IN THE SUPREME COURT OF FLORIDA

CITY OF ATLANTIC BEACH, FLORIDA,

Petitioner,

vs.

GEORGE BULL,

Respondent.

CASE NO. 66,446

DCA Case No. AW-339

GEORGE BULL,

Petitioner,

vs.

CITY OF ATLANTIC BEACH, FLORIDA,

Respondent.

CASE NO. 66,488

DCA Case No. AW-339

PETITIONER'S INITIAL BRIEF

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PREFACE

This case involves a question which has been certified by the First District Court of Appeal to this Court as being of great public importance. Indeed, the outcome of this likely case will affect not only the taxpayers and public officials of The City of Atlantic Beach, but all citizens and public bodies within our state.

The question certified by the First District Court of Appeal is as follows:

> 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?

In the instant case, the First District Court of Appeal has ruled that a taxpayer does have such automatic standing upon alleging that the taxing authority's action will result in an increase in his tax burden. The Fourth District Court of Appeal has ruled likewise. The Second District Court of Appeal, however, has ruled to the contrary.

Petitioner, City of Atlantic Beach, has brought its petition seeking to invoke the discretionary jurisdiction of this Court to review the decision of the First District Court of Appeal in the instant case and to seek this Court's clarification on this most important issue. It should be noted

that a similar case presenting to this Court the identical question (certified by the Fourth District Court of Appeal) is presently pending in this Court. North Broward Hospital District v. Fornes, Case No. 66,115.

The following abbreviated references will be used throughout this brief:

1. Petitioner, City of Atlantic Beach, will be referred to as "the City".

2. Respondent, George Bull, will be referred to as "Bull".

3. The Opinion here under review is that rendered by the First District Court of Appeal in the case of George Bull, Appellant, vs. City of Atlantic Beach, Florida, et al., Appellees, Case No. AW-339, Opinion filed January 8, 1985; all references herein to the "First DCA's Opinion" or similar references are intended in the context of that proceeding and that Opinion.

4. References to the record-on-appeal shall be given by the symbol "R." followed by the appropriate page numbers.

5. References to the appendix shall be given by the symbol "App." followed by the appropriate page numbers.

STATEMENT OF THE CASE

This proceeding is brought to review the First DCA's Opinion and Order (App. 1-3) reversing the trial court's final order dismissing Bull's Third Amended Complaint with prejudice, on the basis that Bull lacked standing to bring his suit against the City (R. 64-65; App. 4-5).

This case was commenced by Bull's filing of his original Complaint against The City on August 13, 1982. After subsequent amendments and preliminary proceedings in the Circuit Court, Bull's Third Amended Complaint was filed on June 22, 1983 (R. 44-49). The City filed its Motion to Dismiss the Third Amended Complaint on several grounds, including the assertion that Bull was without standing (R. 54-55). On November 23, 1983, the Circuit Court, Fourth Judicial Circuit, the Honorable Harold R. Clark, entered its Order Dismissing Third Amended Complaint, in which the court dismissed said Complaint with prejudice on the grounds that Bull lacked standing to maintain his action (R. 64-65). In doing so, the Circuit Court specifically found as follows:

> "1. In his Third Amended Complaint, Plaintiff has alleged that, as a taxpayer of The City of Atlantic Beach, he will suffer an increase in his tax burden as a result of the alleged non-compliance of The City with the requirements of §287.055 Florida Statutes (1981); the Plaintiff has failed, however, to allege any special injury different and distinct from that suffered by other taxpayers in The City."

> "2. Florida law requires that, in order for a plaintiff to maintain a taxpayer's suit against a governmental entity, he must demonstrate that he has sustained such a "special" injury, different from that sustained by other taxpayers and proximately caused by the alleged wrongful actions of the governmental entity. Rickman v. Whitehurst, 73 Fla. 152, 74 So. 205 (Fla. 1917); Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972); Department of Revenue of the State of Florida v. Markham, 396 So.2d 1120 (Fla. 1981); and Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2d DCA 1983)". (R-64-65; App. 4-5).

Bull appealled the Circuit Court's decision to the First District Court of Appeal, where the case was decided upon the briefs without oral argument. In its Opinion and Order dated January 8, 1985, the First DCA reversed the order of the Fourth Judicial Circuit, citing its reliance on and approval of the decision rendered by the Fourth District Court of Appeal in the case of Fornes v. North Broward Hospital District, 455 So.2d 584 (Fla. 4th DCA 1984). The court also expressed its agreement with the dissenting opinion in the case of Godheim v. City of Tampa, 426 So.2d 1084, 1092 (Fla. 2d DCA 1983), a case in which the Second DCA denied standing to a taxpayer-plaintiff under circumstances virtually identical to those alleged in Bull's Third Amended Complaint.

At the conclusion of its Opinion, the First DCA acknowledged the "great public importance" of the standing issue posed by the instant case, and indicated it would "follow the lead" of the Fourth DCA in the Fornes case by certifying to this Court the specific question which is quoted verbatim in

the Preface to this brief. Thus, the First DCA has acknowledged its conflict with the Second DCA's Opinion in Godheim, as well as the need to have this most important issue resolved by this Court.

STATEMENT OF THE FACTS

The pertinent allegations of the Third Amended Complaint are as follows:

1. Bull is a resident, property owner and taxpayer of The City of Atlantic Beach.

2. During 1982, The City properly requested and received bids for the construction of a new maintenance building within The City, and thereafter began negotiations with the low bidder. [Notably, there is no allegation of any wrongdoing in connection with The City's bidding and negotiations as to the actual construction of the new maintenance building].

3. In connection with the bidding of the aforementioned project and subsequent negotiations with the low bidder, The City was assisted by a consulting architect/engineer whose services had been employed by The City for that purpose. In connection with those services, The City authorized payment to that consultant of fees and costs in the total sum of $22,504.22.

4. At no time prior to authorizing said payment to The City's consultant did The City publicly announce or accept competitive bids for those consulting services.

5. In paying those consulting fees and costs associated with the bidding and negotiation phases of the new maintenance building project, The City violated Chapter 287, Florida Statutes, as well as various provisions of The City charter

which provide that The City shall abide by the provisions of Chapter 287.

6. The payments to the consulting architect/engineer have caused or will cause waste and injury to the public funds, which will thereby result in an increase to Bull's tax burden.

Bull prayed that The City be restrained from paying out City funds to its consultant until such time as The City complied with the aforementioned provisions of Chapter 287, Florida Statutes and the aforementioned sections of The City charter, and that The City be "compelled to account for and recover" the amounts previously paid to its consultant. (R.-49).

Noticeably lacking from the allegations of the Third Amended Complaint is any assertion that Bull has suffered, or will suffer, any form of injury other than the alleged increase to his tax burden resulting from The City's payments to its consulting architect/engineer.

Although not mentioned in the Third Amended Complaint, another fact brought out by Bull in his initial brief filed in the First DCA is the following:

> "There are currently pending in the Circuit Court in and for Duval County, Florida and in [the First DCA] multiple cases wherein Bull is Plaintiff or Appellant and The City is Defendant or Appellee. The facts are similar but not identical." [App. p.7].

Petitioner City acknowledges that the allegations of the Third Amended Complaint must be taken as true for the purposes of this appeal.

ISSUE

WHETHER A TAXPAYER WHO ALLEGES THAT HE WILL SUFFER AN INCREASED TAX BURDEN AS A RESULT OF AN ILLEGAL EXPENDITURE OF PUBLIC FUNDS BY A GOVERNMENTAL BODY HAS STANDING TO MAINTAIN AN ACTION TO PREVENT SUCH EXPENDITURE, WHERE THE TAXPAYER ALLEGES NO SPECIAL INJURY DIFFERENT FROM THAT SUFFERED BY OTHER TAXPAYERS SIMILARLY SITUATED.

ARGUMENT

A TAXPAYER WHO WILL SUFFER NO SPECIAL INJURY DIFFERENT FROM OTHER TAXPAYERS SIMILARLY SITUATED IS WITHOUT STANDING TO MAINTAIN AN ACTION TO PREVENT AN ALLEGED UNLAWFUL EXPENDITURE OF PUBLIC FUNDS BY GOVERNMENTAL OFFICIALS.

The issue in this appeal is straight-forward and has been framed clearly by the pleadings of record in the trial court, together with the trial court's Order Dismissing Third Amended Complaint (App.4-5) and the First DCA's Opinion reversing the trial court (App. 1-3).

In addition, the issue presented by this appeal is identical to that raised in another case pending before this Court at this time. In the Fornes case the Court has before it an appeal from the Fourth District Court of Appeal, in which that court has certified as a question of great public importance the identical question certified in the instant case by the First DCA. Briefs have been filed in that case by all parties as well as by several amicus curiae, one of whom is the Florida League of Cities; the undersigned is unaware of the further progress or status of that case.

The issue posed is of obvious importance to the entire citizenry and to all municipal governments and other taxing authorities within the State of Florida. A decision that all taxpayers should have standing to bring individual lawsuits to prevent what they believe are unlawful expenditures of public funds would open the door to a barrage of litigation now restricted by existing Supreme Court guidelines, and would threaten the total disruption of municipal government by exposing Florida municipalities and other public bodies to unrestricted law suits, whether from well-intentioned taxpayers or vexatious troublemakers.

In the following portions of this brief, The City will demonstrate to the Court that there is no need to remove existing restrictions against such taxpayer suits, and indeed there is strong public policy against such a change.

1. The Most Recent Decisions Of This Court Reflect That Taxpayers Have No Standing To Bring Such Suits, Absent A Showing Of Special Injury Different From That Suffered By Other Taxpayers Similarly Situated.

At the outset, Petitioner acknowledges the extensive discussion of pertinent Florida caselaw contained in the several briefs filed in the Fornes case and now being considered by this Court. However, because this Court has elected not to consolidate the instant case with the Fornes case (although noting that the two are similar), Petitioner is compelled to address that body of Supreme Court precedent as a predicate for further argument.

The discussion necessarily begins with the case of Rickman v. Whitehurst, 74 So. 205 (Fla. 1917), a case very similar to the instant case. That case also involved a suit by a "taxpayer citizen" to enjoin a city's expenditure of public funds for the construction of a bridge. As in the instant case, it was alleged that the proposed expenditure had been approved without the competitive bidding required by state statute and was therefore illegal. The trial court sustained a demurrer to the bill, and the action was dismissed. On appeal, the Supreme Court affirmed the trial court's ruling, establishing was has since been called the "Rickman Rule", as follows:

> "In a case where a public official is about to commit an unlawful act, the public by its authorized public officers must institute the proceeding to prevent the wrongful act, unless a private person is threatened with or suffers some public or special damage to his individual interests, distinct from that of every other inhabitant, in which case he may maintain his bill." 74 So. 207 (emphasis supplied).

In further elaborating, the court explained:

> "The taxpayer's injury specially induced by the unlawful act is the basis of his equity, and unless it is alleged and proved, there can be no equitable relief. His position is not contradistinguished from that of all other taxpayers, or citizens who are not taxpayers, and therefore cannot invoke the aid of equity merely to prevent an unlawful corporate act however much the act may shame his sense of pride in the faithful observance by public officials of the obligations of their public duties." Id.

The "Rickman Rule" has been the subject of much judicial discussion since the time the case was first decided in 1917. Concededly, prior to 1941 "Florida has had a checkered history concerning the requirements for standing to bring a taxpayer's suit". Godheim v. City of Tampa, 426 So.2d 1084, 1086 (Fla. 2d DCA 1983). However, since 1941, beginning with the case of Henry L. Doherty and Company, Inc. v. Joachim, 200 So. 238 (Fla. 1941), the decisions of this Court have been consistent and clear on this subject, and those decisions support the trial court's dismissal of the Third Amended complaint filed in the instant case.

In the Doherty case, a property owner in the town of Palm Beach brought suit against the town and others for economic and other injuries sustained as a result of certain municipal action which affected the plaintiff as well as other property owners in the town. The town filed its motion to dismiss, claiming that plaintiff lacked standing in that plaintiff had not suffered damages different from other property owners and citizens. The trial court denied the motion to dismiss; on appeal, this Court reversed the trial court and ruled that the motion to dismiss should have been granted. Id. at 240. The basis for this Court's ruling was that, although plaintiff concededly had suffered damages as a result of the town's actions, and although those damages may have been greater in degree than that suffered by many others in the community, nonetheless those damages were similar "in kind" to those

suffered by others in the community. Thus, unable to show an injury different in kind from others similarly situated, plaintiff was unable to maintain his lawsuit against the municipality. Id. As a predicate to its decision, the Court noted as follows:

> "Both parties seem to recognize the rule announced in Rickman v. Whitehurst, et al., (citation omitted) that in the event an official threatens an unlawful act, the public by its representatives must institute the proceeding to prevent it, unless a private person can show a damage peculiar to his individual interests, in which case equity will grant him succor". Id. at 239.

In 1955 this Court again had occasion to consider the issue. In Town of Flagler Beach v. Greene, 83 So.2d 598 (Fla. 1955), certain land owners brought suit against the city to enjoin the construction of a public recreation building. The trial court entered judgment for plaintiffs, thus enjoining the city from the proposed construction. On appeal to this Court, the trial court's decision was reversed on the grounds that the record before the Supreme Court contained "no showing at all that the plaintiffs below (would) suffer any injury from the construction of the building proposed different from the kind suffered by the public generally." Id. at 600.

In explaining its reasoning, the Court specifically approved the reasoning of the Doherty case, stating:

> "In a similar situation in the case of Henry L. Doherty and Company v. Joachim (citation omitted), we placed upon the plaintiff the burden of showing that the claimed injury was different in kind as distinguished from different in degree from

> the injury that might be suffered by the public generally. This burden must be carried by the plaintiffs in the case at bar." Id. (original emphasis).

This Court again addressed the issue as to whether a taxpayer has standing to challenge an allegedly unlawful expenditure by a public body in the case of Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972). There, the court considered a taxpayer's suit attacking the constitutionality of various provisions of the 1971 General Appropriations Act, as constituting unlawful expenditures of public funds. The trial court had denied a motion to dismiss the complaint, which was premised on the issue of whether the plaintiff taxpayers had the requisite standing to bring such a suit. On appeal to this Court, the court cited and approved the "special injury" requirement previously enunciated in Rickman and subsequent decisions. 269 So.2d 662. However, the Florida Supreme Court added a very limited "exception" to the rule precluding standing in such cases, based on the 1968 decision by the United States Supreme Court in Flast v. Cohen, 392 U.S. 83 (1968). This Court stated:

> "Essentially, the "Rickman Rule" requires a showing of special injury. We find, however, that the instant case presents a valid exception to the so called "Rickman Rule". Appellees have alleged the unconstitutionality of certain sections of an appropriations act. These sections are said to be volative of constitutional provisions which place limitations upon enacting legislation regarding state funds. We hold that such allegation in this narrow area satisfies the requirement for "standing" to attack an appropriations act." 269 So.2d 662 (original emphasis).

In elaborating further as to the narrow exception being applied in that instance, the Court stated:

> "Thus, we find that where there is an attack upon constitutional grounds based directly upon the legislature's taxing and spending power, there is standing to sue without the Rickman requirement of special injury, which will still obtain in all other cases." Id. at 663 (original emphasis).

In accord, Paul v. Blake, 376 So.2d 256 (Fla. 3d DCA 1979).

This Court's elaboration as to the narrow "exception" created in the Horne case was reaffirmed emphatically by this Court in the subsequent case of United States Steel Corporation v. Save Sand Key, Inc., 303 So.2d 9 (Fla. 1974). In that case, certain citizens brought suit seeking to enjoin the U.S. Steel Corporation from interfering with certain alleged public rights to the use and enjoyment of certain beach property in Florida. The circuit court dismissed the complaint with prejudice on the grounds that the private citizens lacked standing to sue. The Second DCA reversed the decision, and the case was brought to this Court to review the issue as to whether the private citizens had standing to bring such an action.

This Court reversed the Second DCA and affirmed the trial court's dismissal of the complaint on the grounds that the plaintiffs did not have standing since they had shown no special injury different from that suffered by all other citizens. The Court reaffirmed its holding in Horne, and emphatically stated that the Horne decision created only a limited exception to the Rickman "standing" requirement. The Court stated:

> "Clearly, by its decision in Department of Administration v. Horne, supra, this Court did not intend to abrogate in any way the special injury rule in cases as those sub judice, but, in fact, recognized that it would still obtain in other cases. . . .We adhere resolutely to our holding in Sarasota County Anglers Club, Inc. v. Kirt, supra, and other decisions of this Court relative to the concept of special injury in determining standing. (citing Doherty v. Joachim and Town of Flagler Beach v. Greene). 303 So.2d 12.

Notably, the Court then made the following observation concerning the need for the strict requirement of "special injury" as a prerequisite to standing in actions brought by private citizens against public bodies:

> "If it were otherwise there would be no end to potential litigation against a given defendant, whether he be a public official or otherwise, brought by individuals or residents, all possessed of the same general interest, since none of them would be bound by res judicata as a result of prior suits; and as against public authorities, they may be intolerably hampered in the performance of their duties and have little time for anything but the interminable litigation." (quoting from Askew v. Hold The Bulkhead-Save Our Bays, 269 So.2d 696 (Fla. 2d DCA 1972). Id.

The "no standing" rule was again affirmed by this Court in the case of Florida Wildlife Federation v. State Department of Environmental Regulation, 39 So.2d 64 (Fla. 1980). In that case, the Court noted that the "special injury" rule first developed in the area of Public Nuisance Law and prevented an individual from bringing suit to enjoin a nuisance unless that person could show an injury "different both in kind and degree

from that suffered by the public at large". 390 So.2d 67. The Court then noted as follows:

> "The rule has been extended to taxpayers' suits, Rickman v. Whitehurst...and zoning suits...the rule is not absolute, however, and exceptions to it have been carved out by both this Court and the legislature. See...Department of Administration v. Horne..." Id. at 67.

In the following year, in the case of Department of Revenue v. Markham, 396 So.2d 1120 (Fla. 1981), the Court was faced with the issue as to whether citizens and taxpayers, in such capacities, had standing to seek declaratory relief as to certain exemptions from ad valorem taxation. In ruling that the plaintiffs had no such standing, and their complaint therefore should have been dismissed, this Court ruled:

> "The complaint for declaratory relief contained no allegation of any special injury, and it did not attack the constitutionality of the taxing statutes in question. It has long been the rule in Florida that, in the absence of a constitutional challenge, a taxpayer may bring suit only upon a showing of special injury which is distinct from that suffered by other taxpayers in the taxing district. (citing Horne and Rickman). Id. at 1121.

Then, quoting from the Third District Court of Appeal case of Paul v. Blake, supra, the Court reiterated the rationale for the "special injury" rule:

> "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 great 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 elective representatives. It is felt that absent some showing of special injury as thus defined, the taxpayers' remedy should be at the polls and not in the courts. Moreover, it has long been recognized that in a representative democracy the public's representatives in government should ordinarily be relied on to institute the appropriate legal proceedings to prevent the unlawful exercise of the state or county's taxing and spending power." (emphasis supplied) Id. at 1122.

Relying on the aforementioned cases most recently decided by this Court, the Second District Court of Appeal decided in the case of Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2d DCA 1983) that a taxpayer lacks standing to bring suit to enjoin the expenditure of public funds allegedly in violation of Chapter 287, Florida Statutes. Thus, the identical issue and cause of action presented in the instant case was adjudicated against the taxpayer, on the basis of the precedent established by this Court.

As previously mentioned, in the recent Fornes case the Fourth District Court of Appeal has ruled exactly contrary to the holding in Godheim, on similar facts. That departure from existing Supreme Court precedent has now been followed by the First District Court in the instant case. While not addressing any of the more recent Supreme Court decisions previously discussed in this brief, the First DCA has adopted, instead, the reasoning of Judge Lehan's dissenting opinion in Godheim, including Judge Lehan's "interpretation" of the "Rickman Rule". (App. 2). Respectfully, the First DCA's emphasis and focus are misplaced.

Recognizing, as did the majority in Godheim, that a "plausible argument" could be made in support of Judge Lehan's interpretation of the "Rickman Rule", at this point the argument is moot because of subsequent Supreme Court decisions on point. As stated in Godheim:

> "At this point, however, it makes no difference that others might read Rickman in a different light. The Supreme Court has, in fact, unmistakably interpreted Rickman to mean that the plaintiff must show a special injury different from other taxpayers in order to have standing to bring a taxpayers' suit. (citing Horne and Markham)".

Respectfully, if there is any legitimate question as to what the Court ruled in Rickman, or the current position of the Court on the "standing" issue addressed in that case, the appropriate means of resolving that question is to look to the most recent Opinions of this Court dealing with the same issue. A district court may disagree as to the interpretation to be given to an earlier Supreme Court case, but it must accept as controlling precedent the most recent decisions of the Supreme Court on that issue. Gilliam v. Stewart, 291 So.2d 593 (Fla. 1974).

Although there may be an argument as to exactly what the Rickman case meant to say, there can be no argument as to what the Supreme Court has said, very consistently, beginning with the Doherty decision in 1941. As the foregoing discussion demonstrates, the most recent position of this Court has been that a taxpayer has no standing to sue a public body unless he

can show a special injury different from that suffered by all other taxpayers, or unless there is a separate constitutional challenge to the actions of the public body.

2. The Existing "No Standing" Rule Is Supported, And Mandated, By the Public Policy Of This State.

The rule precluding a taxpayer's standing to bring suits of the nature at issue in this case not only is supported by valid public policy reasons, but is absolutely necessary to insure the orderly conduct of business by public officials and public bodies throughout this State.

That underlying public policy is articulated in the quote from Paul v. Blake (and adopted by this Court in Markham) which is set forth at page 14 of this brief; it is premised on the "likelihood" that, without such a "special injury" standing requirement, the courts of this State would be faced with a "great number of frivolous lawsuits filed by disgruntled taxpayers" who are unhappy with the spending decisions of their elected officials.

Again in United States Steel Corp. v. Save Sand Key, Inc., supra, in the passage quoted at page 13 of this brief, this Court reiterated its concern that without a "special injury" requirement "there would be no end to potential litigation", and public authorities may be "intolerably hampered in the performance of their duties"; indeed the Court worried that public officials "would have little time for anything but the interminable litigation". 303 So.2d 12.

It is noteworthy that in the Horne case the Court noted that even in situations which constitute valid exceptions to the "no standing" rule (for example, the constitutional challenge alleged in Horne), the taxpayer's suit should be allowed only as a last resort, after the appropriate public officials have declined to bring suit on behalf of the affected taxpayers. The Court stated:

> "...It would be appropriate in such a taxpayer's suit that, as in other similar instances, the certificate of the Attorney General be provided, setting forth that he elects not to sue, as a predicate to a taxpayer proceeding. This would be in accord with orderly procedure wherein the appropriate public officer usually deals with such matters, rather than the possible multitude of individual citizens who might attempt to act in instances which are many times unwarranted or where such citizens do not have access to appropriate information and procedures involved; otherwise the courts might be subjected unduly to unnecessary and unwarranted litigation on such subjects." (emphasis supplied) 269 So.2d at 663.

Thus, as repeatedly emphasized by this Court, abrogation of the existing rule denying standing to taxpayers who can show no special injury likely would create "interminable litigation" for public officials and bodies throughout this State, which could only hamper, or indeed cripple, their ability to function in the public interest. That litigation could result from a variety of sources, including: (a) multiple lawsuits by different taxpayers arising out of the same governmental activity; (b) lawsuits brought by well-intentioned but ill-informed taxpayers to prevent governmental activity which,

in their opinion, is improper; (c) spite suits, frivolous suits and repetitive litigation brought by "disgruntled" or vexatious taxpayers; and (d) litigation brought in the name of a taxpayer to accomplish an ulterior business motive or to gain a business advantage in connection with actual or proposed municipal business.

Respectfully, this Court cannot ignore the likelihood that such litigation could cripple the effective conduct of public business while, at the same time, result in great waste of public funds and expense to the taxpayers of this State as their elected public officials are put to the expense of defending against such claims.

In the context of the public policy reasoning previously articulated by the Supreme Court and appellate courts of this state, it is particularly worth noting that the Respondent in the instant case, George Bull, presently is engaged in "multiple" lawsuits against The City of Atlantic Beach, all instituted by Bull either as plaintiff in the trial court or as appellant in the appellate court (App. 7). Whether or not Mr. Bull sincerely believes that The City wrongfully expended funds in the instant case by paying certain fees to its consulting architect/engineer, nonetheless the multitude of suits and appeals by Bull against The City provides an excellent example of the type of "interminable litigation" instigated by a "disgruntled taxpayer" which has been anticipated by this Court in the event the "no standing" rule were abrogated.

3. Other Remedies Are Available To Protect The Public Against Wrongful Expenditures By Their Elected Officials.

In its Opinion, the First District Court cited with approval the following rationale articulated by the Fourth DCA in Fornes:

> "We are also impressed with the policy arguments that militate in favor of allowing a taxpayer whose burden will be increased by alleged illegal expenditures of public funds to have standing to sue. For example, if an offended taxpayer cannot sue to prevent such activity, who will? Even other bidders may not have standing unless they, too, are taxpayers. Furthermore, an interesting question presents itself, should the enforcement of competitive bidding laws be left solely to the public officials and the bidders?"

The unqualified answer to the last rhetorical question posed by the District Court is yes! For the public policy reasons previously articulated, the enforcement of such laws must be left to the appropriate public officials and those private citizens who are peculiarly injured by such actions, such as unsuccessful bidders and other competitors injured by the alleged violation of competitive bidding laws. In the Horne case, this Court expressly recognized that:

> "It is felt that absent some showing of special injury as thus defined, the taxpayer's remedy should be at the polls, not in the courts. Moreover, it has long been recognized that in a representative democracy the public's representatives in government should ordinarily be relied on to institute the appropriate legal proceedings to prevent the unlawful exercise of the state or county's taxing and spending power." 396 So.2d 1122.

A public official who is guilty of the wrongful expenditure of public funds, or any other violation of law, can be held accountable by his electorate at the polls where such conduct often is punished by removal from public office. In addition, judicial relief is available, on behalf of all persons affected by such conduct, through the institution of civil or criminal legal proceedings by the appropriate public officials.

Article IV, Section 4(c) of the Constitution of the State of Florida provides that the Attorney General is the chief legal officer of the State of Florida. The Attorney General's duties are set forth in Section 16.01 Florida Statutes which provides, in relevant part, as follows:

> "The Attorney General:
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> *
>
> (4) Shall appear in and attend to, in behalf of the State, all suits or prosecutions, civil or criminal or in equity, in which the State may be a party, or in anywise interested, in the Supreme Court and District Courts of Appeal of the State;
>
> (5) Shall appear in and attend to such suits or prosecutions in any other of the courts of this State or in any courts of any other state or of the United States;
>
> (6) Shall have and perform all powers and duties incident or usual to such office."

The Florida Supreme Court has held as follows concerning the duties and powers of the Attorney General:

> "The Attorney General is the attorney and legal guardian of the people...His duties pertain to the executive department of the State, and it is his duty to use means most

> effectual to the enforcement of the laws, and the protection of the people, whenever directed by the proper authority, or when occasion arises. . . .The office of the Attorney General is a public trust. It is a legal presumption that he will do his duty, that he will act with strict impartiality. In this confidence he has been endowed with a large discretion, not only in cases like this, but in other matters of public concern." State ex. rel. Attorney General v. Gleason, 12 Fla. 90, 112 (Fla. 1869).

This Court has also stated:

> "The Attorney General has the power and it is his duty among the many devolving upon him by the common law to prosecute all actions necessary for the protection and defense of the property and the revenue of the State. . ." State ex. rel. Landis v. Kress, 115 Fla. 189, 155 So. 823, 827 (Fla. 1934).

In the case of State ex. rel. Shevin v. Yarborough, 257 So.2d 891 (Fla. 1972), Justice Ervin (a former Florida Attorney General) stated:

> "It is the inescapable historic duty of the Attorney General, as the chief State legal officer, to institute, defend or intervene in any litigation or quasi judicial administrative proceeding which he determines in his sound official discretion involves a legal matter of compelling public interest." Id. at 894.

That power and duty of the Attorney General to institute litigation in the public interest, on his own initiative, is extremely broad. State of Florida ex. rel. Shevin v. Exxon Corporation, 526 Fed. 2d 266, 271 (5th Cir. 1976).

Thus, under our State constitution, statutes, and caselaw, if a taxpayer sincerely suspects that a public official has breached the public trust or violated any law of this State in the performance of his duties, the proper avenue of redress is to bring the matter to the attention of the Attorney General, either directly or through the local state attorney's office. In that event, the Attorney General or state attorney would have the right and duty to investigate the claim and, if warranted, to prosecute the claim either through appropriate civil or criminal proceedings.

Respectfully, the investigation and evaluation of such claims by the Attorney General or state attorney creates a necessary level of scrutiny required to "filter" valid claims from those which are, in the judgment of our elected representatives, unfounded. Unless we filter such claims through the individual whom we have elected to represent us in legal proceedings involving the public interest, we subject public officials, governmental bodies and the entire tax-paying citizenry (which ultimately pays for such litigation) to the judgment and discretion of each and every citizen who claims an interest or injury resulting from the subject governmental action.

As applied to the instant case, it is noteworthy that the Attorney General of the State of Florida often has been called upon to consider questions and situations concerning the application and violation of Florida Statutes §287.055. See generally, Opinions of the Attorney General 83-20 (March 29,

1983); 078-19 (Feb. 7, 1978); 077-140 (Dec. 30, 1977); 077-22 (Feb. 23, 1977); 076-142 (June 18, 1976); 075-131 (May 5, 1975); 075-86 (March 19, 1975); 075-78 (March 18, 1975); 075-56 (March 6, 1975); 074-308 (Oct. 7, 1974).

In addition to the powers vested in the Attorney General of the State of Florida, the power to initiate judicial proceedings in the public interest also lies with the Governor. Article IV, Section 1(b) states:

> "(b) The Governor may initiate judicial proceedings in the name of the State against any executive or administrative state, county or municipal officer to enforce compliance with any duty or restrain any unauthorized act."

Admittedly, in most instances where the Governor is alerted to an alleged violation of law or abuse of the public trust by a public official or public body, the Governor likely will rely on the investigation and assessment of the claim by the Attorney General or local state attorney; nonetheless, the constitution expressly authorizes the Governor to institute such actions independent of the Attorney General's discretion.

Finally, a municipality's violation of §287.055 Fla. Stat. certainly can, and in most instances will, be challenged by unsuccessful bidders or other competitors directly affected by such action. Miami Marinas Association, Inc. v. City of Miami, 408 So.2d 615 (Fla. 3d DCA 1981), rehearing denied 1982; City of Jacksonville v. Reynolds, Smith and Hills, Architects, Engineers and Planners, Inc., 424 So.2d 63 (Fla. 1st DCA 1982), rehearing denied 1983. In effect, this provides yet another

level of protection to taxpayers from public expenditures in violation of Fla. Stat. §287.055.

The foregoing discussion illustrates that under existing constitutional and statutory laws, the taxpayers of a municipality are assured adequate protection from unlawful expenditures of public funds. Accordingly, there is no legitimate need to abrogate the long-standing rule established by this Court against affording a taxpayer standing to bring suit against his municipality in situations such as those in the case sub judice.

CONCLUSION

The trial court dismissed with prejudice Respondent Bull's Third Amended Complaint against The City of Atlantic Beach on the grounds that Bull had no standing to bring his "taxpayer" action premised on The City's alleged violation of Section 287.055, Florida Statutes. That decision by the trial court was premised expressly on the most recent decisions of this Court, and on the basis of the Godheim decision which is directly on point with the instant case.

The public policy underlying the prior decisions of this Court demonstrates that taxpayers at large cannot have unrestricted access to the courts for review of the spending decisions of their public officials. Taxpayers must be required to rely on the judgment and discretion of their elected representatives, such as the Attorney General and local state attorneys, to enforce the laws of this State, including those laws pertaining to the expenditure of public funds.

Naturally, where a taxpayer can demonstrate a special injury, unique to him and different from that suffered by other taxpayers, such a claimant has standing to prosecute his claim against the public body causing the injury; absent such a showing, however, public officials and governmental bodies must be protected from the avalanche of litigation which likely would ensue from a lesser standard, as is advocated by Respondent Bull in the instant case.

Accordingly, The City of Atlantic Beach respectfully requests that this Honorable Court answer the certified question accordingly and reverse the decision of the First District Court of Appeal.

Respectfully submitted,

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and

MAHONEY ADAMS MILAM SURFACE
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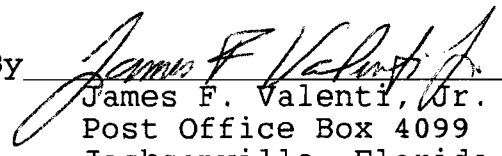
By 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Tyrie A. Boyer, Esquire, 3030 Independent Square, Jacksonville, Florida 32202, and Thomson Zeder Bohrer Werth Adorno & Razook, 100 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131, by U.S. Mail, this 25th day of February, 1985.

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Attorney