IN THE SUPREME COURT OF FLORIDA

NORTH BROWARD HOSPTIAL DISTRICT, a special tax district,

Petitioner,

vs.

SHARON T. FORNES,

Respondent.

CASE NO. 66,115

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA, IN CASE NO. 83-947

CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE

RESPONDENT'S BRIEF ON THE MERITS

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CERTIFIED QUESTION PRESENTED

DOES A TAXPAYER WHO ALLEGES THAT THE TAXING AUTHORITY IS ACTING ILLEGALLY IN EXPENDING PUBLIC FUNDS, WHICH WILL INCREASE HIS TAX BURDEN, HAVE STANDING TO SUE TO PREVENT SUCH EXPENDITURE, OR IS IT NECESSARY THAT HE SUFFER SOME OTHER SPECIAL INJURY DISTINCT FROM OTHER TAXPAYERS (AS OPPOSED TO OTHER INHABITANTS) OR LAUNCH A CONSTITUTIONAL ATTACK UPON THE TAXING AUTHORITY'S ACTION IN ORDER TO HAVE STANDING?

STATEMENT OF THE CASE

The Respondent, Sharon T. Fornes, would adopt as her Statement of the Case that stated by the court below. See, Fornes v. North Broward Hospital District, 455 So.2d 584-85 (Fla. 4th DCA 1984). Alternatively, Ms. Fornes will accept the Statement of the Case provided by the Petitioner, North Broward Hospital District (hereinafter "Hospital District"), with the following clarifications:

The Hospital District has listed its point on appeal as whether Ms. Fornes "failed to allege any facts which would give her standing." (Hospital District at iv). Ms. Fornes has simply alleged that the Hospital District failed to properly competitively bid a construction project with the result being an increased tax burden. As the Fourth District stated:

> Fornes alleges that the specifications were drawn so as to permit favoritism and collusion and stifling of the competitive bidding process required under the district charter, all of which prevented the project from being completed at the lowest possible cost to the taxpayers.

Id. at 585.

For purposes of this appeal, the factual essence of Ms. Fornes' complaint is readily distilled from the question certified by the Fourth District Court of Appeals. She has stated that the taxing authority is acting illegally in expending public funds, and that this action will increase her tax burden.

Counsel for the Respondent conceded below, and does so here, that Ms. Fornes cannot allege a "special injury" different in kind from any other taxpayer in the North Broward Hospital District. The only injury she will suffer as a result of the alleged unlawful activity is an increase in her taxes.

Within the factual context of this case, Ms. Fornes believes that this injury is sufficient to confer standing.

(On Tuesday of this week, the First District Court of Appeals decided Bull v. City of Atlantic Beach, Case No. AW-339 (Fla. 1st DCA, Jan. 12, 1985). This case presents the same issue discussed in this brief. The First District adopted the Fornes decision and certified

the same question to this Court. A copy of the decision is appended to this brief. Counsel received the decision one hour before this brief was mailed and, regrettably, was unable to include it throughout.)

SUMMARY OF ARGUMENT

At the outset, Respondent notes that the Petitioner and its amici have all treated the decision below as though it announces a new rule of taxpayer standing. From this premise, Petitioner predicts dire consequences should the Court change the alleged present rule. In fact, as the court below found, the present rule in this state is, and always has been, that a taxpayer has standing to contest an unauthorized or unlawful act which would increase his taxes.

This is not a zoning, land use or public nuisance case. The instant matter involves competitive bidding. In the history of Florida jurisprudence, only one decision has ever denied standing to a taxpayer under these circumstances. In the instant case, the Fourth District Court of Appeals expressly disagreed with that case and certified the present matter to this Court.

Since 1856, this Court has consistently upheld the standing of taxpayers to sue to enjoin the unauthorized or unlawful expenditure of public funds which will result in an increased tax burden. This theory of standing has never been overruled and remains the law of this state to the present date.

There has been some confusion created by rulings in some later cases from this and other Courts. However, careful reading of the relevant body of law as a whole harmonizes this seeming conflict or confusion.

The Respondent's argument continues by discussing the public policy reasons supporting her theory of taxpayer standing. First, the "floodgate" argument espoused by the Petitioner is invalid. According to every level court in this state and all the commentators, the "floodgates" have been open to Florida taxpayers for 130 years. There is absolutely no indication that this privilege has been abused. Furthermore, any future abuse which might develop may be easily controlled by the Court or by the imposition of legislated conditions.

Second, there are serious practical difficulties in leaving the enforcement of competitive bidding laws to public officers. In any event, it has long been the law that in the absence of legislation requiring public officials to enforce such laws, an affected taxpayer has the right to do so.

Third, the Respondent has no recourse at the voting booth in this case. The Petitioner is comprised of appointed members. In any event, such a remedy would not prevent the unlawful distribution of public funds.

Fourth, it is neither wise nor practical to depend upon disappointed bidders to enforce competitive bidding laws. The tremendous cost of litigation may be unattractive to a profit making enterprise. Also, suing public officials is bad business when those same public officials may have many other contracts to award in the future.

Finally, and perhaps most importantly, competitive bidding laws were not passed for the benefit of public officials and bidders. They were passed to protect taxpayers. The persons with the most immediate and direct interest in cases such as this one are the taxpayers who must fund the project. As such, good legal and common sense dictates that a taxpayer should have standing to bring suit.

ARGUMENT

I. A TAXPAYER HAS STANDING TO CONTEST UNLAWFUL EXPENDITURES OF PUBLIC FUNDS WHICH HAVE A TENDENCY TO INCREASE HER TAX BURDEN.

The question posed by this appeal is not new. If the scales of justice were a literal tool of decision, the present task would be an easy one. The vast majority of authority in Florida and elsewhere would grant Ms. Fornes standing.

By this statement, Ms. Fornes does not mean to suggest, as Petitioner intimates (See, Hospital District at 14), that the "greater number" of cases should decide this appeal. Counsel is sufficiently versed in American jurisprudence to understand the principles of stare decisis. Obviously, one recent decision of this Court would successfully neuter the large base of case law which supports Ms. Fornes' position. The point is that such a decision does not, presently, exist.

It is, of course, elementary that any brief filed in this Court should discuss both what the law is and what it ought to be. Respondent pauses to mention this truism because of the nature of the arguments presented by the Petitioner. Armed with a kaleidoscope of environmental, zoning, and public nuisance cases, the Hospital District and its amici have told this Court that it is "well

established" that absent "special injury" the Respondent has no standing to sue.

Waste Management Inc. (WMI) says "it has long been the rule" that a taxpayer must show special injury. (WMI at 2) The Hospital District states that this Court has "unequivocally held since 1941" that a taxpayer must show special injury. (Hospital District at 6, 10, 12, 13) The Florida League of Cities (The League) states that the Fornes case announces a "new rule" of taxpayer standing and that the "present rule" is that a taxpayer must show special injury. (League at 5, 9)

All three predict dire consequences if this Court should uphold the Fornes decision and announce this alleged "new rule" of taxpayer standing. These consequences would take the form of a flood of disgruntled taxpayers beating down the courthouse doors with frivolous law suits. The Hospital District cautions this Court that "what isn't broke (sic) shouldn't be fixed." (Hospital District at 10)

Ms. Fornes definitely agrees with the latter sentiment. What isn't broken should, indeed, not be fixed. The instant matter is not a zoning case; it is not an environmental case; it is not a public nuisance suit. This is an action for violation of competitive bidding laws.

In the long, and arguably confusing, history of taxpayer standing in this state, no decision has ever denied standing to a taxpayer in a competitive bidding case. The first, and only case to do so, was Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2d DCA 1983). For over one hundred and thirty years taxpayers have been allowed to contest activities such as those alleged in this case and the Courthouse doors are still intact. The law, as it stands, needs no repair, merely clarification.

A. Throughout the History Of Taxpayer Standing in Florida No Court Has Ever Denied Standing To Enjoin An Unlawful Disbursement of Public Funds Which Would Result In An Increased Tax Burden.

Since the mid 19th Century, this Court has held that a taxpayer has standing whenever an alleged illegal disbursement of public funds would create a heavier tax burden. This holding has been readopted and reaffirmed in several Supreme Court cases and was eventually adopted by every District Court in this state. Most of these decisions contain language commenting on how well established such taxpayer standing is. For example, this Court has stated:

> It is too well settled to be seriously questioned that a taxpayer has the right to maintain a suit against

> officers who have squandered or dissipated public funds or who have unlawfully disposed of or are about to dispose of public funds.

Armstrong v. Richards, 128 Fla. 561, 175 So. 340, 341 (1937).

Nevertheless, in Godheim, the Second District found that a 1917 decision of the Supreme Court, Rickman v. Whitehurst, 73 Fla. 152, 74 So. 205 (1917), did away with the very same right that the Armstrong case, which was decided twenty years after Rickman, deemed "too well settled to be seriously questioned." If the Godheim court is correct, then the present decisional law of all the districts is in at least partial conflict with the Supreme Court, the Supreme Court is in conflict with itself, and there is further intra-district conflict in both the Second and the Third Districts.

On the other hand, in a lengthy and fervent dissent to the Godheim opinion, Judge Lehan presented a different interpretation of the many cases dealing with taxpayer standing. Before the Fourth District, Ms. Fornes argued that the dissent was a better approach to the instant matter. She contended that a review of the history of taxpayer standing in Florida demonstrated that the dissent was both logically and legally sound. Furthermore, it harmonized the decisions of the Supreme Court

and the District Courts, rather than provoking unnecessary conflict.

The Fourth District agreed.

> Suffice to say, we are persuaded by the dissenting opinion authored by Judge Lehan because it is supported by a long line of Florida Supreme Court decisions holding that a taxpayer has standing to sue to prevent the illegal expenditure of public funds where he alleges that such expenditures will increase his tax burden. ... In addition, those cases are not inconsistent with the more recent decisions holding that other grounds giving rise to standing in this situation are a) where the attack is based upon constitutional grounds, as in Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972) and b) a showing by the taxpayer of some special injury distinct from that suffered by other taxpayers in the district.

Fornes, 455 So.2d at 585 (Citations omitted).

As early as 1856, the Florida Supreme Court entertained lawsuits for injunctive relief filed by taxpayers. See, Cotton v. Commissioners of Leon County, 6 Fla. 610 (1856) (suit by taxpayers to enjoin levying of taxes to purchase railroad stock). In Lanier v. Padgett, 18 Fla. 842 (1882), the Supreme Court found: "the complainants simply as taxpayers in their own behalf and in behalf of other taxpayers have a standing which entitles them to a remedy against a threatened wrongful proceeding which might involve them and the whole people of the County in great expense and confusion, . . . "Id at 846.

In 1890, this Court held that "resident taxpayers have the right to invoke the interposition of a court of

equity to prevent an illegal dispostion of the monies of a municipal corporation, or the illegal creation of a debt which they, in common with other property holders may otherwise be compelled to pay." Peck v. Spencer, 26 Fla. 23, 7 So. 642, 644 (1890).

By 1906, the Supreme Court believed there could be "no question" as to the right of a taxpayer to sue to restrain void and unauthorized contracts. Anderson v. Fuller, 51 Fla. 380, 41 So. 684, 688 (1906). See also, Chamberlain v. City of Tampa, 40 Fla. 74, 23 So. 572, 574 (1898) (suit to enjoin illegal or improper disposition of City funds properly brought by a taxpayer on behalf of himself and other taxpayers).

In Whitner v. Woodruff, 68 Fla. 465, 67 So. 110 (1914), the Court found that a taxpayer had standing for either of two reasons: to prevent "unauthorized expenditures" or because he was "peculiarly interested" in the case. 67 So. at 111.

In 1917 the Supreme Court decided Rickman. In Rickman, a taxpayer sued the DeSoto County Commission for failing to competitively bid a contract for road maintenance. A special act which funded the building of the road allowed the County Commissioners to either bid the contract for road maintenance competitively or establish their own road maintenance crew by hiring day labor. The hiring of day labor was thirty percent (30%) cheaper than the lowest bid on the project.

For obvious reasons, the taxpayer did not, and could not, allege that the Commission's acts were unauthorized and resulted in an increased tax burden. He simply wished to alter the Commission's decision as to how the law should be interpreted and implemented. The Commission demurred to the complaint and the demurrer was granted with leave to amend. Instead, the taxpayer appealed. This Court began its discussion of the law by stating:

> In the first place the complainant [the taxpayer] has the right to maintain the bill if the acts complained of were unauthorized and not within the powers of the Board of CountyCommissioners, and tended to produce a resultant injury to the Complainant by increasing the burden of his taxes.

Id at 207. (emphasis added).

It is apparent from the above quoted language that the Rickman court believed that the standing of a tax payer in this situation was so well established that it could be treated axiomatically. The Court continued by stating the rationale underlying such taxpayer standing:

> The right of a citizen taxpayer to maintain a suit to prevent the unlawful expenditure by public officials of public monies, unless otherwise provided by legislative enactment, is generally recognized. The nature of the powers exercised by county commissioners who are vested by law with the power of levying taxes for county purposes and the expenditure of county funds, the danger of the abuse of such powers which are delegated to them by legislative enactment, and the necessity for prompt

> action to prevent their flagrant abuse and irremedial injuries flowing therefrom would seem to fully justify the courts of equity in interfering upon the application of a county taxpayer and citizen.

Id.

The Rickman court went on to note that the Plaintiff did not contest the propriety of the expenditures nor did he allege that the "cost of constructing the roads and bridges by the method proposed will entail a greater cost than the method prescribed by the general act, nor that the money is being wasted or improvidently expended." Id. at 207.

Thus, it seems established beyond dispute that the first criteria for taxpayer standing would be an allegation of an unauthorized act which produced a resultant increase in the tax burden. It was only after establishing the absence of any allegation of unauthorized acts leading to increased taxes, that the court went on to discuss whether the plaintiff suffered any "special injury."

Thus, as in Whitner, Rickman found that standing would be proper in either of two instances: whenever an unlawful expenditure will increase taxes; and, if no tax increase, whenever the taxpayer would suffer a special injury. Under both of these circumstances, the plaintiff has suffered a determinable injury.

What this Court has not, should not, and did not allow in Rickman was a citizen to challenge the acts of public officials based on a "mere abstract conception that an act done by county officials [is] not in strict conformity of law ..." Id. at 207. A mere philosophical disagreement with an elected official does not confer standing; increased taxes or special injury do.

Rickman was followed by numerous Supreme Court decisions which continued to uphold taxpayer standing on these grounds. Several of these decisions relied on Rickman.

In Hathaway v. Munroe, 97 Fla. 28, 119 So. 149 (1929), the State Road Department contended that a tax payer had no right to enjoin its award of construction contracts. This Court found that a citizen had a right "to maintain the suit to enjoin the execution of illegal contracts involving payments from a public fund to which the citizen taxpayer is a contributor." 119 So. at 150. Rickman and Anderson were cited as authority for this proposition.

In Thursby v. Stewart, 133 So. 742 (Fla. 1931), Rickman was cited for the proposition that a taxpayer's right to enjoin an unauthorized expenditure of public money is "well established." 138 So. at 749. See also, Robert G. Lassater & Co. v. Taylor, 99 Fla. 819, 128 So. 14, 17 (1930) (that a taxpayer can properly maintain a

bill to restrain the paying out of public monies upon void and authorized contracts, there can be no question); and Wester v. Belote, 103 Fla. 976, 138 So. 721, 724 (1931).

In City of Daytona Beach v. News Journal Corp., 116 Fla. 706, 156 So. 887 (1934), this Court made the following comments:

> Citizens and taxpayers when suing as such, undoubtedly have the right to injunctive relief to protect the public treasury against illegal disbursements of public funds. . . . no other showing is required of complainant than that he allege his status as a citizen and taxpayer and point out that the threatened disbursement of public funds is for an unauthorized or illegal purpose, . . .

Id. at 889. See also, Kathleen Citrus Land Co. v. City of Lakeland, 169 So. 357 (Fla. 1936) (en banc); Barrow v. Smith, 158 So. 819 (Fla. 1935); and Harrell v. Lake County, 199 So. 491 (Fla. 1940) (en banc).

Thus, it is easy to understand the Court's statement in Armstrong that the ability of a taxpayer to maintain suit against the unlawful disposition of public funds was "too well settled to be seriously questioned." 175 So. at 341.

In 1951, an en banc Supreme Court held "that a taxpayer cannot sue to enjoin the illegal or unauthorized act on the part of municipal corporation unless such act will result in an increase of his taxes, or will otherwise result in direct or indirect pecuniary injury to him." Bryan v. City of Miami, 56 So.2d 924, 926 (Fla. 1951) (en banc) (emphasis added).

Finally, in Lewis v. Peters, 66 So.2d 489 (Fla. 1953), the Court held:

> There is no question that the appellee had the right to institute this suit as a resident taxpayer to enjoin the illegal act of a statutory commission in the expenditure of public funds which he, in common with other property owners and taxpayers, might otherwise be compelled to contribute to or pay.

The Court continued by stating:

> If the acts complained of were unauthorized and not within the powers of the Board and tended to produce a resulting injury of the plaintiff by increasing the burden of his taxes, he certainly has a right to maintain this action. Richman (sic) v. Whitehurst.

Id. at 492. (emphasis added).

The foregoing leaves little doubt as to how the Florida Supreme Court has consistently interpreted its decision in the Rickman case.[1]

Shortly after the Lewis decision, the District Courts of Appeals were established. These courts quickly embraced the Supreme Court's clear commands regarding the standing of taxpayers to bring lawsuits to stop the illegal disbursement of funds.

With the Court's continued indulgence, the following are some of the cases, arranged by district, which follow the Supreme Court authorization of taxpayer standing in the instant case.

The First District, in R. L. Bernardo & Sons, Inc., v. Duncan, 134 So.2d 297 (Fla. 1st DCA 1961), relied on Rickman for the proposition that it was long established in Florida jurisprudence that a taxpayer had standing to question the acts of public officials which had the tendency of raising their tax burden. Accord, Robinson's Inc. v. Short, 146 So.2d 108 (Fla. 1st DCA 1962); Mayes Printing Company v. Flowers, 154 So. 2d 859

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[1]It should be noted that both Bryan and Lewis were decided long after 1941, which is the year in which the Petitioner contends this Court "unequivocally held" that a taxpayer must allege special injury in order to have standing. (Hospital District at 12,13). Besides the numerous District Court cases directly contradicting the Hospital District's argument there are also further Supreme Court cases, which will be notsed, chronologically, infra.

(Fla. 1st DCA 1963); see also, Jones v. Braxton, 379 So.2d 115 (Fla. 1st DCA 1979).

The Second District, in Hunter v. Carmichael, 133 So.2d 584 (Fla. 2d DCA 1961) found:

> We do not agree with the contention of the appellant Hunter, that the Carmichael's suit should have been dismissed in the trial court because no special injury was shown. Florida has recognized the right of a citizen and taxpayer to maintain a suit to restrain public officials from paying out public monies upon an allegedly void and unauthorized contract.

Id at 586; accord, Ashe v. City of Boca Raton, 133 So.2d 122 (Fla. 2d DCA 1961); but see, Godheim.

In Krantzler v. Board of County Commissioners, 354 So.2d 126 (Fla. 3d DCA 1978), the Third District quoted extensively from Rickman in upholding the right of a taxpayer to bring a suit where his taxes are allegedly increased. See also, Ratner v. City of Miami Beach, 288 So.2d 520 (Fla. 3d DCA 1974) and Glatstein v. City of Miami, 399 So.2d 1005 (Fla. 3d DCA 1981) (by implication); but see; Paul v. Blake, 376 So.2d 256 (Fla. 3d DCA 1979).

The Fourth District has held that a taxpayer may maintain a suit "to prevent illegal acts of tax receiving bodies that will increase the burden of taxation, . . ." Housing Authority of the City of Melbourne v. Richardson, 196 So. 2d 489, 492 (Fla. 4th DCA 1967). See also,

Ashcroft v. Melbourne Civic Improvement Board, 232 So.2d 436 (Fla. 4th DCA 1970).

In 1976, this Court decided Williams v. Howard, 329 So.2d 277 (Fla. 1976). Williams was an action challenging the constitutionality of certain statutes affecting the Parole and Probation Commission. Several persons challenged the statute in their official capacities as members of the Parole and Probation Commission as well as citizens and taxpayers.

The trial court found that two of the challengers, Howard and Cross, lacked standing in their capacity as minority members of the Parole and Probation Commission. The trial court further found the complaint to be lacking in allegations as to any unlawful expenditures of public monies. Nevertheless, Howard and Cross were not dismissed from the action. The trial court went on to find the statute unconstitutional and the state appealed.

With respect to Howard and Cross, this Court agreed that these individuals lacked standing in their capacity as members of the Parole and Probation Commission. The Court also agreed with the finding that there were no allegations of unlawful expenditures and further held that the lack of such allegations was a fatal deficiency to the right to bring an action as a taxpayer.

> We also concur in the trial court's finding that the allegations of the complaint were not specific as to any unlawful expenditures of

> public monies arising from the asserted invalidity of Section 20.315 (6), Fla. Stats. We conclude, however, that such deficiency in the allegations of the complaint is fatal to the standing of Howard and Cross to maintain the suit as citizens and taxpayers. See, Rickman v. Whitehurst, 72 Fla. 152, 74 So. 205 (1917), the principles of which are reaffirmed in Dept. of Administration v. Horne, 269 So.2d 659 (Fla.1972) as to the point here under consideration.
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> ***
>
> For the same reasons that the allegations were in-sufficient to create standing in Howard and Cross as citizens and taxpayers, they are insufficient for the other Appellees in such capacity.

Williams, 329 So.2d at 279-80. (emphasis added). See also, Brown v Firestone, 382 So.2d 654, 662 n.2 (Fla. 1980) where the Court cites Rickman for the proposition that "[I]n certain instances a party will not have standing unless he can show a "special injury." (emphasis added). One such instance is when no illegal expenditures are involved.

Furthermore, the various commentators are firmly convinced that Florida provides taxpayer standing to restrain public officials from paying out public monies upon an allegedly void and unauthorized contract. See e.g., 18 McQuillin, Municipal Corporations, §§52.13-14; and 26 Fla. Jur., Public Works and Contracts, §§37-38 at 569-71.

Even the United States Supreme Court, while establishing a different rule for federal taxpayers has con-

sistently recognized the right of a municipal taxpayer to challenge illegal expenditures of municipalities. See e.g., Crampton v. Zabriskie, 101 U.S. 601 (1880); Frothingham v. Mellon, 262 U.S. 447 (1923); Doremus v. Board of Education, 342 U.S. 429 (1952); compare, Flast v. Cohen, 392 U.S. 83 (1968).

In Crampton, the Court explained the policy rationale underlying this type of taxpayer standing. Much of this language was either directly quoted or paraphrased in the Florida Supreme Court's Rickman decision. See, Rickman, 74 So. at 207; (see also, this brief supra at 12.)

> Of the right of resident taxpayers to invoke the interposition of a court of equity to prevent an illegal disposition of the monies of the county or the illegal creation of a debt which they, in common with other property holders of the county, may otherwise be compelled to pay, there is at this date no serious question. The right has been recognized by the state courts in numerous cases; and from the nature of the powers exercised by municipal corporations, the great danger of their abuse and the necessity of prompt action to prevent irremediable injuries, it would seem eminently proper for courts of equity to interfere upon the application of the taxpayers of a county to prevent the consummation of a wrong, when the officers of those corporations assume in excess of their powers, to create burdens upon property holders. Certainly, in the absence of legislation restricting the right to interfere in such cases to public officers of the state or county, there would seem to be no substantial reason why a bill by or on behalf of individual taxpayers should not be

> entertained to prevent the misuse of corporate powers. The courts may be safely entrusted to prevent the abuse of process in such cases.

Crampton, 101 U.S. at 609.

Finally, according to various commentators, nearly all state courts presently entertain state and municipal taxpayer suits. See, Comment, A Hard and Flast Rule for Taxpayer Standing, 57 St. Johns L. Rev. 367, 368-69 n.6 (1983); see also, Flast, 392 U.S. at 108 & n.2.; see generally, Comment, Taxpayers' Suits: A Survey and Summary, 69 Yale L.J. 895, 900-02 (1960).

Ms. Fornes has not dragged this Court through a lengthy review of the Florida jurisprudence on this point merely to establish a legitimate legal lineage for her complaint. She simply wishes to illustrate that until the Godheim decision, there had never been a Florida decision which denied standing to a taxpayer seeking to enjoin the illegal disbursement of public funds. Godheim's departure from nearly 130 years of consistent holdings created numerous legal and logical contradictions. However, as the Godheim dissent points out, and as the Fourth District found, these contradictions may be easily laid to rest if the cases are viewed in the proper context.

B. The Decision Below is in Harmony With Both Past and Present Taxpayer Standing Cases.

While agreeing that the early cases may have favored Ms. Fornes, the Hospital District and its amici repeatedly contend that since 1941 this Court has consistently denied standing to a taxpayer absent special injury. This oft-repeated contention is partially defensible when applied to zoning, land use, and public nuisance cases. See e.g., "A Citizen's Standing to Sue in Environmental and Land Use Cases," Fla. Bar Journal, 496 (July/August, 1983) and Skaggs-Albertsons v. ABC Liquors, Inc., 363 So.2d 1082 (Fla. 1978), and cases therein. This contention, as has been demonstrated, is totally incorrect when applied to the present case.

First, virtually all the cases on which the Hospital District relies deal with environmental and land use questions. See e.g., Henry L. Doherty & Co. v. Joachim, 146 Fla. 50, 200 So. 238 (1941) (challenge of ordinance abandoning easement); Askew v. Hold the Bulkhead Save Our Bays, Inc., 269 So.2d 696 (Fla. 2d DCA 1972) (standing of a citizens' environmental group); United States Steel Corp. v.Safe Sand Key, Inc., 303 So.2d 9 (Fla.1974) (standing of a citizens' environmental group); and Florida Wildlife Federation v. State Department of Environmental Regulation, 390 So.2d 64 (Fla. 1980)

(special injury standing requirement in environmental or public nuisance matters can be eliminated by legislation).

There are literally hundreds of cases espousing this public nuisance standard. However, none are applicable here. None of these cases even arguably involves a taxpayer suing to restrain unauthorized or unlawful activity which will result in an increased tax burden. As such, those cases are meant for other times and other matters. None of these cases plays any part in either the Godheim or the Fornes opinions.

Instead, the Godheim majority opinion rests on the premise that the Rickman decision, in conjunction with Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972) and Department of Revenue v. Markham, 396 So.2d 1120 (1981), announces a new rule of taxpayer standing.

As we have already noted, the very first legal statement of the Rickman court was, "[i]n the first place, the complainant has the right to maintain the bill if the acts complained of were unauthorized, and tended to produce a resultant injury to the complainant by increasing the burden of his taxes." 74 So. at 207. Despite this language, the Godheim majority found that Rickman requires a showing in taxpayer suits of special injury distinct from that of every other taxpayer. The

majority acknowledged that there is a "plausible argument" that the holding of Rickman had been misinterpreted. However, it apparently believed it was constrained to rule as it did because the Supreme Court in Horne "unmistakably interpreted Rickman to mean that the Plaintiff must show a special injury different from other taxpayers in order to have standing to bring the tax payers suit." 426 So.2d at 1087.

Both Horne and Markham do refer to Rickman as necessitating a special injury. However, the Second District was apparently unaware of the earlier Supreme Court decisions in Lewis, Hathaway and Thursby which interpreted Rickman as also allowing standing upon the allegation that an illegal expenditure would increase the burden of taxes. Thus, as both the Godheim dissent, the opinion below, and other cases suggest, the Rickman decision did not have the effect of restricting the longstanding doctrine of taxpayer standing, but rather, of expanding it. The Godheim dissent discusses the syntactical reasons supporting this interpretation at length. See, 426 So.2d at 1090-92.

Essentially, Rickman stands for the simple proposition that a taxpayer has standing when an unauthorized act will increase his tax burden or, in the absence of that factor, if he suffers a "special injury." As the Fourth District noted, "an increased tax burden fulfills

the standing requirement because it constitutes a peculiar injury distinct from other inhabitants." Fornes, 455 So.2d at 586 (emphasis by the court).

Subsequent cases dealing with this aspect of taxpayer standing, including Horne and Markham, appear to be consistent with this approach. In every case where the taxpayer has alleged an increase in his tax burden, standing has been allowed. In cases where no tax increase would result, the Courts have inquired as to special injury.

For example, in Bryan, this Court noted that tax payer standing was proper if improper municipal acts would increase taxes, but denied plaintiff standing because the expenditures he endeavored to stop had already been made. 56 So.2d at 926. In Ashe, plaintiffs attempted to stop the City of Boca Raton from giving away 203 acres. The Second District upheld the dismissal of the complaint because the plaintiffs were unable to allege an increase in their taxes or some special injury apart from other members of the community. 133 So.2d at 124. In Guernsey v. Haley, 107 So.2d 184 (Fla. 2d DCA 1958), the plaintiff had no standing to institute a law suit to stop artwork from being removed from the Ringling Museum because he suffered no injury different from the public in general, and failed to allege that the action of the public officials would result in an increase of his taxes. Id at 187.

The First District considered these cases and their relation to Rickman in R. L. Bernardo and Sons. The Court succinctly stated the holding of Rickman as:

> The decision states that in the absence of a showing of special injury, or an increase in the public burden, suits to enjoin public officials from making illegal expenditures of public funds must be brought by an authorized public officer in the protection of the public interest.

134 So.2d at 302-03 (emphasis added)

The court went on to determine that Bryan and Guernsey were examples of cases following the rule announced in Rickman while holding that plaintiff had standing because his complaint alleged an increase in his taxes by implication. Id.

Horne does not conflict with this interpretation of Rickman. In Horne, plaintiffs challenged an appropriations act passed by the Florida legislature. Both the parties and the Court agreed that Florida law allowed taxpayers to make "attacks upon unlawful expenditures." 269 So.2d at 660. However, the defendants contended that since this was an appropriation and not an expenditure bill, such taxpayer standing did not apply. The Court noted that this seemed to be a "distinction without a difference", but determined that the matter of standing did not turn upon whether or not the appropriations act constituted a direct expenditure. Id. at 660.

After quoting from the Rickman decision, the Court found that the instant case presented a valid exception to the so called "Rickman Rule." The Court determined that the plaintiffs had challenged the constitutionality of certain sections of the legislation and held that such an allegation "in this narrow area satisfies the requirement for standing to attack an appropriations act." Id at 662.

Thus, the question Horne poses is what did this Court mean by an "exception to the 'Rickman Rule'?" The logical answer to this question based on the preceding 120 years of case law is that a taxpayer has standing when (1) asserting an unlawful expenditure which will increase his taxes; (2) when he suffers a special injury different from the remainder of the public; and (3) in narrow areas, to make constitutional challenges.

This interpretation of Horne and Rickman is directly supported by this Court's decision in Williams v. Howard. As previously stated, in Williams, this Court found that failure to allege the unlawful expenditure of public monies was a fatal deficiency to taxpayer standing; that Rickman compelled this result; and that the principles of Rickman were reaffirmed by Horne. Williams, 329 So.2d at 279-80.

Thus, it is apparent that the Godheim court erred in holding that the Horne decision "unmistakeably

interpreted Rickman to mean that the plaintiff must show special injury ..." 426 So.2d at 1087. Williams clearly states that unauthorized expenditures are still a basis for taxpayer standing and that such basis is totally con-sistent with Horne.

Markham is also consistent with this interpretation of Rickman. In Markham, the Broward County Property Appraiser sought a declaratory judgment to interpret provisions of a statute requiring that household goods owned by non-residents be subject to ad valorem taxation. Not surprisingly, this Court denied standing. There was no constitutional challenge, there was no allegation of special injury, and there was no allegation of increased tax burden. In fact, plaintiff was interested in having the Court find that he could stop assessing such taxes. Instead of trying to stop an increase in taxes, plaintiff was trying to cause one.[2]

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[2]In the lower court Plaintiff did make some allegations that it would cost the appraiser more to make the tax assessments than the amount of tax that would be collected. Thus, by implication, it could be argued that if required to carry out the statute, the public burden would be increased. See, Department of Revenue v. Markham, 381 So.2d 1101, 1103 (Fla. 1st DCA 1979). This aspect of the case does not appear to have been raised before this Court.

Furthermore, there is a critical distinction between Mr. Markham's allegations and those of the instant case. Essentially, Mr. Markham simply disagreed with the tax law his representatives had passed. The legislature did nothing unlawful. The worst that could be said about the legislature is that it acted improvidently. Perhaps with the benefit of experience, the legislature will agree with Mr. Markham and the law will be changed.

However, in the present case, Ms. Fornes is attempting to make public officials comply with the law. She has alleged that these public officials intend to make disbursements of public funds unlawfully. Once these funds are disbursed, they are lost to the taxpayer forever and no change in legislation can bring them back. In fact, the competitive bidding statute Ms. Fornes is seeking to enforce was specifically designed to protect taxpayers against the precise injury alleged.

If a taxpayer cannot bring a lawsuit based on the competitive bidding laws for the sole reason that violation of these laws will increase her taxes, then a taxpayer can never bring such a lawsuit. See, Godheim at 1089 and Fornes at 586. When competitive bidding laws are violated, the only party who will suffer a "special injury" distinct from the public at large is, of course, a competitor for the project. This leads to the anoma-

lous result that competitive bidding laws, which were enacted to protect the public against possible collusion between public officials and bidders, can only be enforced by public officials and bidders. Where, as here, neither of these entities chooses to police themselves, if the Godheim Court is correct, the competitive bidding laws are not worth the proverbial paper they are printed upon.

C. Public Policy Supports Taxpayer Standing in This Case.

In Paul v. Blake, the Third District discussed the supposed policy rationale behind denial of taxpayer standing.

> This rule is based on the sound policy ground that without a special injury standing requirement, the courts would in all likelihood be faced with a number of frivolous lawsuits filed by disgruntled taxpayers, who, along with much of the taxpaying public these days, are not entirely pleased with certain of the taxing and spending decisions of their elected representatives.

376 So.2d at 259. (emphasis added)

The genesis of this rationale is the case of Frothingham v. Mellon, 262 U.S. 447 (1923). In Frothingham, the United States Supreme Court was confronted, for the first time, with the question of federal taxpayer standing. The court reaffirmed its previous holdings that a state taxpayer may sue to enjoin an

illegal use of the monies of a municipal corporation, but established a different rule for federal taxpayers. The Court reasoned that because the injury suffered by a state taxpayer was direct and immediate, an injunction against misuse of funds is not inappropriate. The Court distinguished that situation from a federal taxpayer saying:

> The relation of a taxpayer of the United States to the federal government is very different. His interest in the monies of the Treasury - partly realized in taxation and partly from other sources - is shared with millions of others; it is comparatively minute and indeterminable, and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity.

Id. at 487. The Court went on to make the "floodgate" argument later adopted by Paul v. Blake, and quoted by the Petitioner.

No one disputes that the "floodgate" argument is an oft-cited reason for foreclosing various types of litigation. However, the argument, by its very nature, not only invites, but requires, speculation. It asks the court to sit back and envision a parade of horribles which may, or may not, accompany any new change in the law. However, in the instant matter, absolutely no such speculation is required.

According to every level court in the State of Florida, as well as all the commentators, the "flood gates" regarding taxpayer standing have been wide open for nearly 130 years. It is simply impossible to ignore the fact that the feared flood of frivilous lawsuits by disgruntled taxpayers has never materialized.

Assuming, arguendo, that the legal arguments of the Petitioner and its amici are correct, even they admit that through the vast majority of Florida history a taxpayer has had standing in a case such as this one. Nevertheless, they all invite the Court to speculate about potential taxpayer abuse of this standing. Where is the evidence of this abuse? They cite to no cases detailing any abuse. They cite to no legislative activity to prevent such abuse. Such abuse simply has never occurred.

If any speculation is in order here, it should be directed towards the reasons why Florida taxpayers have not abused this privilege.

Perhaps it is due to various restrictions of the Rules of Civil Procedure. Perhaps there are practical reasons such as the tremendous cost of litigation or fear of sanctions for filing a frivolous action. Perhaps Florida public officials are doing generally good work. Perhaps the initial premise is simply incorrect and should be discarded.

Furthermore, throughout the long existence of this type of taxpayer standing in Florida, the legislature has seen no reason to alter, abolish, or condition such standing. In fact, the legislature has gone so far as to eliminate the usual "special injury" rule by statute for certain cases. See, Florida Wildlife Federation, 390 So.2d at 67. Even if taxpayer suits should someday present some difficulty, the legislature has any number of weapons at its disposal to eliminate them. For example, the legislature could establish conditions precedent to bringing a taxpayer action and require the posting of a bond, or the payment of attorney's fees to the prevailing party. The legislature has not taken such action simply because there has been no reason to.

In any event, Ms. Fornes is most definitely not "disgruntled with certain of the taxing and spending decisions of her elected representatives." This is not a situation where a taxpayer simply disagrees with the law or some lawful exercise of official discretion. Instead, Ms. Fornes agrees with the law. She is simply trying to get the Hospital District to comply with it.

Petitioner and its amici proffer several other arguments allegedly justifying restricted taxpayer standing. One such argument is that taxpayers should rely on various public officials to enforce competitive bidding laws. There are many practical difficulties involved in

this theory. Many of these difficulties are noted by Judge Lehan in Godheim at 1096. However, the most serious problem with Petitioner's argument is not practical, but legal. As the cases point out, unless otherwise provided by the legislature, a taxpayer has standing to contest unauthorized expenditures of public funds. Rickman, 74 So. at 207. As the United States Supreme Court stated:

> Certainly, in the absence of legislation restricting the right to interfere in such cases to public officials of the state or county, there would seem to be no substantial reason why a bill, by or on behalf of the individual taxpayers should not be entertained to prevent the misuse of corporate powers.

Crampton, 101 U.S. at 609. It is axiomatic that the legislature is presumed to be aware of the law, including standing requirements. See e.g., Florida Wildlife Federation, 390 So.2d at 67. The legislature has not chosen to restrict these actions to public officers. In fact, it has chosen not to restrict such taxpayer actions at all.

Another oft-advanced justification for limiting taxpayer standing is available recourse to the polls. WMI suggests Ms. Fornes "ultimate remedy should be at the polls." (WMI at 16). However, any political remedy is lacking in this case. The Hospital District commissioners are appointed by the Governor for a term

certain and cannot be removed by the polls. See, §155.06 Fla. Stat. (1981) Besides, no one would seriously entertain the notion that a governor should be removed from office because of the defalcations of the North Broward Hospital District.

In any event, under the circumstances of this case, such a remedy would prove to be particularly illusory. The money will be long and irretrievably spent before any election could occur. Thus, the only policy such reasoning serves is merely to limit the time a public official may feed at the public trough.

WMI also suggests that enforcement of competitive bidding laws be left to disappointed bidders. There are numerous problems militating against this approach. The first such problem is cost. WMI cites, by way of example, the case of Marriott Corp. v. Metropolitan Dade County, 383 So.2d 662 (Fla. 3d DCA 1980), pet. for rev. dism. sub nom, Jerry's, Inc.v. Marriott Corp., 401 So.2d 1335 (Fla. 1981).[3]

Marriott involved competitive bidding for a franchise to sell alcohol at the Miami International Airport. After extensive preparation of documentation required for a bid proposal, Marriott was found to be the

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[3]Counsel for the respondent represented the Marriott Corporation in these cases.

best bidder. After two further reviews of all bids, Marriott was recommended to the County Commission as the superior bidder. Nevertheless, the Commission ignored both the bids and the recommendations and gave the franchise to another bidder because he was, allegedly, "a local fellow."

To regain the franchise, Marriott was required to undergo a lengthy trial on merits, an appeal to the Third District Court of Appeals, and to prepare a jurisdictional brief, a brief on the merits, and attend oral argument before this Court. Marriott is a large corporation with the resources to fight City Hall. However, the cost of such litigation precludes the challenging of all but the largest contracts. Bidders are business people responsible for watching the bottom line.

Additionally, a business person must consider that public officials have many contracts to award. Unlike a taxpayer, bidders have a vested interest in staying on the "good side" of public officials. A bidder is not likely to curry much favor by suing the people with the power to provide him contracts. Even if a bidder successfully challenges the actions of public officials and receives the contract, he can expect little

cooperation in fulfilling his agreement. Without this cooperation, the project may become much more expensive than the original bid and the contractor will wind up losing money for all his efforts.

Finally, and perhaps most importantly, there is the inescapable anomaly discussed earlier. Competitive bidding laws were not passed for the protection of bidders. Competitive bidding laws were not passed for the protection of public officials. They were passed to protect taxpayers against collusion between public officials and bidders. This is the precise situation Ms. Fornes presents to this Court.

The lessons of history led the founders of this country to the adoption of a federal system of government. They believed that smaller, local governing units would be more directly responsive to the wants and needs of the governed. As a result, we are a nation made up of states, made up of counties, made up of cities, municipalities and villages, all containing special taxing districts which assess ad valorem taxes.

Under this system, those persons who are most likely to derive the benefits of the use of tax money are those persons who are required to bear the burden. Very few things are of more direct concern to a property owner than the amount of taxes she must pay to provide for essential services, such as schools and hospitals.

Of course, without the presence of taxpayers in a community, there is no need for such services and thus, no need for public officials to supply them. However, once these public officials are ensconced in their positions, the least they should be required to do is follow the very same law which mandates their existence. Any failure to do so creates a burden which falls distinctly upon the taxpayers they have been elected or appointed to serve.

There is no other person or entity in this state with a more immediate and direct interest in the activities of the North Broward Hospital District than the people who pay for its existence. Allowing a taxpayer standing in this case is not merely an extension of good legal and common sense; it has been the law of the state of Florida since 1856 and should so remain.

CONCLUSION

For the reasons stated, the decision of the Fourth District Court of Appeals should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of Respondent's Answer Brief was served by mail this 11th day of January, 1985 on WILLIAM ZEI, ESQUIRE, Attorney for Hospital District, 224 Southeast Ninth Street, Fort Lauderdale, Florida; JAMES WOLF, General Counsel, Florida League of Cities, Inc., 201 West Park Avenue, P. O. Box 1757, Tallahassee, Florida 32302; H. LEE MOFFITT, Moffitt, Moffitt, Hart & Miller, 401 South Florida Avenue, Tampa, Florida 33602; SUSAN APRILL, Thompson, Zeder et al, 1000 Southeast Bank Building, Miami, Florida 33131; and JOHN H. RAINS, Annis, Mitchell, Cockey, et al, P.O. Box 3433, Tampa, Florida 33601.

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