

**SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA**

FREDDY D'AGASTINO, et al.,

Petitioners,

Case No. SC16-645

L.T. No. 3D10-2704

v.

THE CITY OF MIAMI, et al.,

Respondents.

**BRIEF
OF AMICUS CURIAE,
FLORIDA PROFESSIONAL FIREFIGHTERS, INC.,
IN SUPPORT OF PETITIONERS' POSITION**

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STATEMENT OF INTEREST

The amicus curiae, Florida Professional Firefighters, Inc., International Association of Firefighters, AFL-CIO, is the labor organization (union) of firefighters, paramedics, and life guards employed by the State of Florida, counties, cities and special districts. It lobbies the Legislature on matters concerning its members and assists its locals in collective bargaining. Therefore, it has an interest in the Firefighters' Bill of Rights and its companion, the Police Officers' Bill of Rights, involved in this case. It is filing this brief in support of the petitioners' position.

SUMMARY OF ARGUMENT

The present case presents a conflict between a state statute, the Police Officers' Bill of Rights, and a municipal law creating the City of Miami Civilian Investigative Panel, especially the Complaint Committee.

This sort of conflict was previously resolved by the Fifth District Court of Appeal in *Demings v. Orange County Citizens Review Board*, 15 So. 3d 604, 605-06 (Fla. 5th DCA 2009), in a manner favorable to the Petitioner.

The Police Officers' Bill of Rights prevails over the municipal law creating the Civilian Investigative Panel, especially the Complaint Committee.

Therefore, the majority opinion of the Third District Court of Appeal in the proceedings below is incorrect and the dissenting opinion is correct and should be adopted by this Court.

ARGUMENT

POINT ONE

II. THE CITY OF MIAMI ORDINANCE AUTHORIZING A CIVILIAN INVESTIGATIVE PANEL IS PREEMPTED BY FLORIDA STATUTE SECTION 112.533

A. The Civilian Investigative Panel Expressly Preempts Florida Statute Section 112.533

B. The Civilian Investigative Panel Conflicts with Section 112.533 and Impliedly Preempts the Civilian Investigative Panel

III. The Fifth District's Decision in *Demings* was Correctly Decided

(Petitioners' Point)

The standard of review is *de novo*. *City of Miami v. McGrath*, 824 So. 2d 143, at 146 (Fla. 2002); *Caribbean Conservation Corp., Inc. v. Florida Fish and Wildlife Conservation Commission*, 838 So. 2d 492, at 500 (Fla. 2003).

This *amicus curiae*, Florida Professional Firefighters, Inc., adopts the brief and argument of the Petitioners and the brief and argument of the *Amicus Curiae* Florida Police Benevolent Association as though fully

contained herein.

The City of Miami Civilian Investigative Panel is structurally and functionally contrary to the Police Officers' Bill of Rights and is therefore invalid.

However, this amicus curiae, Florida Professional Firefighters, Inc., wishes to point out another aspect of non-compliance with the Police Officers' Bill of Rights in regard to representation.

The Florida Statutes contained a Firefighters' Bill of Rights, Section 112.82, Fla. Stat., which is obviously of great importance to this amicus curiae.

The present case involves the Police Officers' Bill of Rights also contained in the Florida Statutes, Section 112.532, Fla. Stat.

These two provisions serve the same purpose.

Both statutes provide that a "First Responder" is entitled to representation in connection with any occasion in which his conduct is called into question.

The Firefighters' Bill of Rights specifically provides that a firefighter is entitled to representation by his union representative when his conduct is questioned. §112.82(8), Fla. Stat. This provision is part of the implementation of the employee's fundamental right to collective bargaining

and union representation. See *Dade County Classroom Teachers' Association v. Ryan* [Ryan I], 225 So. 2d 903 (Fla. 1969); *Dade County Classroom Teachers Ass'n v. Legislature* [Ryan II], 269 So. 2d 684 (Fla. 1972); [public employees right to union representation required statutory implementation]; *The City of Miami Beach v. The Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach*, 91 So. 3d 237 (Fla. 3rd DCA 2012); [fundamental right of public employees to collective bargaining trumps City charter].

The Police Officers' Bill of Rights provides that a law enforcement officer has similar rights. He is entitled to representation by an attorney or other representative when his conduct is questioned. §112.532(1)(i), Fla. Stat. The only other possible lawful representative is his union representative.

The present case highlights the fundamental right of a police officer to the protections of the Police Officers' Bill of Rights versus the function of the City's Civilian Investigative Panel, particularly its Complaint Committee. The former is provided for by state statute and the latter is provided for by municipal law.

Cities do not have the power to create new and different governments. They can only create agencies of themselves. The Home Rule Powers Act is

specific that state statute prevails over municipal law, whether that is by city charter, city ordinance, city resolution, city rule or city practice. §§166.021(1), (3)(c) and (4).

The City of Miami is the employer. The petitioner, Freddy D'Agastino, is an employee of the City of Miami. The procedure and method by which the employer investigates the employee's conduct is governed by state statute, the Police Officers' Bill of Rights. Whether the City does this by action of the police chief himself, some other supervisory employee, Internal Affairs, a civilian investigative panel, a complaint committee or the human resources department or by any other means does not matter. It is simply the City employer acting through its agencies.

At the heart of the question is whether the City of Miami has the power to disregard the state statute, the Police Officers' Bill of Rights. The majority of the Third District Court of Appeal said "yes", the dissenting judge said "no". If there is any simple excuse for disregarding the state statute, it would be the pretense that any decision of the Civilian Investigative Panel is only advisory. This is unrealistic. A finding by the Civilian Investigative Panel against a police officer is a serious business. Really bad things can happen to a police officer on this account.

Recently in *Westphal v. City of St. Petersburg*, Fla. Sup. Ct. Case No.

SC13-1930, corrected opinion filed June 9, 2016, the Supreme Court of Florida stated:

Although this Court must, whenever possible, construe statutes to effect a constitutional outcome, we may not salvage a plainly written statute by rewriting it. See Sult v. State, 906 So. 2d 1013, 1019 (Fla. 2005) ('Courts may not go so far in their narrowing constructions so as to effectively rewrite legislative enactments.').

Westphal, 19-20.

In other words, courts should reconcile a conflict between the constitution and laws. They should not look for an excuse by interpretation to avoid deciding what needs to be decided. This is what the dissenting opinion correctly did in the proceeding below.

The Fifth District Court of Appeal correctly disposed of the same issue involved in the present case in *Demings v. Orange County Citizens Review Board*, 15 So. 3d 604, 605-06 (Fla. 5th DCA 2009). This Court should reaffirm the decision in *Demings*.


This Court should reject the majority opinion in the proceedings below in the Third District Court of Appeal and should adopt the dissenting opinion as being a correct view of the law.

CONCLUSION

The Court should reverse the decision of the Third District Court of Appeal in the proceedings below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF FONT SIZE AND STYLE

I certify that this brief has been typed in 14 point proportionately spaced Times New Roman.


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