

O/a 3-10-89

IN THE SUPREME COURT OF THE  
STATE OF FLORIDA

**FILED**  
SID J. WHITE

FEB 6 1989

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk  
CASE NO. 72,992

COUNTY OF ORANGE, ETC.,

Petitioner,

vs.

ROBERT N. WEBSTER,

Respondent.

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REPLY BRIEF TO BRIEF OF AMICI CURIAE  
GREATER ORLANDO CHAMBER OF COMMERCE, INC., AND OTHERS  
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## INTRODUCTION

This Reply Brief is to the Amici Curiae Brief.

## STATEMENT OF THE CASE AND THE FACTS

Fifteen people filed their Amici Curiae Brief along with Orlando Chamber of Commerce, Inc. some fourteen (14) of whom were members of the Charter Review Commission appointed by Orange County on or about August 10th, 1987, (pages 15, 16, and 17 of the Appendix of the Amici Curiae entitled No. 87-M-27). This was a resolution stating in its title "Resolution of Board of County Commission of Orange County, Florida, dissolving the Orange County Citizens' Charter Government Study Committee and creating the Orange County Charter Review Commission." (Emphasis supplied). Of the fifteen members named people in the said resolution dated August 10th, 1987, only fourteen of the said fifteen are listed as Plaintiffs in this suit. John S. Lord is not listed as a member of the Review Committee, but a new name, James G. Hauser, has been added thereto. This is contrary to Chapter 125.61(2) which required that the Charter Commission should be composed of an odd number of not less than eleven (11) nor more fifteen (15) members. There is no showing when the change was made and manner of changing. Proposition One and Proposition Two were put on the ballot of Orange County for a vote on November 8th, 1988.

There is a case pending in Orange County at this time in regard to the legality of said vote and results thereof. This is attached as Appendix 1.

On November 8th, 1988, the voters of Orange County approved Proposition One and Proposition Two, but did not approve a revision of the entire Orange County Charter and certainly did not vote for a charter government for Orange County as required by Part II, F. S. Chapter 125. The revision of the Orange County Charter was never put to the electorate to vote on November 8th, 1988, or at any time, nor did the notice advertised October 2, 16, 1988 indicate what section of the charter was being revised. The proceedings leading up to November 8th, 1988 Referendum did not comply with the requirements of Chapter 125, Part II, of Florida Statutes for adopting a new charter. The issue whether the Charter as adopted November 4th, 1986, is invalid as ruled on by the Fifth District Court of Appeal is still pending before this court. The revised 1988 Charter which the Amici Curiae attached to their Brief as an Appendix, pages 34-53, was never filed with the Clerk as required by Chapter 125.66 nor was it mailed to the Department of State as required by said Section of the law. The so-called charter change as advocated by the Amici Curiae did not comply with 125.66(4) which requires a publication of the title of the ordinance or amendment to be considered in a newspaper of general circulation within the County. Nor did it comply with Subparagraph 5 of said Chapter in that it affects the zoning in Orange County and the said ordinance was never published as set out in said 125.66(5).

Chapter 125.60 states:

Any county not having a chartered form of consolidated government may, pursuant to the provisions of ss 126.60-125.64, locally initiate and adopt by a majority vote of the qualified electors of the county a county home rule charter. (Emphasis supplied)

Orange County says it is a charter county, the Fifth DCA says it is not a charter county. The Amici Curiae Brief should not be considered by this Court.

#### ARGUMENT

On November 8th, 1988, the voters of Orange County voted on a proposed charter amendment as to single district membership and proposed charter revision of a charter for election of six commissioners in separate districts and a commissioner voted upon countywide that had been ruled invalid by the Fifth District Court of Appeals of Florida and should never have been placed on the ballot until final determination of the validity of said charter was rendered. There is no constitution or statute provision for six district commissioners and one countywide. Orange County attempted to revise the charter in regard to the items set out as Proposition One and Proposition Two on the ballot listing it as a general election rather than a special election as is required by 125.82, F. S. Orange County did not comply with the requirements of Part II of Chapter 125 of F. S. for the following reasons:

1. Chapter 125.60 reads as follows:

Any county not having a charter form of consolidated government may, pursuant to provisions of Sections

125.60-125.64 locally initiate and adopt by majority vote of the qualified elector of the county a county home rule charter.

2. Chapter 125.61 reads as follows:

Following the adoption of a resolution by the board of county commissioners or upon the submission of a petition to the county commission signed by at least 15 percent of the qualified electors of the county requesting that a charter commission be established, a charter commission shall be appointed pursuant to subsection (2) within 30 days of the adoption of said resolution or of the filing of said petition.

A charter commission pursuant to Chapter 125.61 has not been appointed.

Orange County argues it is a charter county and if it is, then Chapter 125.60 is applicable. Orange County cannot amend an invalid ordinance. There is no constitutional or statutory authority to amend a charter pursuant to Part IV by proceeding under Part II of F. S. Chapter 125.

Orange County has never become a charter county and cannot, in that the charter sets up no provisions as required by 125.87(1) which states:

Following organization of the first board of county commissioners elected pursuant to a charter, the board of county commissioners shall adopt an administrative code organizing the administration of the county government and setting forth the duties and responsibilities and powers of all county officials and agencies pursuant to the provisions of this charter.

There have been no elections in Orange County since January 1st, 1986, to elect County Commissioners pursuant to the charter and, therefore, Orange County, if it is acting as a charter county, is acting illegally at this time. Orange County has to take a view at some time that either it is a charter county as of January 1st, 1987, or not a charter county and that is what the appeal is

to determine. The Brief of the Amici Curiae is placing Orange County in the position of either having to say that the charter government as voted upon on November 4, 1986, did not affect Orange County or that the vote taken on November 8th, 1988, was to establish a charter in Orange County pursuant to F. S. Chapter Part II. It is the position of the Respondent herein that the original charter voted on November 4th, 1986, is invalid for reasons set out in the Brief filed previously by the Respondent herein. A revised charter was not placed on the ballot but merely Propositions I and II.

Orange County had no authority to appoint a Revision Committee or to spend public money for the operation of said Committee because as of August 18, 1988, the date of the Order of the Fifth DCA, Orange County had no charter and from that date on no public money should have been expended for the Review Commission.

The only advertising by newspaper in regard to the referendum of the Revision Commission was published October 2nd and 16th, 1986, but the report prepared by the Review Commission was not filed with the Clerk of the Court nor filed with the Department of State in Tallahassee as admitted in the Brief of the Amici Curiae. It is admitted by the Amici Curiae that it was 100 days from the time of Resolution 87-M-27 until the vote taken November 8th, 1988, which exceeded the time frame as set out in Chapter 125.64. (See Brief filed by Respondent.) Nowhere in the instruments attached as exhibits by the Amici Curiae shows that the election was called a special election--at all times it was called a general election. The notice says it is revision



commission and does not refer to the Resolution 87-M-27 of Orange County.

The notice of the referendum published does identify the section or sections of the charter of 1986 that it intends to amend or revise.

Part II of F. S. Chapter 125 does not make any provision as to how a proposed charter is to be placed on the special ballot for a referendum.

There were only 14 of the original 15 appointees to the Review Committee as shown on final report filed by the Committee. John S. Lord was not listed on the committee in its final report. F. S. Chapter 125.61(2), an odd number cannot be a committee.

The referendum of November 8, 1988, was not done pursuant to Chapter 125.64(1) which required the vote be held at a special election. The ballot shows it was a general election.

Amici Curiae says it was 100 days after the presentation of amendment and revision to County Commissioners but no charter was presented to Orange County pursuant to F. S. Chapter 125, Part II.

The Orange County Charter Review Commission's Final Report (A. p. 21) states in its title "A Final Report of the Orange County Charter Review Commission; proposing to amend the Orange County, Florida, Charter to provide for single-member commission districts; proposing a revision of the Charter to provide for, among other things, a County Chairman elected by the voters; providing for referenda on the amendments and the revision; providing effective dates and other related provisions."

## ARGUMENT I

### WHAT DID THE REFERENDUM OF NOVEMBER 8, 1988, DO TO CHANGE GOVERNMENT OPERATION IN ORANGE COUNTY?

The voters of Orange County on November 8th, 1988, voted to create five (5) single district election of commissioners as stated in Section 203 of the Orange County Charter voted on on November 4, 1986, and pursuant to F. S. Chapter 124.01(1) or to increase number of commissioners to six (6) from single districts and one commissioner to run countywide called Proposition II on the ballot.

There is no provision in law for a referendum of 6 and 1 as set out in Proposition II.

Resolution No. 87-M-27 of Orange County dated August 10th, 1987, appointed fifteen (15) people as a Charter Review Commission pursuant to Article VII of Charter of Orange County. The Resolution makes no provision for the Committee to be a charter commission as set out in Part II, F. S. Chapter 125.61.

The vote taken on November 8, 1988, did not revise the entire County Charter (A. p. 34 of Amici Curiae). It merely was a vote on Proposition I and Proposition II. Both received a majority vote and only Proposition I is provided by law, F.S. Chapter 124.011.

The Fifth District Court of Appeal has ruled Ordinance No. 86-22 of Orange County is invalid.

F. S. Chapter 125.60 states that Part II of said Chapter can only be applicable in a non-charter county.

The vote taken November 8th, 1988, did not affect Orange County in any manner and neither Proposition I nor Proposition II can be enforced.

## ARGUMENT II

DOES A PENDING COMPLAINT IN A TRIAL COURT THAT QUESTIONS THE LEGALITY OF THE VOTE TAKEN NOVEMBER 8, 1988, HAVE TO BE DETERMINED BY THE TRIAL COURT BEFORE THE ISSUES CAN BE APPEALED?

Attached as Appendix 1 of Respondent is a Complaint and Answer filed and pending in the Circuit Court, being Case No. CI88-8114, filed November 28, 1988, and January 17, 1989, respectively. This matter should be completed in the trial court before an appellate court can hear an appeal.

The referendum of November 8, 1988, gave the elector a choice to approve Proposition I or II, but electors chose both. Neither can be implemented as they are not compatible.

## ARGUMENT III

CAN THE RESULT OF THE 1988 CHARTER REFERENDUM WHICH MERELY SHOWS TWO PROPOSITIONS WERE PRESENTED TO THE ELECTORATE AND BOTH WERE APPROVED BE IMPLEMENTED?

Orange County could have had a single district vote pursuant to Chapter 124.011 F. S. as a charter or non-charter county. The 6 and 1 district is not provided for by law. Because both received a majority vote neither can be implemented.

## ARGUMENT IV

DID ORANGE COUNTY COMPLY WITH SECTION 203 OF THE CHARTER AND DID IT COMPLY WITH 702 OF THE CHARTER?

Orange County did not place the issue of single member representation pursuant to Section 203 of the Charter on the ballot as Orange County did not place Propositions I and II on the ballot. It was placed on the ballot by the Charter Review Commission. A portion of Section 702(B) . . . a report of the proposed amendments and revisions of the charter shall be made

public by the Charter Review Commission no later than August 1, 1988. The Charter is silent as to what is public and who was to place the amendments and/or revisions to the public and on the ballot. The Respondent says this court should hold that F. S. Chapter 125.64 is applicable as to public display of amendments and revisions proposed by the Charter Review Commission. This was not done.

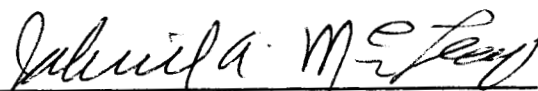
A notice of referendum must advise the electors of issues to be voted upon. No charter pursuant to Part II, Chapter 125, was placed on the ballot for November 8, 1988.

CONCLUSION

The Amici Curiae has no standing to argue anything except to argue the points as ruled on by the Fifth District Court of Appeal. Any action taken by Orange County in regard to the Charter as set out in the Brief and Appendix filed by the Amici Curiae shows that there is no standing for them to appear in regard to this appeal. A charter pursuant to F. S. Chapter 125, Part II, was not voted upon by the electorate in Orange County, November 8th, 1988.

Orange County Resolution No. 87-M-27 sets up the Charter Review Commission pursuant to Article VII of the Orange County Charter voted upon by title on November 4, 1986. It does not create a charter committee pursuant to Part II, Chapter 125, F.S. See Appendix 2.

The issue as to legality of the votes taken on November 8, 1988, pursuant to Resolution No. 87-M-27 of Orange County is pending in a trial Court. See attached Appendix 2.

  
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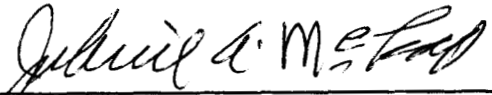
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U. S. Mail, postage prepaid this 3rd day of February, 1989, to the following persons:

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