IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-1647

CATHY ANTUNES, KATHLEEN BOLAM, DAVID BROWN, BETH COLVIN, CYNTHIA CROWE, VIOLA DeYOUNG, LEONARD DALE DeYOUNG, MICHAEL FIGGINS, LORI FRARY, JIM LAMPL, MILLICENT PULEO, PATRICIA ROUNDS, JOHN SAUNDERS, JOHN SCOLARO, W. BRIAN SLIDER, and BARBARA VAUGHN,

Appellants,

v.

SARASOTA COUNTY, a political subdivision of the State of Florida,

Appellees.

APPELLANTS' BRIEF ON THE MERITS

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ISSUES ON APPEAL

The motion to dissolve the permanent injunction enjoining enforcement of the county charter provision should have been granted because the Florida Constitution does not impose any restrictions on county voters' decision to impose term limits in a charter provision.

PREFACE

Appellants, sixteen registered voters of Sarasota County, Florida, will be referred to as "Citizens."

Appellee Sarasota County, Florida, will be referred to as the "County."

Appended to this brief are the following items which are included in the record on appeal:

Tab 1 – Section 2.1A, Sarasota County Charter

Tab 2 – Circuit Court decision in *Moore v. Sarasota County*, Case No. 2004-10230-NC

INTRODUCTION

Citizens sought the dissolution of a permanent injunction barring enforcement of the existing Sarasota County Charter provision imposing limits on the terms of county commissioners. A prior Circuit Court decision that was not appealed held the Charter provision unconstitutional based on *dicta* from a Florida Supreme Court decision. After the decision in *Snipes v. Telli*, 67 So. 3d 415 (Fla. 4th DCA 2011), *review granted*, 74 So. 3d 1084 (Fla. 2011), Citizens moved to dissolve the injunction, which was denied. This appeal ensued.

STATEMENT OF THE CASE AND FACTS

A. Nature of the Case

This case is an appeal by sixteen registered voters in Sarasota County, Florida, from a non-final Order of the Twelfth Judicial Circuit denying a motion to dissolve an injunction which enjoined the enforcement of a Charter provision imposing term limits on county commissioners. The Second District Court of Appeal certified the case as being of great public importance requiring immediate resolution ("Certification Order").

B. Course of Proceedings and Factual Background

On September 1, 1998, voters in Sarasota County overwhelmingly approved an amendment to the Sarasota County Charter ("Charter") that provides for a limit of two consecutive terms of four years each for County Commissioners, hereafter referred to as the "Term Limit Amendment." A copy of the Charter, incorporating the Term Limit Amendment in Section 2.1A, is appended hereto at Tab 1.

In its current form, Section 2.1A of the Charter, provides as follows:

> *Composition, election and term of members.* There shall be a Board of County Commissioners which shall consist of five members serving staggered terms of four years. One Commissioner residing in each district shall be elected by qualified voters of the County. A Commissioner who is removed from his or her district as a result of redistricting may serve out the balance of his or her term as a representative of his or her former district.

> No Commissioner shall serve more than two consecutive terms on the Board. For purposes of this limitation, any period of service on the Board of less than eighteen (18) months shall not be deemed to constitute a term of service. Further, a Commissioner who has served two consecutive terms may thereafter serve additional term(s) only after a lapse of service in office of at least two years. No previous term or term which is in progress as of the effective date of this Amendment shall be considered a term of service for purposes of the limitations contained herein.

In 2004, a civil action was filed by Defendants Frank and Dorothy Moore against Sarasota County in which it was alleged that the Term Limit Amendment was unconstitutional. See *Moore v. Sarasota County*, Case No. 2005-10230-NC (12th Jud. Cir.) ("*Moore*"), appended hereto at Tab 2.

On February 1, 2005, a final judgment was rendered in *Moore* which enjoined Sarasota County from enforcing the Term Limit Amendment. *Moore* at 5. The *Moore* decision expressly stated that it was based on *dicta* from the decision of the Florida Supreme Court in *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002). In pertinent part, Judge Economou stated:

> Although the Florida Supreme Court decision in Cook limits its holding to the County Officers referenced in Article VIII, Section l(d), Florida Constitution, this Court finds that **the dicta referenced throughout the *Cook* decision** is sufficiently expansive to govern County commissioners referenced in Article VIII, section l(e) of the Florida Constitution.

Moore at 3.

On February 8, 2005, Sarasota County, acting through the County Commissioners who are subject to the Term Limit Amendment, decided not to appeal the *Moore* decision.

On November 8, 2011, Citizens brought a civil action in the Twelfth Judicial Circuit seeking to challenge a ballot initiative proposed by the Board of County Commissioners of Sarasota County, Florida.[1] Citizens also sought to dissolve the injunction entered in the *Moore* case. Citizens sought emergency injunctive relief and expedited proceedings.

C. Disposition in the Lower Tribunal

On November 21, 2011, an expedited hearing was held in the trial court by the Honorable Jack R. Schoonover. The trial court denied Citizens' motion to dissolve the injunction entered in *Moore*, stating:

> The Court finds that the defendants and the parties together have not shown that the Moore decision is void and should be ignored at this time. The Court denies that part of the injunction.

Transcript of Hearing on Nov. 21, 2011 at 48.

[1] As proposed the ballot initiative would have reset the clock on the Charter provision containing term limits and increased the number of terms from two to three before the limitation applied. The Circuit Court entered an Order finding the proposed ballot language misleading and deficient. That issue has not been appealed and is not before the Court.

The trial court entered a written order denying the motion to dissolve without prejudice on December 7, 2011. Citizens filed a timely notice of appeal on December 13, 2011. On January 23, 2012, the Second District Court of Appeal entered an Order certifying this case as one of great public importance requiring immediate resolution by the Supreme Court.[2]

On February 14, 2012, this Court entered an Order accepting jurisdiction and expediting the briefing schedule. These proceedings ensued.

SUMMARY OF THE ARGUMENT

Under the Florida Constitution, counties operating under county charters, such as Sarasota County, "shall have all powers of local self-government not inconsistent with general law." Art. VIII, § 1(g), Fla. Const. Section 2.1A of the Sarasota County Charter is constitutional because it provides voter-imposed restrictions on the terms of county commissioners consistent with Art. VIII, § 1(e), Fla. Const. The decision in *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), construed language in Art. VIII, § 1(d) involving a different class of county officers. County commissioners are not constitutional officers within the meaning of Art. VIII, § 1(d).

[2] The District Court specifically stated that "[t]he qualifications deadline for county commissioners in Sarasota County is June 4, 2012. Resolution of this issue prior to that date is necessary because one incumbent county commissioner, who would otherwise be barred from a third term if the injunction were not in place, has filed to run for another term in office." Certification Order at 1.

STANDARD OF REVIEW

The determination of a statute's constitutionality and the interpretation of a provision of the Florida Constitution is a question of law subject to *de novo* review. *Crist v. Florida Ass'n of Criminal Def. Lawyers, Inc.*, 978 So. 2d 134, 139 (Fla. 2008). Legislative enactments are presumed to be constitutional and "must be construed whenever possible to effect a constitutional outcome." *Id.*

ARGUMENT

I.

THE TRIAL COURT ERRED IN DENYING THE MOTION TO DISSOLVE THE INJUNCTION BECAUSE THE DECISION IN *SNIPES v. TELLI* CONSTITUTED BINDING PRECEDENT.

Citizens contend that the trial court was bound to follow the decision of the Fourth District Court of Appeal in *Snipes v. Telli*, 67 So. 3d 415 (Fla. 4th DCA 2011), because it was factually and legally indistinguishable and there was no other contrary decision at the district court level. The permanent injunction entered in *Moore* which Citizens sought to dissolve was expressly based on *dicta* from the decision in *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002). Under these particular circumstances, the trial court was bound by *Snipes*. Each contention is addressed below.

1. Charter counties and Term Limits

The issue presented in this case is whether a chartered county can impose term limits upon county commissioners. Art. VIII § 1, Florida Constitution, provides that:

> (e) **Commissioners**. ***Except when otherwise provided by county charter***, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

Art. VIII, § 1, Fla. Const. (emphasis added).

As set forth above, § 2.1A of Sarasota County's Charter contains a term limits provision enacted by voters at a referendum in 1998. That Charter provision imposes two-term limits upon county commissioners. In 2005, however, Circuit Court Judge Deno Economou enjoined the County's enforcement of the Charter provision in an action brought by two citizens, Frank and Dorothy Moore. Judge Economou's decision was expressly based on *dicta* from the Florida Supreme Court's decision in *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002). *Moore* at 3. The County did not appeal that decision.

2. *Cook* does not apply to Art. VIII, § 1(e) officers

Citizens argue that *Cook* does not apply because that decision was limited to whether Art. VIII, § 1(d) prohibited voters in charter counties from exercising home rule power to impose term limits on a narrow class of county officers.[3] As demonstrated below, a closer reading of *Cook* reveals that the majority never mentioned Art. VIII, § 1(e) and that its analysis was limited to the county officers enumerated in Art. VIII, § 1(d).

First, the *Cook* Court noted that the issue to be addressed was "whether a charter county may in its charter impose a 'term limit' provision upon **those county officer positions which are authorized by article VIII, section 1(d)**, Florida Constitution, where the charter county through its charter has not abolished **those county officer positions**." Cook, 823 So. 2d at 90 (emphasis added).

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[3] As the Fourth District noted in *Snipes*:

> The holding in *Cook,* by its express language, applies only to the county officers specified in article VIII, section 1(d) of the Florida Constitution—'a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.' Art. VIII, § 1(d), Fla. Const.; *Cook,* 823 So.2d at 90, 94–95. The issue here is whether *Cook*'s reasoning and the language of article VIII, section 1 support the extension of *Cook*'s holding to the voters' adoption of term limits on county commissioners in a charter county.

67 So. 3d at 416.

Second, the *Cook* Court stated that "[t]he county offices subject to this review are authorized by article VIII, section 1(d) . ..." *Id*.

Third, the Court's narrow holding was expressly limited to the county officers listed in Art. VIII, § 1(d). The Court stated:

> We find that article VI, section 4(a), provides the only disqualifications applicable to **the county offices established by article VIII, section 1(d), Florida Constitution**. Thus, we hold that [these charter provisions] providing for a term limit on county officers authorized by article VIII, section 1(d), are invalid . ...

Id. at 94-95 (emphasis added).

"No Florida appellate decision is authority on any question not raised and considered, although it may be involved in the facts of the case." *Rey v. Philip Morris, Inc.*, 75 So. 3d 378 (Fla. 3d DCA 2011) (internal quotation marks omitted). Because the actual issue decided in *Cook* involved only Art. VIII, § 1(d), officers, that decision does not control the outcome of the different language contained in Art. VIII, § 1(e).

3. The Fourth DCA got it right.

The decision of the Fourth District Court of Appeal in *Snipes v. Telli*, 67 So. 3d 415 (Fla. 4th DCA 2011), rejected the *dicta* in *Cook* and emphasized that the different terminology used in Art. VIII §§ 1(d) and (e) meant that voters could validly impose term limits on county commissioners in a charter county. *Snipes* squarely held that Art. VII, § 1(e) did not bar

voters from imposing term limits on county commissioners. The *Snipes* Court stated:

> we decline to extend the holding in *Cook* to apply to members of a county's governing body under article VIII, section 1(e), Florida Constitution, and hold that the voters may amend a county's charter, if they choose, to impose term limits on county commissioners.

Snipes, 67 So. 3d at 419.

4. *Snipes* was binding on the trial court.

At the time of the trial court proceedings, *Snipes* constituted binding precedent. Under Florida law, a decision of a district court of appeal is binding on a trial court in another district in the absence of a contrary decision by the appellate court in the trial court's own district. *See, e.g.*, *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) ("This Court has stated that the decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court. Thus, in the absence of interdistrict conflict, district court decisions bind all Florida trial courts") (internal citation and quotation marks omitted). *See also Sys. Components Corp. v. Florida Dept. of Transp.*, 14 So. 3d 967, 973 (Fla. 2009) ("In the absence of inter-district conflict or contrary precedent from this Court, it is absolutely clear that the decision of a district court of appeal is binding precedent *throughout Florida.* Consequently, a trial court may not overrule

or recede from the controlling decision of a district court.") (internal citation omitted) (emphasis in original); *Bunkley v. State*, 882 So. 2d 890 (Fla. 2004) (reaffirming *Prado* "in which this Court ruled that 'in the absence of interdistrict conflict, district court decisions bind all Florida trial courts.'"); *Brannon v. State*, 850 So. 2d 452, 458 (Fla. 2003) ("If there is no controlling decision by this Court or the district court having jurisdiction over the trial court on a point of law, a decision by another district court is binding."); *Gore v. Harris*, 772 So. 2d 1243, 1258 (Fla.), *rev'd on other grounds*, 531 U.S. 98 (2000) ("This Court has determined that the decisions of the district courts of appeal represent the law of this State unless and until they are overruled by this Court, and therefore, in the absence of interdistrict conflict, district court decisions bind all Florida trial courts."); *Stanfill v. State*, 384 So.2d 141, 143 (Fla. 1980) ("The decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court"). *See generally* 12A Fla. Jur 2d Courts and Judges § 177 ("A circuit court wheresoever situated in Florida is equally bound by a decision of a district court of appeal regardless of its appellate district. Thus, in the absence of a contrary opinion of its own district court of appeal, a circuit court is bound to follow an opinion of another district court of appeal.").

Applying these well-established principles, the decision in *Snipes* is factually and legally indistinguishable from the question presented to the trial court on Citizens' motion to dissolve the injunction. Indeed, the District Court's certification to this Court states that "the legal issue in *Snipes* and in this case are identical." Certification Order at 1. As there was no contrary decision from the Second District Court of Appeal, nor any other appellate district, *Snipes* constituted binding precedent. This is particularly appropriate given that the Circuit Court decision in *Moore* expressly stated that it was based on *dicta* from the expansive language found in *Cook*. See *Moore* at 3 ("… this Court finds that the dicta referenced throughout the *Cook* decision is sufficiently expansive to govern County commissioners referenced in Article VIII, section l(e) of the Florida Constitution.").

Because the intervening decision in *Snipes* is binding, the trial court should have dissolved the injunction entered in *Moore*. As stated in *Simonik v. Patterson*, 752 So. 2d 692 (Fla. 3d DCA 2000):

> The terms of a permanent injunction must be confined to what is required by the circumstances justifying the injunction, and those terms are subject to alteration when those circumstances change.

Id. at 693.

In *Hale v. Miracle Enterprises Corp.*, 517 So. 2d 102 (Fla. 3d DCA 1987), the Third District Court of Appeal held:

> It is well settled that (a) because permanent injunctions are open ended and remain indefinitely in effect, a court necessarily retains jurisdiction to modify an injunctive order whenever changed circumstances make it equitable to do so, and (b) since the terms of an injunction must be confined to that required by their existing circumstances to enforce the particular right asserted, those terms are obviously subject to alteration when those conditions change. The terms of any initial injunction, based upon the circumstances which then prevail, cannot therefore bind a subsequent determination of the appropriate extent of the injunction under the doctrine of res judicata.

Id. at 103 (internal citations omitted). *See also Elias v. Steele*, 940 So. 2d 495, 497 (Fla. 3d DCA 2006) ("An individual seeking to modify or dissolve an injunction must establish that the circumstances justifying the injunction have changed so that the terms of the injunction are no longer equitable."); *Samanka v. Brookhouser*, 899 So. 2d 1190, 1191 (Fla. 2d DCA 2005) (court has power to modify permanent injunction upon notice to nonmoving party).

Here, the intervening appellate court decision was certainly a sufficient change in circumstances that warranted dissolution of the permanent injunction entered in the *Moore* case. *See Jackson Grain Co. v. Lee*, 7 So. 2d 143, 146 (Fla. 1942) (change in the law is valid basis for modifying permanent injunction and "does not deprive the complainant of any vested right in the injunction because no such vested right exists.").

CONCLUSION

The motion to dissolve the permanent injunction entered in *Moore* should have been granted because, under binding precedent, Sarasota County's existing term limits provision in the charter is constitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 2, 2012 a copy of the foregoing has been furnished via Hand Delivery to: DAVID PERSSON, 1820 Ringling Blvd, Sarasota, FL 34236-5917; and FREDERICK J. ELBRECHT, 1660 Ringling Blvd., Sarasota, FL 34236.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with the font requirements set forth in Rule 9.210(a)(2), Fla. R. App. P.

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