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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 72,697

01A2-7-89

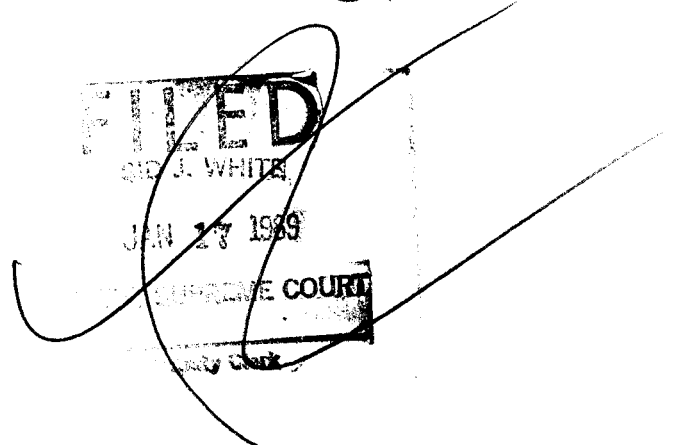
CHARLES W. KANE, SHERIDAN
PLYMALE, PETER WALSON, LISA
LYONS, E. CLARK GIBSON,
STEWART R. HERSHEY and BETTY
WALSON,

Petitioners,

vs.

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

Respondents.



PETITIONERS' REPLY BRIEF

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ARGUMENT

CHAPTER 76-432, LAWS OF FLORIDA PROVIDING
FOR FOR NON-PARTISAN SCHOOL BOARD ELECTIONS
IN MARTIN COUNTY VIOLATES THE FLORIDA
CONSTITUTION ARTICLE III, SECTION 11(a)(1)
PROHIBITING SPECIAL LAWS PERTAINING TO THE
ELECTION, JURISDICTION AND DUTIES OF
OFFICERS.

Respondents' Briefs challenge Petitioners' assertion that the decision in this case will decide whether the legislature has the power to pass special laws pertaining to not only the election, but also the jurisdiction and duties of school boards throughout the state. While Respondents correctly point out that the special act in this case pertain only to elections and only to Martin County, Respondents' argument reveals a total lack of understanding of the central legal issue and the ramifications of this Court's decision.

The issue in this case is whether the prohibition on special laws set forth in Article III, Section 11(a) of the Florida Constitution applies to school boards. If Article III, Section 11(a) does not apply to school boards, future legislatures will be free to pass special laws, on a county-by-county basis, pertaining not only to elections, but also the jurisdiction and duties of school boards. If Article III, Section 11(a) does apply to school boards, the special act in this case is unconstitutional and any other special laws pertaining to the election, jurisdiction or duties of school boards would also be invalid, except those special laws which

only have an "incidental affect." See School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977).

To decide the issue in this case, this Court must answer two questions:

1. Are school board members "officers" within the meaning of Article III, Section 11(a) of the Florida Constitution; and, if so,
2. Are school boards special districts within the meaning of the exceptions to Article III, Section 11(a)?

All other arguments and issues raised by Respondents are irrelevant and merely cloud the constitutional question presented here.

For instance, Respondents cite Article IX, Section 4 of the Florida Constitution which creates school boards and provides that their election shall be "as provided by law." Respondents argue that the term "by law" could mean either general or special law under prior case law. Respondents then conclude that the prohibitions against special acts in Article III, Section 11(a), must not apply to school boards since Article IX, Section 4 authorizes general or special laws. (Respondents are shamelessly inconsistent in this regard, since they later urge this Court to ignore other provisions of the Florida Constitution which distinguish between the terms school boards and special districts when trying to determine the meaning of special district).

Petitioners agree that the term "by law" could mean either general or special law under Florida case law. However,

this argument fails to address the issue of whether the grant of substantive power to the legislature in Article IX, Section 4 is limited in the manner it may be exercised by the restrictions of Article III, Section 11. Article IX is titled "Education" and provides for the creation of a uniform system of free public schools. Article III is titled "Legislature" and provides for the composition of the state legislature and the manner in which it conducts its business and passes laws. Article III is not only the appropriate and logical place to look for restrictions on the exercise of legislative power, it expressly provides for said limitations on a wide variety of topics. See the Florida Constitution, Article III, Section 6 (Laws); Section 7 (Passage of Bills); Section 10 (Special Laws); Section 11 (Prohibited Special Laws - covering twenty (20) topics on subject matters where special laws are prohibited, in addition to the election, jurisdiction and duties of officers).

Another false argument presented by Respondents is their assertion that School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977) upholds the validity of a special law pertaining to school board elections. Respondents further assert that this Court would have to recede from its decision in Escambia County if it overrules the Fourth District Court of Appeal in this case. These assertions are nonsense.

In Escambia County, 353 So.2d 834, this Court upheld a provision of a special act (Section 2) which expanded the

school board from five to seven members. This Court held that this provision was not an illegal attempt to pack the school board or endanger the uniform system of free public schools because: both the Florida Constitution (Article IX, Section 4) and general law (Section 230.04, Fla. Sta. (1975)) contemplate that school boards may be composed of five or more members. School Board of Escambia County v. State, 353 So.2d 834, 837 (Fla. 1977). Neither party raised the issue of whether this provision violated Article III, Section 11(a) (prohibited special laws) and this Court did not discuss it.

One could logically conclude that a special law expanding school boards from five to seven members is valid because it pertains to the composition of school boards, (and is contemplated by the Florida Constitution and general law), but does not pertain to the manner of its members' election, its jurisdiction or duties. Indeed, Respondent School Board (at page 8 of its Brief) erroneously states that this Court upheld several provisions of the special act in Escambia County contained in Section 4 which do pertain to the election of school board members. However, Section 4 of that special act (which also contained the provision for non-partisan elections) was struck down by the trial court as violative of Article III, Section 11(a) of the Florida Constitution and the issue was not presented to this Court. Escambia County, 353 So.2d at 835.

Turning to the questions that this Court must decide, school board members are "officers" and school boards are not

special districts within the meaning of Article III, Section 11(a), Florida Constitution (1968). Thus, the special act in this case violated Article III, Section 11(a) and is unconstitutional.

Respondents assert that school board members are not "constitutional officers." They suggest that only persons who have individual authority can be "constitutional officers," not corporate bodies like school boards. However, Article III, Section 11(a) does not contain the term "constitutional officer" (it says "officer") and the modifying word "constitutional" is irrelevant and misleading. Contrary to Respondents' assertion, this Court has recognized that board members of corporate bodies such as county commissioners are officers. Board of County Commissioners of Palm Beach County v. Hibbard, 292 So.2d 1 (Fla. 1974). The various cases cited by Respondent which discuss school district trustees are not on point because trustees of special school tax districts were clearly different from school board members (formerly boards of public instruction) and this antiquated system was abolished by the 1968 Constitution.

Finally, Respondents' arguments that school boards are special districts lack citations to any authority on point and are unpersuasive. For example, Respondents cite the history of Article XII, Florida Constitution (1885), as authority for the proposition that special laws pertaining to the election of school board members have been historically sanctioned.

However, Article XII does not pertain to the election of school board members. Moreover, Respondents' cite to 1983 Op. Atty. Gen. 83-72 (Oct. 18, 1983), is indicative of Respondents' flawed logic. The quoted provision from that opinion means only that both school boards and special districts are limited to the power and authority granted by the legislature, and are thus to be accorded only that power.

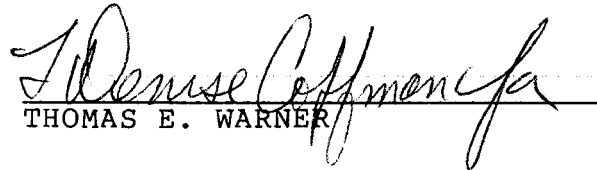
Respondents chose to ignore the legislative history of the 1968 Constitution which clearly shows that the framers had no intention of including school boards with the term special districts. Hayek v. Lee County, 231 So.2d 214 (Fla. 1970). Furthermore, Respondents urge this Court to ignore other provisions of the Florida Constitution which distinguish between school boards and special districts. See Article III, Section 9(a), Florida Constitution (1968); Article VII, Section 10, Florida Constitution (1968); Article VII, Section 12, Florida Constitution (1968).

CONCLUSION

For the reasons presented, this Court should reject Respondents' arguments and reverse the decision of the Fourth District Court of Appeal.

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 11th day of January, 1989, to: James S. Telepman, Esquire, Post Office Box 2525, Palm Beach, FL 33480; and Douglas K. Sands, Esquire, 300 Colorado Avenue, Stuart, FL 34994.


THOMAS E. WARNER