No. 15-1149

# In The
# Supreme Court of the United States

STEPHEN J. DIBBS,

*Petitioner,*

v.

HILLSBOROUGH COUNTY, FLORIDA,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Whether the standard set forth in *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992), defining "similarly situated" comparators as those which are "in all relevant respects alike," is synonymous with the "identical in all relevant respects" standard applied by the Eleventh Circuit.

Whether in the absence of a Circuit conflict regarding the definition of "similarly situated," there remains any basis for this Court's jurisdiction pursuant to Supreme Court Rule 10.

## PARTIES TO THE PROCEEDINGS

*Petitioner* is Stephen J. Dibbs.

*Respondent* is Hillsborough County, a political subdivision of the State of Florida.

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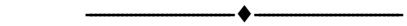
Respondent Hillsborough County respectfully opposes the petition for certiorari.



## CERTIORARI SHOULD BE DENIED BECAUSE NO CIRCUIT CONFLICT EXISTS

Petitioner is a developer who alleges he experienced unfair treatment by Respondent, a Florida local governmental entity. At bar, Petitioner alleges that the allegedly unfair treatment constitutes a "class-of-one" Equal Protection claim. Granting summary judgment in favor of Respondent, the district court held that Petitioner's "class-of-one" Equal Protection claim failed because Petitioner did not present sufficient comparator evidence of others who were "similarly situated" to Petitioner "in all relevant respects."

Petitioner argues that two separate factual scenarios suggest he received unfair treatment. Petitioner's first argument concerns a "Community Plan" adopted by Respondent Hillsborough County in 2001 pursuant to Florida Law, regulating land uses in the Keystone-Odessa area of northwestern Hillsborough County, Florida. (App. 23a-24a). Petitioner, who owned property in the Keystone-Odessa area, applied to Respondent seeking to "opt out" of the requirements of the Community Plan. Respondent rejected Petitioner's request. Petitioner "did not seek judicial review of these denials." (App. 26a). Further,

Petitioner testified that he "does not know of any landowners in the Keystone area that were permitted to opt out of the Plan." (App. 50a). Thus Petitioner presented no evidence of a "similarly situated" comparator.

Petitioner's second argument concerns an application he filed with Respondent to operate a "borrow pit" in the Keystone-Odessa area. Respondent *approved* this application. However, Petitioner claims that his borrow pit application was delayed because, based upon his subjective belief, "a number of people working for the County have not liked him since he won a lawsuit against the County in 1997." (App. 48a). Petitioner presented "lists" of people who Petitioner alleged had filed borrow pit applications in other parts of the County, whose applications were approved more quickly than Petitioner's application had been. (App. 49a-50a). However, the district court held that "[t]hese lists are not sufficient for any jury to find a similarly situated landowner." (App. 50a).

As to both of his arguments, Petitioner invokes the certiorari jurisdiction of this Court for the purpose of clarifying the legal standard for determining when a comparator is "similarly situated" for purposes of "class-of-one" Equal Protection analysis. Petitioner asserts that because the Court did not specifically define the term "similarly situated" in *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000), that by consequence the Circuits were left to determine the meaning of the term "similarly situated,"

which resulted in a Circuit conflict in the construction of the term.

The problem with Petitioner's argument is the Court's holding in *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992), in which the Court concluded that in a "class-of-one" case parties are "similarly situated" if they are in "all relevant respects alike." The *Nordlinger* "all relevant respects alike" standard is the very standard applied below by the Eleventh Circuit panel, the very standard to which Petitioner objects at bar.[1] Because *Nordlinger* affirmatively established the standard to be applied by the Circuits, there exists no demonstrable conflict among the Circuits regarding the definition of "similarly situated."

Absent the existence of a Circuit split, the petition is devoid of any argument which would suggest a basis for certiorari review pursuant to Supreme Court Rule 10. Petitioner simply misapprehends this

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[1] The Eleventh Circuit has described the applicable test as requiring that comparators be "*identical* in all relevant respects." *E.g.*, *Maverick Enterprises, LLC v. Frings*, 456 Fed. Appx. 870, 872-873 (11th Cir. 2012). To the extent that Petitioner argues that the "*identical* in all relevant respects" standard differs from the *Nordlinger* standard that comparators be "in all relevant respects *alike*," it appears Petitioner's argument clings to the possibility of a difference between the words "alike" and "identical." Yet this would present a distinction without a difference, because the terms "alike" and "identical" are synonymous. Thus no practical difference exists between the Eleventh Circuit's use of the word "identical" and this Court's use of the word "alike."

Court's well established standard for determining whether others are "similarly situated." For this reason, the petition should be denied.

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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