

No. 24 - \_\_\_\_\_

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**Supreme Court of the United States**

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Christine Scott,

*Petitioner,*

vs.

State of Florida,

*Respondent.*

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On Petition for Writ of Certiorari to  
the Florida Supreme Court

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**APPENDIX**

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## TABLE OF APPENDICES

Appendix A: Order of the Florida Supreme Court Declining Jurisdiction (November 22, 2023) <i>Scott v. State</i> , SC2023 -1188.....	1a
Appendix Aa: Notice to Invoke Discretionary Jurisdiction .....	1a1
Appendix B: Opinion of the District Court of Appeal of Florida, Fourth District (August 2, 2023) <i>Scott v. State</i> , --- So.3d ---- (2023), 2023 WL 4917152 .....	2a - 4a
Appendix Ba: <i>Scott v. State</i> , App. 4 Dist., 368 So.3d 8 (2023) Decision notes for Section 5 of Article I. Right to Assemble.....	4a1
Appendix C: Verdict in the County Court of the 15 <sup>th</sup> Judicial Circuit, Criminal Division in and for Palm Beach County, Florida (April 6, 2022) Case No. 2021MM007524ANB Div. "P" .....	5a
Appendix C <sub>a</sub> : Judgment in the County Court of the 15 <sup>th</sup> Judicial Circuit, Criminal Division in and for Palm Beach County, Florida (April 6, 2022) Case No. 2021MM007524ANB Div. "P" .....	5a <sub>a</sub> 1
Appendix C <sub>b</sub> : Motion for New Trial .....	5a <sub>a</sub> 2 - 5a <sub>a</sub> 3
Appendix C <sub>c</sub> : Order Denying Motion for New Trial .....	5a <sub>a</sub> 4
Appendix C <sub>d</sub> : Notice of Appeal .....	5a <sub>a</sub> 5
Appendix aD: Constitutional Provisions and Statutes .....	5a <sub>1</sub> - 5a <sub>4</sub>
Appendix D: Florida Statute 616 .....	6a - 32a
Appendix E: Palm Beach County Property Appraiser 'Tangible Property Information' relating to the Palm Beach County owned property located at 9067 Southern Blvd, Royal Palm Beach, 334411, contracted to the South Florida Fair and Palm Beach County Expositions, Inc. ....	33a - 35a
Appendix F: Palm Beach County Property Appraiser 'Public Ownership' relating to the Palm Beach County owned property located at 9067 Southern Blvd, Royal Palm Beach, 334411, contracted to the South Florida Fair and Palm Beach County Expositions, Inc. ....	36a - 38a
Appendix G: NAICS Code Description for 921190 - All Other General Government .....	39a

Appendix H: Trial Transcript Excerpts from the County Court of the 15 <sup>th</sup> Judicial Circuit, Criminal Division in and for Palm Beach County, Florida (April 6, 2022)	40a - 132a2
Appendix Ha: Jury Note #1 / Question #1	132a3
Appendix I: Jury Instructions 13.4	133a -134a
Appendix J: Florida Statute 810.09	135a - 136a
Appendix K: (1867) The Reconstruction Acts, Chap. CLIII, Sec. 5	137a - 139a
Appendix L: State Constitutions in the Federal System: Selected Issues and Opportunities for State Initiatives, Advisory Commission on Intergovernmental Relations, A-113, July 1989	140a
Appendix M: Excerpt from <i>Marbury v. Madison</i> , 5 U.S. (2 Cranch) 137, 180 (1803)	141a

# Appendix A

1a

## 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

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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.

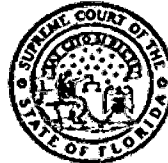
No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

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

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John A. Tomasino  
Clerk, Supreme Court  
SC2023-1188 11/22/2023



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# Appendix B

2a

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

2023 WL 4917152

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District Court of Appeal of Florida, Fourth District.

Christine H. SCOTT, Appellant,

v.

STATE of Florida, Appellee.

No. 4D22-1204

I

[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

Carey 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 <sup>1</sup> *Nelson* 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* <sup>1</sup> *Lloyd Corp. v. Tanner*, 407 U.S. 551, 567–69, 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* <sup>1</sup> *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

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

2023 WL 4917152

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 *Attwood 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. Enft.*, 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. Mecham 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. DiGuida*, 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.

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

2023 WL 4917152

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*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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