

Appendix 1: Florida Supreme Court Declined To Accept Jurisdiction of
Constitutional Question Entered on November 22, 2023

Supreme Court of Florida

WEDNESDAY, NOVEMBER 22, 2023

Christine H. Scott,
Petitioner(s)

v.

State of Florida,
Respondent(s)

SC2023-1188

Lower Tribunal No(s):

4D22-1204;

502021MM007524AXXXMB

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

MUÑIZ, C.J., and CANADY, COURIEL, FRANCIS, and SASSO, JJ.,
concur.

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John A. Tomasino

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Appendix 2: *SCOTT V STATE*, 4D22-1204 w1 4917152 (FLA. 4TH DCA AUG. 2, 2023)

Scott v. State, --- So.3d --- (2023)
2023 WL 4917152

2023 WL 4917152

Only the Westlaw citation is currently available.

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District Court of Appeal of Florida, Fourth District.

Christine H. SCOTT, Appellant,

v.

STATE of Florida, Appellee.

No. 4D22-1204

|

[August 2, 2023]

Appeal from the County Court for the Fifteenth Judicial Circuit, Palm Beach County; Sherri L. Collins, Judge; L.T. Case No. 50-2021-MM-007524-AXXX-MB.

Attorneys and Law Firms

Carcy Haughwout, Public Defender, and Christine C. Geraghty, Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Jonathan P. Picard, Assistant Attorney General, West Palm Beach, for appellee.

Opinion

Damoorgian, J.

*1 Christine Scott ("Scott") appeals her conviction and sentence on the charge of misdemeanor trespass after warning. On appeal, Scott argues: (1) her conviction violates her right to petition under article I, section 5 of the Florida Constitution; (2) the trial court abused its discretion in failing to conduct an adequate *Nelson*¹ hearing; and (3) the trial court's rulings on Scott's proposed jury instruction and her proffered testimony opining on the law were error. We affirm Scott's conviction and sentence and write only to address whether article I, section 5 of the Florida Constitution confers on the citizens a broader right to free speech on another's private property than the First Amendment to the United States Constitution.

The following facts adduced at trial are relevant to our discussion. Scott desired to run for a seat in the United States Congress. She attempted to qualify by collecting the required number of signed petitions from registered Florida voters. The allegations and evidence forming the basis of Scott's conviction arose while she attempted to collect signatures from customers waiting in line to enter a gun show. The gun show was held on a property owned by South Florida Fair and Palm Beach County Expositions, Inc. No record evidence suggests the property was owned or operated by the State or a government agency. Entry into the gun show required a ticket. Eventually, a law enforcement officer asked Scott to leave after being informed by security that Scott was "harassing patrons in line waiting to enter the Gun Show." Scott refused to vacate the premises and was arrested and charged with trespass after warning.

On appeal, Scott argues she should not have been charged with—much less convicted of—trespassing at the gun show because her actions were an exercise of her right to petition the government on private property held open to the public. Although Scott recognizes that the First Amendment does not afford her the right to engage in political activity on private property, *see* *Lloyd Corp. v. Tabor*, 407 U.S. 551, 367–69, 92 S.Ct. 2219, 33 L.Ed.2d 131 (1972), she argues article I, section 5 of the Florida Constitution provides more expansive political speech protections than the United States Constitution. Specifically, Scott argues "Florida's choice to create a specific section in the state constitution to protect the right to petition and other political rights, rather than lump all rights recognized by the First Amendment together," demonstrates that political speech is granted expanded protection in Florida. In support of her argument, Scott references the differences in language between article I, section 4 and article I, section 5 of the Florida Constitution. *Compare* Art. I, § 4, Fla. Const. (providing "[n]o law shall be passed") *with* Art. I, § 5, Fla. Const. (providing "[t]he people shall have the right"). From this, Scott concludes article I, section 5 contains no state action requirement and allows an individual to engage in political activity on private property. We disagree.

*2 We do not quarrel with Scott's contention that state constitutions may provide broader protections than those conferred by the United States Constitution. *See generally* *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980). However, we find nothing in article I, section 5's text which leads us to conclude that the

Florida Constitution confers political speech rights greater than those provided by the First Amendment to the United States Constitution. Like the First Amendment, Florida's Constitution only protects individuals' freedom of political activity and speech *against government infringement*. See *Airwood v. Clemons*, 526 F. Supp. 3d 1152, 1174 (N.D. Fla. 2021) (“[T]he expressive political activities protected in article I, section 5 of the Florida Constitution are identical to those protected by the First Amendment.” (citing *State v. J.P.*, 907 So. 2d 1101, 1111 (Fla. 2004))); *Publix Super Mkts., Inc. v. Tallahasseans for Prac. L. Enfr.*, No. 2004 CA 1817, 2005 WL 3673662, at *5 (Fla. 2d Cir. Ct. Dec. 13, 2005) (“Defendants are not entitled under the First Amendment or the Florida Constitution to solicit signatures or engage in political speech on Publix's privately owned or leased property without Publix's permission.”); *Whole Foods Mkt. Grp., Inc. v. Sarasota Coal. for a Living Wage*, No. 2007 CA 002208 NC, 2010 WL 2380390 (Fla. 12th Cir. Ct. Mar. 31, 2010) (“Florida courts have held that the provisions of the Declaration of Rights of Florida's Constitution are only implicated where there is governmental action.”).

As recognized by other states with constitutional schema akin to ours, state action is required to trigger the political speech protections provided by state constitutions:

The firmly established doctrine that constitutionally guaranteed individual rights are drawn to restrict governmental conduct and to provide protection from governmental infringement and excesses is not unique to the federal Bill of Rights. This has generally been the view with respect to state bills of rights as well. This fundamental concept concerning the reach of constitutionally guaranteed individual rights is deeply rooted in constitutional tradition and is consistent with the very nature of our constitutional democracy. The Michigan Constitution's Declaration of Rights provisions have never been interpreted as extending to purely private conduct; these provisions have consistently been interpreted as

limited to protection against state action.

Woodland v. Mich. Citizens Lobby, 423 Mich. 188, 378 N.W.2d 337, 344 (1985) (internal citations omitted); see also *SHAD All. v. Smith Haven Mall*, 66 N.Y.2d 496, 498 N.Y.S.2d 99, 488 N.E.2d 1211, 1216 (1985) (“State constitutional provisions ... protect individual liberty by limiting the plenary power of the State over its citizens. Thus, State action is a crucial foundation for both private autonomy and separation of powers.” (internal citations omitted)); *Jacobs v. Major*, 139 Wis.2d 492, 407 N.W.2d 832, 840 (1987) (“To turn what was prohibition of governmental acts into positive rights against other private persons is not logical nor historically established. In fact, it would be contrary to history.”); *Fiesta Mall Venture v. Mechem Recall Comm.*, 159 Ariz. 371, 767 P.2d 719, 723 (Ariz. Ct. App. 1988) (“We have reviewed the cases cited by both parties and conclude that the more persuasive are those in which the courts have determined that their states' constitutions do not require private property owners to permit political activities on their premises.”); *People v. DiGiuda*, 152 Ill.2d 104, 178 Ill.Dec. 80, 604 N.E.2d 336, 345 (1992) (“[W]e conclude that [the free speech provision of the Illinois Constitution] was not intended to apply to actions taken by private persons, but only to actions by the State. Such a requirement of State action is necessary in order to preserve the private autonomy of our citizens.”); *State v. Wicklund*, 589 N.W.2d 793, 799, 802 (Minn. 1999) (cautioning that “[i]f the 'state action' requirement is discarded, it is difficult to formulate a principled line between those privately-owned locations in which constitutional free speech guarantees should apply and those where they should not,” and noting that “[t]he majority of courts having virtually identical language have interpreted the free speech provisions of their constitutions as coextensive with that of the First Amendment” (citations omitted)).

*3 Accordingly, we affirm Scott's conviction and hold the political speech protections conferred under article I, section 5 of the Florida Constitution are no broader than those guaranteed under the First Amendment of the United States Constitution. Stated differently, article I, section 5 does not provide an expanded right requiring private property owners to permit political speech on their property over their objection.


Affirmed.

All Citations

--- So.3d ---, 2023 WL 4917152

Warner and Kuntz, JJ., concur.

Footnotes

1.  Nelson v. State, 74 So. 2d 256 (Fla. 4th DCA 1973)

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RE: Pro Se Petitioner Motion for Extension of Time

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CAUTION: This email originated from outside of the Supreme Court of the United States. Do not click links or open attachments unless you recognize the sender and know the content is safe and relevant.

Dear Supreme Court Clerk,

On Feb. 10, 2024, I submitted to 11th Circuit an APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI with the United States Supreme Court (see attached).

I have attached a copy of the application for your convenience. Since the application is filed with the 11th Circuit Justice, I believe I have filed the it within the proper court, but wanted to send the Supreme Court a courtesy copy and backup.

The Florida Supreme Court date entered was Nov. 22, 2023. 90 days from that day was Saturday, Feb. 20, 2024. I have requested a 30-day extension to file. The case is constitutionally based in First Amendment rights, as well as review of the opinion made by the Florida court relating to the constitution. I need the additional time to properly present the arguments to the Court. I believe review of my petition will be granted. The Supreme Court has jurisdiction per Title 28 U.S.C. 1257(a) and Rule 11, the latter due to the imperative public importance. Americans are being denied the right to petition for ballot access on quasi-public property due to interpretation of property, particularly government property that has been statutorily contracted to an entity for public use. There is a question of constitutionality relating to the First Amendment right to petition, free speech and assembly, as well as the interpretation of Florida's more expansive Constitutional rights under Art. 1, Sec. 4 and Art. 1, Sec. 5 and the origination of those rights stemming from the neighboring constitutions, particularly inspired by Alabama's constitution, which directly relates to *Marsh v. State of Alabama*. Further, it appears the history of the Florida Constitutional changes from the original 1838 state constitution and the revised 1968 state constitution was changed without historical preservation, which brings into question the use of the revised constitution. The extension of time is needed so that I can familiarize myself with the record and to prepare a petition that will be helpful to the court in evaluating whether to review the state court opinion.

I appreciate your attention to this matter. Please feel free to contact me if I can be of any assistance in this matter.