CONSTITUTIONAL LAW

Constitutional Law: Amendments

***Lanning v. Pilcher*,**
16 So. 3d 294 (Fla. 1st Dist. App. 2009)

Florida's Save Our Homes Amendment (SOHA) does not violate a nonresident's rights under the Equal Protection Clause, Privileges and Immunities Clause, or the Commerce Clause of the United States Constitution. An action challenging the validity of tax laws need not be brought within sixty days of tax roll certification, as the sixty-day time limit only applies when contesting the assessment itself, not the applicable tax law.

FACTS AND PROCEDURAL HISTORY

Plaintiffs Jerome K. Lanning and Joyce A. Lanning, husband and wife, and Ann C. Reese as personal representative of the estate of Marlow Reese, individually and as representatives of similarly situated persons (collectively, Lanning), brought an action challenging the constitutionality of SOHA and its implementing statute. SOHA provides for a three-percent annual tax cap on homestead property assessment increases. Lanning argued Article VII, Section 4(c) of the Florida Constitution (2009), along with Florida Statutes Section 193.155 (2009), violated their rights under the Equal Protection Clause, the Privileges and Immunities Clause, and the Commerce Clause of the United States Constitution. The trial court upheld the validity of the Amendment and its implementing statute. This appeal ensued. On cross-appeal, Defendants offered an alternative claim that the trial court lacked jurisdiction because Plaintiffs did not bring their claim within sixty days of their property assessment, as required by Florida Statutes Section 194.171 (2009).

ANALYSIS

The First District affirmed the trial court's ruling and rejected the alternative argument raised by Defendants on cross-appeal.

First, the court addressed the cross-appeal and relied on its previous ruling in *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st Dist. App. 2000), in which it held Section 194.171 applied only to actions contesting property tax assessments and denials of exemptions. Finding support in the plain reading of the Statute, the court held it did not apply to litigation challenging the validity of tax laws. The issue at hand did not involve specific property assessments, and the court pointed out that if it were to find the Amendment and its implementing statute unconstitutional, Plaintiffs would not be entitled to a tax refund or reduction. Therefore, the court found no reason to stray from its prior holding, and rejected Defendant's cross-appeal.

Next, the court addressed the main appeal. It compared the constitutional challenges to the statute with arguments raised and rejected in similar cases. The court pointed to the Supreme Court's ruling in *Nordlinger v. Hahn*, 505 U.S. 1 (1992), in which an amendment to the California Constitution capping real property tax increases at two percent per year in the absence of change of ownership was deemed consistent with the Equal Protection Clause. The court also emphasized the similarities between the case at hand and *Reinish*, in which it found the Florida homestead exemption did not violate the Equal Protection Clause, the Privileges and Immunities Clause, or the Commerce Clause. The court found the same analysis applicable because the tax implications were based on the use of the property rather than the landowner's status as a resident or nonresident.

Finally, the court noted that under SOHA, Florida residents who own vacation homes or business property are in the same position as non-residents and would not benefit from any tax advantages. SOHA and its statute establish a three-percent tax cap on property used as a primary residence. The court pointed out that "plaintiffs argue that the existence of a benefit for homestead property, when combined with the tax treatment of non-homestead property, gives Florida residents a tax advantage, but this is essentially an argument that the homestead exemption is itself unconstitutional, a point rejected in *Reinish*." *Lanning*, 16 So. 3d at 297–298. Rejecting such an argument again, the court affirmed the trial court's ruling.

SIGNIFICANCE

Lanning v. Pilcher emphasizes that Florida Statutes Section 194.171 (2009), establishing a sixty-day limit to bring a claim, does not apply to litigation centered on challenging the validity of a tax law because the claim does not arise from a particular property assessment.

Furthermore, tax laws based on land used as a primary residence, rather than landowner status, do not violate nonresidents' rights under the Equal Protection Clause, the Privileges and Immunities Clause, or the Commerce Clause of the Constitution.

RESEARCH REFERENCE

- 16B Am. Jur. 2d *Constitutional Law* § 758 (2009).

Mitali Vyas

Constitutional Law: First Amendment—Elections

***Citizens for Police Accountability Political Committee v. Browning*,**
572 F.3d 1213 (11th Cir. 2009)

A Florida Statute prohibiting solicitation within one hundred feet of the entrance to a polling place does not violate the First Amendment. A statute limiting the right to political speech is constitutional as long as it is narrowly drawn and necessary to fulfill a state's compelling interest.

FACTS AND PROCEDURAL HISTORY

The Plaintiffs, the Citizens for Police Accountability Political Committee (the Committee) and the Florida State Conference of the NAACP, supported an amendment to the Fort Myers city charter that would establish a citizen panel to oversee the police department. In order to get the amendment on the ballot, the Plaintiffs were required to gather signatures from at least ten percent of the city's registered voters. In January 2008, the Committee attempted to gather signatures from individuals at a polling place in Fort Myers. The amendment for which the Committee gathered signatures was unrelated to any existing ballot measures at that time. The individuals approached for signatures

had voted and were leaving the polling place. Election officials prohibited the Committee members from requesting signatures within one hundred feet of the polling site, as per Florida Statutes Section 102.031(4) (2008) (the Statute).

In August 2008, Plaintiffs filed suit against the State and requested injunctive relief under Title 42, Section 1983 of the United States Code, claiming a violation of their right to political speech at polling places. Additionally, Plaintiffs sought to enjoin the State from enforcing Florida Statutes Section 102.031(4) against them on an election day later in the month. The district court granted the preliminary injunction against the State and found the Statute unconstitutional as applied to the Plaintiffs' exit-solicitation activities. The Court of Appeals reversed, finding that the appeal regarding the preliminary injunction was not moot and that the statute created no First Amendment violation.

ANALYSIS

The Court of Appeals ruled in favor of the State, finding Section 102.031(4) did not violate the First Amendment even though it limited Plaintiffs' right to engage in political speech.

First, the court discussed the Supreme Court decision in *Burson v. Freeman*, 504 U.S. 191 (1992), in which the Court evaluated the constitutionality of a Tennessee statute restricting political speech in a public forum by determining whether the statute was supported by a compelling state interest and was necessary to promote that interest. Although the court agreed with Plaintiffs that *Burson* was not binding in this case, it applied the reasoning of *Burson* to the facts at hand. The court first determined that the State's expressed interests in preventing voter confusion and undue influence and maintaining the integrity of the voting process were legitimate and compelling.

Second, the court deemed the Statute necessary to serve the interests identified by the State. The court found that exit solicitation could potentially confuse voters and might discourage potential voters from approaching the polling sites. The court further determined that exit solicitation would place an unreasonable burden on election officials if they are expected to ensure solicitors target only individuals who have already voted. Even if peaceful and organized, the State is justified in prohibiting such exit solicitation as it may deter potential voters from voting.

Regulations enacted to prevent likely disturbances are appropriate, as "[t]he cost of a disturbed election is too high to allow the State only to react to disturbances but not to prevent disturbances." *Citizens for Police Accountability*, 572 F.3d at 1221.

Finally, the court held the statute was narrowly tailored and did not significantly infringe on Plaintiffs' constitutionally protected rights. The Statute prohibits solicitations within one hundred feet of the entrance to polling sites, similar to the Tennessee statute upheld in *Burson*. Therefore, the court reversed the district court's ruling, and upheld the Florida Statute.

SIGNIFICANCE

Citizens for Police Accountability emphasizes the standard used in determining the constitutionality of State statutes that infringe on constitutionally protected rights. Even if State regulations create some limitations of constitutionally protected rights, they are justified if necessary and narrowly tailored to meet compelling State interests. Preventing voter confusion and undue influence and maintaining the integrity of the election process are compelling State interests.

RESEARCH REFERENCE

- 26 Am. Jur. 2d *Elections* § 451 (2004 & Supp. 2009).

Mitali R. Vyas

Constitutional Law: Funding of the State Court System

***Lewis v. Leon County*,**
15 So. 3d 777 (Fla. 1st Dist. App. 2009)

Section 19 of Chapter 2007-62, Laws of Florida violates Article V, Section 14 and Article VII, Section 18(a) of the Florida Constitution by imposing funding responsibility for Regional Conflict Counsel upon the counties instead of the State. The Legislature may not obligate counties to spend local funds for court-appointed counsel, nor may it impose funding responsibility upon the counties without finding an "important state interest" for doing so.

FACTS AND PROCEDURAL HISTORY

The Office of Criminal Conflict and Civil Regional Counsel (Regional Conflict Counsel) was established in 2007 by Chapter 2007-62, Laws of Florida. It provides court-appointed counsel to indigent defendants for cases in which public defenders have a conflict of interest, largely replacing a registry of private counsel previously used for the same purpose. The Regional Conflict Counsel's originating statute classified the entity as a subset of the public defenders' offices, and by doing so it required counties to provide its funding.

Twenty-six counties, in two actions that were consolidated at the circuit court, sought a declaratory judgment that Section 19, Chapter 2007-62, Laws of Florida was unconstitutional. First, they argued that the statute violated Article V, Section 14 of the Florida Constitution, which requires the State to fund court-appointed counsel. Related to this argument, the counties maintained that the Legislature lacked the authority to expand the meaning of the constitutionally defined term "public defenders' offices." Second, the counties contended that the Legislature inappropriately obligated the counties to provide funding because it made no finding of "important state interest" as required by Article VII, Section 18(a) of the Florida Constitution.

The counties moved for summary judgment, and the trial court granted that motion. The First District Court of Appeal ultimately affirmed.

ANALYSIS

The First District examined the language of Article V, Section 14 and explained that it limits counties' financial obligation for the state court system and specifically requires the State to fund court-appointed counsel. The court's interpretation was buttressed by the Constitution Revision Commission's Statement of Intent, which explained, "'It is the intent of the proposers that the state be . . . wholly responsible for funding court-appointed counsel and related costs necessary to ensure the protection of due process rights.'" *Lewis*, 15 So. 3d at 780.

Citing *Crist v. Fla. Assn. of Crim. Def. Laws., Inc.*, 978 So. 2d 134, 146 (Fla. 2008), the First District held that Regional Conflict Counsel are not public defenders. Moreover, there is no significant legal difference between the Regional Conflict Counsel sys-

tem and the registry of private court-appointed counsel that preceded it. Therefore, Section 19's requirement that counties fund the Regional Conflict Counsel system unconstitutionally violated the mandates of Article V, Section 14.

Turning to the counties' second contention, the First District referred to the language of Article VII, Section 18(a), commonly referred to as the unfunded-mandate requirement, which precludes the Legislature from obligating counties to spend local funds without finding that the proposed law fulfills an "important state interest." The court held that the Legislature never indicated that it created the Regional Conflict Counsel system to fulfill an important state interest; general statements that the system was "necessary" were insufficient to satisfy the unfunded mandate requirement. Because the Legislature made no such finding, it could not obligate the counties to fund the Regional Conflict Counsel system, and it therefore unconstitutionally violated Article VII, Section 18(a). Additionally, the court rejected Appellant's argument that the court could make the important-state-interest determination where the Legislature had not.

SIGNIFICANCE

Lewis affirms that the Legislature may not shift the financial burden for state court entities that guarantee the protection of due process rights from the State to the counties. Moreover, though it is not stated explicitly, *Lewis* implies that the unfunded mandate requirement is met only by an *express* legislative finding of "important state interest."

RESEARCH REFERENCES

- Fla. Const. art. V, § 14(c).
- Fla. Const. art. VII, § 18(a).

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