O/A 1114-84

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,586

MICHELE HESS, etc., et al.,

Petitioners,

vs.

METROPOLITAN DADE COUNTY,

Respondent.

On Discretionary Review of a Decision of the
Third District Court of Appeal

RESPONDENT'S ANSWER BRIEF

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NOTE:

The Petitioners herein shall be referred to as Claimants; Respondent shall be referred to as Dade County or the County. All emphasis is supplied unless otherwise noted.

STATEMENT OF THE FACTS AND CASE

Claimants have improperly supplemented their factual statement with incorrect legal conclusions of law. For example, Claimants erroneously declare that Chapter 83-393, Laws of Florida, was passed "pursuant to general law" (Petitioners' Brief at 2); inaccurately report that the Legislature directed the County to satisfy the judgment (Id. at 1); and incorrectly conclude that they are without remedy other than mandamus (Id. at 2). Such matters plainly are disputed legal issues. The County therefore submits the following Statement of the Facts and Case.

A. Statement of Facts

In May, 1980, Claimant Michele Hess was injured by a bus driven by a County employee. Claimants filed suit pursuant to Section 768.28, Florida Statutes, against the County in September 1980. After trial by jury, a verdict was rendered and judgment entered against the County in the sum of $365,400. A cost judgment was later entered in the sum of $4,929.95. In May 1982, Dade County satisfied the judgment to the extent required by Section 768.28(5).

During the 1983 legislative session, Claimants filed a claims bill which originally provided for compensation from the State of Florida general revenues for the unpaid amount of the verdict and judgment, $270,329.95 (R.38-45). The bill was later amended to force the County, rather than the state, to pay Claimants. Claimants complied with all statutory notice provisions governing the passage of such a Local Act. See Appendix to Petitioners' Brief at 25. The bill as amended was passed in July, 1983, and became Chapter 83-393, Laws of Florida without the governor's

approval. Id. at 3. The County declined to comply with the legislative mandate, stating that the Local Act was invalid.

B. Statement of the Case

This cause was formally initiated on August 30, 1983, by Claimants' Petition for Mandamus to the Third District Court of Appeal, whereby Claimants sought to compel the County to comply with Chapter 83-393 (R.1-5). On November 22, 1983, the Third District Court declined to issue the writ, reasoning that alternative remedies were available to Claimants. Claimants timely filed their Notice to Invoke Discretionary Jurisdiction pursuant to Fla.R.App.P. 9.030(a)(2)(A)(iv). On July 2, 1984, this Honorable Court voted 4-3 to accept jurisdiction.

ISSUES PRESENTED

I. WHETHER, WHEN ALTERNATIVE REMEDIES ARE AVAILABLE TO PETITIONER, THE LOWER TRIBUNAL ABUSED ITS DISCRETION IN DECLINING TO ISSUE A WRIT OF MANDAMUS

II. WHETHER A LOCAL ACT DIRECTING ONLY DADE COUNTY TO DISBURSE COURT FUNDS FOR THE BENEFIT OF PRIVATE INDIVIDUALS IS PROHIBITED BY THE HOME RULE AMENDMENT TO THE FLORIDA CONSTITUTION

III. WHETHER SECTION 768.28, FLORIDA STATUTES, CONSTITUTIONALLY ENABLES THE FLORIDA LEGISLATURE TO PASS A LOCAL CLAIMS BILL AFFECTING ONLY DADE COUNTY

SUMMARY OF ARGUMENT

The substantive question presented in this case is whether, after the County has satisfied a tort judgment against it to the extent that its sovereign immunity has been waived, the Legislature may thereafter lawfully demand that Dade County pay from its own budget additional sums to individual claimants.

The Third District Court of Appeal's discretionary decision not to issue a writ of mandamus to compel such payment is correct. Moreover, the decision does not expressly and directly conflict with any prior Florida decision, especially those cited by Claimants, which relate neither to claims bills, sovereign immunity, nor home rule. Claimants' contention that the Legislature, in passing Chapter 83-393, has merely enforced a judgment, is without merit; the Legislature neither intended nor is constitutionally permitted to perform functions reserved to the judicial branch. Local acts such as Chapter 83-393 are precisely the sort of evil intended to be proscribed by the Home Rule Amendment to the Florida Constitution, and have been expressly held unconstitutional by this Court in Dickinson v. Board of Public Instruction of Dade County, 217 So.2d 533 (Fla. 1968).

Claimant's argument that Section 768.28, Florida Statutes (1979), somehow supercedes the Home Rule Amendment and invalidates Dickenson is without merit. First, it is organically impossible for a mere statute to override a constitutional provision. Second, there is absolutely no indication, and certainly not the requisite clear and unambiguous showing, that in passing Section 768.28, the

Legislature intended to confer unto itself the blanket authority to adjust sovereign immunity limits on an ad-hoc basis. Rather, the legislative history and case law demonstrate that in passing Section 768.28(5), the Legislature simply acknowledged that claimants remained free to seek legislative relief from the state for any amounts in excess of the tort liability limits, just as they did during the days of complete sovereign immunity.

Finally, even assuming with the Claimants that Chapter 83-393 is not merely a relief bill, but an extension of the County's liability beyond the limits set forth in Section 768.28, it is nonetheless constitutionally defective because under Article X, Section 13 of the Florida Constitution (1968), all legislation pertaining to sovereign immunity must be by general law. Chapter 83-393, in contrast, and as conceded by Claimants, is a local act.

ARGUMENT

I. THE THIRD DISTRICT COURT OF APPEAL DID NOT ABUSE ITS DISCRETION IN DECLINING TO ISSUE THE WRIT OF MANDAMUS WHERE ALTERNATIVE REMEDIES WERE AVAILABLE TO CLAIMANTS, AND ITS HOLDING DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH ANY OTHER FLORIDA DECISION

The threshold issue before this Court is whether the Third District Court's discretionary decision, to refuse issuance of the writ of mandamus because alternative remedies are available to Claimants, expressly and directly conflicts with another Florida decision on the same question of law. Fla.R.App.P. 9.030(a)(2)(A)(iv). The principal situations justifying the exercise of jurisdiction under that rule are (1) the announcement of a rule of law which conflicts with a rule previously announced, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case. Neilson v. City of Sarasota, 117 So.2d 731 (Fla. 1960). The measure of jurisdiction is not whether this honorable court would have arrived at a conclusion different from that reached by the District Court, but whether the decision of the District Court on its face directly collides with a prior decision on the same point of law so as to create an inconsistency or conflict among the precedents. Kincaid v. World Insurance Co., 157 So.2d 517 (Fla. 1963).

Regardless of the nature of alternative remedy contemplated by the lower tribunal,[1/] the decision does not expressly and directly conflict with any case cited by

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1/ The issue was not raised by either party below in the record nor at oral argument. This Honorable Court, in the similar case of Dickinson v. Board of Public Instruction of Dade County, 217 So.2d 553 (Fla. 1968), has endorsed the statutory remedy of declaratory relief.

Claimants, nor with any other Florida decision. To sustain their argument that conflict exists, Claimants have been forced to contend that the Legislature, in passing the local claims bill at issue, is in fact exercising the judicial function of enforcing a court judgment. Such an exercise is, of course, beyond the constitutional limits of legislative power. Moreover, as more fully explored later, no evidence exists which remotely suggests that the Legislature intended to authorize or exercise such a patently unconstitutional act.

Furthermore, the writ of mandamus is an extraordinary writ, the issuance of which is left to the discretion of the court. As this Court stated in State ex rel. Long v. Carey, 121 Fla. 515, 164 So. 199, 206 (Fla. 1935):

> It is elementary that the court is not bound to allow the writ merely because the applicant shows a clear legal right for which mandamus would be an appropriate remedy, even though without mandamus the applicant for the writ would be without remedy. Even under these circumstances the court may deny the writ, where by its issuance the public would be injuriously affected, or where it would operate inequitably upon the defendant... or would injuriously affect third persons... (citations omitted; emphasis in original).

Thus, to prevail on the threshold jurisdictional question, Claimants must establish that under all the circumstances, the lower tribunal's denial of the writ was such an abuse of discretion that it clearly presents direct and express conflict with other precedent of this state. The rule announced by the lower tribunal is not expressly and directly in conflict with any prior pronouncement in Florida. Moreover, none of the cases cited by Claimants present even remotely similar controlling facts: none involve a local claims bill, none involve the issue of

sovereign immunity, and none involve a home rule charter county. For all of these reasons, this court should vacate its original order granting jurisdiction.

If this Court believes the lower tribunal erred in declining to reach the merits of Claimant's petition, this case should be remanded to give the Third District Court of Appeal the opportunity to decide the case. See Green v. City of Pensacola, 108 So.2d 897 (Fla. 1st DCA 1959). However, this honorable court is vested with the full authority to decide the merits of a case in which conflict is asserted. See Kennedy v. Kennedy, 303 So.2d 629 (Fla. 1974). The County welcomes the opportunity to demonstrate to this Honorable Court the ultimate correctness of the lower tribunal's decision; the petition for mandamus, even had it been considered on the merits, was correctly denied.

II. A LOCAL CLAIMS BILL DIRECTING ONLY DADE COUNTY TO DISBURSE COUNTY FUNDS FOR THE BENEFIT OF PRIVATE INDIVIDUALS IS PROHIBITED BY THE HOME RULE AMENDMENT OF THE FLORIDA CONSTITUTION

The issue before this Honorable Court is whether, after the County has satisfied a tort judgment to the extent of the statutory limits, the Legislature is authorized to direct the County to pay out additional County funds to selected claimants. The answer to that question is a resounding "no". The Legislature is absolutely precluded by the Florida Constitution from passing such a law that relates only to Dade County.

A. State legislation affecting only Dade County is precisely the evil intended to be prohibited by the Home Rule Amendment.

On November 6, 1956, the Dade County Home Rule Amendment (Art.VIII, §11, Fla.Const (1885)) was adopted by the people of the State of Florida. Subsections (5)[2] and (6)[3]

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[2] (5) Nothing in this section shall limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties in the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida, and the home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Dade County and any other one or more counties of the State of Florida except as expressly authorized in this section nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein, nor shall the charter of any municipality in Dade County conflict with this Constitution or any such applicable general law except as expressly authorized herein, provided however that said charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County.

[3] (6) Nothing in this section shall be construed to limit or restrict the power of the Legislature to (cont'd)

of that Amendment prescribe that the State Legislature may not lawfully adopt any act which relates only to Dade County. Chase v. Cowart, 102 So.2d 147 (Fla. 1958). Section 11 of the Constitution was intended to give the electors of Dade County autonomy in affairs pertaining solely to Dade, and to insure that the Legislature would not have the power to enact laws relating only to Dade County. S&J Transportation v. Gordon, 176 So.2d 69 (Fla. 1965).

The general concept of home rule derives from the understanding that not all governmental powers are best exercised by the state through the state legislature. See generally, Sandalon, The Limits of Municipal Power Under Home Rule: A Role for the Courts, 48 Minn.L.Rev. 643 (1964); Note, The Urban County: A Study of New Approaches to Local Government in Metropolitan Areas, 73 Harv.L.Rev. 526 (1960); Mattis, Home Rule - At the Crossroads, 5 Current Municipal Problems 30 (1979). Certain governmental functions and interests are of such special importance to particular localities that delegating their exercise to these localities is critical. Only in this manner can populous counties and large cities properly operate and effectively provide necessary government and services to their residents. In

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3/ (cont'd)

> enact general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida relating to county or municipal affairs and all such general laws shall apply to Dade County and to all municipalities therein to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith and shall supersede any provision of any ordinance enacted pursuant to said charter and in conflict therewith, and shall supersede any provision of any charter of any municipality in Dade County in conflict therewith.

essence, home rule is a doctrinal enunciation of the modern relationship between state and local government and defines not only the maximum limits of the County's sphere of autonomy, but also the limits on the state's authority with respect to the County. Because the principal limitation on the state's authority is the prohibition of laws relating only to the County, it is useful to examine the reasons why such a proscription was given constitutional status by the citizens of the State of Florida.

Local and special laws[4/] represent the precise evil sought to be avoided by home rule. Comment, Metro and its Judicial History, 15 U.Miami L.Rev. 283 (1961); see also Note, 73 Harvard L.Rev. 526, supra at 5; Chase v. Cowart, 102 So.2d 147 (Fla. 1958); Schneider v. Lansdale, 191 Md. 317, 61 A.2d 671 (Md. 1948). Such laws, which operate over a particular locality instead of over the whole of the state, or which relate to particular persons, places or things, are objectionable interferences by the state legislature. State control of local governance prior to home rule has been described as an avenue for "legislative connivance for political purposes," 1 McQuillin, Municipal Corporations §1.40 (1971), and "an opportunity for delivering the government of cities and other local subdivisions into

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4/ A statute relating to a particular subdivision of the state is a "local" law, whereas a statute relating to a particular person or thing is a "special" law. State ex rel. Gray v. Stoutamire, 131 Fla. 698, 179 So. 730 (1938). Although the County will use the terms as distinguished in Stoutamire, it should be noted that both "local" and "special" acts are defined as "special" in the Florida Constitution. Art.X, §12.

Chapter 83-393 not only takes money from Dade County alone, thereby making it "local", it also distributes that money to particular persons, meeting the definition of "special act" as well. See Dickinson.

the hands of political spoilsmen in the legislature." Peppin, Municipal Home Rule in California, 30 Calif.L.Rev. 1, 2 (1941).

Home rule is intended to overcome the fundamental shortcomings of special and local legislation. For instance, legislators generally have neither the time nor the ability to evaluate adequately local and special laws. 1 McQuillin, Municipal Corporations §1.40 (1971). As a result, local and special laws are often passed without careful deliberation or consideration for the locality affected. Sandalon, The Limits of Municipal Power Under Home Rule: A Role for the Courts, 48 Minn.L.Rev. 643, 656 (1764). Legislators from outside an affected locality are ordinarily guided by personal and constituent interests which conflict with those of the residents in the locality. Id. Consequently, the use of special and local legislation is inefficient and unjust because it is a legislative exercise often controlled by representatives of other parts of the state having little or no interest in or familiarity with the locality, and owing no fiscal or other responsibility to its residents. Id.; Peppin, Municipal Home Rule in California, at 2.

The incentive for logrolling and other forms of legislative politicking detracts from the locality's ability to effectively provide for its residents, and is yet another shortcoming of local and special laws. Necessary laws are held up or fail to be enacted; other necessary laws, when pruned by legislative dickering, prove insufficient to satisfy a locality's particular needs; still other laws fail simply because of inadequate statewide support.

Finally, local and special laws are susceptible to use as a weapon against local officers and electors for differences in political ideology or party allegiance. Home rule legislative bodies are far less vulnerable to becoming a forum for acting upon regional and political animosities. See Pepin, supra at 6. In summary, the very purpose of home rule is to prevent state legislators, with no political responsibility for the home rule governmental entity, from enacting laws with application only to that county.

B. Chapter 83-393, a local claims bill, is prohibited by the Home Rule Amendment, and strikes at the heart of home rule.

Chapter 83-393 is not merely an excellent example of the type of evils intended to be eradicated with the passage of the Home Rule Amendment; it is precisely and specifically this type of law, affecting the people of only Dade County, affecting the resources of only Dade County, and affecting the government of only Dade County, which is prohibited by the Constitution. Claimants are forced to concede the special, local nature of Chapter 83-393; they candidly include copies of their Notice of Legislation in their Appendix.[5/] The vast majority of

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5/ "Notice is hereby given of intention to apply to the 1983 Session of the Florida Legislature for passage of a Local Act for the relief of [Claimants]. ..." Appendix to Petitioners' Brief at 25.

Amicus Curiae Dade County Trial Lawyers Association (hereinafter referred to as DCTLA) inexplicably refuse to agree with Claimants' description of Chapter 83-393 as a local act. They assume, without any argument or authority whatsoever, that the law, entitled "An Act Relating to Dade County," is a general law.

A clue to Amicus' reluctance to admit the obvious may be found in the fact that its counsel also represents Rosalie, Paul and Vincent Brooks, beneficiaries of Chapter 84-419, a local claims bill ordering Dade County (cont'd)

legislators who voted for this bill have absolutely no political accountability to the citizens of Dade. They cannot be fully informed as to the social and economic forces at work in Dade, and the impact thereon of such a bill; they therefore must assess Claimant's request in a vacuum.

Notwithstanding those patent inadequacies, legislators not elected by and not responsible to the citizens of Dade have taken it upon themselves to tax those citizens and those citizens alone. They have instructed Dade County to allocate hundreds of thousands of dollars from its budget, while simultaneously limiting the ability of Dade County to budget and provide for such claims. See §125.01 et seq., Fla.Stat. (1983). To do so is not only directly and clearly prohibited by the Home Rule Amendment and the general principles inherent in home rule, it is antithetical to the most basic tenets of representative democracy.

Applying the above understanding of the reasons for home rule protection and of the particular evils of a local claims bill, this honorable court has already disposed of the issue presented in this case, when it decided in Dickinson v. Board of Public Instruction of Dade County, 217 So.2d 533 (Fla. 1968). This honorable court there expressly held that the Legislature could not, by way of a claims bill substantially identical to Ch.83-393, constitutionally direct that payment be made to a claimant out of Dade County funds. The court first recognized that

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5/ (cont'd)

to pay the Brookses approximately four million dollars. The bill was recently ruled unconstitutional in the Eleventh Judicial Circuit; Amicus' counsel has filed a notice of appeal to the Third District Court of Appeals. Rosalie Brooks, et al. v. Miami-Dade Water & Sewer Authority, Case No. 82-13318 (Fla. 11th Cir.Ct. 1982).

such a law is a local act because it "affected only Dade County and made an appropriation out of specific funds due to... that county only." Id. at 554. The court then went on to hold that because of the Dade County Home Rule Amendment, "the Legislature 'no longer has authority to enact laws which relate only' to the affairs of Dade County." Id. at 555. Cf. Dickinson v. Bradley, 298 So.2d 352 (Fla. 1974) (state may constitutionally enact claim bill benefitting Dade County resident if law appropriates state funds). The reasoning applied by this honorable court in Dickinson, 217 So.2d 553 is sound and is totally dispositive of the present case. See also State ex rel. City of Pompano Beach v. Lewis, 368 So.2d 1298 (Fla. 1979).

III. SECTION 768.28, FLORIDA STATUTES, DOES NOT AND CANNOT AUTHORIZE THE LEGISLATURE TO PASS A LOCAL CLAIMS BILL AFFECTING ONLY DADE COUNTY

Claimants, of course, are forced to attempt to distinguish Dickinson, but their efforts prove futile. They argue that because Chapter 83-393 is "authorized" by the post-Dickinson waiver of sovereign immunity, it is no longer subject to constitutional restraint. Specifically, they contend that the Legislature, in passing Section 768.28(5), Florida Statutes (1979),[6/] intended to allow itself to review judgments in excess of the liability limitations therein, and decide, on a case-by-case basis whether and to what extent those limitations should be extended. They similarly contend that in passing local acts such as Chapter 83-393, the Legislature is effectively ordering that a judgment be satisfied beyond the liability limits contained in Section 768.28.

6/ (5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $950,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of $100,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $50,000 or $100,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

Those arguments are the sine qua non of Claimant's position. Unless this court assumes with Claimants that the Legislature, solely by use of the words "by further act of the Legislature," has changed the constitutional nature of a local claims bill, Dickinson is dispositive.[7/]

Both Claimants' premise and their conclusions are incorrect. Far from "authorizing" the claims process in §768.28, the Legislature has there made merely passing reference to the continuing vitality of a supplemental means of relief which predates the waiver of sovereign immunity by approximately one-half century. The claims process, used by Claimants and required by the Legislature for all claims bills,[8/] has its origins in Laws 1887, Chapter 3708, Section 1. The present-day statutes, Section 11.02, et seq.,[9/]

7/ As will be seen at Point III of County's Brief, even if the Court indulges in the Claimant's assumption, the claims bill is nonetheless unconstitutional.

8/ See M. Robinson, Introduction of Claims Bills: Policies, Procedures and Information (unpublished manuscript, 1982).

9/ "11.02 Notice of special or local legislation or certain relief acts.--The notice required to obtain special or local legislation or any relief act specified in s.11.065(3) shall be by publishing the identical notice in each county involved in some newspaper as defined in chapter 50 published in or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, there being no newspaper circulated throughout or published in the county, by posting for at least 30 days at not less than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s.10, Art.III of the State Constitution."

"11.021 Evidence of publication of notice.--The evidence that such notice has been published shall be established in the Legislature before such bill shall be passed, and (cont'd)

have not significantly changed since 1929.[10] The notice provisions set forth therein are mandated by Article III, Section 10, Florida Constitution (1968),[11] to obtaining passage of special or local legislation. Claimants themselves submitted their bill to this very process.

A. Where no clear and unequivocal provision can be found in Section 768.28, and where legislative history and case law provides no support, Claimant's assumption that Section 768.28 authorizes the Legislature to pass Local Claims Bills is invalid.

The reader will search in vain through Claimant's Initial Brief for some authority -- be it legislative language, history, or case law -- to support Claimants' assumption that the claims process has been drastically changed by Section 768.28.

Not a scintilla of authority is presented in support of that premise so vital to Claimant's position. The plain language of the statute certainly does not lend support; the only reference in the entire fourteen-section statute is that "the portion of the judgment that exceeds [the maximum liability of the state or its agency or subdivision] may be reported to the Legislature, but may

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9/ (cont'd)

such evidence shall be filed or preserved with the bill in the Department of State in such manner as the Legislature shall provide. The fact that such notice was established in the Legislature shall in every case be recited upon the journals of the Senate and of the House of Representatives."

"11.03 Proof of publication of notice.--
(1) Affidavit of proof of publication of such notice of intention to apply therefor, may be made. ..."

10/ See 1 Fla.Stat.Ann. 320 (1961).

11/ "SECTION 10. Special laws.--No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected."

be paid in part or in whole only by further act of the Legislature." §768.28(5). Construction of that language must be undertaken with care; statutes waiving sovereign immunity must be clear and unequivocal, and must be strictly construed. Levine v. Dade County School Board, 442 So.2d 210 (Fla. 1983); Department of Natural Resources v. Circuit Court of the Twelfth Judicial Circuit, 339 So.2d 1113 (Fla. 1975); Arnold v. Shumpert, 217 So.2d 116 (Fla. 1968). Whatever rights of recovery are given to a claimant must affirmatively appear in the waiver of immunity statute and cannot be read into it. Berek v. Metropolitan Dade County, 396 So.2d 756 (Fla. 3d DCA 1981), approved, 422 So.2d 838 (Fla. 1983). Cf. Valdez v. State Road Department, 189 So.2d 823 (Fla. 2d DCA 1966) (statute authorizing purchase of liability insurance held not to waive sovereign immunity).

Surely the cited oblique statutory reference to a "further act" does not clearly and unequivocally allow the Legislature to compel the County to disburse monies over and above the limited waiver of sovereign immunity. Indeed, regardless of the rules of construction governing the instant use, such a meaning may not even be inferred. Claimants' interpretation conflicts with the clear language in the same section that "[n]either the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $100,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments... arising out of the same incident or occurance, exceeds the sum of $200,000." §768.28(5); see also §768.28(1) ("[t]he state... hereby waives sovereign immunity for torts, but only to the

extent specified in this act."). Claimants' interpretation conflicts with the long-recognized legislative intent that local governments be afforded predictability, orderly administration of government, and protection against profligate encroachments on their respective treasures. Spangler v. Florida State Turnpike Authority, 106 So.2d 421 (Fla. 1958); see also Manors of Inverrary XII Condominium Association, Inc. v. Atreco-Florida, Inc., 438 So.2d 490 (Fla. 4th DCA 1983) (Glickstein, J., concurring) (Section 768.28(5) protects local governments from a flood of claims); Jetton v. Jacksonville Electric Authority, 399 So.2d 396 (Fla. 1st DCA 1981) (statutory maximum necessary to permit government to order its fiscal planning; requiring local governments to protect themselves against full liability could impose too heavy a fincial burden on taxpayers).

Claimants' assumption is also refuted by the opinion of the Florida Attorney General. In 1976, after the passage of §768.28, he concluded that the Florida Legislature continues to be "constitutionally precluded from enacting a claims bill directing [a judgment in excess of statutory monetary limitation] to be paid from the funds of Dade County." 1976 Op.Atty.Gen.Fla. 076-147 at 49.[12/]

Finally, the meager legislative history available pertaining to Section 768.28 tends to indicate that the Legislature did not intend for local governments to have any liability exposure, by claims bill or otherwise, for

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12/ The Attorney General's opinion is entitled to great weight in construing the law of Florida. Beverly v. Division of Beverages of Department of Business Regulation, 282 So.2d 657 (Fla. 1st DCA 1973).

amounts in excess of the statutory maximums. The Senate Staff Analysis and Economic Statement on Senate Bill 396, 1977 Session,[13] for example, advised legislators that the limitations of §768.28(5) made it "unnecessary for any state agency to purchase more than $50,000/$100,000 of insurance coverage." The bill was encouraged, inasmuch as it offered "significant savings" to local governments. Id. Such comments are clearly incompatible with Claimant's belief that the Legislature, in passing Section 768.28, intended to reserve for itself the power to expand the limits therein, as applied to local governments, on an unpredicatable, case-by-case basis.

Claimants' assumption that the Legislature, in enacting a local claims bill, is effectively "enforcing" that portion of the judgment in excess of the statutory limits, is also without supporting authority. Claimants' theory is in patent conflict with the constitutional doctrine of separation of powers; the authority to enforce judgments is vested exclusively in the judicial branch. Art.II, §3, Fla.Const. (1968); White v. Johnson, 59 So.2d 532 (Fla. 1952); Florida Guaranteed Securities v. McAllister, 47 F.2d 762 (5th Cir. 1931). Moreover, Florida courts have repeatedly recognized the clear distinction between a governmental entity's liability for a judgment, and the legislature's authority to provide funds to a claimant in

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[13] Senate Bill 396 was ultimately passed in slightly modified form as Chapter 77-86, Laws of Florida (1977). The law, in response to an earlier Attorney General Opinion (076-41), clarified that the statutory maximums on liability applied to all agencies and subdivisions of the state.

excess of that entity's liability. In Cauley v. City of Jacksonville, 403 So.2d 379 (Fla. 1981), this Honorable Court noted:

> Before waiver of sovereign immunity, one suffering injury at the hands of the state could always petition for legislative relief by means of a claims bill. At present, if a claim exceeds the statutory limit, the legislature will still entertain a petition for a claims bill for the excess amount.

Id. at 381, n.5.[14/] Similarly, this Honorable Court ruled in City of Lake Worth v. Nicolas, 434 So.2d 315 (Fla. 1983), that upon payment of the statutory maximum by a liable governmental entity, the claimant "shall be required to give a satisfaction of judgment, his recourse for the excess being only to the legislature." Id. at 316 (emphasis supplied). See also Travelers Indemnity Company v. Jacobs, 402 So.2d 1261, 1264 (Fla. 3d DCA 1981) ("Under section 768.28(5), judgments in excess of the monetary limitations could be paid by the state"); Jetton v. Jacksonville Electric Authority, 399 So.2d 396, 397 (Fla. 1st DCA 1981) ("[T]he legislature... placed limits on recovery... and noted that claimants remain free to seek legislative relief bills, as they did during days of complete sovereign immunity").

Clearly, the Legislature, by enacting Section 768.28(5), has done nothing to change the scope or validity of local claims bills. The Legislature expressly noted their continued availability, so that injured claimants would

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14/ Claimants rely on Cauley as supporting authority for an "equal protection" type of argument. Cauley, however, dealt with the narrow question of municipal vis-a-vis county liability, to which issue the Home Rule Amendment and the unique constitutional status of Dade County is wholly immaterial. Moreover, as demonstrated herein, Chapter 83-393, a supplemental relief act, is not properly viewed as an expansion of governmental tort liability.

not infer that statutorily limited local governmental liability was their sole source of recovery. They remain free to solicit the State for additional compensation, and the State remains free to disburse it, but only using constitutionally permissible means. Nothing in the language or history of Section 768.28 indicates any substantive change in the scope of the Legislature's authority to pass on claims, which authority remains limited by the Home Rule Amendment.

B. The Legislature is without authority to circumvent the Home Rule Amendment.

Regardless of legislative intent, the Legislature is simply without power to strip Dade County of the protection provided by the Home Rule Amendment of the Florida Constitution. No legislation, general or otherwise, can remove limitations established by the Constitution. The Legislature is simply and absolutely prohibited by the Home Rule Amendment from enacting laws affecting only Dade County such as Chapter 83-393. The Legislature may not authorize itself to do what the constitution prohibits. See Steuart v. State ex rel. Dolcimascolo, 161 So. 378, 119 Fla. 117 (1935) (Legislature does not have authority to amend, add to, detract from, or alter constitutional provision); cf. State v. Yeats, 74 Fla. 509, 77 So. 262 (Fla. 1917) (Where Constitution prescribes the method of doing an act, it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the Constitution). Section 768.28, because it is but a statute and not part of the Florida Constitution, could not alter that prohibition. It is the constitution which defines the scope of legislation, not the reverse. To accept claimant's position would allow

the Legislature to do an end run around the Home Rule Amendment on any and all subject matter, simply by passing a vaguely-worded general law allowing for further local acts in the future. See Dade County v. Dade County League of Municipalities, 104 So.2d 512 (Fla. 1958) (proposed charter amendment allowing Legislature to amend municipal charter by subsequent special act is in direct contravention of Home Rule Amendment and therefore unconstitutional); State ex rel. Powell v. Leon County, 182 So. 639, 133 Fla. 68 (1938) (Legislature may not do by indirect action what Constitution prohibits it from doing by direct action). Such an absurd result was not intended by the drafters of the Home Rule Amendment, nor by the citizens of this state who voted to make that amendment part of their constitution. Such an interpretation must be rejected by this honorable court.

The fatal flaw in Claimants' logic is their theory that if the County cannot legislate on sovereign immunity,[15/] ipso facto the state has carte blanche in the field. Precisely that argument was made and rejected by this Court in S&J Transportation v. Gordon, 176 So.2d 69 (1965). S&J Transportation involved an attack by taxicab companies on Chapter 63-964, Laws of 1963. The law provided that the county commissioners in any county with a population greater than 900,000 may contract for ground transportation of passengers between the airport and "all permits, places

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15/ For the proposition that a local governmental entity cannot legislate on sovereign immunity, Claimants correctly cite Kaulakis v. Boyd, 138 So.2d 505 (Fla. 1962). In the final analysis, however, Kaulakis refutes the Claimants' argument, inasmuch as it affirms the constitutional mandate that no legislation pertaining to sovereign immunity, whether by a county or by the state, shall be by special law. See Point III, C infra at 25.

and areas within such county."[16/] Counties having less than 900,000 population, however, could contract for transportation of passengers only between the airport and designated points within the county. Chapter 63-694 was challenged on the basis that it violated the Home Rule Amendment, because it affected only Dade County. In support of the law, Dade County ironically advanced the identical argument forwarded by Claimants. Dade County contended that although Chapter 63-964 concededly applied only to Dade County, it was valid because the subject matter of Chapter 63-964, transportation, was not a local affair, but was a statewide subject "over which the Legislature retains full power to the exclusion of Dade County." Id. at 70-1. This Court's holding is equally responsive to Claimant's position:

> It does not follow that a holding that Chapter 63-964 is invalid would leave Dade County free to legislate in this field. In any event, we do not feel that the act is invalid because it invades the power given the people of Dade by Section 11, Article VIII. Rather, it is invalid because it violates the limitation that the Legislature shall not lawfully pass any act which relates only to Dade County. The fact that the act in question relates to public transportation does not change this restriction on the legislative power.
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> ...[T]he Legislature no longer has authority to enact laws which relate only to Dade County. This is true regardless of the subject matter, the manner of passage or whether according to previous decisions of this court they would be classified as valid general laws. If this section was construed otherwise the Legislature would still have the power to enact laws applicable only to Dade County on a population or other reasonable classification basis on a myriad of subjects and completely destroy the intended autonomy in local affairs.

16/ The taxicab companies challenged the law because through its execution, they were placed on an equal footing with the competing limousine companies.

Id. at 7. Thus, the Home Rule Amendment absolutely proscribes the passage of any act which affects only Dade County, even if the County is also precluded from legislating in the field.

C. Even if Chapter 83-393 were an authorized expansion of the County's liability consistent with the Home Rule Amendment, the Local Act is unconstitutional because all laws relating to sovereign immunity must be general acts.

Even assuming that Section 768.28 was intended to and expressly did authorize the Legislature to pass local, case-by-case extensions of local governmental liability for torts, such local acts would be nonetheless unconstitutional. If, as Claimants urge, Chapter 83-393 is simply a limited waiver of sovereign immunity, it is unconstitutional regardless of Dade's home rule status because sovereign immunity can be waived only by general law. Art.X, §13, Fla.Const. (1968). Claimants recognize the general principle involved when they enthusiastically embrace this Honorable Court's holding in Kaulakis v. Boyd, 138 So.2d 505 (Fla. 1962). In Kaulakis, the citizens of Dade County had attempted, through their charter, to waive sovereign immunity so as to hold Dade County liable "to the same extent that municipalities in the State of Florida are liable in tort." Charter of Dade County, §8.03. This Court held Section 8.03 unconstitutional, because it conflicted with Article X, §13, Florida Constitution, and was not expressly covered in the Home Rule Amendment. Claimants apparently failed to recognize that Article X, Section 13 is applicable not only to Dade County, but to all governmental entities in Florida, including the Florida Legislature. It is certainly true that neither Dade nor any other Florida county may unilaterally legislate on

sovereign immunity in any respect because any such charter provision, ordinance or regulation would by its very nature be a local act. But it is equally clear that the Florida Legislature is also prohibited from utilizing a local or special act to waive sovereign immunity; all legislation relating to governmental liability must be by general law, i.e. it must be designed to affect more than one county, and must affect a class of persons rather than particular persons.[17/] Both the present case and Kaulakis involve attempts to legislate on sovereign immunity via constitutionally impermissible means. In Kaulakis, a county attempted to waive immunity only as to that county; in the present case, the Legislature has attempted to do precisely the same thing, but has multiplied the constitutional infirmities by waiving immunity for the benefit of no one other than the Claimants. Just as in Kaulakis, that attempt must fail.

Claimants should not be heard to complain that such a result is harsh or unfair; their alternative argument that if Chapter 83-393 is unconstitutional, the limits on liability contained in Section 768.28(5) should not apply as Dade County is equally spurious. This honorable court is obliged to construe a law, if possible, so as to sustain its constitutionality. Department of Insurance v. Southeast Volusia Hospital District, 438 So.2d 815 (Fla. 1983). Section 768.28(5) is clearly valid, so long as one does

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17/ In the latter respect, Ch.83-393 (and claims bills in general) also runs afoul of Art.III, §11, Fla.Const. (1968) which provides in pertinent part: "There shall be no special law or general law of local application pertaining to... disposal of public property, including any interest therein, for private purposes. ..." See State ex rel. Destin v. Flowers, 403 So.2d 488 (Fla. 1st DCA 1981).

not indulge in Claimants' assertion that it was intended to authorize the Legislature to supercede the statutory maximums on liability by way of local law. Commercial Carrier Corporation v. Indian River County, 371 So.2d 1010 (Fla. 1979).

The Legislature, having reserved for itself the exclusive power to pass on such claims, could have easily and constitutionally satisfied whatever further obligation it perceived by appropriating general state revenues. Indeed, the bill originally introduced at Claimants' request directed the excess amount to be "appropriated out of funds in the state treasury not otherwise appropriated." (R.38-45). It should surprise neither Claimants nor this Honorable Court that state legislators ultimately chose to utilize County rather than state funds. Legislators' decision to elect to spend money from a treasury for which they bear neither responsibility nor accountability is overwhelming evidence of the flaws inherent in the claims process applied by the Florida Legislature.

The Legislature's willingness to spend other governmental entities' funds under the present claims system is that in the vast majority of cases, the Legislature does nothing more than rubber stamp the claims bills as filed. During the 1980 legislative session, for example, ten out of eleven claims bills were so passed; the one bill that was reduced was a claim against the State. See M. Robinson, Introduction of Claims Bills (1982). Such an ad-hoc approach has, of course, a real or potential disastrous impact on local governmental entities' attempts to anticipate and provide for liability risks. If the Legislature is attempting to waive entirely the maximum limits on the

sovereign immunity, it has chosen an impermissible means. It is, of course, within the Legislature's prerogative to waive sovereign immunity without limitation, but the waiver must be general law, pursuant to Article X, Section 13. The present state of affairs is completely contrary to a major purpose of the limits contained in Section 768.28(5): to allow local governments to anticipate and provide for the risk of liability, and to provide protection against profligate encroachments on their treasures. Spangler v. Florida State Turnpike Authority, 106 So.2d 421 (Fla. 1958). That purpose must not be circumvented unless by valid, general act of the Legislature. No such act has been passed in this case.

CONCLUSION

It is crucial to the vitality of home rule in Florida that the Legislature be precluded from enacting local laws which relate only to Dade County. Chapter 83-393, which appropriates county resources without consideration of or responsibility for other legitimate county interests and policies is precisely the state intrusion into local affairs contemplated by the drafters of the Home Rule Amendment to the Florida Constitution.

Claimants argue, without any historical or legal support, that with the passage of Section 768.28, the Legislature has authorized itself to not only circumvent the Home Rule Amendment, but also to extend the limits of sovereign liability on a case-by-case basis, apparently guided only by sympathy and politics. That argument paradoxically illustrates additional constitutional infirmities carried by Chapter 83-393. The drafters of the Florida Constitution, in requiring that immunity must be waived by general law, wisely perceived the significance of exposing local governments to tort liability. Florida courts have also recognized the importance of allowing those governmental entities to plan for liabilities, and of protecting them from unpredictable exposure. Claimants' argument flies in the face of the constitutional provision and its underlying policy, and must therefore be rejected.

For all of the reasons stated, the County respectfully requests that the lower tribunal be affirmed in result, with appropriate instructions to guide other courts confronted with this issue.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S ANSWER BRIEF was mailed on this 17th day of August, 1984, to JULIAN CLARKSON, Esquire, and RICHARD NICHOLS, Esquire, Holland & Knight, P.O. Drawer 810, Tallahassee, FL 32302, attorneys for Petitioners; and MARY FRIEDMAN, Esquire, attorney for Amicus Curiae Dade County Trial Lawyers Association, Second Floor Concord Building, 66 West Flagler Street, Miami, FL 33130.

Respectfully submitted,

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