IN THE SUPREME COURT OF
THE STATE OF FLORIDA

CASE No. 66, 618

CITY OF NORTH MIAMI

Appellant,

vs.

FLORIDA DEFENDERS OF
THE ENVIRONMENT, et al,

Appellees.

_____/

APPEAL FROM THE DISTRICT
COURT OF APPEAL, FIRST
DISTRICT, STATE OF FLORIDA
(462 So. 2d 59)

APPELLEES' ANSWER BRIEF

Respectfully submitted by:

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SUMMARY OF ARGUMENT

As held by the District Court of Appeal, First District, Special Appropriation § 1312A, Ch. 83-300, Laws of Florida, is unconstitutional and void. The enactment is plainly an appropriation measure that amends the substantive purposes of the Conservation and Recreation Lands Trust Fund (CARL Fund) pro tanto, thereby, also amending CARL Fund statutes (§§ 253.023 and § 239.035, Fla. Stat.) pro tanto. Because Ch. 83-300 does not set out the amended sections and subsections in full, the pro tanto amending statute consequently violates Art. III, § 6, Fla. Const. and is void.

Section § 1312A is also void on the second ground that it, being plainly an appropriation, amends substantive law pro tanto in direct violation of Art. III, § 12, Fla. Const., which takes away the power of the legislature to amend substantive law in an appropriation enactment.

The legal status of § 1668B, Ch. 83-300, Laws of Florida, is not uncertain. Because the court below ruled it to be constitutional, the only question is whether the fund referred to within the provision has monies in it from a valid source. At this stage, this is an administrative and not a judicial question. No clarification of the opinion below is needed to answer it.

The court below was correct on all points and this Court should affirm its holding that § 1312A is void and its order that the Comptroller ignore it and that the Secretary of State strike it from Ch. 83-300.

STATEMENT OF CASE AND FACTS

The meaning of the term "Appellees" as used in Appellant's initial brief is clarified as followed.

The initial plaintiffs in this case sued Bob Graham, Governor, and the members of the Florida Cabinet. The present Appellant, City of North Miami, intervened as a party defendant. The trial court judge held for all defendants against all plaintiffs.

In proceedings before the District Court of Appeal, First District, the original plaintiffs were appellants and all defendants participated as appellees. The trial court judgment was reversed.

In the current proceedings, only the City of North Miami is participating as an appellant. The Governor and Cabinet have chosen not to appeal. Consequently, under Fla. R. App. P. 9.020(f)(2) all other parties who participated in the proceeding in the District Court of Appeal, including the Governor and Cabinet, are technically Appellees in this proceeding.

The term "Appellees" is used herein to describe the original plaintiffs in this matter.

ARGUMENT

A. THE DISTRICT COURT OF APPEAL CORRECTLY RULED THAT SPECIAL APPROPRIATION S1321A, CH. 83-300, LAWS OF FLORIDA, IS UNCONSTITUTIONAL AND VOID

In the opinion below, 462 So. 2d 59, the District Court of Appeal, First Direct invalidated S1312A, Ch. 83-300 Laws of Florida, on the ground that the enactment violates Art. III, SS6 and 12, Fla. Const. In its opinion the District Court correctly applied the laws and constitution of Florida in strict conformance with this Court's clear, repeated and recent interpretations in a series of cases including Brown v. Firestone, 382 So. 2d 654 (Fla 1980), Gindl v. Department of Education, 396 So. 2d 1105 (Fla. 1981), Department of Education v. Lewis, 416 So. 2d 455 (Fla. 1982) and Orr v. Trask, ___ So. 2d ___, No. 65487 (Fla. 1985).

Because the court below correctly decided the matter, Appellees herein will not spend time rebutting Appellant's attempted revival of the erroneous trial court holding that was soundly repudiated by the District Court of Appeal. In this regard this Honorable Court should note that the erroneous arguments were initially advanced by the Governor and cabinet members, the original defendants in this case. Present Appellants merely adopted those arguments by Notice of Adoption of Defendant's memorandum of Law. (See Appellant's initial brief p. 3) The Court should also note that the Governor and Cabinet have not appealed the holding of the District Court of Appeal that repudiated the arguments formerly advanced by them.

The issue in this case is whether the legislature may, by enacting a line item special appropriation (namely, the disputed S1312A of Ch. 83-300, Laws of 1983), appropriate money from a protected trust fund (namely, the CARL Fund [Conservation and Recreation Lands Trust Fund] S253.023, Fla. Stat. (1981)) to be used for a purpose other than the exclusive purposes for which the Trust fund monies are specifically limited in S253.023(3) and without complying with the exclusive procedures prescribed by law in S259.035, Fla. Stat. (1981) for selecting lands to be purchased from the protected fund. Relying upon Art. III, SS6 & 12, Fla. Const. as applied by this Court in Brown, Gindl, and Lewis, supra., the District Court of Appeal correctly held that S1312A was unconstitutional and void.

The Florida Defenders of the Environment (FDE) and the other individual plaintiffs to the initial suit in this matter have for years manifested a strong commitment to protecting Florida's natural environment. Protection of endangered and environmently sensitive lands has been a matter of highest priority to them. For that reason, FDE and some of the named defendants worked diligently, directly and successfully to support the creation and adoption of the CARL Fund program and have, since its initiation, worked actively and directly to assure that its procedures and purposes were strictly complied with in the appropriation and expenditure of the trust fund monies.

In three successive legislative years the legislature has attempted to "raid" the CARL Fund by the use of a proviso or line item special appropriation in the general appropriation bill. In each instance an attempt has been made to take $8.5 million from

the protected CARL Fund to purchase a parcel of land that has not been selected as suitable by the mandatory CARL Fund selection procedures prescribed in S259.030, Fla. Stat. (1981) and that does not meet the exclusive CARL Fund purposes prescribed in S253.023(2). In each instance FDE and various individual Florida citizens and taxpayers have filed actions to have the proviso or special appropriation declared unconstitutional and expunged from the statute books.

The action against measures enacted in the 1981 (a proviso to §3, Ch. 81-206, Laws of Fla.) and 1982 (§31, Ch. 82-215, laws of Florida) was ended satisfactorily to the plaintiffs by the lapsing of the disputed provisions as a matter of law during the pendency of the litigation. This is evidenced by a Joint Motion to Dismiss filed by all parties in Case No. 82-1642, Cir. Ct. for the 2nd Jud. Circuit, in and for Leon County. Also during the pendency of that action, the 1983 legislature enacted the 1983-84 General Appropriations Act, Ch. 83-300, Laws of Fla. (1983), including three specific appropriations that pertain directly or indirectly to the CARL Fund. They are:

1312A	Aid to Local Governments Transfer to Special Acquisition Trust Fund From Conservation and Recreation Lands Trust Fund.....8,500,000
1668A	Fixed Capital Outlay CARL Program From Conservation and Recreation Lands Trust Fund.....35,000,000
1668B	Fixed Capital Outlay North Dade County Land Purchase From Special Acquisition Trust Fund..8,500,000

Section 1668A is the annual appropriation from the CARL Fund to the CARL Program to make purchases in accordance with SS253.023 and 259.035. The validity of that provision is not in dispute.

Appellees argued below that S1312A and S1668B together constituted a two step specific appropriation from the protected CARL Fund that should collectively be declared unconstitutional on the ground that they amended SS253.023 and 259.035 pro tanto without complying with the requirements of Art. III S6 ("Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph...) and Art. III S12 ("Laws making appropriations ... shall contain provisions on no other subject.") Brown, Gindl, Lewis and Orr, supra., all invalidated similar specific appropriations and provisos on the ground asserted by Appellees.

The District Court of Appeal agreed completely with this argument as it applies to S1312A, ruled the provision to be invalid, ordered the Comptroller to disregard it, and ordered the Secretary of State to strike it from ch. 83-300. (462 So. 2d at 61, 62.) The District Court's holding prevents the unconstitutional raiding of the CARL Fund and wholly satisfies the purpose of Appellees in initiating the action.

The District Court also held that S1668B of itself could theoretically stand alone and, considered alone, did not violate the cited constitutional provisions. This acknowledges that the invalidation of S1312A prevents the wrongful misappropriation of CARL Fund monies to S1668B but does not rule out the theoretical possibility that funds may have been legally appropriated to

S1668B from some other source. Because the CARL Fund is protected by this interpretation, Appellees do not contest it.

When the inquiry is sharply focused upon S1312A alone as done by the District Court of Appeal, the proper mode of analysis of the issue presented herein is immediately apparent. First, is S1312A, Ch. 83-300, an appropriation measure? Second, does the implementation of S1312A modify substantive law pro tanto? And, third, if it does, does the modification violate either Art. III, S6, Fla. Const. (requiring that amending laws set out amended sections, etc.) or Art. III S12 (taking away the power of the legislature to use appropriation bills to make law on any subject except appropriations)?

The District Court of Appeal correctly answered each of these questions in the affirmative and declared S1312A to be unconstitutional and void. First, S1312A is an element of the 1983 General Appropriations Act and plainly purports to appropriate $8.5 million from the CARL Fund to the Special Acquisitions Trust Fund (STA FUND). As to that element of the analysis, no dispute can sensibly be voiced; § 1312A is plainly on its face an appropriations measure.

Second, S1312A in application does modify substantive law pro tanto. As stated by the District Court of Appeal, the CARL Fund is established by S253.023(2), Fla. Stat., "as a nonlapsing, revolving fund exclusively for the purposes of this section [S253.023}.]" (e.s.) Moreover under S253.023(1) and S259.035(2)(c), "All proposals for acquisition projects pursuant to...s. 253.023 shall originate from the committee." (e.s.) The Committee referred to is composed of high state executive

officials designated by S259.035(1). Furthermore, the exclusive specific purposes for which CARL Fund monies may be used are prescribed and limited by S253.023(3). (Copies of all cited provisions are attached as Appendix A.)

Section 1312A plainly satisfies neither the prescribed exclusive substantive purposes of S253.023(3) nor the exclusive selection procedures of S259.035(2). Therefore, in application, it would have the effect of modifying those provisions pro tanto in the manner of various provisions disputed in Brown, Gindl, Lewis and Orr, supra. Although Appellees will not unnecessarily burden this brief with quotations to demonstrate this, it is worth pointing out that the attempted circumvention of the S259.035 selection committee is virtually identical to the proviso modifying established statutory decision mechanisms condemned by Brown (382 So. 2d at 659, 669) and that the attempted avoidance of the substantive criteria of S253.023 is virtually identical to the appropriations item changing the formula for distributing funds condemned by Gindl (396 So. 2d at 1106). This Court struck both provisions on the ground asserted herein. Lewis and Orr stand for the same point. It, thus, is clear that the District Court of Appeal was correct to hold that S1312A amends substantive law pro tanto.

The District Court of Appeal was also correct to rule that S1312A violates Art. III SS6 and 12, Fla. Constitution. These provisions state:

SECTION 6. LAWS.-

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title ... Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection ...

SECTION 12. APPROPRIATION BILLS.-

> Laws making appropriation for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.

First, the fact that S1312A amends substantive law pro tanto without setting out the "revised or amended act, etc." as required by Art. III S6 is apparent on its face, as held by the court below. (462 So. 2d at 61 n. 4). Moreover, no other part of Ch. 83-300, Laws of Florida, which is a part of the trial record, cures this defect. Second, the fact that S1312A, which is a line item appropriation in the General Appropriation Act, amends substantive law pro tanto plainly violates Art. III, S12, as held by the court below. (462 So. 2d at 61). These holdings are clearly mandated by this Court's specific holdings in Brown, Lewis, Grindl and Orr, supra.

In sum, the District Court of Appeal correctly held that S1312A violates Art. III, Florida Constitution, and is, therefore, void.

B. THE DISTRICT COURT OF APPEALS' DECISON CREATES NO UNCERTAINTY ABOUT THE LEGAL STATUS OF S1668B CH. 83-300, LAWS OF FLORIDA

In the trial court and the district court below, Appellees argued, in effect, that SS1312A and 1668B were inextrically connected in unconstitutionally appropriating monies from the CARL Fund to the STA Fund and, consequently, both were void. The District Court of Appeal quite appropriately tested the constitutionality of the two provisions independently. Under that approach, the District Court found no basis on the face of the statutes to invalidate S1668B. In sum, if monies have been validly placed in the STA Fund by some source other than the unconstitutional S1312A appropriation from the CARL Fund, then those funds would remain available for the purposes stated in S1668B.

This status creates no uncertainty. If the STA Fund has monies available from some valid source, then S1668B provides an appropriation from that fund for the stated purposes. If the STA Fund possesses no funds (or inadequate funds), then S1668B's attempted appropriation is a mere nullity. The answers to these kinds of questions are available from the Comptroller and other executive officials. They can be propounded by a telephone call or correspondence and are not judicial questions. In addition, given the invalidity of § 1312A, Appellees are not proper parties to litigate matters pertaining solely to § 1668B.

In sum, the legal status of S1668B under the District Court of Appeal's opinion is not uncertain. Consequently, the plea to

refer the matter for clarification in the courts below should be denied.

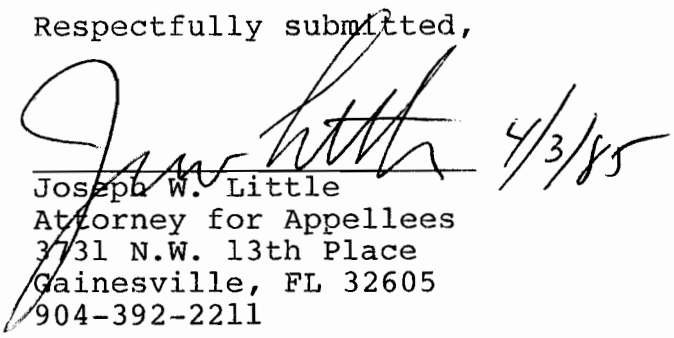
Conclusion

In Brown v. Firestone and the other cited cases this Court has emphatically asserted that Art. III §6 and 12, Fla. Const. are intended to and do protect the citizens of Florida against log rolling and other abusive legislative practices. Particularly, this Court has time and again invalidated legislative attempts to modify substantive law in appropriations bills. Brown and the other cases are clear, concrete and unequivocal on these points.

Despite this Court's plain admonitions, the legislature has attempted three times to invade the protected CARL Trust funds, silently amending pro tanto substantive criteria and procedures in the process, to make a state expenditure that the majority of the members of the legislature is apparently unwilling to fund by simple means of enacting a specific appropriation from the general fund. Appellees do not deny that the legislature has the power to enact an appropriation from the general fund to make the particular purchase. What Appellees do steadfastly deny is that the legislature may invade a protected trust fund in violation of Art. III, SS6 and 12, Fla. Const., which have been adopted by the people of Florida to place restraints upon the legislature in how it conducts the business of the people.

In sum, Appellees respectfully pray that this Honorable Court affirm the opinion of the District Court of Appeal, invaliding S1312A and ordering the Comptroller to ignore it and the Secretary of State to strike it from the statutes, and deny the other relief requested by appellants.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a correct and true copy of the foregoing Answer Brief was furnished by United States mail this 3 day of April, 1985, to David M. Wolpin, Esq., 776 N.E. 125th Street, North Miami, FL 33161 and Walter Meginniss, Esq., Department of Legal Affairs, Suite 1502, The Capitol, Tallahassee, FL 32301.

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