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IN THE SUPREME COURT OF FLORIDA

Case No. SC13-411

CITRUS COUNTY HOSPITAL BOARD
and the STATE of FLORIDA,
Appellants,

v.

CITRUS MEMORIAL HEALTH FOUNDATION, INC.,
Appellee.

ON APPEAL FROM THE FIRST DISTRICT COURT OF APPEAL
Case No. 1D12-0858

REPLY BRIEF OF THE STATE OF FLORIDA ON THE MERITS

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PRELIMINARY STATEMENT

References to the initial briefs of the State and Citrus County Hospital Board ("CCHB" or "Board") will appear as State Init. Br. at #, or CCHB Init. Br. at #, where # refers to the page number referenced within the brief. References to the answer brief of the Citrus Memorial Health Foundation ("Foundation") will appear as Answer Br. at #, where # refers to the page number.

SUMMARY OF THE REPLY ARGUMENT

First, the Contracts Clause does not prohibit the oversight exercised by the Legislature in this case. The Legislature enacted Chapter 2011-256, Laws of Florida, (the Act) to establish oversight measures that would address the Foundation's significant fiscal problems. These harms involved the direct expenditure of public funds by a public corporation to operate a county's sole public hospital. Simply put, the Board's contract with the Foundation could in no way divest, remove, or circumvent public oversight of the hospital.

Second, even if the Act resulted in an identifiable impairment to a contract, this Court has acknowledged repeatedly that some degree of impairment may be constitutionally reasonable after balancing the nature and extent of the impairment and the importance of the State's objective. Here, the State's significant interest in regulating a public hospital supported by public funds far outweighs any

contractual impairment the Foundation may suffer as a result of the fiscal oversight measures contained in the Act.

This Court should find the Act valid and reverse the First District's decision.

REPLY ARGUMENT

I. The Legislature Can Lawfully Exercise Fiscal Oversight per Chapter 2011-256 Because the Foundation is a Public Corporation That Operates a Public Hospital With Public Funds.

The Foundation is a public corporation that operates a public hospital with public funds; therefore, the Contracts Clause does not prohibit the fiscal oversight exercised by the Legislature.

The Foundation attempts to characterize Chapter 2011-256 as self-serving legislation designed to protect the State's financial interests. *See* Answer Br. at 48. Further, the Foundation attempts to disregard cases recognizing the legislative "power of the purse," by arguing that such a power does not trump the Contracts Clause. *See id.* In doing so, the Foundation avoids directly addressing the glaring fiscal problems and lack of oversight that necessitated the Legislature's action. Those concrete harms, which were not mere trifles, involved the direct expenditure of public funds by a public corporation to operate a county's sole public hospital. Responding to these significant fiscal infirmities, the Legislature passed the Act to protect public funds and, in its words, "[t]o ensure public oversight, accountability, and public benefit." Ch. 2011-256, §16, at 59, Laws of Fla. Although the Contracts

Clause exists to ward off legislative impairment of contracts, it does not prohibit the oversight exercised by the Legislature in this case.

Furthermore, the Board's contract with the Foundation could in no way divest, remove, or circumvent public oversight of the hospital. While section 140.55, Florida Statutes, authorizes agreements such as the lease and agreement at issue in this case, it "does not authorize relinquishing ... unfettered control over public property, powers, taxing authority, and money, including expenditure of ad valorem taxes without public oversight or accountability." *Palm Beach Cnty. Health Care Dist. v. Everglades Mem'l Hosp*., 658 So. 2d 577, 580 (Fla. 4th DCA 1995). Contrary to the Foundation's assertion, it cannot straddle the realm between public and private, accepting the benefits but refusing the burdens that accompany its role as a public entity.

Finally, the Foundation takes issue with the State's arguments concerning these issues because it asserts they were not pursued in the trial court or on appeal to the First District. Answer Br. at 47-49. But these issues are not new and they relate to the crux of this case: whether a corporation performing a governmental function transferred to it by a governmental agency can avoid legislative oversight by invoking the Contracts Clause.

The fact remains that the Contracts Clause has never been applied to bar legislative action directed to improve the fiscal oversight of a public entity funded

with public monies. Accordingly, the Legislature's role as guardian of public funds is entirely relevant to this appeal and cannot be brushed away by the Foundation.

II. The State's Interest in Regulating a Public Hospital and Public Funds Outweighs the Foundation's Interest in Avoiding Fiscal Oversight.

Even if the Contracts Clause applied, the Act is valid. The Foundation asserts that any law that diminishes the value of a contract "must be invalidated [under *Dewberry*], without further analysis." Answer Br. at 26, 37. This is an entirely incorrect interpretation of the Florida Constitution and this Court's application of the Contracts Clause. Repeatedly, this Court has acknowledged that some degree of impairment may be constitutionally reasonable after balancing the "nature and extent of the impairment" and the "importance of the state's objective." *See Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 780 (Fla. 1979); *see also U.S. Fidelity & Guar. Co. v. Dep't of Ins.*, 453 So. 2d 1355, 1360 (Fla. 1984). Further, this balanced approach to the Contracts Clause is "the one most likely to yield results consonant with the basic purpose of the constitutional prohibition [against impairment]." *Pomponio*, 378 So. 2d at 780.

Here, where the State has an undeniable interest in regulating the operation of a public hospital by a public corporation that is supported with public funds, *Pomponio*'s balancing test, rather than *Dewberry*'s per se approach, governs the analysis. *See U.S. Fidelity*, 453 So. 2d at 1360 (applying a balancing test to evaluate "a person's interest not to have his contracts impaired with the state's

interest in exercising its legitimate police power."). Under this balancing test, the Act is valid.

As detailed in its Initial Brief, the State's significant interest in regulating a public hospital supported by public funds far outweighs any contractual impairment the Foundation may suffer because of this new fiscal oversight. State Init. Br. at 9-14. As the Act itself states, "the ability of the hospital board to continue to act in the public interest on behalf of the taxpayers of Citrus County requires mechanisms to ensure adherence to the hospital board's public responsibilities [and] this Act provides an appropriate and effective means of addressing the [Foundation's] performance of its responsibilities to the public and to the taxpayers of Citrus County." Ch. 2011-256, at 53, Laws of Fla.

Perplexingly, the Foundation takes issue with the Act because "[i]t offers no reason why the newly imposed controls on the Foundation are necessary for this one hospital but not for others, and none exists." Answer Br. at 38-39. But as detailed in both initial briefs, there were ample reasons why the Act established new oversight mechanisms for *this* hospital. State Init. Br. at 7, 12-13; CCHB Init. Br. at 10-11. Specifically, the Foundation incurred significant financial losses (resulting in an increase in the tax burden faced by Citrus County citizens) and consistently underperformed as compared to statistically similar hospital groups. *Id.* Additionally, the lease agreement failed to provide for good business practices

and the Foundation's president and CEO was subjected to a super-majority vote of no confidence. *Id.*

In light of these facts, the Foundation's contention that the Act's oversight provisions were unnecessary because "all public lessors operating under section 155.40 should act in the public interest, and all hospital lessees should carry out their responsibilities to the public," borders on the quixotic. There is a vast gap between the Foundation's aspirational "should" and the factual reality that it "has not," and a contract is no shield from public accountability. *See, e.g., W. Fla. Reg'l Med. Ctr., Inc. v. See*, 18 So. 3d 676, 688 (Fla. 1st DCA 2009) (rejecting a claim brought under the federal Contracts Clause and noting that participants in the heavily-regulated medical industry "cannot purport to regulate themselves through private contracts and then seek shelter from state laws under those contracts").

Accordingly, even if the Contracts Clause applied, the Act is valid because any contractual impairment is outweighed by the State's legitimate, customary, and expected interest in ensuring that a public hospital supported by public funds is governed responsibly.

CONCLUSION

For the reasons expressed above, this Court should find the Act valid and reverse the decision of the First District Court of Appeal.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I HEREBY CERTIFY that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the font requirement of Florida Rule of Appellate Procedure 9.210 and that a true copy of the foregoing has been furnished this 12th day of June, 2013, by electronic mail to:

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