
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.

**CROSS REPLY BRIEF OF
APPELLEES, CROSS-APPELLANTS**

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ARGUMENT IN REPLY

Poe's argument fails because it is without foundation. To **affirm** the trial court, this Court must ignore, as does Poe, the trial court's factual findings that the stadium project will be enormously beneficial to the citizens of the Tampa community. Next, the Court must accept Poe's argument that state and local legislators were clearly wrong to determine that this project serves a paramount public purpose, despite years of precedent to the contrary. Finally, this Court must accept and adopt Poe's novel interpretation of bond validation law. Poe's strained arguments only underscore the obvious. The facts and law compel the conclusion that the trial court's order should be reversed and the bonds validated.'

The Economic Impact of the Stadium **Project** Cannot Be Ignored

Not once in fifty pages of reply does Poe address directly the trial court's ruling that the stadium project would bring at least three billion dollars to the Tampa community. Nor does Poe address the court's conclusion regarding the other immeasurable benefits resulting from keeping an NFL team in Tampa. But these findings **cannot** be ignored. To affirm the trial court and to rule for Poe, this Court must rule that a stadium project that carries with it these substantial benefits to the Tampa community serves no paramount public purpose.

¹ Issuers decline Poe's invitation to battle over factual minutia, but two points need rebuttal. First, Poe suggests that Issuers "insult" the Court with their accurate statement that "neither the full faith and credit nor the taxing power of the Issuers is pledged for the repayment of the bonds" (Poe Answer Brief at 7). Poe is apparently unfamiliar with this standard phrase in bond validation cases which means that the bonds are not a general obligation of the Issuers and do not implicate their **ad valorem** taxing power. Poe also misrepresents that Judge Whittemore made no finding of paramount public purpose. Judge Whittemore's order is quite clear. According to Judge Whittemore, "[T]his Court cannot conclude that local government's determination that construction of the stadium serves a sufficiently paramount public purpose is so clearly wrong as to be beyond local governments' legislative authority. " Poe v. **Iorio**, **Order** at 14, Case, No. 96-5537 (13th Cir. Hillsborough County, Aug. 26, 1996)(JA XVI-tab 37, p. 14).

Having no ammunition to attack the trial court's factual findings directly, Poe fires several diversionary pot-shots. For example, despite common sense and overwhelming evidence to the contrary (Issuers' Answer Br. at 8), Poe adamantly maintains that the Super Bowl, the most sought-after media event in the world, has no positive economic impact. See Poe's Reply Br. at 6. Then, recognizing the tenuousness of this position, Poe asks this Court to speculate that maybe Tampa will get another Super Bowl after all, even if it refuses to modernize its stadium and allows the **Bucs** to leave (Poe Reply Br. at 6). Tampa may wait a long time. Just ask Jacksonville, Orlando, Tallahassee, and Gainesville, Florida cities with large football stadiums which, with the recent exception of Jacksonville, have had no NFL franchise. How many Super Bowls have been awarded to these cities in the last thirty years?

These facts illustrate that the **Bucs** are not, as Poe would suggest, just another **small-**to-midsized business. To begin with, an economic impact of between \$85 million and \$185 million a year over thirty years can hardly be labeled "small. " More importantly, what other "small" business fills a stadium with Packers fans from Green Bay, Bears fans from Chicago, or Lions fans from Detroit ten Sundays a year? What other "small" business televises its events to a national audience? What other "small" business garners national and international publicity for Tampa, not just during football season, but all year long? What other "small" business has brought Tampa two Super Bowls, will bring Tampa a Super Bowl in 2001, and will put Tampa in line for future Super Bowls?

Even during the period when this Court was issuing sharply divided opinions rejecting bonds for manufacturing **projects**,² this Court recognized that stadium projects were entirely different because of their important impact on tourism and because of their recreational value to tourists and residents alike. As this Court observed in its decision on the Daytona Motor Speedway,

the sand and the sun and the water are not sufficient to attract those seeking a vacation and recreation. Entertainment must be offered. . . . The [Speedway], considering the uses to which it will be adopted and their expected effect on the public welfare, is infinitely more a valid public purpose than [the typical industrial project]. The public purpose here seems to be predominant and the private benefit and gain to be incidental.

State v. Daytona Beach Racing & Recreational Facil. Dist., 89 So. 2d 34, 37 (Fla. 1956).

Poe belittles these public benefits, focusing on the benefit to the **Bucs**. Astonishingly, Poe suggests that building a stadium to house an NFL team does not serve a public purpose. To begin with, this argument ignores the fact that there is more to this stadium project than the **Bucs**. Tampa's existing stadium is over 30 years old and must be either demolished or expensively refurbished at a cost of at least \$52 million just to keep it in its present **condition**.³ In today's hotly competitive environment for major events, there is no assurance that Tampa's existing stadium, even if repaired, could retain USF Football, the Mutiny soccer team, the Outback Bowl, and the other major events that benefit the community, both economically and otherwise (Issuers' Answer Br. at 9).

² ***E.g., State v. Jacksonville Port Auth.***, 204 So. 2d 881 (Fla. 1967); ***State v. Town of North Miami***, 59 So. 2d 779 (Fla. 1952).

³ To -bring the existing stadium up to current NFL standards would be as expensive as building the proposed Community Stadium (JA IV-504-505).

More importantly, Poe confuses the **means** with the ends. The purpose of this project is not to benefit the **Bucs**, but to benefit the community by the economic and intangible benefits that flow from having a stadium housing an NFL franchise. A community that stays competitive by upgrading its infrastructure in a hotly competitive national market is not “giving away the store” as Poe would suggest, Turn back the clock twenty years. In the mid-70’s, Tampa had a fine stadium that served the purpose of the high school and University of Tampa football games that were played there. But the stadium was inadequate for NFL football. Thus, when the **Bucs** came to town, the stadium was expanded and enlarged to make it suitable for the **Bucs**. One could be myopic and argue that this mid-70’s stadium project was simply to benefit the **Bucs**. However, Poe’s response as mayor of Tampa was to articulate the commendable public purpose served by the enhancement and enlargement of Tampa Stadium. Poe was right (then) and the stadium bonds for the stadium improvements were validated without incident.

Poe’s complaints about a “windfall” to the **Bucs** are also absurd. Just as the mid-70’s **Bucs** could not play profitably in Tampa Stadium as it was then configured, the 1990’s **Bucs** cannot profitably compete in Tampa’s aging Houlihan Stadium. Poe does not contest that the **Bucs** lost over \$90 million dollars in the last two years playing in the existing stadium. The threat of such losses left the **Bucs** no practical alternative, They could either continue to accept losses of this magnitude, negotiate a new Stadium Agreement, or relocate. The Issuers could either re-negotiate or let the **Bucs** leave, thus foregoing the enormous economic and intangible benefits derived from having an NFL team, The result was an intensely negotiated, carefully crafted, complex 90-page Stadium Agreement that is the product of the normal “give-and-take” of commercial negotiations. Some provisions favor the **Bucs**, some

provisions favor the Issuers, but the intent, as in any successful commercial negotiation, is for both sides to profit. Poe has not suggested how the Issuers were to convince the **Bucs**, or any other team, to play in outdated Houlihan Stadium at a loss.

The Court cannot ignore the trial court's findings regarding the economic and non-economic public benefits of the stadium project. The stadium project serves a paramount public purpose.

State and Local Legislative Findings of
Public Purpose Are Not Clearly Erroneous

Tampa's situation is neither unexpected nor unique. Community Stadiums and professional sports franchises are very expensive propositions. That is precisely why the legislature specifically has made money available to local governments to assist them in attracting or retaining a professional sports franchise (Issuer Answer Br. at 18-19). In light of the evidence of the powerful economic impact that sports franchises have on their respective communities and the immeasurable and intangible benefits they provide, it is impossible to conclude, as does Poe, that these legislative findings are clearly erroneous.

To accept Poe's argument would be to reverse over forty years of precedent in this Court, which has uniformly recognized the importance of public stadium projects to the community (Issuers' Answer Br. at 20-24). A contrary ruling would also place Florida dramatically out of step with the unanimous case law of other states that have reviewed these precise issues. For example, as discussed in the Issuers' Answer Brief, the high courts of Washington and Wisconsin have approved similar stadium projects under the precise factual scenario that is presented to this Court (Issuers' Answer Br. at **23-25**).⁴

⁴ *CLEAN v. State of Wash.*, 928 P.2d 1054 (Wash. 1996); *Libertarian Party of Wis. v. State*, 546 N.W.2d 424 (Wis. 1996).

Courts have also rejected arguments that particular sports projects are “bad deals” for the sponsoring government. For example, the Minnesota Supreme Court observed that it was

not persuaded by plaintiff’s argument that the law is a bad law because . . . it is economically unsound; . . . that the new stadium, if built, will prove to be a “loser” from a revenue standpoint. These arguments are proper arguments to be made to the legislature, or to the [Metropolitan Sports Facilities] Commission itself. It might very well prove to be the case that the revenues from a new stadium . . . will be insufficient to pay for both bond principle and interest and for the operations and administrative expenses Decisions such as these are economic matters and political decisions to be made by legislative bodies, not the courts.

Lifteau v. Metropolitan Sports Facil. Com’n, 270 N.W.2d 749, 753-55 (Minn. 1978). See also *City of Los Angeles v. Superior Court*, 333 P.2d 745, 750 (Cal. 1959) (the adequacy of the consideration to attract the Brooklyn Dodgers to Los Angeles “rests in the judgment and discretion of the City Council”),

Other courts have specifically rejected the argument that the benefits to the private owners of sports franchises foreclose a finding of public purpose. *Eg., County of Erie v. Kerr*, 373 N.Y.S.2d 913, 919 (N.Y. App. Div. 1975), *app. denied*, 348 N.E.2d 619 (N.Y. 1976) (“the existence of a private profit motive by the lessee does not preclude the operation of the stadium from being a public purpose”).⁵

⁵ See also *CLEAN*, 928 P.2d at 1061 (“the fact that private ends are incidentally advanced is immaterial to determining whether legislation furthers a public purposes”); *Libertarian Party*, 546 N. W.2d at 434 (the fact that a private entity such as the [Milwaukee] Brewers will benefit from the stadium does not destroy the predominant public purpose of this act”); *Lifteau*, 270 N.W.2d at 754; *Bazell v. City of Cincinnati*, 233 N.E.2d 864, 870 (Ohio), cert. *denied*, 391 U.S. 601 (1968).

The state and local legislative conclusion that this stadium project serves a public purpose could not be more consistent with prevailing case law. These findings cannot be rejected as clearly erroneous,

The Court Must **Reject** Poe's Novel **Theory** of Bond Validation Law

Poe persists in his argument that no bonds can be validated, regardless of the paramount public purpose, unless the bonds are repaid solely out of project revenues. Poe's ponderous discussion of irrelevant cases cannot obscure the fact that no case so holds. In fact, Poe concedes that prior to the 1968 Florida Constitutional Amendment, this Court validated bonds **benefitting** a private party even though the bonds were not payable solely by project revenue (Poe Reply Br. at 26). *Panama City v. State*, 93 So. 2d 608 (Fla. 1957).

Apparently, Poe suggests that the 1968 Amendment increasing the power of local government to issue industrial revenue bonds should be interpreted to restrict that power instead. As this Court discussed in *Linscott v. Orange County Indus. Dev. Auth.*, 443 So. 2d 97 (Fla. 1983), the purpose of the 1968 Amendment was to overrule a line of cases in which this Court held that certain industrial projects did not serve a paramount public purpose. *Id.* at 99-100. The 1968 Amendment listed particular industrial projects that could be authorized and validated without any showing of "paramount public purpose." *Id.* at 101. However, the 1968 Amendment did nothing to restrict local government to issuing only revenue bonds. As to non-revenue bonds, the paramount public purpose test "is still applicable when a pledge of public credit is involved." *Id.*

Nothing in *Linscott* or any other case suggests that the 1968 Amendment added restrictions on the power to issue bonds, To the contrary, as discussed in the Issuers' Answer Brief, this Court has **.validated** bonds since. 1968, **.even** when those bonds were to be

repaid from non-project revenue. *State v. Sunrise Lakes Phase II Special Recreation Dist.*, 383 So. 2d 631 (Fla. 1980); *State v. City of Miami*, 379 So. 2d 651 (Fla. 1980); see *also Rowe v. Pinellas Sports Auth.*, 461 So. 2d 72 (Fla. 1984) (validating stadium bonds to be repaid almost entirely from tourist development *tax*); *Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So. 2d 981 (Fla. 1981).⁶

Poe's response is to suggest that these cases can be distinguished because the degree of private participation was small. Again, Poe misunderstands the case law. As was discussed extensively in the Issuers' Answer Brief (and as revealed by Poe's discussion of these same cases), if an important public purpose such as tourism or recreation is served, the court has validated bonds even when the benefit to private parties was substantial (Issuers' Answer Br. at 27-31; Poe's Reply Brief at 17-24).⁷

The Court should reject Poe's misinterpretation of bond validation law and affirm the paramount public purpose of the stadium project.

The Issuers' Alternative Request for Conditional Validation is **Appropriate**

If this Court is troubled by one or more provisions of the Stadium Agreement with the **Bucs**, the Issuers have asked this Court to validate the bonds conditioned upon the removal of the offending provisions from the Agreement. The Issuers do not, as Poe

⁶ Both the original Tampa Stadium and the enlargement of Orlando's Tangerine (Citrus) Bowl were financed with bonds secured by non-stadium revenues. Orlando's stadium project, like **Rowe**, was for the express purpose of attracting a professional sports team. In each case, this Court validated the bonds (Issuers' Answer Br. at 20, 25-26).

⁷ Although not a bond validation case, this Court's decision in *O'Neill v. Burns*, 198 So. 2d 1, 4 (Fla. 1967), demonstrates nicely the relationship between private and public benefit. In *O'Neill*, this Court approved a direct \$50,000 appropriation to induce the Junior Chamber of Commerce to establish headquarters in Florida. Although this money would directly benefit a private-entity, the private benefit was only incidental to the greater public purpose of promoting tourism.

suggests, request this Court to rewrite the Stadium Agreement. The Issuers merely ask for this Court to ensure the early and final conclusion of this case. If this Court were to agree with the trial court that the stadium project could be rendered constitutional by striking one or more provisions in the Stadium Agreement, then the Issuers request a specific ruling to that effect coupled with a conditional validation of the bonds. At that point, it will be up to the Issuers to either renegotiate the contract to bring it within whatever constitutional limitations the Court articulates or to abandon the agreement with the **Bucs**.

The alternative to conditional validation is a cumbersome, timely, and expensive process that benefits no one. If this Court refuses to validate the bonds, the Issuers will be forced to renegotiate, reopen the trial court proceeding or bring a new trial court proceeding, try this case a second time, and prosecute or defend an appeal to this Court. This waste of time, effort, and public money can be avoided through a clear determination from this Court of what provisions, if any, render the project unconstitutional, and thus puts to rest the question of the power of the Issuers to issue the bonds and build the stadium project pursuant to the Stadium Agreement.

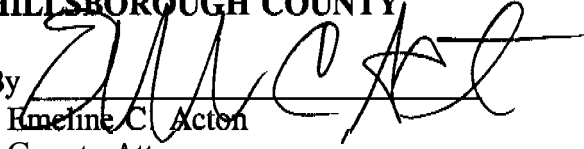
CONCLUSION

For all the foregoing reasons, the Court should reverse the trial court's decision in refusing to validate the bonds. 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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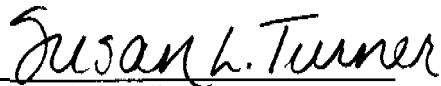
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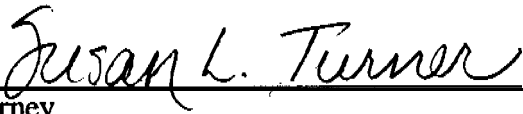

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I HEREBY CERTIFY that the foregoing has been furnished by fax and U.S. Mail to:

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TPA2-427828