SUPREME COURT OF FLORIDA

CASE NO. 84,414

SARASOTA COUNTY, Appellant, vs. SARASOTA CHURCH OF CHRIST, INC., ET AL., Appellees.	ON APPEAL FROM THE SECOND DISTRICT COURT OF APPEAL CASE NO. 93-1902

BRIEF OF AMICUS CURIAE

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STATEMENT OF CASE AND FACTS

Amicus curiae concurs with the Statement Of Case And Facts as presented by the Appellee.

SUMMARY OF ARGUMENT

The future of private property in Florida's may depend on this Court's ruling. A special assessment that does not provide a special benefit to property must be invalid, else property will be oppressed.

Special assessments have been recognized as dangerous in the past. Since they clearly flow from the power of taxation (albeit a branch of home rule power), they are preempted by the state constitution to legislative oversight, which has not been forthcoming. Thirteen assessments, even if limited to $500.00 a piece, or one assessment of $262,000.00 would make private property beyond the reach of most Floridians.

The present reliance on special assessments is a small percentage of local government revenues. The Court should act decisively now, else local governments will be encouraged to burden private property with greater exposure to special assessments.

Because Florida's homestead is not at issue, and a "much more restrictive" test may apply to Florida's homesteads, any opinion the Court renders should be limited in its applicability or that test should be applicable to all private property and the Court should consider receding from prior opinions imposing "service assessments" against private property.

ARGUMENT

I. "THE LINE IN THE SAND" PREMATURELY DRAWN BY JUDGE PEACH AT SUMMARY JUDGMENT MAY NOW BE ETCHED IN STONE AFTER A TRIAL ON THE MERITS BY JUDGE WHATLEY.

The holding on special assessments in Madison County v. Foxx, 636 So.2d 39 (Fla. 1st DCA 1994) was that the ordinances imposing the special assessments were null and void for failure of the County to follow legislative authorization. In mere dicta thereafter the Appellate Court found that there was a material issue of fact and therefore a Summary Judgment was premature. It does not stand for the proposition that the "line in the sand" that Judge Peach drew was reversed by the District Court's opinion.

The Foxx Appellate Court first upheld Judge Peach's finding that the special assessment ordinances were null and void:

> "Because of our conclusion that these ordinances imposing special assessments are null and void for failure of the County to substantially comply with the statutory authority under which it purported act, we do not reach the further issue raised by the County..."(Foxx at 48).

The Court next addressed the "line in the sand" in Part II of the Opinion (Foxx at 49). Judge Peach, on Summary Judgment, had determined that there was an absence of a material issue of fact and that the Plaintiffs were entitled to judgment as a matter of law. The Appellate Court's words were:

> "Because this issue was, in part, a question of fact, and the pleadings, depositions on file, and the affidavits, do not demonstrate an absence of material issues of fact, the Trial

> Court's determination that these charges were not special assessments was **premature**." (Foxx at 49, emphasis supplied).

The Appellant's declaration that Judge Peach's determination was reversed on this point is simply wrong. Judge Peach's declaration of the law is entirely accurate when the facts are resolved and there is no special benefit, as in the case at bar.

To illustrate, in every special assessment case, there will always be the initial question of fact as to the nature of the special assessment. In order to determine if there is a sufficient special benefit to property to sustain the special assessment one must know what it is the government agency is attempting to do. When that has been done, (and in the present case there was a trial on the facts, it is not a Summary Judgment case, and the trier of fact determined there was no special benefit) then it is and should be a question of law to strike down a special assessment that does not provide a special benefit to the property. State v. Halifax Hospital District, 159 So.2d 231 (Fla. 1963) (See also Page 18 supra).

The case before this Court is very similar to Fisher v. Board of County Commissioners Dade County, 84 So.2d 572 (Fla. 1956) where this Court has said:

> "Aside from the resolutions of the Board of County Commissioners supported by the report of the County Engineer, no testimony was offered purporting to show the need or justification for the proposed improvements nor was any evidence other than the opinion of the engineer submitted to sustain the conclusion reached by the County

> Commissioners that the real property in the District would be 'specially benefited' in the manner announced by the resolutions of the final decree."(Fisher at 574).

The Court (well aware of the tremendous threats unbridled special assessments could do-Fisher at 580) disposed of this evidence as follows:

> "...The unsupported conclusion of the County Engineer under the circumstances revealed in this record regardless of his ability and integrity cannot be accepted as determinative of the constitutional question involved....
>
> ...A 'special benefit assessment' must be levied according to the particular benefits received by the real property in question and in order to sustain the assessment, there must be some proof of the benefits other than the dictum of a governing agency." (Fisher at 576).

Any presumption was given short shrift by the Florida Supreme Court.

The only outright reversal of the Foxx Trial Court was its dismissal with prejudice of the attempt by Foxx to state a cause of action under 42 U.S. Code, Section 1983. This dismissal with prejudice was reversed by the Appellate Court. (See Foxx at 51).

The "line in the sand" that was drawn by Judge Peach while premature in a Summary Judgment case has now been redrawn by Judge Whatley after a full trial on the merits. It has been upheld by the Second District Court of Appeals.

By writing in stone this rule of law, this Florida Supreme Court will ensure that all Floridians for generations to come will be secure in their property from "creeping expropriation" by

governments' innovative attempts to expand the definition of benefit (See for example, Florida Statute 163.514(8),(16) (a) where law enforcement may be attempted to be funded via a special assessment-limited to $500.00-and Florida Statute 197.3635(9)(c) where the legislature envisions that there may be so many municipal service benefit units in a county that they would not all fit on the ad valorem tax bill and if that is the case they may summarize them by function). The special assessments do not show up on the "TRIM" notices, but do come on the tax bills, giving the taxpayers an artificially low estimate of their tax bills.

A correct reading of South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380 (Fla. 1973) shows the holding in the case is that an apportionment scheme of the legislative body is entitled to some presumption of correctness. The issue of apportionment was not reached in the case at bar, the Trial Court finding for the Plaintiffs on the initial question, that is, that there was no special benefit (Appellant's Brief at Page 10, Footnote 7). The Appellants' position in South Trail Fire Control District was outlined by the Court as follows:

> "The Owners say the primary question is one of discrimination in that business and commercial owners were paying 17.2% of the total assessments, while the value of their property was 10.8% of all the property in the District and they receive only 6% of the actual services of the District." (South Trail Fire Control District at 382 emphasis supplied).

The quotation cited by the Appellant herein in its brief (see

Appellant's Brief at Page 13) is clearly aimed at the apportionment scheme and the existence of the underlying benefit was not at issue in the case. It is interesting to note that Appellant left out this part of the same quotation:

> "There is a point beyond which it cannot go, even when it is exerting the power of taxation. It cannot by its fiat make a local improvement of that which in its essence is not such an improvement (and it cannot by its fiat make a special benefit to sustain its special assessment where there is no special benefit)." (South Trail Fire Control District of Sarasota County at 383, emphasis supplied).

Suggesting that without an improvement you could not do a special assessment which had been the law for hundreds of years to the days of King Henry VIII (it should also be noted that special assessment power clearly comes from the power of taxation, although it is distinguishable from an ad valorem tax, the argument that it flows from "home rule power" begs the question, for home rule of power is a transfer of sovereignty and the branch of home rule of power from which special assessments flow is clearly taxation) (See also page 10 supra).

Should the Court give some presumption of correctness to a legislative determination of special benefit to a service then the Court will conflict with an earlier decision. Atlantic Coast Line Railroad v. City of Gainesville, 83 Fla. 275, 91 So. 118 (1922). In that case the City of Gainesville attempted to pass a special assessment along to the Atlantic Coast Line Railroad for a railroad

track that ran down the center of Main Street. The City tried to claim that the railroad "abutted" the street. Contrary to Appellant's characterization of the case the holding of the case is that "if property other than that actually abutting on the improved street is assessed for such improvement, the presumption of benefit from the improvements which attaches to land abutting on the street vanishes, as such an assessment could only be upheld upon showing that the property derived actual benefit from the improvements." Atlantic Coast Line Railroad at 121 (emphasis supplied). This case is of no solace to Appellants and is directly contrary to their position. A non-abutting capital improvement loses its presumption. Certainly a service is farther away from any type of benefit to real property compared to an abutting capital improvement than is a non-abutting capital improvement.

This case actually supports Appellee's position.

Another case cited by Appellants is Martin v. Dade Muck Land Company, 116 So. 449 (Fla. 1928), appeal dismissed, 278 U.S. 560 (1928). That case referred to the charge as a "special assessment ad valorem tax." Martin at 463. The case seems to confuse the general indirect benefit that sustains a general tax.

The presumption that may accrue in the Martin special assessment case is distinguishable because that case was an improvement case:

> "Administrative determinations on legislative authority as to improvements to be made and as to the method, rate, or amount of special

> assessments to be imposed, or as to contemplated benefits to and the apportionment of burdens on, the property so specially assessed, are not conclusive;"(Martin at 464 emphasis supplied).

Any suggestion that a higher standard applies than the lack of special benefits (as the sin qua non for valid special assessments) is belied by that Court's disjunctive description of the various possibilities by which a special assessment may be successfully challenged:

> "...such special assessment must not, by reason of arbitrary action or unjust discrimination or otherwise, violate the due process or equal protection or other provisions of organic law." (Martin at 464, emphasis supplied).

As may be seen, arbitrary action by itself violates due process and is not a separate test. If any one of those provisions are violated, the special assessment must fail. It must pass all those provisions. A special assessment that provides no special benefits loses its justification. It amounts to an outright confiscation. It should be noted also that in the Martin case the amount of the assessment was considered "a mere nominal sum." Martin at 469.

With regard to the refund, the state case law is generally that a refund is available. Coe v. Broward County, Florida, 358 So.2d 214 (Fla. 4th DCA 1978).

Government services per se must provide a general benefit Burnett v. Greene, 122 So. 570, 577 (Fla. 1929). If this general benefit which satisfies the needs of property owners can be

translated into a special assessment because of some **unfunded federal mandate**, then virtually all government services may be added to the property tax rolls under the guise of special assessments.

The potential dangers of special assessments have been clearly recognized by Florida in the past:

> "We fully approve of the following expressions by Mr. Chief Justice Dickey in Craw v. Village of Tolono, supra:
>
> > 'Serious apprehensions are expressed less, under the power to impose special taxation upon contiguous property for local improvements, cities may, in case of very expensive improvements, abuse the power, and, under the form of its exercise, practically confiscate private property to public use. So long as it is confined to sidewalks, there is little cause for such apprehension. It will be time enough to consider the question when a case of oppression occurs.'" Anderson v. City of Ocala, 67 Fla. 204, 64 So. 775, 781 (1914).

The source of the power to impose special assessments is a question of some significance. It is clear from Article VII, Section 6, of the Florida Constitution that assessments for special benefits are a species of the **taxation power**. That being the case it is preempted to the state (see Article VII, Section I (a) of the Florida Constitution).

II. THE VOTERS WERE CLEARLY LED TO BELIEVE THAT SPECIAL ASSESSMENTS WOULD NOT BE UTILIZED TO FUND GOVERNMENT SERVICES IN 1934.

During the Great Depression Florida enacted Article X, Section 7, in 1935 (see House Joint Resolution No. 20, approved May 27, 1933 and passed by the majority of electors in the General Election November 1934). That constitutional provision subjected all property to "special assessments for benefits." That provision mirrors the private property takings provision that has been utilized by Florida Courts to scrutinize special assessments (it should be noted that a slightly different provision in Florida's Constitution from 1939 to the present provides "much more restrictive" language, (see Halifax infra)).

The Miami Herald in its November 1, 1934, edition, page eight, printed (column 1): "it provides for the exemption of owner-occupied homesteads for all taxation, other than special assessments for benefits (such as sewers, sidewalks, and the like), up to the valuation of $5,000.00." (Clearly indicating the public was led to believe that special assessments were for utilization in the traditional manner to pay for abutting capital improvements).

The St. Petersburg Times in its October 27, 1934, edition on page four, says "The Tampa Tribune huddles the whole question onto the unshakable basis of right and righteous, and then wipes it out altogether with these few but sweeping words:

> 'The Home Exemption proposal is fundamentally wrong--because the homeowner should bear his part of the cost of the public services he demands and receives.'"

This statement clearly shows that the public was led to believe that services could not be so funded and that the constitutional protection would exempt them from having to pay for those services. A clearer statement could not be found.

The Florida Times Union in its November 5, 1934, edition, page nine, said: "First, such a statute would eliminate a substantial sum of money which is now received and helps to keep our institution going and it does not provide any other source of revenue." The special assessment "loophole" was not presented as a service loophole at the time and should not now be so interpreted.

During the Roaring 20's many capital improvements were paid for by special assessment bonds. With the addition of services to special assessments, Floridians are in greater peril, especially if and when another economic crisis arrives.

To make matters worse, the present collection method for special assessments is to put them on the property tax rolls under Chapter 197 of the Florida Statutes (since 1991). The previous (Depression era) method was to utilize a lien and foreclosure procedure. The current mechanism results in tax certificates being issued and a tax deed issued after a tax sale.

In the times of another economic downturn such as another Great Depression, the property owners would therefore bear the brunt of the losses. During the 1930's many of Florida's municipalities went bankrupt, the lien/foreclosure method being too

cumbersome to be effective, thus sparing property owners (a practical protection we have now lost). The Federal Bankruptcy Code was amended (interestingly, Congress taking specific cognizance of the financial condition of Florida's municipalities) to allow municipal bankruptcy, and many Florida municipalities did go bankrupt. After Florida sold hundreds of millions of dollars in bonds during the Roaring 20's; such bonds were sold at 10 and 20 cents on the dollar in the 30's; economic disaster occurred in Florida's government structure. State v. Florida State Improvement Commission, 60 So.2d 747, 751 (1952).

The economic "catastrophe" that the local government entities are "bootstrapping" themselves into (see Appellant's Brief at Page 24) is actually a recipe for disaster for private property and those on fixed incomes. The will of the majority will turn private property into little more than financing vehicles for government budgets.

Present efforts by local governments to utilize special assessments to include both capital improvement and service assessments contrast with the 1920's when only capital improvements were so funded.

Because current utilization includes relatively new service assessment attempts and capital improvement assessments, the current reliance on service assessments is a fraction of their total. The present total percentage of local government reliance on special assessments (which, unfortunately, also includes impact

fees, however because the total figure is small, the "service assessment" is even smaller) (as a percentage of local government revenue) is above 2% and below 3% (services assessments are estimated to presently be below 1% of total local revenue). According to the Department of Banking and Finances of the State of Florida, per their State of Florida Local Government Financial Reports for Fiscal Years 1989-90, (Page 766), 1990-91 (Page 652), and 1991-92, (Page 602), special assessment revenues as a fraction of total local government revenues were as follows:

Year	Special Assessments	Total Local Gov't Revenue
1989-90	$349,900,165.00	$15,661,235,320.00
1990-91	$381,580,515.00	$16,841,515,810.00
1991-92	$390,307,492.00	$18,022,264,400.00

Utilization of special assessments exceeded 7% of local government revenues in 1930 and had dropped by 90% in 1940 and remained less than 1% of local government revenues in 1977. ("Financing Public Investment by Deferred Special Assessment" by Donald C. Shupe, National Tax Journal, 1980, Volume XXXIII, Page 413 and State and Local Taxes and Finance by Oldman and Schoettle, Page 414-415).

Catastrophic (Appellant's Brief at Page 24) reliance on special assessment service assessments by government cannot validly be claimed today. If it could or ever does, it should send warning signals that the lessons of the Roaring 20's excesses learned very painfully during the Great Depression have been forgotten. Since

government reliance today on service special assessments is a small fraction, the solution to this threat to private property is to "nip it in the bud" before greater percentages are reached.

This is especially true in view of the collection method outlined pursuant to Florida Statutes 197.3635 where it will be much easier to forfeit private property during another economic crisis through the sale of tax liens, tax certificates, and tax deeds.

The government should not be permitted to utilize special assessments based on a liberal "contribution to need" as the measurement of special benefit (see Brief of Appellant, Page one). The government's justification is circuitous. All government expenditures must provide a general benefit: Burnett, supra. A benefit by definition satisfies some need. All government expenditures therefore could become some type of special benefit and would only be limited by government's ability to show some connection to property.

Contrast this proposed test with the traditional one, in a traditional special assessments case, where an abutting capital improvement adds fair market value to the abutting property owner. One obviously sees that paving a residential street or adding a sidewalk or curbs and gutters enhances the fair market value of private property. It is reasonable to apportion a portion of the cost on the property owner.

"Contribution to need" opens a Pandora's Box. Developed

property "contributes to the need" for schools, hospitals, libraries, judicial detention centers, jails, welfare systems, prisons, and government, itself. There is virtually no limitation on the number of special assessments, the size of special assessments, nor on the number of entities that may impose them if the governments novel definition is accepted..

The "record" for the most number of special assessments is currently held by Orange County with 13 (see "Florida Advisory Council on Intergovernmental Relations Report In Brief Re: Special Assessments: Current Status in Law and Application" dated January 21, 1992, page 14).

The highest special assessment that has been reported to date is over $262,000.00 in Steinberg v. City of Sunrise, 592 So.2d 1148 (Fla. 4th DCA 1992). While that is a capital improvement case, that distinction is of no comfort to the vast majority of the millions of Florida's property owners who could not afford such confiscation under the guise of imposing "benefits" on them.

III. THE LIMITATION ON THE IMPOSITION OF ASSESSMENTS FOR SPECIAL BENEFITS IMPOSED BY ARTICLE VII, SECTION 6, OF FLORIDA'S CONSTITUTION IS NOT AT ISSUE IN THIS CASE AND THEREFORE ANY OPINION RENDERED SHOULD BE CAREFULLY TAILORED TO RESTRICT ITS APPLICATION TO THE PROPERTY TESTS UNDER FLORIDA'S CONSTITUTION HERE LITIGATED.

Since the 1939 amendment to then Article X, Section 7, of the 1885 Florida Constitution (which language was carried over and is still effective now found at Article VII, Section 6), the

parameters for "an assessment for special benefits" to be effective are so limited that only capital improvements have been lawfully imposed and no service assessments have been lawfully imposed against homestead property (all appellate challenges to service assessments asserting the homestead have been successful to date).

The Florida Supreme Court and other Florida Appellate Courts have upheld "special assessments for benefits" against non-homestead property in several opinions for services; however, they have never upheld an "assessment for special benefits" against homesteads when that issue has been raised in a government service case (as opposed to a capital improvement). In fact, in the five (5) times this specific issue (service assessment against an asserted homestead) has come before the Appellate Courts (all Florida Supreme Court cases), the homestead has been protected in each case, as will be seen. A departure from this line opens the homestead to legislative and executive encroachment.

Since the homestead issue is not before the Court, it is most respectfully suggested that the Court's opinion ought to be limited to non-homestead private property constitutional limitations, (i.e. the 5th and 14th amendment due process/takings standards and Florida's equivalents)

In Crowder v. Phillips, et.al, 1 So.2d 629 (Fla. 1941), the Florida Supreme Court did not allow a hospital to be built ("...such advantages cannot fall in the category of special benefits to real property for which assessments would be

authorized." Crowder at 631) utilizing special assessments under the then new (and still current) language of the Florida Constitution (then Article X, Section VII, now Article VII, Section VI). The Court did not there explain why a hospital could not be built in 1941, but that it had earlier said that a hospital could be operated in 1938, by assessment which it had upheld in State ex rel. Ginsberg, et. al. v. Dreka, 185 So. 616 (Fla. 1938). This apparent anomaly (Ginsberg may be read as an estoppel case) was clearly explained in State v. Halifax Hospital District, 159 So.2d 231 at 234 (Fla. 1963). In that case the Halifax Hospital District attempted to claim the ability to finance a bond issue by the mechanism of utilizing assessments for special benefits, among other theories. The Court did not allow them, reversing the upholding of a bond issue (which clearly makes the question a matter of law when fact issues have been resolved). The Court explained the difference between its Ginsberg decision in 1938 and its seemingly contradictory Crowder decision in 1941, by explaining that the Constitution had changed. The Court said that the new test under the "assessments for special benefits" language is:

> "much more restricted"
> (Halifax at 235 emphasis supplied).

A clearer statement that there are two (2) different tests could not be made, and that the homestead has more restricted exposure than other private property.

The case at bar utilizes the traditional test that is

applicable to all private property in Florida (which parenthetically is also of benefit to homesteaders, since they share a 5th and 14th Amendment private property protection as well as Florida's equivalent constitutional provisions, Article I, Sections 2 and 9).

The next case after the Crowder case to come before the Court with regard to a service against the homestead was Whisnant et.al. v. Stringfellow et.al, 50 So.2d 885 (Fla. 1951) wherein the Florida Supreme Court disallowed an assessment for special benefits against the homestead for a county health unit ("But there would appear to be no 'special or peculiar benefit' to the real property located in the county..." Whisnant at 885-886).

After Crowder, Halifax, and Whisnant it is clear that the Court has on three (3) occasions indicated that health services may not be paid for via special assessments. This is relevant for two (2) reasons. One, it appears to establish a rule of law. Two, the Court has upheld a "rescue assessment" on non-homestead property. South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380 (Fla. 1973).

A rescue service is generally a "portable hospital" consisting of an ambulance that provides service to injured people and transports them to a hospital. It is an assessment that helps people and similar to hospitals and health departments doesn't benefit property in the traditional sense. Should the Court address the rescue assessment in its Opinion, although the church did not

cross appeal the lower Court's estoppel holding, the Court might inadvertently expand the usage of or encourage the usage of special assessments to pay for medical costs. It is entirely conceivable that emergency rooms would become adjuncts to rescue services and hospitals would become adjuncts to emergency rooms and the homestead could become subject to tremendous hospital expenses from which they are now exempt. The South Trail case may be distinguished because it is a non-homestead case.

The next case to come before the Florida Supreme Court on point is City of Ft. Lauderdale v. Carter, 71 So.2d 260 (Fla. 1954). In this case the Court disallowed an assessment for special benefits for garbage collection ("Furthermore, no special or peculiar benefit results to any specified portion of the community or the property situated therein." Carter at 261). See also Fisher supra at 578 for the Florida Supreme Court's clear explanation that Carter was a lack of special benefit case not an apportionment case:

> "But neither services are of a peculiar benefit to a particular homestead to the extent that it would support an ad valorem levy against the homestead in the form of a so-called 'assessment' within the framework of our Constitution." Fisher at 578.

The last service/homestead case to come before the Court is St. Lucie County-Ft. Pierce Prevention and Control District v. Higgs, 141 So.2d 744 (Fla. 1962) when the Court held that fire protection provided general benefit and could not reach homesteads

via an assessment for special benefits ("...no parts of land was specially or peculiarly benefited..." Higgs at 746 emphasis in original).

It is important to note that the homestead is of vital importance to Florida. The homestead test (that is "much more restrictive" Halifax at 234) was enacted in the midst of the Depression. It replaced a constitutional provision (that had been presented to the people as one that would not be used to fund services via the avenue of special assessments) with a much more protective provision. Should the people of the state of Florida wish to enact to a constitutional test that might subject the homestead to an assessment for special benefits for services they are free to amend their constitution.

The cases where a service has been upheld against private property are all non-homestead cases and should be so distinguished. See for example, Charlotte County v. Fiske, 350 So.2d 578, garbage collection, homestead not cited; South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380 (Fla. 1973), a commercial enterprise case and the principal issue there is clearly one of the apportionment test, the decision with regard to presumption is directed at the legislative apportionment scheme; Fire District No. 1 of Polk County v. Jenkins, 221 So.2d 740 (Fla. 1969), a commercial enterprise and not a homestead case; and Gleason v. Dade County, 174 So.2d 466 (Fla. 3d DCA 1965), the homestead issue was not raised and (interestingly) the fifth and

sixth paragraphs even say that the constitutional question was not considered; it therefore creates no valid support for the Fiske case which subsequently (mis-) cited it.

The Appellant clearly misconstrues Atlantic Coast Line R. Co. v. City of Gainesville, 83 Fla. 275, 91 So. 118, to suggest it supports their case. This is clearly wrong. It is also dangerous because the holding is that a legislative presumption only applies in the case of an abutting capital improvement and when the landowner is no longer abutting the capital improvement, the presumption of benefit "vanishes" (Atlantic Coast Line Railroad at Page 121) (here we don't even have a non-abutting improvement but a service).

Since the origination of special assessments as financing mechanisms to pay for abutting capital improvements, they have relied on their obvious special benefit to abutting property owners to justify the imposition of their costs thereon. As we explore the limits to what may be paid for by the vehicle of special assessments the obvious benefit to the property owner becomes obscured. If Florida's protections are diminished, invasive attempts must still withstand a 5th Amendment through the 14th Amendment takings/due process challenge, i.e. the special benefits must be "benefits that are not shared by the general public", Norwood v. Baker, 172 U.S. 269, 294, 43 L.Ed. 443, 19 Sup. Ct. 187 (1898). No services can meet that challenge.

Should the county prevail and be able to add the additional

arbitrary and capriciousness test, (which test is in actuality inherent in an invalid special assessment finding), persons will still have a 5th Amendment through the 14th Amendment takings/due process claim and would be encouraged to go to Federal Court. This is a poor public policy choice. Having federal judges overseeing local officials' responses to local problems is a burdensome task to impose on the Federal Courts. The State Court's interpretation of Florida's Constitution (Article I, Sections 2 and 9) ought to give a similar protection to private property equivalent to the Federal Constitution's protections.

The Court may wish to re-examine its "service assessment" holdings by applying the more restrictive test enacted by the voters in 1938.

CONCLUSION

Compliance per se with, in this case, an unfunded federal mandate may or may not provide the special benefit required to justify a special assessment against private property. After a trial on the merits, the tryor of facts determined there were no special benefits from Sarasota County's stormwater utilities ordinances. That being the case, special assessments may not be used as a vehicle to provide funding. This Court may not re-weigh the evidence. There being substantial competent evidence to support the Trial Court's findings, he must be affirmed.

The vehicle of special assessments was originally created as a method of apportioning the costs of abutting capital improvements on surrounding land owners. The attempt to fund government services through special assessments is a modern invention. The Court is powerless to change the Constitution. If special assessments are to be utilized to fund government services, the people are free to change the Constitution.

The homestead exemption provision is not before the Court; it was enacted during the Great Depression, originally in 1935 and amended in 1939. It is clear that government services may not be imposed on the private property under the guise of special assessments based on the people's will at the time and the subsequent case law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to the parties on the attached Service List this 6th day of April, 1995.

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