O/a 9-10-85

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 REPLY BRIEF

Respectfully submitted by:

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City of North Miami

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APPELLANT'S REPLY BRIEF

Appellant, CITY OF NORTH MIAMI, pursuant to Rule 9.210(d), Fla.R.App.P. respectfully presents its Reply Brief and the attached Appendix in response to the Appellee's Answer Brief.

I. SUMMARY OF ARGUMENT

In striking down the challenged appropriation Item 1312A, the District Court erroneously relied 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 support the conclusion reached, for the reason that appropriation Item 1312A represents a permitted transfer of funds, not a substantive statutory amendment.

The Item 1312A transfer of funds from the excess of the $20,000,000.00 1983-1984 fiscal year C.A.R.L. Fund credit is not contrary to Sections 6 and 12 of Art. III, Fla. Constitution, and is authorized by Sec. 253.023(2), F.S.

II. No Substantive Amendment

Appellant CITY respectfully asserts that the primary deficiency in the statutory analysis advocated by Appellees and adopted by the District Court of Appeal is the erroneous conclusion that appropriation Item 1312A of Chapter 83-300, Laws of Florida, constitutes a substantive amendment of the procedural requirements and exclusive use provisions of Sec. 253.023, F.S. governing C.A.R.L. funds.

The Trial Court recognized that since Item 1312A did not work a substantive amendment to Sec. 253.023, the budget measure is simply not within the purview of Sections 6 and 12 of Article III of the Florida Constitution and that the teachings of the cases arising under those constitutional sections, which the District Court relied upon, are not applicable to the instant case.

The Trial Court astutely observed that:

> "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.)

III. Deficiency In District Court's Analysis

In rejecting the Trial Court's conclusion that item 1312A constitutes a proper transfer of excess funds authorized by Sec. 253.023(2), F.S. rather than an unlawful substantive modification of Sec. 253.023, F.S., the District Court stated at 462 So.2d, 61 that:

> "Furthermore, even were an excess tax credit involved, §253.023(2) expressly provides for the transfer thereof to the General Revenue Fund."
> (emphasis added.)

The above quotation reveals a very serious crack in the foundation of the District Court's determination of this matter. Implicitly, the District Court determined, as refelcted by such above quoted language, that even if the Trial Court was correct

that the $8,500,000.00 appropriation Item 1312A was an excess credit that could be transferred from the CARL Fund by a line item appropriation, the transfer would have to be first made to the General Revenue Fund rather than directly to the Special Acquisition Trust Fund which was the object of Item 1312A.

Appellant CITY asserts that contrary to the District Court's implicit analysis, the funds transferred from the C.A.R.L. Fund to the Special Acquisition Trust Fund by Item 1312A constituted, by operation of law, a portion of the General Revenue Fund, to the extent such funds were a credit in excess of the $20,000,000.00 1983/1984 fiscal year C.A.R.L. Fund annual cap. In short, making an intermediate stop into the formal body of the General Revenue Fund was not a prerequisite to tranfer of the excess credit to the Special Acquisition Trust Fund destination. This was recognized by the Trial Court in paragraph 7 of its Declaratory Judgment. (Appendix, Item #1)

Appellant CITY asserts that if the District Court had recognized that an excess credit is deemed to be general revenue funds and need not be first formally transferred to the General Revenue Fund, and that Item 1312A represented such an excess credit, the District Court would have been compelled to recognize that Section 6 and 12 of Art. III of our Florida Constitution are not applicable.

Appellant CITY suspects that the reason the District Court decided the controversy as it did was that the District Court determined that the additional factual matters, as raised by the instant 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 from fiscal year 1982/83 to fiscal year 1983-84, indicated that the funds transferred by Item 1312A were not from the excess of C.A.R.L. funds over the $20,000,000.00 annual credit for fiscal year 1983-84, but were instead from within the $20,000,000.00 annual credit to the C.A.R.L. Fund. While the District Court's Opinion

does not openly disclose this and does not openly rely upon such new factual matter improperly sought to be injected by Appellees, Appellant CITY respectfully asserts that such improper reliance by the District Court is the only plausible explanation for the District Court's erroneous rejection of the Trial Court's sound analysis.

It is interesting to note that the Appellees, having raised for the first time in the District Court of Appeal the fund carryover issue and having there utilized such "new evidence" to pursuade the District Court that the Trial Court commited error, now do not even mention the issue in their Answer Brief. Such silence does not remedy the harm done. Item #3 of the attached Appendix displays a portion of Appellees initial brief in the District Court (as appellant therein) where the issue of a carryover is stressed.

IV. No Raid on C.A.R.L. Fund

Appellant CITY asserts that there was no "raid" on the statutory C.A.R.L. funds as contended by Appellees at page 2 and 3 of their Answer Brief. The First District recognized at 462 So.2d 61, footnote (3), that:

> "Section 253.023(2) provides that the CARL Fund shall be credited a percentage of mineral severance and production tax receipts, but limits such credit to $20 million per fiscal year, with the further provision that any excess shall be transferred to the General Revenue Fund." (emphasis added)

Further, contrary to Appellee's contentions, lapsed appropriations from prior legislative sessions are not before this Supreme Court, since this cause involves only the validity of Item 1312A of Chapter 83-300, Laws of Florida. The history of the Interama lands of the Appellant CITY, as outlined in

Appellant City's Initial Brief, demonstrate that it is very inappropriate to in any way characterize the Legislature's efforts to solve the Interama problem as a "raid" of the C.A.R.L. Fund. If anything has been raided, it is the City's treasury which has felt the burden of Interama for fifteen (15) years.

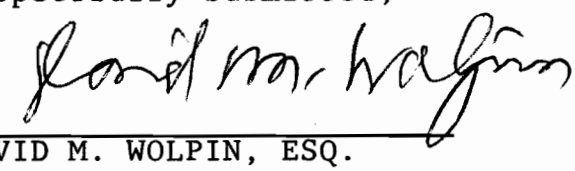
V. Conclusion

The District Courts' analysis does not pass muster under this Supreme Court's admonition that in deciding whether a statute is constitutional, every presumption is to be indulged in favor of the validity of the statute. Golden v. McCarty, 337 So.2d 388 (Fla. 1976).

Appellant CITY most respectfully prays that the decision of the Honorable First 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.

Respectfully submitted,



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City of North Miami

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief was furnished by U.S. Mail this 26th day of April, 1985, to JOSEPH M. LITTLE, 3731 N.W. 13th Place, Gainesville, FL 32605, and WALTER MEGINNISS, Assistant Attorney General, Department of Legal Affaris, Suite 1502, The Capitol, Tallahassee, FL 32301.

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