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SUPREME COURT OF FLORIDA

CASE NO. 83,010

District Court of Appeal
5th District No. 92-2645

CHARTER REVIEW COMMISSION
OF ORANGE COUNTY, FLORIDA,

Petitioner,

vs.

ERNIE SCOTT; FORD S. HAUSMAN,
as ORANGE COUNTY PROPERTY
APPRAISER; EARL K. WOOD, as
ORANGE COUNTY TAX COLLECTOR;
WALTER J. GALLAGHER, as
ORANGE COUNTY SHERIFF; BOARD OF
COUNTY COMMISSIONERS OF ORANGE
COUNTY, FLORIDA; and BETTY
CARTER as ORANGE COUNTY
SUPERVISOR OF ELECTIONS,

Respondents.

BRIEF OF METROPOLITAN DADE COUNTY
AS INTERVENOR OR IN THE ALTERNATIVE
AS AMICUS CURIAE

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QUESTION PRESENTED

WHETHER THE "SINGLE SUBJECT RULE" APPLIES
TO COUNTY CHARTER REVISIONS.

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INTRODUCTION

This Brief is submitted by Metropolitan Dade County as an intervenor or alternatively as amicus curiae. Metropolitan Dade County's February 7, 1994, motion to intervene or in the alternative to appear as amicus curiae is attached as Appendix A to this Brief.

DECISIONS BELOW

The decisions below of the Fifth District Court of Appeal are reported at 18 Fla. L. Weekly D2126 and 18 Fla. L. Weekly D2622.

STATEMENT OF THE CASE AND FACTS

Pursuant to §702 of the Orange County Charter, the Orange County Board of County Commissioners appointed a charter review commission to study county government and to propose amendments and revisions to the County Charter. In July 1992, the Charter Review Commission proposed a series of amendments that were incorporated into six separate ballot questions to be submitted to the voters on November 3, 1992. Only one of these questions is at issue in this case. That question provided as follows:

QUESTION #1

CREATE CITIZEN REVIEW BOARD; CHANGE
SHERIFF, PROPERTY APPRAISER AND TAX
COLLECTOR TO ELECTED CHARTER OFFICERS

Shall the Orange County Charter be revised to: (a) create a Citizen Review Board with subpoena power that would review and make recommendations regarding citizen complaints and departmental investigations

of the use of force or abuse of power by employees of the Sheriff; and (b) make the Orange County Sheriff, Property Appraiser and Tax Collector elected charter officers subject to Charter provisions and abolish their current status as "constitutional officers"?

YES
 NO

Respondents filed suit seeking to enjoin the vote on Question #1. On October 26, 1992, the Circuit Court of the Ninth Judicial Circuit entered a final order in which it found that Question #1 was misleading and failed to notify the voters of the actual substance of the ballot proposal. The Circuit Court also determined that Question #1 attempted to amend two separate sections of the Orange County Charter and thus violated the "single subject rule," which prohibits an enactment from encompassing two separate and distinct propositions. For these reasons, the Circuit Court enjoined the Orange County Supervisor of Elections from tabulating the results of the vote on Question #1.

The Fifth District Court of Appeal affirmed. The Fifth District recognized that neither the Florida Constitution nor the Florida Statutes contained an express provision mandating a single subject rule for county charter revisions. Nonetheless, it held that "general law and public policy of Florida" called for application of the "single subject rule" to Question #1. See Charter Review Comm'n v. Scott, 18 Fla. L. Weekly D2126, D2127-D2128 (Fla. 5th DCA Oct. 1, 1993). Applying the rule to the Question #1, the Fifth District held

that Question #1 encompassed between two and four distinct propositions. See id. at D2128. Accordingly, the Fifth District held that Question #1 failed to comply with the single subject rule.¹

The Fifth District granted rehearing for the limited purpose of certifying the following question for review as one great public importance:

WHETHER BALLOT QUESTIONS CONTAINING COUNTY
CHARTER REVISIONS PROPOSED BY A CHARTER
REVIEW COMMISSION ARE SUBJECT TO A SINGLE
SUBJECT RULE?

See Charter Review Comm'n v. Scott, 18 Fla. L. Weekly D2622 (Fla. 5th DCA Dec. 10, 1993). On January 13, 1994, this Court issued an order that postponed its decision on jurisdiction and directed the parties to serve briefs on the merits.

JURISDICTIONAL STATEMENT

Article V, §3(b)(4), of the Florida Constitution grants this Court discretion to review any decision of a district court of appeal that passes upon a question certified by it to

¹On October 27, 1992, the day after the Circuit Court's final order, Petitioner filed its notice of appeal to the Fifth District Court of Appeal. Pursuant to Rule 9.310(b)(2) of the Florida Rules of Appellate Procedure, the notice of appeal operated as an automatic stay of the Circuit Court's order. Consequently, the vote on Question #1 proceeded as scheduled, and while the case was pending on appeal, the Orange County voters passed Question #1. The Fifth District determined that the election's completion and the favorable vote on Question #1 did not operate to cure any defect in the ballot question or otherwise render the case moot. See Charter Review Comm'n v. Scott, 18 Fla. L. Weekly D2126, D2127 (Fla. 5th DCA Oct. 1, 1993). Metropolitan Dade County does not contest this portion of the Fifth District's ruling.

be of great public importance. The Court should exercise its discretion in this case.

The question certified by the Fifth District -- whether a ballot question containing county charter revisions proposed by a charter review commission is subject to the single subject rule -- is of great public importance. This question lies at the intersection of two areas whose great public importance is illustrated by the attention that this Court has accorded to them: (1) the application of the single subject rule to certain governmental enactments, see, e.g., Fine v. Firestone, 448 So. 2d 984 (Fla. 1984); Weber v. Smathers, 338 So. 2d 819 (Fla. 1976), and (2) the powers and functioning of charter county governments; see, e.g., County of Orange v. Webster, 546 So. 2d 1033 (Fla. 1989); Broward County v. City of Fort Lauderdale, 480 So. 2d 631 (Fla. 1985). If the certified question were answered in the affirmative, the imposition of a single subject rule upon county charter revisions would have drastic consequences for charter counties by substantially impairing their abilities to adjust governmental structures to respond changing public needs. Cf. State v. Lee, 356 So. 2d 276, 282 (Fla. 1978) (observing need to exercise caution in applying single subject rule).

Not only is the question certified by the Fifth District important, but also the Fifth District's resolution of it is incorrect. As explained below, there is no textual or contextual warrant for a conclusion that the single subject rule applies to any form of county charter revision. The

policies that explain the single subject rule similarly fail to support extending it to a county charter revision, and the cases relied upon by the Fifth District do not suggest otherwise. Even if there were a justification for such an extension of the single subject rule, that justification would not sanction extending it, as in this case, to a county charter revision generated by a governmental body.

SUMMARY OF ARGUMENT

Article VIII, §1, of the Florida Constitution and Chapter 125 of the Florida Statutes create a comprehensive scheme for regulating charter county government. Article VIII, §1, and Chapter 125 do not contain an express single subject rule for county charter revisions. Nor do they support such a rule by implication. Taken together, Article VIII, §1, and Chapter 125 address the allocation of numerous functions within county governments, the structure and content of county charters, and the application of the single subject rule to county ordinances. Article VIII, §1, and Chapter 125 have ample occasion to provide for a single subject rule for county charter revisions. Their failure to do so is telling and indicates a distinct aversion towards imposing a single subject rule in this setting.

The policies driving the single subject rule confirm that the statutory and constitutional silence is intentional. The Florida Constitution and Florida Statutes contain single subject rules for legislation, legislative appropriations for

executive branch expenses, and initiative-based constitutional amendments or revisions. These single subject rules seek to combat two dangers: (1) legislative "logrolling" among special interest groups and (2) sweeping, unchecked change in our constitutional system. County charter revisions do not present either danger. Indeed, county charter revisions are more closely akin to municipal charter amendments, which are not limited by a single subject rule.

None of the cases relied upon by the Fifth District support a contrary conclusion. Antuono v. City of Tampa, 87 Fla. 82, 99 So. 324 (1924), and State v. Dade County, 39 So. 2d 807 (Fla. 1949), held that the single subject rule applies to ballot questions to issue bonds for capital improvements. Unlike county charter revisions, bond issues largely resemble legislation and present the same threat of logrolling that animates Florida's express single subject rule for legislation. City of Coral Gables v. Gray, 154 Fla. 881, 19 So. 2d 318 (1944), interpreted Article XVII, §1, of the Constitution of 1885 to provide for a single subject rule for legislatively-proposed constitutional amendments. Gray based its result on a construction of language within Article XVII, §1. By contrast, no textual foundation exists for a single subject rule applicable to county charter revisions. To the extent that Antuono, Dade County, and Gray suggest an active judicial role in devising single subject rules for various county government enactments, the Legislature's adoption of

Parts II-IV of Chapter 125 has superseded the rationale for that suggestion.

Finally, even if there were a justification to apply a single subject rule to some types of county charter revisions, that justification would not extend to those revisions proposed by a governmental body. Charter revisions proposed by a governmental body occur after public debate and hearing. As the Court recognized in Fine v. Firestone, 448 So. 2d 984, 988-89 (1984), the checks provided by public debate and hearing explain why the single subject rule does not apply to constitutional amendments and revisions generated by a governmental body. That logic applies with equal force to county charter revisions and compels the conclusion that the single subject rule similarly should not apply to charter revisions generated by a governmental body.

ARGUMENT

I. THE SINGLE SUBJECT RULE DOES NOT APPLY TO COUNTY CHARTER REVISIONS

A. The Absence Of An Express Single Subject Rule For County Charter Revisions Within Either The Florida Constitution Or Florida Statutes Is Intentional

As its name implies, the "single subject rule" prohibits an enactment from embracing more than one proposition. See, e.g., Advisory Opinion to the Attorney General, 592 So. 2d 225, 227-28 (Fla. 1991). The Florida Constitution and Florida Statutes contain express single subject limitations for a

variety of enactments, see Art. III, §6, Fla. Const.; Art. III, §12, Fla. Const.; Art. XI, §3, Fla. Const.; §125.67, Fla. Stat. (1993); §166.041(2), Fla. Stat. (1993), but county charter revisions² are not among them. The great detail that the Constitution and statutes dedicate to county government procedure in general and to county charters in particular reveals that this silence is intentional and that Florida law does not countenance the application of the single subject rule to county charter revisions.

County government is the subject of eleven separate provisions within Article VIII, §1, of the Florida Constitution. Among other things, §1 enumerates required county officers, see id., §1(d); mandates the existence of a board of county commissioners and explains the process for electing board members, see id., §1(e); and provides for charter and non-charter governments and identifies the respective powers of each, see id., §1(f)-(g).

Chapter 125 of the Florida Statutes likewise is devoted exclusively to county government. Chapter 125 is comprehensive. Included within Chapter 125 is a detailed recitation of the 40 separate substantive powers and duties held by county governments. See §125.01, Fla. Stat. (1993). Elaborating upon §125.01, Chapter 125 contains four separate

²For purposes of the issue before the Court, a county charter revision is identical to a county charter amendment. This brief uses the term "county charter revision" to refer to both.

provisions dealing with taxation, see §§125.0104, 125.0108, 125.016 & 125.019, Fla. Stat. (1993), and another six addressing county-owned property, see §§125.35, 125.355, 125.37, 125.38, 125.39 & 125.411, Fla. Stat. (1993).

Three of the five Parts under Chapter 125 are dedicated to the processes by which county government operates. Taken together, Parts II, III, and IV of Chapter 125 describe the mode of county administration, see §125.70-125.74, Fla. Stat. (1993), the allocation of legislative and executive responsibilities within charter counties, see §125.83-125.88, Fla. Stat. (1993), and the procedures for enacting county ordinances and county charters, see §125.66-125.67, Fla. Stat. (1993) (county ordinances); §§125.60-125.64 & 125.82, Fla. Stat. (1993) (county charters).

The two series of provisions that address county charters are both extensive. Part II of Chapter 125 sets forth the customary procedure for adopting a county charter, including the process for invoking a charter commission, the methods for selecting members, the drafting and proposal of a county charter, and the vote by the electors on the proposed charter. See §§125.60-125.64, Fla. Stat. (1993). The Florida "Optional County Charter Law" sets forth an alternative means for proposing a county charter. Under this provision, the board of county commissioners, in lieu of a charter commission, may propose a charter for vote by the electors. See §125.82, Fla. Stat. (1993).

The Optional County Charter Law also contains a detailed series of provisions that focus exclusively upon the structure of charter counties. For instance, the Optional County Charter Law identifies three permissible forms of charter county government: the "County Executive Form," the "County Manager Form," and the "County Chairman-Administrator Form." See §125.84, Fla. Stat. (1993)). Additionally, the Optional County Charter Law divides legislative and executive functions within charter counties, requires that charter counties adopt an administrative code, and explains the relationship between the adoption of a county charter and the status of the civil service. See §§125.84-125.88, Fla. Stat. (1993). The Optional County Charter Law goes so far as to provide for mandatory residency requirements for elected county officers and optional residency requirements for appointed county officers. See §125.83, Fla. Stat. (1993).

In view of the thorough attention that Article VIII and Chapter 125 accord to county government procedures, the absence of a provision that places county charter revisions under a single subject limitation is telling. The comprehensive scope of these provisions indicate that Article VIII and Chapter 125 are not merely starting points to be supplemented by additional judicially-devised procedures. Moreover, the absence of a single subject rule for county charter revisions cannot be accidental, for the single subject

rule is a well-known feature of Florida law. See Art III, §6, Fla. Const.; Art. III, §12, Fla. Const.; Art. XI, §3, Fla. Const.; §125.67, Fla. Stat. (1993); §166.041(2), Fla. Stat. (1993). Considered against the backdrop of the express single subject rules that govern certain constitutional revisions, see Art XI, §3, Fla. Const., and that govern county ordinances, see §125.67, Fla. Stat., the absence of a similar express single subject rule for county charter revisions is particularly striking.

A second and related consideration amplifies the significance of this silence. The question whether a particular enactment satisfies the single subject rule necessarily turns upon how broadly the term "single subject" is construed. Constitutional and statutory single subject rules thus include language that helps define the meaning of "single subject" in each different setting. For instance, the single subject rule for legislation explains a single subject as encompassing "one subject and matter properly connected therewith." Art. III, §6, Fla. Const. (emphasis added). Accord §§125.67, 166.041(2), Fla. Stat. (1993). The single subject rule for initiative-based constitutional amendments and revisions seeks to effect a tighter restriction, describing a single subject as "one subject and matter directly connected therewith." Art. XI, §3, Fla. Const. (emphasis added). See Fine v. Firestone, 448 So. 2d 984, 988-89 (Fla. 1984) (distinguishing scope of "properly connected therewith" under Article III, §6, from "directly

connected therewith" under Article XI, §3). Because neither the Constitution nor statute contains a single subject rule for county charter revisions, there similarly exists no textual basis to define its scope. This void reinforces the conclusion that Florida law simply does not contemplate any such rule.³

Ordinarily, courts do not attempt to infer rules out of statutory and constitutional silence. See In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender, 561 So. 2d 1130, 1137 (Fla. 1990). Certainly, they should not do so when the textual and contextual evidence suggests that the silence is deliberate.

³ Article III, §12, of the Florida Constitution, does not undermine this argument. That provision mandates that "[l]aws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." Article III, §12, does not contain language such as either "properly connected" or "directly connected" to explain when a law includes both permissible appropriations and "no other subject." However, common sense suggests that no such supplemental language is necessary, for the question whether a particular provision appropriates money for public officers or current expenses of the State is apparent on its face and is not a question of degree. By contrast, the question whether legislation or a constitutional amendment is confined to a single subject invariably turns on how broadly one defines a single subject. Compare, e.g., Advisory Opinion to the Attorney General, 592 So. 2d 225, 227 (Fla. 1991), with id. at 231-33 (Kogan, J., concurring in part and dissenting in part); and Chenoweth v. Kemp, 396 So. 2d 1122, 1124 (Fla. 1981), with id. at 1126-27 (Sundberg, C.J., dissenting). Consequently, the single subject rules directed at those enactments contain language to define the meaning of a single subject. See Art. III, §6, Fla. Const.; Art. XI, §3, Fla. Const.; §125.67, Fla. Stat. (1993); 166.041(2), Fla. Stat. (1993). For the same reasons, a single subject rule directed at county charter revisions necessarily would require similar clarifying language.

Cf. id. ("Courts should not add additional words to a statute not placed there by the legislature. . . . It is difficult to believe that the legislature intended by its silence to undertake this financial burden."). In this case, the statutory and constitutional silence speaks volumes. The absence of an express statutory or constitutional single subject rule for county charter revisions is intentional, and the Fifth Circuit erred in assuming otherwise.

B. The Policies That Motivate The Florida Constitution's and Florida Statute's Express Single Subject Rules Do Not Support The Rule's Extension To County Charter Revisions

Even if courts were free to supplement the existing constitutional and statutory scheme with judicially-devised single subject rules, courts should not do so in the area of county charter revisions. Because unnecessary application of the single subject rule may frustrate governmental responsiveness, cf. State v. Lee, 356 So. 2d 276, 282 (Fla. 1978) (observing need to exercise caution in applying single subject rule), Florida law reserves the single subject rule for only those specific forms of enactments that pose particular grounds for concern if allowed to take on an omnibus character. Examination of the policies driving these single subject limitations explains why neither the Florida Constitution nor Florida Statutes contains a similar limitation upon county charter revisions, for county charter revisions do not bear the attributes that account for

application of the single subject rule to these other enactments.

Taken together, the Florida Constitution and Florida Statutes impose a single subject limitation upon three types of enactments. The first is legislation. Article III, §6, of the Constitution provides that "[e]very law shall embrace but one subject and matter properly connected therewith." This requirement, which has been extended by statute to county and municipal ordinances, see §125.67, Fla. Stat. (1993); §166.041(2), Fla. Stat. (1993),⁴ operates to check special interests. Without a single subject rule, special interests can partake in a process known as "logrolling," in which they secure passage of proposals that separately may lack majority support by covertly wrapping them together into a larger package designed to entice broader appeal. See Fine v. Firestone, 448 So. 2d at 988; Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978). Thus, "[t]he purpose of the . . . prohibition against a plurality of subjects in a single legislative act is to prevent a single enactment from becoming a 'cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter." State v. Lee, 356 So. 2d at 282.

⁴Article III, §6's single subject rule applies only to "'laws' in the sense of acts of the legislature." Santos v. State, 380 So. 2d 1284, 1285 (Fla. 1980).

Along these same lines, Article III, §12, of the Constitution requires that "[l]aws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." This provision attacks a particularly destructive form of logrolling. Without Article III, §12, the Legislature could block the Governor from vetoing an objectionable proposal by placing the proposal within a bill containing appropriations needed to run the executive branch. Article III, §12, prevents the Legislature from tying the Governor's hands in that way. See Brown v. Firestone, 382 So. 2d 654, 663-64 (1980).

Finally, Article XI, §3, of the Florida Constitution authorizes the voters to amend or revise the Constitution by initiative, "provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith." Although Article XI, §§1-2 and 4, also allows for amendment or revision by the Legislature, the Constitutional Revision Commission, and a Constitutional Convention, only the initiative process contains a single subject limitation. "The citizens' initiative is the most restrictive of the four methods for amending or revising the constitution." Fine v. Firestone, 448 So. 2d at 997 (Shaw, J., concurring in result). As the Court has noted, a principled reason explains the unique restriction upon initiative-based constitutional amendments and revisions. The three other means of effecting constitutional change all provide for legislative debate and

public hearing. Because the initiative process lacks such a legislative "filter," Article XI, §3's single subject rule is necessary to guard against "multiple precipitous changes in our state constitution." Fine v. Firestone, 448 So. 2d at 988; see also Smith v. Department of Insurance, 507 So. 2d 1080, 1085 (Fla. 1987) ("we should require strict compliance with the single subject rule for initiative constitutional change because our constitution is the basic document that controls our governmental functions").

County charter revisions do not bear the characteristics that would justify application of the single subject rule to them. Unlike legislation or appropriations, county charter revisions do not invite particularly troublesome forms of logrolling. County charters are concerned with the "operation" and "conduct" of county governments, see §125.63, Fla. Stat. (1993), and thus focus upon the allocation of powers within county government, see §§125.84-125.86, Fla. (1993). Because county charters do not operate to authorize discrete projects or particular expenditures, there is little risk that county charter revisions will be the product of narrow, special interest group dealmaking that can pollute the legislative process.⁵

⁵Because county charters clearly cannot interfere with the Governor's powers, the special concerns that account for Article III, §12, of the Constitution are not present in the case of county charter revisions.

Moreover, unlike initiative-based constitutional change, county charter revisions do not threaten sweeping, unbridled change in our governmental system. By definition, county charters govern confined geographical areas. More importantly, Florida law provides sufficient means to check county charter revisions that may go too far. County charters are limited by restrictions imposed by the Florida Constitution and the Florida Legislature. See, e.g., Hollywood, Inc. v. Broward County, 431 So. 2d 606, 609 (Fla. 4th DCA 1983). And as explained above, see supra, at 10, Florida's Optional County Charter Law illustrates numerous examples of limitations on county charters that State statute already has anticipated. See §§125.83-125.88, Fla. Stat. (1993). Because both the Constitution and the Legislature have ample weapons to prevent county charter revisions from veering astray, there is little need for a judicially-devised single subject limitation for county charter revisions.

Indeed, if the Court were to look to express provisions under Florida law for guidance in resolving this case, §166.031 of the Florida Statutes, would furnish a far more appropriate analogy. Although the Florida Statutes do not discuss county charter revisions, §166.031 does discuss municipal charter amendments. Section 166.031 does not impose a single subject limitation upon municipal charters. Instead, it permits a municipal charter amendment "to any part or to all" of the municipal charter (except for the part of the

charter that describes municipal boundaries). See §166.031(1), Fla. Stat. (1993). Presumably, the wide latitude accorded to municipal charter amendments is the outgrowth of several considerations: the limited danger posed by logrolling, the confined geographical scope of municipal government, and the ability of the Florida Constitution and Florida Legislature to regulate the content of municipal charters. See, e.g., §166.021, Fla. Stat. (1993). Because county charters share these features and operate within similar constraints, it stands to reason that county charter revisions similarly should not be restricted by a single subject rule.

C. The Authorities Relied Upon By The Fifth District Do Not Support Imposing A Single Subject Rule Upon County Charter Revisions

In concluding that county charter revisions should be limited by a single subject rule, the Fifth District relied primarily upon three older decisions of this Court: Antuono v. City of Tampa, 87 Fla. 82, 99 So. 324 (1924); City of Coral Gables v. Gray, 154 Fla. 881, 19 So. 2d 318 (1944); and State v. Dade County, 39 So. 2d 807 (Fla. 1949). Each case is distinguishable, and none support imposing a single subject restriction upon county charter revisions.

In Antuono, the City of Tampa placed before the voters a ballot question that sought permission to issue bonds to finance a variety of capital improvement projects. The

projects included wharves, hospitals, parks, an auditorium, sewage disposal, a fire station, certain street repairs, garbage incineration, water mains, a seawall, and several bridges. See 99 So. at 325. The ballot question offered the voters only an "all-or-nothing" choice and did not permit them to accept some of the projects while rejecting others. See id. Noting commentary endorsing the single subject rule as a general principle, the Court determined that "principles of fair dealing" required applying a single subject rule to the ballot question in that case. See id. at 326 (citing 5 McQuillin on Municipal Corporations §2198). The Court then held that the City of Tampa's ballot question did not meet the single subject test. See id. at 326-27.

Antuono did not involve a county charter revision, but rather a ballot question that proposed to finance discrete capital projects. These two different types of enactments have markedly distinctive qualities. The Antuono ballot question was analogous to legislation in that it focused upon particular projects and expenditures. Indeed, the Antuono ballot question grouped together a series of unrelated projects that each would benefit discrete segments of the community in attempt to "logroll" the support of each group into approval for all of the projects. Consequently, it invited the very sort of logrolling that animates the single subject rules for State legislation and county and municipal ordinances found within Article III, §6, of the Florida Constitution and §§125.67 and 166.041(2) of the Florida

Statutes. As indicated earlier, see supra, at 16, this concern does not warrant extending a single subject rule to county charter revisions.

Nor does Antuono's generalized appeal to the justifications for the single subject rule justify imposing that rule specifically upon county charter revisions. Florida law recognizes that these justifications have strength in certain settings. For instance, Article III, §6, of the Florida Constitution imposes a single subject rule upon legislation; Article III, §12 imposes one on legislative appropriations; and Article XI, §3, imposes one on constitutional amendments or revisions by initiative.

At the same time, however, Florida law rejects the notion that the general virtues of the single subject rule warrant placing every type of enactment under a single subject limitation. Thus, although initiative-based constitutional changes are restricted by a single subject rule, constitutional changes proposed the Legislature, the Constitutional Revision Commission, or a Constitutional Convention are not. Compare Art. XI, §3, Fla. Const., with Art. XI, §§1-2 & 4, Fla. Const. Similarly, the statute governing municipal charter amendments does not purport to restrict such amendments to a single subject only. See §166.031, Fla. Stat. (1993). Taken collectively, these provisions indicate that Florida law does not impose the single subject rule upon enactments that do not present the

precise dangers the rule seeks to combat. As explained above, see supra, at 16-17, the policies that account for the single subject rule do not attach with any particular force in the setting of county charter revisions.

The other two cases proffered by the Fifth District likewise fail to support its result. Like Antuono, Dade County arose out of a ballot question that sought approval to issue bonds for capital improvements. The bond issues in Dade County proposed to construct bridges situated in five separate locations within the County. See 39 So. 2d at 807-08. Citing Antuono, the Court recognized that ballot questions on bond issues must satisfy the single subject rule and concluded that the ballot question in that case did satisfy the rule. See id. at 808-09. Because Dade County does no more than follow Antuono, it is distinguishable for the same reasons.

Gray involved a statewide ballot question proposed by the Legislature to amend the Florida Constitution of 1885 to either restructure or abolish various county offices and functions within both Orange County and Dade County. See 19 So. 2d at 321. The Court found that the language of Article XVII, §1, of the Constitution of 1885, which required that legislatively-proposed constitutional amendments "be so submitted as to enable the electors to vote on each amendment separately," imposed a single subject limitation on the amendment at issue in the case. It then held that proposed changes in the offices and their functions within the two

separate counties did not meet that test. See Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978) (explaining Gray).

Gray also is easily distinguished from this case. The Court in Gray did not purport to employ a judicially-devised single subject rule. Rather, Gray located a single subject rule within an existing constitutional provision. Accordingly, the single subject rule in Gray had a solid textual basis: the language in Article XVII, §1, requiring that voters be allowed to vote "on each amendment separately." By contrast, the single subject rule in this case does not result from the construction of existing constitutional or statutory language. Indeed, there is no textual basis at all for a single subject rule applicable to county charter revisions.⁶

Finally, none of these cases should be read to endorse an active judicial role in devising single subject rules for county charter revisions. To the extent Antuono, Dade County, or Gray suggested such a role, Chapter 125, Parts II-IV, of

⁶The closest textual source for such a rule would come from §125.67 of the Florida Statutes, which provides that "[e]very [county] ordinance shall embrace but one subject and matter properly connected therewith" (emphasis added). Section 125.67 provides no support for a single subject rule for county charter revisions. Florida law contains numerous references to constitutional and charter amendments and revisions. See, e.g., Art. XI, §§1-4, Fla. Const; §166.031, Fla. Stat. (1993). If the Legislature were to have intended for §125.67 to cover county charter revisions, it surely would have used a term other than the "ordinance" to express that intention.

the Florida Statutes has superseded the logic behind that suggestion. As explained above, see supra, at 9-10, Parts II-IV comprehensively address the allocation of numerous functions within county governments, the structure and content of county charters, and the application of the single subject rule to county ordinances. The Legislature put the bulk of Parts II-IV into place between 1969 and 1974, well after Antuono, Dade County, and Gray were decided. The great detail the Legislature has devoted to county government procedures through Chapter 125 more than adequately responds to any need these cases might have sensed for devising extensive procedural safeguards for county governments. In view of Chapter 125, any hint that Antuono, Dade County, and Gray might endorse judicially-devised single subject rules for county governments no longer remains viable. Cf. Sparks v. State, 273 So. 2d 74, 76 (Fla. 1973) ("The reason for the common law rule having ceased, the rule is discarded").

II. EVEN IF THE SINGLE SUBJECT RULE APPLIES TO
SOME COUNTY CHARTER REVISIONS, IT DOES NOT
APPLY TO COUNTY CHARTER REVISIONS
GENERATED BY A GOVERNMENTAL BODY

A determination that the single subject rule should apply to county charter revisions necessarily would turn upon a finding that these enactments may present dangers posed by enactments already restricted by express single subject limitations. Yet even assuming that those dangers may appear in some county charter revisions, they are not present in county charter revisions generated by a governmental body. At

minimum, then, the single subject rule cannot apply to governmentally-generated county charter revisions.

Article XI of the Florida Constitution supplies the foundation for this analysis. Article XI sets forth four means of proposing constitutional change for vote by the electorate: (1) by the Legislature, id., §1; (2) by a constitutional revision commission, id., §2; (3) by voter initiative, id., §3; or (4) by constitutional convention, id., §4. Within this "delicately balanced" scheme, State ex rel. Citizens Proposition for Tax Relief v. Firestone, 386 So. 2d 561, 566 (1980), only initiative-proposed change under §3 is limited by a single subject restriction.⁷ In Fine v. Firestone, 448 So. 2d 984 (Fla. 1984), the Court explained the reason for this distinction. The legislative, revision commission, and constitutional convention forms of proposing constitutional change all provide for public hearing and debate in the proposal and its drafting. See id. at 988. By contrast, the Court noted, the initiative process does not provide "a filtering legislative process." Id. "Such a process allows change in the content of any law before its adoption. This process is, in itself, a restriction on the drafting of a proposal which is not applicable to the scheme

⁷Even though Article XI, §§2 and 4, of the Constitution do not contain express language mandating submission of the proposed changes to the electorate, the Court has recognized that any proposed constitutional change, regardless of its source, must be presented to the electorate for its approval. See Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984).

for constitutional revision or amendment by initiative." Id. at 989.⁸ Consequently, the single subject rule serves to furnish the "filter" otherwise missing from the initiative process.

This logic applies equally to county charter revisions. When the proposed revision is generated by a governmental body, it is subject to a "filtering legislative process." For that reason, imposing a single subject rule upon the proposed revision serves little purpose. Assuming that a single subject rule has any application at all to county charter revisions, the single subject rule should apply only to an initiative-based revision, because only that form of charter revision is not subject to a "legislative filter."

The county charter revision at issue in this case, Question #1, was proposed by a charter review commission convened pursuant to the Orange County Charter. Because Question #1 was subject to the sort of legislative filtering process that Fine v. Firestone recognized satisfies any need for a single subject limitation, the Fifth District erred in applying the single subject rule to Question #1.⁹

⁸The Court has suggested that other considerations might explain this distinction. See Fine v. Firestone, 448 So. 2d at 988 (describing lack of legislative filter as "one of the reasons the initiative process is restricted to single-subject changes to the state constitution"). The Court, however, has not elaborated upon this suggestion.

⁹The Fifth District also incorrectly concluded that Question #1 failed to meet the single subject rule. An
(Footnote Continued)

CONCLUSION

The Florida Constitution and Florida Statutes do not contain a single subject limitation for county charter revisions, and the comprehensive scope of the provisions regulating county government procedure evidences that this omission is intentional. Moreover, neither the policies that underlie existing single subject limitations nor this Court's prior decisions supports a single subject rule for county charter revisions. Even if there were such a justification,

(Footnote Continued)

enactment satisfies this test "if it has 'a logical and natural oneness of purpose,'" Advisory Opinion to the Attorney General, 592 So. 2d 225, 227 (Fla. 1991) (quoting Fine v. Firestone, 448 So. 2d at 990), or is "'a single dominant plan or scheme,'" Advisory Opinion to the Attorney General, 592 So. 2d at 227 (quoting City of Coral Gables v. Gray, 154 Fla. 881, 883-84, 19 So. 2d 318, 320 (1944)). Question #1 had a singular goal: placing county executive officers under more direct public control. By changing the Sheriff, Property Appraiser and Tax Collector from constitutional officers to charter officers, Question #1 placed those officers under the restrictions imposed by the Orange County Charter, in addition to those independently mandated by State law. By creating a Citizen Review Board to investigate misconduct by the Sheriff, Question #1 added a second layer of new public control over the Sheriff. See generally Final Report of the 1991-1992 Orange County Charter Review Commission 3-5 (July 30, 1992) (attached as Appendix B to this Brief).

This singularity of purpose is not diluted by virtue of Question #1's application to three separate executive officers. As this Court has recognized, an enactment complies with the single subject rule so long as it has one purpose, even if the enactment applies that purpose to several different objects. See, e.g., Advisory Opinion to the Attorney General 592 So. 2d at 227 ("The sole subject of the proposed amendment is limiting the number of consecutive terms that certain elected public officers may serve. Although the proposed amendment affects officeholders in three different branches of government, that fact alone is not sufficient to invalidate the proposed amendment." (emphasis added)).

that justification would not warrant extending a single subject rule to county charter revisions generated by a governmental body. For the foregoing reasons, the decision of the Fifth District Court of Appeal should be reversed.

Respectfully submitted,

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(305) 375-5151

By: Michael S. Davis
Michael S. Davis
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 7th day of February, 1994, mailed to:

A. BRYANT APPLGATE, ESQ., Post Office Box 1393, Orlando, Florida 32802; MEL R. MARTINEZ, ESQ., 719 Vassar Street, Orlando, Florida 32804; DEBRA STEINBERG NELSON, ESQ., and ALTON G. PITTS, ESQ., 201 East Pine Street, Suite 425, Orlando, Florida 32801; J. EDWIN MILLS, ESQ., Post Office Box 1440, Orlando, Florida 32802; and WILLIAM POWERS, JR., ESQ., PHILLIP P. QUASCHNICK, ESQ., and STACI BIEVENUE, ESQ., Post Office Box 12186, Tallahassee, Florida 32317-2186.

Michael S. Davis
Assistant County Attorney

A P P E N D I X

SUPREME COURT OF FLORIDA

CHARTER REVIEW COMMISSION
OF ORANGE COUNTY, FLORIDA

Petitioner,

CASE NO. 83,010,
(District Court of Appeal
5th District No. 92-2645)

vs.

ERNIE SCOTT; FORD S. HAUSMAN;
as ORANGE COUNTY PROPERTY
APPRAISER; EARL K. WOOD, as
ORANGE COUNTY TAX COLLECTOR;
WALTER J. GALLAGHER, as
ORANGE COUNTY SHERIFF; BOARD OF
COUNTY COMMISSIONERS OF ORANGE
COUNTY, FLORIDA; BETTY CARTER
as ORANGE COUNTY SUPERVISOR
OF ELECTIONS,

Respondents.

**MOTION FOR PERMISSION TO INTERVENE OR
IN THE ALTERNATIVE FOR PERMISSION TO
FILE AN AMICUS CURIAE BRIEF**

The undersigned counsel, on behalf of Metropolitan Dade County, respectfully requests this Court, pursuant to Rule 9.360 of the Florida Rules of Appellate Procedure, for permission to intervene in support of Petitioner or, in the alternative, pursuant to Rule 9.370 of the Florida Rules of Appellate Procedure, for permission to file an amicus curiae brief and in support states as follows:

1. The question certified for review in this case is whether county charter revisions proposed by a charter review commission are subject to a single subject rule.

2. Metropolitan Dade County is the most populous charter county in the State of Florida and is engaged in ongoing charter review.

3. The resolution of the question certified therefore will have significant impact on any efforts of Metropolitan Dade County to revise its County Charter.

4. This office has communicated with the attorney for Petitioner, Mel R. Martinez, Esq., and Mr. Martinez has no objection to Metropolitan Dade County's participation in this matter.

5. Metropolitan Dade County is serving its brief on the merits concurrently with this motion.

WHEREFORE, METROPOLITAN DADE COUNTY, respectfully requests that this Court grant it permission to intervene in support of Petitioner or, in the alternative, permission to file an amicus curiae brief.

Respectfully submitted,

OFFICE OF COUNTY ATTORNEY
ROBERT A. GINSBURG
Stephen P. Clark Center
111 N.W. 1st Street
Suite 2810
Miami, Florida 33128-1993
(305) 375-5151

By: Michael S. Davis
Michael S. Davis
Assistant County Attorney

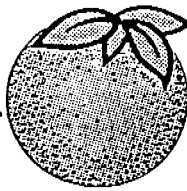
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 7 day of February, 1994, to A. Bryant Applegate, Esq., P.O. Box 1393, Orlando, Florida, 32802; Mel R. Martinez, Esq. 719 Vassar Street, Orlando, Florida 32804; Debra Steinberg Nelson, Esq., and Alton G. Pitts, Esq., 201 East Pine

Street, Suite 425, Orlando, Florida, 32801; J. Edwin Mills, Esq.,
P.O. Box 1440, Orlando Florida, 32802; and William E. Powers,
Jr., Esq., Phillip P. Quaschnick, Esq., and Staci Bievenue, Esq.,
P.O. Box 12186, Tallahassee, Florida 32317-2186.


Assistant County Attorney

Orange



County

1991-1992 Charter Review Commission

201 South Rosalind Avenue

Fourth Floor

Orlando, Florida 32801-3547

Telephone: (407) 836-5874

FAX: (407) 836-5599

JUL 31 9 27 AM '92

Kevin W. Shaughnessy, Chairman
Florence H. Neidig, Vice Chairman
Mel R. Martinez, General Counsel

July 30, 1992

The Honorable Betty Carter
Orange County Supervisor of Elections
119 West Kaley Street
Orlando, Florida 32806

Hand Delivered

RE: Charter Ballot Questions

Dear Supervisor Carter:

Pursuant to Section 702 of the Orange County Charter, enclosed please find the original Final Report of the 1991-1992 Orange County Charter Review Commission.

The Final Report contains the amendments and revisions to the Charter that the Charter Review Commission is proposing and the six Charter questions to be placed on the November 3, 1992 General Election Ballot. Pursuant to the Charter, please place these questions on the ballot.

In addition, please date stamp the enclosed copies of this letter and the Final Report, and return the stamped copy of the letter and the Final Report to the individual delivering this package to you. Your assistance is greatly appreciated.

Best regards.

Sincerely,

Kevin W. Shaughnessy,
Chairman

92 JUL 30 PM 3 28
SUPERVISOR
OF ELECTIONS

enc.

cc: Mel R. Martinez, Martinez & Dalton
John Gehrig, County Attorney
Tom Wilkes, Acting County Administrator
Charter Review Commission

bcc: Mary Jo Garrison, Comptroller's Clerk.

Members: Marci Arthur • Jane Brooks • Jesse E. Graham • Charles P. LaDue • Frederick W. Leonhardt • Robin McBride
George G. McClure • Joel H. Sharp, Jr. • Jean Siegfried • Ana E. Tangel-Rodriguez • Billie Tate • Royce B. Walden • Cynthia Wood

'92 JUL 30 PM 3 28

ORANGE COUNTY
CHARTER REVIEW COMMISSION

FINAL REPORT

A FINAL REPORT OF THE ORANGE COUNTY CHARTER REVIEW COMMISSION; PROPOSING TO AMEND THE ORANGE COUNTY CHARTER TO: CREATE A CITIZEN REVIEW BOARD; CHANGE SHERIFF, PROPERTY APPRAISER AND TAX COLLECTOR TO ELECTED CHARTER OFFICES; PROVIDE FOR NONPARTISAN COUNTY ELECTIONS; ALLOW CREATION OF "PRESERVATION DISTRICTS" AND PROVIDE FOR VOLUNTARY ANNEXATION WITHIN THOSE DISTRICTS; ALLOW COUNTY TRANSPORTATION IMPACT FEES TO BE EFFECTIVE WITHIN MUNICIPALITIES; BOARD OF COUNTY COMMISSIONERS VICE CHAIRMAN ELECTION DATE; ADJOURNMENT DATE FOR CHARTER REVIEW COMMISSIONS, CHARTER AMENDMENT BALLOT PLACEMENT; DELETION OF OBSOLETE CHARTER PROVISIONS; CHANGE TITLE OF COUNTY CHAIRMAN TO COUNTY MAYOR.

WHEREAS, Section 702 of the Orange County Charter requires the Orange County Commission to appoint every four years a Charter Review Commission which is empowered to study any and all phases of county government and to offer proposed amendments and revisions of the Charter to the electorate at the subsequent General Election; and

WHEREAS, on January 29, 1991, the Orange County Commission created by resolution the present Orange County Charter Review Commission pursuant to Section 702; and

WHEREAS, the Charter Review Commission has conducted numerous public hearings and held deliberations at public meetings regarding possible amendments and revisions to the Charter; and

WHEREAS, after conducting a comprehensive study of many phases of County government the Charter Review Commission has determined a number of changes that would enhance the County's efficiency, effectiveness and responsiveness to the people of Orange County; and

WHEREAS, these changes include the creation of a Citizen Review Board with subpoena power to investigate citizen complaints regarding use of force or abuse of power by employees of the Sheriff; and

WHEREAS, the Charter Review Commission has further determined that County government would run more efficiently and effectively if the offices of Sheriff, Property Appraiser and Tax Collector were made elected charter offices subject to Charter provisions and restrictions; and

WHEREAS, the Charter Review Commission desires to have all future Orange County elections become nonpartisan; and

WHEREAS, the Charter Review Commission has determined that a charter amendment allowing the Board of County Commissioners to create "Preservation Districts" within rural residential communities and provide for an exclusive method of voluntary annexation of these districts would help keep intact some of the rural areas of Orange County; and

WHEREAS, the Charter Review Commission has determined that allowing county impact fees to be effective within municipalities would be a fairer way of imposing the cost of new development; and

WHEREAS, the Charter Review Commission desires to change the date on which the Board of County Commissioners selects their Vice Chairman; and

WHEREAS, the Charter Review Commission has noted the need to set an adjournment date for future Charter Review Commissions; and

WHEREAS, the Charter Review Commission concludes that it would be best if all future proposals for amendments by Charter Review Commissions could be placed on the ballot at any general, special or primary election; and

WHEREAS, the Charter Review Commission desires to delete from the charter certain obsolete provisions; and

WHEREAS, the Charter Review Commission believes a change in the title of County Chairman to County Mayor would be more reflective of the duties and status of that position; and

WHEREAS, although all recommended changes were approved by at least a two-third majority, three Commission members, Jane Brooks, George McClure and Robin McBride, strongly disagreed with many of the conclusions of this Commission; and

WHEREAS, the Charter Review Commission desires to give the voters of Orange County a fair opportunity to decide these proposed changes on their merits and has determined that the best way to do this is through six ballot questions; and

WHEREAS, the adoption of this report will allow the electorate of Orange County to approve or reject the proposed amendments at the General Election to be held November 3, 1992.

NOW THEREFORE, THE 1992 ORANGE COUNTY CHARTER REVIEW COMMISSION HEREBY ISSUES THIS REPORT:

Section 1. Amendment to create a Citizen Review Board; change status of Sheriff, Property Appraiser and Tax Collector

(a) Approval of Amendment to the Charter. Section 703 of the Orange County Charter is amended and Section 801 is created to read as follows:

Section 703. Constitutional Charter Offices.

~~All constitutional offices shall remain as presently constituted.~~

~~A. Property Appraiser, Tax Collector, and Sheriff. The offices of the Property Appraiser, Tax Collector and Sheriff created pursuant to Article VIII, Section 1(d), of the Florida Constitution, are hereby abolished and all functions and duties prescribed by the Constitution and the Laws of Florida for each respective office are hereby transferred to the following: Office of Property Appraiser, Office of Tax Collector and Office of Sheriff. These Charter offices shall be elective and all sections of the Charter shall apply to the Charter offices except that the County's personnel policies shall not apply to the law enforcement officers employed by the Office of Sheriff.~~

~~B. Supervisor of Elections, Clerk of Court, and Comptroller. The offices of Supervisor of Elections, Clerk of Court and Comptroller, created by the Florida Constitution shall remain as non-Charter offices.~~

~~C. Transition Provisions. This section shall take effect February 1, 1993. The office holders of the former county offices of Property Appraiser, Tax Collector and Sheriff as of the effective date shall be retained and shall constitute the initial holders of the Office of Property Appraiser, Office of Tax Collector and Office of Sheriff and shall hold these offices until expiration of their terms. This subsection C shall expire and be deemed repealed and shall be deleted from the Charter and any codification thereof on December 1, 1996.~~

ARTICLE VIII

CITIZEN REVIEW BOARD

Section 801. Citizen Review Board.

A. There is hereby created the Orange County Citizen Review Board composed of not less than seven nor more than eleven members, two of whom shall be appointed by the Office of Sheriff, with the remainder appointed by the Board of County Commissioners. The composition of the Citizen Review Board shall reflect the ethnic, racial and economic diversity of Orange County. The Citizen Review Board shall be charged with reviewing citizen complaints and departmental investigations thereof regarding the use of force or abuse of power by any officer or employee of the Office of Sheriff. The Board of County Commissioners shall specify the number of members and may from time to time provide for rules of procedure and other administrative matters by ordinance.

B. For the purpose of conducting investigations pursuant to this section, the Citizen Review Board may subpoena witnesses, administer oaths, take testimony and require production of evidence. Any person who fails or refuses to obey a lawful order or subpoena issued in the exercise of these powers shall be guilty of a misdemeanor upon conviction and shall be punished according to law. Upon completion of any investigation or inquiry, the Citizen Review Board shall issue to the Office of Sheriff its finding of facts and recommendations.

C. The initial ordinance setting forth the number of members of the Citizen Review Board shall be adopted after a public hearing no later than April 1, 1993. Thereafter, the Board of County Commissioners and the Office of Sheriff shall make their respective initial appointments no later than May 1, 1993, and the Citizen Review Board shall convene, elect its officers, and commence the conduct of its business no later than June 1, 1993. This Subsection C. shall expire and be deemed repealed, and shall be deleted from this Charter and any codification thereof, on January 1, 1994.

(b) Ballot Question. The amendments approved in subsection 1(a) shall be offered to the electorate at referendum to be held at the General Election on November 3, 1992. The wording of the ballot shall be substantially as follows:

QUESTION #1

CREATE CITIZEN REVIEW BOARD; CHANGE SHERIFF, PROPERTY APPRAISER AND TAX COLLECTOR TO ELECTED CHARTER OFFICES

Shall the Orange County Charter be revised to: (a) create a Citizen Review Board with subpoena power that would review and make recommendations regarding citizen complaints and departmental investigations of the use of force or abuse of power by employees of the Sheriff; and (b) make the Orange County Sheriff, Property Appraiser and Tax Collector elected charter officers subject to Charter provisions and abolish their current status as "constitutional officers"?

_____ YES

_____ NO

(c) Effective Date of Amendments. The amendments in subsection 1(a) shall take effect on February 1, 1993, but only if approved by a majority of those qualified Orange County electors voting on the question at the General Election in November, 1992.

Section 2. Amendment to provide for nonpartisan elections.

(a) Approval of Amendment to the Charter. Section 605 of the Orange County Charter is amended to read as follows:

Proposed Section 605. Nonpartisan Elections

Elections for all Charter offices shall be nonpartisan. No candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All candidates' names shall be placed on the ballot without reference to political party affiliation.

In the event that more than two candidates have qualified for any single office under the chartered government, an election shall be held at the time of the First Primary Election and, providing no candidate receives a majority of the votes cast, the two candidates receiving the most votes shall be placed on the ballot for the General Election.