IN THE SUPREME COURT OF FLORIDA

NORTH BROWARD HOSPITAL DISTRICT

Petitioner

vs.

CASE NO. 66,115

SHARON T. FORNES

Respondent

_____/

ON CERTIFIED QUESTION
FROM THE FOURTH DISTRICT
COURT OF APPEAL OF FLORIDA

BRIEF OF AMICUS CURIAE

FLORIDA LEAGUE OF CITIES

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INTRODUCTION

The Petitioner, North Broward Hospital District was the Defendant in the trial court and Appellees in the District Court of Appeal. The Respondent, Sharon Fornes, was the Plaintiff in the trial court and Appellant in the District Court of Appeal. The Florida League of Cities, Inc. is an amicus curiae, pursuant to motion filed with this court, and represents the interests of the cities of the State of Florida. In this brief the "Petitioners" and "Respondents" will be referred to as they stand before this Court and the Florida League of Cities, Inc. will be referred to as the "League".

STATEMENT OF CASE AND FACTS

The instant case is before the Court on a certified question from the Fourth District Court of Appeal in the case of Fornes v. North Broward Hospital District, 455 So.2d 584 (Fla. 4th DCA 1984). The amicus "League" will address legal issues and policies raised by the certified question rather than addressing the particular facts of the case sub judice.

QUESTION CERTIFIED

DOES A TAXPAYER WHO ALLEGES THAT THE TAXING AUTHORITY IS ACTING ILLEGALLY IN EXPENDING PUBLIC FUNDS WHICH WILL INCREASE HIS TAX BURDEN, HAVE STANDING TO SUE TO PREVENT SUCH EXPENDITURE OR IS IT NECESSARY THAT HE SUFFER SOME OTHER SPECIAL INJURY DISTINCT FROM OTHER TAXPAYERS (AS OPPOSED TO OTHER INHABITANTS) OR LAUNCH A CONSTITUTIONAL ATTACK UPON THE TAXING AUTHORITY'S ACTION IN ORDER TO HAVE STANDING?

BRIEF SUMMARY

The present law of standing for a taxpayer to challenge an action of a governmental entity is that a taxpayer must demonstrate special injury to himself different than the community as a whole. This rule of law is supported by the sound public policy considerations that the elected representatives of the people should not be unduly hampered in their ability to govern and that individual citizens should not represent the interests of the general public.

While historically there has been some confusion concerning the standing of a taxpayer to challenge an alleged illegal expenditure, the Supreme Court has clearly stated that the "Special Injury Rule" is equally applicable in these cases unless the taxpayer's challenge is based on independent constitutional grounds.

The same public policy arguments support this rule of law which was announced in Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972) and should be reaffirmed by this Court.

ARGUMENT

A TAXPAYER WHO WISHES TO CHALLENGE THE ALLEGED ILLEGAL EXPENDITURE OF PUBLIC FUNDS DOES NOT HAVE STANDING TO SUE TO PREVENT SUCH EXPENDITURE UNLESS THE TAXPAYER SUFFERS A SPECIAL INJURY DISTINCT FROM OTHER TAXPAYERS OR UNLESS HIS CHALLENGE IS BASED ON INDEPENDENT CONSTITUTIONAL GROUNDS.

The general rule of law in this State is that in order for a citizen or taxpayer to have standing to seek injunctive relief against a governmental entity to prevent an alleged illegal or wrongful act by that governmental entity, said taxpayer must demonstrate that he will suffer a special injury different from all other inhabitants of the community. See Henry L. Doherty, Inc. v. Joachim, 146 Fla. 50, 200 So. 238 (1941) (challenge to vacation of public street); Town of Flagler Beach v. Green, 83 So.2d 598 (Fla. 1955) (challenge to construction of public recreation building) and Williams v. Howard, 329 So.2d 277 (Fla. 1970) (challenge to alleged illegal transfer of powers from Parole and Probation Commission to Department of Offender Rehabilitation).

This Court has been reluctant to allow private citizens to enforce the rights of the general public. United States Steel Corp. v. Save Sand Key, Inc., 303 So.2d 9 (Fla. 1974); Boucher v. Novotny, 102 So.2d 138 (Fla. 1958) (must show special injury to enforce validly enacted zoning ordinance).

> An individual to have standing must have a definite interest exceeding the general interest in community good shared with all citizens. Renard v. Dade County, 261 So.2d 832, 837 (Fla. 1972).

This Court recently affirmed its position that standing will not be extended to a party to attack an alleged illegal act absent a showing of special injury or at least a legally recognizable interest. Citizen's Growth Management Coalition of West Palm Beach Inc. v. City of West Palm Beach, 450 So.2d 204 (Fla. 1984).

Sound public policy reasons support the general rules of standing enunciated by this court. Absent a requirement that a party have some tangible interest prior to instituting litigation, governmental entities would be subject to "spite suits", "frivolous suits" and repetitive litigation which would hamper the effective exercise of their discretionary powers to govern. Renard v. Dade County, 261 So.2d 832 (Fla. 1972); United States Steel Corp. v. Save Sand Key, 303 So.2d 9 (Fla. 1974).

Former Justice Roberts at P. 12 of United States Steel Corp, supra, noted with approval the following language from Askew v. Hold the Bulkhead - Save Our Bays, Inc., 269 So.2d 696 (Fla. 1972).

> If it were otherwise there would be no end to potential litigation against a given defendant whether it be a public official or otherwise, brought by individual or residents, and possessed of the same general interest, since none of them would be bound by res judicata as a result of prior suits; and as against public authorities, they may be intolerably hampered in the performance of their duties and have little time for anything but the interminable litigation.

The Respondent and the Fourth District Court of Appeal would urge this court that the general rule of standing requiring special injury has been abandoned where a taxpayer seeks to challenge an alleged illegal expenditure of funds or, in the alternative, that this court should in fact announce a new rule of law which would allow standing to a taxpayer who alleges that an illegal expenditure by a governmental entity will increase his tax burden without a showing of special injury. The arguments advanced by the Respondent and the Fourth District Court of Appeal are not supported by either existing law or public policy considerations.

In Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972) this Court announced the existing rule of law in suits where a taxpayer wished to challenge a proposed governmental expenditure. A taxpayer does not have standing to challenge an appropriation or expenditure absent a showing of special injury. The only exception recognized by this Court is if the attack on the appropriation or expenditure is based on constitutional grounds. See Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972). Justice Roberts in discussing Department of Administration v. Horne, supra, stated it provided:

> ... only a very limited exemption to the special injury rule.
>
> Clearly by the decision in Department of Administration v. Horne, supra this Court did not intend to abrogate in any way the special injury rule in cases as those sub judice, but recognized it would obtain in other cases. United States Steel Corporation v. Save Sand Key, 303 So.2d 9, 13 (Fla. 1981).

Judge Grimes in the case of Godheim v. City of Tampa, 426 So.2d 1084, 1086 (Fla. 2nd DCA 1983), states that, "Florida has a checkered history concerning the requirements for bringing a taxpayer's suit", to challenge an alleged illegal expenditure.[1] Much of the confusion was as a result of the Court's attempting to interprete whether this Court had abolished the special injury requirements in taxpayer suits which challenged alleged illegal expenditures in the case of Rickman v. Whitehurst, 73 Fla. 152, 74 So. 205 (1917).

[1] A lengthy and accurate discussion of the history of taxpayer standing cases is contained in Judge Grimes' scholarly opinion in Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2nd DCA 1983) and is therefore omitted from this brief.

It would be unproductive to further attempt to analyze the confusing decision in Rickman, supra, because as Judge Grimes correctly points out in Godheim, supra, while there has been confusion in this area, this Honorable Court has consistently, since 1972, stated that Rickman v. Whitehurst, supra, did not do away with the requirement of special injury in taxpayer's suits. Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972); Brown v. Firestone, 382 So.2d 654, 662 (Fla. 1980); United States Steel Corporation v. Save Sand Key, 303 So.2d 9, 13 (Fla. 1974) and Department of Revenue v. Markham, 396 So.2d 1120 (Fla. 1981).

> It is the established law of this state that a taxpayer of the state or county has standing to bring a declaratory action against the proper public official to restrain the unlawful exercise of the state or county's taxing or spending authority only upon a showing of special injury to such taxpayer which is distinct from that sustained by every other taxpayer in the taxing unit. Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972); Rickman v. Whitehurst, 73 Fla. 152, 74 So. 205 (1917) Paul v. Blake, 376 So.2d 256, 259 (Fla. 3rd DCA 1979); in accord, Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2nd DCA 1983).

The same public policy considerations which require a party to demonstrate a special injury to challenge other actions of government are equally if not more important in taxpayer suits which challenge alleged unlawful expenditures.

> The rule is based on the sound policy ground that without a special injury standing requirement the courts would in all likelihood be faced with a great number of frivolous lawsuits filed by disgruntled taxpayers who along with much of the taxpaying public these days, are not entirely pleased with certain of the taxing and spending decisions of their elected representatives. It is felt that absent some showing of special injury as thus defined, the taxpayer's remedy should be at the polls not in the courts. Moreover it has long been recognized that in a representative democracy that the public's representatives in government should ordinarily be relied on to institute the appropriate legal proceedings to prevent the unlawful exercise of the state or county's taxing and spending power. See Henry J. Doherty and Co. v. Joachim, 146 Fla. 50, 56, 200 So. 238, 239 (1941) Paul v. Blake, 376 So.2d 256, 259 (Fla. 3rd DCA 1979).

If this court adopts the position that a taxpayer who states that an alleged illegal expenditure will increase his tax burden has demonstrated a special injury to support standing or that special injury is not necessary in such cases, the court will have effectively emasculated the very public policy reasons for the special inuury rule. All general expenditures of a local government will be subject to malicious, frivolous or spite suits by any member of the public at large.

The term taxpayer under our present structure of municipal financing may encompass all residents of the municipality or any party who has some contact with the municipality whether they be resident or not. As Judge Wigginton correctly noted in R.L. Renardo & Sons, Inc. v. Duncan, 124 So.2d 297 (Fla. 1st DCA 1961), not all local revenues come from ad valorem taxes. Taxpayers are people who pay: 1) the Municipal Public Service Tax (Section 166.231, Fla. Stat. (1983) allows municipalities to levy a 10% tax on the purchase of electricity, metered or bottled gas, water service, telephone service and telegraph service); 2) the Municipal Occupational License Tax (Section 205.042, Fla. Stat. (1983) allows the municipality to levy a tax on all businesses within a municipality); or 3) contribute to municipal revenue sharing (distributions from half cent sales tax, cigarette tax and gasoline tax). All residents of a municipality and many non residents pay at least the municipal public service tax and may allege that their tax burden may be increased by an alleged proposed expenditure of the municipality.

In addition, a proposed expenditure of a municipality generally does not come from a specific revenue source nor does it identify the revenue source. It is therefore possible for a "taxpayer" to allege that any expenditure may result in an increased tax burden and therefore subject to challenge.

While it may be argued that an injunction will not be guaranteed to restrain the exercise of discretionary powers of government (see Hunter v. Carmichael, 133 So.2d 584 (Fla. 2nd DCA 1961)), the mere filing of lawsuits will be both costly and may hamper the government's ability to govern. Frivolous lawsuits are even more likely because a local government may not question the motives of a taxpayer in bringing the suit nor institute malicious prosecution actions where said suits are brought in bad faith. Robinson, Inc. v. Short, 146 So.2d 108 (Fla. 1st DCA 1962); Cate v. Oldham, 450 So.2d 224 (Fla. 1984).

The present rule of standing precludes a wholesale intervention by the judiciary into the legislative and executive branches of government while effectively protecting the rights of those citizens who are truly injured by a governmental action.

In addition to the fact that any party may challenge an alleged unconstitutional expenditure (see Department of Administration v. Horne, supra and Flast v. Cohen, 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968)) or challenge any expenditure when he can demonstrate special injury, the rights of the individual and general public are protected in a number of other means.

The "Sunshine Law", Section 286.011, Florida Statutes (1983) and "Public Records Law", Section 119.07, Florida Statutes (1983) guarantee that all budgeting decisions will be made in public and subject to public scrutiny. Section 200.065, Florida Statutes (1983) requires that advertised public hearings be held on the proposed budget and a 1984 amendment, Chapter 84-164, further requires that a proposed budget summary be advertised prior to the hearing. The State Attorney is a party to all bond validation proceedings

under Section 75.05, Florida Statutes (1983) and the Attorney General may protect the public interests pursuant to Chapter 542, Florida Statutes (1983), if the governmental entity is expending funds or acting in an anticompetitive manner.

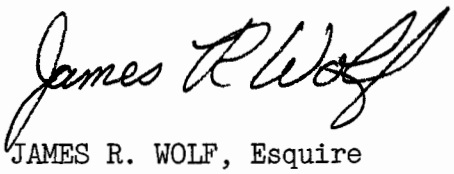
Individual citizens are further protected by their right to intervene in all bond validation proceedings, Section 75.07, Florida Statutes (1983) and the right to intervene in assessment proceedings against their property (Chapter 170, Florida Statutes).

The aforementioned statutes are just several areas where the Legislature has defined the rights of the general public to intercede in the expenditure process; to allow parties that cannot demonstrate special injury to institute judicial intervention into the state and local expenditure process will not serve the public. The special injury rule ratified by this Court in Department of Administration v. Horne, supra, is supported by sound public policy and should be reaffirmed by this Honorable Court.

CONCLUSION

BASED upon the cases, authorities and policies cited herein, the amicus curiae, Florida League of Cities, respectfully requests this Honorable Court to answer the certified question in the negative and to reverse the decision of the Appellate Court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to John L. Korthals, Esquire 2401 East Atlantic Boulevard, Pompano Beach, Florida 33061, and James C. Pilkey, Esquire, 1451 Brickell Avenue, Miami, Florida 33131, Counsels for the Respondent, and William Zei, Esquire, Gibbs & Zei, 224 Southeast Third Avenue, Ft. Lauderdale, Florida 33316, Counsel for the Petitioner, North Broward Hospital District, on this 3rd day of December, 1984.

James R Wolf
Attorney