ORIGINAL

IN THE SUPREME COURT
STATE OF FLORIDA

FILED
THOMAS D. HALL
OCT 16 2000
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BY

KARLEEN F. DeBLAKER, as Clerk of The Circuit Court; W. FRED PETTY, as Tax Collector; and EVERETT S. RICE, as Sheriff,

Petitioners, CASE NO. SC00-1908

vs.

EIGHT IS ENOUGH IN PINELLAS, a Political Committee,

Respondent.

ON PETITIONERS' APPLICATION FOR DISCRETIONARY REVIEW OF THE DISTRICT COURT OF APPEAL, SECOND DISTRICT COURT CASE NUMBER 99-00846

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

This case involves an attempt to invalidate an amendment (the "Amendment") to the Pinellas County Home Rule Charter (the "Charter"). The Amendment imposes term limits on the County Commissioners and County Officers of Pinellas County. (A-1 at 3). Although other local governmental officials previously were involved in this dispute, only the Petitioners continue to advocate judicial invalidation of the Amendment. Petitioners' Brief, p. 1. Petitioners seek to invoke this Court's discretionary jurisdiction to review the District Court's decision (the "Decision") under Article V, Section 3(b)(3) of the Florida Constitution (the "Constitution"), pursuant to either Florida Appellate Rule 9.030(a)(2)(A)(ii) or Rule 9.030(a)(2)(A)(iii).[1] Petitioners' Brief, p. 3.

SUMMARY OF ARGUMENT

The Court lacks jurisdiction to review this case. To activate the Court's discretionary jurisdiction under Rule 9.030(a)(2)(A)(iii), the Decision must expressly affect a class of state or constitutional officers. Because the Decision

[1] Respondent disagrees with several statements contained in Petitioners' "Statement of the Case and of the Facts." Nevertheless, because these statements are irrelevant to whether the Court should accept jurisdiction, Respondent will not specifically respond to the statements in this Brief.

affects only governmental officials of Pinellas County, it does not affect the "class" of officers required to invoke jurisdiction under Rule 9.030(a)(2)(A)(iii).

Petitioners' attempt to invoke the Court's discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(ii) also fails. Under this rule, jurisdiction exists only if the Decision expressly construes a provision of the Constitution. The Decision does not construe any constitutional provisions within the meaning of Rule 9.030(a)(2)(A)(ii).

Finally, because the Court's jurisdiction is discretionary under either rule, the Court is not required to take the case even if it concludes that jurisdiction otherwise exists. This case does not have the broad, statewide implications suggested by Petitioners. Hence, the Court should decline to exercise its limited jurisdiction to review the local issues in this dispute.

ARGUMENT

I. Because the District Court's Decision Does Not Expressly Affect a Class of Constitutional Officers, the Court Lacks Discretionary Jurisdiction to Review this Case Under Rule 9.030(a)(2)(A)(iii).

Rule 9.030(a)(2)(A)(iii) authorizes the Court to review decisions that affect multiple state or constitutional officers exercising the same power. Florida State Board of Health v. Lewis, 149 So.2d 41, 43 (Fla. 1963). To vest the Court with jurisdiction, the decision must directly and exclusively affect the duties, powers, validity, formation, termination, or regulation of a requisite class of officers.

Spradley v. State, 293 So.2d 697, 701 (Fla. 1974). If the decision does not expressly affect the requisite class of officers, the Court lacks jurisdiction. School Board of Pinellas County v. District Court of Appeal, 467 So.2d 985, 986 (Fla. 1985) (the Court lacked jurisdiction because nothing contained in the district court's decision affected other constitutional officers). For purposes of this rule, the term "class" means two or more state or constitutional officers who separately and independently exercise identical powers of government. Florida State Board of Health, 149 So.2d at 43. A group of officers comprising a single governmental entity does not constitute a "class" for purposes of the rule. Id. Simply put, a decision that affects only constitutional officers in a single county is insufficient to activate the Court's discretionary jurisdiction under Rule 9.030(a)(2)(A)(iii).

In this case, the Decision affects only Pinellas County's County Commissioners and County Officers. The Amendment has absolutely no application beyond the Pinellas County boundaries. No other county commissioners, clerks of the circuit court, tax collectors, sheriffs, supervisors of elections, or property appraisers are impacted by the Amendment. In short, the Decision lacks the "statewide" effect required to invoke the Court's discretionary jurisdiction under Rule 9.030(a)(2)(A)(iii).

Ironically, Petitioners' prior argument in this case underscores the fallacy of their strained attempt to invoke jurisdiction pursuant to Rule 9.030(a)(2)(A)(iii).

Petitioners' challenge has been based on the premise that the Charter is unique among county charters in Florida. Specifically, Petitioners have argued that the Charter purportedly is a one-of-a-kind, "limited" home rule charter that differs from any other Florida home rule charter. (A-1 at 3). Because Pinellas County supposedly possesses this unique "limited" home rule charter, Petitioners have contended that the citizens of Pinellas County have less power to amend their Charter and impose term limits on their county commissioners and county officers than the citizens of other Florida home rule counties. In other words, Petitioners' argument in this case that the Charter bars the Amendment is premised on their assertion that the Charter itself is different from any other Florida home rule charter.

Although Respondent disagrees with Petitioners' characterization of the Charter (and Petitioners' contention was rejected by the District Court), Petitioners essentially now are trying to "have their cake and eat it too." In their last-ditch effort to invoke this Court's jurisdiction, Petitioners are ignoring that the fundamental premise of their challenge of the Amendment is based on the supposed uniqueness of the Charter and instead are now asserting that the decision impacts other constitutional officers in the state. Petitioners cannot have it both ways. If Petitioners' long-standing assertion that the Charter contains limits not existing elsewhere in Florida is true, the decision, which merely addresses the

Amendment's validity, necessarily can have no application to other Florida constitutional officers. Conversely, if Petitioners' fundamental premise is incorrect, then their argument based on the supposed uniqueness of the Charter can never prevail even if this Court entertained jurisdiction to hear it.

In short, the Decision simply decides the validity of the Amendment. The Amendment affects only one county's commissioners, one clerk of the circuit court, one tax collector, one sheriff, one supervisor of elections, one property appraiser, and has no effect or impact beyond the boundaries of Pinellas County. As noted, a "class" of officers consists of two or more officers performing identical powers of government (e.g., two or more sheriffs, two or more tax collectors, etc.). See Florida State Board of Health, 149 So.2d at 43. Notwithstanding Petitioners' assertion to the contrary, there simply is no "class" of constitutional officers affected by the Decision for purposes of Rule 9.030(a)(2)(A)(iii).[2]

[2] The cases cited by Petitioners in support of their "class" argument do not suggest a different result. These cases involve decisions that affected two or more like constitutional officers. See e.g., Taylor v. Tampa Electric Company, 356 So. 2d 260, 261 (Fla. 1978) (decision affected all clerks of court in the state); State v. Laiser, 322 So. 2d 490, 491 (Fla. 1975) (decision affected all state sheriffs). Petitioners' cases thus are readily distinguishable from the present case, which impacts solely the officers of Pinellas County.

II. Because the District Court Decision Does Not Expressly Construe a Provision of the Constitution, the Court Lacks Discretionary Jurisdiction To Review this Case Under Rule 9.030(a)(2)(A)(ii).

Petitioners' attempt to activate the Court's discretionary jurisdiction under Rule 9.030(a)(2)(A)(ii) is similarly unavailing. Pursuant to this rule, the Court possesses jurisdiction to review decisions that expressly construe a provision of the state or federal constitution. Jurisdiction is not invoked simply because a decision references a constitutional provision or the case involves constitutional arguments. See, e.g., Roberts v. State, 181 So.2d 646, 648 (Fla. 1966). Rather, the decision must expressly construe a constitutional provision to properly invoke jurisdiction. Id. If the decision does not construe a constitutional provision, the Court lacks jurisdiction under Rule 9.030(a)(2)(A)(ii). Ogle v. Pepin, 273 So.2d 391, 393 (Fla. 1973).

Stated differently, some actual interpretation of the Constitution's language must be involved to justify the Court's jurisdiction. As the Court succinctly stated in Armstrong v. City of Tampa, 106 So.2d 407, 409 (Fla. 1958):

> [I]n order to sustain the jurisdiction of this court . . . it is necessary that the final decree under assault actually construe, as distinguished from apply, a controlling provision of the Constitution. . . . [T]he mere fact that a constitutional provision is indirectly involved in the ultimate judgment of the [court] does not in and of itself convey jurisdiction . . . [I]n order to sustain the jurisdiction of this court, there must be an actual construction of the constitutional provision. That is to say, by way of illustration, that the [court] must undertake to explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision. It is not sufficient

> merely that the [court] examine into the facts of a particular case and then apply a recognized, clear cut provision of the Constitution.

(emphasis added). In reaffirming the Armstrong principle in a case considering an appeal from the Fourth District Court of Appeal, the Court further stated in Ogle, 273 So. 2d at 393:

> We do not have jurisdiction to decide this appeal because the decision below failed to explain or define any constitutional terms or language as required by the Armstrong rule revitalized here.

Moreover, the mere application of a constitutional provision to the facts of a case is insufficient to invoke the Court's jurisdiction. See Dykman v. State, 294 So.2d 633, 634-5 (Fla. 1973) (the Court's jurisdiction is properly invoked only if the construction of a constitutional provision has occurred, not merely because a court applied a constitutional provision to the facts before it); Rojas v. State, 288 So.2d 234, 236 (Fla. 1973) (applying a constitutional provision is not synonymous with construing a constitutional provision). As this Court also aptly stated in Armstrong, 106 So. 2d at 410:

> It is not sufficient to sustain our jurisdiction merely to point to a set of facts and contend that the [court] failed to apply correctly a recognized provision of the Constitution. To convey jurisdiction . . . it is necessary that the [court] actually construe or interpret a section of the Constitution and then apply [its] construction to the factual situation presented to [it].

Although the Decision mentioned a few constitutional provisions, the District Court did not "construe" any of them. For instance, on page 4 of its

decision, the District Court noted that Article VIII, Section 1(d), identifies the "county officers." (A-1 at 4). However, the District Court undertook no construction of this section. On page 5, the District Court cited another Constitution section for the undisputed principle that the "term of office" for a county commissioner is four years. (A-1 at 5). Again, the District Court did not attempt to construe or interpret this provision. Similarly, on pages 5 and 6 of its opinion, the District Court referred to the general "home rule power" clause contained at Article VIII, Section 1(g), of the Constitution, recognized this Court's prior construction of the phrase "not inconsistent with general law" contained within that clause, and applied this Court's construction of that provision to the facts of this case. (A-1 at 5-6). However, once again, the District Court undertook no effort of its own to construe or interpret the home rule power clause, and simply applied this Court's prior construction of the clause to the facts.

In short, the District Court did not undertake its own construction of any of the constitutional provisions mentioned in its opinion. The Court merely cited various provisions for reference purposes or applied this Court's prior construction of the home rule power clause to the present facts. Pursuant to Armstrong, Ogle, and the other authority cited above, this is not the type of "express construction" of

a constitutional provision required to invoke the Court's jurisdiction under Rule 9.030(a)(2)(A)(ii).[3]

III. Even if the Court Possesses Discretionary Jurisdiction to Review this Case, the Court Should Decline to Exercise its Jurisdiction.

The Court's jurisdiction under both of the foregoing prongs of Rule 9.030(a)(2) is obviously discretionary. The Court thus is not required to take this case even if the Court concludes that it otherwise possesses jurisdiction. Notwithstanding Petitioners' self-serving assertions to the contrary, this is simply not the kind of case that the Court should exercise its limited jurisdiction and resources to review.

This case does not have the broad, statewide ramifications suggested by Petitioners. In their brief, Petitioners urged the court to accept jurisdiction "because of the impact on both the exercise of home rule powers throughout Florida, and on Constitutional County Officers statewide" that supposedly results from the District Court Decision. Petitioners' Brief, p. 3. However, as noted, the

[3] The cases cited by Petitioners in their brief do not help their cause. Unlike this case, the decisions relied on by Petitioners involved express constructions of constitutional provisions by the district courts. See e.g., City of Ocala v. Nye, 608 So. 2d 15, 16 (Fla. 1992) (the Court had jurisdiction because the district court construed Article VIII, Section 2(b) of the Constitution); Florida Association of Counties, Inc. v. Department of Administration, Division of Retirement, 595 So. 2d 42 (Fla. 1992) (the Court had jurisdiction because the district court construed Article X, Section 14 of the Constitution). Where a district court merely refers to constitutional provisions, but undertakes no constitutional construction, as in this case, the Court's discretionary jurisdiction is never triggered.

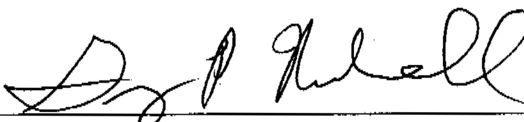
impact and effect of the Decision is limited exclusively to Pinellas County. Because the effect of the Decision is limited, this Court is not being called upon to consider the "exercise of home rule powers throughout Florida" or the impact of the decision "on constitutional county officers statewide" as contended by Petitioners. Therefore, the Court should decline to review this case's purely local issues.

CONCLUSION

Petitioners have failed to establish a cognizable basis for the Court's exercise of its discretionary jurisdiction. The Court thus should deny Petitioners' request that the Court review this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was served by U.S. Mail to all persons listed below on the attached Service List, on October 12, 2000.



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_______________________________/

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that Respondent's Brief on Jurisdiction was filed with this Court in a 14 point Times New Roman Font, comporting with the font requirements of Rule 9.210(a)(2), Florida Rules of Civil Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Certificate was served by U.S. Mail on Sarah Richardson, Senior Assistant County Attorney, 315 Court Street, Clearwater, FL 33756, Bernie McCabe, State Attorney for the Sixth Judicial Circuit, 14250 49th Street North, Room 100, Clearwater, FL 33760, Marion Hale, Johnson Blakely, 911 Chestnut

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