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

APPELLANT CITY'S INITIAL BRIEF

Respectfully submitted by:

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INITIAL BRIEF

COMES NOW Appellant, the CITY OF NORTH MIAMI, FLORIDA, (hereafter referred to as "Appellant City") and respectfully presents its initial brief to this Honorable Supreme Court.

A. STATEMENT OF THE CASE AND FACTS

(1) NATURE OF CASE

This is an appeal pursuant to Rule 9.110, Fla. R. App. P., by which Appellant City seeks review by this Supreme Court of the decision of the First District Court of Appeal declaring invalid a portion of a state statute, to-wit: appropriation item 1312A of Chapter 83-300, Laws of Florida (1983), the 1983 General Appropriations Act, which portion had provided for the appropriation of $8,500,000.00 to the Special Acquisition Trust Fund in connection with the State's purchase of the "Interama Lands" from the City.

The First District Court of Appeal in a decision dated December 28, 1984, and rendered January 30, 1985, reversed the September 29, 1983, Declaratory Judgment of the Trial Court and declared appropriation item 1312A invalid upon the basis that such appropriation failed to satisfy Florida Constitution Article III, Sec. 6 (title heading and textual content of amendment) and Sec. 12, (appropriations bill amending substantive law).

The Declaratory Judgment had been entered by the Circuit Court, Second Judicial Circuit, in and for Leon County, Florida, in an action initiated by Florida Defenders of the Environment, Inc., a Florida not-for profit corporation, Marjorie H. Carr, Helen Hood and Joseph W. Little, Taxpayers and Citizens of Florida, as Plaintiffs against Bob Graham,

Governor of Florida, Jim Smith, Attorney General, Bill Gunter, Treasurer and Insurance Commissioner, Gerald A. Lewis, Comptroller, Ralph Turlington, Commissioner of Education, George Firestone, Secretary of State, and Doyle Connor, Commissioner of Agriculture, Defendants. Plaintiffs in the trial court are now Appellees before this Supreme Court and will be referred to as "Appellees" throughout this Initial Brief.

The Appellant City intervened as a party defendant in the trial court proceedings, participated as an appellee in the District Court and now appeals to this Court. The State officers enumerated above have not appealed the District Court's decision and are referred to hereafter as "State Officers".

References to the Record on Appeal from the Trial Court to the First District will be made by the letter "R" followed by page number, for example (R).

The course of the proceedings in the Trial Court and then in the First District may be traced as described below.

(2) PROCEEDINGS IN TRIAL COURT

On July 27, 1983, Appellees filed their "Complaint for Declaratory Judgment, Expungement from Statutes, Injunctive Relief, and other Appropriate Relief" (R 1-3) in which they alleged that two sections of Chapter 83-300, Laws of Florida, the General Appropriation Act for the 1983-84 Fiscal Year, failed to meet constitutional standards and demanded that the trial court declare the sections unconstitutional and void (R 2-3). Targeted by Appellee for judicial invalidation were items 1312A and 1668B (R 2) which appear as specific appropriations in Chapter 83-300, Laws of Florida. Appellees attack was two-fold. First, it was alleged

that these specific appropriations directed expenditure of funds from the Conservation and Recreation Lands Trust Fund (CARL Fund) without complying with the procedures specified in Florida Statutes S253.023 and that the "...effect of them is to avoid the substantive provisions and procedures of Fla. Stat. S253.023, thereby making a pro tanto amendment of said Fla. Stat. S253.023 in violation of Article III, S12, 1968 Florida Constitution, to-wit, 'Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject,'..." (R 2)(Emphasis Added).

Appellees second attack entailed allegations that the specific appropriations constituted a substantive revision of Fla. Stat. S253.023 in violation of Article III, Sec. 6 1968 Florida Constitution requiring that every law shall embrace but one subject and matter properly connected therewith (R 2). Appellees further alleged that the title to the general appropriations bill did not express a revision to Chapter 253, Fla. Stat., 1981, and did not specify the portions to which the revision applied (R 2).

On August 17, 1983, the State Officers filed their Answer and Affirmative Defense (R 4-8), a Motion for Judgement on the Pleadings (R 9-10), and Memorandum of Law in Support of Defendant's Motion for Judgment on the Pleadings (R 11-18).

On September 14, 1983, the Appellant City filed its Answer (R 45-48), Motion for Judgment on the Pleadings and Notice of Adoption of Defendants Memorandum of Law. (R 49-50).

On September 2, 1983, Appellees filed their Motion for Judgment on the Pleadings (R 33) with a "Memorandum of Law in Opposition to Defendants' Motion for Judgment on the Pleadings and in Support for

Plaintiffs' Motion for Summary Judgment" (R 19-32). In their Motion for Judgment on the Pleadings, Appellees asserted that the only issues in the pleadings and supporting memoranda were issues of statutory construction and law (R 33).

The above-described Answers and supporting memoranda of the State Officers and Appellant City disputed Appellees argument and affirmatively asserted:

(1) That Section 253.023 provided for a continuing appropriation, as defined by Section 216.011(k);

(2) That Section 253.023 created a trust fund for the State to use to buy land for the State, to be funded from specified excise taxes;

(3) That a continuing appropriation may be altered or modified by a general appropriation bill without unlawfully amending general law;

(4) That Appellees view of the facts was incorrect, since Chapter 83-300 actually appropriated $35 million to the CARL fund and also appropriated $8.5 million for the special acquisition of the North Dade property. The $8.5 million appropriation thus did not take money "from" the Chapter 253 CARL fund, and hence did not "amend" Chapter 253. (R 4-8, 9-10, 11-18, 45-50).

Thus, the matter was presented to the trial court in the posture outlined above.

(3) TRIAL COURT'S VIEW

The Trial Court resolved the dispute which was before it by ruling that the Legislature had through Chapter 83-300 appropriated $43.5 million -- $35 million of the specified revenues for the CARL fund, and $8.5 million of the specified revenues for the North Dade acquisition. (R 57-61)

The court pointed out that Chapter 253 assigned 50% of the specified revenues to the CARL fund, but that funds in excess of $20 million "shall be transferred" to the general revenues. Thus the Trial Court also concluded that:

(1) Up to $20 million in specified revenues was a continuing appropriation for the CARL fund; (2) Chapter 83-300 appropriated $35,000,000 to the CARL fund; (3) the Legislature had also transferred $8.5 million of the same revenues to the North Miami acquisition; and (4) this was entirely proper since these funds were not "CARL funds" under Chapter 253, but rather general revenue funds available for use as the Legislature deemed fit. (R 57-61)

The pertinent part of paragraph (8) of the Trial Courts Declaratory Judgment recites that:

> "...The court construes the items of the 1983 General Appropriation Act, Chapter 83-300, Laws of Florida, which have been challenged in this cause to be as hereinbefore stated, and declares that they are not in conflict with Sections 6 or 12, Article III, of the Florida Constitution. The cases of Brown v. Firestone, Fla. 1980, 382 So. 2d 654, and Department of Education v. Lewis, Fla. 1982, 416 So. 2d 465, are not applicable to this case."

(4) PROCEDURES IN DISTRICT COURT

The Appellees perfected their appeal to the First District Court and filed their Initial Brief and Reply Brief. Appellant City and the State Officers each filed an Answer Brief.

All parties maintained essentially the same position on appeal that they had advocated below, except that Appellees raised, for the first time in their brief on appeal, additional factual matters as to the existence of a $38,314,468.25 CARL fund balance carryover to fiscal year 1983/84.

Subsequently to the issuance of the decision of the First District Court of Appeal, Appellant City filed a motion for rehearing, which was denied, and now pursues the instant appeal.

B. SUMMARY OF ARGUMENT

Appellant City respectfully asserts that the District Court's invalidation of budget appropriation 1312A in Chapter 83-300, Laws of Florida, is erroneous and is not mandated by Section 6 and 12 of Article III of the Florida Constitution.

Further Appellant City asserts that the Trial Court properly recognized that appropriation 1312A is a valid transfer of excess revenue under Sec. 253.023(2), F.S. and is not a substantive amendment within the sphere of Section 6 and 12 of Article III of the Florida Constitution.

Appellant City further asserts that the District Court erroneously relied on new factual matter, concerning carryover funds, raised by Appellees for the first time on appeal in the District Court, as a basis for characterization of the Trial Court analysis of the transfer as an unsupported assumption.

C. ARGUMENT AND AUTHORITIES

(1) Issue on Appeal

Whether the First District Court of Appeal errored in declaring invalid appropriation Item 1312A of Chapter 83-300, Laws of

Florida, upon the basis that said appropriation did not comport with Sections 6 and 12 of Article III of the Florida Constitution?

(2) Appellant's Position

Appellant City respectfully asserts that the Honorable District Court of Appeal committed reversible error by declaring Item 1312A of Chapter 83-300 invalid.

(3) Historical Background - Interama Land

It is appropriate to take note of part of the history of these troublesome "Interama Lands", which are the subject matter of this controversy, as a key to grasping the legislative intent and objective in adopting appropriation 1312A.

The Inter-American Center Authority was created in 1951 by Chapter 26614, Laws of Florida, 1951 as "an agency of the State of Florida". The Legislature stated that:

> ". . .the establishment of Inter-American Cultural and Trade Center in or near Miami, as a permanent year-round enterprise for the development of improved relations and increased trade with the republics of Latin American and other countries, will sustain employment and production, improve living standards, and contribute to national security and defense both in the United States and in other countries, as well as promoting a balanced foreign trade with Latin America;"

After failures and other statutory changes, (See for example, Ch. 69-138, Laws of Florida 1969, whereby the assets and the liabilities of the Authority were transferred to the County of Dade), on June 17, 1970, the Legislature adopted Chapter 70-108 whereby the earlier law, Chapter 69-138 was repealed; the Inter-American Center Authority was restored; and the following provisions in pertinent part were added to Chapter 554, F.S.:

"554.29 Allocation of property.-

(1) The authority shall allocate the use of real property within the center, and designate the specific locations, as follows:

(a) Three hundred fifty (350) acres contiguous to the boundary of the City of North Miami shall be transferred to the City of North Miami upon the providing by the City of North Miami to the authority, sufficient funds to satisfy the existing bonded indebtedness of the authority not to exceed twelve million dollars ($12,000,000.00). Said three hundred fifty (350) acres shall be utilized by the City of North Miami for recreational...without the prior approval of the authority, but under no circumstances shall said parcel be utilized for other than public purposes. . ."

"554.30 Specific revenue bond.-

(1) The authority shall issue a revenue bond to the City of North Miami in the amount provided by the City of North Miami to the authority for the purpose of satisfying the existing bonded indebtedness of the authority. Said bond shall be for a term not exceeding thirty (30) years and shall contain such provisions as are determined by the authority." (emphasis added)

The Authority bond was never issued and it was all over for the Inter-American Center Authority in 1975. In Chapter 75-131, Laws of Florida 1975, Chapter 554, F.S., "and all sections thereof as presently constituted" was repealed. The land, property and liabilities of the Inter-American Center Authority were transferred to the Board of Trustees of the Internal Improvement Trust Fund. S2 of Chapter 75-131 provided as follows"

"All real and personal property presently owned by the Inter-American Center Authority, pursuant to S554.072, Florida Statutes, or otherwise, and all existing liabilities of said Authority, are hereby transferred to the Board of Trustees of the Internal Improvement Trust Fund. However, the liability to the Florida Department of Transportation for road and bridge work is hereby waived and satisfied. Except as provided in Section 4, all obligations in connection with contracts and bond issues of the Authority shall be assumed and performed by the

> Trustees as provided by law or contract. No action shall be taken as a result of this act that will impair the obligations of any such contract or outstanding bonds."

Appellant City has taken the above brief detour into the lengthy history of the City's Interama Lands for the reason that the striking of appropriation item 1312A by the District Court has again resulted in a frustration of the State Legislature's intent and purpose of honoring the State's commitment to provide some relief to the City via the land sale transaction.

What is perhaps most upsetting to Appellant City is that, as the Trial Court recognized, Section 6 and 12 of Article III of the Florida Constitution do not mandate the harmful result reached by the District Court.

(4) District Courts Holding

The gist of the District Courts holding is that:

> "In departing from the statutory requirements of S253.023 appropriation 1312A thereby effects a tacit amendment of existing law which, as indicated by Brown, Lewis, and Gindl, supra, is prohibited by Art. III S12 of the Florida Constitution." (Footnote omitted)

The footnote to the above-quoted holding noted that:

> "To the extent that appropriation 1312A effects a tacit amendment of S253.023 it likewise fails to comport with Art. III S6, with regard to the required title heading and textual content of the amended section. . ."

(5) The Applicable Appropriation Statutes

The appropriation item invalidated from Chapter 83-300 by the District Court is item 1312A, set out below with pertinent non-invalidated provisions of Chapter 83-300:

"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"

Although Appellees challenged both appropriation 1312A and 1668B, the District Court found only 1312A to be unconstitutional.

In the second paragraph of footnote #4 of the District Court's Opinion, the Court pointed out:

> "Appropriation 1668B, however, has not been shown by appellants to be necessarily dependent on appropriation 1312A. No other challenge being presented, we thus do not find appropriation 1668B to be constitutionally affected by the invalidity of appropriation 1312A."

Appellant CITY can only presume that the basis for the above quoted footnote language, from the District Courts perspective, must be that the record on appeal does not disclose whether there are any funds in the Special Acquisition Trust Fund other than the funds provided by item 1312A.

(6) District Courts Opinion Creates Uncertainty

The District Court's judicial invalidation of appropriation 1312A, while leaving appropriation 1668B intact as constitutionally sound, raises new issues which impose further uncertainty upon the ultimate resolution of the Interama land matter. In light of the District Court's

Opinion, the CITY is uncertain as to whether the State can utilize appropriation 1668B to proceed to close the land acquisition transaction. The CITY is likewise uncertain as to whether the District Court's Opinion leaves the Trial Court's Declaratory Judgement intact as to the portion of the judgment holding that appropriation 1668B, the ultimate vehicle for the closing of the land transaction, is valid.

(7) The Constitutional Standards

The Florida Constitutional Standards under which the appropriation item 1312A were scrutinized by both the Trial Court and District Court, with opposite results, are in pertinent part as set forth below.

Article III of the Florida Constitution provides:

> "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 subjects."

(8) Conflict of Analysis

The Trial Court and the District Court recognized, in the words of the District Court, that:

> "Section 253.023, Florida Statutes, expresses a public policy to assure "the availability of public lands" for conservation and recreational purposes. The statute provides for the acquisition of designated lands, and Subsection 253.023(2) establishes a Conservation and Recreation Lands Trust Fund (CARL Fund) "to be used as a non-lapsing, revolving fund exclusively for the purposes specified."

The analysis employed by the Trial and District Courts conflicted, as follows:

The Trial Court properly reasoned that appropriation 1312A merely effects the transfer of an excess appropriation and does not impact the provisions of Subsection 253.023. In reaching that conclusion the Trial Court assumed that appropriation 1668A encompassed an excess credit. However, the District Court erroneously determined that such a Trial Court finding is a finding improperly based on the unsupported assumption that appropriation 1668A contained an excess credit available for transfer.

Appellant CITY most respectfully suggests that the Trial Court's assumption in reference to the $35,000,000.00 appropriation item 1668A was a reasonable judicial analysis of the situation in light of the yearly $20,000,000.00 cap of Subsection 253.023(2), F.S. It is only when one considers the additional factual matters, as raised by Appellees for the first time in their initial brief on appeal in the District Court as to the existence of a $38,314,468.25 CARL Fund balance carryover to fiscal year 1983/84, that the accuracy of the Trial Court's analysis may become questionable.

The vehicle used by Appellees to raise this fund carryover issue was an official looking copy of the "Florida Department of Natural Resources Combining Balance Sheet - Trust and Agency Funds, June 30, 1983" attached to Appellee's reply brief below.

Appellant City respectfully asserts that just as the Fourth District Court of Appeal specifically refused to consider a post judgment affidavit never presented to the Trial Court in the case of B.M.Z. Corp.

v. City of Oakland Park 404 So.2nd 133, 134 (Fla. 4th DCA 1981), the First District should have specifically refused to consider the above post judgment balance sheet, especially where, as here, Appellant City objected to the consideration of such new factual matter in its Answer Brief. See also Dober v. Worrell 401 So.2d 1322 (Fla. 1981).

Appellant CITY asserts that it is fundamentally unfair to Appellant and disruptive to the judicial process to allow the injection of such new and potentially material facts into the controversy subsequent to the Trial Court's adjudication. The error of utilizing these new facts as a means of destroying the Trial Court's assumption and analysis is augmented by the fact that Appellees suggested to the Trial Court, at page 7 of their September 1983 memorandum of law, that they would accept a construction based on just such an assumption.

9. Cases Relied On By District Court

In striking down the challenged appropriation 1312A, the District Court expressed its reliance on Brown v. Firestone 382 So.2d 654 (Fla. 1980), Gindl v. Dept. of Education 396 So.2d 1105 (Fla. 1979) and Dept. of Education v. Lewis, 416 So.2d 455 (Fla. 1982)

Appellant CITY asserts that the cases relied upon by the District Court do not require the conclusion reached, for the reason that, as the Trial Court observed:

> The fiscal transfer of the $8,500,000 from the Conservation and Recreation Lands Trust Fund to a "Special Acquisition Trust Fund" is a transfer to the new fund of only that portion of the CARL trust fund which is within the excess funds over the $20,000,000 minimum for CARL purchases specified in Subsection 253.023 and are made part of the General Revenue Fund, available for other legislative disposition.

> The construction thus placed upon the challenged items does not have the effect which plaintiffs have asserted. There is no substantive amendment to Subsection 253.023, and thus no violation of either Section 6 or Section 12 of Article III of the Florida Constitution." (Declaratory Judgment, paragraph 7, emphasis added.)

Appellant CITY does not dispute the important interests sought to be protected by Sections 6 and 12 of Article III of the State Constitution, nor does Appellant seek to turn aside the decisions of this Court interpreting said provisions. Instead, Appellant CITY simply asserts, as the Trial Court found, that the above cited constitutional provisions are not impacted by budget appropriation item 1312A. Item 1312A merely accomplished a transfer of excess funds from the revenues above the $20,000,000.00 a year CARL funding entitlement. Such transfer of excess revenue accomplished by appropriation 1312A is authorized by Sec. 253.023(2), F.S. and is not a substantive amendment within the sphere of sections 6 or 12 of Article III, Fla. Constitution.

Recently, in Orr v. Trask 10 F.L.W. 137 (Fla. 1985) this Florida Supreme Court on the basis of Article III, Sec. 12 Fla. Const., invalidated a budget proviso in the Appropriations Act, Chapter 83-300, Laws of Florida, restricting the number of Workmens Compensation judges, and held that the Legislature cannot abolish a statutory office through an appropriations act which amends or nullifies substantive law. The holding of Orr v. Trask does not in any way diminish the soundness of appropriation 1312A, which simply seeks to transfer excess funds and not to abolish a statutory provision.

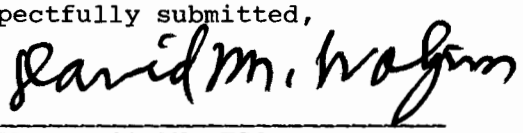
D. CONCLUSION

Appellant CITY most respectfully prays that the decision of the

District Court of Appeal be reversed and that judgment be rendered upholding appropriation item 1312A of Chapter 83-300, Laws of Florida.

Alternatively, Appellant CITY prays that the decision of the First District Court of Appeal be reversed and remanded to the Trial Court for a determination of the effect of the additional factual matters concerning the apparent $38,314,468.25 fund carryover upon the Trial Court's disposition of the controversy and for consideration by the Trial Court of whether appropriation 1668B will continue to exist as a real vehicle for completion of the Interama land acquisition even if appropriation 1312A must fail.

Respectfully submitted,



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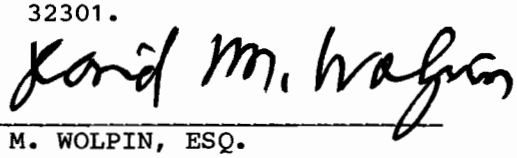
I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief was furnished by U.S. Mail this 15th day of March, 1985, to JOSEPH M. LITTLE, 3731 N.W. 13th Place, Gainesville, FL 32605, and WALTER MEGINNISS, Assistant Attorney General, Department of Legal Affairs, Suite 1502, The Capitol, Tallahassee, FL 32301.



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