

IN THE SUPREME COURT  
STATE OF FLORIDA

CASE NO. SC01-1562  
(L.T. CASE NO. 3D00-2754)

THE CITY OF MIAMI, a municipal corporation,

Appellant,

vs.

PATRICK MCGRATH III, MIAMI-DADE  
COUNTY, a political subdivision of the State  
of Florida and LAUREEN VARGA,

Appellees,

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**CITY'S REPLY TO SUPPLEMENTAL ANSWER BRIEF**

**ON APPEAL FROM  
A DECISION OF THE THIRD DISTRICT COURT OF APPEAL**

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## ARGUMENT

### I. THE AMENDMENT IS CONSTITUTIONAL AND APPLICABLE TO THE CITY.

The sole issue identified by the Third District with regard to the Original Statute is clearly and definitely resolved or “cured” by the S.B. 54-B (“Amendment”). The fact that the class now includes cities having a population of 300,000 or more “on or after April 1, 1999,” and that it “locks in” cities even if their population is somehow reduced in the future, does not make it a special law. Not only do the appellees fail to cite a single case supporting their claim, but they fail to explain why under the test used by the Florida Supreme Court and the Florida Constitution, the open-ended class of cities created by the Amendment is not reasonably related to the subject matter of the statute. *State v. City of Miami Beach*, 234 So.2d 103 (Fla. 1970); *Golden Nugget Group v. Metropolitan Dade County*, 464 So.2d 535 (Fla. 1985); Florida Constitution, Art. III, § 11(b)§§. *See also Department of Legal Affairs v. Sanford-Orlando Kennel Club*, 434 So.2d 879, 881 (Fla. 1983) (The fact that a classification scheme was designed to include a specific race track does not make the enactment a special law).<sup>1</sup>

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<sup>1</sup> / Although appellees erroneously rely on facts outside of the record and, as a result, the matter is not properly before the Court, clear language of the Amendment demonstrate that it shows that it applies to the City. The Amendment states that any municipality “which has been declared in a state of financial emergency pursuant to this section may impose a discretionary per-vehicle surcharge . . . .” It is undisputed that the City “has been declared in a state of emergency pursuant to this section.”

## II. THE CITY HAS NO OBLIGATION TO REFUND SURCHARGE REVENUE PURSUANT TO THE ORIGINAL STATUTE.

The City passed the surcharge based upon its good-faith reliance on a presumptively valid statute which was subsequently declared constitutional by the trial court after extensive briefing and argument. In addition, unlike *Department of Revenue v. Kuhnlein*, 646 So.2d 717 (Fla. 1994), it is simply impossible to identify the tens of thousands of individuals who paid the surcharge as a result of daily or hourly charges in public parking lots. In *Kuhnlein*, the state was able to ascertain the precise names and addresses of every taxpayer who paid money pursuant to the statute found to be unconstitutional. The appellees here suggest “publication in local newspapers,” but fail suggest any mechanism as to how taxpayers from out of town or out of the country, can be notified and, if notified, can prove that they paid the surcharge.

Both the equitable and practical circumstances involved in this case require that the Court follow the *Gulesian v. Dade County School Board*, 281 So.2d 325 (Fla. 1973) model and not that of *Kuhnlein*.<sup>2</sup>

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<sup>2</sup> / This Court in *Kuhnlein* also found that the Legislature had “acted wholly outside its constitutional powers” by imposing the tax and that the law was facially unconstitutional. 646 So.2d at 726. No such facts or findings exist in this case.

### III. THE AMENDMENT AND RATIFICATION APPLY RETROACTIVELY.

If the Amendment and Ratification (S.B. 64-C) are read together (in fact, the Ratification specifically references the Amendment), there is no question that the Legislature intended for them to be applied retroactively. The Ratification specifically provides that its purpose is to “ratify the use of proceeds collected and expended pursuant to this section before the effective date of the [a]mendment.” (emphasis added) The only logical way to read the Amendment is in *para materia* with the Ratification, which clearly demonstrates that it is intended to apply retroactively to acts taken from the date of enactment of Chapter 99-251, Laws of Florida. *City of Boca Raton v. Gidman*, 440 So.2d 1277, 1282 (Fla. 1983).<sup>34</sup>

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<sup>3/</sup> As further evidence of the retroactive intent, the Court can take judicial notice of the “Statement of Intent” made by Senator Silver, a sponsor of both laws and reported in the Journal of the Senate on October 25, 2001. He specifically stated that the intent of the Legislature (as to the Amendment) was a clarification of the Original Statute and that “all acts and proceedings taken . . . by a municipality before the date this act becomes a law are ratified, validated and confirmed.”

<sup>4/</sup> In addition, it is equally clear that the Amendment was intended to be a remedial statute. This Court has held that remedial statutes are applied retroactively. *State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 61 (Fla. 1995)

#### IV. THE ACTS HAVE THE EFFECT OF RATIFYING THE CITY'S ACTIONS TAKEN SINCE THE DATE OF THE ORIGINAL STATUTE

McGrath's "separation of powers" argument ignores the significant body of authority from this Court approving curative legislation ratifying acts of local governments. The Legislature can ratify the previously collected surcharges as long as doing so does not "violate the organic laws of the state." *Smith Bros. v. Williams*, 131 So. 335 (Fla. 1930) (Validating assessments alleged to violate right to due process)<sup>5</sup>. There the Court stated that:

[A] statute may validate illegal or unauthorized administrative assessments or other unauthorized administrative acts done under an illegal or inoperative statute, provided the assessment or other act is within the power of the Legislature to do itself as by a duly enacted statute, and the illegal administrative act could have been directly done by statute when it was done and when the validating statute was enacted. (emphasis added)

*Smith Bros. at 335. The Court also stated that:*

*[W]here a portion of an enactment is invalid because its terms violate or conflict with organic law, the illegality may be removed by a valid amendment.*

*Smith Bros. at 338.*

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<sup>5/</sup> This Court has also approved legislative ratification of the following actions of local government: a home rule charter approved at an election that was not held within the time permitted by law, *County of Orange v. Webster*, 546 So. 2d 1033 (Fla. 1989); assessments for local improvements made without a hearing as to benefits conferred. *Town of Gulfport v. Mendels*, 174 So. 8 (Fla. 1937); bond issues alleged to violate due process because of lack of notice. *State v. County of Sarasota*, 155 So. 2d 543 (Fla. 1963).

*Assuming arguendo that Original Statute was invalid because of the claimed “closed classification,” the “illegality” was removed by the Amendment. The Legislature may validate any act which it could have authorized in the first place. Coon v. Board of Public Instruction of Oskaloosa County, 203 So. 2d 497 (Fla. 1967) (upholding validation of creation of school tax district and issuance of bonds done without required petition). This is the central difference between the instant case and Sebring Airport Authority v. McIntyre, 783 So. 2d 238 (Fla. 2001). In Sebring, the Legislature attempted to pass an unconstitutional tax exemption, which the Legislature had no power to cure. Here, as in Smith Bros., the curative legislation ratified actions that the Legislature could itself have done, namely, impose a parking surcharge.<sup>6</sup>*

Finally, it cannot be reasonably argued that the Ratification is itself an unconstitutional special law because it ratifies only the acts of one City. This Court rejected a special law challenge to the ratification of a County home rule charter where

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<sup>6/</sup> McGrath has never asserted that the Surcharge is prohibited by the Constitution. Nor does McGrath cite any authority to support his assertion that the Ratification violates the constitutional separation of powers. Nothing in *Sebring* suggests that the tax exemption there violated separation of powers. *Sebring* simply stands for the principle that the Legislature cannot create a tax exemption which is not permitted by the Constitution. Nor is the Ratification a “declaration of constitutionality.” (McGrath Supplemental Brief, p. 7). *Mendels*, 174 So. at 9. A curative act is not an impermissible legislative invasion into the judicial function. *Coon, supra*, at 498-99, citing *State v. Fla. Inland Nav. Dist.* 122 So. 249 (Fla. 1929).

the language of the curative act was limited to one particular County. *Webster*, 546 So.2d at 1036.

**CONCLUSION**

The City respectfully requests that this Court find the Amendment and Ratification to be valid and enforceable and, if the Court finds otherwise, to consider the merits of this appeal and find that the Original Statute constitutional.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via Federal Express this 10<sup>th</sup> day of January, 2002, to MARK J. HEISE, ESQ., Heise Markarian Foreman, Co-Counsel for Appellees, 1950 Miami Center, 201 South Biscayne Blvd., Miami, FL 33131; THOMAS J. KORGE, ESQ. Korge & Korge, Co-Counsel for Plaintiff, 230 Palermo Avenue, Coral Gables, Florida, 33134; and to JESS M. MCCARTY, ESQ.; Robert A. Ginsburg, Miami-Dade County Attorney, Counsel for Intervenors, Stephen P. Clark Center, Suite 2810, 111 N.W. First Street, Miami, Florida 33128.

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Joseph H. Serota

**CERTIFICATE OF COMPLIANCE**

Undersigned counsel certifies that the font used in this brief is Times New Roman, 14 point, which complies with Rule 9.210(a)(2).

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Joseph H. Serota