IN THE SUPREME COURT OF FLORIDA

Case No. 77,572

Bond Validation Appeal From
The Circuit Court of Leon County, Florida

PEOPLE AGAINST TAX REVENUE MISMANAGEMENT, INC.; DANNY MCDANIEL; JOEL DALAFAVE; and CHARLES SMITH,

Appellants,

v.

COUNTY OF LEON, FLORIDA,

Appellee.

ANSWER BRIEF OF APPELLEE COUNTY OF LEON, FLORIDA

Herbert W. A. Thiele (FBN 261327)
County Attorney
Leon County Courthouse
Room 502
Tallahassee, FL 32301
(904) 487-1008

Michael L. Rosen (FBN 243531)
Susan L. Turner (FBN 772097)
HOLLAND & KNIGHT
Post Office Drawer 810
Tallahassee, FL 32302
(904) 224-7000

Attorneys for Leon County

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STATEMENT OF THE CASE AND FACTS

The statement of the case and facts furnished in the initial brief of PEOPLE AGAINST TAX REVENUE MISMANAGEMENT, INC., et al. (together, "PATRM"), fails to inform the Court fully of the nature of the underlying controversy and the manner in which it has already been litigated. Eighteen months ago, on September 19, 1989, Leon County voters approved a local option one-cent sales tax that is intended to secure the Leon County, Florida, Sales Tax Revenue Bonds, Series 1991 (the "Bonds"). The Bonds, in an aggregate principal amount not exceeding $60,000,000, are being issued for the purpose of paying all or part of the cost of a new Leon County jail and other infrastructure costs for the City of Tallahassee and the COUNTY OF LEON, FLORIDA (the "County," or "Leon County").

PATRM is a Florida not for profit corporation organized "to research, scrutinize, and bring to public attention waste, fraud, and abuse in the government of the City of Tallahassee and Leon County." PATRM was incorporated on October 2, 1989, approximately two weeks after the sales tax referendum. The individual appellants constitute the board of directors of PATRM [A 1].[1]

On the same day that PATRM filed its articles of incorporation, it filed a complaint in Leon County Circuit

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[1] This brief is accompanied by an appendix in three parts: the Articles of Incorporation of PATRM and the transcript of its voluntary dismissal of its original suit are bound in with the brief itself, and herein designated "A __." The complete transcript of the bond validation hearing is separately bound in two volumes. References to the transcript are designated "T __."

Court, naming the Leon County Canvassing Board as defendant (Case No. 89-3673) [I.Br. App. K]. While the case was pending, PATRM failed to pursue formal discovery, propounding only one set of interrogatories and making no attempt to resolve the defendant's objections [T I-66, 67]. The Canvassing Board's motion for summary judgment was granted on the grounds that the Canvassing Board was not the proper party defendant to the allegations raised by PATRM's complaint. On appeal, the First District affirmed. PATRM v. Leon County Canvassing Board, 573 So.2d 31 (Fla. 1st DCA 1990).

When the Canvassing Board's motion for summary judgment was granted, PATRM amended its complaint to name the City of Tallahassee and Leon County as defendants. 573 So.2d at 33. On the morning the case was called for trial, PATRM took a voluntary dismissal [T I-31; A 5]. Nevertheless, at the bond validation hearing, PATRM sought (unsuccessfully) to consolidate the dismissed action with the bond validation [I.Br. App. H].

The Canvassing Board cases generated a petition for prohibition filed by PATRM before the First District, directed to Judge Reynolds, but otherwise very similar to the petition for prohibition this Court recently denied in PATRM v. Sauls, No. 77,411 (Fla. Feb. 22, 1991). The First District denied the first petition. PATRM v. Reynolds, 571 So.2d 493 (Fla. 1st DCA 1990).

SUMMARY OF THE ARGUMENT

PATRM is attempting to gain a second appeal before this Court on issues already determined adversely to PATRM by the First District Court of Appeal. PATRM seeks another opportunity to litigate its election contest against the Leon County Canvassing Board, but its attempt must be rejected because the First District's decision on that issue became final and PATRM failed to timely invoke the jurisdiction of this Court for further review. In addition, PATRM is not entitled to relief against an entity that is not a party to this appeal.

PATRM complains that the conduct of the bond validation hearing was improper, because PATRM was not prepared to litigate its challenge fully at that time, but the record reveals that Leon County complied with all statutory requirements for notice of the hearing. The statute, the order to show cause, and the published notice all gave express notice that the hearing would encompass all questions of law and fact. PATRM's state of unpreparedness was exclusively within its own control, and it has failed to demonstrate any basis to reverse the judgment validating the Bonds.

PATRM argues that Leon County did not have standing to litigate the election contest issues, but again runs afoul of the statutory requirement that all factual and legal issues are to be resolved with finality in the bond validation proceeding. Leon County, as the issuer of the Bonds, was required by statute to be the party plaintiff. PATRM raised its election contest allegations as an affirmative defense. Ironically, PATRM

overlooks the limits to its own standing. It is a private organization, and does not represent the public. The public approved the sales tax and supported validation of the Bonds, but PATRM seeks to disenfranchise the voters and controvert the will of the people. PATRM's attempts are in violation of the fundamental principle that the will of the people must be given effect.

PATRM also argues that published notice of the bond validation hearing was defective for failure to include express notice of the substance of PATRM's challenges. However, PATRM offers no authority that would impose such a requirement. Due process requires the giving of notice and an opportunity to be heard, which are an integral part of Florida's bond validation statute. It is undisputed that Leon County complied fully with the statutory requirements, and thus PATRM has failed to demonstrate reversible error in the notice of the bond validation hearing.

On the merits of its election contest allegations, PATRM attempts to re-argue the sufficiency of its evidence. Such an attempt violates the fundamental principle that the trier of fact is the exclusive arbiter of the weight of the evidence. After hearing the testimony and considering the evidence, the trial court specifically ruled that the sales tax referendum and all other proceedings had in connection with the issuance of the Bonds were free of the irregularities asserted by PATRM. The record reflects competent, substantial evidence in support of the

trial judge's findings, which are entitled to a presumption of correctness before this Court.

Finally, PATRM once again argues that the trial judge and all judges of the Second Judicial Circuit should be disqualified from presiding over the bond validation proceeding. These arguments have already been raised and rejected both by this Court and by the First District. PATRM has failed to demonstrate any basis for revisiting or reversing those decisions.

ARGUMENT

Florida's bond validation statute governs the procedures for conduct of bond validation hearings, and mandates that such a proceeding be tried and final judgment rendered with the "least possible delay." §75.07, Fla. Stat. (1989). The scope of judicial review of a bond validation is limited to the issuer's authority to issue the bonds, the legality of the purpose of the bonds, and compliance with the requirements of law. Risher v. Town of Inglis, 522 So.2d 355, 356 (Fla. 1988). At the hearing, the court is required to decide all questions of law and fact necessary to determine the action and reach a final judgment. §75.07, Fla. Stat. (1989). Of necessity, the court's review extends to the underlying sources of repayment and security for the bonds. See State v. School Board of Sarasota County, 561 So.2d 549 (Fla. 1990).

The public interest in a prompt resolution of a bond validation hearing is likewise an important factor in an election contest:

> As to this type litigation there is a public interest in promptness and finality of decision.

Kinzel v. City of North Miami, 212 So.2d 327, 328 (Fla. 3d DCA 1968). Despite the public interest, PATRM has continuously since its post-referendum incorporation filed a series of lawsuits and original appellate proceedings seeking to invalidate the sales tax that the voters of Leon County approved, and seeking through that election challenge to invalidate the Bonds and halt preparations for construction of the new Leon County

jail. In the course of all its litigation, PATRM has failed to pursue any formal discovery against named defendants, confining its preparation to public records research designed to support its attempts to disqualify every judge residing in Leon County. Every trial court proceeding has been marked by delay and devoid of merit, and the bond validation is no different. PATRM's various arguments are all demonstrably meritless.

ISSUE I

THE FORM AND CONDUCT OF THE BOND VALIDATION PROCEEDING WERE PROPER.

PATRM initially argues that the bond validation procedure followed in this case "fails on two grounds," because "it did not fairly accomodate [sic] the substantial issues of fact at stake," and because the Leon County Canvassing Board was not the party defendant [I.Br. 7]. In essence, PATRM's argument that it should be entitled to litigate its claims in the context of a full-blown election contest proceeding, with the Canvassing Board as the sole defendant, is simply an attempt to have this Court revisit an issue that PATRM has already litigated and lost.

The first of PATRM's numerous proceedings directed against the sales tax referendum was an election contest suit filed in Circuit Court against the Leon County Canvassing Board. After the suit had been pending for eight months, the trial court granted the Canvassing Board's motion for summary judgment, ruling that the Canvassing Board was not the proper party defendant to the suit. Under section 102.168, Florida Statutes (1987), the Canvassing Board would have been a proper party

defendant to a suit alleging fraud or error in balloting or counting, but because PATRM made no such allegations, the suit was dismissed.[2] PATRM timely appealed the judgment of dismissal, and the First District affirmed. PATRM v. Leon County Canvassing Board, 573 So.2d 31 (Fla. 1st DCA 1990).

That appellate decision became final upon denial of PATRM's motion for rehearing on December 18, 1990. The last day to invoke the discretionary jurisdiction of this Court has long since passed, and PATRM elected not to seek further review. PATRM is improperly attempting to use this proceeding as a vehicle to circumvent the finality of the adverse judgment and to secure a second appeal before this Court, in which PATRM seeks relief against an entity that is not even a party to these proceedings. Therefore, all of PATRM's arguments suggesting that this bond validation proceeding was defective because PATRM's prior suit against the Canvassing Board failed should be rejected as untimely and not properly a part of this appeal [I.Br. 11-16].

PATRM's remaining argument under Issue I asserts that the bond validation procedure itself was improper because of the lack of any prior notice by the court that the show cause hearing would be the final hearing and trial [I.Br. 9]. Apparently, PATRM contends that it was entitled to merely appear at the hearing and be granted a later hearing date and an intervening

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[2] PATRM then named the City of Tallahassee and Leon County as the defendants, but voluntarily dismissed that suit in open court on the morning it was called for trial [A 5]. By doing so, PATRM itself undermined the public interest in obtaining a prompt and final disposition of the election contest. Kinzel v. City of North Miami, 212 So.2d 327, 328 (Fla. 3d DCA 1968).

delay during which it would ostensibly have better prepared its case. PATRM offers no authority to support its assertion, but simply relies on its conclusory characterization of the hearing as a "summary device." The primary flaw in PATRM's argument, however, is that it seeks judicial relief from its own tactical decisions and lack of preparation.

The conduct of a bond validation hearing is a matter within the sound discretion of the trial court. The scope of inquiry extends to all questions of fact that were or might have been placed at issue in the proceeding. Lee v. Atlantic Coast Line R. Co., 141 Fla. 545, 194 So. 252, 266 (1940). PATRM's challenge to the legality of the underlying sales tax and the referendum by which it was adopted were directly relevant to the proceedings, were placed at issue in the complaint and in PATRM's answer, and were properly adjudicated. If PATRM had made a showing sufficient to entitle it to a continuance and a later hearing, then the judge could have entered such an order. Rianhard v. Port of Palm Beach District, 186 So.2d 503 (Fla. 1966).

The intervenors in Rianhard raised essentially the same argument that PATRM raises here, except that in Rianhard the hearing was limited to legal issues and no testimony was adduced. Faced with the argument that the trial court had erred, this Court rejected the argument in no uncertain terms:

> At this hearing after raising questions as to the legal sufficiency of the petition, the respondents in effect sought a continuance in order that they might have time thereafter to gather evidence and submit the same at a later hearing. However, there was a duly

> published notice in which a particular date was set for the validation hearing. The respondents intervenors were thereby notified as provided by law to be ready to present their objections to the validation including their testimony or other evidence of any. The court offered respondents opportunity to present their evidence but they made no effort then to submit any nor made any proffer whatever.
>
> The record does not disclose the circuit court in any way misled respondents in regard to the matter of subsequently affording them opportunity to present testimony or other evidence.

186 So.2d at 504 (emphasis added). Rianhard is on point and dispositive of PATRM's argument as to the scope of the hearing. See also Risher v. Town of Inglis, 522 So.2d 355, 356 (Fla. 1988) (trial court did not abuse discretion in refusing to continue bond validation hearing to allow intervenors to litigate other issues).

The procedure for validation of bonds is prescribed by Chapter 75, Florida Statutes. The issuing body must file a complaint in circuit court to determine its authority to issue bonds and the legality of all proceedings had in connection with the issue. §75.02, Fla. Stat. After such a complaint is filed, the trial court is required to issue an order directing any interested party "to appear at a designated time and place ... and show cause why the complaint should not be granted and the proceedings and bonds or certificates validated." §75.05, Fla. Stat. Notice is given, and any interested party must appear at or before the hearing.

The statute provides:

> At the hearing the court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment with the least possible delay.

§75.07, Fla. Stat. A judgment validating the bonds becomes final if no appeal is taken or if it is affirmed on appeal, and the finality of the proceeding is absolute:

> [S]uch judgment is forever conclusive as to all matters adjudicated against plaintiff and all parties affected thereby... .

§75.09, Fla. Stat. (emphasis added).

The legislative declaration that the judgment will be "forever conclusive" is a clear warning to those interested in a bond validation proceeding. The statute clearly explains that the bond validation hearing is the forum for challenging the bonds, and that the scope of the proceeding extends to all factual and legal issues.

In view of the clear language of the statute, PATRM's argument that notice of the scope and nature of the hearing was somewhat deficient is manifestly untenable. PATRM was on actual notice of the hearing, and had filed an answer and affirmative defenses. The status of PATRM's own preparation was a matter exclusively within its own control, and furnishes no basis for relief before this Court -- particularly in light of the fact that PATRM previously had an opportunity to develop and litigate its election contest claims but voluntarily declined to do so

when it could not obtain the defendant of its choosing.[3] No reversible error has been demonstrated.

ISSUE II

LEON COUNTY HAS STANDING TO LITIGATE ALL MATTERS WITHIN THE SCOPE OF THE BOND VALIDATION, INCLUDING PATRM'S ELECTION CHALLENGE.

PATRM's second argument is little more than a restatement of its first argument, and fails for the same reasons. PATRM again seeks to resurrect its prior unsuccessful election contest suit by asserting that only the Leon County Canvassing Board has standing to litigate the election contest issues [I.Br. 17, 20-22]. Inherent in PATRM's argument is its assumption that these issues were not properly a part of the bond validation proceeding initiated by Leon County.

The authorities presented in response to PATRM's first argument demonstrate that it was not only proper, but necessary, to adjudicate in the bond validation proceeding all questions of fact and law bearing on the validity of the bonds and the legality of the underlying proceedings. Leon County was designated by statute as the necessary party plaintiff. §75.02, Fla. Stat. (1989). PATRM itself raised the election contest issues in its affirmative defenses, and cannot now be heard to argue that they should not have been considered.

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[3] PATRM's persistence in attempting to litigate its claims against the Canvassing Board is based on its belief that the Canvassing Board may not defend the election as vigorously as the County. This reasoning renders hollow any claim that PATRM seeks to promote the "will of the people."

PATRM cites ten cases to illustrate the general applicability of standing principles to governmental entities [I.Br. 18-22], but offers no authority that is directly relevant here. Palm Beach County v. Hudspeth, 540 So.2d 147 (Fla. 4th DCA 1989), from which PATRM quotes, has no bearing on the question of standing here. In Hudspeth, the plaintiffs sought to enjoin the use of certain ballot language prior to an election, and to recover the costs of allegedly improper expenditures. 540 So.2d at 154. The Hudspeth plaintiffs were not attempting an after-the-fact voiding of a completed referendum. Most significantly in the context of PATRM's argument that Leon County has no standing to litigate the validity of the election, the defendant in Hudspeth was the county government. That fact alone, which is conveniently overlooked by PATRM, contradicts PATRM's argument.

PATRM also asserts that the voters are the real parties in interest [I.Br. 21-22]. It is not clear what point PATRM intends to make through this general statement, but apparently the thrust of the argument is that only the voters can litigate the validity of the referendum. As already noted, however, Leon County is the real party in interest as to the validity of its bond issues, and is required by statute to initiate validating litigation. The statute recognizes the public interest by making the public a party represented by the state attorney.

The public in this case asserted no ground to invalidate the bonds, which gives rise to the second problem with PATRM's argument: PATRM is not the public, and does not represent the interests of the public. PATRM is a collection of

private individuals asserting their personal views on the election. PATRM is in no position to claim any special status as a representative of the public. To the contrary, the position advanced by PATRM threatens to "mute the public voice," a result that this Court has recognized must be carefully avoided:

> [T]he primary consideration in an election contest is whether the will of the people has been effected.

Boardman v. Esteva, 323 So.2d 259, 269 (Fla. 1976). See also Bolden v. Potter, 452 So.2d 564, 566 (Fla. 1984) (courts should avoid unnecessarily disenfranchising voters, and should not invalidate election unless evidence clearly shows intentional fraud that adversely affects the sanctity of the ballot).

The people will be disenfranchised if PATRM has its way, because PATRM wants to orchestrate a suit against a selected defendant that PATRM believes may not be as vigilant in defending the election results. That potential result is the reason why the election contest statute and the bond validation statute strictly regulate the time for raising challenges to election results and bond validations. §102.168, Fla. Stat. (1989) (10 days after adjournment of last canvassing board); §§75.07 and 75.09, Fla. Stat. (bond validation is forever conclusive once final). PATRM's present challenge actually seeks to defeat the will of the people, and is untimely and meritless. The judgment of the trial court in rejecting PATRM's challenge should be affirmed.

ISSUE III

PUBLICATION OF NOTICE WAS ADEQUATE IN ALL RESPECTS.

PATRM argues that publication of notice of the bond validation hearing was "constitutionally inadequate" [I.Br. 24] for failure to include specific notice of PATRM's election contest claims, which "remained live." Yet PATRM makes no reference to Florida's bond validation statute or to any cases arising thereunder as support for its position. Instead, PATRM bases its argument on a series of purely speculative allegations that Leon County was acting under ulterior motives, and cites one Supreme Court case that neither stands for the proposition PATRM advances nor supports PATRM's position.

In Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 99 L.Ed.2d 565, 108 S.Ct. 1340 (1988), the issue was the constitutional sufficiency of an Oklahoma nonclaim statute that permitted notice of probate to be given to decedents' creditors solely by publication. The Supreme Court found that the constructive notice provision of the statute violated the due process clause of the Fourteenth Amendment because the creditors had a protectible intangible property interest affected by state action, and actual notice could be given to known or reasonably ascertainable creditors without undue burden. 99 L.Ed.2d at 574-75.

Contrary to PATRM's assertion, the Tulsa case does not hold that notice of the pending action must inform the public of

the actual or potential arguments of opposing parties.[4] Due process requires the giving of notice of the pendency of the action; the method of giving notice must be reasonable and adequate for the purpose at hand. Following the notice, there must be an opportunity for interested parties to be heard. Logan v. Zimmerman Brush Co., 455 U.S. 422, 71 L.Ed.2d 265, 273, 102 S.Ct. 1148 (1982). Florida's bond validation statute satisfies the requirements of due process, and has been expressly adjudicated to be constitutional. State v. Special Road and Bridge District, 127 Fla. 631, 173 So. 716 (1937).

Leon County complied with the statutory requirements. Section 75.06, Florida Statutes (Supp. 1990), requires publication of the show cause order in a newspaper in the affected county once each week for 2 consecutive weeks, beginning not less than twenty days before the scheduled hearing date. The record in this case clearly reflects compliance with the statutory requirements [I.Br. App. D]. The published order to show cause was, pursuant to statute, directed to the state, the county, all taxpayers, property owners, and citizens, in addition to PATRM.[5]

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[4] Such requirements for contents of a notice would be a practical impossibility where, as under the bond validation statute, the notice itself is designed to prompt any opponents to act. At the time of issuance of the show cause order in a typical case, the moving party would not yet be aware of the arguments of opponents, if any. PATRM's suggestion also raises a myriad of other logistical questions, such as which party determines the language to be used, or whether that issue itself must be separately litigated, or whether the opponent must establish a prima facie case before being entitled to inclusion in the notice.

[5] The very naming of PATRM gave actual notice of the existence of opposing parties. All filings related to the bond validation, and all of PATRM's other lawsuits, were a matter of

The notice in this case included the fact of pendency of the proceedings, the nature of the proceedings, and the specifics of the opportunity to be heard. No constitutional provision requires that the contents of the notice must identify or describe any potential grounds for challenging the validation of the bonds. Thus, there is no merit to PATRM's assertion that publication of notice was constitutionally inadequate.

ISSUE IV

PATRM FAILED TO MAKE A SHOWING SUFFICIENT TO INVALIDATE THE BONDS.

PATRM argues that the "quantum of facts and law" [I.Br. 25] it presented at the bond validation hearing should have been adjudicated sufficient to invalidate the bonds or to require further proceedings. In support of this argument, PATRM presents a litany of conclusory allegations -- the very same list that PATRM presented to the circuit court and to the First District Court of Appeal in PATRM's earlier suits against the Leon County Canvassing Board, the City of Tallahassee, and Leon County [I.Br. App. K].

PATRM's assertions regarding the sufficiency of its evidence must be tested against the fundamental principle that determining the weight of the evidence and the credibility of witnesses is the exclusive province of the trier of fact. Shaw v. Shaw, 334 So.2d 13, 16 (Fla. 1976). An appeals court should not substitute its judgment for that of the trier of fact so long as the record reflects competent, substantial evidence to support

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public record and available for inspection by any interested parties.

the trial court's finding. Markham v. Fogg, 348 So.2d 1122, 1126 (Fla. 1984). In the event of any conflict in the facts or evidence, the resolution reached by the trial judge in a nonjury case is not to be set aside on review unless it is "totally unsupported" by competent, substantial evidence. Clegg v. Chipola Aviation, Inc., 458 So.2d 1186, 1187 (Fla. 1st DCA 1984) (quoting from Concreform Systems, Inc. v. R.M. Hicks Construction Co., 433 So.2d 50 (Fla. 3d DCA 1983)).

PATRM did not list its allegations in its answer to the complaint [I.Br. App. C] or in its response to the order to show cause [I.Br. App. F], but incorporated the allegations by reference in both pleadings and attached to its response a copy of its prior complaint against the Canvassing Board [I.Br. App. K]. The trial judge took judicial notice of the contents of the file in PATRM's suit against the Canvassing Board, obtained a copy of the file during recess, and was furnished a certified copy at the hearing [T I-70; II-241]. PATRM participated actively in the bond validation hearing, presenting its evidence and questioning witnesses.

After hearing the evidence and testimony presented, the trial judge made a specific finding that "the expenses incurred by Leon County and the City of Tallahassee were valid, constitutional and lawful expenses which served to educate the electors of Leon County, Florida." [I.Br. App. M at 8.] The trial court further found that

> the evidence introduced by the defendants [PATRM] failed to prove any of the defendants' Affirmative Defenses, and that the Referendum ballot, the Referendum, and the

> expenses incurred by Leon County and the City of Tallahassee in connection with the Referendum were valid, constitutional and lawful, and were free of every irregularity complained of in People Against Tax Revenue Mismanagement, Inc., Danny McDaniel, Joel Dalafave and Charles Smith v. Leon County Canvassing Board, Leon County Circuit Court Case No. 89-3673.

[Id. at 9.]

PATRM now argues that its allegations were "supported in the record" [I.Br. 26], and proceeds from there to the conclusory assertion that the bonds were not properly validated [I.Br. 29]. Aside from failing to present any authority in support of its conclusion, PATRM fails to apply the correct standard of review. The question is not whether there was evidence to support PATRM's view, but whether the record reveals that the trial court's finding was supported by competent, substantial evidence.

With respect to the three specific examples emphasized in PATRM's brief, the record reveals competent, substantial evidence in support of the trial court's findings. Mr. Cuthbertson testified that the City undertook an informational campaign to educate voters and to publicize the upcoming referendum [I.Br. 27]. The so-called "campaign theme," "Take Charge: It's Your Future," was selected for the express reason that it encouraged voter turnout "without saying 'vote for.'" [Id. at 28.] Finally, the supervisor of elections testified that he did not, and was not authorized to, investigate or draw any conclusions about alleged election law violations [I.Br. 29]. PATRM presented no other evidence of an alleged violation.

These three examples that PATRM selected for inclusion in its initial brief illustrate that there is record support for each of the trial judge's findings. In addition, the testimony of Leon County Commissioner Gayle Nelson and public information officer Catherine Sportelli directly refutes PATRM's allegations of wrongdoing. Commissioner Nelson, who chaired the commission at the time of the sales tax referendum that PATRM now challenges, testified repeatedly that the County's efforts were directed to informing the public and encouraging voter turnout. In fact, the referendum was rescheduled from May to September for the express purpose of furnishing the public more detailed information [T-143]. In addition, Commissioner Nelson testified that she undertook to revise an advertisement in order to be sure it was neutral [I-108].

Ms. Sportelli was, at the time of preparations for the referendum, the newly hired public information officer. She testified that, of her own initiative, working evenings at home on her own computer, she compiled information and her ideas on the sales tax referendum, in a manner similar to what she had done in her prior private sector consulting job. However, when she distributed her ideas to the commissioners, she realized the private sector approach was unacceptable:

> Given the individual conversations it became abundantly clear to me rather quickly that this was not the way government operated relative to a referendum.

[T 166.] Ms. Sportelli testified that the commission never took up her compilation [Id.]. Commissioner Nelson also testified that she rejected the document, and added:

> This plan was never acted on by the Board of County Commission[er]s, never discussed by the Board of County Commissioners.

[T 90.]

Each example of PATRM's allegations reveals that, notwithstanding PATRM's self-serving and conclusory view, the testimony and evidence was at least subject to varying interpretations and weight. The fact that the trial court drew conclusions contrary to those urged by PATRM is not fatal to the trial judge's findings. To the contrary, the record support for those findings means that the findings are entitled to a presumption of correctness upon appellate review. Applegate v. Barnett Bank, 377 So.2d 1150, 1152 (Fla. 1979). PATRM has not demonstrated that the findings were "totally unsupported," and therefore the judgment of the trial court should be affirmed.

ISSUE V

THE TRIAL JUDGE PROPERLY DENIED THE MOTION FOR DISQUALIFICATION.

Finally, PATRM again argues that Judge Sauls should have been disqualified from presiding over the bond validation proceedings because of his alleged ties to the firm that formerly represented the County, and his property interests in Leon County. In addition, PATRM raises for the first time a "new ground" directed to the judge's affidavit under section 38.02, Florida Statutes (1989). PATRM further argues that the entire judiciary of the Second Circuit should be disqualified because of their "extensive use and reliance upon" the jail facilities to be constructed with the proceeds of the bonds, on the strength of the sales tax.

These are the same arguments that this Court rejected in denying PATRM's Petition for Writ of Prohibition (Case No. 77,411), and that the First District rejected in PATRM v. Reynolds, 571 So.2d 493 (Fla. 1st DCA 1990). PATRM failed to invoke the jurisdiction of this Court after rendition of the First District's decision in Reynolds, and should not be permitted this belated opportunity to gain review of the same questions in this proceeding. One of the grounds raised, Judge Sauls' property interests, is expressly forbidden by statute to be a basis of disqualification. §75.14, Fla. Stat. (1989). The other grounds are equally meritless.

The so-called "new ground"[6] is not properly before this Court because, as PATRM concedes [I.Br. 30], it was not presented to and passed upon by the trial court. Even if it were properly before this Court, it must be rejected as totally meritless. PATRM asserts that the trial judge erred in passing upon the facts of the motion to disqualify, because the trial judge's affidavit recites that the motion "falsely suggests that the undersigned circuit judge is interested in the results of this lawsuit." [I.Br. E 2.] PATRM fails to reference the governing statute, section 38.02, which expressly requires a judge faced with a suggestion of interest in the result of a proceeding to make just such a recitation:

> [I]f he finds that the suggestion is false, he shall forthwith enter his order so

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[6] PATRM's "discovery" of a case decided 13 years ago does not constitute a "new" ground, because it could have been raised below.

> reciting and declaring himself to be qualified in the cause.

Judge Sauls complied with the statutory requirement, and cannot by so doing be said to have erred. PATRM's assertion to the contrary must be rejected.

CONCLUSION

PATRM has failed to demonstrate any reversible error in the form or substance of the bond validation hearing. The will of the public is clearly evidenced by the voters' approval of the sales tax and the taxpayers' support for the issuance of the Bonds, and that will must be given effect. PATRM, a small private organization pursuing its own agenda, does not speak for the public. In the eighteen months and half dozen legal proceedings since the sales tax referendum, PATRM has failed to prepare a case sufficient to sustain the allegations of its election contest. It has failed again on this appeal, and, there being no other opposition, the judgment validating the Bonds must be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by hand delivery to Kenneth Muszynski, 1704 W. Call St., B-2, Tallahassee, FL 32304, and to Elaine Ashley, Assistant State Attorney, Leon County Courthouse, Tallahasse, FL 32301, this 5th day of April, 1991.

Herbert W. A. Thiele (FBN 261327)
County Attorney
Leon County Courthouse
Room 502
Tallahassee, FL 32301
(904) 487-1008

Michael L. Rosen (FBN 243531)
Susan L. Turner (FBN 772097)
HOLLAND & KNIGHT
Post Office Drawer 810
Tallahassee, FL 32302
(904) 224-7000

Attorneys for Leon County

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