

**IN THE EIGHTH JUDICIAL CIRCUIT COURT
IN AND FOR ALACHUA COUNTY, FLORIDA**

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GENERAL COURT
UNIVERSITY OF FLORIDA
2008 MAY -5 P 1:17

**STUDENTS FOR ONLINE VOTING,
THOMAS F. JARDON, President, and
SAM A. MIORELLI, Executive Director,**

Petitioners,

vs.

Case No.: 01-2008-CA-000833

Division: W

**STUDENT GOVERNMENT OF THE
STUDENT BODY OF THE UNIVERSITY OF FLORIDA;
SUPREME COURT OF THE STUDENT BODY
OF THE UNIVERSITY OF FLORIDA;
BERNARD MACHEN AS PRESIDENT
OF THE UNIVERSITY OF FLORIDA AND
AGENT OF THE UNIVERSITY OF FLORIDA
BOARD OF TRUSTEES,**

Respondents.

ORDER GRANTING MOTION TO DISMISS

THIS ACTION came before this Court on Respondents' motion to dismiss due to lack of subject matter jurisdiction, filed 14 March 2008. This Court has considered the written arguments of counsel, as well as the oral argument given at hearing on 24 April 2008.

FACTS

On 22 February 2008, Petitioners filed a "Petition for Extraordinary Writ of Mandamus and Prohibition." The petition was filed by a student organization at the University of Florida entitled "Students for Online Voting" ("SOV"). This dispute arose after SOV submitted a referendum question to the University of Florida Supreme Court (of the University of Florida Student Government), seeking certification from that body so as to allow the question to be placed on the ballot for the upcoming student election. The UF Supreme Court issued an opinion to the effect that

the referendum could not be certified because it violated the privacy provisions of both the Florida and United States Constitutions. The mandamus portion of the petition before this Court seeks an order compelling the UF Supreme Court to certify SOV's referendum petition.¹ The prohibition portion of the petition seeks an order from this Court which would prohibit the UF Supreme Court from acting in excess of its "jurisdiction." Specifically, Petitioners argue that the UF Supreme Court had no authority to declare an act taken pursuant to lawful authority to be unconstitutional, and that, by doing so, it unconstitutionally usurped judicial authority.

Respondents then filed a motion to dismiss, arguing that this Court lacks jurisdiction to entertain the petition for extraordinary relief because it lacks ultimate appellate authority over the subject matter. Specifically, Respondents argue that appellate authority over a final decision of a state agency lies instead in the First District Court of Appeal. *See Fla. Stat. § 120.68(2)(a)*. Therefore, Respondents conclude, the circuit court lacks jurisdiction to issue an extraordinary writ because such must be filed in the District Court.

In response, Petitioners argue that this Court has jurisdiction, concurrent with the District Court, to provide extraordinary relief in this case. Petitioners argue that this jurisdiction flows directly from the Constitution and is not subject to limitation. Petitioners urge this Court to exercise jurisdiction so as to dispose of this action on the merits. The simplicity and efficiency of Petitioners' argument is appealing. However, for the reasons that follow, this Court finds that the relief sought by Petitioners is more appropriately sought in the First District Court of Appeal, and that this Court is an inappropriate forum.

DISCUSSION

¹ The referendum question would have sought student voter approval to amend the UF Constitution so as to institute on-

The power of the circuit court to issue an extraordinary writ is found in the Florida Constitution, Article V, Sec. 5(b): Circuit courts

shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

This broad constitutional grant of authority is defined more explicitly in § 26.012, Florida Statutes. General law provides that the circuit courts have appellate jurisdiction over (1) county court decisions and (2) decisions of local code enforcement boards. *See* Fla. Stat. § 26.012(1). The Legislature goes on to enumerate those types of cases in which the circuit court has exclusive original jurisdiction. *See* Fla. Stat. § 26.012(2). The Florida Statutes elsewhere contain additional specific statements concerning subject matter jurisdiction. *See, e.g.* Fla. Stat. § 322.31 (notwithstanding any provision in the APA to the contrary, the right to review of any final order of the Florida Department of Highway Safety and Motor Vehicles shall be by writ of certiorari in the circuit court).

Extraordinary writ jurisdiction in the circuit courts is essentially a hybrid of both original and appellate jurisdiction. While an extraordinary writ, by its nature, seeks judicial review, and is thus appellate in nature, it is filed first in the reviewing court and thus invokes the appellate court's original jurisdiction. The constitutional language in Article V places no limit on the circuit court's power to issue extraordinary writs, going so far as to include an "all writs" provision to enable the circuit court to issue any writ necessary "to the complete exercise of its jurisdiction."

The Petitioners argue that this Court's inquiry should end there. However, the hybrid nature of extraordinary writ jurisdiction does carry with it some embedded limitations. It is clear to this Court that extraordinary writ jurisdiction exists only to ensure that judicial review is available in those situations where it would otherwise be foreclosed. It exists, in other words, for those situations where the Legislature has failed to grant appellate authority. For example, the Legislature has not passed any law providing for appellate authority over decisions rendered by administrative agencies not governed by the APA. For this reason, judicial review would be unavailable if not for the power of the circuit court to issue a writ of certiorari. *See Cherokee Crushed Stone, Inc. v. City of Miramar*, 421 So. 2d 684, 689 (Fla. 4th DCA 1982). The same situation holds in the case of an inmate who seeks review of a decision rendered by the Florida Department of Corrections or Florida Parole Commission. Because § 120.81(3)(a) explicitly disallows prisoners from being considered a party in an action under the APA, judicial review would be denied these individuals absent the circuit court's power to issue an extraordinary writ. *See, e.g. Sheley v. Florida Parole Commission*, 703 So. 2d 1202, 1205 (Fla. 1st DCA 1997) (mandamus is the accepted vehicle for an inmate seeking appellate review of a decision of the Florida Parole Commission); *Ashley v. Moore*, 732 So. 2d 498, 499 (Fla. 1st DCA 1999) (habeas corpus is the proper remedy for a prisoner seeking appellate review of a decision of the Florida Department of Corrections regarding a placement in "close management"); *Clark v. State*, 793 So. 2d 135, 135 (Fla. 2d DCA 2001) (either habeas corpus or mandamus may be employed by prisoner to seek review of an administrative action of the Florida Department of Corrections).

The same is true in cases where an extraordinary writ is employed to seek review of a non-final order. For example, the writ of certiorari may be used to obtain review of a pre-trial order

compelling discovery when an individual claims that the items are privileged. *See, e.g. Florida East Coast Railway v. Jones*, 847 So. 2d 1118 (Fla. 1st DCA 2003). The writ will not issue, however, if appeal from the final judgment would provide an adequate remedy. *See Brown v. Champion*, 757 So. 2d 535, 536 (Fla. 1st DCA 2000).

The end result is that extraordinary writs are not utilized when another remedy remains available. In other words, it is inappropriate “to employ an extraordinary remedy to assist a litigant who has foregone an ordinary one which would have served adequately.” *State v. Willis*, 344 So. 2d 580, 592-93 (Fla. 1st DCA 1977).

This case, however, is not really about jurisdiction. It is clear that this Court does have jurisdiction to issue extraordinary writs. In this respect, Petitioners are correct. However, that jurisdiction will not be properly invoked unless a petitioner first demonstrates that there is no adequate remedy by appeal. *See Brown*, 757 So. 2d at 536. As discussed above, this is often the case because *no court* has appellate authority over a final order, thereby limiting judicial review to extraordinary relief in the circuit court. It may also be the case that a non-final order must be immediately reviewed because appeal from the final judgment would not afford an adequate remedy. If the latter is the case, a petitioner must show that the court being applied to for extraordinary relief also has appellate jurisdiction over any final order that might eventually be rendered in the case. *See State v. Anderson*, 164 So. 2d 265, 267-68 (Fla. 2d DCA 1964); *State ex rel Bettendorf v. Martin County Environmental Control Hearing Bd.*, 564 So. 2d 1227, 1228 (Fla. 4th DCA 1990).

In this case, Petitioner has not shown (1) that there is no adequate remedy by appeal, or (2) that this Court has appellate authority over any final order that might be rendered. While it may well

be true that resort to an appeal from a final decision in this case would be inadequate, this Court does not have appellate jurisdiction over the subject matter.

The Student Government of the University of Florida was created pursuant to Fla. Stat. § 1004.26. Section 1004.26(1) unambiguously states that a “student government is a part of the university at which it is established.” Therefore, the Student Government, and its Supreme Court, are part of the University of Florida. *See University of South Florida Student Government v. Trundle*, 336 So. 2d 488, 489 (Fla. 2d DCA 1976). The University of Florida is defined as a state agency. *See* Fla. Stat. § 120.52(b)(7) (indicating that educational units are encompassed within the definition of “agency”); § 120.52(c)(6) (defining educational units to include “a state university when the university is acting pursuant to statutory authority derived from the Legislature”). The Administrative Procedures Act contains a provision concerning judicial review for parties “adversely affected by final agency action.” *See* Fla. Stat. § 120.68(1). Such “[j]udicial review shall be sought in the appellate district where the agency maintains its headquarters ...” Fla. Stat. § 120.68(2)(a). This Court does not have appellate jurisdiction over any final order that might be entered in this matter.² Moreover, because the District Court does possess such appellate authority, this Court need not employ its extraordinary writ jurisdiction to provide judicial review. In short, an

² Pursuant to F.A.C. Rule 6C1-4.002, the “Student Government shall be the representative of all students and is encouraged to function on campus with the recognition that ultimate authority for university affairs rests with the Board of Trustees and the Administration of the University.” Petitioners’ have, in fact, appealed by letter to the Vice President for Student Affairs. The University’s response indicates that actions will be undertaken to study the subject of on-line voting and render an opinion. It therefore does not appear that final agency action has been taken in this case. This Court must note that the University’s indication that “there is no opportunity for an internal appeal,” when an issue is first raised in the UF Supreme Court is troubling. Ms. Telles-Irvin goes on to indicate that she will recommend “that Student Government undertake a comprehensive review of the processes and procedures of the Student Body Supreme Court.” This petition highlights the importance of having written procedures in place for undergoing exhaustion of administrative remedies.

ordinary remedy is available for the Petitioners, and it would thus be inappropriate for this Court to employ an extraordinary one.

Normally, this Court would transfer the petition to the First District Court of Appeal. *See* Fla. R. App. P. 9.040(b)(1). However, because this Court has been advised that an identical petition has already been filed in that Court, this Court will simply dismiss the petition before it.

Accordingly, it is **ADJUDGED** that Respondents' motion is **GRANTED**. The petition for writ of prohibition and mandamus is **DISMISSED**.

ORDERED in Alachua County, Florida on / May 2008.

ORIGINAL SIGNED BY
FREDERICK D. SMITH
CIRCUIT JUDGE

FREDERICK D. SMITH, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished on 2 May 2008 to:

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