

IN THE SUPREME COURT OF FLORIDA

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ROSS J. GRECO, SUSAN GRECO,  
SAM FALZONE & HEATHER EVERETT,

Petitioners,

v.

CASE NO. 68,178

STATE OF FLORIDA,

Respondent.

BRIEF OF APPELLANT ON JURISDICTION

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SUMMARY OF THE ARGUMENT

The respondent will argue that this Honorable Court should refuse to accept jurisdiction on three basis. (1) The argument presented by the petitioner is not adequately supported by case law. (2) A reading of the opinion rendered by the Second District Court of Appeal shows that they did not rely on inappropriate case law, nor did they rely on an improper legal premise. (3) The petitioner's argument before this Honorable Court does nothing more than restate the argument that he made before the Second District Court of Appeal, and which argument was specifically rejected by that court in the opinion.

## ARGUMENT

At page five of his brief to this Honorable Court, the petitioner states that the priorities for determining the constitutionality of a statute are not the same for civil and penal statutes. While the respondent is prohibited by the Rules of Appellate Procedure from arguing merits in this brief, the respondent would suggest that the mere perusal of West's Digest of Florida Cases will show that the presumptions that are applied when testing a statute have been relied on in criminal as well as civil cases.

The petitioner at page five of his brief claims that Beebe v. Richardson, 156 Fla. 559, 23 So.2d 718 (1945) was improperly relied on by the Second District Court of Appeal concerning this question, yet if one reads the opinion, one sees that Beebe was cited for a different proposition.

The petitioner at page five of his brief cites the cases of Ex parte Bailey, 23 So. 552 (Fla. 1897); Ex parte Amos, 112 So. 289 (1927); State v. Wershow, 343 So. 605 (Fla. 1977) and Earnest v. State, 351 So.2d 957 (Fla. 1977) for the proposition that the primary concern regarding a criminal statute is that the citizens are clearly and specifically put on notice as to the prohibited conduct. The respondent herein will agree to that, but will ask this Honorable Court to note that the Second District Court of Appeal also agrees with that proposition and, in fact, so stated in their opinion. There can be no question that the court applied the right standard since it stated:

"a statute is vague if it fails to give adequate notice of what conduct is prohibited and which, because of its imprecision, may also invite arbitrary and discriminatory enforcement."

The petitioner at page six et seq. of his brief then goes on to pose different hypothetical questions concerning the meaning of the statutes in question or of words within the statutes. The respondent will suggest that any statute may be attacked in a like manner, and again, the Second District Court of Appeal, in its opinion, dealt specifically with this argument when it stated:

"Much of appellees' argument concerning vagueness consists of positing whether certain hypothetical fact scenarios fall within the scope of the statute. Thus, they ask: Are a husband and wife exempted from being a political committee? What if the primary purpose of two persons acting in concert is not political but one of them has an incidental purpose that is political? Do all the people who make up the combination have to share the identical political purpose or is it enough that 51% of the members have an incidental purpose? If the original members have no political purpose, do subsequent members having an incidental purpose cause the group to become a political committee? We need not respond to these questions until appellees demonstrate that their conduct is within the purview of such inquiries. As noted by the United States Supreme Court in *New York v. Ferber*, 458 U.S. 747, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982):

The traditional rule is that a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to

others in situations not before  
the Court.

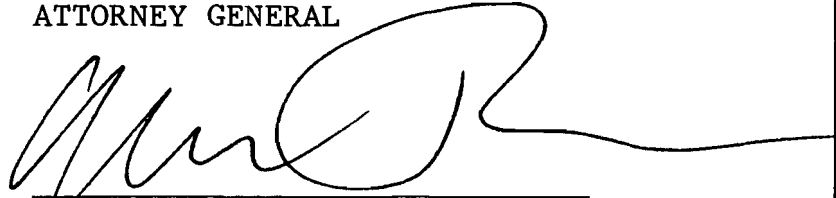
In short, the respondent herein has no argument with the cases presented by the petitioner, but when those cases are examined in light of the opinion rendered by the Second District Court of Appeal one finds that they do not support the petitioner's argument, nor do they conflict with the standards and propositions set out by the Second District Court of Appeal in its opinion. Further, the petitioner has done no more in the present brief concerning the issue of vagueness than it did before the Second District Court of Appeal; to wit: attempt to show the illogicality of the statute by proposing various scenarios that are irrelevant to the matter sub judice. The respondent will argue that while this Court certainly may take jurisdiction of the case, to do so would be a waste of scarce judicial resources since the opinion that the petitioner challenges is well reasoned, and supported by fact and law. In some situations, this Honorable Court is presented with matters that cry out for its discretion to be used or that represent a grey area where the court may wish to use its discretion in an abundance of caution. The matter sub judice falls into neither of those categories.

CONCLUSION

Based on the foregoing arguments and case authority, the respondent would ask this Honorable Court to refuse to accept jurisdiction in the matter sub judice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to A. R. Mander, III, GREENFELDER, MANDER, HANSON, MURPHY & TOWNSEND, 103 North Third Street, Dade City, Florida 33525, this 27 day of January, 1986.



OF COUNSEL FOR RESPONDENT.