
IN THE SUPREME COURT OF FLORIDA

Case No. SC06-____
LT Case No. 1D05-1497

Upon Petition For Discretionary Review
Of A Decision Of The First District Court Of Appeal

**WALTON COUNTY,
A Political Subdivision Of The State Of Florida,**

Petitioner,

v.

SUN SEEKERS HOMEOWNERS' ASSOCIATION, INC.,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

WALTON COUNTY, FLORIDA, by David A. Hallman, County Attorney, 161 E. Sloss Ave., DeFuniak Springs, FL 32433-1343, Ph. (850) 892-8110, Fax (850) 892-8471; **PLEAT & PERRY, P.A.**, by Amy A. Perry and John B. Fuller, III, 4477 Legendary Dr., Ste. 202, Destin, FL 32541, Ph. (850) 650-0599, Fax (850) 650-4402; **ANCHORS SMITH GRIMSLEY**, by Susan L. Kelsey, The Perkins House, 118 N. Gadsden St., Tallahassee, FL 32301, Ph. (850) 222-4778, Fax (850) 224-4777.

Co-Counsel for Petitioner, Walton County

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF THE ARGUMENT	2
STANDARD OF REVIEW	3
ARGUMENT	3
I. THE COURT HAS JURISDICTION TO REVIEW THE FIRST DISTRICT’S DECISION BECAUSE IT EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS.	3
II. THE COURT SHOULD EXERCISE ITS DISCRETION TO REVIEW THIS CASE BECAUSE IT HAS A SIGNIFICANT IMPACT ON GOVERNMENTAL ENTITIES’ ABILITY TO PROVIDE THE PUBLIC WITH BEACH ACCESS AS REQUIRED BY THE PUBLIC TRUST DOCTRINE.	5
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	11
CERTIFICATE OF TYPEFACE COMPLIANCE	11
INDEX TO APPENDIX – Decision to be reviewed. APPENDIX (attached)	

TABLE OF AUTHORITIES

CASES	PAGE(s)
Board of Trustees of the Internal Improvement Trust Fund v. Levy, 656 So. 2d 1359 (Fla. 1st DCA 1995)	8
Chief Judge of the Eighth Jud. Cir. v. Board of Co. Commrs. Of Bradford County, 401 So. 2d 1330 (Fla. 1981)	4
City of Daytona Beach Shores v. State, 483 So. 2d 405 (Fla. 1985)	8
City of Daytona Beach v. Tona-Rama, Inc., 294 So. 2d 73, 75 (Fla. 1974).....	6
Johnson v. Citizens State Bank, 537 So. 2d 96 (Fla. 1989)	4
Lloyd Enterprises, Inc. v. Department of Rev., 651 So. 2d 735 (Fla. 5th DCA 1995).....	8
State v. Walton County, 93 Fla. 796, 112 So. 630 (1927).....	4
Sun Ins. Co. v. Boyd, 105 So. 2d 574 (Fla. 1958)	3
Sun Seekers Homeowners' Association, Inc. v. Walton County, 922 So. 2d 1001 (Fla. 1st DCA 2006)	passim
Walters v. McCall, 450 So. 2d 1139 (Fla. 1st DCA 1984)	2
White v. Hughes, 139 Fla. 54, 190 So. 446, 448-49 (1939)	6

FLORIDA CONSTITUTION

Art. V, § 3(b)(3)	3, 4
Art. X, § 11	2, 6
Art. VIII, § 1(a), (e)	3

FLORIDA STATUTES (2005)

§ 125.01	7
§ 125.15	3
§ 161.021	2, 6
§ 187.201(8)	7

FLORIDA RULES

Fla. R. App. P. 9.040(c),(d).....	4
Fla. R. App. P. 9.210(a)	10

OTHER AUTHORITIES

H. Anstead, G. Kogan, T. Hall, and C. Waters, <i>The Operation & Jurisdiction of the Supreme Court of Florida</i> , 29 <i>Nova L. Rev.</i> 431, 509 (2005)	4
J. Sullivan, <i>Laying Out An “Unwelcome Mat” to Public Beach Access</i> , 18 <i>J. Land Use & Envtl. L. J.</i> 331, 332 (2003).	5
Walton County Code § 22-52	7
Walton County Comprehensive Plan Policy R-5.1.1	7
Walton County Comprehensive Plan Policy R-7.1.5	8

STATEMENT OF THE CASE AND FACTS

Petitioner, WALTON COUNTY, FLORIDA (“Walton County” or the “County”), seeks review of a decision of the First District Court of Appeal, *Sun Seekers Homeowners’ Association, Inc. v. Walton County*, 922 So. 2d 1001 (Fla. 1st DCA 2006). [Appended.]

Respondent, the Sun Seekers Homeowners’ Association, Inc. (the “Homeowners’ Association”), brought a declaratory judgment action in Walton County Circuit Court, asserting that the public did not have the right to use a certain piece of land for beach access. *Sun Seekers*, 922 So. 2d at 1002. The Homeowners’ Association asserted that it had standing to raise this issue. *Id.* The trial court ruled that the Homeowners’ Association had standing, and entered a final summary judgment in favor of Walton County, ruling that the general public had the right to use the land for beach access. *Id.*

The Homeowners’ Association appealed the final summary judgment allowing public beach access across the land, and Walton County appealed the trial court’s ruling that the Homeowners’ Association had standing. *Id.* On appeal, the First District Court of Appeal affirmed the trial court’s ruling that the Homeowners’ Association had standing, but reversed the trial court’s determination that Walton County had the right to allow the public to use the land at issue for beach access. *Id.* In support of its decision, the First District cited

Walters v. McCall, 450 So. 2d 1139 (Fla. 1st DCA 1984). *Sun Seekers*, 922 So. 2d at 1002. Walton County seeks review of the First District's decision in *Sun Seekers*.

SUMMARY OF THE ARGUMENT

The Court clearly has jurisdiction to review the First District's decision in *Sun Seekers*, because it expressly affects a class of constitutional or state officers, the Walton County Board of County Commissioners, which by law must sue and be sued in the name of Walton County, as occurred here. This effect on a class of constitutional officers is apparent from the face of the *Sun Seekers* opinion.

The Court should exercise its discretion to review *Sun Seekers* because it directly affects the ability of a governmental entity in Florida to provide the general public with beach access pursuant to the Public Trust Doctrine arising under Article X, section 11, of the Florida Constitution and codified at section 161.021, Florida Statutes (2005). Walton County urges the Court to accept jurisdiction at least provisionally, and to allow briefing on the merits so that Walton County can more fully demonstrate the importance of this case to Walton County and to all local governments in Florida that are striving to provide the public with access to the State's beaches and other bodies of water, against increasing opposition of private landowners.

ARGUMENT

Standard of Review. The Court’s decision on jurisdiction is a matter of de novo review. *Sun Ins. Co. v. Boyd*, 105 So. 2d 574, 575 (Fla. 1958).

I. THE COURT HAS JURISDICTION TO REVIEW THE FIRST DISTRICT’S DECISION BECAUSE IT EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS.

Petitioner, Walton County, is a political subdivision of the State of Florida established pursuant to Article VIII, Section 1(a), Florida Constitution. The government of Walton County is a Board of County Commissioners established pursuant to Article VIII, Section 1(e), Florida Constitution. By law, the Board of County Commissioners must sue and be sued in the name of the County. § 125.15, Fla. Stat. (2005). Walton County, therefore, by and through its Board of County Commissioners, is among the class of “constitutional or state officers” contemplated by Article V, Section 3(b)(3), Florida Constitution. The Court has jurisdiction to review the First District’s decision in *Sun Seekers* because it expressly affects a class of constitutional or state officers. Art. V, § 3(b)(3), Fla. Const. (“The supreme court ... [m]ay review any decision of a district court of appeal that ... expressly affects a class of constitutional or state officers ...”).¹

¹ Walton County’s original Notice to Invoke was timely filed, and asserted conflict of decisions as the basis for review. Regrettably, however, the First District’s opinion is so skimpy on the facts of the case that it would be difficult to demonstrate to this Court from the face of the opinion how the decision conflicts with decisions from other district courts of appeal. Walton County has, accordingly, filed an amended Notice to Invoke simultaneously with the filing of

A number of authorities have recognized that a county, through its Board of County Commissioners, falls within the scope of this category of the Court’s jurisdiction. *See, e.g., Chief Judge of the Eighth Jud. Cir. v. Board of Co. Commrs. Of Bradford County*, 401 So. 2d 1330, 1331 (Fla. 1981) (exercising former certiorari jurisdiction under Art. V, § 3(b)(3), Fla. Const. because decision affected Bradford County Board of County Commissioners); *State v. Walton County*, 93 Fla. 796, 112 So. 630 (1927) (“Therefore, the board of county commissioners of each county are [sic] constitutional officers”); *see also* H. Anstead, G. Kogan, T. Hall, and C. Waters, *The Operation & Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431, 509 (2005) (“Jurisdiction would exist, for example, where a decision affects every board of county commissioners in the state in some way peculiar to them as a class.”). Based on these authorities, the Court has jurisdiction.

this brief, asserting that jurisdiction exists under the Court’s authority to review decisions expressly affecting a class of constitutional or state officers. *See* Fla. R. App. P. 9.040(c),(d) (treat filing as if proper remedy were sought and allow amendments in the interest of justice); *see also Johnson v. Citizens State Bank*, 537 So. 2d 96, 98 (Fla. 1989) (“Once the [appellate] court's jurisdiction has been invoked, it cannot be divested of jurisdiction by a hindsight determination that the wrong remedy was sought.”).

II. THE COURT SHOULD EXERCISE ITS DISCRETION TO REVIEW THIS CASE BECAUSE IT HAS A SIGNIFICANT IMPACT ON GOVERNMENTAL ENTITIES' ABILITY TO PROVIDE THE PUBLIC WITH BEACH ACCESS AS REQUIRED BY THE PUBLIC TRUST DOCTRINE.

Several critical facts demonstrating the importance of this case are readily apparent on the face of the *Sun Seekers* opinion. Walton County holds an interest in land, pursuant to which it believed it had the right to allow the general public to use the land to access the beach. The Homeowners' Association disputed the public's right to access the beach over this land, and filed a declaratory judgment action to resolve the issue. The circuit court entered a final summary judgment in favor of Walton County, finding that it had the right to allow the land to be used for public beach access. The First District reversed, remanding the case back to the circuit court with instructions to enter summary judgment in favor of the Homeowners' Association.

Walton County seeks this Court's review in order to protect the County's ability to provide beach access to the vast majority of people who do not own beachfront property: "Ninety-nine percent of coastal residents, as well as tourists, depend upon public access points to reach the beach; while less than one percent of Florida's coastal residents own beachfront property." J. Sullivan, *Laying Out An "Unwelcome Mat" to Public Beach Access*, 18 J. Land Use & Envtl. L. J. 331, 332 (2003). The public's right to access the beach is of exceptional importance to

Walton County just as it is to all other Counties and other local governmental entities that are charged with the duty of providing the general public access to the State's beaches and inland water bodies:

We recognize the propriety of protecting the public interest in, and right to utilization of, the beaches and oceans of the State of Florida. No part of Florida is more exclusively hers, nor more properly utilized by her people than her beaches. And the right of the public of access to, and enjoyment of, Florida's oceans and beaches has long been recognized by this Court.

City of Daytona Beach v. Tona-Rama, Inc., 294 So. 2d 73, 75 (Fla. 1974); *see also White v. Hughes*, 139 Fla. 54, 190 So. 446, 448-49 (1939) (access critical to public's right to use beaches and water bodies).

This duty arises out of the constitutionally-created Public Trust Doctrine, which emanates from the State's retention of title to sovereignty lands:

SECTION 11. Sovereignty lands.--The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, *in trust for all the people*. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

Art. X, § 11, Fla. Const. (emphasis added). By law, Walton County and similarly-situated governmental entities in Florida must preserve and protect the public's right of access to State water bodies, including the "public's right to laterally traverse the sandy beaches of this state where such access exists on or after July 1, 1987." *See* § 161.021, Fla. Stat. (2005) (defining "access" and "public access" for

purposes of the “Beach and Shore Preservation Act” that applies to Counties); *see also* § 187.201(8), Fla. Stat. (2005) (“Florida shall, through acquisition and access improvements, make available to the state's population additional beaches and marine environment” and shall “Ensure the public's right to reasonable access to beaches.”).

Walton County has adopted a local code provision codifying these principles and requiring the County to give “the highest value” to “the public right of access to the beach and water bodies”:

This article is adopted pursuant to F.S. § 125.01. It is intended to regulate comprehensive public health, safety and welfare on or pertaining to the beach and water bodies south of Highway 20. Local government policy toward the beach and water bodies should be guided by the recognition that proper management of the beach and water bodies is vital to the economic development of the county and that all reasonable competing uses of the beach and water bodies must be protected and balanced. *The highest value* should be given to protecting and enhancing the quality of life of and on the beach and water bodies *and the public right of access to the beach and water bodies* in order to enjoy the beach and water bodies as a source of pleasant, safe, clean and wholesome recreation.

Sec. 22-52, Walton County Code (emphasis added). Walton County’s Comprehensive Plan contains two provisions that also embody the duty to provide and protect beach access:

Policy R-5.1.1: The County will continue, through the development review process, to require the developers of Planned Unit Developments to provide reasonably convenient access from all occupied structures to common open spaces, such open spaces to

preserve valuable site amenities such as trees, dunes, natural land forms *and beach access*. (Emphasis added.)

* * *

Policy R-7.1.5: The County shall continue to require subdividers to dedicate a minimum of 5% percent of the gross area of a subdivision development for public recreation purposes, including *public beach accessways*, or pay 5% of the assessed land value, as established in the Land Development Regulations. (Emphasis added.)

It scarcely requires citation of any authority to advise the Court that allowing the public access to beaches and other water bodies is a huge and complicated issue, and one that spawns a great deal of litigation. *See, e.g., City of Daytona Beach Shores v. State*, 483 So. 2d 405 (Fla. 1985); *Board of Trustees of the Internal Improvement Trust Fund v. Levy*, 656 So. 2d 1359 (Fla. 1st DCA 1995); *Lloyd Enterprises, Inc. v. Department of Rev.*, 651 So. 2d 735 (Fla. 5th DCA 1995). The tensions generated in governmental attempts to allow public access only increase over time, as the State's population increases and development increases with it.

Providing public beach access is an obligation that Walton County takes very seriously. The decision of the First District in *Sun Seekers*, however, limits Walton County's ability to provide that access for the benefit of the general public. As is obvious from the First District's explanation of the case and its citation of a case construing easements, this case provides a vehicle for this Court to address principles of construction applicable to easements and other interests in land held

by a County or other governmental entity desiring to provide public access to a beach or other water body. This case gives this Court an opportunity to examine and resolve for statewide application such issues as how the Public Trust Doctrine should be applied to interpreting easements and ownership interests held by a County; whether a transfer of interests in land from private to public ownership authorizes the governmental owner to allow public access over the land when adjoining private landowners also hold easements for access; and other issues that arose in this case and regularly arise in cases throughout the State.

Walton County and similarly-situated governments throughout the State need this Court's intervention to help them continue to provide and protect public access. Walton County, therefore, urges the Court to accept jurisdiction of this case, or alternatively to postpone its decision on jurisdiction and allow briefing on the merits, so that the Court may understand the extreme importance of the decision to Walton County and other governmental entities of the State.

CONCLUSION

The First District's decision in *Sun Seekers* expressly affects a class of constitutional or state officers; i.e., Walton County through its Board of County Commissioners. The decision is important to all Counties and Boards of County Commissioners, as well as to all other local governmental entities charged with providing the general public access to the State's beaches and inland water bodies.

Accordingly, Walton County urges the Court to allow briefing on the merits so that the Court can fully appreciate the significance of the case, and upon review of the merits to quash the decision of the First District and reinstate the final summary judgment in favor of Walton County.

Respectfully submitted this 26th day of April, 2006.

WALTON COUNTY

David A. Hallman (FBN 825794)
County Attorney
161 E. Sloss Ave.
DeFuniak Springs, FL 32433-1343
Ph. (850) 892-8110
Fax (850) 892-8471

PLEAT & PERRY, P.A.

Amy A. Perry (FBN 161918)
John B. Fuller III (FBN 15247)
4477 Legendary Dr., Suite 202
Destin, FL 32541
Ph. (850) 650-0599
Fax (850) 650-4402

And

ANCHORS SMITH GRIMSLEY

Susan L. Kelsey (FBN 772097)
The Perkins House
118 N. Gadsden St.
Tallahassee, FL 32301
Ph. (850) 222-4778
Fax (850) 224-4777

Co-Counsel for Petitioner, Walton County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing with its appendix has been furnished by United States mail to counsel for Respondent, E. Gary Early, Messer, Caparello & Self, P.A., P.O. Box 1876, Tallahassee, FL 32302-1876, this 26th day of April, 2006.

Amy A. Perry

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced and complies with Florida Rule of Appellate Procedure 9.210(a).

Amy A. Perry

INDEX TO APPENDIX

Decision to be reviewed: *Sun Seekers Homeowners' Association, Inc. v. Walton County*, 922 So. 2d 1001 (Fla. 1st DCA 2006).