IN THE SUPREME COURT OF FLORIDA

Case Nos. SC03-446 and SC03-552 (Consolidated)

On Discretionary Review From a Decision of the
Fourth District Court of Appeal

JOHN M. HAIRE, et al.,
Petitioners,

vs.

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, AND THE STATE OF FLORIDA
Respondents.

BRIEF OF AMICUS CURIAE, FLORIDA CITRUS MUTUAL

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INTRODUCTION

This amicus curiae brief is filed[1] by Florida Citrus Mutual in support of the position of Respondent, Florida Department Of Agriculture And Consumer Services ("FDACS"), advocating approval of the Fourth District Court of Appeal's decision in Florida Dept. of Agriculture & Consumer Services v. Haire, 836 So.2d 1040 (Fla. 4th DCA 2002). That decision vacated an injunction by which the Broward County Circuit Court effectively prevented FDACS from enforcing the state's citrus canker eradication program in accordance with the statutory directive that exposed trees within a 1900-foot radius of an infected tree be destroyed.

Florida Citrus Mutual, as an organization of more than 11,600 members representing over 90% of Florida's citrus growers, has a manifest interest in this case, because any decision reinstating the injunction or otherwise impeding enforcement of the canker eradication program would jeopardize the future of Florida's citrus industry—the state's second largest[2]—and would threaten the security all Floridians whose livelihoods depend upon its continuing vitality.

[1] In accordance with Florida Rule of Appellate Procedure 9.370(a), Florida Citrus Mutual requested and obtained leave of the Court to submit this amicus curiae brief.

[2] Surpassed only by tourism, the Florida citrus industry has an economic impact of $9.1 billion and employs nearly 90,000 people.

SUMMARY OF THE ARGUMENT

Petitioners' contention that canker does not pose a sufficiently serious threat to justify the eradication of exposed dooryard trees ignores the fact that if the disease continues to spread and infects commercial groves, it will damage and destroy trees, thus severely reducing production and prompting a federal quarantine that could fatally undermine the ability of Florida's industry to compete on the world market. The property rights of citrus growers are no less deserving of protection than those of homeowners; and the legislature's determination that the conflict between those interests must be resolved in favor of protecting the citrus industry should be sustained as a matter of sound public policy supported by reason and the record. Because Florida courts have consistently upheld the state's power to protect the citrus industry from the devastating effects of canker, a decision curtailing or interfering with enforcement of the current eradication program would constitute an unwarranted departure from well-reasoned precedent.

ARGUMENT

Although the various legal theories advanced by Petitioners Broward and Brooks Tropicals in assailing the propriety of the Fourth District's decision have been thoroughly refuted by the Answer Brief of FDACS, two recurring themes woven throughout Broward's arguments implicate public policy issues on which the position of Florida's citrus growers merits consideration. Specifically, Broward

contends that the canker eradication program is unjustified because the disease does not pose a serious threat to the citrus industry, and is unfair because it infringes upon the fundamental private property rights of homeowners. Florida Citrus Mutual submits that both premises are demonstrably flawed, because the former understates the consequences of canker infestation, and the latter overlooks the countervailing interests of citrus growers. Moreover, Broward's attempt to denigrate the gravity of this threat ignores the public interest in protecting the citrus industry—an interest long recognized by Florida's legislature and judiciary.

(a) The Threat Posed By Citrus Canker Is Real and Substantial

At the outset, Broward characterizes canker as nothing more than a "cosmetic" plant disease, and suggests that it poses no substantial economic threat to Florida's citrus industry because "[c]anker blemishes do not affect the taste or internal quality of the fruit," and "has no impact, whatsoever, on human health or safety." [Broward's Brief at 1.] As both the Florida Legislature and Florida courts have recognized, however, canker can cause severe damage to citrus groves—with consequential losses to growers that would adversely affect Florida's economy—because the disease results in premature fruit drop, declining fruit production, and decay that can eventually kill the trees. See Preamble to Ch. 2000-308, Laws of Fla. ("citrus canker…weakens and eventually kills trees"); Florida Dept. of Agric. & Consumer Servs. v. City of Pompano Beach, 792 So.2d 539, 541 (Fla. 4th DCA

2001) ("Citrus canker…causes defoliation, fruit drop and loss of yield…, [and] can cause girdling of the stems and death of the tree.") The indisputable fact that canker diminishes yield production negates any contention that the disease can be regarded as purely "cosmetic."

Broward further suggests that the presence of canker-infected trees in Miami-Dade and Broward and Palm Beach counties poses "no imminent threat to the citrus industry" based on the "crucial" fact that southeast Florida is "far removed from the commercial growing region." [Broward's Brief at 10.] Proceeding from that premise, Broward argues "there is no evidence that Florida's citrus industry could not co-exist with citrus canker, and certainly no evidence that 'exposed' trees far away from groves could not possibly co-exist with the groves." [Broward's Brief at 10.] This notion not only flies in the face of the fact that canker has continued to migrate northward—undoubtedly aided by Petitioners' efforts to inhibit eradication—but contraverts the legislature's finding that "citrus canker has spread at an alarming rate…throughout Miami-Dade County and Broward County," and "if not eradicated quickly, …will spread to other parts of the state and may destroy the citrus industry…." Preamble to Ch. 2000-308, Laws of Fla.

Although Broward attempts to impart a patina of reasonableness to its position by declaring that it "ha[s] never challenged the removal of infected trees," but only contests "the state's destruction of the surrounding healthy trees"

[Broward's Brief at 1], the problem lies in determining what constitutes an "infected" tree and distinguishing it from those that are truly "healthy." Broward acknowledges expert testimony in the record establishing that infected trees can become dormant and symptomless for some period, "but could spread canker during that time"—a fact Broward cites as evidence of the "unreliable nature of visual inspection." [Broward's Brief at 4-5.] Thus, when Broward asserts that "[o]nly infected trees can spread canker" [Broward's Brief at 10], it must be kept in mind that such contagious trees include many that appear "healthy."

In a further effort to deny the necessity of removing "healthy" trees from the 1900-foot exposure zone, Broward asserts that "[f]ew trees 'exposed to infection' will become infected," citing Dr. Gottwald's study in which "only 18%" of the exposed trees became infected. [Broward's Brief at 10.] Aside from the fact that an 18% infection rate is hardly insubstantial when measuring potential losses in an industry where competitive market conditions leave little operating margin for domestic growers, Broward's argument ignores the fact that a "few" infected trees is more than sufficient to precipitate a USDA quarantine on Florida fruit. In effect, citrus canker is an epidemic that can only be contained by measures analogous to those necessitated by the SARS virus—if there is one infected person on an airplane, everyone who was exposed must be quarantined and treated to protect against potential contagion, even though few may actually become infected.

Finally, Broward proclaims that "[a]ll property owners have the fundamental right to protect their private property." [Broward's Brief at 18.] Presumably, Broward would acknowledge that citrus growers have the same fundamental right. The problem, of course, is that canker places these rights in conflict: The private property of homeowners that Broward seeks to protect may harbor an infectious plant disease that could, if not destroyed, severely damage the private property of the growers—and cripple the state's second largest industry in the process.[3]

Under similar circumstances, the United States Supreme Court upheld the power of a state, without paying compensation, to destroy trees on private property located within two miles of an orchard to prevent the spread of a disease that could pose a menace to the state's valuable commercial fruit industry, explaining:

> When forced to such a choice the state does not exceed its constitutional powers by deciding upon the destruction of one class of property in order to save another which, in the judgment of the legislature, is of greater value to the public. … And where the public interest is involved preferment of that interest over the property interest of the individual, to the extent even of its destruction, is one of the distinguishing characteristics of every exercise of the police power which affects property.

[3] Ironically, Broward asserts that the removal of a homeowner's exposed trees causes irreparable harm because "[t]here is no replacement market for mature, rooted citrus trees," and thus "it would take many years or decades to re-grow the trees destroyed." [Broward's Brief at 13.] What Broward apparently overlooks, however, is that the length of time required to restore mature fruit-bearing trees is one of the principal reasons why the threat of canker spreading into commercial groves poses a real danger of financial ruin for growers.

Miller v. Schoene, 276 U.S. 272, 279-80 (1926).

Given the inevitability that canker, if not eradicated, will continue to spread into the commercial producing region and will cause severe damage to the groves when it arrives, the suggestion that Florida's citrus industry can "co-exist" with canker is delusive. Contrary to Broward's contentions, the problem of citrus canker has forced the State of Florida to confront the same unavoidable choice between conflicting individual and public interests that was faced by Virginia in Miller. And here, as in Miller, there is no doubt that the state has justifiably elected to protect its valuable agricultural products.

(b) Florida's Legislature and Judiciary Have Recognized the Important Public Interest in Protecting the Citrus Industry From Canker

In addition to the specific legislative findings recited in the 2000 enactment that amended the canker eradication program by approving the 1900-foot radius rule [see FDACS' Answer Brief at 3-4], the Florida Legislature has expressly declared that the cultivation and production of citrus "***is the major agricultural enterprise of Florida*** and, together with the sale and distribution of said crop, ***affects the health, morals, and general economy of a vast number of citizens of the state who are either directly or indirectly dependent thereon for a livelihood***, and said business ***is therefore of vast public interest***." §601.02(2), Fla. Stat. (2001)(emphasis added). Accordingly, the Legislature has found that stabilizing production in the Florida citrus industry "***will promote and protect the health,***

peace, safety, and general welfare of the people of this state, which in turn ***will promote the general welfare and social and political economy of this state***." §601.154(1)(g), Fla. Stat. (2001)(emphasis added).

More than 70 years ago, this Court confirmed that Florida's citrus industry was of sufficient public importance to warrant protection by the legislature:

> This court takes judicial notice of the fact that ***the citrus industry of Florida is one of its greatest assets. Its promotion and protection is of the greatest value to the state***, and its advancement redounds greatly to the general welfare of the commonwealth**.** For this reason, ***the Legislature necessarily has a wide field of police power within which to pass laws to foster, promote, and protect the citrus fruit industry of Florida from injurious practices which may tend to injure or destroy either the reputation or value of Florida's citrus products in the world's markets***.

L. Maxcy, Inc. v. Mayo, 103 Fla. 552, 139 So. 121, 128 (1931).

Florida courts have uniformly upheld the enforceability of canker eradication programs based on the public interest in protecting the citrus industry. The authority of FDACS to destroy "presumptively exposed" plants was initially tested in Denney v. Conner, 462 So.2d 534 (Fla. 1st DCA 1985), where the First District refused to stay an immediate final order issued by FDACS requiring the destruction of apparently healthy citrus trees purchased from a nursery where canker had been detected. Recognizing that "citrus canker…may lay dormant in apparently healthy plants for some months…after exposure to infected plants before manifesting signs of the disease," the First District found FDACS was

justified in concluding that "***even though the plants appear healthy and at this time evidence no sign of citrus canker, [such] plants still present an imminent danger in the spread of the disease since they have been exposed to infested or infected plants***." 462 So.2d at 536 (emphasis added). The court determined that FDACS had "shown that ***the threat to the public interest in the citrus industry represented by citrus canker is of sufficient gravity and urgency*** that…[t]o further delay the order's effect would be an unwarranted judicial intrusion into the arena of administrative responsibility…." Id. at 536-37 (emphasis added).

Relying on Denney, the Fifth District ruled in Nordmann v. Florida Dept. of Agric. & Consumer Servs., 473 So.2d 278 (Fla. 5th DCA 1985), that FDACS was entitled to enforce its citrus eradication program by requiring the destruction of 568 "suspect" trees that had been purchased from an infected nursery, even though fourteen months had passed without evidence that the trees were diseased. The court found that FDACS could order the destruction of trees that had been exposed to infected plants based on section 581.161(17), Florida Statutes (1983), which authorized FDACS to destroy plants "capable of harboring plant pests…if they are infested ***or located in an area which may be suspected of being infested or infected due to its proximity to a known infestation, or if they were reasonably exposed to infestation***, to prevent or control the dissemination of or to eradicate plant pests…." (Emphasis added.) Thus, Denney and Nordmann upheld the

authority of FDACS to destroy trees that exhibited no signs of canker infection but were suspected of harboring the disease based on proximity to infected trees.

The issue of whether the owners of apparently healthy but exposed trees that were destroyed would be entitled to compensation was addressed in Florida Dept. of Agric. & Consumer Servs. v. Mid-Florida Growers, Inc., 505 So.2d 592 (Fla. 2d DCA 1987), approved, 521 So.2d 101 (Fla.), cert. denied, 488 U.S. 870 (1988). Two nurseries had purchased citrus budwood from Ward's Nursery about five months before canker was discovered at Ward's in August 1984. 521 So.2d at 102. Although tests showed none of their stock was infected, the two nurseries were ordered to destroy all nursery stock within 125 feet of any citrus budwood that came from Ward's. The two nurseries then filed an inverse condemnation action against FDACS, claiming that the destruction of their uninfected nursery stock constituted a taking for which they should be compensated. Id.

The trial court ruled that a compensable taking occurred, and the Second District affirmed. While concluding that "a taking occurred when the healthy trees were destroyed," the Second District confirmed that "the state validly exercised its police powers in destroying the citrus trees," explaining:

> We understand the difficulties the state faces in confronting citrus canker. Canker…is a particularly resilient disease which may be spread by both natural and artificial means and which may lay dormant in healthy plants for some months before manifesting signs of the disease. ***We understand the difficulties in determining whether canker is present in healthy trees.***

> ***Destruction of the healthy trees, however, assured the continued vitality of Florida's most valuable citrus industry***.

505 So.2d at 595 (emphasis added). To facilitate an authoritative resolution of the taking issue, the Second District certified to this Court the question of whether the police power authorized the state "to destroy healthy, but suspect citrus plants without compensation." Id. at 596.

Approving the Second District's decision, this Court determined there was substantial competent evidence to support the trial court's finding that the plants were healthy. The Court thus rejected FDACS' contention that "no compensation is required…because the trees that were destroyed had been in the presence of or exposed to canker infested nursery stock and were therefore not healthy." 521 So.2d at 104. While holding that "full and just compensation is required when the state, pursuant to its police power, destroys healthy trees," however, the Court not only agreed that the state's police power authorized FDACS' action in removing the exposed trees, but observed that "***destruction of the healthy trees benefited the entire citrus industry and, in turn, Florida's economy***.…" Id. at 102-03 (emphasis added). See also Conner v. Reed Bros., Inc., 567 So.2d 515 (Fla. 2d DCA 1990).

By 1989, scientists determined that the canker discovered in 1984 was not of the Asian strain, but was a less virulent type that became known as the Florida Nursery strain. Department of Agric. & Consumer Servs. v. Polk, 568 So.2d 35, 46 (Fla. 1990) (McDonald, J., concurring). Recognizing that FDACS had "acted

properly in dealing with the 1984 outbreak of citrus canker disease" and had destroyed citrus plants "in good faith reliance on the scientific information available at the time," but that this Court in Mid-Florida Growers had held the destruction of "healthy, but suspect" plants to constitute a compensable taking, the Florida Legislature in 1989 enacted a statutory mechanism for compensating the owners of trees destroyed under the Citrus Canker Eradication Program. Ch. 89-91, Laws of Fla. The statute provided a schedule of values that were presumed to represent just compensation, which owners could either accept or attempt to rebut through administrative hearings. Ch. 89-91, §3, Laws of Fla.

In Department of Agric. & Consumer Servs. v. Bonanno, 568 So.2d 24 (Fla. 1990), this Court upheld the constitutionality of that statute against contentions that it violated the right of access to courts and deprived the claimants of a jury trial. While granting prohibition on the ground that the statutory scheme divested the courts of jurisdiction to adjudicate claims for the taking of trees destroyed pursuant to the Citrus Canker Eradication Program, 568 So.2d at 28-32, neither the majority nor the dissenting opinion expressed any doubts or reservations about the authority of the state to destroy the trees.

On the same day that Bonanno was decided, however, this Court significantly qualified its ruling in Mid-Florida Growers by limiting the extent to which the destruction of trees that had been exposed to canker would be deemed a

compensable taking. Department of Agric. & Consumer Servs. v. Polk, 568 So.2d 35 (Fla. 1990). One year after the discovery of citrus canker at Ward's Nursery, the disease was detected at Polk's Nursery, and FDACS ordered Polk's entire stock of more than 500,000 trees to be destroyed, even though less than ten trees showed signs of infection. Id. at 37-38. Polk filed an inverse condemnation suit, seeking compensation for all trees not visibly infected. Although the trial court held that a taking had occurred, it found that the state need not compensate Polk for trees located within 125 feet of the diseased trees—the "exposure zone for suspected infection" then delineated by FDACS' rule—because those trees, like the ones that were visibly infected, "had no marketable value." Id. at 40 n.4.

On bypass certification of the appeal, this Court affirmed the trial court's conclusion that "the destruction of trees actually exhibiting physical symptoms of the bacterial disease ***and those within 125 feet of those trees did not constitute a taking….***" 568 So.2d at 43 (emphasis added). As support for that ruling, the Court relied upon its prior recognition that

> [w]hen, in the exercise of the police power, the state through its agents destroys diseased cattle, unwholesome meats, [or] decayed fruit…, it is clear that the constitutional requirement of "just compensation" does not compel the state to reimburse the owner whose property is destroyed. ***Such property…is of no value, and it is a source of public danger***.

Id. at 40 (emphasis the Court's), quoting from State Plant Board v. Smith, 110 So.2d 401, 406-07 (Fla. 1959). The Court agreed that "Polk is entitled to

compensation for the remainder of the destroyed nursery stock," but ordered that such compensation must be recovered in accordance with the statutory process prescribed by chapter 89-91 and approved in Bonanno. Id.

Furthermore, as Justice McDonald acknowledged in his specially concurring opinion, FDACS' actions in attempting to deal with the citrus canker problem are entitled to deference from the courts:

> The department had a duty to take emergency measures to prevent what it and others perceived as an immediate harm. In viewing its action from an emergency standpoint, and considering the uncertainty concerning the exact nature of the disease, that action was reasonable. Moreover, any doubt as to whether the disease was actually dangerous at the time of the department's actions should be resolved in favor of the department. Absent a clear showing of invalidity of the enabling statutes or an arbitrary, unreasonable administration of the program, courts should not interfere.

568 So.2d at 46 (Fla. 1990) (McDonald, J., concurring), citing Conner v. Carlton, 223 So.2d 324 (Fla.), app. dismissed, 396 U.S. 272 (1969).

Justice McDonald emphasized that allowing courts to second-guess FDACS by scrutinizing its actions in light of subsequently developed scientific knowledge would place the agency "in a no win situation": If FDACS took action to eradicate exposed trees based on the preliminary conclusion, shared by USDA, that such action was necessary to prevent the potentially devastating spread of the disease, but it was later determined that such action was unwarranted or excessive, FDACS would be required to compensate the owners of the destroyed trees for a taking; on

the other hand, if FDACS decided to take no action in the belief that the canker did not pose a serious threat to the citrus industry, but the disease then spread and damaged commercial groves, FDACS would be required to compensate the grove owners for a taking based on its failure to protect their property from exposure to the destructive disease. 568 So.2d at 46-47. Justice McDonald concluded that FDACS, when faced with that dilemma, should not be faulted for action that was taken in good faith, and "was reasonable in light of the situation and scientific information known at the time," because "***inaction by the department could possibly cause irreparable damage to Florida's citrus industry, a risk which the state simply cannot afford to take***." Id. at 47 (emphasis added). Justice Grimes concurred on that point. Id. at 49.

The Florida Nursery strain of canker was eradicated by 1992, and the state's eradication program was curtailed in 1994; but in 1995, a new outbreak of Asian strain citrus canker was discovered near the Miami International Airport. City of Pompano Beach, 792 So.2d at 541-42; Broward County v. Department of Agric. & Consumer Servs., 24 F.A.L.R. 624, 629-30 (DOAH 2001). "Recognizing the possibly devastating effect of citrus canker on the citrus industry, the Department declared citrus canker a plant pest and developed procedures to eradicate citrus canker within the state" by promulgating rules to implement a new canker

eradication program. State Dept. of Agric. & Consumer Servs. v. Sun Gardens Citrus, LLP, 780 So.2d 922, 924 (Fla. 2d DCA 2001).

FDACS initially attempted to contain the disease by applying the 125-foot radius standard to determine the zone within which exposure to infected trees would present a substantial risk of contagion; but FDACS did not formally adopt its 125-foot radius policy as a rule. Broward County, 24 F.A.L.R. at 629-30. When the owners of citrus trees in Dade County that were deemed exposed and removed by FDACS pursuant to the 125-foot radius policy asserted a taking of their property, the Third DCA dismissed the claims in reliance on the Polk decision, reaffirming that compensation is not required for the destruction of trees located within 125 feet of an infected tree because such trees had been exposed to citrus canker and thus had no marketable value. State Dept. of Agric. & Consumer Servs. v. Varela, 732 So.2d 1146, 1147 (Fla. 3d DCA 1999).

Despite the immediate response by FDACS, the 1995 outbreak continued spreading through Dade County and into Broward County, and it became evident that the destruction of trees within a 125-foot radius, while adequate to contain the less dangerous Florida Nursery strain of canker, would not be sufficient to arrest the spread of the more virulent Asian strain. City of Pompano Beach, 792 So.2d at 542; Broward County, 24 F.A.L.R. at 629-31. Thus, "[w]hen the State's initial

conservative attempts to eliminate citrus canker failed, it upgraded its efforts considerably." Sun Gardens Citrus, 780 So.2d at 924.

In 1998, a USDA plant pathologist, Dr. Tim Gottwald, conducted a study that would measure the spread of canker and determine the extent of the exposure radius required to prevent further contagion. City of Pompano Beach, 792 So.2d at 542; Broward County, 24 F.A.L.R. at 631. Dr. Gottwald's study, which monitored more than 19,000 trees, revealed that the 125-foot radius policy captured no more than 41% of the infectious bacteria spreading from a diseased tree. City of Pompano Beach, 792 So.2d at 542. Dr. Gottwald's findings were then reviewed by two groups of scientists, regulatory officials, and citrus industry representatives, which concluded that to contain 95% of potentially infectious bacteria would require destruction of all trees within a 1900-foot radius of the diseased tree. Based on their recommendation, FDACS adopted a policy effective January 1, 2000, that all trees within 1900 feet of an infected tree would be deemed exposed and would be destroyed in order to eradicate citrus canker. Accordingly, in September 2000, FDACS began issuing IFOs to property owners with trees that were either infected or situated within 1900 feet of an infected tree. City of Pompano Beach, 792 So.2d at 542; Broward County, 24 F.A.L.R. at 631.

In the first reported decision reviewing a challenge to an IFO that required destruction of exposed trees based on the 1900-foot radius rule, the Third DCA

confirmed the authority of FDACS. Citing Denney and Nordmann, the Third DCA declared "[t]he law is clear that orders to remove or destroy apparently healthy but exposed trees in citrus canker emergencies are permissible." Sapp Farms, Inc. v. Florida Dept. of Agric. & Consumer Servs., 761 So.2d 347, 348 (Fla. 3d DCA 2000). The Second DCA followed suit in Sun Gardens Citrus, supra.

When the Third DCA next addressed the issue, it again affirmed the validity of the IFO, but expressed frustration with the process and concluded by observing that "[a]lthough small consolation to the owners, this decision is without prejudice to bring an action for inverse condemnation, or to seek such other relief as they deem appropriate." Markus v. Florida Dept. of Agric. & Consumer Servs., 785 So.2d 595, 596 (Fla. 3d DCA 2001). Subsequently, the Third DCA acknowledged that its comment in Markus, suggesting owners of exposed trees destroyed by FDACS may pursue inverse condemnation claims, could not be reconciled with the holding in Polk that citrus trees situated within a specified radius of a diseased tree—formerly 125 feet, but now 1900 feet—are deemed valueless as a result of exposure to infection, and thus may be destroyed without compensation. Patchen v. State Dept. of Agric. & Consumer Servs., 817 So.2d 854, 855 (Fla. 3d DCA 2002). Although recognizing that Polk had involved uninfected commercial nursery stock while the case before it dealt with citrus trees on residential property, the Third DCA expressed the belief that it must adhere to Polk, as well as its own prior

decision in Varela, and thus affirmed the summary judgment for FDACS on the owners' inverse condemnation claim.[4] Id.

The foregoing analysis demonstrates that throughout Florida history, the legislature has forcefully reaffirmed through its acts a commitment to protecting the citrus industry from the threat of canker, and the courts have unfailingly endorsed those legislative efforts. Petitioners offer no persuasive justification for departing from that unbroken line of public policy and judicial precedent now.

[4] On rehearing, the Third DCA in Patchen certified its decision to this Court as one that passed upon a question of great public importance. 817 So.2d at 855-56 (emphasis in original). That decision is now pending before this Court on discretionary review in Case No. SC02-1291.

CONCLUSION

Ultimately, the resolution of this controversy requires a choice between the competing interests of homeowners who wish to avoid losing their dooryard trees and an agricultural industry that seeks to avoid succumbing to a devastating disease. The legislature has weighed those competing interests and determined, as a matter of public policy and necessity, that protection of the citrus industry must take precedence for the welfare of all the people. Because that determination is both reasonable and amply supported by the record, the legislature's balancing of interests is entitled to great deference and should not be disturbed by this Court.

No one wants to deprive homeowners of the ability to enjoy the fruit and shade and aesthetic pleasure of having a citrus tree in their yard. Many homeowners would undoubtedly prefer to accept the risk that their exposed trees might not develop the disease; some may even be willing to "co-exist with canker," despite the fact that their trees will not only produce fruit blemished by lesions, but will yield progressively less of it as the tree declines in health. But when canker infects commercial groves, Florida's citrus growers stand to lose their livelihoods, their property, their homes, and their heritage. Consideration of the consequences for them, and for the future of Florida's $9.1 billion citrus industry, compels the conclusion that the decision of the Fourth District should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by overnight delivery to Edward A. Dion and Andrew J. Meyers, Broward County Attorney's Office, 115 South Andrews Avenue, Suite 423, Fort Lauderdale, FL 33301; to Robert A. Ginsburg and Robert A. Duvall, III, Miami-Dade County Attorney's Office, 111 N.W. 1st Street, Suite 2810, Miami, FL 33128, Counsel for Miami-Dade County; to Craig P. Kalil, Aballi, Milne, Kalil & Escagedo, P.A., 2250 SunTrust International Center, One Southeast Third Avenue, Miami, FL 33131; to William J. Moore, III, Henrichsen Siegel Moore, 200 East Forsyth Street, Jacksonville, FL 32202; to Arthur J. England, Jr., Elliot H. Scherker, and Elliot B. Kula, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131; to Jerold I Budney, Greenberg Traurig, P.A., 401 East Las Olas Boulevard, Suite 2000, Fort Lauderdale, FL 33301; and to David C. Ashburn, Greenberg Traurig, P.A., 101 East College Avenue, Tallahassee, FL 32301; and has been furnished by U. S. Mail this 3rd day of June, 2003, to all other counsel of record as reflected on the attached Service List.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief of Amicus Curiae complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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