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IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: SC 18-79
Lower Tribunal Case Numbers: 5D16-2509, 5D16-2511

ORANGE COUNTY, FLORIDA,

Petitioner,

v.

RICK SINGH, INDIVIDUALLY,
ET AL.,

Respondents.

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

PETITIONER'S BRIEF ON JURISDICTION

GREGORY T. STEWART
Florida Bar No. 203718
CARLY J. SCHRADER
Florida Bar No. 14675
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
(850) 224-4070
(850) 224-4073 (Facsimile)
gstewart@ngnlaw.com
cschrader@ngnlaw.com
legal-admin@ngnlaw.com

JEFFREY J. NEWTON
County Attorney
Florida Bar No. 887390
WILLIAM C. TURNER, JR.
Assistant County Attorney
Florida Bar No. 0871958
Orange County Attorney's Office
Orange County Administration Center
201 S. Rosaline Avenue, Third Floor
P.O. Box 1393
Orlando, Florida 32802-1393
jeffrey.newton@ocfl.net
gail.stanford@ocfl.net
WilliamChip.Turner@ocfl.net
judith.catt@ocfl.net

COUNSEL FOR PETITIONER ORANGE COUNTY, FLORIDA

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STATEMENT OF THE CASE AND FACTS

Petitioner, Orange County, Florida, seeks review of a decision of the Fifth District Court of Appeal in Orange County v. Singh, 42 Fla. L. Weekly D 2586, Case Nos. 5D16-2509, 5D16-2511 (Fla. 5th DCA Dec. 8. 2017), which affirms an order of the trial court striking down a portion of a county charter amendment directing that elections for all county constitutional officers within Orange County shall be nonpartisan. (App. A). The subject of this decision involves an issue of statewide importance, impacting on the home rule authority granted to Counties by Article VIII of the Florida Constitution, and the ability of charter counties to choose the manner of selection of county constitutional officers, as specifically recognized by this Court in Telli v. Broward County, 94 So. 3d 504 (Fla. 2012).

In 2014, the citizens of Orange County voted to amend Section 703 of the Orange County Charter to provide for term limits and nonpartisan elections for county constitutional officers including the Orange County Sheriff, Property Appraiser, Tax Collector, Supervisor of Elections, Clerk of the Circuit Court, and Comptroller. (App. 5-6). Three of Orange County's county officers, including the Sheriff, Property Appraiser, and Tax Collector, filed an action for declaratory judgment, challenging the underlying county ordinance, including the provisions

regarding term limitations and nonpartisan elections.[1] (App. 6). In ruling on motions for summary judgment, the trial court upheld the portion of the charter amendment regarding term limits, but struck down the provision requiring nonpartisan elections.[2] On appeal, the Fifth District affirmed in all respects, and issued an opinion specifically rejecting the County's argument it has constitutional authority to provide for nonpartisan elections of constitutional officers. Although recognizing Orange County's broad grant of home rule authority under the Florida Constitution, the Fifth District did not agree that Article VIII, section 1(d), Florida Constitution, provides authorization for charter counties to provide for nonpartisan elections of county constitutional officers. The Court ruled instead that this provision "simply authorizes a charter county to select its county constitutional officers in some other manner than by election," and that "[i]t does not grant a charter county the power to regulate elections for those officers." (App. 8). The Court also determined that Orange County cannot regulate the "method and timing" of its elections for county constitutional officers because that subject area has been preempted to the State. (App. 7-8).

Following the decision issued by the Fifth District, Orange County timely

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[1] These Constitutional Officers also challenged the ballot title and summary, but were unsuccessful at the trial level regarding these claims. The Fifth District Court of Appeal affirmed the judgment of the trial court as to these issues.

[2] This ruling did not affect a similar existing charter provision directing the selection of county commissioners by nonpartisan election.

filed a notice to invoke the discretionary jurisdiction of this Court on the grounds that the decision (i) expressly construes a provision of the State Constitution; and (ii) expressly and directly conflicts with a decision of the Florida Supreme Court on the same question of law as decided in the case of Telli v. Broward County, 94 So. 3d 504 (Fla. 2012). Art. V, § 3(b)(3), Fla. Const.; Fla. Rs. App. P. 9.030(a)(2)(A)(ii), (iv).

SUMMARY OF ARGUMENT

This Court has jurisdiction to review the decision of the Fifth District Court of Appeal because it: (1) construes Article VIII, sections 1(d) and (g), Florida Constitution; and (2) expressly and directly conflicts with this Court's opinion in Telli, which determined under these same provisions that the voters of a charter county are allowed to select their county constitutional officers "in any manner of their choosing." By invalidating the charter amendment providing for the nonpartisan election of county constitutional officers, the decision of the Fifth District impermissibly limits the ability of charter counties to specify the manner of selection of their county constitutional officers, contrary to their broad home rule powers. The Court should exercise its discretionary jurisdiction over this matter because of its statewide importance and impact.

ARGUMENT

I. THE DECISION OF THE FIFTH DISTRICT EXPRESSLY CONSTRUES THE FLORIDA CONSTITUTION.

Under both Article V, Section 3(b)(3), Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(ii), this Court has jurisdiction to review decisions of the district court that expressly construe a provision of the state or federal constitution. An opinion or decision expressly construes a provision of the constitution where it undertakes "to explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision." Ogle v. Pepin, 273 So. 2d 391 (Fla. 1973). In the underlying appeal before the Fifth District the County argued under its broad home rule power, and more specifically, Article VIII, section 1(d), Florida Constitution, that the County is expressly authorized to provide for nonpartisan elections of county constitutional officers. This section provides:

> (d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of

> the board of county commissioners, auditor, recorder and custodian of all county funds.

Art. VIII, §1(d), Fla. Const. (emphasis added). In reviewing the County's home rule power provided under Article VIII, section 1(g), Florida Constitution[3], which gives charter counties all powers of local self-government not inconsistent with general or special law, the Fifth District determined that the County was nevertheless preempted by the Florida Election Code[4] from providing for nonpartisan election of its constitutional officers. Additionally, regarding Article VIII, section 1(d) of the Florida Constitution, the Fifth District opined that provision "simply authorizes a charter county to select its county constitutional officers in some other manner than by election," and that it "does not grant a charter county the power to regulate elections for those officers."

By its construction of Article VIII, sections 1(d) and (g), Florida Constitution, the Fifth District decision impermissibly restricts the home rule

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[3] Article VIII, section 1(g), Florida Constitution, provides:

> (g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

[4] Chapters 97-106, Florida Statutes.

authority of Orange County to provide the manner of selection of its constitutional officers through nonpartisan election. This Court has jurisdiction in this case, as the decision of the Fifth District expressly construes, explains, and analyzes the grant of home rule authority set forth by Article VIII, sections 1(d), (g), Florida Constitution.

II. THE DECISION OF THE FIFTH DISTRICT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FLORIDA SUPREME COURT IN TELLI .

Under both Article V, section 3(b)(3), Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), this Court has jurisdiction to review decisions of a district court of appeal that expressly and directly conflict with a decision of another district or this Court on the same question of law. In analyzing the County's home rule authority granted under Article VIII, sections 1(g) and (d), Florida Constitution, the Fifth District never once cites or discusses this Court's prior construction of these provisions, found in Telli, in which the Court receded from its earlier opinion in Cook v. City of Jacksonville, 823 So. 2d 86 (Fla. 2002), and agreed with Justice Anstead's dissenting opinion in the same. 94 So. 3d at 512. Nonetheless, the opinion demonstrates express and direct conflict with this Court's decision in Telli. See Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981) (explaining that the requirement of "express" conflict does not require that a district court explicitly identify conflicting decisions in its opinion, but that the

legal principles which the court applied supplies a sufficient basis for conflict review).

In Cook, the Florida Supreme Court had determined that counties did not have the authority to place term limits on county officers where the charter county had not abolished these officers. In disagreeing with the majority holding in his dissenting opinion, Justice Anstead set forth an analysis of Article VIII, section 1(g) and (d) of the Florida Constitution, and opined:

> This broad language was obviously intended to allow charter counties wide latitude in enacting regulations governing the selection and duties of county officers. . . The term limit provisions in the charters in these cases are not inconsistent with any provision of general law relating to elected county officers. Given this grant of broad authority and consistency with general law, I can find no legal justification for concluding that charter counties should not be allowed to ask their citizens to vote on eligibility requirements of local elected officials, including term limits, since they could abolish the offices completely or decide to select the officers in any manner of their choosing.

Telli, 94 So. 3d at 512 (quoting Cook, 823 So. 2d at 96 (Anstead, J., dissenting)). In receding from Cook, and specifically agreeing with and quoting the dissenting opinion, the Court specifically recognized that Cook "undermines the ability of counties to govern themselves" and the "broad authority" granted to counties by the Florida Constitution. Id. at 513. The Telli Court instructed that "express restrictions" on this broad home rule authority "must be found, not implied." Id.

The Fifth District decision below failed to appropriately apply or even acknowledge the Telli Court's prior analysis and construction of Article VIII, sections 1(g) and 1(d). As set forth in Telli, these constitutional provisions, allow a charter county to ask their citizens to vote *on eligibility requirements* of local elected officials, since they could abolish the offices completely *or decide to select the officers in any manner of their choosing*. In this case, Orange County voters determined that their constitutional officers should be selected through a nonpartisan election process. This is within the broad grant of authority to Orange County under the Florida Constitution. The Fifth District, by determining that Orange County was preempted by the Florida Election Code from choosing nonpartisan elections as the manner in which constitutional officers were selected for office, impermissibly read the general law as an implied restriction on this broad constitutional grant of authority. As such, the decision below expressly and directly conflicts with this Court's decision in Telli.

III. THE COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FIFTH DISTRICT BECAUSE THE ISSUE IS OF STATEWIDE IMPORTANCE AND THREATENS THE CONSTITUTIONALLY PROVIDED HOME RULE AUTHORITY OF COUNTIES RECOGNIZED IN TELLI.

The issue of whether the voters in Orange County can adopt a charter amendment which designates the selection of county constitutional officers by way of nonpartisan election is an issue of statewide importance, as shown by the

participation of various amici in the appeal below. The decision of the Fifth District infringes upon the broad home rule authority provided to counties under the Florida Constitution, as recognized by the Telli Court, and has the potential to jeopardize the enforceability of charter provisions in other charter counties. For example, the counties of Columbia, Lee, Leon, Orange, Miami-Dade, Palm Beach, Polk, and Wakulla are examples of charter counties across the state which have adopted charter provisions providing for the election of one or more governmental officials on a nonpartisan basis, which this decision has a potential to impact. The construction of Article VIII, section 1(d), Florida Constitution, by the Fifth District lends confusion to this area of the law, and completely overlooks and misapplies the Court's decision and reasoning in Telli.

Further, the Fifth District's decision and reasoning regarding preemption of the County's charter amendment based on the Florida Election Code also has the potential to cause confusion statewide as it pertains to nonpartisan elections even outside county constitutional officers. Though the Fifth District reasoned that Chapter 105, Florida Statutes, provides procedures for nonpartisan elections, the court found that it did not authorize nonpartisan elections of county constitutional officers. However, nothing in the Florida Election Code reveals a legislative intent to expressly limit the class of offices that may be selected by nonpartisan election to only those offices specifically mentioned in Chapter 105—the judiciary or

school board members—or to otherwise restrict the application of the procedures for nonpartisan election only to those offices. For instance, a review of the Florida Statutes reveals at least five instances where the Florida Legislature requires or authorizes nonpartisan elections for offices other than judges or school board members outside of Chapter 105. See §§ 189.04(2)(c), (3)(b); 190.006(3)(b); 191.005(1)(a); 388.101(1); and 582.18(1), Fla. Stat. The designation of the manner of selection by nonpartisan election is separate and apart from the adoption of means, methods, or procedures for holding these elections, as set forth in Chapter 105, Florida Statutes.

The Fifth District's decision below rejects the charter amendment without a showing of its unconstitutionality or invalidity. If allowed to stand, the decision will introduce considerable confusion even within Orange County, as a similar charter provision pertaining to the nonpartisan election of county commissioners has been in place in the Orange County Charter since 1992, and has not been challenged as part of the underlying action. For these reasons, the Court should exercise its discretion, and grant review of the decision of the Fifth District.

CONCLUSION

Petitioner, Orange County, Florida, respectfully requests that this Court exercise its discretionary jurisdiction to review the decision of the Fifth District Court of Appeal.

Respectfully submitted,

/s/ Gregory T. Stewart

GREGORY T. STEWART
Florida Bar No. 203718
CARLY J. SCHRADER
Florida Bar No. 14675
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
(850) 224-4070
(850) 224-4073 (Facsimile)
gstewart@ngnlaw.com
cschrader@ngnlaw.com
legal-admin@ngnlaw.com

JEFFREY J. NEWTON
County Attorney
Florida Bar No. 887390
WILLIAM C. TURNER, JR.
Assistant County Attorney
Florida Bar No. 0871958
Orange County Attorney's Office
Orange County Administration Center
201 S. Rosaline Avenue, Third Floor
P.O. Box 1393
Orlando, Florida 32802-1393
jeffrey.newton@ocfl.net
gail.stanford@ocfl.net
WilliamChip.Turner@ocfl.net
judith.catt@ocfl.net

COUNSEL FOR PETITIONER
ORANGE COUNTY, FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail via the Florida Courts E-Filing Portal, as authorized by Fla. R. Jud. Admin. 2.516, this 18th day of January, 2018, to:

Eric D. Dunlap
Assistant General Counsel
Orange County Sheriff's Office
Legal Services Section
2500 W. Colonial Drive
Orlando, Florida 32804
eric.dunlap@ocfl.net
Counsel for Appellee/Cross-Appellant Jerry L. Demings, Sheriff of Orange County, Florida

Michael E. Marder
Greenspoon Marder, P.A.
201 E. Pine Street, Suite 500
Orlando, Florida 32801
michael.marder@gmlaw.com
trisha.snyder@gmlaw.com
Counsel for Appellee/Cross-Appellant Rick Singh, Property Appraiser of Orange County, Florida

John H. Pelzer
Greenspoon Marder, P.A.
200 E. Broward Boulevard
Suite 1800
Fort Lauderdale, Florida 33301
john.pelzer@gmlaw.com
dotti.cassidy@gmlaw.com
Counsel for Appellee/Cross-Appellant Rick Singh, Property Appraiser of Orange County, Florida

Mark Herron
Gigi Rollini
Messer Caparello, P.A.
2618 Centennial Place
Tallahassee, Florida 32308
mherron@lawfla.com
grollini@lawfla.com
Counsel for Appellee/Cross-Appellant Scott Randolph, Tax Collector of Orange County, Florida

Scott Randolph, Individually
701 Delaney Park Drive
Orlando, Florida 32806-1321
randolphscott007@gmail.com
Pro Se

Nicholas A. Shannin
Shannin Law Firm, P.A.
214 East Lucerne Circle, Suite 200
Orlando, Florida 32801
nshannin@shanninlaw.com
service@shanninlaw.com
Counsel for Appellee/Cross-Appellee Bill Cowles, Orange County Supervisor of Elections

Jason Vail
Jolly, Peterson & Truckenbrod, P.A.
Post Office Box 37400
Tallahassee, Florida 32315
ejv@jollylaw.com
Counsel for Amicus Curiae The Florida Sheriffs Association

David H. Margolis
General Counsel
Orange County Clerk of the Circuit Court
425 North Orange Avenue
Suite 2110
Orlando, Florida 32801
David.Margolis@MyOrangeClerk.com
Counsel for Amicus Curiae Orange County Clerk of the Circuit Court

/s/ Gregory T. Stewart
GREGORY T. STEWART

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Gregory T. Stewart
GREGORY T. STEWART