SUPREME COURT OF FLORIDA

CANAVERAL PORT AUTHORITY, Petitioner, v. DEPARTMENT OF REVENUE, et al., Respondents.	*	CASE NO. 84,743 District Court of Appeal, 5th District - No. 93-2422

BRIEF ON THE MERITS OF PETITIONER CANAVERAL PORT AUTHORITY

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PRELIMINARY STATEMENT

Petitioner, the CANAVERAL PORT AUTHORITY (Plaintiff and Appellee below), will be referred to in this brief as the "Port Authority" or "CPA." The Respondent, FLORIDA DEPARTMENT OF REVENUE (Defendant and Appellant below), will be referred to as the "Department of Revenue" or "DOR." The remaining Respondents (Defendants and Appellants below) will be referred to by their governmental titles, i.e., the "Property Appraiser" (Defendant JIM FORD) and the "Tax Collector" (Defendant ROD NORTHCUTT).

References to the trial court's Record on Appeal will be cited as "R." followed by the page number corresponding to the Clerk's Index, along with the title of the item referenced (e.g., R. 311, Final Judgment). The transcript is in two volumes consecutively numbered and includes the transcript of an earlier hearing on a Motion for Summary Judgment, with the transcript of the non-jury trial of this case commencing at page 63 of Volume I. References to specific pages in the trial transcript will be abbreviated as TR p. 95. References to the Record on Appeal as compiled by the Fifth District Court of Appeals will be cited as "5th DCA R." followed by the page number corresponding to the appellate court's Index, along with the title of the item referenced (e.g., R. 37, Notice to Invoke Jurisdiction).

The decision of the Fifth District Court of Appeals has now been published at 642 So. 2d 1097 (Fla. 5th DCA 1994) under the style of Florida Department of Revenue v. Canaveral Port Authority, and references to specific aspects of the decision will utilize the Southern Reporter citation.

STATEMENT OF THE CASE AND FACTS

The present case comes to this Court following the rendition of a decision by the Fifth District Court of Appeals overturning the Circuit Court's Final Judgment in favor of the Canaveral Port Authority. The Final Judgment had been entered by the Honorable Charles M. Holcomb following a non-jury trial in which, after consideration of the evidence presented, Judge Holcomb found that the Canaveral Port Authority's fee interest in real property that it owns is not taxable by the Brevard County Property Appraiser since the Port Authority, based on the evidence presented, is a political subdivision of the State of Florida immune from ad valorem taxation of its owned real property. R. 311-324, Final Judgment. The Defendants were permanently enjoined from attempting to levy or collect any ad valorem taxes on the real property owned by the Port Authority and were ordered to refund any collected monies to the parties paying such taxes, i.e., the Port Authority or its lessees. R. 323-324, Final Judgment. Because of its finding of immunity the trial court did not reach a separate claim of exemption under Chapter 315 and § 315.11, Fla. Stat.

On appeal to the Fifth District Court of Appeal that court concluded[1] that the decision in Sarasota-Manatee Airport Authority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA 1992), *review denied*, 617 So. 2d 320 (Fla. 1993) -- which the trial court followed in analyzing the evidence presented and reaching its conclusion -- did not apply

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[1]As is noted above, the opinion of the Fifth District Court of Appeal has now been published and appears as Florida Department of Revenue v. Canaveral Port Authority, 642 So. 2d 1097 (Fla. 5th DCA 1994).

since the legislature had expressly designated the Sarasota-Manatee Airport Authority ("SMAA") as a *'political subdivision." 642 So. 2d at 1099-1100. The Fifth District (which recognized that the state has "political subdivisions" in addition to counties which are immune from taxation[2]) then looked to case law to determine whether the Canaveral Port Authority was a *'political subdivision" and framed the question to be decided as "whether the entity claiming immunity acts as a branch of general administration of the policy of the state" (642 So. 2d 1100) or "its role as a branch of the general administration of the policy of the state" (642 So. 2d at 1101). Utilizing this test, the Fifth District stated that the Canaveral Port Authority was not created as a "political subdivision" of the state and is not "part of a centralized, statewide system of port management and operation." 642 So. 2d at 1101. The Fifth District concluded, "Given the nature of the CPA, it is not a political subdivision which is immune from taxation." 642 So. 2d at 1102.

Because of its rejection of the trial court's finding of immunity, the Fifth District addressed the question of exemption under Chapter 315, Fla. Stat., governing port facilities and stated that the exemption set forth in § 315.11 (which the Fifth District construed strictly against the taxpayer) applies only to the extent that the statutorily enumerated properties are engaged in a governmental or public use. 642 So. 2d at 1102. The Fifth District then concluded that the real properties at issue were not

[2]See 642 So. 2d at 1099.

exempt under the statute based on the appellate court's restrictive interpretation and its assumption that such terms as "market" and "recreational facilities" included in the statute do not apply to private enterprises that derive from port business, even if those businesses compliment the facilities of the port. 642 So. 2d at 1103. Consequently, the Fifth District held that all of the properties at issue were not exempt and reversed the judgment of the trial court. The Canaveral Port Authority's Motion for Rehearing or Certification (5th DCA R. 16-22) and Motion for Rehearing En Banc (5th DCA R. 23-29) were subsequently denied (5th DCA R. 35, Order) after which the Port Authority filed its timely Notice to Invoke Discretionary Jurisdiction (5th DCA R. 37-38).

As the trial court's Record on Appeal reflects, this case began in 1992 when the Brevard County Property Appraiser attempted for the first time to impose ad valorem taxes on the fee interest which the Port Authority owns in real property at Port Canaveral. The Port Authority's Complaint, brought pursuant to Part II, Chapter 194, Fla. Stat., alleged that prior to 1992 the Brevard County Property Appraiser had never assessed ad valorem taxes on the real property owned by the Port Authority although it had assessed non-governmental lessees apparently not performing a governmental function an ad valorem tax on the buildings and improvements constructed by them on property leased from the Port Authority. R. 1-14, Complaint. The Port Authority did not contest the imposition of these separate taxes on improvements of non-governmental lessees not performing a governmental function (nor

were these tenants parties to this action) and their propriety is not at issue in this case. See TR p. 164-169. The Port Authority did assert, however, that it is a political subdivision of the State of Florida so that its fee interest in the real property that it owns is immune from taxation under the Florida Constitution and also exempt from taxation under § 315.11, Fla. Stat. (as amended 1973), directed specifically to port authorities. Included in this litigation was the Florida Department of Revenue since the Complaint alleged that the attempted levy of taxes was unconstitutional. The Defendants answered the Complaint and asserted through the Property Appraiser the authority to tax the fee interest of the Port Authority in its real property under Chapter 196, Fla. Stat., "when considered in the context of the totality of the provision relating to exemption." R. 15-21, Answers of Defendants.

Included in the trial court's record on appeal are Requests for Admissions served by the Port Authority (R. 22-27) and Responses to those Requests filed by the Defendants (R. 140-147). Upon consideration of a Motion for Summary Judgment filed by the Port Authority the trial court entered an order denying the motion as there were issues of material fact which precluded summary judgment and needed to be resolved at trial. R. 221-230, Order on Motion for Summary Judgment. The trial court's order also noted that the critical issue was whether the Port Authority was a political subdivision of the State that was more in the nature of a county rather than a municipality, and indicated that it needed

to examine the service area of the governmental entity at issue to make this determination. R. 223, 226, Order on Motion for Summary Judgment.

Prior to the trial of this case the following material facts were established through Requests for Admissions served by the Port Authority and answered by the Property Appraiser and the Department of Revenue:

1. That the Department of Community Affairs has determined pursuant to Chapter 189, Fla. stat., that the Canaveral Port Authority is an independent special district of the State of Florida, as defined by § 189.403, Fla. Stat,

2. That the Canaveral Port Authority has been identified as an independent special district of the State of Florida by the Florida Department of Community Affairs pursuant to § 189.4035, Fla. Stat.

3. That the Canaveral Port Authority was created by a special act of the Florida Legislature in Chapter 28922, Laws of Florida (1953), As Amended.

4. That the Brevard County Property Appraiser assessed ad valorem taxes for the year 1992 on the real property owned by the Canaveral Port Authority which was leased to non-governmental lessees who the Appraiser determined are not performing a governmental or other exempt function.

5. That the Canaveral Port Authority is a "port authority" as defined by § 315.02(2), Fla. Stat.

6. That the Canaveral Port Authority is not a municipality as defined in § 165.031(4), Fla. Stat.

7. That the Canaveral Port Authority was created by a special act of the Florida Legislature and not by County Ordinance and is not an agency of a municipality.

See R. 20-27 and 140-147.

The status of the Canaveral Port Authority as an independent special district of the State of Florida is also established by the Port's Charter, Chapter 28922, Laws of Florida, Special Acts of 1953, As Amended (R. Plaintiff's Ex. 1), and by the Department of Community Affairs' designation of the Canaveral Port Authority as an independent special district in the "1992 Official List of Special Districts" prepared pursuant to § 189.4035, Fla. Stat. A certified copy of said Official List was filed with the trial court by the Port Authority and appears at R. 28-135.

The case was tried non-jury on July 30, 1993, at which time the trial court received evidence and heard witnesses on the issues specified in its order on summary judgment. The witnesses testifying included Richard Tesch, President of the Economic Development Commission of Mid-Florida (TR p. 78-83); Dr. Warren McHone, Associate Professor and Chairman of the Economics Department of the University of Central Florida (TR p. 84-94); Charles Rowland, Executive Director of the Canaveral Port Authority (TR p. 95-161); and Malcolm McLouth, Port Commissioner for the past 27 years (TR p. 170-180). Exhibits admitted into evidence included the Port Charter (Plaintiff's ex. 1); the Florida Seaport Transportation and Economic Development Council's "A Five-Year Plan to Accomplish the Missions of Florida's Seaports" (Plaintiff's Ex. 2) prepared pursuant to the mandate of Chapter 311, Fla. Stat.; Orders from the U. S. Department of Commerce concerning Port Canaveral's Foreign Trade Zone #136 (Plaintiff's Ex. 3); the Port

Authority's Comprehensive Annual Financial Report for the year ended 9/30/92 (Plaintiff's Ex. 4); the Port's Tariff (Plaintiff's Ex. 5); the Annual Report for Foreign Trade Zone #136 (Plaintiff's Ex. 6); maps of Port Canaveral and FTZ #136 (Defendants' Exs. 1 & 6); the Canaveral Port Authority 1992 Tax Roll (Defendants' Ex. 2); a summary of and the leases for which the Property Appraiser gave total or partial exemptions for 1992 (Defendants' Ex. 3); and a summary of and leases for which the Property Appraiser gave no exemptions for 1992 (Defendants' Ex. 4). These last two exhibits showed three separate types of ad valorem assessments, i.e., on land, buildings, and improvements. See TR p. 162-164, 167-168.

The trial court's Final Judgment was issued September 10, 1993, and found as a factual determination based on the evidence presented that the Part Authority was a political subdivision of the State more in the nature of a county so that its fee interest in its real property is immune from taxation. R. 323, Final Judgment. The trial court's findings of fact as set forth in its Final Judgment were recited by the Fifth District in its opinion as follows:

> Although the Canaveral Port District is established with boundaries only within Brevard County, Florida, the Canaveral Port Authority serves and economically benefits more than the immediate area of Brevard County in which it is situated. The port at issue is the only part in east central Florida. The port's economic impact extends throughout the Central Florida region. The port exported 90 percent of all the citrus exported internationally out of Florida in this last citrus season and is essential for the movement of other physical goods in and out of the central Florida area as well. The cruise industry located at the port generates economic activity in excess of two hundred million dollars for the Central Florida region. The port serves as Central Florida's

> international gateway to international commerce. The port's activity benefits the nation's space program and supports national defense. The port is designated as a foreign trade zone. It is a legal port of entry, a customs port. Testimony also indicated that the port was not governed by Brevard County ordinances. It may levy Ad Valoremtaxes to support it on properties located from the north end of Brevard County to below the middle of the County (Titusville, Coc[o]a, Merritt Island etc.). There are no residents within the enclave of the Port itself and the CPA has no authority over the landowners within the taxing district other than to levy and collect ad valorem taxes.

642 So. 2d at 1098-1099 and R. 321-323, Final Judgment.[3] The trial court also found that "the service area of the [Port Authority] is too wide for the entity to be considered merely in the nature of a municipality" and that "the regional impact of the [Port Authority] would make it more analogous to a county." R. 321-322, Final Judgment. Because of its finding of immunity the trial court did not address the question of exemption under § 315.11, Fla. Stat. Timely Notice of Appeal was subsequently filed by the Defendants (R. 335, Notice of Appeal) resulting in the decision now at issue before this Court.

[3]The trial court's Final Judgment is also included as Appendix B to the Brief on Jurisdiction of the Canaveral Port Authority.

SUMMARY OF ARGUMENT

This case presents for resolution by this Court the issue of what test should be utilized in determining whether a governmental entity is a "political subdivision*' of the state which is thereby immune from taxation. While case law recognizes that the state has political subdivisions in addition to counties that enjoy "inherent sovereign immunity" under broad grounds of fundamentals of government, the courts have differed on the test to be utilized in determining whether a particular governmental entity enjoys this immunity. In Sarasota-Manatee Airport Authority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA 1992), review *denied,* 617 So. 2d 320 (Fla. 1993), the Second District Court of Appeal considered whether the governmental entity was "a political subdivision of the state, more in the nature of a county than of a municipality, [which] is therefore immune from taxation," 605 So. 2d at 133, and concluded from the totality of the circumstances that the Sarasota-Manatee Airport Authority was a political subdivision immune from taxation. This inquiry was used by the trial court in the instant case, which resulted in the finding of immunity by the trial court since the evidence presented to it established that the Canaveral Port Authority was a political subdivision of the state more in the nature of a county than a municipality.

On appeal of the trial court's final judgment the Fifth District Court of Appeal in the case at bar rejected the applicability of Sarasota-Manatee and stated that the issue "depends on whether the entity claiming immunity acts as a branch

of general administration of the policy of the state." 642 So, 2d at 1100. Utilizing this particular test, the appellate court stated that the Canaveral Port Authority is not part of a centralized, statewide system of port management and operation and so is not, given its nature as perceived by the appellate court, a political subdivision which is immune from taxation. 642 So. 2d at 1101-1102.

If the test of Sarasota-Manatee is the correct inquiry, then the Petitioner Canaveral Port Authority submits that the trial court correctly employed this test and its factual finding of immunity should not have been disturbed on appeal. If, on the other hand, the inquiry utilized by the Fifth District in the present case is the correct one (i.e., whether the entity claiming immunity acts as a branch of general administration of the policy of the state), the same result must necessarily follow. Here the uncontroverted evidence at trial established (contrary to the observation of the Fifth District) that the Canaveral Port Authority is part of a centralized, statewide system of port management and operation within the Florida Department of Transportation under which Florida's twelve statutorily designated deepwater international seaports (including Port Canaveral) play a critical role in the general administration of the policy of the state, its intermodal transportation system, and the enhancement of international trade on a statewide basis. Consequently, if the inquiry posed by the Fifth District Court of Appeal is determined

to be the correct one, the trial court's finding of immunity should still have been affirmed on the evidence presented.

If the Canaveral Port Authority is somehow not immune from taxation, the courts must then consider whether it is otherwise exempt from taxation. Although the Canaveral Port Authority has not claimed an exemption under § 196.199, Fla. Stat., for the properties at issue in the present case, it does submit that these properties are exempt under § 315.11, Fla. Stat., which expressly grants an exemption to "port facilities" as they are broadly defined in § 315.06(2). Despite the directive of § 315.16 that these statutory provisions be liberally construed, the Fifth District nevertheless stated it was subjecting them to strict construction and, in a case of first impression, went on to eliminate the properties at issue in the present case from the statutory definition of "port facilities" -- 'and thereby the exemption of § 315.11 -- without any statutory, factual or logical basis for doing so. While the Canaveral Port Authority submits that the statutory exemption granted in § 315.11 is broad enough to encompass all of the properties at issue in the present case, if the restrictive interpretation first set forth by the Fifth District is utilized, then the case should be remanded to the trial court for further evidentiary proceedings directed to this new issue, and should not have been resolved on the basis of the assumptions made by the Fifth District.

ARGUMENT

I. **THE SECOND DISTRICT IN SARASOTA-MAMATEE AIRPORT AUTHORITY v. MIKOS, USED THE PROPER TEST TO DECIDE POLITICAL SUBDIVISION/ TAX IMMUNITY STATUS, WHICH REQUIRES THE AFFIRMANCE OF THE TRIAL COURT'S FINDING THAT THE CANAVERAL PORT AUTHORITY IS IMMUNE FROM AD VALOREM TAXATION OF ITS FEE INTEREST IN ITS REAL PROPERTY.**

In the case at bar the trial court applied the analysis used by the Second District Court of Appeal in Sarasota-Manatee Airport Authority v. Mikos, 605 So. 2d 132 (Fla. 2d 1992), *review denied,* 617 So. 2d 320 (Fla. 1993), and concluded that in order to decide the question of immunity it must determine whether the Canaveral Port Authority is an entity more in the nature of a county or a municipality. Under this functional analysis, if the Port Authority is found to be more like a county, then it is immune from taxation and statutory references to exemption do not change that immunity, nor does the presence or absence of legislative labels, since the actual nature of the entity controls.[4] After analyzing the case law in this area and applying this test to the testimony and all of the evidence presented to it, the trial court found that the Canaveral Port Authority was in fact a political subdivision of the State of Florida more in the nature of a county and thereby immune from ad valorem taxation of the fee interest in real property which it owned. R. 311-324 at 315, Final Judgment.

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[4]As the trial court explained, "Placing a 'bear' sign on a cage containing a rabbit does not change the nature of the animal in the cage." R. 311-324 at 316, Final Judgment. Of course, it is the position of the Port Authority, as noted in its Brief on Jurisdiction,, that the rabbit in the cage still remains a rabbit even if the legislature fails to put any sign on the cage at all. See Petitioner's Brief on Jurisdiction, p. 7-8.

On appeal to the Fifth District the appellate court, in reversing the trial court's Final Judgment, attempted to distinguish Sarasota-Manatee on the grounds that the legislature, in a 1991 amendment to the special act creating the Sarasota-Manatee Airport Authority, had expressly designated that entity as a political subdivision of the state, while the original charter for the Canaveral Port Authority enacted in 1953 contained no such provision, As the Fifth District observed, "The legislature has not expressly labeled the CPA a 'political subdivision.'*' Thus it viewed the absence of this label as taking the case out of the ambit of the decision in Sarasota-Manatee. 642 So. 2d at 1100. While recognizing that Florida has "political subdivisions" other than counties that are immune from taxation, the Fifth District did not address the status of the Canaveral Port Authority as an independent special district as defined by § 189.404, Fla Stat. (1991), or its designation as such by the Florida Department of Community Affairs pursuant to § 189.4035, Fla. Stat. -- attributes the Port Authority shares in common with the Sarasota-Manatee Airport Authority. Under the Fifth District's view, the Second District's inquiry in Sarasota-Manatee would have stopped with the legislative label, rather than analyzing the totality of the circumstances surrounding the Airport Authority as the Second District in fact did in order to determine if the Airport Authority was more in the nature of a county rather than a municipality.

The decision in Sarasota-Manatee reveals, on the other hand, that the proper inquiry to determine the tax immunity of an

independent special district is not limited to whether the legislature termed it a political subdivision of the state, but must also consider whether the total circumstances show the governmental authority to be **more** in the nature of a county than a municipality. This analysis gives full recognition to the principle, acknowledged by the Fifth District herein **as well, that** "the state and its political subdivisions have an 'inherent sovereign immunity' from taxation, which 'is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government." 642 So. 2d at 1099, citing Dickinson v. City of Tallahassee, 325 So. 2d 1, 3 (Fla. 1975) and State ex rel. Charlotte County v. Alford, 107 So. 2d 27, 29 (Fla. 1958). It also coincides with the Fifth District's earlier pronouncement that, "[I]mmunity from taxation flows directly from the Constitution and is not subject to the ever-transitory and fleeting benevolence of the legislature." Orange County Florida v. Florida Department of Revenue, 605 So. 2d 1333, 1334 (Fla. 5th DCA 1992). Furthermore, it recognizes significant changes in the status of special taxing districts under the 1968 Constitution.

While the Fifth District rejected the impact of the 1968 Constitution on the question of status as a "political subdivision," its significance cannot be disregarded. The 1968 Constitution of the State of Florida, unlike its predecessor, expressly recognized special taxing districts as separate local government entities, one of four types of local government in the State of Florida, i.e., counties, school districts, special

districts and municipalities. In Eldred v. North Broward Hospital District, 498 So. 2d 911 (Fla. 1986), this Court explained:

> The provisions of the 1968 Constitution leave no doubt that special taxing districts are included as one of four types of local governmental entities, along with counties, school districts and municipalities.

498 So. 2d at 914, The Canaveral Port District and its governing body, the Canaveral Port Authority, were established by the Florida Legislature as one of these special taxing districts by Chapter 28922, Laws of Florida Special Acts of 1953, As Amended (hereafter "Port Charter"). See R. Plaintiff's Ex. 1. The Port Charter specifically provides in Article I, Section 2 that the Canaveral Port District "shall also be a special taxing district, to be known as the 'Canaveral Port District'."

The evidence presented to the trial court in this case established that the Port Authority is not a municipality or an agency of any municipality. The Port Authority is instead an independent special district as defined by § 189.403, Fla. Stat. (1992), and has (like the Sarasota-Manatee Airport Authority) been identified as such by the Florida Department of Community Affairs pursuant to § 189.4035, Fla. Stat. (1991). See R. 28-135. As an independent special district, the Port Authority is an "independent establishment of the state" created by the state legislature and is not subject to the control of a county or municipality, as is a dependent special district. § 189.403(2) and (3), Fla. Stat. (1991). See also testimony of Rowland, TR p. 131-132. By law, only the legislature can create an independent special district. §§ 189.402(1), 189.404, Fla. Stat. (1989); Forsythe v. Longboat Key

Beach Erosion Control District, 604 So. 2d 452 (Fla. 1992). As the Fifth District explained in North Brevard County Hospital District v. Roberts, 585 So. 2d 1110 (Fla. 5th DCA 1991):

> Such special districts are creatures of the state legislature, and are created when deemed necessary by those elected officials to serve an important and usually specialized, public purpose.

585 So. 2d at 1112, n.4.

That the Canaveral Port Authority is a creation of the state legislature charged with the responsibility to perform a specialized, state public purpose, is apparent from the language of the Port Charter itself which shows that the Canaveral Port Authority is fully invested with the powers necessary to establish, operate, and maintain a deep water port -- clearly a specialized governmental function. R. Plaintiff's Ex. 1, Port Charter. See also Petchem, Inc. v. Federal Maritime Commission, 853 F.2d 958, 959 (D.C. Cir. 1988). The operation of ports has been expressly declared by the Florida Legislature to be essential for the welfare of the inhabitants and the industrial and commercial development of the area which the port serves and to constitute the performance of proper public and governmental functions. See § 315.11, Fla. Stat. and Chapter 311 discussed in greater detail, *infra*. In some instances these functions are on a municipal scale, while in others a port's impact is regional, making it more like a county and a political subdivision of the state. Here the trial court found just such a regional impact from the factual record. See also Op. Att'y Gen. Fla. 61-153 (1961) cited by the trial court (port or harbor authority should be deemed a state agency when its port or

harbor serves the state or a large portion thereof; county agency when it primarily serves a county area; municipal agency when it primarily serves a municipal area.) Perhaps even more importantly, under Chapter 311, Fla. Stat., enacted in 1990, the legislature has expressly established Port Canaveral, along with eleven other deepwater international seaports[5] and the state Departments of Commerce, Transportation, and Community Affairs, as members of the "Florida Seaport Transportation and Economic Development Council" within the Florida Department of Transportation. The legislature has empowered this Council with broad duties relating to the development of port facilities and an intermodal transportation system in order to enhance international trade, cargo flow, and cruise passenger movements, and has given it rule-making power for the regulation of the Florida Seaport Transportation and Economic Development Trust Fund created under § 311.07, as well as decision-making authority over Trust Fund project approval. Therefore, Chapter 311 confirms the role of the designated ports as "part of a centralized, statewide system of port management and operation" contrary to the conclusion of the Fifth District, which never addressed the import of this statute. Cf. 642 So. 2d at 1101.

The uncontroverted evidence presented in this case further showed, as the trial court found, that Port Canaveral is the only

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[5]The members of the Council as designated by § 311.09(1) are the ports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, and Pensacola. Additionally, the Council includes as non-voting members the secretary (or his designee) of the Departments of Transportation, Commerce, and Community Affairs.

deepwater port in East Central Florida and that its economic impact extends throughout the Central Florida region, benefitting more than the immediate area of Brevard County in which it is physically located. Its activities benefit and support the nation's space program and national defense and it is a legal port of entry and a customs port, as well as a foreign trade zone established under federal law. It handled 90 percent of all of the citrus exported internationally out of Florida in the last citrus season and is essential for the movement of other cargoes in and out of Central Florida. Its cruise industry generates over $200 million in economic activity for the region. It has been described as Central Florida's gateway to international commerce and a key asset to the development of Central Florida as an international marketplace. R. 321, Final Judgment. See also testimony of Tesch, TR p. 80-81, 82; McHone TR p. 88-89; Rowland TR p. 112-113, 115-125.

Although there is no specific provision in the Florida Constitution addressing the state's immunity from taxation, it is settled Florida law -- as the Fifth District held -- that the state and its political subdivisions are immune from taxation because there is simply no power to tax them. This is true despite statutory references to such property as being exempt. Dickinson v. City of Tallahassee, *supra*, 325 So. 2d at 4; Park-N-Shop, Inc. v. Sparkman, 99 So. 2d 571, 573-574 (Fla. 1957); Orange County Florida v. Florida Department of Revenue, 605 So. 2d 1333, 1334 (Fla. 5th DCA 1992). Independent special districts that are created as political subdivisions of the state enjoy the same

immunity from taxation as does the state, so that the question of exemption is never reached. See e.g. Andrews v. Pal-Mar Water Control District, 388 So. 2d 4, 5 (Fla. 4th DCA 1980); *rev. den.* 392 So. 2d 1371 (Fla. 1980), relied on by the Second District in Sarasota-Manatee. As the Fourth District Court of Appeal explained in Andrews, once the trial court determines that a district is a political subdivision of the state, it is clear that the district is immune from tax liability, not subject to the provisions of Chapter 196, and entitled to a refund of taxes paid under protest. 388 So. 2d at 5, citing *inter alia*, Dickinson, *supra;* Park-N-Shop, *supra.* This is, of course, the analysis used by the trial court in the case at bar and precisely the conclusion that it reached.

Under these authorities it is respectfully submitted that the decision in Sarasota-Manatee should have been dispositive of this case and to the extent that the Fifth District's decision conflicts with that of the Second District, the decision in Sarasota-Manatee and the functional test it utilized should be approved by this Court. Like the Canaveral Port Authority, the Sarasota-Manatee Airport Authority is an independent special district as defined by § 189.403, Fla. Stat., created by special act of the Florida Legislature. See Chapter 31263, Laws of Florida (1955), as revised by Chapter 91-358, Laws of Florida. R. Plaintiff's Ex. 7. In that case, as here, the Property Appraiser assessed an ad valorem tax on the leased fee interest of the Airport Authority's real property leased to allegedly non-governmental, non-exempt tenants. An examination of the very similar special acts creating the Canaveral

Port Authority and the Sarasota-Manatee County Airport Authority shows that both are referred to as a "body politic and corporate" and are independent special districts created by the legislature to perform highly specialized public and governmental functions as transportation authorities. The Second District noted in its decision that the Airport Authority (like the Port Authority) had been identified by the Department of Community Affairs as an independent special district pursuant to § 189.4035, Fla. Stat. Both entities are specifically authorized to lease lands. One difference between that decision and the case at bar is that the Second District made its ruling as a matter of law based on the totality of the legislative enactments, while the trial court in this case supplemented its analysis with additional evidence and findings of fact. The result, however, should be the same, i.e., that the Canaveral Port Authority, like the Sarasota-Manatee County Airport Authority, "is a political subdivision of the state, more in the nature of a county than of a municipality, and is therefore immune from taxation," 605 So. 2d at 133.

In reaching its conclusion the Second District Court of Appeal pointed out that the state and its political subdivisions are immune from taxation since there is no power to tax them. This was noted to be true despite statutory references (comparable to those relating to the Canaveral Port Authority) that the Authority was instead exempt. 605 So. 2d at 133-134. The Second District also held that City of Orlando v. Hausman, 534 So. 2d 1183 (Fla. 5th DCA 1988), review *denied* 544 So. 2d 199 (Fla. 1989), Hillsborough

County Aviation Authority v. Walden, 210 So. 2d 193 (Fla. 1968)[6] (relied on extensively by the Fifth District herein), and § 196.199(4), Fla. Stat., were inapplicable in light of the appellate court's determination that the Airport Authority was immune from taxation. 605 So. 2d at 134. Consequently, the existence or absence of a statutory label was not pertinent to the inability to impose ad valorem taxes on the Airport Authority's fee interest.

Two other decisions relied on by the Fifth District are not controlling. In Ocean Highway and Port Authority v. Page, 609 So. 2d 84 (Fla. 1st DCA 1992), taxes were assessed on improvements that a port authority constructed on land it leased from private corporations, so that the immunity of the port authority's real property was not addressed and the case was decided instead under the exemption statutes. Furthermore, the port authority in Ocean Highway did not and does not enjoy the statutory designation given to Port Canaveral as a deepwater international seaport under Chapter 311, nor did the record establish that port as one of regional impact commensurate with that of Port Canaveral. The port at issue in Broward County Port Authority v. Arundel, 206 F.2d 220 (5th Cir. 1953), on the other hand, does now share with Port Canaveral the statutorily recognized status of Chapter 311 since

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[6]It is important to realize that Walden was decided under the Constitution of 1885, which did not recognize special districts as separate local government entities. This distinction first appears in the Constitution of 1968. See Eldred, supra. Thus the Walden Court's comment that the Airport Authority was unlike a county and not a political subdivision of the state was appropriate at the time, but the Fifth District's reliance on this decision in the present case is misplaced.

recognized status of Chapter 311 since the port at issue in that case is now known as Port Everglades, a port which, like Port Canaveral, has greatly changed since the early 1950's when the federal appellate court decided Arundel and the legislature first adopted a charter for Port Canaveral. Consequently, the continued validity of the decision in Arundel is questionable from a factual standpoint alone without any consideration of the impact of the 1968 Constitution. The test utilized in Sarasota-Manatee, however, is fully capable of taking into account these changes and focuses on substance rather labels which may or may not be consistent with the true character of a specific governmental entity.

Consequently, it is respectfully submitted that the test employed by the Second District in Sarasota-Manatee is the correct analysis and should have been applied in the present case. Had this been done, the Fifth District should have affirmed the trial court's determination that the Canaveral Port Authority's leased fee interest in its real property is immune from taxation under the Constitution of the State of Florida because the Canaveral Port Authority is a political subdivision of the state more in the nature of a county rather than a municipality. The trial court's findings of fact in this regard were fully supported by the record and uncontroverted evidence presented at trial and should not, therefore, have been disturbed by the Fifth District on appeal.

11. PROPER APPLICATION OF THE "BRANCH OF GENERAL ADMINISTRATION OF STATE POLICY" TEST UTILIZED BY THE FIFTH DISTRICT STILL REQUIRES A FINDING THAT THE CANAVERAL PORT AUTHORITY, AS ONE OF TWELVE STATUTORILY RECOGNIZED DEEPWATER INTERNATIONAL SEAPORTS, IS IMMUNE FROM AD VALOREM TAXATION OF ITS FEE INTEREST IN ITS REAL PROPERTY UNDER THE EVIDENCE PRESENTED.

As an alternative to the test used by the Second District in Sarasota-Manatee Airport Authority v. Mikos, the Fifth District in the case at bar employed a different analysis and stated:

> It appears the question whether an authority is a political subdivision of the state depends on whether the entity claiming immunity acts as a branch of general administration of the policy of the state.

642 So. 2d at 1100. Later in its decision the Fifth District explained further:

> What makes an entity a political subdivision of the state entitled to immunity from taxation is its role as a branch of the general administration of the policy of the state. See Commissioners of Duval County v. City of Jacksonville, 36 Fla. 196, 18 So. 339, 343 (Fla. 1895). Thus, Florida courts have recognized the immunity of state departments, agencies, and school boards, all of which are local arms of state government. See Dickinson v. City of Tallahassee, 325 So. 2d 1, 2 (Fla. 1975).

642 So. 2d at 1101. The Canaveral Port Authority submits, of course, that the proper test under the case law is that used by the Second District in Sarasota-Manatee and by the trial court herein, as is detailed above. But assuming for the sake of argument that the "branch of general administration of state policy" analysis is the correct one and is approved by this Court instead, the proper application of that analysis to the facts of this case must still result in a finding that the Canaveral Port Authority is a political subdivision of the state immune from taxation.

In applying the test it had enunciated to the facts of this controversy the Fifth District considered the Port Charter of 1953 and the exemption originally provided in it, which the Port Authority recognizes was repealed by Chapter 71-133 § 14, Laws of Florida. The Fifth District did not, however, consider the altered status of independent special districts under the 1968 Constitution to be of significance,' nor did it address the distinctions between independent and dependent special districts under Chapter 189, first enacted in 1989.' Instead it concluded on the basis of the original Port Charter that the Canaveral Port Authority is not "part of a centralized, statewide system of port management and operation" and "is not acting as an agent of the state, but was created by special act to carry out a limited purpose." 642 So. 2d at 1101.

In reaching its conclusion the Fifth District not only failed to address the extensive evidence presented to the trial court on the current role of Port Canaveral and the dramatic changes it has undergone since the time of its original charter in the early 1950's, but also failed to take into account the legislation enacted since that time which has recognized the significant developments and changes that have occurred and which have

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'See 642 So. 2d at 1101, n.9. As is detailed in the discussion of Issue I, supra, the Petitioner disagrees with the Fifth District's analysis of this question, as do a number of the *amicus* curiae who are filing briefs in support of Petitioner in this action.

'Compare § 189.403(2) defining "dependent special district" with § 189.403(3) defining "independent special district."

transformed Port Canaveral from a sleepy fishing port into a deepwater international seaport with a prominent role in Florida's cruise industry, a significant cargo and foreign trade component, and a critical role in the nation's defense and space programs. Most notably, Chapter 311, Fla. Stat., enacted in June 1990, confirms the role that Port Canaveral now plays, along with the eleven other statutorily designated deepwater international seaports,[9] as part of a centralized, statewide system for the management, operation, and development of Florida's twelve deepwater international seaports, and establishes the propriety of the trial court's finding that the Canaveral Port Authority is a political subdivision of the state immune from taxation, even under the test employed by the Fifth District."

Chapter 311, Fla. Stat., now governs Florida's seaport transportation and economic development. Section 311.09 establishes, *inter alia,* the "Florida Seaport Transportation and Economic Development Council" within the Florida Department of Transportation and has as its avowed purpose developing port facilities and an intermodal transportation system, enhancing international trade, promoting cargo flow, increasing cruise passenger movements, and providing economic benefits to the state.

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[9]For a list of the twelve designated seaports see note 5, *supra.*

[10]See also § 403.021(9), Fla. Stat., contained within the "Florida Air and Water Pollution Control Act," which addresses the preservation and maintenance of water depth for deepwater shipping *commerce* within environmental constraints, and applies only to these same twelve deepwater international seaports as delineated in § 403.021(9)(b).

See § 311.09(3). As such, this legislation promotes coordination among Florida's deepwater international seaports as called for in the state's Comprehensive Plan. See § 187.201(22)(b)13, Fla. Stat. Section 311.09(1) expressly designates Port Canaveral, Florida's eleven other deepwater international seaports, and the state Departments of Commerce, Transportation, and Community Affairs, as members of this Council, thereby confirming Port Canaveral and its sister deepwater international seaports as local arms of state government and "part of a centralized, statewide system of port management and operation." Cf. 642 So. 2d at 1101. In addition, § 311.07 creates the "Florida Seaport Transportation and Economic Development Trust Fund," also within the state Department of Transportation and funded by it, which provides a funding source and mechanism for projects at the twelve statutorily designated deepwater international seaports as approved by the Council pursuant to § 311.09(4) & (5). The statute further calls for the development of a 5-year Seaport Mission Plan, the 1993 version of which was received in evidence by the trial court. See A Five-Year Plan to Accomplish the Mission of Florida's Seaports, published by Florida's Seaport Transportation and Economic Development Council, R. Plaintiff's Ex. 2. As this trial exhibit makes clear:

> As trade facilitators, Florida's seaports are keystones of the $33.7 billion international trade industry that is now one of the state's largest. Many of the seaports [and clearly Port Canaveral under the trial court's findings] also serve Florida's $30.0 billion tourism industry, through their record-setting cruise activities.
>
> Theintermodalefficiency andcost-effectiveness required for the Florida ports to retain and expand market share into the next century and continue strengthening the

> state economy can be achieved only with the full political backing of the state. Other states, long recognizing the benefit of international trade to their overall economies, subsidize various aspects of their port network. To its credit, Florida, with the creation of [Chapter 311] and the complementary Intermodal Development Program has also recognized this benefit, and must continue to do so.

R. Plaintiff's Ex. 2, p. iv. This special status of Florida's twelve deepwater international seaports is fully in accordance with and supports the trial court's determination (after considering all of the evidence, witnesses, and authorities) that the Canaveral Port Authority is a political subdivision of the State of Florida which is immune from taxation, and refutes the Fifth District's conclusion that the Canaveral Port Authority is not acting as a branch of the general administration of the policy of the state or as a local arm of state government.

By failing to address the impact of Chapter 311, Fla. Stat., the Fifth District misconstrued the nature of the Canaveral Port Authority and erroneously relied primarily on the Port's original charter enacted in 1953 -- before there was a space program, a significant cruise industry, or explosive growth in Central Florida. This reliance in turn led to the erroneous conclusion that the Canaveral Port Authority is not part of any centralized, statewide system of port management, operation, and development, and does not act as an agent of the state. Such a determination clearly misconstrues the regional status of Port Canaveral and fails to take into account the role that the Canaveral Port Authority, along with the eleven other statutorily designated deepwater seaports, now plays in Florida's international trade and

cruise industries. Had this statute and the findings of the trial court been properly assessed under the test utilized by the Fifth District, the appellate court, like the trial court before it, would have correctly concluded that the Canaveral Port Authority is immune from ad valorem taxation by Brevard County. Consequently, even if this Court rejects the test used by the Second District in Sarasota-Manatee and instead approves the test used by the Fifth District in the case at bar, the trial court's finding of immunity should still be affirmed.

III. THE CANAVERAL PORT AUTHORITY IS EXEMPT FROM AD VALOREM TAXATION OF ITS FEE INTEREST IN ITS REAL PROPERTY UNDER CHAP. 315, FLA. STAT., AND THE FIFTH DISTRICT COURT OF APPEAL HAD NO BASIS FOR DECIDING THAT THE PROPERTIES NOW TAXED ARE EXCLUDED FROM THE § 315.11 EXEMPTION ON THE BASIS OF THEIR PRESUMED CHARACTER OR RELATION TO THE BASIC OPERATION OF A PORT.

Because of its rejection of the trial court's determination that the Canaveral Port Authority is immune from taxation, the Fifth District Court of Appeal addressed the separate issue af exemption from taxation under the Port Facilities Financing Law, Chapter 315, Fla. Stat., and especially § 315.11 -- an issue which the trial court had not needed to reach. While the Fifth District correctly recognized that the impact of this statutory exemption presented a case of first impression, it erroneously concluded that the Canaveral Port Authority's property is exempt only to the extent of its governmental or public use, thereby engrafting onto § 315.11 the requirements of § 196.199. Additionally, without any evidentiary basis to do so, the Fifth District took out of the statutory definition of "port facilities" a variety of businesses

that fall within the plain language of the admittedly broad statutory definition, thereby arbitrarily eliminating certain facilities and activities from the scope of the exemption.

Chapter 315, originally enacted in 1959, establishes and supplements the financing of port facilities throughout the state. Section § 315.11 was last amended and thereby reenacted in 1973[11] and grants, as part of this overall financing arrangement, an exemption from taxation for all "port facilities." The statute provides:

> Exemption from taxation:
>
> As adequate port facilities are essential for the welfare of the inhabitants and the industrial and commercial development of the area within or served by the unit, and as the exercise of the powers conferred by this law to effect such purposes constitutes the performance of proper public and governmental functions, and as such port facilities constitute public property and are used for public purposes, the unit shall not be required to pay any state, county, municipal or other taxes or assessments thereon whether located within or without the territorial boundaries of the unit, or upon the income therefrom and any bonds issued under the provisions of this law, their transfer and the income thereupon (including any profit made on the sale thereof) shall at all times be free from taxation within this state. The exemption granted by this Section shall not be applicable to any tax imposed by Chapter 220 on interest, income or profits on debt obligations owned by corporations.

[Emphasis added]. The term "port facilities" used in this exemption statute is broadly defined (as the Fifth District acknowledged) in § 315.06(2) which states:

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[11]The amendment and reenactment took place the year after all statutory tax exemptions contained in special acts were repealed by the legislature pursuant to Chapter 71-133, Section 14, Laws of Florida, General Acts of 1971. See Straushn v. Camp, 293 So. 2d 689 (Fla. 1974).

> The term "port facilities" shall mean and shall include harbor, shipping, and port facilities, and improvements of every kind, nature, and description, includincr, but without limitation, channels, turning basins, jetties, breakwaters, public landings, wharves, docks, markets, parks, recreational facilities, structures, buildinss, piers, storaqe facilities, public buildinqs and plazas, anchorages, utilities, bridges, tunnels, roads, causeways, and any and all property and facilities necessary or useful in connection with the foreqoinq, and any one or more or any combination thereof and any extension, addition, betterment or improvement of any thereof.
>
> [Emphasis added.]

In its consideration of this tax exemption granted to "port facilities" the Fifth District rejected any '*blanket exception" for port facilities under Chapter 315 and § 315.11 and stated:

> The legislature has defined the term "port facilities** broadly, but not, we think, so broadly as to embrace property on which commercial activity is being carried on by private lessees at the port facility.

642 So. 2d at 1103. While characterizing the enumerated examples in the statutory definition as "of the same general kind or class [which] appear directly related to the basic operation of a port, including the movement of cargo," the Fifth District nevertheless acknowledged the inclusion of certain "stray terms," such as market and recreational facilities. The inclusion of these categories of facilities was dispensed with by stating:

> "Market," however, in this context likely relates to a location for trade in bulk commodities, not a 7-11. "Recreational facilities** likely means a park with picnic tables and a place to shoot hoops, not a video parlor. Here the exemption provided appears to be limited to property which is somehow used in direct connection with port business (i.e. governmental functions), not private enterprises that derive from port business, even if those businesses complement the facilities of the port authority.

642 So. 2d at 1103. The Fifth District did not, however, utilize any evidentiary basis for such a distinction, nor did it explain how this restrictive analysis squared with the express inclusion in the statutory definition of "improvements of every kind, nature, and description, including, but without limitation . . ." or the expansive phrase "any and all property and facilities necessary or useful in connection with the foregoing." Similarly, the Fifth District did not address why the statute expressly includes not only "buildings" but also "public buildings and plazas" if private commercial buildings and activities of private lessees are not included. Instead it cited without detailed explanation Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So. 2d 498 (Fla. 1977), appeal dismissed, 434 U.S. 804 (1978), a case which this Court specifically noted concerned a leasehold and not a fee simple interest in real estate, and in which an exemption could arise only under Chapter 196 since an earlier exemption contained in a special act had been repealed by Chapter 71-133, § 14, Laws of Florida, as addressed in Straushn v. Camp. Additionally, that case had no statutes comparable to reenacted § 315.11 or to § 315.16 requiring liberal construction. Consequently, the rationale of this Court's decision in Volusia County is inapplicable to the present case and the analysis of Chapter 315.

It is respectfully submitted that the Fifth District's analysis, in a case of first impression, interpreted § 315.11 and §315.02(6) in a manner inconsistent with the plain language of the

statute and unsupported by any factual record, and erroneously rejected the exemption from taxation that this statute provides to port facilities as broadly defined, such as those established at Port Canaveral and other ports throughout the state. Nothing in the statutory scheme authorizes such a rewriting of the definition of the term "port facilities," nor is there any basis for limiting this exemption to the terms of § 196.199, which is by no means the sole source of tax exemptions. In fact, if the exemption were so limited there would be no reason for § 315.11 at all, since all of the exemption needed would already be afforded under § 196.199.

The Fifth District also justified its borrowing of the language of § 196.199 and its restrictive interpretation of this statutory exemption by relying on the general proposition that tax exemptions are to be strictly construed against the taxpayer. See 642 So. 2d at 1102, citing Straughn v. Camp, *supra.* Section 315.16, however, expressly declares:

> This law, being necessary for the welfare of the inhabitants of the state, shall be liberally construed to effect the purposes thereof.

[Emphasis added.] This legislative requirement of liberal construction for Chapter 315 and the exemption provided in it was, nonetheless, never referenced by the Fifth District. Consequently, the general rule of strict construction relied on by the appellate decision is not applicable to the present case or the tax exemption set forth in Chapter 315.

A very recent decision from the Fourth District Court of Appeal addressed this same issue but with a different result. In

State of Florida Dept. of Revenue v. Port of Palm Beach District, Case No. 93-3053 (Fla. 4th DCA Feb. 23, 1995), the appellate court applied the Fifth District's decision on immunity but remanded the case to the trial court for a determination of whether any statutory exemptions would apply to the properties at issue in that case under either § 196.199 or Chapter 315, since the trial court had not reached that issue. While the Canaveral Port Authority in the present case stipulated that the properties at issue were not claiming an exemption on the basis of governmental, literary, scientific, religious or charitable use (the pertinent criteria of § 196.199)[12], it did not stipulate or agree to the factual conclusions reached by the Fifth District or the effect of those determinations, and would not do so had it had the benefit of the Fifth District's interpretation of the statute.

The difficulties in the Fifth District's analysis are revealed by a careful consideration of the examples it cites and the distinctions it draws among them, as quoted above. For example, the distinction by the Fifth District between "recreational facilities" which it views as characterized by "a park with picnic tables and a place to shoot hoops" and those which involve a video

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[12]As the trial court's Final Judgment noted, the properties at issue "include warehouses, fuel stations, deli/restaurants, fish markets, charter boat slips, offices, and docks." See R. 312, Final Judgment. Thus if the Fifth District's restrictive interpretation is correct, some of the properties would appear to be directly related to the basic operation of a port even under the Fifth District's view, and a remand to the trial court was needed for a factual determination of which properties meet the criteria of the Fifth District.

parlor would appear to exclude a traditional "Seaman's Club" offering the latter but not the former, even though such a club plays a far more integral role than a public park in the basic operation of a port by providing recreation as well as essential services to transient merchant seamen. Thus proper evidentiary development of the issues now raised by the Fifth District may (and would be expected) to show that the assumptions made by the appellate court in its narrow reading and strict construction of the statutory exemption and its associated definition are without factual basis.

Under the plain language of § 315.11 and § 315.06(2) and the statutory mandate of liberal construction contained in § 315.16, the Canaveral Port Authority was entitled to the benefit of this statutory tax exemption for all of the properties at issue since they constitute "port facilities" and "property and facilities necessary or useful in connection with" the same as broadly defined by the Florida legislature in this specific context. The Fifth District's restrictive interpretation of this tax exemption is unsupported by the terms of the statute itself, and had no basis in logic or in the facts and evidence before the court. Consequently, if the statute is not to be construed to afford the blanket exemption that it appears by its own terms to grant, then the case should have been remanded to the trial court for further evidentiary proceedings directed to this new issue and analysis, as was done by the Fourth District in State of Florida Dept. of Revenue v. Port of Palm Beach District.

CONCLUSIONS

As the foregoing authorities demonstrate, the proper test to determine whether a governmental entity is a political subdivision of the state of Florida and thereby immune from taxation is the functional test utilized by the Second District Court of Appeal in Sarasota-Manatee Airport Authority v. Mikos and by the trial court herein. Consequently, the Petitioner would urge this Court to approve the Second District's decision in that case and direct the affirmance of the trial court's Final Judgment in the case at bar. Alternatively, if the test used by the Fifth District Court of Appeal in the present case is in fact the correct analysis, the Final Judgment of the trial court should still be affirmed under the proper application of that test to the evidence in this case and the most recent legislative pronouncements governing Florida's twelve deepwater international seaports and the roles they play as branches in the general administration of the policy of the state.

Finally, if the Canaveral Port Authority is somehow not a political subdivision of the state which is immune from taxation, its fee interest in the real property that it owns is still exempt from ad valorem taxation by Brevard County under the provisions of Chapter 315, Fla. Stat. Consequently, the ruling of the trial court should be affirmed under this separate theory as well.

For these reasons, the Petitioner Canaveral Port Authority would urge this Court to reverse the decision of the Fifth District Court of Appeal and affirm the Final Judgment of the Circuit Court of Brevard County as originally rendered.

Respectfully submitted,

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