IN THE SUPREME COURT OF FLORIDA
CASE NO. 88,844

ALACHUA COUNTY, FLORIDA, a political subdivision of the State of Florida; and the CITY OF GAINESVILLE, an incorporated municipality within Alachua County, Florida,

Appellants,

vs.

DWIGHT ADAMS, individually, as a citizen and taxpayer of Alachua County, Florida,

Appellee.
_____/

REPLY BRIEF OF APPELLANTS ALACHUA COUNTY, FLORIDA AND THE CITY OF GAINESVILLE

On Appeal from the **First District Court** of **Appeal**
Case No, 96-00257

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I. INTRODUCTION.

The issues in this case are not complex and the County's presentation of them is not "specious" or "semantic," In fact, the issues in this case only become complicated because of the Appellee's misunderstanding of them.

First, the presumption that an act of the Florida Legislature is valid and constitutional attaches at all levels of the judiciary because "[i]t is no small matter for one branch of the government to annul the formal exercise by another of power committed to the latter." Greater Loretta Improvement Assoc. v. State ex rel. Boone, 234 So. 2d 665, 670 (Fla. 1970). Despite the ruling of the First District Court of Appeal below, Chapter 94-487, Laws of Florida, is still clothed with a presumption of constitutionality. On issues involving a district court of appeal's declaration that a state statute is unconstitutional, this Court remains the ultimate arbiter. See Art. V, § 3(b)(1), Fla. Const. See also Golden v. McCarty, 337 so. 2d 388, 389 (Fla. 1976) ("Every presumption is to be indulged in favor of the validity of a statute[.]") (emphasis added). This standard of review is not altered by the Appellee's citation of Videon v. Higgs, 72 So. 2d 396 (Fla. 1954), which merely reviewed a circuit court decision on an issue of fact.

In addition, the answer to the question of whether Chapter 94-487, Laws of Florida, violates Article VII, section l(a), Florida

Constitution, is simply no. Article VII, section 1(a) mandates that all "forms" of taxation -- other than state ad valorem taxes on real estate or tangible personal property -- shall be "preempted to the state except as provided by general law." Id. The meaning of this provision is provided by the plain language itself: a "form" of taxation is a type of taxation. An ad valorem property tax is a "form" of taxation, a sales tax is a "form" of taxation, an income tax is a "form" of taxation. Thus, the "form" of the Surtax at issue here must be provided by general law, and it is.

Furthermore, the answer to the question of whether Chapter 94-487, Laws of Florida, violates Article VII, section 9(a), Florida Constitution, is also simply no. This section authorizes cities and counties to levy ad valorem taxes and authorizes cites, counties, and school boards to "levy other **taxes"** by general law. The "levy" of taxes, other than city or county ad valorem taxes, must be authorized by general law. The Surtax at issue here is not a city or county ad valorem tax and thus its "levy" as any "other tax" must be provided by general law, and it is.

Clearly and plainly, these two constitutional provisions do not require that every detail must be provided by general law. The tax rate and the persons, objects or transactions taxed prescribe the "form" of the tax. Additionally, general law requirements for certain mechanical functions or more detailed requirements find their constitutional basis in Article III, section 11(a)(2), Florida Constitution. This section requires that the "assessment or collection of taxes for state or county purposes" cannot be

provided by special act. Again, the use of tax proceeds authorized and levied according to general law is not the same as the "assessment" or "collection" of taxes and may be expanded by a special act.[1] The mechanics relating to the "assessment or collection of taxes" are provided by section 212.055, Florida Statutes. The special act at issue does not even purport, much less expressly, address the mechanics of the Surtax. All Chapter 94-487 does is expand the uses of the Surtax proceeds; this impact does not offend Article III, section 11(a)(2), Florida Constitution.

Finally, while the Appellee contends that Article III, section 11(a)(2), Florida Constitution, has no bearing on this case, he never answers the question of why, then, that constitutional provision exists. If the Appellee's fundamental argument is correct -- that a "form" of taxation is defined by every detail associated with the tax -- then Article III, section 11(a)(2) has no function, The reason Article III, section 11(a)(2) exists is to prohibit special acts that relate to the assessment and collection of taxes, two subjects not contained in the phrase "forms of taxation." Chapter 94-487, Laws of Florida, does not either

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[1] The Appellee's attempt to dismiss the cases of State ex rel. Maxwell Hunter v. O'Quinn, 154 So. 166 (Fla. 1934), Kirkland v. Phillips, 106 So. 2d 909 (Fla. 1958), and Wilson v. Hillsboroush County Aviation Authority, 138 So. 2d 65 (Fla. 1962), as defining the language of Article III, section 11(a)(2), Florida Constitution, merely because these cases were decided before the 1968 constitutional revision, fails. Concededly, these cases are pre-1968 decisions but they construed the exact same language, "assessment and collection of taxes," in the exact same context of special, local laws; thus, they are precisely on point.

directly or indirectly do any of these things; all these details **are** provided, as required, by general law, section 212.055(2), Florida Statutes.

The Appellee attempts to avoid constitutional analysis of the plain language of the Constitution by labeling all disagreeable arguments as "specious." What the Appellee cannot avoid is that the plain language of these three constitutional provisions indicates that the County's interpretation is reasonable and logical. Clearly, the Florida Legislature thought the County's interpretation was reasonable and logical or it would not have enacted Chapter 94-487 nor Chapter 94-459, Laws of Florida, a special act pertaining to Clay County and the Surtax. Consequently, Chapter 94-487 is presumed to be valid and constitutional and unless the Appellee can, beyond all reasonable doubts, clearly demonstrate that Chapter 94-487 is flawed, any doubt must be resolved in favor of upholding the legislation,

II. THE LEGISLATIVE POWER OF THE FLORIDA LEGISLATURE INCLUDES THE POWER TO CHANGE THE USES OF A GENERAL LAW-AUTHORIZED TAX BY SPECIAL ACT.

A. **Chapter 94-487, Laws Of Florida,** Offends **Neither Article VII,** Section 1 **(a), Nor Article VII, Section** 9(a) **Of The Florida Constitution.**

The Appellee attempts to refute the County's argument that Chapter 94-487, Laws of Florida, does not offend Article VII of the Florida Constitution by asserting that all the characteristics of taxation must be detailed in general laws. The Appellee's

assertion is contrary to the plain language of Article VII, sections l(a) and 9(a) and provides no explanation for the existence of Article III, section 11(a)(2). When "the language is clear and not entirely unreasonable or illogical in its operation [the Court has] no power to go . . . in search of excuses to give a different meaning to the words used[.]" City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So. 2d 817, 822 (Fla. 1970) (Court construed another constitutional taxation provision: Article VIII, section l(h), Florida Constitution).

The Appellee attempts to support his assertion by posing a series of hypotheticals which he contends "easily repudiate[]" the County's position. Appellee's Answer Brief at 17. However, the Appellee's hypotheticals actually lend further support to the County's position.

In the first hypothetical posed to allegedly "repudiate" the County's position that the special act need not be enacted by general law, the Appellee queries whether a special act could, in a constitutional manner, increase the rate of the Surtax from one percent, as established in section 212.055(2)(a)(1), Florida Statutes, to two percent. Appellee's Answer Brief at 17-18. Clearly, no special act could alter or eliminate the percentage at which the Surtax was imposed because the establishment of the rate of the Surtax is inherent to its "form." Similarly, no special act could alter or eliminate the object of the Surtax (e.g., sales of tangible personal property) as the placement of the tax burden also defines the "form" of the tax.

The Appellee then hypothesizes on whether a special act could constitutionally alter three other "conditions" of the Surtax: (1) allow voter approval of the Surtax without first obtaining prior approval of its board of county commissioners or without obtaining prior uniform resolutions of the municipal governing bodies, as required by section 212.055(2)(a)(1); (2) allow a levy of the Surtax without prior voter approval in a referendum, as also required by section 212.055(2)(a)(1); or (3) allow a levy of the Surtax without identifying the projects to be funded, as required by section 212.055(2)(b). Appellee's Answer Brief at 18-19. The Appellee correctly responds to his own questions by indicating that, neither could the stated events take place in derogation of the statutory requirements, nor could a special act eliminate them. The Appellee's reasoning, however, is completely flawed. Although each of the requirements set forth in these three hypotheticals must be set forth in general law, they are not required to be in general law because they define the "form" of the tax or authorize its levy.

Rather, these conditions must be articulated in general law because of the limitations in Article III, section 11(a)(2), Florida Constitution. This provision prohibits any "special law or general law of local application pertaining to: . . .(2) assessment or collection of taxes for state or county purposes. . .." Id. This provision has been consistently interpreted to "proscribe only local enactments bearing upon the mechanics of tax assessment and collection[.]" Metropolitan Dade County v. Golden Nugget Group,

448 So. 2d 515, 521 (Fla. 3d DCA 1984), approved, 464 so. 2d 535 (Fla. 1985) (emphasis added). Clearly, each of the statutory requirements in the Appellee's latter three hypotheticals bear upon the "mechanics" of the assessment of the Surtax authorized by the general law provision of section 212.055(2), Florida Statutes. As such, they must be articulated in general law but not because of the mandate of Article VII, section 1(a) or section P(a), Florida Constitution.[2]

However, unlike the Appellee's hypotheticals, the uses of the Surtax proceeds can be changed by a special act even if that special act authorizes for the County a use which is wholly contradictory to that authorized for other counties by the general law provision. No constitutional provision limits the power of the Legislature to restrict or expand the uses of tax proceeds once the levy and the form of the tax has been authorized by general law. The uses of the Surtax proceeds do not relate to the "mechanics" of its assessment or collection and thus do not run afoul of Article III, section 11(a)(2), Florida Constitution, or any of the constitutional provision's other prohibited special act subject areas. To the extent general law tax authorizations provide details not required to be set forth in general law by Article III, section 11(a)(2), Florida Constitution, those details may indeed be further expanded or restricted for certain localities by special

[2] Again, if the Appellee is correct that all aspects of taxation require general law authorization as a constitutional mandate of Article VII, sections 1(a) and 9(a), Florida Constitution, what is the purpose of the special law limitation of Article III, section 11(a)(2), Florida Constitution?

law. Nothing in the cases or hypotheticals cited by the Appellee suggests otherwise.

Aside from the hypotheticals, the Appellee's two additional assertions as to why Chapter 94-487, Laws of Florida, is facially unconstitutional are equally unconvincing. First, the Appellee cites several cases[3] for the proposition that all taxes, other than city or county ad valorem taxes, must be authorized by general law. Appellee's Answer Brief at 10. The County agrees. Section 212.055, Florida Statutes, is the general law which authorizes the Surtax at issue here. Second, the Appellee cites several cases[4] for the proposition that the County may not do indirectly what it cannot do directly. Appellee's Answer Brief at 14-16. Again, the County agrees; but this argument lends no substantive assistance to the issues of this case.

B. The Appellee's Distinction Between The "Other Forms Of Taxation" Language Of Article VII, Section 1(a) And The "Other Taxes" Language Of Article VII, Section 9(a) Has No Significance Here.

Here, the Appellee attempts to expand the clear meaning of the phrase "forms of taxation" in Article VII, section l(a), Florida Constitution, based solely upon a minor difference in terminology

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[3] The Appellee cites the following: Citv of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1 (Fla. 1972); Florida Dept. of Educ. v. Glasser, 622 So. 2d 944 (Fla. 1993); and City of Port Orange v. State, 650 So. 2d 1 (Fla. 1994).

[4] The Appellee cites the following: Owens v. Fosdick, 13 So. 2d 700 (Fla. 1943); Lewis v. Mosley, 204 So. 2d 197 (Fla. 1967); and Dept. of Environ. Protection v. Millender, 666 So. 2d 882 (Fla. 1996).

in Article VII, section 9(a), Florida Constitution, the importance of which has no significance to this case. Thus, the Appellee has pointed out a distinction without a difference.[5]

The Appellee cites City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1 (Fla. 1972), as support for his argument.[6] The County in its Initial Brief, fully explored why Birdsong supports its position, and Appellee has done nothing in his Answer Brief to rebut that argument. In City of Tampa v. Birdsong, the Supreme Court struck the tax, or the "form of tax[]," because of a lack of general law authorization for it. This lack of general law authorization does not exist here and Birdsong thus provides the Appellee no support.

The case of Belcher Oil Company v. Dade County, 271 So, 2d 118 (Fla. 1972), also provides the Appellee no support even though Belcher Oil Company elaborates on the holding in Birdsong. In Belcher Oil Company, this Court determined the constitutionality of both a county ordinance imposing an excise tax on certain

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[5] The Appellee asserts that while Article VII, section 1(a) Florida Constitution, states that "[a]ll other forms of taxation shall be . . . provided by general law," the County "ignores" the more particularized and specific language in Article VII, section 9(a), Florida Constitution, that "[c]ounties may be authorized by general law . . . to levy other taxes." Appellee's Answer Brief at 21.

[6] The Appellee also attempts to downplay the significance of the State v. Sarasota County, 549 So. 2d 659 (Fla. 1989) and City of Tampa v. Carolina Freight Carriers Corp 529 so. 2d 324 (Fla. 2d DCA 1988), cases cited by the County'& its Initial Brief, arguing that neither dealt exhaustively with the Article VII constitutional provisions at issue here. These cases were cited merely to provide examples of other "forms of taxation" or kinds of "other taxes" which are constitutionally required to be set forth in general law.

enumerated public services and the enabling general law provision upon which it was based. The enabling statute spoke in mandatory terms, indicating that when a municipality chose to tax one of the described public utility services, its ordinance "shall impose a tax in the like amount" on the purchase of any utility service found to be in competition with the others taxed. Id. at 120.

Although this Court in Belcher Oil Company agreed with the lower court's approval of the statute and ordinance at issue there, and although this Court cited City of Tampa v. Birdsonq for the proposition that "municipalities may not impose a particular tax unless specifically authorized by general law[,]" this Court's holding was that Article VII, section 9(a), Florida Constitution, "authorized, not required" that cities or counties be able to levy taxes set forth in general law. Belcher Oil Company, 271 So. 2d at 122 (emphasis added). Thus, this Court concluded that statutory language, which appeared to mandate the taxation of any service found in competition with others taxed, must be construed to be permissive only. According to the Court, "Although the municipality must receive the authority to levy this tax on public utilities and services competitive thereto, from the Legislature, it has legislative discretion to determine what is competitive and whether, in fact, to impose such a tax." Id. at 123 (emphasis added).

By analogy to the issue presented in this case, while the County could not levy the Surtax without the authority given by the Florida Legislature in section 212.055(2), the Legislature has the

constitutional power to exercise legislative discretion here, through passage of a special act applicable only to a single county, to determine the uses for which the Surtax proceeds in that county may be used. The Appellee has not and cannot locate any constitutional limitation on this legislative power to adopt special acts as to uses of the proceeds of a tax authorized by general law. To the extent section 212.055(2) speaks in mandatory terms regarding the uses for the Surtax revenues, these terms, when they do not impact the actual authorization for the levy itself, must be viewed as permissive, subject to being changed by special act of the Legislature. Consequently, the case of Belcher Oil Company fully supports this analogy and nothing in either the Article VII, section l(a) "other forms of taxation" or the Article VII, section 9(a) "other taxes" language dictates otherwise.

The Appellee's second argument under this point appears to be that the "form of taxation" referred to in Article VII, section 1(a), Florida Constitution, must not be viewed simply as a sales surtax but as "a sales surtax to maintain and operate facilities," and the only circumstance under which the Legislature could have adopted Chapter 94-487, Laws of Florida, would have been if section 212.055(2), Florida Statutes, had been silent as to use. Appellee's Answer Brief at 21, 27-28. The "form of taxation" required by the Florida Constitution to be authorized by general law is of a broad, generic type. Ad valorem taxes, tourist development taxes, motor vehicle taxes, license taxes, excise taxes, and local option sales taxes are a few examples of "forms"

of taxation. Clearly, then, the "form" of taxation is defined by the object, the type, and the rate of the taxation (e.g., real property ad valorem, percentage of **sale** price for goods, percentage of rental price for hotel rooms, etc.). The use of **any tax** revenue does not define its form. For example, the revenues of many "forms" of taxation are used to provide general governmental services at the local and state levels. The use of the tax revenue for general services, however, provides no clue as to the types or "forms" of taxation which generated that revenue. Conversely, an examination of the object and type of taxation will provide answers as to the "form" of taxation at issue. The "form" of taxation at issue in Chapter 94-487, Laws of Florida, is a **sales** surtax, which is detailed, authorized, and identified in section 212.055, Florida Statutes, a general law.

C. Chapter 94-487, Laws Of Florida, Prevails Over Any Previously-Adopted General Law On The Use Of The Surtax Proceeds.

The Appellee unconvincingly asserts that one of the most simple rules of statutory construction has no application in this **case.** Florida recognizes the axiom that when a general law and a special act conflict, and the special act was adopted after the general law, the special act prevails. See Rowe v. Pinellas Sports Authority, 461 So. 2d 72, 77 (Fla. 1984) ("When a special act . . . and a general law conflict, the special act will prevail."); State ex rel. Johnson v. Vizzini, 227 So. 2d 205, 207 (Fla. 1969) ("Where a general act and a special act conflict, the latter prevails.");

and Town of Palm Beach v. Palm Beach Local 1866, 275 So. 2d 247, 249 (Fla. 1973) (generally, a special act will even prevail over a subsequently-enacted general law). Consequently, if the provisions of section 212.055, Florida Statutes, relating to the authorized uses of the Surtax proceeds, are deemed to conflict with Chapter 94-487, Laws of Florida, Chapter 94-487 will prevail over the conflicting restrictions of section 212.055(2) as a subsequently-adopted special act.

The case of Rowe v. Pinellas Sports Authority, 461 So. 2d 72 (Fla. 1984), despite the Appellee's assertions to the contrary, is on point here and supports the validity of Chapter 94-487, Laws of Florida. This Court, in a taxation context, said very simply that "[b]ecause section 8(c) of the PSA charter was enacted by subsequent special act, the authority for the pledging of tourist development tax revenues by the county to secure obligations issued by the PSA controls over any limitation imposed upon such a pledge" by the general law. 461 So. 2d at 77 (emphasis added). A pledge of taxation revenue is a use of taxation revenue and any alteration as to which governmental entity may pledge the revenue is a change in use of the revenue.

This change in the use of taxation revenue is precisely what Chapter 94-487, Laws of Florida, does. Consequently, any conflict between the special act and the general law on the issue of use should be resolved in favor of the special act.

CONCLUSION

As Chapter 94-487, Laws of Florida, is a lawfully-adopted special act of the Florida Legislature, which offends no provision of the Constitution, this Court should reverse the decision of the First District Court of Appeal, declaring Chapter 94-487 unconstitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Joseph W. Little, Esquire, 3731 Northwest 13th Place, Gainesville, Florida 32605, this 28th day of October, 1996.

ROBERT L. NABORS

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