IN THE SUPREME COURT OF FLORIDA
Case No. 90,223

Bond Validation Appeal From **A** Final Order
Of The Thirteenth Judicial Circuit,
Hillsborough County, Florida

WILLIAM **F. POE, SR.,**

Appellant, Cross-Appellee,

v.

HILLSBOROUGH COUNTY, CITY OF TAMPA, FLORIDA, and TAMPA SPORTS AUTHORITY,

Appellees , Cross-Appellants.

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INTRODUCTION

Hillsborough County, the City of Tampa, and the Tampa Sports Authority (collectively, the "Issuers"), appeal the trial court's refusal to validate bonds intended to fund construction of a new community stadium in Tampa. The new stadium will replace an aging stadium in need of $52 million in repairs and will enable the Tampa Bay area to keep its National Football League franchise, the Tampa Bay Buccaneers (the "Bucs"), for the next 30 years.

The trial judge refused to validate the bonds despite overwhelming evidence that the stadium project serves a paramount public purpose. The trial judge's ruling ignores:

- well-settled and nearly unanimous case law in Florida and in other jurisdictions that similar stadium projects serve a paramount public purpose;
- legislative findings on both the state and local level that constructing a new stadium and retaining a professional sports franchise serve a paramount public purpose;
- the decision of Hillsborough County voters to pass a referendum authorizing the construction of the stadium; and
- the trial court's own finding that the new stadium and the Bucs will have a positive economic impact of at least *$3 Billion* in the Tampa area over the next 30 years in addition to immeasurable intangible benefits.

In its final judgment the trial court recognized and recited these indicia of the public purposes served by this stadium project. However, the trial court erroneously concluded that one particular provision in the proposed stadium agreement between the Bucs and the Tampa Sports Authority was too favorable to the Bucs to allow the bonds to be validated. In so doing, the trial court went beyond its narrow task in bond validation proceedings. The Florida Constitution requires the court to determine whether the construction of the stadium and the retention of the Bucs in the Tampa area serves a paramount public purpose. In

making this decision, the trial court is required to defer to the decisions of state and local public officials unless their decisions were clearly erroneous. The trial court had no authority to second-guess elected public officials on the particulars of their negotiations with the Bucs. Although reasonable people might differ on the concessions that should be offered to keep a professional sports franchise from relocating, the wisdom of public officials as they make these difficult and controversial decisions is a matter for the voters, not the courts, to decide.

Here, elected officials were confronted with the potential loss of a business worth at least $3 billion to the future of their community, They struck their best deal to preserve those benefits to their constituents. Their efforts should not go for naught just because the trial court felt that the deal with the Bucs could have been marginally better.

The judgment of the trial court should be reversed and the bonds validated.

References to the Parties and Record

In this brief the Appellant/Cross-Appellee, William F. ("Bill") Poe, Sr. will be referred to as "Poe," and Appellees/Cross-Appellants, the City of Tampa, Hillsborough County and Tampa Sports Authority will be collectively referred to as the "Issuers. "

The Joint Appendix will be referred to by the symbol "JA" followed by the volume and page or exhibit number. The Supplement to Joint Appendix, filed by the Issuers in order to provide the Court a more complete record substitute, will be referenced as "SJA" followed by the tab and page number. A copy of the order on appeal is attached to Issuers' brief and referenced as "A" and page number. Exhibits are identified by the prefix "PX" for Issuers' Exhibits and "DX" for Poe's Exhibits. Poe's Initial Brief will be referred to as "Poe Br."

STATEMENT QF THE CASE

This appeal arises from two consolidated lower court actions, the Issuers' Complaint to validate a series of revenue bond issues intended to fund the construction of Tampa's new community stadium (the "Community Stadium"), and Poe's suit for injunctive relief and a declaration that the expenditure of funds and the incurrence of a debt to construct the Community Stadium violates the Florida Constitution. The consolidated cases resulted in a single judgment of the trial court refusing to validate the bonds.

STATEMENT QF THE FACTS

Although Poe embraces the trial court's decision on validation, his brief ignores the court's findings of fact which largely support the Issuers' case.[1] Instead, Poe resorts to a one-sided presentation of the facts overlooking the crucial point that the court below has already resolved any conflicts in the evidence. Thus, Issuers restate the facts to give the court the benefit of the competent substantial evidence upon which the trial court's factual findings were based. Where necessary and material, Issuers correct the many factual misstatements in Poe's brief.

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[1] The trial court's order, which rules in Poe's favor on the ultimate issue, is appended to this brief (A 1). Poe was clearly the prevailing party at the trial court level, from the standpoint of both cases, and if any appeal were to be taken, the Issuers were the parties to file such an appeal. Poe's premature notice upsets the normal appellate process. The Rules of Appellate Procedure clearly contemplate that an aggrieved party, one who does not prevail at the trial court level, is the appellant. If there are trial court rulings adverse to the appellee, the latter may raise these rulings by cross-appeal so that in the event that the appellant is successful and a new trial is mandated, such issues will have been resolved for use at the new trial. The points that Poe argues as appellant do not contest the court's judgment. Thus, even though the Issuers are the appellees, they are called upon to respond to an appellate brief that does not address any appealable issue and does nothing more than to request this Court to uphold the judgment of the trial court. Consequently, appellees are thrust in the anomalous position of filing an appellee's brief, and at the same time urging reversal of the trial court's judgment,

Background

Since 1976 the Bucs have played their home games in a stadium owned and operated by the Tampa Sports Authority (the "TSA") (JA III-367). TSA originally built the stadium, currently known as "Houlihan Stadium," in 1967 (JA VI-PX-32). Additional seating and luxury boxes were added in 1975 after the National Football League awarded the Bucs' franchise to Tampa. These changes were necessary to bring Tampa Stadium up to then-current NFL standards (JA XVI-PX-3).

The original stadium, as well as the improvements necessary to accommodate the Bucs, were financed by bond issues, all of which were validated without significant controversy. ***State v. Tampa Sports Auth.,*** 188 So. 2d 795 (Fla. 1966); ***Tampa Sports Auth. v. State,*** Case No. 75-800 (13th Cir. Hillsborough County, 1975); ***Tampa Sports Auth. v. State,*** Case No. 77-6456 (13th Circuit Hillsborough County, July 5, 1977). Poe, as the Mayor of Tampa, participated in the 1975 and 1977 bond financings relating to stadium improvements to benefit the Bucs. These bonds were backed by a pledge of non-ad valorem tax monies provided by the County and City (JA XVI-PX-31,32). Poe executed documents that found that the Bucs benefitted the economy both by providing tourism and generally promoting the image of the area, thereby serving a "commendable public purpose" (JA XVI-PX-31,32).

Now thirty years old, Houlihan Stadium needs significant repairs. Professional engineers engaged by TSA estimate that the required repairs will cost approximately $52 million (JA III-457), not including the cost of any upgrades or additional amenities that might

be added to the stadium (JA 111-457). As the trial court noted, these repairs would be necessary even if the Bucs left Tampa. (JA XVI-tab 38, p. 3)[2]

In 1995 the Bucs were sold to a new owner for approximately $192 million (JA I-48). During the negotiations with several possible purchasers, the new owner and other prospective bidders advised local public officials that the team required additional stadium-related revenue sources (such as luxury suites, club seats and the like) to remain financially competitive with other NFL teams. These bidders made clear that they intended to relocate if a new stadium were not constructed incorporating such amenities (JA V-675). The new owner reiterated this position after he acquired the team (JA V-676). These concerns regarding the BUCS' fiscal competitiveness were justified. The Bucs lost $60 million in 1995 and $33 million in 1996 playing in the existing stadium (JA 111-410). The trial court concluded that it was "not unreasonable" for local public officials to conclude that the Bucs would in fact relocate if a new stadium was not constructed (JA XVI-tab 38, p. 3; JA III-676,720).[3] This determination was based on the owner's announced intentions, proposals

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[2] Poe downplays these serious repairs, arguing that the existing stadium is not unsafe and can continue to be used in its present condition for several years. However, professional engineers described a host of major defects in the 30 year-old structure, including the falling of large chunks of concrete, as well as the spalling and cracking of the concrete slabs that make up the ramps, which pose a threat to fan safety (JA 111-444). In any event, within three years, a choice must be made between closing down the stadium or making substantial repairs. Poe also implies that the community investment tax could be used to repair the existing stadium. In fact, neither the investment tax nor the $2 million sales tax rebate provided by section 288.1162, Fla. Stat. (Supp. 1996) is available for that purpose. The referendum approved by the voters contemplated construction of a new stadium (JA V 713), and without a new stadium the Bucs will relocate, which renders the existing stadium ineligible to receive the State sales tax rebate.

[3] Poe minimizes the threat of relocation with several misstatements of the record. First, Poe implies that the Bucs would be responsible for the payment of the $11 million debt outstanding on the existing stadium bonds if they relocated. (Poe Br. at 3). In fact, Poe's own witness recognized that the Bucs would be required to pay debt service on the existing

the Bucs received from other cities (JA V-704) and the recent relocations experienced by Los Angeles, Oakland, St. Louis, Houston and Cleveland (JA VI-842, 843; JA VIII-1152).[4]

The Stadium Agreement

After considering the substantial repairs necessary for the existing stadium and determining that it could not be economically rehabilitated to provide the required revenue enhancing amenities the Bucs needed, Issuers made the decision to construct a new stadium (JA 1-66; II-244).[5] As a result, negotiations between the Issuers and the new owner of the Bucs commenced in the fall of 1995 and continued into 1996, culminating in an agreement dated August 28, 1996 (the "Stadium Agreement"), under which the TSA agreed to construct a new 65,000-seat community stadium at a cost of approximately $168.5 million to serve as the Bucs' home field and a $12 million training facility for the Bucs' use (JA XII-PX-12). The Stadium Agreement requires the Bucs to utilize the stadium for 30 years[6] and to pay the TSA a total of $3.5 million annually, of which $2 million is allocated to stadium rent, $1

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bonds for only 3 years (JA VIII-l 156). Poe also overstates by $20 million the additional fee that would be owed to the original owner of the Bucs if the Bucs relocate. Poe's argument regarding the $29 million relocation fee supposedly owed to the NFL is pure speculation (JA VIII 1152, 1155-56). Moreover, Poe's witness unfairly compared the initial proposals the Bucs received from Hollywood Park and Baltimore with the fully negotiated Stadium Agreement. Significantly, the witnesses omitted any reference to the concessions Baltimore made to the Browns to induce the team to abandon Cleveland.

[4] The Bucs' insistence on a new stadium is not unique. Testimony established that there are currently 12 new stadiums either under construction or in the preconstruction stage in NFL cities throughout the nation (JA VI-830).

[5] Poe's brief vastly inflates the value of the existing stadium to $80 million (Poe Br. at 3). In fact, the existing stadium is insured for $80 million, which represents replacement cost, not its appraised value (JA IV-616-17).

[6] Unlike the existing lease with the Bucs, the Stadium Agreement gives the TSA the right to specific performance if the Bucs attempt to relocate during the 30 year term.

million to practice facility rent and $500,000 as a fee for certain development rights granted to the Bucs with respect to stadium property (IA XII-PX-12).[7] The TSA will manage the stadium and realize an additional $1.93 million annually from a surcharge on tickets for Bucs games and other stadium events (JA XII-PX-12). A summary of the principal financial terms of the Stadium Agreement is appended to the Final Judgment entered by the trial court attached hereto at page A-l.

Public officials involved in the negotiating process and an NFL official testified that the Stadium Agreement compares favorably with recently negotiated leases relating to other NFL stadiums (JA 1-60, JA V-701, 718, JA VI-839-841). Although the club seating, luxury suites and other amenities of the new stadium are expected to yield $8 million to $16 million in additional revenue for the Bucs (JA III-416-417), testimony indicated that these provisions are not inconsistent with modern NFL leases being negotiated in the current competitive marketplace for NFL teams,' These modern NFL leases give most if not all stadium revenue to the team (JA V-701). These are precisely the additional revenue streams that all

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[7] Testimony established that the TSA was constrained from demanding greater rent by the private activity bond provisions of the Internal Revenue Code, which negates the tax exempt status of bonds if, subject to certain adjustments, private revenues (such as rent) exceed 10% of debt service (JA V-678-880,726). See, 26 U.S.C. 9141. Poe contends that the Bucs pay no part of the debt service on the bonds to be issued to fund construction of the new stadium (Poe Br. at 19). Although technically accurate, the Stadium Agreement does not prevent TSA from allocating the $3.5 million it will receive annually as rent from the Bucs and ticket surcharge revenue to debt service, If TSA had elected to do so, such revenue would fund approximately 40% of the debt service (JA IV-541, 575-576; JA XII-PX-12).

[8] Poe's brief inflates these revenue figures to $15-$23 million, ignoring the testimony of Bucs' general manager, Richard McKay. Poe's brief also vastly inflates the resulting economic benefit to the Bucs arguing that the Bucs will receive $40 million per season or $1.2 billion over the initial 30-year term of the lease. This figure is grossly misleading because a large portion of this projected revenue represents revenue from the sale of tickets to Bucs games. (JA IV-629).

of the serious prospective purchasers for the Bucs needed to remain competitive both financially and on the playing field (JA 111-369, 430; JA 11-675). Without these revenue streams, the Bucs have announced their intention to relocate to another city (JA V-676).[9]

The 2001 Super Bowl

As a direct result of the Issuers' commitment to construct a new stadium, the NFL has selected Tampa to host the Super Bowl in January, 2001 (JA 1-35-36; JA V-734-735).[10] A Senior Vice President of the NFL testified that without a new stadium, the staff of the NFL would not have recommended Tampa as a Super Bowl host (JA VI-837,85 1,852). This witness also testified that with a new state-of-the-art stadium he would recommend that additional Super Bowls be held in Tampa (JA V-839). If the new stadium is not built, it is likely that the 2001 Super Bowl will be awarded to another city and that Tampa will lose the opportunity to host future Super Bowls (JA V-850-52).

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[9] Poe also inflates the operating and maintenance ("O&M") deficit the Tampa Sports Authority will incur as a result of the Stadium Agreement. Poe argues that TSA will incur an immediate O&M deficit of $2 million per year, increasing each year by the rate of inflation (Poe Br. at 14). In fact, by drawing on an O&M reserve fund, the County projects no O&M deficit for at least 25 years (JA IV-557, 574-75, 583, 631, 634). Poe makes several other misstatements regarding the Stadium Agreement. He states that the Tampa Sports Authority does not expect to earn any revenues from the new stadium for three to five years. (Poe Br. at p. 16). This is patently incorrect. Assuming the stadium is completed on time, the TSA will begin realizing ticket surcharges immediately, Poe also inflates dramatically the development rights ceded to the Bucs (implying that the public officials gave away these rights without any consideration of their value) (Poe Br. at 17). In fact, these development rights are worth no more than $2 million because of the requirement that the Bucs preserve no less than 9,000 parking spaces (JA VI-856-58). Finally, Poe inflates the bond indebtedness to $400 million even though the maximum principal amount of the bond issues is $204.5 million (JA IV-530, 541).

[10] Not surprisingly, Poe carefully avoids any mention of the Super Bowl that the new stadium will bring to Tampa, but nevertheless claims that costs associated with hosting the event are wasteful (Poe Br. at 18), ignoring the estimated $300 million of economic benefits and world-wide media exposure that a community receives from a Super Bowl (JA VI-819, 926, 952-54).

Other Stadium Events

In addition to hosting 10 Bucs games annually and one or more Super Bowls, the new stadium will host more than 30 other major events each year, including Tampa Bay Mutiny professional soccer games, University of South Florida intercollegiate football games, high school football games, the annual Outback Bowl football game, equestrian events, tractor pulls, motor-cross events and concerts (JA IV-543-544). Witnesses testified, and the trial court found, that if a new stadium is not constructed, some of these other events currently held in Houlihan Stadium might relocate to competing state-of-the-art facilities -- even if the $52 million of repairs to Houlihan Stadium recommended by professional engineers are made. (JA 11-345, JA V-715, JA XVI-tab 38, p.3).[11]

The Proposed Stadium Bonds

To finance construction of the new stadium, the TSA proposes to issue up to $33 million in revenue bonds supported by state sales tax monies,[12] $11.5 million in revenue bonds supported by the local option fourth-cent tourist development tax and $160 million in revenue bonds supported by approximately 11.7 percent of revenues to be realized from a county-wide local option half-cent sales tax (the "Community Investment Tax") (JA 1-44, JA IV-530). The Community Investment Tax is designed to fund school construction, criminal justice projects and numerous other capital projects within Hillsborough County, the City of Tampa, Plant City and Temple Terrace (JA 1-45, JA XIV-PX-19). The tax was approved by

[11] Poe's claim that this finding is without support overlooks the testimony cited in the text by Ron Barton, head of KPMG Peat Marwick's national sports division and Hillsborough County's Administrator Dan Kleman.

[12] The State has approved an application for the allocation of $2 million annually from State sales tax collections to fund construction of the new stadium pursuant to section 288.1162, Fla. Stat. (Supp. 1996) (JA V-697, JA XIV-PX 23).

53% of the voters in a widely publicized referendum held in September, 1996 (JA V-692) -- a referendum that Poe tried unsuccessfully to stop through a lawsuit that culminated in a judicial finding (which Poe did not appeal) that the bonds served a paramount public purpose (JA XVI, tab 37).[13] The evidence established that, based on historical trends, tourists will pay approximately 25 percent of the Community Investment Tax, representing more than twice the amount needed to fund the new stadium (JA 1-45). Neither the full faith and credit nor the taxing power of the Issuers is pledged for the repayment of the bonds.

Governmental Approvals

The bonds are to be issued by the TSA pursuant to the authorizations contained in its enabling legislation, Chapter 96-520, Laws of Florida (1996) (the "TSA Enabling Act").[14] The governing body of the TSA has adopted a resolution authorizing the proposed bond issues, the governing body of the County has adopted interlocal agreements relating to the stadium financing, and the governing bodies of the TSA and City have each adopted resolutions approving the interlocal agreements and other documents relating to the stadium financing (JA XIII-13,4; JA XIV-21,22,26,28). As discussed infra, such resolutions include express findings that the new stadium serves a valid public purpose. In addition, sections 196.012(6) and 288.1162, Florida Statutes, and the TSA Enabling Act contain express legislative determinations that sports facilities and retaining professional sports franchises serve a public purpose.

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[13] A referendum seeking approval of a local option half-cent sales tax solely for the purpose of funding school construction and public safety projects was defeated by a wide margin in 1995 (JA V-682-683).

[14] Section 6 of the TSA Enabling Act expressly authorizes TSA to issue revenue bonds to provide monies for achieving its purposes, including the cost of constructing and equipping sports facilities.

Public Purpose - Economic Benefits

The trial court found that even using the most conservative forecasts, the stadium and the Bucs will have a $3 billion economic impact on the community over the 30 year life of the Stadium Agreement before any adjustments for future inflation (JA XVI tab 38, p. 7). The Issuers' expert witnesses testified that the Bucs provide an annual economic benefit to the Tampa Bay economy ranging from a high of $183 million (JA 1-130-3 1) to a low of $83 million exclusive of inflation (JA 11-281-282). Other experts testified that the Super Bowl scheduled to be held in the new stadium in the year 2001 can be expected to yield an economic benefit in excess of $300 million (JA VI-926, 952-54) and the stadium construction project itself should provide an economic benefit to the local economy of approximately $263 million, given the projected use of local labor and materials (JA II-302).[15]

The court rejected the conflicting testimony of Poe's experts who opined that neither the Bucs nor the Super Bowl provide any measurable economic benefit to the local economy (JA VII-1073; JA VIII-1184,1887,1997; JA IX-1314). None of Poe's experts was able to present financial data that directly contradicted the data on which Issuers' experts relied in compiling their economic forecasts (JA VIII-1136; JA IX-1352; JA XVI-tab 38, p.7). After weighing the testimony, the trial Court found Issuers' experts' forecasts were more credible (JA XVI-tab 38).[16] The trial court determined that the local community will realize

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[15] Using the higher of these expert opinions yields a total economic benefit of nearly $6 billion over the 30 year term of the Stadium Agreement, exclusive of inflation.

[16] The quality of Poe's expert witness testimony is demonstrated by testimony offered by Professor Porter that the 1984 and 1991 Super Bowls held in Tampa had no measurable impact on the local economy. Besides defying common sense, this testimony was based on significant errors in analysis. Poe fails to disclose that Professor Porter's studies were discredited because he inadvertently used December sales tax data instead of the January date when the Super Bowls were held, used the wrong consumer price index throughout his study,

substantial economic benefits from the continued presence of the Bucs and from hosting the 2001 Super Bowl, and that over time these benefits can be expected to far exceed the cost of the new stadium (JA XVI-38, p.7).[17]

Public Purpose - Intangible Benefits

In addition to the quantifiable economic benefits described above, the trial court found that the Bucs made a substantial intangible contribution to the Tampa Bay area. (JA XVI-tab 38, p. 8). This finding was supported by testimony from the Mayor of Tampa, the Hillsborough County Administrator, the Past President of the Greater Tampa Chamber of Commerce, the President of the Tampa/Hi&borough County Convention Association and others regarding the immeasurable economic benefits realized as a result of national media exposure in newspapers and from televised Bucs games and Super Bowls, including the value of such exposure in helping to attract tourists and new businesses to the Tampa Bay area (JA I-34,35,62; JA 11-249-50; JA V-685,696,707,730,743,822). In addition, several witnesses testified that without an NFL team, the community would find it more difficult to compete with other cities for new business (JA I-34,35,62,137; JA II-249,250; JA V-685,686,730).

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and failed to take into account numerous changes in the sales tax base over the years due to legislative amendments, thereby corrupting his entire study (JA VIII- 1199-1200, 1208- 10; JA X-1405-06). In fact, the Super Bowl increased occupancy rates by 20 percent and hotel revenues by 20 to 25 percent between January 1990 and January 1991 when the Super Bowl was held in Tampa (JA V-741, 781). As this court is well aware, the Super Bowl is the biggest media event in the world and the most sought-after prize in the tourist industry as an economic impact generator (JA V-822). Poe also relied on a regression study performed by Professor Baade, even though in a recent journal article the professor himself admitted that his conclusions were "highly tenuous" given the paucity of available data. (JA IX-1290).

[17] With the new stadium, the Tampa community will be in a favorable position to attract additional Super Bowls beyond the 2001 Super Bowl provisionally awarded to Tampa (JA V-839). The economic impact from these future Super Bowls would result in a financial impact over and above the estimates presented by the Issuers' economic experts.

The trial court found this testimony to be credible (JA XVI-tab 38. p. 8). The trial court also found that the Bucs instill civic pride and camaraderie into the community and that Bucs games and other stadium events serve a commendable public purpose by enhancing the community's image on a nationwide basis and providing recreation, entertainment and cultural activities to its citizens (JA XVI-tab 38, p.8).

Final Judgment and Anneal

On March 21, 1997 the trial court entered the final judgment that is the subject of this appeal (A 1; JA VXI-tab 38). Despite its recognition of the economic impact of the Bucs, the court refused to validate the bonds based on one provision in the Stadium Agreement. The court was offended by the clause allocating to the Bucs the first $2 million dollars in net annual revenues from non-Buts events. Except for this one provision, the court held that the new stadium project serves a paramount public purpose. The court's Order denying rehearing reiterates that the court would "validate the bonds if an agreement can be made between the Bucs, the City of Tampa, Hillsborough County and the Tampa Sports Authority to revise paragraph 10 of the Stadium Agreement to delete the clause that grants the right to the Bucs to receive the first $2 million per year from non-Buts events" (JA XVI-tab 39).

On March 31, 1997 Poe filed an appeal from the Order of the trial court. Poe's appeal was purely tactical, designed to prevent the trial court from considering any modifications that the TSA might make in its lease with the Bucs in light of the court's ruling. Poe had no legitimate basis to file an appeal because he was not aggrieved by the trial court's ruling, which granted him all the relief he sought. Issuers filed their cross-appeal on April 3, 1997. Shortly thereafter, this Court entered its order dramatically accelerating the briefing and oral argument of this case,

SUMMARY OF THE ARGUMENT

The trial court, after hearing the testimony of more than 20 witnesses including expert witnesses on both sides, properly found that constructing the Community Stadium and retaining the Bucs will generate substantial economic benefits as well as immeasurable intangible benefits to the Tampa Bay Community. Indeed, the trial court properly determined that the stadium project will generate benefits of at least $3 billion exclusive of inflation. The trial court also found that the stadium and the Bucs will generate immeasurable intangible benefits such as attracting national media exposure, helping to attract tourists and new businesses to the Tampa Bay Area, instilling civic pride and camaraderie into the community, enhancing the community's image on a nationwide basis and providing recreation, entertainment, and cultural activities to its citizens. These findings of fact were clearly within the province of the trial court, were supported by competent substantial evidence and should not be disturbed.

In light of these findings on the benefits to be realized from the stadium project, the state and local legislative findings of public purpose, approval by the voters in a referendum, and the substantial case law supporting the project, the trial court should have validated the bonds. The court's decision that one clause in the Stadium Agreement was too beneficial to the Bucs overlooks the many decisions of this Court upholding projects in the public interest even when a private party will receive substantial benefits. The court exceeded its authority by attempting to micromanage the stadium negotiations between the Bucs and the Issuers. The wisdom or financial viability of the Stadium project is within the province of legislative officials, not the courts.

Finally, Poe's attacks on the court's evidentiary rulings are irrelevant, and in any event must fail because these rulings were not an abuse of discretion. The issue is not whether the elected public officials made the correct decision, but only whether there was a reasonable basis for their actions. The fact that experts may disagree is no basis to rule that the public officials' decisions were clearly erroneous.

The court should reverse the decision of the trial court and validate the bonds. If the trial court is affirmed, the bonds should still be validated conditioned upon the renegotiation of the offending portion of the Stadium Agreement.

ARGUMENT

The narrow role of the courts in bond validation proceedings is to determine whether the governmental entity has the power to issue the bonds, and whether it exercised such power in accordance with *the* law. ***Noble v. Martin County Health Facilities Auth.***, 682 So. 2d 1089 (Fla. 1996). Poe does not question the Issuers' authority to issue the bonds.[18] Thus, the only question is whether the new stadium project violates Article VII, Section 10 of the Florida Constitution because the Bucs will benefit from their lease with the Sports Authority. Article VII, Section 10 provides:

> Neither the state nor any county, school district, municipality, special district, or agency of any them shall become a joint owner with, or stockholder of, or give, lend, or use its taxing power or credit to aid any corporation, association, partnership or person . . . .

According to this Court, a bond issue does not violate Article VII, Section 10 so long as the project serves a "paramount public purpose, " even if a private party benefits from the bonds. See ***Northern Palm Beach County Water Control Dist. v. State, 604 So.*** 2d 440, 441-42 (Fla. 1992); ***Wald v. Sarasota County Health Facilities Auth.,*** 360 So. 2d 763 (Fla. 1978). So long as a paramount public purpose exists, and private interests are only incidentally benefitted, bonds are constitutional. See ***State v. Jacksonville Port Auth., 204*** So. 2d 881 (Fla. 1967).

The Issuers proved below and will demonstrate here that the construction of a new Community Stadium, which will keep the Bucs in Tampa for the next thirty years, serves a paramount public purpose. Our brief opens with a discussion of State and local legislative

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[18] Poe's opposition to the new stadium includes an unsuccessful attempt to enjoin the County's Supervisor of Elections from conducting the referendum in ***Poe*** *v. Iorio*, Case No. 96-5537 (13th Cir., Hillsborough County, Aug. 26, 1996) (JA XVI, tab 37). Poe did not appeal this adverse ruling.

findings that stadium projects in general and this stadium project in particular serve a paramount public purpose. As this Court has acknowledged, it is the province of these public officials, and not the court, to determine what is in the public interest,

Next, we will demonstrate that these legislative findings of paramount public purpose are not clearly erroneous, Indeed, the trial court determined that conservatively, the new stadium project and the Bucs will have at least a $3 billion economic impact on the Tampa community over the next thirty years, Obviously recognizing the import of this conclusion -- $3 billion in economic impact presents a powerful case of paramount public purpose -- Poe asks this Court to revisit the trial court's factual determinations. However, the trial court's findings of economic impact are based on competent substantial evidence and must be affirmed.

As we show below, the trial judge's factual findings on economic impact, combined with the declarations of state and local public officials and the referendum, should have compelled the conclusion that the bonds serve a paramount public purpose. Yet, the trial judge erroneously refused to validate the bonds based on one provision in the Stadium Agreement that grants the first $2 million from non-Buts events to the Bucs. The trial court had no business second-guessing the wisdom of the Issuers' lease negotiations with the Bucs.

We close by addressing Poe's complaints regarding the trial court's evidentiary decisions. As shown below, none of these decisions was an abuse of discretion. All of the Issuers' evidence demonstrated a reasonable basis to support the decision of these elected officials and the voters that this stadium project serves a paramount public purpose.

I. CONSTRUCTION OF A COMMUNITY STADIUM DESIGNED TO KEEP THE BUCS IN TAMPA SERVES A PARAMOUNT PUBLIC PURPOSE.

State and local legislative officials have determined that constructing a sports facility to retain a professional sports team such as the Bucs serves a public purpose. The legislative preamble to Chapter 88-226 of the Laws of Florida, which is entitled an "act relating to professional sports franchises, " expressly provides that such franchises serve an important public purpose:

> The legislature recognizes that the location of a professional sports franchise in the state represents nonpolluting economic development for the state and promotes tourism and recreation, improves the prosperity and welfare of the state and its citizens and such public purposes implement the governmental purposes under the State Constitution of providing for the health, safety and welfare of the people.

Pursuant to this legislation, the State of Florida established a funding mechanism to partially subsidize the construction of sports facilities for new professional sports franchises within the State of Florida. §288.1162(7), Fla. Stat. (Supp. 1996). This statute conditions the receipt of the rebate on proof that a long term lease is in place with a professional team.

More recently, the state legislature expanded its subsidization of sports facilities to include a "facility for a retained professional sports franchise." Ch. 95-304, Laws of Fla.[19] (Emphasis supplied). This legislation recognizes the important public purpose in retaining existing professional sports teams. According to the legislative preamble to Chapter 95-304, "existing professional sports franchises provide Florida communities with a source of

[19] Chapter 95-304 amends §§212.20 and 288.1162, Fla. Stat.

recreation and contribute to civic pride, and . . . such existing professional sports franchises provide jobs and enhance economic development and well-being for the citizens of Florida . . . ." Confirming this public purpose, the legislation makes funds available to assist in retaining professional sports teams in danger of relocation. See also § 196.012(6), Fla. Stat. (Supp. 1996) (lease of public stadium by private party serves a public purpose).

Local public officials charged with making decisions relating to the stadium and the Bucs reached similar conclusions regarding the value of the stadium project. Summarizing the findings made by the County, the City, and the TSA, the Interlocal Agreement for Stadium Financing confirms the public purpose of the stadium project. According to the Agreement: "The acquisition and construction of the stadium by the Authority complies with the County's plan of tourist development and will promote the influx of tourists to the County and thereby benefit the local economy, and will be of substantial benefit to the entire County and thereby serves a public purpose." (JAPX-14).[20]

Confirming the limited role of the courts in bond validations, this court has held that these legislative declarations of public purpose are presumed valid. ***See, e.g., Northern Palm Beach County Water Control Dist. v. State,*** 604 So. 2d 440, 442 (Fla. 1992) ("This court has stated that a legislative declaration of public purpose is presumed to be valid, and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislature. "); ***Pepin v. Division of Bond Finance,*** 493 So. 2d 1013, 1014 (Fla. 1986) ("Legislative declarations of public purpose are presumed valid and should be considered correct unless patently erroneous."); ***Nohrr v. Brevard County,*** 247 So. 2d 304, 309 (Fla. 1971) (those

[20] See Tampa City Council Resolution Nos. 1388 (JA XIV-PX-26) and 1554 (JA XV-PX-29); TSA Resolution 96-121 (JA XIII-PX-14) and Hillsborough County Ordinance 96-12 (JA XVI-PX-19).

challenging a legislative declaration must show that the determination was "so clearly wrong as to be beyond the power of the legislature"),

The declarations of the state and local legislators relevant to this case are supported by well-settled authority in Florida and from many other jurisdictions holding that the construction of a sports facility serves a valid public purpose. The leading case in Florida is ***State v. Daytona Beach Racing & Recreational Facilities Dist., 89 So.*** 2d 34 (Fla. 1956) where this Court considered the validity of bonds issued to finance the Daytona Motor Speedway, Addressing whether there was a paramount public purpose supporting the Speedway, the Court held that bonds could be validated notwithstanding that a private corporation would realize substantial private gain from the facility. Deferring to legislative findings of public purpose, this Court recognized the important public benefits resulting from the construction of the Speedway and other such facilities. Id. at 36-37.

Consistently following this reasoning, this Court has validated bonds for the construction of the original Tampa Stadium,[21] the enlargement of the Orange Bowl,[22] the construction of Tropicana Field in St. Petersburg, [23] the enlargement of the Tangerine Bowl[24] and a host of other cultural and recreational projects.[25] ***See also Miami Dolphins, Ltd. v. Metropolitan Dade*** County, 394 So. 2d 981 (Fla. 1981) (tourist development tax to

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[21] ***State v. City of Tampa,*** 146 So. 2d 100 (Fla. 1962).

[22] ***State v. City of Miami,*** 41 So. 2d 545 (Fla. 1949).

[23] ***Rowe v. Pinellas Sports Auth.,*** 461 So. 2d 72 (Fla. 1984).

[24] ***Orange County Civic Facilities Auth. v. State, 286 So,*** 2d 193 (Fla. 1973).

[25] ***City of Tampa,*** 146 So. 2d 100 (noting that the Court has frequently approved cultural and recreational projects such as stadiums).

modernize and improve the Miami Dolphins' home stadium not unconstitutional); ***Daytona Beach Racing & Recreational Facilities Dist. v. Paul, 179 So.*** 2d 349 (Fla. 1965) (reconfirming the important public purpose of building recreational and tourist facilities such as the Speedway).

Other courts addressing Florida stadium projects have reached similar results. See ***Rolling Oaks Homeowners' Ass'n, Inc. v. Dade County,*** 492 So. 2d 686, 688 (Fla. 3d DCA 1986) (" [t]he use of public property as a sports stadium has been approved as use for a public purpose. "), rev. ***denied,*** 503 So. 2d 328 (Fla. 1987); ***Luke Lucerne Civic Ass'n, Inc. v. Dolphin Stadium Corp.***, 878 F.2d 1360 (11th Cir. 1989) ("The construction of a sports stadium was a legitimate public purpose under Florida law.. . . "), ***cert. denied, 493*** U.S. 1079 (1990).

The only Florida case to the contrary cited by Poe is the anomalous and outdated case of ***Brandes v. City of Deerfield Beach,*** 186 So. 2d 6 (Fla. 1966). In ***Brandes***, this Court, in a narrow 4-3 ruling, held that the construction of a spring training facility for the Pittsburgh Pirates did not serve a paramount public purpose. However, ***Brandes*** offers little assistance to the resolution of this case for several reasons. First, the Court's analysis of the private versus public benefits is extremely conclusory. ***Id.*** at 12. The decision sheds no light on what evidence, if any, was in the record that the proposed spring training facility would have a positive economic impact to its community. It may well be that the record (unlike the record here) contained little or no evidence of the public benefit to be derived from the project.

More importantly, however, ***Brandes*** is out of step with the other stadium cases cited above and with modern precedent taking a broader view of paramount public purpose. Put

simply, the dissent's prediction that "the Court has today drawn too tight a line around public financing for the accomplishment of legitimate public objectives" has proven prophetic. *Id.* at 12 (Thornal, J., dissenting). ***Brandes*** cannot be reconciled with more recent pronouncements of this and other courts on the paramount public purpose of building community stadiums and other recreational or tourist facilities.[26]

Brandes also predates important changes in the law relating to the public purposes that bond financing can serve, After ***Brandes*** was decided, the Florida Constitution was amended to expand the power of local governments to use bond financing.[27] ***Brandes*** also predates the legislature's declaration that the construction of a sports facility and the retention of existing professional sports franchises serve a public purpose. §§196.012(6), 288.1162(7), Fla. Stat.; Ch. 95-304, Laws of Fla.

Brandes aside, Florida law is consistent with overwhelming precedent in other jurisdictions. For example, in ***CLEAN v. State of Washington,*** 928 P.2d 1054 (Wash. 1996), the Supreme Court of Washington recently held that the expenditure of public funds to

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[26] ***Brandes*** can also be distinguished on its facts. In ***Brandes*** there was no referendum approving the construction of the sports facility. Moreover, the construction of the sports facility was merely to serve as a spring training facility for exhibition games, unlike the Community Stadium, which will serve as a home for the Tampa Bay Bucs for both exhibition games as well as regular season games and will serve as home to the Tampa Bay Mutiny Soccer Team, University of South Florida Football Team, the 2001 Super Bowl, high school football games, the Outback Bowl, motor sports events, and a variety of nonathletic events including concerts (JA IV-543-545.) Clearly, the public purpose of a multi-purpose Community Stadium is much greater than the public purpose associated with the construction of a spring training facility. ***See Lifteau v. Metropolitan Sports Facilities Comm 'n, 270*** N.W.2d 749 (Minn. 1978) (distinguishing ***Brandes*** because it related to the training facility of only one team rather than a multi-purpose stadium).

[27] Although the 1968 Amendment does not specifically overrule ***Brandes,*** it demonstrates that the legislature and the voters felt that this Court too narrowly defined public purpose in several sharply divided bond validation opinions issued during this time period. See ***Linscott v. Orange County Zndus. Dev. Auth.,*** 443 So. 2d 97 (Fla. 1983).

finance the construction of a "state-of-the-art" sports facility passed constitutional muster. In ***CLEAN,*** the management of the Seattle Mariners had expressed the need for a new stadium to achieve financial stability and to become financially competitive with other major league baseball clubs. Absent the new stadium, the Mariners suggested that they would be forced to relocate to another city.

In the *CLEAN* case--just as in the case at hand--the party challenging the construction asserted that public development of a sports facility did not serve a public purpose but rather served only the interests of the Mariners. The Washington Supreme Court, in rejecting this constitutional attack, stated:

> We are satisfied, after reviewing the record here, that construction of a major league baseball stadium in King County confers a benefit of reasonably general character to a significant part of the public in King County, as well as other persons in the region, to survive a challenge that it is violative of article VII, section 1 of the Washington Constitution. In reaching this conclusion we are not unmindful of the fact that the Seattle Mariners may also reap benefits as the principal tenant of the publicly owned stadium that will be built as a consequence of the passage of the Stadium Act.

928 P.2d at 1060-61.[28]

The Wisconsin Supreme Court reached a similar conclusion in ***Libertarian Party of Wis. v. State,*** 546 N.W.2d 424 (Wis. 1996), approving the construction of a new $250 million sports facility for the Milwaukee Brewers, next to an already existing stadium. The court held that the new stadium served a paramount public purpose notwithstanding that a

[28] Significantly, the Supreme Court of Washington approved the stadium project even though voters in the Seattle area had defeated a resolution authorizing the construction of the new stadium. By contrast, Hillsborough County voters approved the construction of the community stadium in a highly publicized referendum.

private entity -- the Milwaukee Brewers -- would benefit from the construction of the stadium. 546 N.W.2d at 424.

CLEAN and ***Libertarian Party*** are representative of numerous cases nationally finding that the construction of a sports stadium serves a public purpose despite the benefit realized by the professional teams using those stadiums. A representative sample of those cases is included in the margin.[29]

Poe's response to this overwhelming case law is to misconstrue it. Recognizing the inevitable conclusion that this stadium project serves a public purpose, Poe argues that Issuers must also prove that the bonds are being repaid entirely from revenues of the stadium project (Poe Br. at 31-33). No case so holds and there are cases to the contrary.

For example, in ***Panama City v. State,*** 93 So. 2d 608 (Fla. 1957), Panama City sought to issue bonds to build a large waterfront development, where a portion of the development consisted of concession buildings to be leased to private owners. The bonds were to be repaid from revenue derived by rent payments, utilities services, excise taxes, licenses, and sources other than ad valorem taxes. Although private interests were involved, this Court approved the bonds that were not payable solely by project revenue. Likewise, in ***State v. Sunrise Lakes Phase ZZ Special Recreation Dist.*** , 383 So. 2d 63 1 (Fla. 1980), this

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[29] ***Rice*** *v. Ashcroft*, 831 S.W. 2d 206 (Mo. Ct. App. 1991); ***Kelly v. Marylanders for Sports Sanity, Inc., 530*** A.2d ***245*** (Md. ***1987); Lifteau v. Metropolitan Sports Facilities Comm'n, 270*** N.W.2d ***749, 753-54*** (Minn. 1978); ***County of Erie v. Kerr, 373*** N.Y.S.2d 913 (N.Y. App. Div. 1975), ***appeal denied, 348*** N.E.2d 619 ***(N.Y.*** 1976); ***Reyes v. Prince George's County, 380*** A.2d 12, 27-28 (Md. 1977); New ***Jersey Sports & Exposition Auth. v.*** *McCrane*, 292 A.2d 580 (N.J. Super. Ct. Law Div. 1971), ***aff'd, 292*** A.2d 545 (N.J. 1972); ***Bazell v. City of Cincinnati, 233*** N.E.2d ***864*** (Ohio 1968), ***cert. denied,*** 391 U.S. 601 (1968); ***Ginsberg v. City & County of Denver, 436*** P.2d ***685*** (Colo. 1968); ***Martin v. City of Philadelphia,*** 215 A.2d ***894*** (Pa. 1966); ***Meyer v. City of Cleveland,*** 171 N.E. 606 (Ohio Ct. App. 1930).

Court upheld bonds secured by ad valorem taxes, issued for the purpose of purchasing recreational facilities that would be located within a private condominium development. This Court noted that although the facilities would be available to the general public, the condominium residents will "receive the primary benefits because of their close proximity to the recreational facilities." *Id.* at 633.

In *State v. City of Miami, 379* So. 2d 651 (Fla. 1980), this Court upheld bonds secured by net revenues derived from the project as well as other revenues of the City of Miami, exclusive of ad valorem taxes. The bonds were issued for the purpose of constructing a convention center, a hotel, and a retail area. Id. at 652. The City agreed to lease to a developer certain properties for the construction and operation of a hotel, construct a water plant to service the convention center and hotel, and give the developer priority to reserve a share of the spaces in the parking garage. Id. Obviously, in *City of Miami* private interests benefitted greatly from the publicly financed project.[30]

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[30] Poe goes so far as to argue that this Court has approved the use of public financing for projects "only when there has [sic] been no private leases or private interests involved" (Poe Br. at *32).* Poe cites *Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.* 2d 981 (Fla. 1981), which involved the use of a tourist development tax to modernize and improve a football stadium. Curiously, Poe completely ignores that the improvements were the result of a stadium lease with the Miami Dolphins. Poe also cites *Rowe* as additional authority for the proposition. *Rowe* affirmed the validation of bonds issued by the Pinellas Sports Authority backed by tourist development taxes. The bonds funded construction of the domed stadium in St. Petersburg now known as Tropicana Field, the home of the Tampa Bay Devil Rays. While there was no lease in place at the time of validation, the stadium was constructed for the sole purpose of attracting and entering into a lease with a Major League Baseball team. As in *Rowe, the court* in *Orange County Civic Facilities Auth. v. State, 286* So. 2d 193 (Fla. 1973), validated bonds to fund improvements made to the Citrus Bowl in Orlando,in an effort to attract a professional football team. Under Poe's theory, it is lawful to construct a stadium with tax monies provided it has no tenants even if it means the stadium will be largely unused for many years, but it is unlawful to construct a stadium which has a preexisting lease with a major sports franchise. This is not the law. Note that the Florida Legislature has made the existence of a long-term lease with a professional sports franchise a prerequisite to the receipt of $2 million per year of rebates from state sales tax

Poe's argument also ignores the original Tampa Stadium financing. This Court validated the bond even though they were to be repaid by funds pledged by the city of Tampa and Hillsborough County in addition to Stadium revenues. *State v. Tampa Sports Authority,* 188 *So.* 2d *795* (Fla. 1966). See also *Rowe v. Pinellas Sports Authority,* 461 So. 2d 72 (Fla. 1984) (stadium built to attract Major League Baseball team funded by tourist development tax).

Poe's diversions cannot obscure the only conclusion that can be drawn from this overwhelming body of case law. The stadium project serves a paramount public purpose and the bonds should be validated.

II. THE TRIAL COURT OVERSTEPPED ITS AUTHORITY BY SECOND-GUESSING THE RESULTS OF THE NEGOTIATIONS BETWEEN THE ISSUERS AND THE BUCS.

After recognizing the legislative determinations of public interest, the approval of the project by Hillsborough County voters, the case law confirming the constitutionality of such projects, and the substantial positive economic impact on the Tampa Community, the trial court was legally bound to validate the bonds. Instead, it stopped just short. The court observed that it would find a paramount public purpose and validate the bonds but for one provision in the Stadium Agreement. That provision reserved to the Bucs the first $2 million of revenue from non-Buts events at the stadium. Put simply, in a deal worth between $3 and $6 billion to the citizens of the Tampa area, the court found that the parties' allocation of $2 million in annual revenues tipped the scales against the public interest.

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collections to be used to construct or renovate a sports facility. § *288.1162, Fla. Stat.* (Supp. 1996).

Florida law is clear on the narrow task that confronted the trial court. Public officials are given "wide latitude" in connection with public projects of a recreational or entertainment nature. ***Panama City v. State,*** 93 So. 2d 608, 613 (Fla. 1957). The fact that the trial court may have preferred the Stadium Agreement to be negotiated differently is irrelevant. It is not within the province of the court to pass upon the wisdom of the decisionmakers involved in the project or to second-guess the project's fiscal viability. Id. at 615; ***Warner Cable Communications, Inc. v. City of Niceville, 520 So.*** 2d ***245*** (Fla. 1988), ***cert. denied, 488*** U.S. ***825*** (1988). See ***Noble v. Martin County Health Facilities Auth., 682 So.*** 2d 1084 (Fla. 1996) (it is beyond the court's jurisdiction in a bond validation proceeding to consider the economic effects of the proposed project); ***State v. City of Daytona Beach,*** 431 So. 2d 981 (Fla. 1983) ("questions concerning financial and economic feasibility" are to be resolved at the executive level and "are beyond the scope of judicial review in a validation proceeding"). Once a public purpose is found, the fact that a private party may also benefit, even substantially, does not render the project unconstitutional.

Several cases dramatically illustrate these principles. For example, in ***State v. Reedy Creek Imp. Dist.,*** 216 So. 2d 202 (Fla. 1968), this Court addressed development bonds that would primarily benefit Walt Disney World, far and away the largest landowner in the district. Despite the substantial benefit to Disney, the Court correctly validated the bonds, recognizing the larger public purpose in developing and encouraging tourism. Disney's substantial benefit was dismissed as no more than incidental to this important public purpose. ***Id.*** at 206.

Applying the same reasoning, this Court validated bonds to finance the construction of a Days Inn because of the legislative finding that this hotel was needed to support the area's

developing tourist industry. ***State v. Osceola County Indus. Dev. Auth., 424 So.*** 2d 739 (Fla. 1982). Important to the Court was the public officials' determination that the hotel would benefit tourism development. The fact that ***all*** of the profits of the hotel would benefit a private business was only incidental.

Perhaps this Court's clearest statement of these principles appears in ***Daytona Beach Racing & Recreational Facilities Dist.*** v. ***Paul,*** 179 So. 2d 349 (Fla. 1965). When the Speedway was first built, the District had the right to use the facility for six months. Later, this was reduced to 3 months, any of which could be preempted by the private Speedway Corporation, This Court was not troubled by the fact that the deal skewed so substantially in favor of the private party. The lease still served a predominately public purpose because of the Speedway's value as a unique tourist and business attraction to the area. ***Id.*** at 355.[31]

The trial judge misapplied these cases by summarily concluding that one clause in the Stadium Agreement rendered the private benefit more than incidental. However, the ultimate determination of public purpose is not judged by so fine a measure as to depend upon one $2 million clause in a $3 billion deal. To the contrary, Florida courts have never reweighed the negotiation decisions of the public officials developing the project. Once the paramount

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[31] ***Reedy Creek, Osceola County*** and ***Daytona Beach Racing*** are representative of numerous cases validating bonds despite evidence of significant private benefit. See ***also Northern Palm Beach County Water Control Dist. v. State, 604 So.*** 2d 440 (Fla. 1992) (bonds validated to finance private road to private development based on legislative declaration of public purpose); ***State v. Orange County Zndus. Dev. Auth.,*** 417 So. 2d 959 (Fla. 1982) (privately run convention hotel serves paramount public purpose promoting tourism in urban development); ***State v. City of Miami, 379 So.*** 2d 651 (Fla. 1980) (privately operated parking garage serves paramount public purpose of increasing tourism, encouraging international trade, and urban redevelopment); ***State v. Okaloosa County Airport & Indus. Auth.,*** 168 So. 2d 745 (Fla. 1964) (privately run airport maintenance facility serves a paramount public purpose); ***Panama City v. State,*** 93 So. 2d 608 (Fla. 1957) (approving waterfront development despite the benefit to private commercial interests).

public purpose was shown, the fact that a private party might benefit very substantially was considered incidental. [32]

Even if the courts were permitted to weigh the public interest against the private benefit, this balance tips decidedly toward the public interest in this case. Even using the trial court's conservative estimates, the direct economic benefit to the Tampa Community over the next 30 years exceeds $3 billion before adjustments for inflation. As a result of the new stadium, the Tampa area already has one Super Bowl in hand (with its accompanying $300 million in economic impact), along with the prospect of several more over the next 30 years. At the same time, the court recognized the "immeasurable economic benefits" realized as a result of national media exposure and newspapers and from televised Bucs games (JA XVI-tab 38, p. 7). The Court also found that the Bucs instilled civic pride and served a "commendable public purpose by enhancing the community's image on a nationwide basis and providing recreation, entertainment and cultural activities to its citizens" (JA XVI-tab 38, p. 8). These benefits extend beyond the Bucs and their fans. As the trial court observed, the new stadium will host more than 40 major events each year including Bucs

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[32] Poe's cases on this issue are outdated and unhelpful. In addition to the ***Brandes*** case already discussed above, Poe cites cases like ***State v. Jacksonville Port Auth., 204 So.*** 2d 881 (Fla. 1967), ***State v. Clay County Dev. Auth.,*** 140 So. 2d 576 (Fla. 1962), and ***State v. Town of North Miami,*** 59 So. 2d 779 (Fla. 1952). These cases reflect this Court's pre-1968 position that revenue bonds designed to finance private industrial facilities were unconstitutional, During this time period, this Court consistently rejected the general argument that the facility would serve a paramount public purpose by increasing economic prosperity and reducing unemployment. These decisions were overruled by the 1968 amendment to the Florida Constitution specifically permitting industrial revenue bonds of this type. However, even while this Court remained firm in its rejection of bonds to promote general business development, it remained just as firm in its consistent holding that public stadiums and other tourist oriented and recreational facilities were extremely important to the public welfare in Florida and that projects promoting such interests served a paramount public purpose.

games, Tampa Bay Mutiny Professional Soccer Games, University of South Florida football games, high school football games, bowl games, equestrian events, tractor pulls, motor cross events and concerts (JA XVI-tab 38, p. 8).

Yet, all of these very substantial benefits are at risk because of the trial court's decision. The Tampa area faces a very credible threat that the Bucs will leave if the new stadium is not built. All of the major prospective bidders for the Bucs made clear that a new stadium would be necessary to survive, The fate of cities like Baltimore, Cleveland, Oakland, St. Louis, Houston, and Los Angeles, all of whom have experienced the loss of a professional football franchise, proves the severity of this threat.

Thus, the Issuers had to choose between letting the Bucs relocate -- thereby losing the substantial revenues produced by the Bucs, the 2001 Super Bowl, prospective future Super Bowls, and suffer at least $3 billion in potential losses -- or they could negotiate their best possible deal to keep the team, thus preserving these substantial benefits to the community. Even if, in the trial court's opinion, the Issuers had to offer one concession too many to keep the team, the ultimate decision was for the Issuers and their constituents. Reasonable people may disagree about what financial concessions should be made to sports teams to prevent them from relocating, but such decisions should be made by the voters and those who have been elected to represent their interests, not by the courts.[33] ***Noble v. Martin County Health Facilities Auth.*, *682 So.*** 2d 1089.

[33] The evidence shows that the lease negotiated was in line with modern NFL stadium leases (JA V-701).

The trial court was correct to recognize the importance of the Bucs to the Tampa Bay Community. That recognition should have compelled a determination that the stadium project served a paramount public purpose and resulted in the validation of the bonds.

III. THIS COURT SHOULD VALIDATE THE BONDS EVEN IF THE TRIAL COURT'S ORDER IS AFFIRMED AS TO THE STADIUM AGREEMENT.

If this Court were to affirm the decision of the trial court on the offending $2 million clause or any other clause, this decision should not be fatal to Issuers' validation request. Rather than merely affirm, or affirm with a remand, Issuers respectfully request that this Court issue an Order validating the bonds, so long as any unconstitutional provisions are deleted from the Stadium Agreement. See *Nohrr*, 247 So. 2d at 311 (validating bonds while striking offending provision from mortgage).

As this Court has recognized by setting such a short briefing and argument schedule, time is of the essence. The new community stadium is under construction even as this Court considers its decision. The sooner that any uncertainty is resolved relating to the financing for the new stadium, the better for the taxpayers of Hillsborough County and Tampa. Accordingly, rather than remanding this case for further proceedings if any portion of the Stadium Agreement is declared unconstitutional, this Court should validate the bonds under the condition that the offending provision be removed. ***Id.***

Such a procedure is by far the most efficient for the Court and most cost-effective for the taxpayers, whatever the result. If the Court does not validate at least conditionally, the Issuers will be forced to start over in the trial court (assuming they can renegotiate the offending clause), perhaps even with a new validation proceeding. The result would be

substantial delay and almost certainly a second appeal to this Court. All this can be avoided by a conditional validation of the bonds,

In light of the importance of this case, the amount of taxpayer dollars at stake, and the Court's effort to expedite the ultimate decision, Issuers respectfully seek the Court's assistance in reaching a final decision on the merits as quickly as possible.

IV. THE TRIAL COURT'S EVIDENTIARY DECISIONS WERE NOT AN ABUSE OF DISCRETION.

Faced with the adverse factual determination that the stadium project has a substantial economic benefit, Poe has no choice but to attack the trial judge's fact-finding through the court's evidentiary decisions. As the record demonstrates, the trial court's findings of economic benefit were supported by competent substantial evidence. The trial court had the benefit of testimony from distinguished economists and other highly qualified experts who testified regarding the substantial economic benefit to be realized from the project. The Court heard from the public officials involved in making these decisions and from prominent members of the Tampa Bay Community who testified regarding the importance of building the Community Stadium and keeping the Bucs.

Poe's attacks on these witnesses completely miss the point of this proceeding. Poe proceeds as if Issuers can prevail only if they prove their economic calculations with absolute precision. To the contrary, the real question is whether the public officials charged with making this decision acted reasonably in light of the evidence available to them at the time they made these difficult and important public decisions. Elected officials need not discharge their responsibilities with scientific certainty. As discussed above, the courts must defer to their decisions unless they are clearly erroneous.

In other words, the point is not whose experts are more credible,[34] but whether the public officials had a reasonable basis to believe that there were substantial economic and other benefits to be derived from the project. The solid expert witness testimony offered by the Issuers only serves to underscore the reasonableness of the elected officials' decisions in this case.

In any event, Poe's challenge to the testimony of the Issuers' expert witnesses is without merit. Poe suggests that the trial court should not have allowed Professor Shils, Professor Hogan or Ron Barton of KPMG to testify regarding the impact of the Bucs and Super Bowls on the Tampa Bay economy since they utilized a mathematical software model prepared by outside entities to calculate the multiplier effect. Mr. Barton explained that the software models in question consist of 400 by 400 matrices containing a series of multipliers for various industries based on census data and business economic data furnished by the U.S. Department of Commerce (JA II-3 17-3 18, 320). He testified that the models contain thousands of coefficients and simply aggregate a complicated mathematical exercise (JA II-317). Thus, Poe's objection is comparable to suggesting that a person should not be allowed to use a computer to solve a complex mathematical problem unless he can explain the underlying mechanics of the computer.

Professor Hogan testified that he used the RIMS input/output software model prepared by the Bureau of Economic Analysis ("BEA") of the U.S. Department of Commerce, which is widely used and one of three or four economic impact models generally accepted for use

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[34] The trial court expressly found the Issuers' experts to be more credible than Poe's experts (JA XVI-39-7), and as a matter of law, this Court is "not entitled to substitute its judgment for that of the trial court on questions of . . . credibility of witnesses , . . ." *Goldfarb* v. ***Robertson,*** 82 So. 2d 504, 506 (Fla. 1955).

in conducting economic impact studies (JA VI-933-934, 941). He noted that the RIMS model calculates the multiplier effect for each individual kind of expenditure and produces output, earnings and employment results utilizing three separate matrices containing 4,563 coefficients (JA VI-943-945).

Mr. Barton used the EIFS model in calculating the economic impact of the Bucs and the IMPLAN model in calculating the impact of the stadium construction project. The EIFS model was developed by the University of Illinois for the Department of Defense and the Corps of Engineers to test the economic impact of base closures and public works profits (JA 11-290-91). It is reasonably relied upon in computing economic impacts (JA 11-290). The IMPLAN model, which utilizes the same theory as the EIFS model, was developed by a private corporation for the U.S. Department of Forestry and is used by the Department to measure the economic impact of its policy decision (JA 11-290-291, 3 14-3 15, 320).

Finally, Professor Shils used a multiplier provided by the Wharton Econometric Center which is similar to the multiplier generated by the RIMS, EIFS and IMPLAN models (JA 1-110-111). He testified that he had used the multiplier in both local and national impact studies, that he had investigated multipliers that are used by various universities and government agencies and the Wharton Econometric multiplier is similar to the multipliers provided by the BEA (JA 1-106-07, 110-11), and that the Wharton multiplier is consistent with multipliers utilized in economic impact studies in the sports industry (JA 11-236).

The law is settled that experts may rely on facts or data that are inadmissible if, as in the instant case, they are of a type reasonably relied upon by experts on the subject to support the opinion expressed. **§ *90,704, Fla. Stat.*** (1995). See, ***e.g., Peninsula Fed.***

S & L v. D.K.H. Props, 616 So. 2d 1070 (Fla. 3d DCA), ***rev. denied,*** 626 So. 2d 204 (Fla. 1993); ***Marks v. Marks,*** 576 So. 2d 859 (Fla. 3d DCA 1991); ***Robinson v. Hunter, 506 So,*** 2d 1106 (Fla. 4th DCA), ***rev. denied,*** 518 So. 2d 1277 (Fla. 1987); Gomez v. ***Couvertier,*** 409 So. 2d 1174 (Fla. 3d DCA 1982); ***DeLuca v. Merrell Dow Pharmaceuticals,*** 911 F.2d 941, ***952-53*** (3d Cir. 1990); *Bauman* ***v. Centex Corp.,*** 611 F.2d 1115 (5th Cir. 1980); ***Higgins v. Kinnebrew Motors, Inc.,*** 547 F.2d 1223 (5th Cir. 1977). The cases relied on by Poe are readily distinguishable. In ***Department of Corrections v. Williamson, 549 So.*** 2d 1071 (Fla. 5th DCA 1989), the court held that it was proper for an expert to consider an inadmissible affidavit in formulating his opinion. ***Bender v. State,*** 472 So. 2d 1370 (Fla. 3d DCA 1985) held that medical opinion testimony is admissible even though it relies on inadmissible medical reports. In ***Smithson*** *v. V.M.S.* ***Realty, Inc.,*** 536 So. 2d 260 (Fla. 3d DCA 1988), the court reiterated the proposition that an expert witness is entitled to render an opinion premised on inadmissible evidence which is reasonably relied upon by experts. In *Riggins* ***v. Mariner Boat Worlds, Inc.,*** 545 So. 2d 430 (Fla. 2d DCA 1989), the expert rendered his opinion exclusively on information outside of the record. In contrast, here the Issuers' experts relied on financial data introduced into evidence.[35] In *Maklakiewicz* ***v.*** *Berton*, 652 So, 2d 1208 (Fla. 1st DCA 1995) and *Kurynka* ***v. Tamurac Hosp. Corp., 542***

[35] For example, Professor Shils testified that his calculations were predicated upon gross revenues obtained from the Bucs' financial statements admitted into evidence (JA I-126-128; JA XI-PX 4-5). Mr. Barton testified that in preparing his report he and his staff reviewed detailed financial information from the Bucs' financial statements (JA II-271-273), noting that "we walked through all the major line items associated with their financial statements.. . .so the base data that we used as part of this analysis was derived directly from financial information that the Buccaneers shared with us" (JA 11-271). Moreover, the Bucs' Controller testified as to the authenticity of the financial statements (JA VI-889-898). The data that Professor Hogan relied on in preparing his report was clearly identified and admitted into evidence (JA XIV-PX 25).

So. 2d 412 (Fla. ***4th*** DCA), ***rev. denied,*** 551 So. 2d 462-63 (Fla. 1989), *receded from* ***on other grounds,*** 611 So. 2d 1270, 1276 (Fla. 4th DCA 1989), the courts merely cautioned that the evidence rule that allows experts to rely on inadmissible facts or data does not permit an expert to render an opinion based exclusively upon such information, Finally, in ***Husky Industries, Inc. v. Black,*** 434 So. 2d 988 (Fla. 4th DCA 1983) the court simply held that expert testimony is not admissible unless the witness has expertise in the area in which the opinion is sought. By contrast, the Issuers' experts have substantial expertise in the conduct of economic impact studies.[36]

Poe's challenge to the trial court's refusal to qualify Jim Wurdeman as an expert witness is also without merit. Mr. Wurdeman's credentials were seriously in question. His CPA license expired 10 years ago, he has no prior experience in analyzing stadium projects like the one at issue here, he has no expertise in evaluating the economic impact of a sports team, he has never qualified as an expert witness, and he has no designation as a certified financial planner (JA IX 1233-1236, 1244). In light of these facts the trial court's decision to exclude Mr. Wurdeman's testimony was not an abuse of discretion. ***Ramirez v. State, 542*** So. 2d 352, 355 (Fla. 1989); ***Canakaris v. Canakaris,*** 382 So. 2d 1197 (Fla. 1980); ***Rodriguez v. State,*** 413 ***So.*** 2d 1303, 1304 (Fla. 3d DCA 1982); ***Consolidated Mut. Ins. Co. v. Hampton Shops, Inc.,*** 332 So. 2d 101, 102-03 (Fla. 3d DCA 1976).

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[36] Professor Shils has performed economic impact studies of professional sports teams at a local and national level (JA 1-91-121); as the head of KPMG's sports and entertainment division, Mr. Barton has performed numerous economic impact studies of professional sports franchises and facilities throughout the country (JA 11-261-63); and Professor Hogan has previously performed economic impact studies relating to Fiesta Bowls and the 1996 Super Bowl held in Arizona (JA VI-913-954). Poe's counsel did not even object to Professor Hogan's acceptance as an expert witness qualified to render an economic opinion on the impact of Super Bowls (JA VI-923-924).

The trial court's evidentiary conclusions were sound. Poe's attempt to cast doubt on the trial court's factual findings must be rejected. The court's determination that the stadium project will result in a substantial positive economic impact is supported by competent substantial evidence.

CONCLUSION

For all the foregoing reasons, the trial court's decision in refusing to validate the bonds should be reversed. This Court should enter an Order validating the bonds and dismissing Poe's claims with prejudice.

In the event that this Court finds any provision in the Stadium Agreement to violate the constitution, Issuers respectfully request that this Court enter its opinion validating the bonds on the condition that the offending provisions are satisfactorily modified or deleted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by fax, and by mail with the attached Appendix and Supplement to Joint Appendix, to: **Chris H. Bentley, Esq.** and **Diane D. Tremor, Esq.,** Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, **Thomas K. Morrison, Esq.,** 1200 W. Platt St., Suite 100, Tampa, FL 33606 and **J. Michael Hayes, Esq.** General Counsel, State Attorney's Office, 800 E. Kennedy Blvd., 5th Floor, Hillsborough County Courthouse Annex, Tampa, FL 33602 this 28th day of April, 1997.

Susan L. Turner
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TPA2-423862
TAL-106723

INDEX TO APPENDIX

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

WILLIAM F. ("BILL") POE, SR.

Plaintiff,

vs.

HILLSBOROUGH COUNTY, a political subdivision of the State of Florida, the CITY OF TAMPA, a municipal corporation organized and existing under the Laws of the State of Florida, and the TAMPA SPORTS AUTHORITY, a Public agency politic and corporate,

Defendants.
_____/

Case No. 96-6515
Consolidated with
Case No. 96-8748
Division C

TAMPA SPORTS AUTHORITY, HILLSBOROUGH COUNTY, FLORIDA, CITY OF TAMPA, FLORIDA,

Plaintiffs,

vs.

THE STATE OF FLORIDA, THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS OF HILLSBOROUGH COUNTY, FLORIDA, INCLUDING NONRESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN, AND THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS OF THE CITY OF TAMPA, FLORIDA, INCLUDING NONRESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN, AND WILLIAM F. ("BILL") POE, SR.

Defendants.
_____/

FINAL JUDGMENT

Introduction.

Case No. 96-8748 is a bond validation proceeding pursuant to Chapter 75, Florida Statutes, initiated by the Tampa Sports Authority ("TSA"), Hillsborough County (the "County") and the City of Tampa (the "City") to validate a series of revenue bond issues intended to fund construction of a new community stadium. The bond validation proceeding has been consolidated with Case No. 96-6515, an action filed by William F. ("Bill") Poe, Sr., seeking injunctive relief and a declaration that the expenditure of funds and the incurrence of debt to construct the new stadium violate Article VII, Section 10 of the Florida Constitution. This Final Judgement sets forth the Court's findings of fact and legal analysis following the non-jury trial of the consolidated cases on March 3, 4, 5, 7 and 12, 1997. In summary, this Court finds that the new stadium project would serve a paramount public purpose, if not for the fact that the lease of the new stadium to the Tampa Bay Buccaneers grants the Buccaneers the first $2 million in net annual revenues from non-Buccaneer events. Consequently, this Court finds the stadium project to serve a predominantly private purpose and consequently cannot validate the bonds sought to be issued by TSA.[1/]

1/ Throughout this opinion the TSA, County and City are collectively referred to as the "Plaintiffs" and William F. ("Bill") Poe, Sr. is referred to as "Poe."

SUMMARY OF FACTS

The evidence presented at trial established the following facts:

Background.

1. The Tampa Bay Buccaneers football team (the "Buccaneers" or "Bucs") of the National Football League ("NFL") has played its home games in a stadium owned and operated by TSA since 1976. The stadium, currently known as "Houlihan Stadium," was originally constructed by TSA in 1967. Additional seating and luxury boxes were added in 1 975 after the National Football League awarded the Buccaneers franchise to Tampa. Due to its age, Houlihan Stadium is in need of significant repairs. Professional engineers engaged by TSA estimate that the required repairs will cost approximately $52 million. This estimate does not include the cost of any upgrades or additional amenities that might be added to the stadium. Such repairs would be necessary even if the Buccaneers did not remain in Tampa so as to enable non-Buccaneer events to be conducted. Even with such repairs, though, some non-Buccaneer stadium users might relocate to competing venues, some of which are newer and more state-of-the-art than the existing stadium.

2. In 1995 the Buccaneers franchise was sold to a new owner for approximately $192 million. Prior to the sale, the new owner and other prospective bidders advised local public officials that the team required additional stadium-related revenue sources (such as luxury suites, club seats and the like) in order to remain financially competitive with other NFL teams and that they intended to relocate the franchise to another city

unless the TSA constructed a new stadium incorporating such amenities. The new owner reiterated this position after he acquired the team. Based on the proposals received by the Buccaneers from other cities and the relocations of NFL teams from Los Angeles, Oakland, St. Louis, Houston and Cleveland, the Court finds that it is not unreasonable for local public officials to have concluded that the Buccaneers would in fact relocate if a new stadium is not constructed.[2/]

The Stadium Agreement.

3. After determining that the existing stadium could not be economically rehabilitated to provide the required revenue enhancing amenities required by the Buccaneers; negotiations between the Plaintiffs and the new owner of the Buccaneers commenced in the fall of 1995 and continued into 1996, culminating in an agreement dated August 28, 1996 (the "Stadium Agreement") under which the TSA agreed to construct (i) a new 65,000-seat stadium at a cost of approximately $168.5 million to serve as the Buccaneers' home field and (ii) a $12 million training facility to be used by the Buccaneers. In general terms, the Stadium Agreement provides that the Buccaneers will utilize the stadium for 30 years and will pay the TSA a total of $3.5 million annually, of which $2 million is allocated to stadium rent, $1 million to practice facility rent and $500,000 as a fee for certain development rights granted to the Buccaneers

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2/ The Buccaneers' insistence on a new stadium is certainly not unique. Testimony established that there are currently 12 new stadiums that are either under construction or in the pre-construction stage in NFL cities throughout the nation.

with respect to stadium property.[3/] The TSA will realize an additional $1.93 million annually from a surcharge on tickets for Buccaneer games and other stadium events and will retain 50% of all revenue from non-Buccaneer events after the Buccaneers receive their first $2 million, net of direct costs to be reimbursed to TSA. A summary of the material financial terms of the Stadium Agreement is set forth in Appendix A to this opinion. The General Manager of the Buccaneers testified that as a result of the club seats, club lounges, additional luxury boxes and other revenue enhancing facilities, the Buccaneers expect to realize an additional $8 to $16 million annually from the new stadium. Compared to the existing stadium, however, the new stadium will cost TSA approximately an additional $2 million annually to operate and maintain.

The 2001 Super Bowl.

4. In light of the Plaintiffs' commitment to construct a new stadium, the NFL has selected Tampa to host the Super Bowl to be held in January, 2001. A Senior Vice President of the NFL testified that without a new stadium the staff of the NFL would not have recommended Tampa as a Super Bowl host. This witness also testified that with a new state-of-the-art stadium he would recommend that additional Super Bowls be held in Tampa.

[3/] Testimony established that the TSA was constrained from demanding greater rent by the private activity bond provisions of the Internal Revenue Code, which negates the tax exempt status of bonds if, subject to certain adjustments, private revenues (such as rent) exceed 10% of debt service. See 26 U.S.C. 8141.

The Community Investment Tax Referendum.

5. In order to finance construction of the new stadium, the TSA proposes to issue up to $33 million in revenue bonds supported by state sales tax monies,* $11.5 million in revenue bonds supported by the local option fourth cent tourist development tax and $160 million in revenue bonds supported by approximately 11.7 percent of revenues to be realized from a county-wide local option half cent sales tax (the "Community Investment Tax"). The Community Investment Tax is designed to fund school construction, criminal justice projects and numerous other capital projects within Hillsborough County, the City of Tampa, Plant City and Temple Terrace as well as the new community stadium. The tax was approved by 53% of the voters in a referendum held in September, 1996.

Governmental Approvals.

6. The governing bodies of the Plaintiffs have each adopted resolutions authorizing the proposed bond issues and approving related interlocal agreements. As discussed infra, such resolutions include express findings that the new stadium serves a public purpose. In addition, legislation enacted by the Florida Legislature pertaining to funding of sports facilities for professional teams contains determinations that such facilities serve a public purpose.

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* An application for the allocation of $2 million annually from State sales tax collections to fund construction of the new stadium has been approved by the State pursuant to 8288.1162, Florida Statutes (1995).

Public Purpose - Economic Benefits.

7. With respect to the public purpose served by the new stadium and the retention of the Buccaneers, the court was presented with conflicting testimony regarding the economic impact on the local economy of the Buccaneers, a Super Bowl and the new stadium construction project itself. Expert witnesses employed by Plaintiffs testified that the Buccaneers provide an annual economic benefit to the Tampa Bay economy ranging from a high of $183 million to a low of $83 million and that the Super Bowl scheduled to be held in the new stadium in the year 2001 can be expected to yield an economic benefit in' excess of $300 million. Even using the more conservative forecasts, over the 30-year life of the stadium agreement these benefits are expected to total approximately $3 billion before any adjustments for future inflation. In contrast, experts employed by Poe testified that in their opinion neither the Buccaneers nor a Super Bowl provide any measurable economic benefit to the local economy. However, none of Poe's experts were able to present financial data that directly contradicted the data relied on by Plaintiffs' experts in compiling their economic forecasts. After weighing the testimony, the Court finds that the forecasts presented by Plaintiffs' experts were more credible. Although economic forecasting is obviously not a precise science, the Court is of the opinion that the local community will realize substantial economic benefits from the continued presence of the Buccaneers and from hosting the 2001 Super Bowl and that over time these benefits can be expected to far exceed the cost of the new stadium.

Public Purpose - Intangible Benefits.

8. In addition to the quantifiable economic benefits described above, the Court heard credible testimony from the Mayor of Tampa, the Hillsborough County Administrator, the President of the Greater Tampa Chamber of Commerce and others regarding the immeasurable economic benefits realized as a result of national media exposure in newspapers and from televised Buccaneer games and Super Bowls, including the value of such exposure in helping to attract tourists and new businesses to the Tampa Bay area. Several witnesses testified that without an NFL team the community would find it more difficult to compete with other cities for new business.

9. The evidence also established that the new stadium will host more than 40 major events each year, including 10 Buccaneers games, Tampa Bay Mutiny professional soccer games, University of South Florida football games, high school football games, the annual Outback Bowl football game, equestrian events, tractor pulls, motor cross events and concerts. The Court finds that the Buccaneers instill civic pride and camaraderie into the community and that Buccaneer games and other stadium events also serve a commendable public purpose by enhancing the community's image on a nationwide basis and providing recreation, entertainment and cultural activities to its citizens.

LEGAL ANALYSIS

10. The role of this Court in the bond validation proceeding is to determine whether the governmental entity has the power to issue the bonds, and whether it exercised such power in accordance with the law. Noble v. Martin County Health Facilities Authority, **682 So.2d 1089 (Fla. 1996).**

11. The central issue in this case is whether or not the bonds proposed to be issued by TSA to finance construction of the new stadium violate Article VII, Section 10 of the Florida Constitution by reason of the private benefit which will enure to the Buccaneers under the Stadium Agreement. Article VII, Sect&n 10 provides in pertinent part as follows:

> **Neither the State nor any County, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend, or use its taxing power or credit to aid any corporation, association, partnership or person.....[5/]**

Because this case involves governmental use of taxing power and credit, this project is constitutional if, and only if, it serves a "paramount public purpose". See Northern Palm Beach County Water Control District v. State, **604 So. 2d 440, 441-42 (Fla. 1992). It has long been held that the Constitution does not prohibit the use of public funds for projects that benefit private interest, as long as a paramount public purpose exists and**

[5/] Article VII, Section 10 provides for four exemptions not relevant here.

those interests are only incidentally benefited. See State v. Jacksonville Port Authority, 204 So.2d 881 (Fla. 1969); Panama City v. State, 93 So.2d 608 (Fla. 1957).

Standard of Review - The Clearly Erroneous Test

12. This Court takes judicial notice of the specifically expressed determinations made by the Florida Legislature and the governing bodies of the County, the City and the TSA, that the retention of a professional sports team, specifically the Buccaneers, serves a valid public purpose. The determination of what constitutes a valid public purpose is for the legislature to decide, and its decision is not subject to interference by the courts unless the court finds a clear or gross abuse of discretion, fraud, bad faith, or that the legislative finding was so clearly erroneous as to be beyond the power of the legislature. Nohrr v. Brevard County, 247 So.2d 304, 309 (Fla. 1971); Raney v. City of Lakeland, 88 So.2d 148, 150 (Fla. 1956); State v. County of Brevard, 77 So.2d 767 (Fla. 1955). However, this Court finds that any finding by Plaintiffs that the Stadium Agreement serves a paramount public purpose was clearly erroneous, as is discussed more fully below.

Legislative Determinations of Public Purpose

13. The Florida Legislature has specifically found and determined that a sports stadium serves a public purpose. Section 288.1162, Florida Statutes, (Supp. 1996), provides that:

> An applicant certified as a facility for a . . . . . retained professional sports franchise . . . may use funds provided pursuant to Section 212.20 only for the public purpose of paying for the construction.... of a facility for a retained professional sports franchise.

14. A further declaration and determination of public purpose by the Florida Legislature is found in §196.199(2)(a), Fla.Stat. (1995), which mandates a property tax exemption for leasehold interests in property owned by political subdivisions when the lessee serves or performs a governmental, municipal or public interest as defined in Section 196.012(6), Fla.Stat. (1995). Section 196.012(6), Fla. Stat. (1995), states:

> The use by a lessee . . . of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park or beach is deemed a use that serves a governmental purpose or function when access to the property is open to the general public with *or* without a charge for admission. (Emphasis Supplied),

15. The Plaintiffs have also made legislative findings and determinations that the construction of the new stadium will serve a public purpose. These legislative findings and determinations are found in the following public records which were introduced into evidence:

Tampa City Council Resolution No. 1388, which was approved on August 1, 1996, expressly provides that the "construction...of the new stadium, which will serve as home of the Tampa Bay Buccaneers of the National Football League, will serve a valid public purpose by advancing the commerce and prosperity of the City of Tampa and its people...."

Tampa City Council Resolution No. 1554, which was approved on August 29, 1996, further states that "It is in the best interests of the citizens of Tampa to consent to and approve the Stadium Agreement." This resolution, moreover, attached and incorporated by reference the voluminous Stadium Agreement among the Tampa Sports Authority, the Buccaneer Stadium Limited Partnership, the City of Tampa and Hillsborough County.

The Interlocal Agreement Relating to the Distribution of Community Investment Tax Revenue by and among the County, the City, and other public bodies contains specific findings that the new stadium will fulfill a public purpose.

The TSA Resolution No. 96-12 I provides: "it is necessary and serves a public purpose for the Authority to issue the Local Option Sales Tax Bonds to fund the construction of the community stadium and related facilities and improvements" and the form of the Interlocal Agreement For Stadium Financing states: " The acquisition and construction of the Stadium by the Authority complies with and has furthered the County's plan of tourist development and will promote the influx of tourists to the county and thereby benefit the local economy, and will be of substantial benefit to the entire county and thereby serves a public purpose."

16. This Court is also aware of the case law from other state in which stadiums used or intended to be used by professional sports teams were deemed to serve public purposes. See, e.g., CLEAN v. State, 928 P.2d 1054, 1060-61 (Wash. 1996); Libertarian Party v. State, 546 N.W.2d 424, 433 (Wis.1996); Rice v. Ashcroft, 831 S.W.2d 206, 209 (Mo. Ct. App. 1991); Kelly v. Marylanders for Sports Sanity, 530 A.2d 245, 257 (Md. 1987); County of Erie v. Kerr, 373 N.Y.S.2d 913, 919 (App. Div. 1975); Bazell v. City of Cincinnati, 233 N.E.2d 864, 869 (Ohio 1968). While these cases are not binding authority on this Court, they reflect the fact that, as far as this Court can determine, all but two of the jurisdictions to have considered this issue have found such stadiums to serve the public purposes.

17. However, one of the two courts to have found a stadium not to serve the public purpose is the Florida Supreme Court. Brandes v. City of Deerfield Beach, I86 So.2d 6 (Fla. 1966).[6/] Consequently, this Court must carefully scrutinize Rrandes to determine whether it is on point.

[6/] The other court was the Supreme Judicial court of Massachusetts. Opinion of the Justices, 250 N.E.2d 547, 558 (Mass. 1969).

18. In Brandes the Florida Supreme Court held that the construction of a spring training facility for a professional baseball team, the Pittsburgh Pirates, did not serve a paramount public purpose. Certain aspects of Brandes are distinguishable from the present case. First, at the time the Brandes case was decided in 1966, there was no legislative declaration by the state that the construction of a sports facility served a public purpose. Indeed, Fla. Stat. §288.1162(7) which sets forth the public purpose associated with the construction of a sports facility, was not even enacted until 1988. Moreover, Chapter 95-304, Laws of Florida, which expanded the subsidization of sports facilities to also include a "facility for a retained professional sports franchise", was not enacted until 1995, 29 years after Brandes was decided. Since the enactment of Chapter 95-304, the Florida legislature has committed $2 million per year to assist the Plaintiffs in retaining the Tampa Bay Buccaneers whereas the state legislature did not commit any money for the spring training facility in the Brandes case. The sports facility in Brandes was merely to serve as a spring training facility for exhibition games; and if possible; minor league baseball games, whereas in the matter at hand the new stadium will serve as the home of the Buccaneers for both exhibition games as well as regular season games and serve as home to the Tampa Bay Mutiny soccer team, the University of South Florida football team, the 2001 Super Bowl, the Outback Bowl, high school football games, and a variety of non-athletic events including tractor pulls and concerts. Clearly the public purpose of a multi-purpose community stadium is much greater than the public purpose associated with the construction of a facility that is only to be utilized as a spring training and minor league baseball facility. Third, there is no

indication in Brandes of what the economic impact of the spring training team would have been. By contrast, as discussed earlier, there was testimony in this case that demonstrated that the Buccaneers provide a substantial economic benefit to the community and this Court so finds.

19. On the other hand, the facility in Brandes was to be paid for by rentals from the lessee, whereas the new Tampa Stadium will be financed primarily by sales taxes. Nevertheless, this factor by itself would not be enough to defeat a finding of paramount public purpose.

20. This Court finds most significant the fact that under the Stadium Agreement, the Buccaneers would receive the first $2 million per year from non-Buccaneer events (such as college football games, soccer games, tractor pulls and concerts) at the new stadium, net of direct costs to be reimbursed to TSA. According to the testimony of TSA employee Henry Saavedra, the net annual revenue-from non-Buccaneer events will not exceed $2 million for three to five years. Consequently, during that period of time, TSA will receive none of the net revenue from non-Buccaneer events. Over the entire period of the Stadium Agreement, the majority of the net revenue from non-Buccaneer events at the new stadium-will accrue, not to the TSA, the public body which owns the stadium, but to a private business, the Buccaneers, which does not even conduct those events. For this reason only, the paramount public purpose of the project is defeated.

21. The revenues TSA will receive from the new stadium will not be enough to cover the operation and maintenance expenses. Furthermore, this Court notes that the expenditures which TSA is required to make for operation and maintenance of the new

stadium will increase each year due to inflation. According to witness Saavedra, the total operations and maintenance deficit over the lease period is estimated at $24 million. Such deficit would have to be paid for by the taxpayers - two-thirds by the County and one-third by the City. The fact that such a burden will be imposed upon the taxpayers further reduces the possibility that this project could be deemed to serve a paramount public purpose.

22. Although this Court recognizes that the safes tax increase which would partially finance the new stadium was approved by the voters' of Hillsborough County in a referendum, there are three reasons why this Court does not believe this fact to be dispositive in favor of Plaintiffs. First, it is impossible to know to what extent voters cast their ballots on the tax issue based on their feelings about the stadium and to what extent they voted based on the other infrastructure projects to be financed by the sales tax. Second, the aspects of the project which prevent it from serving a paramount public purpose are distinct from the sales tax increase and were not submitted to the voters. Third, and most important, the Plaintiffs may not violate the Florida Constitution whether or not they conduct a referendum.

CONCLUSION

23. For the foregoing reasons, it is hereby adjudged that:

A. The Complaint of TSA, the County, and the City to validate the bonds to finance the cost of the acquisition, construction, operation and equipping of the new stadium and related facilities and improvements, including, but not limited to, the practice facility and the demolition of the existing stadium, is DENIED.

B. The Amended Complaint of Poe is GRANTED to the extent that this Court declares that the stadium project as currently constituted does not serve a paramount public purpose and violates Article VII, Section 10 of the Florida Constitution.

DONE AND ORDERED at Tampa, Florida this 21st of March, 1997.

Sam Pendino

SAM D. PENDINO
CIRCUIT COURT JUDGE

Copies furnished to:

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J. Michael Hayes

APPENDIX A

SUMMARY OF MATERIAL FINANCIAL TERMS OF 1996 STADIUM AGREEMENT

CATEGORY	1996 STADIUM AGREEMENT
Cost of New Stadium	$168,561,522
Stadium License Fee	License fee of $2 million per year or $60 million total; see also "Ticket Surcharge."
Exclusive use of Luxury Suites.	Yes, fee for exclusive use included in license fee.
Training Facility	TSA provides a training facility at a maximum cost of $12 million. Bucs pay $1 million rent per year or $30 million total.
Bucs Ticket Revenue or Surcharge Revenue payable to TSA	Maximum 8 percent ticket surcharge to yield $1,930,000 per year for TSA or $57,900,000 total. Surcharge may not exceed $2.50 per ticket. Surcharge may extend to concession sales and parking fees if estimated ticket surcharge revenue is less than $1,930,000.
Responsibility for NFL game day expenses	TSA
Stadium Management	TSA
Parking and Concession Revenue for Bucs games and other Bucs events	Bucs get 100 percent or parking and concession revenue; Bucs also entitled to upfront payment from concessionaire.
Revenue from other stadium events (license fees, parking, concessions)	Bucs get first $2 million net of direct costs reimbursed to TSA; TSA and Bucs split remainder 50/50
Advertising	Bucs get all advertising revenue from scoreboard, video board and signage, etc. at Bucs games and other Bucs events; with respect to other stadium events: (a) Licensees have the right to utilize one-half of the wall surrounding the playing field for sponsors' signage, to place temporary signs at entrance gates and landings and to display up to 2 inflatable signs on stadium property. (b) Bucs retain the right to display signage on the other one-half of the playing field wall (i.e., every other sign).
Novelties and Programs	Bucs have exclusive right to sell (or contract for sale) all novelties and programs at Bucs games or Bucs events and to retain all revenue generated therefrom. TSA controls right to sell all novelties and programs at other stadium events and revenue is shared 50/50 between TSA and Bucs after the Bucs receive the 1st $2,000,000 per year of revenue from all "other stadium event" sources, net of direct costs reimbursed to TSA. See also "Team Stores" below.
Television and Broadcast Revenue	Bucs retain all TV and broadcast revenue from Bucs games
Number of Parking Spaces	TSA shall provide number of current parking spaces (i.e., 9,900 spaces).
Naming Rights	Bucs control.
Team Stores/Administrative Offices	Bucs have exclusive use of two retail stores and a TV/radio production studio at the stadium to be built out at Bucs expense. Bucs may sell any items they are licensed to sell except they may not sell "single-event" items in competition with a stadium licensee. No provision for Bucs administrative offices at stadium.
Club Lounge	TSA controls use of club lounges. Bucs have right to use club lounges for events sponsored by Bucs provided Bucs pay direct costs.

Ticket Offices	Bucs given exclusive use of ticket office at stadium, including 6 ticket windows. 30 additional ticket windows will be available for the joint use of TSA and the Bucs.
Capital Improvements	TSA agrees to establish a Capital Improvement Fund in the amount of $2.5 million by 1/31/2007, increasing thereafter at $750,000 per year until fund reaches $15 million. Monies in the Capital Improvement Fund may only be spent for Capital Repairs and Capital Improvements if agreed to by the TSA, the City, the County and the Bucs.
Development Rights on TSA Property	Bucs control development rights subject to City, County and TSA approval of any development. Bucs must replace parking spaces absorbed by development by building parking garage or by providing offsite parking acceptable to TSA. Bucs pay development fee of $500,000 per year or $15 million total, payable whether or not development takes place.
Responsibility for Maintenance and Repair	TSA
Responsibility for Funding any Deficit in TSA Debt Service or Operations and Maintenance Expense	Hillsborough County - 2/3, City of Tampa - 1/3.
Term	8/28/96 to 1/31/2028 with 4 additional 5-year renewal options. During renewal term, licensee fee, development rights fee and training facility rent increases from $3,500,000 per year to $7,000,000 per year in the aggregate.