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IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA

v.

FRONTIER ACRES COMMUNITY
DEVELOPMENT DISTRICT,
PASCO COUNTY, FLORIDA

Case No. 66,449
Cir. No. Ct84-2568

BOND VALIDATION APPEAL

APPELLANT'S REPLY TO AMICUS BRIEF OF THE ASSOCIATION OF SPECIAL DISTRICTS

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SUMMARY OF THE ARGUMENT

Chapter 190 creating community development districts is unconstitutional in disenfranchising nonlandowners in the election of the governing officials of the districts who administer the broad governmental powers and authority conferred by the law.

ARGUMENT

CHAPTER 190, FLA. STATS. (1983 and 1984 Supp.) VIOLATES THE EQUAL PROTECTION CLAUSE REQUIREMENT OF ONE PERSON, ONE-VOTE.

Amicus contends that Chapter 190 does not require one vote per person for election of the governing officers of a community development district because the purpose of such a district is sufficiently limited and that the costs and benefits are sufficiently restricted to the landowners. Appellant maintains, however, that community development districts are a newly created division of government, as is a County a lesser division of the State, and a municipality a lesser division of the County. Obviously, the powers of the County are more limited than those of the State, and the powers of the municipality are more limited than those of the County; but both a county and a municipality have broad governmental powers. A county or municipality may not exercise powers reserved by the states. A state may not exercise powers reserved by the federal government. But, these governmental units, including community development districts, provide a wide range of services and exercise a wide range of powers and authority over local inhabitants.

A. Chapter 190, Florida Statutes

1. The Legistlative purpose.

The community development district, like a municipality and like a county, is legislatively designed to function as a governmental unit with relegated authority for "long-range planning, management,

and financing and long-term maintenance, upkeep, and operation of basic services...." Sec. 190.002(1)(c), Fla. Stats. (1984 Supp.) The Legislature specifically found and declared the community development districts legitimate independent entities "to manage and finance basic services" within the districts. Sec. 190.002(2)(b), Fla. Stats. (1984 Supp.). The districts are prohibited powers of zoning and development permitting, Sec. 190.002(3), Fla. Stats. (1984 Supp.); Sec. 190.004, Fla. Stats. (1984 Supp.), and may not exercise police powers. Sec. 190.012(2)(d), Fla. Stats. (1984 Supp.). Several pages of statutes are needed to set forth the general and special powers and authority which the distrits <u>are</u> given by the legislature. Sec. 190.011, General powers; 190.012, Special powers; 190.0125, Purchase or sale of water or sewer utility by district; 190.016, Bonds; 190.022, Special assessments; 190.046, Termination, contraction, or expansion of district; Fla. Stats. (1984 Supp.), Sec. 190.014, Issuance of bond anticipation notes; 190.015, Short-term borrowing; Sec. 190.023, Issuance of certificates of indebtedness based on assessments for assessable improvements; assessment bonds; Sec. 190.024 Tax liens; Sec. 190.025 Payment of taxes and redemption of tax liens by the district; sharing in proceeds of tax sale, Sec. 190.026 Foreclosure of liens; Sec. 190.035 Fees, rentals, and charges; procedure for adoption and modifications; minimum revenue requirement; Sec. 190.036 Recovery of delinquent charges; Sec. 190.037 Discontinuance of service; Sec. 190.041 Enforcement and penalties; Sec. 190.044 Exemption of district property from execution; Fla. Stats. (1983).

The statute defines a community development district as "a local unit of special-purpose government...." The term "special-purpose" may have been intended to trigger application of those cases holding that a special district of sufficiently limited purpose does not require application of the one-man, one vote rule. Ball v. James, 451 U.S. 355 (1983); Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719 (1973); Associated Enter., Inc. v. Toltec Watershed Imp. Dist., 410 U.S. 744 (1973). But, just as calling a petunia a rose does not make it one, whether a community development district is sufficiently limited in "special-purpose" to obviate the need for the one-man, one-vote equal protection will depend on the reality of the extent of the powers and authority conferred on those districts.

A community development district is not a special water management district as in Ball v. James, supra.; Tulare Lake Basin, supra.; or Toltec Watershed Imp. Dist., supra. Subject to other regulatory authorities, a community development district may operate as a water management district, Sec. 190.012(1), Fla. Stats. (1984). But that is only one of the myriad of governmental functions and services that a community development district may perform or provide. After a public hearing and a determination of public interest, a community development district may own and operate a water or sewer utility. Sec. 190.0125, Fla. Stats. (1984 Supp.). A municipal utility bond issue is required to give all persons, not just property taxpayers,

the right to vote. Cipriano v. City of Houma, 395 U.S. 701 (1969); City of Phoenix, Arizona v. Kolodziejski, 399 U.S. 204 (1970). Ball v. James, supra., is not to the contrary because the water reclamation district's sale of electric power was not its primary purpose but only to subsidize the water conservation, storage and delivery functions. Electric power was needed for the reclamation uses, and the revenues were applied to increase water supply at a reduced rate. The Court distinguished the special water management district from normal governmental functions such as "maintenance of streets, the operation of schools, or sanitation, health, or welfare services." Ball v. James at 366.

Ball v. James meets the "compelling state interest" test of Kramer, Cipriano, and Phoenix which will permit disenfranchising citizens only if the state can "meet a stringent test of justification." Hill v. Stone, 421 U.S. 289 (1975). In Hill v. Stone, the Court found a violation of the equal protection clause in restricting to landowners the election of a city bond issue for a library and improved city transit system. The library and transit system were found to be of general, not special interest to the citizens, requiring the equal right to vote in all residents. After obtaining the consent of the "local general-purpose government" a community development district may construct, equip, operate and maintain schools. Sec. 190.012(2)(c). School districts have been required to operate only on authority of elections held pursuant to the equal protection clause

requirements of a vote per person regardless of ownership of land. Kramer v. Union Free School District, 395 U.S. 621 (1969); Hadley v. Junior College Dist. of Metro Kansas City, Mo., 397 U.S. 50 (1970).

Subject to permit and regulation of existing authorities, a community development district may construct roads and bridges. Sec. 190.012(1)(c), (1)(d), Fla. Stats. (1984 Supp.) A road district has been held to the requirements of the one-man, one vote rule even though special assessments for road bond were to affect only property owners. Herbert v. Police Jury of the Parish of Vermilion, 404 U.S. 807 (1971), reversing 245 So.2d 349 (La. 1971). A bond for parks and playgrounds required the equal right to vote in City of Phoenix, supra. A community development may construct and maintain parks and recreational facilities after consent of the local general-purpose government. Sec. 190.012(2)(a), Fla. Stats. (1984 Supp.).

2. The Legislative Substance

That Chapter 190 will permit a general election of all resident voters if ad valorem powers are to be levied, or after six years of creation, whichever comes first, does not cure the equal protection deficiency prior thereto. In City of Phoenix, supra, the Court noted that although the general obligation bonds were to be paid by levied property taxes, in reality the costs were passed on to the rental property by the landowners in the form of high rents. City of Phoenix at 210. Corporate property owners, who had no vote, but paid the property tax, passed their cost on to the consumer as a cost of doing

business, affecting property and nonproperty owners alike. Id. at 211. The Court in City of Phoenix, expressed the reality that the property owners were not the only persons affected even if the bond obligation was purported to be payable only from property taxes.

If ad valorem taxes are to be levied to meet some existing obligation, the granting of the right to vote at that late date is just that, too late. Those persons suddenly enfranchised by the impending levy of ad valorem taxes were not consulted as to the obligation they are now faced with meeting to preserve the project. They had no right to vote at a time when the project itself could have been limited or the price adjusted to a manageable figure. As the Court counseled in Gordon v. Lance, 403 U.S. 1,6 (1971): "It must be remembered in voting to issue bonds voters are committing in part, the credit of infants and of generations yet unborn, and some restriction on such commitment is not an unreasonable demand." Gordon extended the Cipriano holding in acknowledging that "[w]hile Cipriano involved a denial of the vote, a percentage reduction of an individual's power in proportion to the amount of property he owned would be similarly defective. See Stewart v. Parish School Board, 310 F. Supp. 1172 (Ed. La.), aff'd. 400 U.S. 884, 91 S. Ct. 136 (1970)." Id. at 5, fr. 1. That it is only the "organizational period" for the six years during which nonlandowners are disenfranchised does not placate the equal protection requirements. The organizational period may well be the most crucial time. $16,000,000 may well could be being spent for development of the community district.

B. Case Law

1. Narrow Purpose

Amicus and Appellant are not in disagreement as to the applicable case law but only to whether the community development district law creates a sufficiently limited special purpose district to avoid the necessity for the equal protection of the voting right. Both Amicus and Appellant contend that applicable law support their position.

Amicus claims that the limited objective of Chapter 190 is "to create a financing mechanism ..."; i.e., to get the tax-exempt bonds. The plain meaning of the statute is much broader giving at least equal concern for the delivery and management of basic community development services. That a major concern of the legislation was to obtain financing for local community development does not mean that the right to vote can, therefore, be abridged. None of the cases relied on by Amicus of Appellant decide the right to vote on whether the district was created to finance the permitted projects, as most of them were.

2. Relationship of District Functions to Landowners

The instant community development districts are more akin to the facts of City of Phoenix, supra, than to Ball v. James and Sayler, supra. In City of Phoenix, general obligation bonds, which were considered a lien on the property (Id. at 212), were issued to finance

"various municipal improvements, with the larges amounts to go for the city sewer system, parks and playgrounds, police and public safety buildings, and libraries." Id. at 206. Only real property owners were permitted to vote because property taxes were to be levied to pay the bond indebtedness. The Court found no justification for limiting the vote to the property owners, despite the "special burden on property owners for the benefit of the entire community." Id. at 208. The Court found that all residents had a substantial interest in the public facilities and services to be funded and would be substantially affected by the bond election. Although Phoenix had the option of applying other revenues to the bond debt, the Court rejected that this affected the voting issue.

> "But even in such a case the justification would be insufficient. Property taxes may be paid initially by property owners, but a significant part of the ultimate burden of each year's tax on rental property will very liekly be borne by the tenant rather than the landlord...." Id. at 210.

Ball v. James, supra, as contrasted from the community development districts created by Ch. 190, involved a special water management district which did not "administer such normal functions of government as the maintenance of streets, the operation of schools, or sanitation, health, or welfare services." Id. at 366. Chapter 190 specifically authorizes community development districts to administer these normal government functions.

CONCLUSION

Wherefore, Appellant maintains that Amicus has not demonstrated that Chapter 190 is constitutional in protecting the equal right to vote for nonproperty owners as well as property owners. The statute should be held to be unconstitutional in this regard and the order validating the bonds reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response to Amicus Brief has been furnished by U.S. mail this 29th day of March, 1985 to Terry E. Lewis, Steven Lewis, Robert M. Rhodes of Messer, Rhodes and Vickers, P.O. Box 1876, Tallahassee, FL 32302; Robert L. Williams, Ste. B, 2100 S.Tamiami Trail, Venice, Fla. 33595; and Ken van Assenderp of Young, van Assenderp, Varnado & Benton, Gallie's Hall, 225 S. Adams St., Tallahassee, FL 32302.

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