

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC06-_____

Third District Case No. 3D05-1628

CITIZENS FOR OPEN
GOVERNMENT, INC.

Petitioner,

vs.

CITIZENS FOR REFORM, MIAMI-
DADE COUNTY, FLORIDA,
SOUTH FLORIDA AFL-CIO, AND
TRANSPORT WORKERS UNION
OF AMERICA, LOCAL 291, AFL-
CIO,

Respondents.

**JURISDICTIONAL BRIEF OF PETITIONER,
CITIZENS FOR OPEN GOVERNMENT, INC.**

**On Petition For Review Of A Decision Of The
District Court Of Appeal, Third District,
State of Florida**

Stephen M. Cody, Esq.
Florida Bar No. 334685
STEPHEN CODY, P.A.
800 Douglas Road, Suite 850
Coral Gables, FL 33134
Telephone (305) 648-9620
Facsimile (305) 648-9622

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Petitioner, Citizens for Open Government, Inc.¹, seeks review of a decision of the Third District Court of Appeal expressly construing Article VIII, section 11, Fla. Const. (1885), carried forward in Article VIII, section 6, Fla. Const. (1968) (the “Dade County Home Rule Amendment”).

STATEMENT OF THE CASE AND FACTS

The Dade County Home Rule Amendment provides, in part:

Dade County, home rule charter. - (1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, *under which the Board of County Commissioners of Dade County shall be the governing body. ...*

Dade County Home Rule Amendment (emphasis supplied). Pursuant to that Amendment, the voters of Dade County adopted a Home Rule Charter in 1957.

On April 5, 2005, the Miami-Dade County Commission approved a petition as to form submitted by Respondent Citizens for Reform which sought a referendum on a proposed amendment to the Miami-Dade County Charter. The proposed amendment would alter section 1.01 of the Charter as follows:

A. The Board of County Commissioners shall be the legislative ~~and the governing~~ body of the county ~~and shall also have~~ certain additional powers including the power to carry on a central metropolitan government.

¹ Hereinafter referred to as “CFOG”. The remaining Appellees will be referred to by name (i.e. “Miami-Dade County”, “South Florida AFL-CIO”, and “Transport Workers Union”).

~~This power shall include but shall not be restricted to the~~
power to: ...²

The proposed amendment would also alter section 1.08, add a new Article 2, and renumber subsequent articles and sections of the Charter. It would also make changes to present sections 3.01, 3.02, 3.03, 3.04, 3.05, 4.01, 4.02, 4.03, 4.05, and 4.06. The effect of the proposed amendment would be to transfer powers from the County Commission and the appointed County Manager to the County Mayor, grant the Mayor, among other things, the power to issue regulations and appoint members of boards and committees, as well as department heads. The existing prohibition against the Mayor seeking the hiring and firing of County employees would be lifted.

On June 5, 2005, CFR turned in the signed petitions. On June 10, 2005, Petitioner Citizens for Open Government, Inc. filed a Complaint for Declaratory and Injunctive Relief and a Motion for Temporary Injunction, naming both CFR and Miami-Dade County as party defendants. CFOG sought relief on the basis that the proposed amendment violated the requirements of the Florida Constitution and Florida Statutes, that the ballot summary authored by CFR violated the requirements of section 101.161, Florida Statutes, and that CFR failed to have the petitions properly notarized in accordance with the requirements of the Miami-

² Within the proposed amendment, language that was being removed from the Charter was shown as struck through, while new language was shown as

Dade County Charter and Florida Statutes. The South Florida AFL-CIO and the Transport Workers Union were granted leave to intervene as party plaintiffs.

On July 23, 2005, Circuit Court Judge Michael A. Genden held an evidentiary hearing on the motion for temporary injunction. On August 10, 2005, Judge Genden entered the Order Granting Motions to Intervene or Appear as Additional Plaintiffs and Granting Motion for Preliminary Injunction. A1-161. Judge Genden found that the proposed ballot language met the requirements of section 101.161 and that the notarization of the petition met the requirements of law. However, the August 10th Order found that the proposed amendment violated the requirements of the Florida Constitution. Specifically, the trial court held:

Among the requirements mandated by the Florida Constitution is that the Board of County Commissioners must be the County's "governing body". All parties agree that a charter amendment that removes the County Commission as the governing body is unconstitutional and unauthorized. Yet, the charter amendment does just that, by its very language, limiting the Board of County Commissioners to the status of a "legislative body", and taking away the governing body authority. That repeal is explicit and central to the amendment, and cannot be ignored by this Court.

Subsequently, CFR moved for entry of a final judgment and on August 18, 2005, Judge Genden granted the motion and entered the final judgment.

On September 2, 2005, CFR filed a notice of appeal of the Final Judgment in

underlined.

this action. On September 8, 2005, CFOG filed its Notice of Cross-Appeal.

On May 31, 2006, the Third District entered its opinion, reversing the judgment entered by the trial court. *Citizens for Reform, Inc. v. Citizens for Open Government, Inc.*, --- So.2d ----, 2006 WL 1479788, 31 Fla. L. Weekly D1512 (Fla. 3d DCA May 31, 2006). On June 23, 2006 the Third District denied the motions filed by Petitioner and Miami-Dade County for rehearing, rehearing *en banc* or, alternatively, for certification.

SUMMARY OF THE ARGUMENT

This Court has discretionary jurisdiction to review the decision of the Third District pursuant to Article V, section 3(b)(3), Fla. Const. (1968), because the decision expressly construes Article VIII, section 11, Fla. Const. (1885), carried forward in Article VIII, section 6, Fla. Const. (1968). Pursuant to Fla. R. App. P. 9.030(a)(2)(A)(ii), the Florida Supreme Court has jurisdiction to invoke discretionary review of the decision in this matter.

ARGUMENT

I. THE THIRD DISTRICT'S DECISION EXPRESSLY CONSTRUES A PROVISION OF THE FLORIDA CONSTITUTION

The decision below expressly construes Article VIII, Section 11, Fla. Const. (1885), carried forward in Article VIII, Section 6, Fla. Const. (1968) of the Florida Constitution. Appendix at 4. In the opinion, the Third District explicitly held:

The issue presented on appeal is whether the proposed amendment to the Charter effectively removes the Miami-Dade County Commission as the “governing body.” If it does, the proposed amendment is unconstitutional as no provision of the Charter may conflict with the Florida Constitution or general Florida law. *See Cook v. City of Jacksonville*, 823 So.2d 86 (Fla. 2002); *Ellis v. Burk*, 866 So.2d 1236 (Fla. 5th DCA 2004). If the proposed amendment does not remove the County Commission as the “governing body,” the amendment would survive this particular constitutional challenge.

Appendix at 5. Because the decision construes the Dade County Home Rule Amendment, the Court has discretion to grant review. *See* Article V, Section 3(3), Fla. Const (1968).

The Third District’s decision runs counter to this Court’s opinion in *Metro-Dade Fire Rescue District v. Metropolitan Dade County*, 616 So.2d 966 (Fla. 1993). In *Fire Rescue District*, the Supreme Court considered a case wherein the voters of Dade County adopted an amendment to the Miami-Dade County Charter which provided:

Section 1.01. POWERS.

A. The Board of County Commissioners shall be the legislative and the governing body of the county and shall have the power to carry on a central metropolitan government. This power shall include but shall not be restricted to the power to:

11. By ordinance, establish, merge, and abolish special purpose districts within which may be provided police and fire protection.... *[P]rovided, however, the Board of*

County Commissioners shall not be the governing body of the Metro-Dade Fire and Rescue Service District established by Ordinance No. 80-86, but said Fire and Rescue Service District shall be governed by five members elected for initial terms of two years by the registered voters of the Metro-Dade Fire and Rescue Service District.

Dade County Charter, section 1.01(A)(11), September 1986, (emphasis added).

616 So.2d at 968 n.3 (emphasis in original). The effect of the amendment was to remove the County Commission as the “governing body” of the Fire Rescue District, a special taxing district. This Court’s holding is as follows:

In determining the intent of the 1986 amendment, we agree with the dissent below that it is the court’s function to interpret the Charter’s phrase, “governing body.” The court can determine the meaning of “governing body” from its plain language as well as the actions of the Commission, which served as the governing body of the district from 1980 to 1986. As the dissent below states:

The term “governing body” is a generic term which has long been in the Charter. *Id.* § 1.01(A)(11). *The Charter applies that term to all special purpose districts, and not uniquely to the Fire and Rescue Service District. Id.* The Charter does not itself contain a definition of the term, and the trial court correctly ruled that the term “governing body” must be given its usual and obvious meaning. *See City of Jacksonville v. Glidden Co.*, 124 Fla. 690, 169 So. 216, 217 (1936); *Seaboard System R.R., Inc. v. Clemente*, 467 So.2d 348, 355 (Fla. 3d DCA 1985).

Under a standard definition, the “[g]overning body of [an] institution, organization or territory means that body which has ultimate power to determine

its policies and control its activities.” Black’s Law Dictionary 625 (5th ed. 1979) (citation omitted). Similarly, “govern” means “to direct and control, rule, or regulate, by authority.” *Id.*

Metropolitan Dade County, 589 So.2d at 928 (Cope, J., dissenting). Further, while the record is not clear exactly what duties and activities the Commission exercised as the District’s governing body between 1980 and 1986, it is certain that the Commission did not act as an advisory entity making recommendations to another body concerning the final policy of the District. *Thus, we construe the term “governing body” to mean that the voters intended that the Fire Board have the last word concerning policies and control over the District.*

616 So.2d at 969 (emphasis added). Applying the test laid out in *Fire Rescue District* to the instant case, it is clear that the Third District’s interpretation of the word “governing” differs from the requirements of Home Rule Amendment to the Florida Constitution.

It is not enough to say that strong executive mayors exist in other governments. The question that must be answered is whether, under the framework of the Home Rule Amendment, a second center of governing power can be created. In this case, by transferring the Commission’s authority to the County Mayor, and by expressly stripping the Commission of its status as the “governing body” of the County, the answer must surely be that the proposed amendment runs afoul of the requirements of the Florida Constitution.

The voters of the State of Florida did not grant the voters of Dade County wide and limitless discretion with regard to the role of the County Commission as the governing body of the County. In fact, there is no mention of a Mayor, strong, weak or otherwise in the Dade County Home Rule Amendment. Under the Dade County Home Rule Amendment, the Charter *must* have a County Commission which is the governing, rather than just the legislative, body of the County. Applying this Court’s holding in *Fire Rescue District* here means that the voters of Florida intended that the County Commission have the last word concerning *policies and control* over the County. The proposed amendment disrupts the County Commission’s ability to “have the last word”.

This Court should grant review and decide whether removing the County Commission as the explicit “governing body” of the County, together with the power to oversee the appointed County Manager, the officer who operated the County government on a day-to-day basis, takes away the Commission’s constitutionally mandated role as the “governing body” of Miami-Dade County.

REASONS FOR GRANTING REVIEW

The Court should grant review because this Court, in *Florida Commission On Ethics v. Plante*, 369 So.2d 332, 336 (Fla. 1979) held that “It is this court's duty to construe provisions of the constitution. *Alsdorf v. Broward County*, 333 So.2d 457 (Fla. 1976).”

The Third District's construction of Article VIII, Section 11, Fla. Const. (1885), carried forward in Article VIII, Section 6, Fla. Const. (1968) and its misreading *Metro-Dade Fire Rescue District v. Metropolitan Dade County*, 616 So.2d 966 (Fla. 1993), are reasons enough to grant review.

CONCLUSION

This Court has discretion to grant review. Based upon the foregoing argument and authority cited, review should be granted.

Respectfully Submitted,

Stephen M. Cody, Esq.
Florida Bar No 334685
STEPHEN CODY. P.A
800 Douglas Road., Suite 850
Coral Gables, FL 33131-4330
Telephone (305) 648-9620
Fax (305) 648-9622

CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared with Times New Roman 14 point in compliance with Fla. R. App. P. 9.210(a)(2).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the persons named below by mail on July 13, 2006.

Robert Josefsberg, Esq.
Podhurst Orseck
25 W. Flagler Street, Suite 800
Miami, FL 33130

Mark Leibowitz, Esq.
Wolpe Leibowitz et al.
44 West Flagler Street, PH
Miami, FL 33130

Benedict Kuehne, Esq.
Sale & Kuehne, P.A.
100 S. E. 2 Street, Suite 3550
Miami, FL 33131-2154

Mark Richard, Esq.
Phillips Richard & Rind, P.A.
9360 S.W. 72 Street, Suite 283
Miami, FL 33173

Robert Cuevas, Jr., Esq.
Assistant County Attorney
111 N.W. 1st Street, 28th Floor
Miami, FL 33128-1930

Kendall Coffey, Esq.
Coffey & Wright, LLP
2665 South Bayshore Drive PH2
Miami, FL 33133-5448

Bruce S. Rogow, Esq.
500 E. Broward Blvd., Suite 1930
Ft. Lauderdale, FL 33394

Appendix

Conformed copy of District Court of Appeal,
Third District opinion in

Citizens for Reform, Inc. v.
Citizens for Open Government, Inc.