IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-109

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,

Appellee.

APPELLEE'S BRIEF ON THE MERITS

Hankin, Persson, Davis,
McClenathen & Darnell
David P. Persson, Esquire
Florida Bar No. 0622486
1820 Ringling Boulevard
Sarasota, Florida 34236
Telephone: (941) 365-4950

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ISSUE ON APPEAL

The permanent injunction entered by the 12th Judicial Circuit in Moore v. Sarasota County, Case No.: 2004 CA 010230 NC, (Appellants' tab 2), enjoining the enforcement of Sarasota County's Charter provision with regard to term limits should be dissolved as the Florida Constitution does not prohibit charter counties from enacting provisions within its charter governing the number of terms of office that a county commissioner may serve.

INTRODUCTION

Appellee, Sarasota County, herein adopts the Preface, Introduction, Statement of Case and Facts, Summary of the Argument, Standard of Review and Conclusion as set forth by Appellants. Moreover, Appellee adopts Appellants' arguments with respect to its analysis of Cook v. City of Jacksonville, 823 So. 2d 86 (Fla. 2002), Article VIII, § 1(e) of the Florida Constitution and its support of the decision reached in Snipes v. Telli, 67 So. 3d 415 (Fla. 4th Dist. App. 2011). Appellee believes the argument that, during the emergency hearing in this matter below, the trial judge should have entered an order dissolving the permanent injunction based upon the Fourth District Court of Appeal's decision in Snipes was rendered moot by this Court taking discretionary jurisdiction for review of Snipes. Regardless, Appellants and Appellee agree that Article VIII, § 1(e) of the Florida Constitution allows the electors in charter counties to establish term limitations within their charter, Cook should not be expanded to prohibit such charter provisions, and Snipes was correctly decided by the Fourth District Court of Appeal.

ARGUMENT

Sarasota County has in its Charter a provision which provides that County Commissioners may not serve more than two terms without an interceding two years out of office. Section 2.1A, Sarasota County Charter, Appellants' tab 1.

Electors of Sarasota County have the right under Article VIII, § 1(e) of the Florida Constitution to set term limits as recognized by the decision of the Fourth District Court of Appeal in Snipes by virtue of the much-quoted first sentence of § 1(e) "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." This introductory clause of Article VIII, § 1(e) relative to local control of county charters for commissioners clearly and unambiguously allows the local charter to express the will of that particular jurisdiction with regard to the number of county commissioners and their terms of office.

This Court has very recently considered the standard for construing a constitutional provision in West Florida Regional Medical Center, Inc. v. See, 37 Fla. L. Weekly S 22 (Fla. January 12, 2012).

> Similarly, when this Court construes a constitutional provision, it will follow construction principles that parallel those of statutory interpretation. As with statutory construction, a question with regard to meaning of a constitutional provision must begin with the examination of that provision's explicit language. If that language is "clear, unambiguous, and addresses the matter at issue," it is enforced as written. If, however, the provision's language is ambiguous or does not address the exact issue, a court "must endeavor to construe the constitutional provision in a manner consistent with the intent of the framers and voters."

West Florida Regional Medical Center Inc, at S 24. (Internal citations omitted.)

Appellee suggests that the phrase "except when otherwise provided by county charter" when used with respect to numbers of commissioners and terms of office, is clear and unambiguous and should be enforced as written.

Additionally, Charter Counties are granted broad home rule powers under Article VIII, § 1(g), which states in pertinent part: "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors." As noted by the Court in Snipes, "[The Supreme] Court has broadly interpreted the self-governing powers granted charter counties under Article VIII, § 1(g) of the Florida Constitution" citing State v. Broward County, 468 So. 2d 965, 969 (Fla. 1985) (footnote omitted).

Moreover, Courts are bound to choose an interpretation of statutes and rules which renders the provisions meaningful. Interpretations that render provisions superfluous are, and should be, disfavored. Courts must assure that statutory provisions are intended to have some useful purpose. Courts are not to presume that a given provision employs "useless language." See Johnson v. Feder, 485 So. 2d 409 (Fla. 1986.)

A similar interpretation should be provided for the constitutional provisions that are the subject matter of this appeal. The use of "except when otherwise provided by county charter" is clearly deliberate and cannot be construed as

superfluous. (See Piper Aircraft v. Anneliese, 564 So. 2d 546 (Fla. 3d DCA 1990.) "Moreover if a law can fairly be construed so as to make it lawfully enforceable, it is . . . (the Court's) . . . duty to give it effect rather than to adjudge a legislative enactment to be illegal or vain." County of Brevard v. Harland, 102 So. 2d 137, 138 (Fla. 1957).

In Cook, this Court determined that the only disqualifications of office applicable to county offices created by Article VIII, § 1(d) were those set forth in Article VI, § 4(a) of the Florida Constitution. Cook, 823 So. 2d at 95 (Fla. 2002). However in Cook, footnote 9, the Court correctly observes that there are other isolated disqualifications referenced in other provisions of the Florida Constitution. "See, e.g. Art. IV, Sec. 5(b), Fla. Const. (imposing gubernatorial term limit); see also Art. V, Sec. 8, Fla. Const. ("No justice or judge shall serve after attaining the age of seventy years…")…" Id., at 92.

Appellee would argue in the alternative that this is one of those "isolated disqualifications" and the ability to enact this disqualification has been delegated by the Florida Constitution to the electors of a charter county. Thus even if this Court extends the logic of Cook beyond its holding regarding County Officials under Article VIII, § 1(d), the introductory phrase of Article VIII, § 1(e), "Except when otherwise provided by county charter" is a delegation of power to the voters of a charter county to determine terms of its county commissioners. The electors

of a charter county have the ability to determine whether to impose term limitations upon its county commissioners.

Appellee submits that upon a clear reading of Article VIII, § 1(e) of the Florida Constitution, as well as the deference to be given by Article VIII, § 1(g) to the legislative action taken by the electors of a charter county, this Court should find term limitations for county commissioners valid, constitutional and enforceable.

CONCLUSION

Article VIII, § 1(e) of the Florida Constitution should be construed to allow electors of charter counties to enact provisions within their Charter to establish term limits for county commissioners. The permanent injunction entered in Moore should be dissolved and Appellee's existing term limit provision in its Charter should be deemed constitutional and enforceable.

Respectfully submitted,

Hankin, Persson, Davis,
McClenathen & Darnell
David P. Persson, Esquire
Florida Bar No. 0622486
1820 Ringling Boulevard
Sarasota, Florida 34236
Telephone: (941) 365-4950
Facsimile: (941) 365-3259
dpersson@sarasotalawfirm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February _____, 2012, a copy of the foregoing has been furnished via hand delivery to: Andrea Flynn Mogensen, Esquire, 200 South Washington Boulevard, Suite 7, Sarasota, Florida 34236 and Frederick J. Elbrecht, 1660 Ringling Boulevard, Sarasota, Florida 34236.

_____

David P. Persson, Esquire

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.

_____

David P. Persson, Esquire