

ORIGINAL

FILED

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

JAN 5 1989

CLERK SUPREME COURT
By _____
Deputy Clerk

COUNTY OF ORANGE, ETC.,

Petitioner,

vs.

CASE NO.: 72,992

ROBERT N. WEBSTER,

Respondent.

**BRIEF OF
AMICI CURIAE**

Greater Orlando Chamber of Commerce, Inc.
and

William R. Amidon
Lee Chira
Wilbur S. Gary
James L. Harris
James G. Houser
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as individuals

On Appeal from the District Court of Appeal,
Fifth District
(Case No.: 87-1448)

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INTRODUCTION

This Brief of Amici Curiae is filed in support of the Petitioner, Orange County, by the Greater Orlando Chamber of Commerce, Inc., a Florida non-profit corporation (the "Chamber of Commerce"), and the fifteen individual Orange County residents and voters named on the cover page.

The brief will cite to its Appendix with the notation "A:___" followed by a page number or numbers. Also, the "1986 Charter" will mean the Orange County Charter as approved by the voters in 1986 (A:9-15), while the "1988 Charter" will refer to the Orange County Charter as revised and approved by the voters on November 8, 1988 (A:24-33).

STATEMENT OF THE CASE AND THE FACTS

The amici curiae filing this Brief accept and incorporate the Statement of the Case and the Facts contained in the County's Initial Brief and offer the following additional facts:

When the Charter was drafted in 1986, a topic of major debate was the issue of whether county commissioners should continue to be elected by voters county-wide (the "at-large" method) or only by the voters in their respective districts (the "single-member district" method). Many favored single-member districts, among other reasons, as a way to achieve minority representation on the Board of County Commissioners, which apparently has never happened in the history of the County. Indeed, the Board's decision to consider a charter was stimulated largely by a request from Rep. Alzo Reddick, a member of the local legislative delegation, that the Board offer single member districts at referendum pursuant to Section 125.011 of Florida Statutes.

To avoid entangling the two questions of whether to adopt a charter and whether to adopt single-member districts, the County added Section 203 to the Charter:

Section 203. Single-member Representation.

A proposition calling for single-member representation within the Commission districts shall be submitted to the electors of Orange County at the General Election to be held in November of 1988. (A:10)

The effect was to separate the two questions: In November of 1986, the voters would decide whether to have a Charter; in November of 1988, they would decide whether to change from at-large to single-member district elections.

Pursuant to Section 702 of the Charter (A:13), a "Charter Review Commission" was created in August of 1987 (A:15) to offer other amendments and revisions, if any, to the Charter. After a year of work, the Commission offered the electors (i) an amendment to Section 201 to allow single-member district elections and (ii) a further revision of the entire Charter not only to allow single-member district elections, but also to add a sixth commissioner, to create the office of "County Chairman" to be elected county-wide, to separate the executive and legislative functions, and to make numerous other changes. Among other things, the sixth commissioner increased the opportunity for minority representation, and the addition of the "strong chairman" created a leadership position with county-wide stature and perspective.

On November 8, 1988, the amendment passed by 62% and the revision passed by 56%, showing unequivocally that the county's voters want not only single-member districts, but also substantial other changes in the form of their county government. The referendum results proved one other thing: Orange County voters want not only a charter, but also the types of changes in

county government which are available only through a charter and constitutionally are not permitted in non-charter counties.

The Amici Curiae.

The Greater Orlando Chamber of Commerce, Inc. (the "Chamber of Commerce"), is a corporation organized not-for-profit under Florida Law. Among others, its purpose is "to provide leadership on major economic, social, and political issues on behalf of Chamber members." Accordingly, the Chamber of Commerce has governmental relations as one of its three major on-going programs and has taken a leadership role in a number of political issues affecting Orange County, including charter government.

For example, from 1984 to 1986, the Chamber organized and conducted "PROJECT 2000", a major effort to develop an agenda for the Orlando area for the year 2000. Project 2000 involved hundreds of citizens and community leaders spending thousands of hours on numerous committees and task forces studying issues which will affect the community as its approaches the 21st Century. One such group was the Governance Task Force, which studied local government for two years, held numerous public workshops, and ultimately recommended, among other things, that Orange County adopt a Charter.

PROJECT 2000 has now been succeeded by "GOALS 2000", an effort by some five hundred volunteers to implement the recommendations of the former program.

The individual amici curiae are all citizens and voters of Orange County and constitute the fifteen members of the Orange County's Charter Review Commission appointed in August, 1987. The Charter Review Commission was empowered under Section 702 of the Charter "to conduct a comprehensive study of all phases of County Government" and to offer "proposed amendments and revisions of the Charter" to the electorate at the November, 1988 General Election. A:13,14.

The Commission met regularly for nearly one year and held eleven public hearings to obtain citizen input. On July 27, 1988, it issued its report, which included, as explained above, both an amendment and a revision of the Charter. On August 24, 1988, the Charter Review Commission adjourned sine die. Consequently, the fifteen individual amici curiae file this Brief in their individual capacities and not as the Charter Review Commission.

SUMMARY OF ARGUMENT

On November 8, 1988, the voters of Orange County approved a revision of the entire Orange County Charter. By coincidence, the proceedings leading up to the November 8th referendum complied fully with all requirements of Chapter 125, Part II of Florida Statutes for adopting a new charter.

Therefore, the issue of whether the Charter as adopted in 1986 is moot: the revised 1988 Charter was approved as if being adopted ab initio, and its validity does not depend on the outcome of this appeal.

Further, the results of the November 8th Referendum prove that the will of the electorate was, indeed, effected in 1986, notwithstanding Webster's arguments. If Orange County voters felt hoodwinked in 1986 by the referendum being held only 43 days after "receipt" of the Charter by the county commission, they likely would not have approved in 1988 the revised Charter and its substantial changes to the form of Orange County government.

ARGUMENT

1. ON NOVEMBER 8, 1988, THE VOTERS OF ORANGE COUNTY RENDERED WEBSTER'S LAWSUIT MOOT BY EFFECTIVELY APPROVING A NEW CHARTER PURSUANT TO PART II OF CHAPTER 125 OF FLORIDA STATUTES.

On November 8, 1988, the voters of Orange County approved a revision of the entire Orange County Charter. A:36. By coincidence, the proceedings leading up to that referendum approval complied fully with all requirements in Part II of Chapter 125 of Florida Statutes for the initial adoption of a county charter.

For all the reasons which counsel to the County are expected to argue, the Chamber of Commerce and the several individual amici curiae urge this Court to quash the Fifth District's opinion. However, even if this Court decides that the Charter as approved in 1986 is invalid, whether for the reasons set forth by the lower court or otherwise, the issue is now moot: the voters of Orange County have effectively approved a new charter.

The impetus for revising the Charter came from Section 702 of the Charter itself, which requires the Board of County Commissioners to appoint periodically a panel of electors to be known as the "Charter Review Commission." A:13,14. This body is then empowered to study "any or all phases of county government" and propose Charter amendments and revisions which are placed on the ballot beginning in November of 1988 and in four-year cycles thereafter. Id.

Accordingly, the first Charter Review Commission was appointed on August 10, 1987. A:15. The Charter Review Commission conducted its work and deliberations for nearly a year, issuing its report on July 27, 1988, and proposing an amendment to Section 201 of the Charter and a revision of the entire Charter.¹ A:20-33. The proposed revision, contained in Exhibit A to the report (A:24-33), encompassed the entire Charter, including the Preamble and Articles I through VII. Id. The revision affected all articles, leaving only the Preamble unchanged.

On November 8th, the revision was approved by a vote of 93,078 (56%) to 72,753 (44%). A:36.

Although the Charter Review Commission set out in August of 1987 simply to fulfill its responsibilities under Section 702 of the Charter, it coincidentally complied with the procedures set forth in Part II of Chapter 125 of Florida Statutes for adopting a new charter. Compare the Charter Review Commission's proceedings with Sections 125.60 through 126.64:

¹The amendment to Section 201 changed the method of electing county commissioners from "at large" to "single-member districts". A:21. Section 203 of the Charter required this proposition to be placed on the ballot in the November 1988 General Election. A:10. In contrast, the revision not only approved "single-member districts", but also added a sixth commissioner and the office of County Chairman elected countywide, separated the legislative and executive functions, and made other related changes. A:24-33. By passing both propositions, the voters declared their desire not only for single-member districts, but also for substantial changes in their form of county government, which would not be legally possible in a noncharter county. cf. Art VIII, § 1, Fla. Const.

- * A charter commission must be appointed by the board of county commissioners or the local legislative delegation. §125.61(2), Fla. Stat. (1987).

The Charter Review Commission was appointed by the Orange County Board of County Commissioners. A:15.

- * A board of county commissioners must call for creation of the charter commission by resolution. §125.61(1), Fla. Stat. (1987)

The Charter Review Commission was initiated by resolution of the Board. A:15-17.

- * A charter commission must be composed of an odd number of not less than 11 or more than 15 members. §125.61(2), Fla. Stat. (1987)

The Charter Review Commission had 15 members. A:15-17.

- * No members of the legislature or the board of county commissioners may serve on a charter commission. §125.61(2), Fla. Stat. (1987)

No members of the legislature or the Board of County Commissioners served on the Charter Review Commission. A:18.

- * A charter commission must hold an organizational meeting within 30 days after appointments have been made. §125.62(1), Fla. Stat. (1987)

The Charter Review Commission was appointed on August 10, 1987, and held its organizational meeting on September 1, 1987, only 22 days later. A:15, 18.

- * A charter commission must elect a chairman and vice-chairman from among its membership. §125.62(1), Fla. Stat. (1987)

The Charter Review Commission elected members James L. Harris and Lee Chira as its Chairman and Vice-Chairman, respectively. A:18.

- * All meetings of a charter commission must be open to the public. §125.62(1), Fla. Stat. (1987)

All meetings of the Charter Review Commission were open to the public. A:18.

- * A charter commission must present a proposed charter to the board of county commissioners within 18 months of its initial meeting. §125.63, Fla. Stat. (1987)

The Charter Review Commission presented its proposed revised Charter to the Board of County Commissioners 10 months after its initial meeting. A:18-20.

- * A charter commission must hold three public hearings on the proposed charter at intervals of not less than 10 nor more than 20 days. §125.63, Fla. Stat. (1987)

The Charter Review Commission held 11 public hearings spread over a period of some 140 days. A:18, 19 .

- * A charter commission must provide a method in the proposed charter for submitting future charter revisions and amendments to the electors of the county. §125.64(2), Fla. Stat. (1987)

The revised Charter, allows for future amendments by voter initiative (§602), by the Board of County Commissioners (§701), and periodically by the future charter review commissions (§702). A:30-32.

- * A charter proposed by a charter commission may be amended only by the electors of the county. §125.64(2), Fla. Stat. (1987)

All future amendments of the revised Charter take effect only if approved by the electors of Orange County, whether proposed by initiative, the Board of County Commissioners, or a future charter review commission. A:30-32.

- * Notice of the election on the proposed charter must be published in a newspaper of general circulation in the county not less than 30 nor more than 45 days before the election. §125.64(1), Fla. Stat. (1987)

Notice of the November 8th referendum was published twice, on October 2nd and 16th, 1988, in The Orlando Sentinel, a newspaper of general circulation in Orange County. A:34.

- * A charter must be approved at referendum. §125.64(1), Fla. Stat. (1987)

The revised Charter was approved by the voters of Orange County on November 8, 1988. A:36.

The only part with which the Charter Review Commission may not have strictly complied was the restriction in Section 125.64(1) that the charter referendum "be held not more than 90 nor less than 45 days subsequent to the [county commission's] receipt of the proposed charter...." As contemplated by Subsection 702A of the Charter (A:13), the Charter Review Commission directed its Chairman and General Counsel to deliver the proposed Charter to the Board of County Commissioners "no later than August 1, 1988." A:23. The election was held November 8th, exactly 100 days later.

Failure to comply with the 45/90-day election window has two dramatically different results, depending on which end is missed. The 45-day limitation addresses the minimum notice which the voters must receive prior to a charter election under Part II of Chapter 125. Depending on the circumstances, failure to comply with this requirement could void a charter referendum -- indeed, that is otherwise the central issue in this appeal.

However, the 90-day maximum limitation is utterly irrelevant to the validity of a charter. The 90-day limit for holding the election forces a board of county commissioners to do just that: hold the election. It provides a remedy of mandamus or injunction for a frustrated charter commission or a frustrated voter if a board of county commissioners refuses to offer the proposed

charter at referendum. cf. Anderson v. The Town of Largo, 169 So.2d 481, 482 (Fla. 1964); 1971 Op. Atty. Gen. Fla. 71-316 (Oct. 4, 1971). A contrary interpretation would allow precisely the undesirable result: a county commission could deliberately trash months of work by a charter commission simply by waiting 91 days to hold the election.

In other words, the 90-day limit affords an affected person the right to have a charter election conducted, not invalidated.

The Charter Review Commission having thus complied with all the requirements of Part II of Chapter 125, the 1988 Charter must now validly exist in Orange County, either as a revision to the 1986 Charter or standing on its own adoption. Stated differently, the legal validity of the 1988 referendum does not depend on the outcome of this appeal. By virtue of Chapter 125, Part II, a charter was lawfully approved on November 8th by the Orange County electorate, and it matters not that it was characterized as a revision of a charter declared invalid by the 5th District.² To hold otherwise would exult form over substance and frustrate mightily the clear desire of the electorate.

²As a revision of the 1986 Charter, the 1988 Charter was drafted with the customary legislative convention of underscoring the words being added and striking through the words being deleted. A:24-33. If the 1986 Charter is invalid, as argued by Webster, the struck-through words and the underscoring in the 1988 Charter should simply be deemed surplusage, having no legal significance. In any event, the use of this legislative convention is hardly grounds not to declare the 1988 Charter valid.

Able counsel for the County will argue that the 5th District should be reversed on the grounds that (i) the 45-day limitation never applied to the adoption of the 1986 Charter, (ii) even if it did, the County substantially complied with the requirement, and (iii) even if there was not substantial compliance, Chapter 88-38, Laws of Florida, ratified the 1986 Charter. The Chamber of Commerce and the individual amici curiae heartily concur with the County and urge reversal.

However, even if this Court is inclined not to reverse, it need not affirm the lower court. Instead, this Court can declare the issue moot based on the 1988 referendum and dismiss the appeal. Board of Public Instruction of Duval County v. NAACP, 210 So.2d 713 (Fla. 1968); Chafetz v. Greene, 203 So.2d 18 (Fla. 3d DCA 1967); Gill v. City of North Miami Beach, 156 So.2d 182 (Fla. 3d DCA 1963); Bliven v. Turville, 100 So.2d 91 (Fla. 2d DCA 1958). Of course, when great public interest is involved, the Court may nevertheless decide a case despite the issues being moot. Pitt v. Belote, 146 So. 380 (Fla. 1933). Indeed, when issues become moot because of events occurring subsequent to trial, the appellate court can simply refrain from ruling and remand the case to the trial court for further proceedings in light of the subsequent events. Storch v. Allgood, 184 So.2d 170 (Fla. 1966).

The lower court should be reversed. Short of that, a declaration that the issue is moot would, at least, defer to the electorate and allow its will to take effect.

And, take effect it should. How many times must it speak? How many times must Orange County voters say they want a charter? How many times must they go to the polls to get single-member districts and an elected executive? How many times must they vote to get powers such as recall and initiative -- powers denied them under noncharter form?

The ramifications of the Fifth District's holding are enormous. After years of public meetings, public hearings, extensive debate, personal efforts by county commissioners, legislators and civic and business leaders, and community efforts such as PROJECT 2000 and GOALS 2000, the results of not one, but two referenda are in jeopardy of judicial annihilation -- all because of a hyper-technicality involving 2 days out of 43.

Simply put, the voters should not bear the risk of an insubstantial defect of questionable applicability.

In summary, the issue of whether the 1986 charter referendum was procedurally defective has been rendered moot by the 1988 charter referendum. The opinion of the 5th District should be reversed or, alternatively, the appeal should be declared moot and remanded. In any event, the voters, not the lower court should be affirmed.

2. THE RESULTS OF THE 1988 CHARTER REFERENDUM
PROVE THAT ORANGE COUNTY SUBSTANTIALLY
COMPLIED WITH ALL STATUTORY REQUIREMENTS IN
THE 1986 REFERENDUM.

In 1986, the voters of Orange County declared that they wanted a county charter. The referendum held in 1988 was a resounding confirmation of the voters' desire for a charter and proved that the 1986 election was held in substantial compliance with all statutory requirements.

In any election contest, the primary consideration is whether the will of the electorate has been effected. Boardman v. Esteve, 323 So.2d 259 (Fla. 1975); cert. denied, 425 U.S. 967 (1976). In complaining that the County failed to comply with the 45-day limitation contained in Section 125.64(1) of Florida Statutes, Webster has not alleged any election fraud or coercion, nor has he claimed that any voters were denied or were prevented from exercising their right to vote. Absent allegations and proof of these elements, the issue is whether there has been substantial compliance with statutory requirements. Chappell v. Martinez, 13 F.L.W. 702 (Fla. 1988); Wadhams v. Board of County Commissioners of Sarasota County, 501 So.2d 120 (Fla. 2d DCA 1987).

Whether there was substantial compliance in 1986 will be argued at length by counsel for the County, and it is not the purpose of this brief to restate the argument. However, the

Chamber of Commerce and the individual amici curiae would like to point out the clear inference to be drawn from the 1988 referendum results.

Webster has never made any allegation or offered any proof that the results of the 1986 referendum would have been different if the County had strictly complied with the 45-day statutory requirement. Indeed, this Court now has proof to the contrary: if Orange County voters felt hoodwinked by the supposed two-day shortfall in 1986, they would not have approved both an amendment and a revision of the Charter in 1988.

To understand the electorate's attraction to its Charter, one must understand the nature of the 1988 amendment and revision. The amendment, "Proposition 1" on the ballot card (A:35) changed the method of electing county commissioners from "at large" to "single-member districts." The revision, "Proposition 2" (A:35), not only made this change, but also (i) added a sixth commissioner,³ (ii) created the office of "County Chairman", a strong executive position to be elected county wide,

³A primary motive in combining a sixth commissioner with single-member districts is achieving minority representation on the Board of County Commissioners.

and (iii) separated the executive and legislative functions in county government.⁴

Although the single-member-district method of election has been available to noncharter counties since 1985,⁵ the other changes made by the revision are constitutionally unobtainable in noncharter counties. Art. VIII, §§ 1(c)-(g), Fla. Const. Thus, by approving the 1988 Charter revision, the voters have declared not only that they want a charter, but also that they want a form of county government (i.e., six county commissioners and an elected chief executive) that is available only through a charter.

In other words, any doubt as to whether the will of the electorate was effected in 1986 has now evaporated by virtue of the 1988 referendum. Therefore, the County must be deemed to have substantially complied with all statutory requirements, and the district court opinion should be quashed.

⁴Other changes were also made concerning the procedures for voter initiative petitions, the issue of conflicting county and city ordinances, and other subjects not pertinent to this appeal. (A:24-33).

⁵See, House Joint Resolution 452 (1984) (codified at Art. VIII, § 1) and Ch. 84-224, § 1 Laws of Fla. (codified at § 124.011, Fla. Stat. (1987)).

CONCLUSION

In Boardman, supra, then Chief Justice Adkins eloquently expressed the central concern in a contest of election procedure:

... the real parties in interest here, not in the legal sense but in realistic terms, are the voters. They are possessed of the ultimate interest and it is they whom we must give primary consideration.... The right to vote is ... the right to speak, but more importantly the right to be heard. We must tread carefully on that right or we risk the unnecessary and unjustified muting of the public voice. By refusing to recognize an otherwise valid exercise of the right of a citizen to vote for the sake of sacred, unyielding adherence to statutory scripture, we would in effect nullify that right. 323 So.2d at 263.

There are more than ample grounds argued by the County for reversal of the lower court decision. However, even if this Court disagrees that there was substantial, if not complete compliance with statutory requirements, and even if this Court disagrees that the Legislature of Florida has ratified the Charter by enacting Chapter 88-38, Laws of Florida, it still need not affirm the opinion on appeal. Instead, it can respect the votes cast on November 8, 1988 and declare the issue moot.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Amicus Curiae has been furnished to the following by U.S. Mail this 3rd day of January, 1989:

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