SUPREME COURT
STATE OF FLORIDA

STATE OF FLORIDA, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,	CASE NOS.: SC05-2130 SC05-2131 L.T. Case Nos.: 1D04-3819 1D04-4094

Appellant,

v.

GULFSTREAM PARK RACING ASSOCIATION, INC.,

Appellee.
_____/

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

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SUMMARY OF THE ARGUMENT

Neither Appellee nor Intervenors dispute that the geographic description contained in Section 550.515(6), Florida Statutes, that Appellee contends makes it a special law was enacted in 1992 by Chapter 92-348, Laws of Florida, and not by Chapter 96-364, Laws of Florida. Consequently, the non-severability clause that was enacted as a part of Chapter 96-364, Laws of Florida, and which is codified in Section 550.71, Florida Statutes, is not implicated or operable in this case.

Appellee and Intervenors do not dispute that the Legislature re-enacted Section 550.71, Florida Statutes, six separate times since it was first enacted in 1996. Furthermore, their arguments ignore the plain meaning of Section 550.71, Florida Statutes and the responsibility, where a statute is clear and unambiguous, for a court to enforce that meaning. "Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity." State v. Ruiz, 863 So. 2d 1205 (Fla. 2003). Consequently, if the Court finds Section 550.615(6), Florida Statutes (1996) unconstitutional, the Court would have to give full effect to Section 550.71, Florida Statutes, and invalidate every statute that was enacted or amended by Chapter 96-364, Laws of Florida. However, the Court need not reach this conclusion should it agree with Appellant that the District Court was in error.

ARGUMENT

I. This Court Should Not Reach the Question of Severability Because the Challenged Geographic Description Contained in Section 550.615(6) Originated in Chapter 92-348 and Not in Chapter 96-364.

Article III, Section 10 of the Florida Constitution is a notice provision.[1] Like Article III, Section 6, it imposes certain requirements which apply only at the time a law is enacted. See Ocala Breeders' Sales Company, Inc. v. Florida Gaming Center, Inc., 731 So. 2d 21, 24-25 ("Special laws are subject to procedural requirements that do not apply to general laws…These procedural requirements are set out in the Florida Constitution….").

Appellee concedes that it did not challenge Section 15 of Chapter 96-364, Laws of Florida. Appellee's Supplemental Brief pgs. 1, 5. Remarkably, Appellee also concedes that it "did not challenge the 1992 statute…." Appellee's Supplemental Brief at pg. 2. These concessions demonstrate a fundamental misconception of the requirements of Article III, Section 10. Because Article III, Section 10 is a notice provision, a determination of whether a statute is a general law or a local law must take into account the conditions that existed at the time the statute is enacted. If a statute is a general law at the time it is enacted, the requirements of Article III, Section 10 do not apply to it. Because Article III,

[1] Article III, Section 10 of the Florida Constitution provides: "No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected."

Section 10 imposes procedural requirements that only apply at the time a statute is enacted, a general law cannot become a special law as a result of the passage of time or subsequent events.

While Appellee repeatedly states that it did not challenge Section 15 of Chapter 96-364, the complaint below specifically referenced that section of that act. For example, paragraph 17 of the complaint alleged:

> Section 550.615(6) was enacted as section 15, ch. 96-364, Laws of Florida. This measure passed the Legislature as a general bill, Committee Substitute for House Bill No. 337. The Florida Legislature published no intention to enact such law and did not condition its enactment upon vote of electors in the affected area.

Appellee does not dispute that the geographic description contained in Section 550.615(6), Florida Statutes, originated in Chapter 92-348, Laws of Florida, and not in Chapter 96-364, Laws of Florida. Appellee never challenged or established that the geographic description contained in Section 550.615, Florida Statutes, was a special law when it was enacted in 1992. Therefore, the Court should not reach the issue of the severability clause in this case.[2]

[2] Appellee also argues that the Division's first argument is outside the scope of the order for supplemental briefs. The Court's order asked the parties to address the "possible operation" of Section 550.71, Florida Statutes (1996). The Division's first argument is appropriate because it explains why the non-severability clause contained in Section 550.71, Florida Statutes (1996), may not be applicable or operable in this case.

II. If This Court Finds Section 550.615(6), Florida Statutes (1996), Unconstitutional, It Must Invalidate All of Chapter 96-364.

Both Intervenors and Appellee argue that Section 550.71, Florida Statutes, should not be enforced because Chapter 96-364, Laws of Florida, by operation of Sections 11.2421 and 11.2422, Florida Statutes (1999), has been replaced by the Florida Statutes. This argument ignores the following critical facts.

First, neither Intervenors nor Appellee address the fact that the Legislature re-enacted Section 550.71, Florida Statutes, six separate times since it was first enacted.[3] If the Legislature wanted the non-severability clause to no longer be effective, it easily could have either expressly repealed the law or simply not have re-enacted it. However, by re-enacting Section 550.71, the Legislature certainly intended the statute be given some meaning and effect.

Second, both conveniently overlook Section 11.2423(1)(h), Florida Statutes. Section 11.2423 is entitled "Laws or statutes not repealed." It provides a list of statutes which are excluded from repeal by operation of Section 11.2422. Among the types of statutes that are not repealed is "Severability section in any law." Section 11.2423(1)(h), Florida Statutes. Consequently, the non-severability clause contained in Chapter 96-364, Laws of Florida, would not have been deemed

[3] See s.1, ch. 97-97; s.1, ch. 99-10; s.1, ch. 2003-25; s.1, ch. 2004-4; s.1, ch. 2005-1; s.1, ch. 2006-3.

repealed by Section 11.2423, Florida Statutes, even if the Legislature had not continually re-enacted Section 550.71, Florida Statutes.

Appellee notes on page 5 that "non-severability clauses are almost unheard of …." The Legislature clearly did something out of the ordinary when it enacted Section 550.71, Florida Statutes, and the plain meaning and intent of that statute cannot be ignored. State v. Ruiz, 863 So. 2d 1205, 1209 (Fla. 2003) ("Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity.") (citations omitted).

Appellee cites to Small v. Sun Oil Company, 222 So. 2d 196 (Fla. 1969), on page 8 for the proposition that when a severability clause is included in a statute, the expressed legislative intent should be followed unless to do so would produce an unreasonable result. However, Appellee fails to mention the following critical passage from that case:

> When, however, the valid and the void parts of a statute are mutually connected with and dependent upon each other as conditions, considerations, or compensations for each other, then a severance of the good from the bad would effect a result not contemplated by the Legislature; and in this situation a severability clause is not compatible with the legislative intent and cannot be applied to save the valid parts of the statute.

222 So. 2d at 199-200.

In Section 550.71, Florida Statutes, the Legislature has unequivocally stated that each and every section of Chapter 96-364, Laws of Florida, is mutually connected with and dependent on the others as conditions, considerations or compensations for each other. Consequently, if any section of Chapter 96-364 is ruled unconstitutional, the entire Act must be ruled invalid.

On page 10, Appellee states: "The true legislative intent must be gleamed from the later acts of the Legislature." Appellee never addresses the Legislature's re-adoption of Section 550.71, Florida Statutes, on six separate occasions, nor why Section 550.71 should not be given its plain meaning and effect.

Appellee argues that enforcing the non-severability clause would be unreasonable, and asks what would become of Section 550.615(8), Florida Statutes (1995), which was declared unconstitutional in Ocala Breeders' Sales Company, Inc. v. Florida Gaming Centers, Inc., 731 So. 2d 21 (Fla. 1st DCA 1999). Appellee argues that the Ocala Breeders court had "already declared a provision of Chapter 96-364 unconstitutional without invoking the non-severability clause…." However, as noted in footnote 1 of the Ocala Breeders case, the complaint in Ocala Breeders challenged Section 550.615(8), Florida Statutes (1995). Chapter 96-364 simply renumbered subsection (8) of Section 550.615 to subsection (9), but did not

make any substantive changes to that statute.[4] 731 So. 2d at 23. For this reason, the non-severability clause contained in Chapter 96-364 was not implicated by the holding in Ocala Breeders.

Appellee's argument that application of Section 550.71, Florida Statutes, would lead to an absurd and unreasonable result also ignores the fact that the Legislature has previously included provisions in pari-mutuel bills which have led to drastic consequences for the industry. For example, Section 30 of 91-197, Laws of Florida, provided for the repeal of the vast majority of Chapters 550 and 551, Florida Statutes (1991), effective July 1, 1992. As a result, from July 1, 1992 through the enactment of Chapter 92-346, Laws of Florida, Chapters 550 and 551, Florida Statutes, were reduced to a scant few sections leaving the industry nearly unregulated. Therefore, the history of the Chapter demonstrates that the clear legislative intent expressed in Section 550.71, Florida Statutes, should not be dismissed simply because there may be significant consequences to the industry.

Both Intervenors and Appellee argue that this Court should apply the four-part test for severability set forth in Cramp v. Board of Public Instruction of Orange County, 137 So. 2d 828, 830 (Fla. 1962). See Appellee's Supplemental

[4] See Section 15 of Chapter 96-364 which provides in pertinent part: "Subsections (6) and (10) of section 550.615, Florida Statutes, are amended, subsections (8) and (9) are renumbered as subsections (9) and (10), respectively, and new subsections (8) and (11) are added to said section to read:…." (Emphasis added.)

Brief at page 8; Intervenors' Supplemental Initial Brief at pages 11-12, citing Presbyterian Homes v. Wood, 297 So. 2d 556, 559 (Fla. 1974). However, both parties fail to explain how the third part of that four-part test does not require all of Chapter 96-364 to be ruled invalid if any portion of Chapter 96-364 is ruled unconstitutional. The third part of the test is that "the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other." Cramp, 137 So. 2d at 830. In addition, both parties fail to address the other sections of Chapter 550 that contain a direct citation to Section 550.615(6), Florida Statutes.[5]

CONCLUSION

Appellant respectfully requests that this Court reverse the decision of the District Court and affirm the constitutionality of Chapter 96-364, Laws of Florida.

[5] See pages 18-19 of the Division's Supplemental Initial Brief.

CERTIFICATE OF SERVICE

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CERTIFICATE OF TYPE SIZE AND STYLE

This brief is typed using Times New Roman 14 point in accordance with the rules of the Court.

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