# IN THE SUPREME COURT OF FLORIDA

**CASE NO. SC06-___**
**Lower Tribunal Case No. 3D05-2168**

**_____**

**CITIZENS FOR OPEN GOVERNMENT, INC., MIAMI-DADE COUNTY, FLORIDA, SOUTH FLORIDA AFL-CIO, and TRANSPORT WORKERS UNION OF AMERICA, LOCAL 291, AFL-CIO,**
**Petitioners,**

**vs.**

**CITIZENS FOR REFORM,**
**Respondent.**

_____

**ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT**

_____

# JURISDICTIONAL BRIEF OF PETITIONERS SOUTH FLORIDA AFL-CIO AND TRANSPORT WORKERS UNION

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## STATEMENT OF THE CASE AND FACTS

### A. The Petition and the Charter Amendment Process.

The central question in this discretionary review proceeding is what constitutes the "governing body" of Miami-Dade County government, a legal description defined by Florida's Constitution as the board of county commissioners. Art. VIII, § 11, Florida Constitution (1885) ("under which the Board of County Commissioners of Dade County shall be the governing body.").[1] This constitutional provision is unique to Miami-Dade County, a "home rule" county whose governmental existence is the product of a specific constitutional creation applicable to this county.[2] But this "governing body" requirement has a much wider impact, as Article VIII, §1(e) applies that requirement to all counties unless expressly altered by county charter. Simply stated, Florida's constitutional grant of home rule authority to Miami-Dade County mandates a specific government structure powered by the commission.

As mandated by the Home Rule Amendment to the Constitution, the Miami-Dade County Charter ("the Charter") provides that the citizens of the Miami-Dade

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[1] Article VIII, § 11 of the 1885 Constitution (as amended) was carried forward by Article VIII, § 6(e) of the 1968 Florida Constitution.

[2] The [Miami-] Dade County Home Rule Amendment to the Florida Constitution was adopted November 6, 1956.

County have the right to initiate amendments to the Charter. Citizens for Reform submitted a petition to the County Commission for an amendment ("Strong Mayor Amendment") modifying the existing Charter. The ballot summary provides:

> CHARTER AMENDMENT EXPANDING THE MAYOR'S RESPONSIBILITIES AND RESTRICTING THE RESPONSIBILITIES OF THE COUNTY MANAGER
>
> Shall the Miami Dade County Charter be amended to transfer from the County Commission and County Manager to the Mayor certain additional powers and responsibilities including the authority to:
>
> 1. Administer County government;
>
> 2. Appoint the County Manager unless disapproved by supermajority of the Commission;
>
> 3. Appoint department directors unless disapproved by supermajority of the commission; except or otherwise required by law; and
>
> 4. Direct, supervise, reprimand or remove the County Manager and department directors.

**B. Challenge to the Strong Mayor Amendment.**

On June 10, 2005, Citizens for Open Government, Inc. ("COG") filed suit challenging the legality of the Strong Mayor Amendment. While numerous issues were raised, the core dispute focused on the proposed revision to Section 1.01:

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

~~but shall not be restricted to the~~ power to:...

COG argued the transformation manifested by the elimination of the Commission's function as "governing body" and the erasure of its residual "power to carry on a central metropolitan government" was reflected throughout the Strong Mayor Amendment. The structural changes contained in the proposal would (1) establish the mayor as the supreme executive agency, (2) enable the mayor to unilaterally hire, fire, and direct more than 30,000 county employees, (3) give the mayor complete control over county boards and independent commissions, (4) make the county manager and department directors mere mayoral assistants without any oversight or dismissal authority by the Commission, and (5) limit the Commission's authority in selecting the county attorney or special counsel.

### C. Trial Court Finds Proposed Amendment Unconstitutional.

The trial court heard the testimony of five fact witnesses and an expert witness concerning the effect of the removal of the County Commission as the "governing body" in the context of the structure of the county government. According to the trial court, the removal of the Commission's control of legislative matters, administrative oversight, and quasi-judicial functions conflicted with the constitutional requirement that the Commission possess and exercise the ultimate governmental power, a structure mandated by the Constitution. The trial court

found that the Strong Mayor Amendment violated Florida's Constitution and entered injunctive relief.

### D. Appellate Court Finds No Constitutional Conflict.

On appeal to the Third District, Citizens for Reform conceded the elimination of the Board of County Commissioners as the "governing body" was "an unfortunate and unnecessary omission." The court nonetheless decided that alteration did not constitute a fundamental change in the powers of the Board of County Commissioners and was not a structural change in county governance inconsistent with the Florida Constitution. The Third District construed the Florida Constitution as permitting a form of government for Miami-Dade County that eliminated the express definition of the Board of County Commissioners as the "governing body" in favor of the creation of a "legislative body" status, finding the transfers of power "from the Commission to the people" comports with the ultimate role of the citizens as the repository of government power. *Citizens for Reform v. Citizens for Open Government, Inc.*, 2006 WL 1479788, at *11 (Fla. 3rd DCA 2006). En route to its conclusion, the Third District repeatedly and frequently interpreted, analyzed, and relied upon its analysis of the Constitution's home rule provisions. *Id*. at *2, 4, 8, and 11.

## STATEMENT OF THE ISSUES

1. Does the court's decision expressly construe Article VIII, §11 of the Florida Constitution (1885), and Article VIII, §6 of the Florida Constitution (1968)?

2. Does the court's decision expressly and directly conflict with decisions of this court and other appellate courts on the same questions of law concerning (1) the plain meaning of enactments, and (2) the requirement that a governing body have "ultimate power to determine its policies and control its activities ..."?

## SUMMARY OF THE ARGUMENT

The Third District decision upholding the Strong Mayor proposal, with its express elimination of the "governing body" definition of the Board of County Commissioners, is in open and apparent conflict with Article VIII, § 6(e) of the Florida Constitution (1968), requiring the county commission to be the "governing body." In approving a fundamental alteration of Miami-Dade County government, the Third District expressly interpreted and construed the Florida Constitution.

Analyzing the constitutionality of the Strong Mayor Amendment, the appellate court held the express elimination of the commission's function as the "governing body" and the erasure of its residual "power to carry on a central metropolitan government" is of no force and effect, effectively reading out those alterations to the charter. *Id*. at *8. That holding conflicts directly with the longstanding rule of

construction that courts must apply the plain meaning of adopted language and cannot "effectively rewrite the enactment" to avoid constitutional infirmities.

The Third District's opinion that the removal of the "governing body" language from the charter is not at odds with the Constitution advanced a direct and express conflict with the decision in *Metro-Dade Fire Rescue Service District v. Metropolitan Dade County*, 616 So. 2d 966, 969 (Fla. 1993), declaring that a governing body "has ultimate power to determine its policies and control its activities ..."

## ARGUMENT

### 1. THE DISTRICT COURT OPINION EXPRESSLY CONSTRUES A PROVISION OF THE FLORIDA CONSTITUTION.

The Third District decision upholding the Strong Mayor proposal, notwithstanding its express elimination of the "governing body" definition of the Board of County Commissioners, is in open and apparent conflict with Article VIII, § 6(e) of the Florida Constitution (1968), requiring the county commission to be the "governing body." For purposes of the court's "constitutional construction" jurisdiction, it is obvious the appellate opinion expressly construed the Florida Constitution. That conclusion is evident from the appellate court's repeated references to that very provision of the Constitution, appearing at pages *2, 4, 8,

and 11. The court's discussion, at the core of its analysis of the constraints on the power of a governmental body to alter its very structure of governance, is precisely that type of constitutional construction meriting discretionary review, and is no less direct than that prompting the court to accept jurisdiction in *City of Ocala v. Nye*, 608 So. 2d 15, 16 (Fla. 1992) (judicial construction of Constitution's home rule authority).

The appellate court's analysis of the "governing body" home rule provision underlies the structure of county governments throughout the state, making that court's apparent disregard for constitutional limitations the stimulus for a hodgepodge of inconsistent county governance structures throughout the state. Whereas Miami-Dade is controlled by its own specific home rule provision in the Constitution, Florida has nineteen "Charter Counties" governed by Article VIII, §1(g) of the Florida Constitution (1968). Because they are not subject to Miami-Dade's home rule structure, charter counties are permitted by §125.83(1) to implement "one of the optional forms of government herein authorized," including a "county executive form" (elected executive mayor), a "county manager form" (county commission and appointed administrator), and a "county chair - administrator plan" (elected chair and appointed administrator). §125.84, Fla. Stat. (2005). These charter counties are allowed to define their "governing body," Art.

VIII, §1(g), in contrast to the separate constitutional provision applicable to "non-charter government" that mandates a board of county commissioners as the "governing body ..." Art. VIII, §1(e), Fla. Const. (1968). Significantly, even though most charter counties have not implemented one of the optional forms, the construction of the "governing body" language by the Third District, if not checked by this court, will readily alter and eliminate the structural limitations on county government imposed by the Constitution, provided the public has ultimate voting authority to elect public officials.

Not only did the appellate court construe the Constitution, but its construction represents a serious departure from the consistency that has defined the allowable limits of county government throughout the history of our state. Review by this court is essential to maintain uniformity in the definition of "governing body" limitations on county governments. Florida has never permitted unlimited experimentation with government structures, so the Third District's approval of an extreme measure beckons the finality that only Supreme Court review can provide.

### 2. THE DISTRICT COURT OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH OTHER APPELLATE DECISIONS ON THE SAME QUESTION OF LAW.

The Third District's decision creates express and direct conflict with other

decisions, warranting review and resolution pursuant to the authority of Article V, Section 3(b)(3) of the Florida Constitution, and Rule 9.030(a)(2)(A)(iv) of the Florida Rules of Appellate Procedure. That conflict is most evident in the court's holding that the deletion of the "governing body" language and the erasure of its residual "power to carry on a central metropolitan government" are "important" but "not dispositive," essentially eliminating those alterations to the county charter, *id*. at *8:

> Similarly, we cannot overlook the obvious significance of deleting the words "governing body" from the reference to the County Commission in Article I of the Charter. We agree that the deleted words are important but recognize that the proposed deletions are not dispositive. Specifically, in the case of Miami-Dade County, the Florida Constitution expressly requires the County Commission to be the governing body and not merely to be named as such. See FL. CONST. Art. VIII, § 6(e), n. 3. Therefore, the particular choice of nomenclature does not and cannot end our inquiry. Instead, our analysis and holding turns on the effect of the proposed amendment. If the proposed amendment has the effect of removing the Miami-Dade County Commission as the "governing body," it must be found to be unconstitutional as no provision of the Charter may conflict with the Florida Constitution or general Florida law. See Cook, 823 So. 2d 86; Ellis, 866 So. 2d 1236. Conversely, if the effect of the proposed amendment is not to remove the County Commission as the "governing body," the amendment would survive.
>
> Much more striking than the deleted words "governing body" is the unassailable fact that not one single power of the County Commission, as provided in Article 1 of the Charter, is altered in any way by the proposed amendment. Under the proposed amendment, the County Commission retains all of the powers afforded to it under Article 1.

In ignoring the intended consequence of the deleted language, plainly altering the relationship between the mandatory structure of the commission and the authority of the mayor, the court departed from and caused conflict with decisions declaring courts must apply the plain meaning of statutory language and cannot "effectively rewrite the enactment" to avoid constitutional infirmity. *Richardson v. Richardson*, 766 So. 2d 1036, 1042 (Fla. 2000). Nor are judges empowered to "add or delete provisions from plain statutory text." *Limbaugh v. State*, 887 So. 2d 387, 395 (Fla. 4th DCA 2004); *Hayes v. State*, 750 So. 2d 1, 4 (Fla. 1999) ("we are not at liberty to add words to statutes that were not placed there by the Legislature."). This open conflict, express and direct, provides a sound and significant basis for Supreme Court review.

So, too, the holding that the removal of "governing body" from the charter is not at odds with the Constitution advanced a direct and express conflict with *Metro-Dade Fire Rescue Service District v. Metropolitan Dade County*, 616 So. 2d 966, 969 (Fla. 1993), in its declaration that a governing body "has ultimate power to determine its policies and control its activities ..." The appellate court's language rejects that rule of law, finding solace in its determination that the people retain the ultimate power, an observation inconsistent with this court's "governing body" definition.

So inherent in the Florida Constitution's definition of the basic structure of Miami-Dade County is the mandate that the county commission shall be the governing body that its alteration and divestment of the power to control the activities of county government is a matter that is of special importance to the Florida Supreme Court in serving as the final arbiter in matters of constitutional significance. The appellate court's ruling, adverse to prior constitutional enunciations, raises a question of such momentous consequence that this court must undertake a thorough review.

## CONCLUSION

For these reasons, this court should grant discretionary review.

## CERTIFICATE OF TYPE SIZE AND STYLE

This brief complies with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure. It is printed in Times New Roman 14-point proportional font.

Respectfully submitted,

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