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.

_____/

RESPONDENT SCHOOL BOARD'S BRIEF ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT COURT OF APPEAL OF FLORIDA FOURTH DISTRICT

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STATEMENT OF THE CASE

Petitioners, comprising the Republican Executive Committee of Martin County, Florida, will be referred to collectively as The Committee. Respondent, The School Board of Martin County, Florida will be referred to as School Board. Respondent Supervisor of Elections Peggy S. Robbins will be referred to as Robbins.

Both trial and appellate courts below have upheld the constitutional validity of Chapter 76-432, Laws of Florida, a Special Act of the Legislature which, following a three-to-one favorable vote by the electorate in 1976, authorized candidates for membership on the School Board of Martin County to be elected without political party affiliation. The issue before them was direct: is this Special Act which pertains to the election of Martin County School Board Members constitutional? They both ruled that it was, and in so doing found that The Committee had failed to meet its heavy burden of proving otherwise.

Respondent School Board substantially agrees with The Committee's Statement of the remainder of the Case, however disagrees that the Fourth District Court of Appeal "held" that Article III, Section 11(a)(1) "is at best ambiguous." This is obiter dictum, referencing the failure of The Committee to present evidence that the Constitutional Framers intended other than to include school boards within the special law exceptions of this provision for special districts and local governmental agencies. The holding of the case was that Chapter 76-432, Laws of Florida, is constitutional.

In The Committee's Notice of Appeal, two grounds for seeking the discretionary jurisdiction of this Court were stated: (1) that the decision of the Fourth District Court of Appeal expressly construes a provision of the State Constitution, and (2) that it expressly affects a class of constitutional officers. In its Jurisdictional Brief, they added an additional ground to the "Issues Presented" caption: that the decision expressly conflicts with a prior decision of this Court. A fourth "ground" asserting "exceptional public importance" was inserted into the text of their Brief at page 5.

SUMMARY OF ARGUMENT

The Committee is asking this Court to review a decision of the Fourth District Court of Appeal which upheld the constitutionality of Ch. 76-432, Laws of Florida. The School Board urges that jurisdiction be denied.

Of the four grounds asserted by the Committee for discretionary jurisdiction, only one has merit: that the lower Court construed a provision of the Constitution.

The Fourth District Court of Appeal considered Article IX, Section 4(a), Florida Constitution, which specifically addresses School Board elections. It applied a recognized principle of law to conclude that this provision authorized the Legislature to utilize both general and special laws pertaining to School Board elections. The Court harmonized the provision with Article III, Section 11(a)(1), resolved any doubts in favor of upholding constitutionality, and the result was consistent with this Courts decision 11 years ago upholding a Special Act pertaining to the

election of school board members in Escambia County. The School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977). The instant case merely follows and adds to existing case law and this Court should decline to accept jurisdiction.

The decision below does not affect a class of constitutional officers as school board members do not separately and independently exercise powers of government. They comprise a board, which is a single government entity. The Special Act and decision below only pertain to Martin County School Board Members, and not candidates for other school boards. The "ground" is therefore insufficient to confer jurisdiction upon the Court.

There is no express and direct conflict with the Court's decision in Escambia County, supra. The results of the two cases are in harmony, and not in conflict. Therefore, this ground is insufficient to confer jurisdiction upon the Court.

There are no public policy issues involved and a party cannot invoke this Court's discretionary jurisdiction by simply asserting that the case is of exceptional public importance. This is insufficient to invoke the discretionary jurisdiction of the Court.

ARGUMENT

POINT I

THE CONSTRUING OF A CONSTITUTIONAL PROVISION BY THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE MERELY FOLLOWS AND ADDS TO EXISTING CASE LAW, AND THEREFORE THIS COURT SHOULD DECLINE TO ACCEPT JURISDICTION.

The issue below was whether a Special Act of the Legislature pertaining to the election of school board members in Martin County was valid under the Florida Constitution. This issue was

answered affirmatively by both trial and appellate courts. The School Board and Robbins argued that Article IX, Section 4(a) of the Florida Constitution authorized the Legislature to provide for the election of school board members by either General Law or Special Law. That section in pertinent part provides as follows:

> "...in each school district there shall be a school board composed of five or more members chosen by vote of the electors...as provided by law.

This Court had previously held that the phrase "by law" means by either General Law or Special Law. Ison v. Zimmerman, 372 So.2d 431 (Fla. 1979). By applying the recognized holding in Ison, supra, to the instant case, the Fourth District Court of Appeal construed Article IX, Section 4(a) to authorize the Special Act in question.

This Court had also held, some 11 years ago, that a Special Act pertaining to the election of school board members in Escambia County was constitutionally valid. The School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1987). In that case there were three (3) events pertaining to the election of school board members which were affected by their Special Act:

(1) The election of school board members on a non-partisan basis. The trial court struck this down, and its holding on this point was not appealed. It was therefore not before this Court.

(2) The authority contained in the Special Act to qualify and elect at large two (2) additional school board members in the school district, for a total of seven (7) members. This Court upheld the constitutionality of the Special Act on this point.

Although not readily discernable from reading the case, this provision quite clearly pertains to the election of school board members.

(3) The reduction in school board member salary to $200 by the Special Act as it affected the amount of the filing fee of a candidate. This Court upheld the constitutionality of the Special Act on this point also.

Florida has both General and Special Laws pertaining to the election of school board members. All school districts which have seven (7) member school boards had the election-at-large of their additional two (2) members authorized by Special Acts. Seven school districts elect their members on a non-partisan basis, as authorized by Special Acts. The Committee's reading of the above provision is illogical: they would read that single sentence as permitting Special Acts authorizing the election of additional school board members while prohibiting Special Acts authorizing their non-partisan election.

The Committee's position would also create conflict between Article IX, Section 4(a) and Article III, Section 11(a)(1) of the 1968 Constitution. Article III, Section 11(a)(1) provides in pertinent part:

> "There shall be no special law...pertaining to: (1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies."

The Committee argued unsuccessfully that the 1968 Constitutional revisors did not consider school districts to be within the category of special districts or local governmental

agencies for purposes of this provision. At the time of the 1968 Constitutional revision, the Framers were well aware that from 1885 to 1967, some 82 years in Florida's history, the longstanding legislative practice was to treat school districts much like special districts for many purposes. Special Laws for school districts were routine. Indeed, the phrase "special district" was part and parcel of the identifying nomenclature, as in "special tax school district". Other references on this point are contained in the District Court Opinion, and will not be repeated here.

The Committee points to the obiter dictum of the District Court's Opinion stating the provision is "at best ambiguous" as to whether a school board is within the exception for special districts and local governmental agencies. The Rule in Florida is to resolve all doubts in favor of constitutionality and to harmonize provisions of the Constitution whenever possible. It is unconstitutionality which must be demonstrated beyond all reasonable doubt, Bonvento v. Board of Public Instruction, 194 So.2d 605 (Fla. 1967). The Committee failed to meet that burden.

The Fourth District Court of Appeal merely applied and followed existing case law to harmonize two provisions of the Constitution and resolved any doubts in favor of upholding constitutionality. The instant case does nothing more than add to case law, and jurisdiction by this Court should be declined. Spradly v. State 293 So.2d 697 (Fla. 1974).

POINT II

THE DECISION DOES NOT EXPRESSLY AFFECT A CLASS OF CONSTITUTIONAL OFFICERS AS THE MEMBERS OF THE MARTIN COUNTY SCHOOL BOARD DO NOT COMPRISE A "CLASS" OF CONSTITUTIONAL OFFICERS FOR PURPOSES OF INVOKING THE DISCRETIONARY JURISDICTION OF THIS COURT.

The trial court held that the Martin County School Board members are not constitutional officers subject to the prohibitions of Article III, Section 11(a)(1) of the Florida Constitution. Even assuming arguendo that the board members are constitutional officers, they do not constitute a "class" for purposes of invoking the discretionary jurisdiction provisions of Article V, Section 3(b)(3) of the Florida Constitution. The Special Act in question and the decisions below affect only candidates for membership on the School Board of Martin County. They do not affect any other school board member candidates in the State of Florida. The School Board of Martin County, Florida is a single governmental entity. This Court has previously held that a group of officers composing a single governmental entity such as a board or commission would not constitute a "class" of constitutional officers for purposes of being able to invoke the jurisdiction of this Court. Florida State Board of Health v. Lewis, 149 So.2d 41 (Fla.1963). Individual School Board Members do not have independent powers of Government, but may only act together as the school board. This characteristic excludes them from the judicial definition of class of Constitutional officers as that term is used in Article V, Section 3(b)(3), Florida Constitution. To be within such a "class" there must be two or more Constitutional officers who separately and independently

exercise identical powers of government. Lewis, supra at 43. Further, the decision must do more than simply modify, construe or add to case law. Spradley v. State, 293 So.2d 697 (Fla.1974). As the ultimate holding below is consistent with this Court's prior decision in Escambia County, supra, it merely adds to case law. The decision below does not qualify as expressly affecting a class of constitutional officers for purposes of invoking the discretionary jurisdiction of this Court.

POINT III.

THE DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THIS COURT'S DECISION IN THE SCHOOL BOARD OF ESCAMBIA COUNTY v STATE, 353 SO.2d 834 (FLA. 1977).

The Committee asserts conflict with the Court's 1977 decision in The School Board of Escambia Count v. State, supra. The Board disagrees. There is no direct and express conflict. The results are the same. This Court upheld the constitutionality of the Escambia County Special Act in 1977. The Fourth District Court of Appeal specifically reviewed, analyzed and cited as authority this Court's 1977 decision in Escambia County. There is no express and direct conflict in the end result of the two decisions. They are consistent and in harmony.

Since the 1980 amendment to Article V, Section 3(b)(3) of the Florida constitution inherent or implied conflict no longer serves as a basis for jurisdiction. Department of Health and Rehabilitative Services v. National Adoption Counseling Service, Inc., 498 So.2d 888 (Fla. 1986). To find conflict in this instance the District Court decision must on its face collide

with the Court's decision in Escambia County, supra. Kincaid v. World Insurance Company, 157 So.2d 517 (Fla. 1963). It must create an inconsistency. Id. It must be out of harmony with the prior decision. Kyle v. Kyle, 139 So. 2d 885 (Fla. 1962). It must create a conflicting Rule of Law with the prior decision and produce a conflicting result. Nielson v. City of Sarasota, 117 So.2d 731 (Fla. 1960). Clearly none of these tests have been met. The decision of the Fourth District Court of Appeal in the instant case does not expressly and directly conflict with this Court's prior decision in Escambia County, supra.

POINT IV.

THERE IS NO CONSTITUTIONAL AUTHORITY TO CONFER DISCRETIONARY JURISDICTION ON THIS COURT BASED ON THE UNILATERAL ASSERTION BY A PARTY THAT THE CASE IS OF EXCEPTIONAL PUBLIC IMPORTANCE.

The Committee unilaterally asserts this case is of exceptional public importance, and attached copies of newspaper articles. There are different ways a Special Act can pertain to the election of school board members of a given school district. In the Escambia County case, supra, it related to the election filing fees and more importantly permitted two additional candidates to qualify, run and be elected to office. In the instant case it permitted candidates to run without political party affiliation. The Fourth District Court of Appeal decision may be noteworthy because it is the first appellate decision in Florida on the non-partisan aspect of the election of school board members, but given the Escambia County case, supra, it is not the first nor highest appellate court case in Florida to uphold the constitutionality of a Special Act of the Legislature

as it pertains to the election of school board members. Only the Fourth District Court of Appeal could certify the question to be of great public importance to this Court and it did not do so. Article V, Section 3(b)(4), Florida Constitution. Indeed, it stated there were no public policy issues involved. The unilateral assertion by The Committee does not confer jurisdiction upon the Court.

CONCLUSION

Except for the argument that the decision below construes a provision of the Constitution, all other jurisdictional grounds asserted by the Committee are without merit. The result in the instant case is consistent with a prior decision of this Court, harmonizes two provisions of the constitution, upholds constitutionality and merely adds to existing case law. The Fourth District Court of Appeal should be the final appellate review of this case, consistent with the concept that Appellate finality should now rest with District Courts of Appeal with limited exceptions. See, Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

This Court should decline to accept jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. mail this 8th day of August, 1988 to: Thomas E. Warner, Esquire, Warner, Fox, Seeley & Dungey, P.A., 1000 S. Federal Highway, P.O. Drawer 6, Stuart, Florida 34995-0006, Attorney for Petitioners, and James E. Telepman, Esquire, Murphy, Reid, Pilotte & Ross, P.A., 340 Royal Palm Way, P.O. Box 2525, Palm Beach Lakes Blvd., Palm Beach, Florida 33480, Attorney for Respondent, Peggy S. Robbins.

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