FILED
SID J. WHITE
JAN 22 1985
CLERK, SUPREME COURT
By
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

NORTH BROWARD HOSPITAL DISTRICT, Petitioner,	Case No. 66,115
vs.	
SHARON T. FORNES, Respondent.	

ON APPEAL FROM THE FOURTH DISTRICT COURT
OF APPEAL IN CASE NO. 83-947 (455 So.2d 584)

CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE

MANASOTA '88, INC.'S AMICUS CURIAE BRIEF ON BEHALF OF RESPONDENT

JOHN H. RAINS, III
Annis, Mitchell, Cockey,
Edwards & Roehn, P.A.
P.O. Box 3433
Tampa, Florida 33601
(813) 229-3321

AND

THOMAS W. REESE
123 8th Street N.
St. Petersburg, Florida 33701
(813) 822-4084

Attorneys for Manasota '88, Inc.

TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE	iv
SUMMARY OF ARGUMENT	v
ARGUMENT	1
I. FLORIDA TAXPAYERS HAVE STANDING TO CHALLENGE ILLEGAL OR UNAUTHORIZED GOVERNMENT ACTIONS THAT WILL INCREASE THE TAX BURDEN.	1
A. FLORIDA HISTORY WOULD HAVE BEEN DIFFERENT IF THE "GODHEIM RULE" WAS FLORIDA LAW.	1
B. IT IS CONTRARY TO PUBLIC POLICY TO RELY SOLELY ON PUBLIC OFFICIALS AND LOSING BIDDERS TO CHALLENGE THE VALIDITY OF ILLEGAL AND UNAUTHORIZED GOVERNMENT ACTIONS.	6
C. APART FROM THE "GODHEIM RULE," TAXPAYER STANDING TO CHALLENGE ILLEGAL AND UNAUTHORIZED GOVERNMENT ACTIONS IS WIDELY RECOGNIZED.	8
II. A TAXPAPER UNDER ARTICLE I, SECTION 21 OF THE FLORIDA CONSTITUTION HAS A RIGHT TO CHALLENGE ILLEGAL OR UNAUTHORIZED GOVERNMENT ACTIONS WHICH INCREASE THE TAX BURDEN.	10
CONCLUSION	12
CERTIFICATE OF SERVICE	13

TABLE OF CITATIONS

Cases:	Page
Anderson v. Fuller, 51 Fla. 380, 41 So. 684 (1906)	3
Brooker v. Smith, 108 So.2d 790 (Fla. 2d DCA 1959)	7
Bull v. City of Atlantic Beach, Case No. AW-339 (Fla. 1st DCA Jan. 8, 1985)	5, 6
Bull v. City of Atlantic Beach, 450 So.2d 570 (Fla. 1st DCA 1984)	6
City of Daytona Beach v. News Journal Corp. 116 Fla. 706, 156 So. 877 (1934)	3
Cotton v. Leon County, 6 Fla. 610 (1856)	10
Fornes v. North Broward Hospital District, 455 So.2d 584 (Fla. 4th DCA 1984)	5
G.B.B. Investments, Inc. v. Hinterkopf, 343 So.2d 899 (Fla. 3rd DCA 1977)	11
Glatstein v. City of Miami, 339 So.2d 1005 (Fla. 3rd DCA 1981), pet. for rev. denied, 407 So.2d 1102 (1981)	5
Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2d DCA 1983)	1, 2 3, 4 5, 6, 8
Hunter v. Carmichael, 133 So.2d 584 (Fla. 2d DCA 1961)	9
Kluger v. White, 281 So. 2d 1 (Fla. 1973)	10
Lanier v. Padgett, 18 Fla. 842 (1882)	10
Rhodes v. City of Homestead, 248 So.2d 674 (Fla. 3d DCA 1971)	5

Cases:	Page
Rickman v. Whitehurst, 73 Fla. 152, 74 So. 205 (1917)	8
R.L. Bernardo & Sons, Inc. v. Duncan, 134 So.2d 297 (Fla. 1st DCA 1961)	4
Robert G. Lassiter & Co. v. Taylor, 99 Fla. 819, 128 So. 14 (1930)	3, 4
Robinson's, Inc. v. Short, 146 So.2d 108 (Fla. 1st DCA 1962)	7
Stewart v. Gilliam, 271 So.2d 466 (Fla. 4th DCA 1972)	11
Wester v. Belote, 103 Fla. 967, 138 So. 721 (1931)	7
OTHER AUTHORITIES:	
Article I, Section 21 of the Florida Constitution	10, 11
§287.005, Florida Statutes	2
E. McQuillin, Municipal Corporations (3d Ed. 1977) §§52.11, 52.14, 52.18, 52.24, 52.29	8, 9

STATEMENT OF THE CASE

Amicus curiae Manasota '88, Inc. (Manasota '88) adopts as its Statement of the Case that set forth by Respondent, Sharon T. Fornes.

SUMMARY OF ARGUMENT

Historically, if Florida taxpayers did not have standing millions of dollars of illegal government contracts would have been awarded. Practically, neither government officials nor the losing bidders are consistent viable alternatives to taxpayer standing. Finally, prior to 1885 Florida taxpayers had the common law right to challenge illegal government contracts or unauthorized actions and thus have an Article I, Section 21, constitutional right to standing.

ARGUMENT

I. FLORIDA TAXPAYERS HAVE STANDING TO CHALLENGE ILLEGAL OR UNAUTHORIZED GOVERNMENT ACTIONS THAT WILL INCREASE THE TAX BURDEN.

Respondent Fornes has discussed very thoroughly, as did the Fourth District Court of Appeal, the application of the general principles of Florida law to the specific facts of this case. Manasota '88 will focus its argument on the practical public policy considerations supporting the proposition that a Florida taxpayer should have standing to challenge illegal or unauthorized governmental actions which increase the tax burden.

A. FLORIDA HISTORY WOULD HAVE BEEN DIFFERENT IF THE "GODHEIM RULE" WAS FLORIDA LAW.

The Petitioner and its amici assert without any objective basis that to affirm the Fourth District Court of Appeal would "open the flood gates." In contrast to that unsupported assertion, this Court need only review its decisions and the decisions of all of the District Courts of Appeal to see how Florida's history would have been altered if Florida taxpayers were denied standing.

As a result of the majority decision in Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2d DCA 1983), the City of Tampa and Waste Management, Inc., (one of the amicas curiae in support

of Petitioner's position) were permitted to proceed with the design, construction and operation of a multi-million dollar solid waste disposal and resource recovery facility. The complaint alleged in awarding the contract to Waste Management the City violated the competitive bidding requirements of its own municipal ordinance as well as the Consultant's Competitive Negotiation Act, §287.055, Florida Statutes (1981). There were only two bidders on the project. The Godheim majority by affirming the dismissal with prejudice of the taxpayer's action permitted based on the allegations of the complaint an illegal contract for major public work to be awarded. Id. at 1085.

Judge Lehan's lengthy and well-reasoned dissent noted that the City of Tampa initially was quite willing to deal with the merits. In fact, the City was defending on the merits until the intervenor, Waste Management, Inc., raised the standing question. Id. at 1097. Consequently, at the very least, the taxpayers of the City of Tampa, as a result of the Godheim majority were confronted with the dubious situation that an allegedly illegal contract was awarded, but no taxpayer had standing to challenge it. This result was particularly frustrating to one of the undersigned counsel for Manasota '88 who has one of the appeal counsel for Mr. Godheim who was pressured into not seeking review before this Court.

If the "Godheim Rule" had been the law of Florida in 1906, then an illegal award of a contract to a bidder other than

the lowest responsible bidder, on a City of Tampa public works project would have been permitted. Anderson v. Fuller, 51 Fla. 380, 41 So. 684 (1906).

If the "Godheim Rule" had been the law of Florida in 1930, then a taxpayer would have been unable to enjoin the execution a contract originally let through competitive bidding, but which had been subsequently modified to provide for an entirely different type of work with a different price would have been permitted. See Robert G. Lassiter & Co. v. Taylor, 99 Fla. 819, 128 So. 14 (1930). This Court in holding that the taxpayer could maintain an equitable action to restrain the payment of public funds under a void or unauthorized contract stated:

> The intent of the charter provision, requiring such contracts to be let or awarded to the lowest bidder for the work, is to secure the best improvement at the lowest possible cost to the taxpayer and to prevent fraud, favoritism, and extravagance in the expenditure of public funds. Id. at 17.

If the "Godheim Rule" had been law of Florida in 1934, then the City of Daytona Beach could have awarded a contract to a newspaper for the publication of legal notices without first having obtained offers or bids from other newspapers. City of Daytona Beach v. News Journal Corp., 116 Fla. 706, 156 So. 877 (1934). The taxpayer in that case went on to prove that the failure to seek competitive bidding on the printing contract caused the City to the pay a higher rate for its legal notices than would be charged by other city newspapers. The Court, in

affirming the issuance of the injunction, once again expressly held that taxpayers had the right to injunctive relief to protect the public treasury against illegal disbursements caused by unauthorized or illegal contracts. No other showing was required than that the plaintiff allege his status as a taxpayer and allege that the threatened disbursement of public funds was for an unauthorized or illegal purpose. The rationale for that rule was:

> The complainant as a taxpayer only seeks to require the government officials of the municipality to proceed according to the law in procuring the publication of legal notices by that newspaper which propose the best and lowest offer for that service. Id. at 889.

The Court noted that the injunction only required the city officials to do their duty under the city charter.

If the "Godheim Rule" had been the law in Florida in 1961, then Panama City would have been permitted to make a 10% lump sum advance payment to a contractor contrary to the Supreme Court of Florida's decree validating the city revenue bonds based on provisions of bond resolutions and trust indentures providing that payment should be limited to 90% of the materials furnished and labor performed during the preceding month. R.L. Bernardo & Sons, Inc. v. Duncan, 134 So. 297 (Fla. 1st DCA 1961). Similarly, the City of Homestead would have been able to issue a special use permit without notice and without a public hearing as required by city charter to permit a real estate business in a

zoned residential area. Rhodes v. City of Homestead, 248 So.2d 674 (Fla. 3d DCA 1971).

In 1981, if the "Godheim Rule" had been the law in Florida, then the City of Miami would have been able to renegotiate after the bid opening a competitive bid to permit material variances between the detailed plans used to invite competitive bids and the detailed plans for the development of a theme amusement park on which the contract was awarded. Glatstein v. the City of Miami, 399 So.2d 1005 (Fla. 3d DCA 1981), pet. for rev. denied, 407 So.2d 1102 (1981).

In 1984, if the unanimous panel of the Fourth District Court of Appeals had followed the "Godheim Rule", then the North Broward Hospital District would have been permitted, from the allegations on the face of the Complaint, to prepare specifications in a fashion "to permit favoritism and collusion and stifling of the competitive bidding process required under the district charter, all of which permitted the project from being completed at the lowest possible cost to the taxpayers." Id. at 585.

In 1985, if the unanimous panel of the First District Court of Appeals had followed the "Godheim Rule", then the City of Atlantic Beach according to the Complaint, would have been permitted to contract for architectural and engineering services without competitive bidding in violation of both the City Charter, Ordinances and §287.055, Florida Statutes. Bull v. City of

Atlantic Beach,, Case No. AW-339 (Fla. 1st DCA Jan., 1985). See also Bull v. City of Atlantic Beach, 450 So.2d 570 (Fla. 1st DCA 1984) (reversing trial court award of attorneys' fees based on §57.105, based on the argument put forth by Judge Lehan in his dissent in Godheim).

Clearly, the history of taxpayer standing in Florida does not show a "flood" of suits by "disgruntled" taxpayers. Instead, a review of the reported decisions, without considering the unreported trial decisions, demonstrates that taxpayer standing has prevented the illegal and unauthorized expenditure of millions of dollars of public funds.

B. IT IS CONTRARY TO PUBLIC POLICY TO RELY SOLELY ON PUBLIC OFFICIALS AND LOSING BIDDERS TO CHALLENGE THE VALIDITY OF ILLEGAL AND UNAUTHORIZED GOVERNMENT ACTIONS.

As indicated by the discussion of the reported decisions in subpart (A), it is manifest that public officials will not necessarily challenge illegal and unauthorized contracts. In each of those cases, it was a taxpayer not a mayor, not a city councilman, and not a state's attorney that challenged the illegal and unauthorized contracts. Typically, the public body is a party defendant and the public officials are taking part in violating the pertinent laws and charters. Manasota '88 does not suggest that this would necessarily take place because of any improper motivation by public officials of the cities and counties of Florida, but would take place in circumstances, such as that in the Godheim case, where the apparent need for urgent

action overrode the long-term public policy favoring competitive bidding. Id. at 1085. Even in the Godheim case, however, the City of Tampa defended the action on the merits maintaining that its conduct was proper until Waste Management, Inc., an intervenor, raised the standing issue. Id. at 1097. Clearly, the policy favoring an avoidance of even the opportunity for favoritism, whether or not any favoritism is actually practiced, is consistent with good public policy in Florida. See Wester v. Belote, 103 Fla. 967, 138 So. 721, 724 (1931).

Similarly, as indicated in Respondent's brief, losing bidders may be deterred by the cost of litigation or fearful of alienating public bodies that provide work. Furthermore, the losing bidders that took part in an illegal bidding process would be subject to estoppel and waiver arguments. With respect to taxpayers, however, the public policy favoring taxpayer's standing has been so strong in Florida, that the doctrine of unclean hands or improper motive does not even apply to taxpayers. See Robinson's, Inc. v. Short, 146 So.2d 1008 (Fla. 1st DCA 1962) (in holding that a taxpayer had standing to challenge a printing contract based on vague and indefinite specifications, the court rejected the argument that the mere fact that the taxpayer was also an employee of a subsidiary of the losing bidder did not estop him from seeking the aid of a court of equity). See also Brooker v. Smith, 108 So.2d 790, 794 (Fla. 2d DCA 1959) ("there

is at least one exception, generally recognized to the 'clean hands' maxim; that is, the motives of the plaintiff in bringing a taxpayer's suit are immaterial"). See generally E. McQuillin, Municipal Corporations, §52.11 (3d Ed. 1977) (general rule is that a taxpayer's motive, even if he is a "mere catspaw," is immaterial).

C. APART FROM THE "GODHEIM RULE," TAXPAYER STANDING TO CHALLENGE ILLEGAL AND UNAUTHORIZED GOVERNMENT ACTIONS IS WIDELY RECOGNIZED.

The two judges who wrote the majority opinion in Godheim are to be commended for their cander. Unlike the Petitioner's amici that state that the Fourth District Court of Appeals decision announces a "new rule," the Godheim majority candidly recognized what they found to be a conflict in Florida jurisprudence. Even in reaching their decision, the majority recognized the "good reasons" why taxpayers should be permitted to attack the illegality of governmental actions increasing tax burdens. Id. at 1088.

Judge Lehan interpreted the law of Florida differently, found the cases to be consistent and stated the "true" Rickman Rule as follows:

> (1) A taxpayer has standing to sue for an unlawful government act which increases his tax burden.
> (2) If a taxpayer cannot show increased tax burden from such unlawful act, he must show either (a) some other special injury distinct from that suffered by others, or (b) that the action taken by the governmental body was unconstitutional. Id. at 1092.

The unanimous panels of the Fourth District Court of Appeal in this action and the First District Court of Appeal in Bull v. City of Atlantic Beach, Florida, supra, agreed with Judge Lehan.

As Respondent taxpayer in her brief succinctly stated (Brief at 6), this Court should not make its decision by merely counting heads. It is significant, however, that the leading commentator on municipal corporations agrees with Judge Lehan, the Fourth District Court of Appeals, the First District Court of Appeals, as well as the prior decisions of this court. McQuillin states in §52.14:

> it is now held that it is sufficient that plaintiff taxpayer will be pecuniarly injured by the [illegal or unauthorized] act notwithstanding other taxpayers will be injured in the same way. See also §52.18, 52.24, 52.29.

In support of this proposition, McQuillan cites an earlier decision of the Second District Court of Appeals in Hunter v. Carmichael, 133 So.2d 584 (Fla. 2d DCA 1961) where the Second District observed:

> Florida has recognized the right of a citizen and taxpayer to maintain a suit to restrain public officials from paying out public monies upon an allegedly void and unauthorized contract. Id. at 586.

Clearly, the right of a taxpayer to challenge illegal or unauthorized government actions is widely recognized.

II. A TAXPAYER UNDER ARTICLE I, SECTION 21 OF THE FLORIDA CONSITUTION HAS A RIGHT TO CHALLENGE ILLEGAL OR UNAUTHORIZED GOVERNMENT ACTIONS WHICH INCREASE THE TAX BURDEN.

Article I, Section 21 of the Florida Declaration of Rights provides:

> The Court shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay (emphasis added).

Well before the adoption of this provision, Florida courts as early as 1856 entertained actions for injunctive relief by taxpayers. See Cotton v. Leon County, 6 Fla. 610 (1856) (suit by taxpayers to enjoin levying of taxes to purchase railroad stock). In Lanier v. Padgett, 18 Fla. 842 (1882), this Court ruled that "taxpayers on their on behalf and on behalf of other taxpayers have a standing which entitles them to a remedy against a threatened wrongful proceeding which might involve them and the whole people of the county in great expense and confusion...." Id. at 846.

Since Kluger v. White, 281 So.2d 1 (Fla. 1973), Florida courts have held consistently that neither the legislature nor the courts can abolish a right of action without providing a reasonable alternative to protect the rights of people to redress injuries. This Court in Kluger announced the standard for judging the constitutionality of any abrogation of a common law remedy. The Court held:

> where a right of access to the courts for redress of a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida [1885], or where such right has become a part of the common law of the State...the legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the legislature can show an overpowering public necessity for the abolition of such right, and no alternative methods of meeting such public necessity can be shown.
> Id. at 4. (emphasis added)

See also G.B.B. Investments, Inc. v. Hinterkopf, 343 So.2d 899 (Fla. 3d DCA 1977) (trial court's precondition for a hearing on a counterclaim that the counterclaimant pay into the registry of the court the amount due on the mortgage plus delinquent interest and taxes violated Article I, Section 21 because it was an unconstitutional restriction to the access of courts).

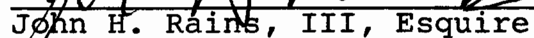
To restrict the availability of a forum on the nebulous ground of averting a "flood" of litigation is contrary to the fundamental concept of justice under the law. "There is no more bedrock principle of law than that which declares that for every legal wrong there is a remedy and that every litigant is entitled to have his cause submitted to the arbitrament of the law." Stewart v. Gilliam, 271 So.2d 466, 475 (Fla. 4th DCA 1972).

Clearly, taxpayers had the common law right before 1885 to challenge illegal or unauthorized governmental actions which increase the tax burden. For this Court to hold otherwise would violate Article I, Section 21 of the Florida Constitution and would unjustly deny access the courts.

CONCLUSION

For the reasons stated, the decision of the Fourth District Court of Appeals should be affirmed. To hold otherwise will abolish the long recognized right in Florida of a taxpayer to seek court redress as a means of challenging illegal acts by public officials.

Respectfully submitted,



John H. Rains, III, Esquire

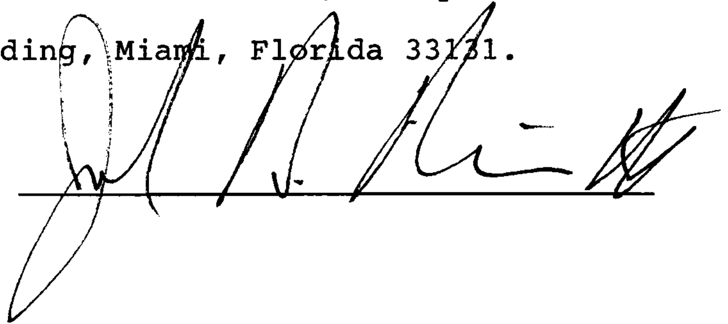
Annis, Mitchell, Cockey,
Edwards & Roehn, P.A.
P.O. Box 3433
Tampa, Florida 33601
(813) 229-3321

and

Thomas W. Reese
123 8th Street N.
St. Petersburg, Florida 33701
(813) 822-4084

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of Respondent's Answer Brief was served by mail this 18th day of January, 1985 by JAMES C. PILKEY, Taylor, Brion, Burker & Greene, 1111 South Bayshore Drive, Miami, Florida 33131 on WILLIAM ZEI, ESQUIRE, Attorney for Hospital District, 224 Southeast Ninth Street, Fort Lauderdale, Florida; JAMES WOLF, General Counsel, Florida League of Cities, Inc., 201 West Park Avenue, P.O. Box 1757, Tallahassee, Florida 32302; H. LEE MOFFITT, Moffitt, Hart & Miller, 401 South Florida Avenue, Tampa, Florida 33602; and SUSAN APRILL, Thompson, Zeder et al, 1000 Southeast Bank Building, Miami, Florida 33131.



JHR4(3)