court held that these provisions of the special act violated Article III, Section 11(a) of the Florida Constitution. The case was appealed to this Court on other grounds and the issue of whether special laws providing for nonpartisan school board elections violated Article III, Section 11(a) of the Florida Constitution, was not submitted to this Court. However, this Court cited the trial court's holding and at least implicitly approved it. (Id. at 836 and 839). Furthermore, a reading of this Court's opinion in Escambia County makes it clear that school board members are "officers", whose "election" would be governed by the prohibitions against special laws under Article III, Section 11(a). (See, the discussion of this issue at page 839 of the Opinion attached).

The issue that was submitted to this Court in Escambia County, was whether a provision of the special act, (reducing school board members' salaries to \$200.00 per month), violated Article III, Section 11(a) of the Florida Constitution. Because filing fees for the election of school board members

are based on their salary, the question was whether a provision reducing salaries was a prohibited special law "pertaining to election... of officers...." (Id. at 839). This Court held that any such effect, (reducing salaries, and thus the filing fees), upon the election of school board members was so incidental and tenuous as to be not cognizable by the prohibitions of Article III, Section 11(a), Florida Constitution. (Id. at 839). Obviously, if the effect had not been so "tenuous," this provision would have violated Article III, Section 11(a) of the Florida Constitution.

Finally, this case is of exceptional public importance. Two circuit court cases have declared special acts providing for nonpartisan election of school board members to be unconstitutional. School Board of Escambia County, Florida v. State of Florida, No. 76-2178-CA-01 (Cir. Ct. of Escambia County, July 9, 1976), aff'd on other grounds, School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977) and Jelsma v. Stegal, No. 81-841 (Cir. Ct. of Lake County, 1981). See also, 1979 Op. Att'y Gen. 079-106 (December 14, 1979) stating that a special act providing for the nonpartisan election of county officers is constitutionally prohibited by Article III, Section 11(a)(1), Florida Constitution.

CONCLUSION

This case will determine the proper and uniform construction of Article III, Section 11(a) of the Florida

Constitution (1968) and whether school boards are "special districts" and their members "officers" under Florida law. We respectfully request that this Court accept jurisdiction, reverse the decision of the Fourth District Court of Appeal, and strike down the special law pertaining to school board elections in Martin County.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the within and foregoing document has been furnished by U.S. mail this 15th day of July, 1988 to: Noreen S. Dreyer, Esquire, County Attorney, 2401 S.E. Monterey Road, Stuart, FL 34996 and Douglas K. Sands, School Board Attorney, 300 Colorado Avenue, Stuart, FL 34994.


THOMAS E. WARNER