SUPREME COURT OF FLORIDA

DAVID KUHNLEIN and SCOTT ENOS, BARBARA BLANCHARD, JOEL CURRAN, and KATHERINE CURRAN, both individually and on behalf of all others similarly situated,

Appellants/Plaintiffs,

vs. **Case No. 85,618**

FLORIDA DEPARTMENT OF REVENUE; et al.,

Appellees/Defendants.

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APPELLANTS' REPLY BRIEF

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I. CLASS PLAINTIFFS ARE ENTITLED TO POSTJUDGMENT INTEREST.

A. SECTION 55.03 MANDATES POSTJUDGMENT INTEREST

Section 55.03(1), Florida Statutes (1993), provides for postjudgment interest as a matter of law on all judgments and decrees. This Court has repeatedly held that where the language of a statute is unambiguous, a court may not construe the statute in a way which would limit its express terms.[1] Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984); State v. Jett, 626 So. 2d 691, 693 (Fla. 1993); City of Miami Beach v. Galbut, 626 So. 2d 192, 193 (Fla. 1993). Section 55.03(1) unambiguously provides that a judgment "shall" bear interest at the rate of 12% per year.[2] Therefore, an award of postjudgment interest under § 55.03 is mandatory on any judgment and is not subject to the discretion of the trial court.

Section 55.03 applies to all defendants and to all judgments and decrees, without exception. This Court has consistently applied § 55.03 to judgments against the State and other governmental entities. Palm Beach County v. City of Palm Beach, 579 So. 2d 719 (Fla. 1991); Florida Livestock Board v. Gladden, 86 So. 2d 812 (Fla. 1956); Stone v. Jeffres, 208 So. 2d 827 (Fla. 1968); Roberts v. Askew, 260 So. 2d 492 (Fla. 1972). Accordingly, Class Plaintiffs are entitled, as a matter of law, to postjudgment interest at 12% per annum from November 30, 1993.

In response, the State claims that § 55.03 does not mandate the payment of interest on the refund of taxes. (Answ. Br. at 34). The State offers no support for this meritless argument. Indeed, the State fails to cite a single case in which the prevailing party was denied postjudgment

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[1] The State concedes that an "unambiguous statute is not to be judicially altered". (Answ. Br. at 35).

[2] The State concedes that 12% is the applicable postjudgment rate of interest in this case. [R. 1943] (Answ. Br. at 30).

interest. Rather, the State argues that there is a sovereign immunity "exception" to the application of § 55.03. (Answ. Br. at 35). Once again, the State fails to provide any case support. The reason no case support is offered is evident: this Court in Palm Beach County specifically ruled that sovereign immunity is no defense to an award of postjudgment interest. There are no exceptions to § 55.03.

B. PALM BEACH COUNTY IS DISPOSITIVE OF THE STATE'S ARGUMENTS IN OPPOSITION TO CLASS PLAINTIFFS' RIGHT TO POSTJUDGMENT INTEREST

The State seeks to avoid the clear meaning of § 55.03 and Florida court precedent by manufacturing three erroneous and misleading arguments premised on sovereign immunity: (1) the State is purportedly immune from the payment of postjudgment interest in the absence of an underlying statute that waives its sovereign immunity (Answ. Br. at 34-36); (2) the State is purportedly immune from paying postjudgment interest where the underlying activity in dispute is "governmental" (as opposed to proprietary) in nature (Answ. Br. at 14-15, 40-42); and (3) the standards for awarding prejudgment interest and postjudgment interest are purportedly the same (Answ. Br. at 5, 33-34, 39-40). Not surprisingly, the State also argues that this is a case of first impression. The State has ignored and/or misread the long line of Florida decisions that rejected the defense of sovereign immunity and awarded postjudgment interest. This Court's recent decision in Palm Beach County is dispositive of the arguments raised by the State and mandates an award of postjudgment interest for the Class Plaintiffs.

1. It Is Unnecessary To Look For An Underlying Statute To Imply Interest Because § 55.03 Expressly Provides For Postjudgment Interest

In Palm Beach County, the trial court ordered Palm Beach County to pay to seventeen municipalities certain ad valorem taxes previously collected from them. The Fourth District

Court of Appeal held that the defense of sovereign immunity did not apply, and upheld the trial court. Palm Beach County v. City of Palm Beach, 507 So. 2d 128, 131 (Fla. 4th DCA 1986). On remand, the trial court did not award postjudgment interest on the taxes to be remitted by the County. On appeal, the government in Palm Beach County, like the State here, contended that § 55.03 "is inapplicable because interest may only be awarded when the right to interest can be implied from the language of a statute which waives sovereign immunity." Compare Palm Beach County, 579 So. 2d at 720, with Answ. Br. at 34-36. In rejecting the position now advanced by the State, this Court held:

> In this instance, we find it unnecessary to look for an underlying statute to imply interest, when section 55.03 expressly provides for postjudgment interest without listing any exception to its application.

Id. Palm Beach County thus establishes that § 55.03 is sufficient, by itself, to impose postjudgment interest. No other statute is necessary when § 55.03 "expressly provides for postjudgment interest without listing any exception to its application." Id. (emphasis added).

2. This Court, In Palm Beach County, Also Rejected The Distinction That The State Is Attempting To Raise Between Actions Undertaken In Its "Governmental" As Opposed To Its "Proprietary" Capacity

The State contends that postjudgment interest can only be awarded on a judgment resulting from the State's exercise of its proprietary (as opposed to its governmental) functions.[3] (Answ. Br. at 14-15, 40-42). In Palm Beach County, however, this Court expressly rejected the proprietary/governmental function distinction that is now at the center of the State's defense:

Likewise unavailing is the county's assertion that, because it was exercising a

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[3] Throughout the litigation of this issue, the State has been in search of a theory to oppose postjudgment interest. The State never raised the governmental/proprietary argument in seeking to avoid interest at the trial court level.

> purely governmental function, sovereign immunity prevents the award of postjudgment interest. Although, in tort actions, the exercise of a purely governmental function may appropriately raise the defense of sovereign immunity from liability, it is not a defense to the award of interest where the county's liability has been determined.

Palm Beach County, 579 So. 2d at 720 n.3. See also Simpson v. Merrill, 234 So. 2d 350, 351 (Fla. 1970) (holding State liable in tax assessment matter for all costs incurred in litigation pursuant to § 57.041, Florida Statutes, because "the government, like any other party, should be compelled to pay the costs of litigation").

The State is seeking to create a legal distinction where none exists. No court has adopted the governmental/proprietary distinction in the postjudgment interest context. To the contrary, in Florida Livestock Board v. Gladden, 86 So. 2d 812 (Fla. 1956), erroneously cited by the State as a "tort" case, this Court permitted the plaintiff to recover against a State agency which was acting in its governmental capacity to protect the health of Florida citizens by bringing a judicial proceeding to destroy diseased hogs. Similarly, in Miller v. Agrico Chemical Co., 383 So. 2d 1137 (Fla. 1st DCA 1980), the court awarded postjudgment interest against the Florida Department of Revenue in addition to a refund of tax monies. See also Houghton v. City of St. Petersburg, 416 So. 2d 465 (Fla. 2d DCA 1982) (city required to pay postjudgment interest on its seizure and retention of monies during a grand jury investigation into a narcotics operation); Lewis v. Andersen, 382 So. 2d 1343, 1343 n.1 (Fla. 5th DCA 1980) (denying prejudgment interest but noting that postjudgment interest would be awarded pursuant to § 55.03 on the refund of State taxes paid by the State Comptroller); City of Miami Beach v. Jacobs, 341 So. 2d 236, 238 (Fla. 3d DCA 1976) (providing for postjudgment interest on tax monies collected by the government in its sovereign capacity).

3. This Court Has Held That There Are Distinct Standards For The Award Of Prejudgment And Postjudgment Interest

The State attempts to blur the distinction between the statutory mandate for postjudgment interest and the "weighing of the equities" analysis necessary for a prejudgment interest award. (Answ. Br. at 5, 33-34, 39-40). The State completely overlooks Palm Beach County in asserting that this Court's decisions "have treated interest, whether prejudgment or postjudgment, as equal." (Answ. Br. at 33). In Palm Beach County, this Court specifically held that the prejudgment interest analysis was of no applicability. Like the State here, the government in Palm Beach County argued against postjudgment interest, relying on University Presbyterian Homes, Inc. v. Smith, 408 So. 2d 1039 (Fla. 1982), and Mailman v. Green, 111 So. 2d 267 (Fla. 1959). Palm Beach County, 579 So. 2d at 720. However, in Palm Beach County, this Court held that "Presbyterian Homes and Mailman are distinguishable in that they involve the question of prejudgment interest, a question not presented here."[4]

While Palm Beach County specifically addresses the State's argument, the State largely ignores this Court's decision and instead cites a morass of prejudgment interest authorities -- none of which hold that postjudgment interest may be denied for any reason, let alone under a prejudgment interest analysis. (Answ. Br. at 5-19, 33-44). The State particularly relies upon this Court's 1935 decision in Treadway v. Terrell, 158 So. 512 (Fla. 1935). At issue in that case, however, was an arbitration award that separately provided for awarded prejudgment and

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[4] It is noteworthy that in Presbyterian Homes, the Hillsborough Tax Collector did not even challenge the award of postjudgment interest on the tax refund at issue. See Smith v. University Presbyterian Homes, Inc., 390 So. 2d 79, 80 (Fla. 2d DCA 1980). The tax collector obviously understood that postjudgment interest is due on a tax refund notwithstanding any separate considerations for an award of prejudgment interest.

postjudgment interest. One of the arbitrators dissented from the portion of the award allowing prejudgment interest. Id. at 516. The prejudgment interest award then became the focal point of this Court's analysis and ruling. The Treadway Court did not address postjudgment interest under § 55.03 or any predecessor statute.

The Florida District Courts of Appeal have also refused to apply a prejudgment interest analysis to plaintiffs seeking postjudgment interest against the State for tax refunds. In Miller v. Agrico Chemical Co., 383 So. 2d 1137 (Fla. 1st DCA 1980), the State argued that "there is no statutory authority for judgment interest on tax refunds." Id. at 1139. The First District, however, rejected that argument, noting that the cases cited as authority by the State "deal with claims for interest from the date of payment of the tax." Id. Therefore, the First District affirmed the award of postjudgment interest notwithstanding the fact that prejudgment interest was not also awarded. Id. at 1140. Similarly, the Fifth District in Lewis v. Andersen, 382 So. 2d 1343 (Fla. 5th DCA 1980), held that § 55.03 requires postjudgment interest on a judgment awarding a state tax refund despite its denial of prejudgment interest. Id. at 1343 n.1.[5] Contrary to the State's unsupported argument, interest is not interest; postjudgment interest must be awarded under § 55.03 regardless of any determination of an award of prejudgment interest.

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[5] Notwithstanding all of these decisions, the Florida Legislature has taken no action to carve out an exception of § 55.03 for judgments against the State that award tax refunds. The Legislature's inaction in the wake of Miller, Lewis, and Palm Beach County must be construed as legislative approval of the judicial application of § 55.03 to all judgments (including state tax refunds) against all parties (including the State and other governmental entities). Even the State itself concedes, "[t]here exists the presumption that the Legislature is cognizant of the judicial construction of prior laws." (Answ. Br. at 9).

4. Sovereign Immunity Is Not A Defense To The Award Of Postjudgment Interest Where The State's Liability Has Been Determined

Just as the State unsuccessfully sought to preclude a full refund of the Vehicle Impact Fee based on the doctrine of sovereign immunity, so too must this defense fail when applied to the postjudgment interest issue. In Palm Beach County, this Court held that a rejection of the State's sovereign immunity on the merits also precludes a sovereign immunity defense on postjudgment interest. Conspicuously absent from the State's Answer Brief is any discussion of this portion of the ruling. In Palm Beach County, this Court answered negatively the following certified question:

> IS A GOVERNMENTAL ENTITY IMMUNE FROM THE PAYMENT OF POSTJUDGMENT INTEREST UNDER THE DOCTRINE OF SOVEREIGN IMMUNITY?

This Court stated unequivocally that sovereign immunity "is not a defense to the award of interest where the county's liability has been determined." Palm Beach County, 579 So. 2d at 720 n.3.[6]

The State's liability already has been determined in a final judgment affirmed by this Court in Dept. of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994) (Kuhnlein I). This Court expressly rejected sovereign immunity as a defense in Kuhnlein I. Id. at 721. In sum, because this Court already resolved the State's liability for a full tax refund, and rejected the sovereign

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[6] The State also contends that in Palm Beach County "the question of governmental immunity was resolved against the County and not appealed." (Answ. Br. at 42). Once again the State is mistaken. The Fourth District Court of Appeal expressly found: "[w]e find no merit in the appellant's assertion that the doctrine of sovereign immunity is applicable in this case." Palm Beach County, 507 So. 2d 128, 131 (Fla. 4th DCA 1986). Finally, this Court addressed and rejected the government's sovereign immunity defense because it lost on the merits. 579 So. 2d at 720 n.3.

immunity defense, the State cannot now assert sovereign immunity as a defense to the award of postjudgment interest.

C. THE STATE'S "MONEY JUDGMENT" ARGUMENT IS IRRELEVANT AND NOT SUPPORTABLE

Perhaps recognizing the fact that § 55.03 and Palm Beach County defeat its sovereign immunity argument, the State argues that § 55.03 has no application because the trial court below entered only a "refund" and "a refund is not a money judgment." (Answ. Br. at 37-38). This argument is meritless. Section 55.03 applies equally to "judgments or decrees." Further, the trial court, this Court in Kuhnlein I, the Class Plaintiffs, and the State all agree that the trial court's November 30, 1993 decision was a final judgment. (See R. 1544; Kuhnlein I, 646 So. 2d at 720; Answ. Br. at 31).

Further, and in sharp contrast to the rhetoric raised by its "money judgment" argument, the State has not cited a single case in which postjudgment interest was denied on **any** form of judgment. (Answ. Br. at 37-8). Rather, Florida courts have awarded postjudgment interest under § 55.03 on a variety of "judgments and decrees." See Roberts v. Askew, 260 So. 2d 492 (Fla. 1972) (interest awarded against the State in a quiet title action); Stone v. Jeffres, 208 So. 2d 827 (Fla. 1968) (holding interest payable on attorney's fee award against the State); Florida Livestock, supra (postjudgment interest awarded under § 55.03 for actions the State agency took in protecting the public welfare by bringing an action in the Florida courts to destroy diseased pigs); Palm Beach County, supra (allowing postjudgment interest on tax monies held to have been unlawfully collected pursuant to an invalid ordinance); Miller, supra (awarding postjudgment interest pursuant to § 55.03 on a refund of mineral severance taxes); Lewis, supra (noting that § 55.03 would permit the payment of postjudgment interest on a tax refund);

Houghton, supra (allowing recovery of postjudgment interest pursuant to § 55.03 where the plaintiff brought an action for replevin of monies obtained by the city in connection with a grand jury investigation into narcotics operations); City of Miami Beach, supra (awarding postjudgment interest under § 55.03 in a taxpayer class action); and Fischbach & Moore, Inc. v. McBro, 619 So. 2d 324, 325 (Fla. 3d DCA 1993) (awarding postjudgment interest under § 55.03 on attorneys fees). Nowhere in any of these decisions do the courts draw a distinction between a "judgment or decree", as that term is used in § 55.03, and a "money judgment".

Largely ignoring the above cited authorities, the State instead relies on three **prejudgment** cases as supporting its "money judgment" theory: Mailman v. Green, 111 So. 2d 267 (Fla. 1959); State ex rel. Four-Fifty Two-Thirty Corp., 322 So. 2d 525 (Fla. 1975); and Hansen v. Port Everglades Steel Corp., 155 So. 2d 387 (Fla. 2d DCA 1963). (Answ. Br. at 38). However, those cases have no application here. Not one of those cases address § 55.03 or postjudgment interest.

First, Mailman's reference to the case "not being an action against the State to recover money" relates to the fact that it was a mandamus case against the Comptroller who had previously retained tax monies collected as a percentage of federal taxes which the United States Tax Court held must be refunded. Unlike Palm Beach County, Mailman did not even mention postjudgment interest or § 55.03. In Four-Fifty Two-Thirty Corp., moreover, the plaintiff brought a mandamus action against the Comptroller and Department of Revenue seeking prejudgment interest on intangible personal property taxes paid in error. This Court denied prejudgment interest based upon Mailman. Nowhere did this Court address § 55.03 or postjudgment interest, or hold that a judgment requiring a tax refund is not a judgment for

purposes of § 55.03. Hansen, another prejudgment interest case, is much like Four-Fifty Two-Thirty Corp.: the case does not discuss postjudgment interest or § 55.03.[7]

Finally, even if one were to apply the State's "money judgment" test, Class Plaintiffs still prevail on their postjudgment interest claim. The State admits that postjudgment interest applies to "claims against the State for alleged injuries caused by the State where money will rectify the injury." (Answ. Br. at 37). In this case, Class Plaintiffs brought a claim against the State for a constitutional injury caused by the State where money, i.e., a refund of the monies unconstitutionally collected under § 319.231, will rectify the injury. In fact, this Court held that "[t]he only clear and certain remedy is a full refund to all who have paid this illegal tax." Kuhnlein I, 646 So. 2d at 726.

D. LONG RECOGNIZED PRINCIPLES OF FAIRNESS ALSO COMPEL AN AWARD OF POSTJUDGMENT INTEREST

As this Court has repeatedly held, there are significant policy reasons why the State and private litigants should be treated equally in litigation. Simpson v. Merrill, supra; Roberts v. Askew, supra. Equal treatment requires the award of postjudgment interest to the Class Plaintiffs. In Palm Beach County, this Court held that once a governmental entity "has fully litigated the issue of its immunity and has lost on the merits, we see no reason why it should be shielded from paying interest on the judgment." Palm Beach County, 579 So. 2d at 721. Here,

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[7] The State also cites Wilson v. Woodward, 602 So. 2d 545 (Fla. 2d DCA 1991), despite the fact that Wilson did not address entitlement to prejudgment or postjudgment interest. Rather, Wilson was concerned with the appropriate amount of a bond to obtain a stay pending review, under Fla. R. App. P. 9.310. Wilson's discussion of a "money judgment" was limited to its consideration of the stay provisions in Fla. R. App. P. 9.310(b)(1) that expressly apply only to "money judgments". The State's citation to Wilson is yet another effort to obfuscate its clear duty under § 55.03 to pay postjudgment interest in this case.

the trial court issued a 24-page opinion in favor of Class Plaintiffs on November 30, 1993. Having lost on the merits, the State should not now be shielded from paying postjudgment interest on the tax refunds due the Class.

In response to these and other decisions by this Court cited at pages 20-22 of Appellants' Initial Brief, the State merely complains of the size of the postjudgment interest award. (Answ. Br. at 4, 46).[8] The size of the award only emphasizes the enormity of the State's wrong. The Vehicle Impact Fee infringed upon the constitutional rights of several hundred thousand Florida taxpayers.

This Court should reject the State's questionable scare tactics[9] regarding postjudgment interest, just as it rejected similar concerns when it awarded a "full refund to all who have paid this illegal tax". Kuhnlein I, 646 So. 2d at 726. First, for all the reasons set forth in Sections I.A. and B. above, Class Plaintiffs are entitled to the postjudgment interest as a matter of law under § 55.03.

Second, there would be no postjudgment interest currently accruing had the State previously acceded to Class Plaintiffs' demand that the Vehicle Impact Fees be escrowed in an

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[8] The State contends that the Legislature's failure to appropriate funds for postjudgment interest on tax refunds bars an award of postjudgment interest in this case. (Answ. Br. at 36, 46). If that were the case, the State could avoid any and all liabilities by mere legislative inaction. However, the Legislature also did not appropriate funds to pay the refunds due the class totalling approximately $188 million, until ordered by this Court to make those refunds. In any event, the State certainly cannot argue, with any degree of plausibility, that it can only be held liable to pay any sum when the Legislature has previously appropriated the monies to pay that sum.

[9] It should be noted that the refund of Vehicle Impact Fees will be paid from the State's working capital (or reserve) fund, which amounted to $296.2 million as of June 30, 1994. [R. 2196; Ex. 41, Supp. Vol. I]. There are ample funds in the reserve or working capital fund to pay the interest as well.

interest-bearing account. Instead, the State fought to keep control of the Class Plaintiffs' money at every turn. After the trial court's decision against the State on November 30, 1993, the Class Plaintiffs sought to have the State place in an interest-bearing escrow account all monies collected pending the State's appeal to this Court. [R. 1387, 1398]. The State objected, and continued to collect and use approximately $50 million in additional fees without any form of escrow. [R. 1422, 1476]. After this Court's ruling, Class Plaintiffs made a similar request with respect to all monies collected by the State. [R. 1951]. It, too, was opposed by the State. Having failed to place the funds in an interest-bearing escrow account, the State's charge that it would be "unfair" to pay postjudgment interest is empty rhetoric and should be rejected.[10]

Third, while the State contends that awarding postjudgment interest would shift the loss to the Florida taxpayers (Answ. Br. at 3), it is the Class Plaintiffs who are the innocent victims. Their constitutional rights were infringed by the deliberate acts of the State. See Palm Beach County, 579 So. 2d at 720. Not only did the State take their personal property, but the State also deprived these taxpayers of the use of that money for as much as four years. An award of postjudgment interest will only require the State to pay interest since the trial court's decision 18 months ago. When one considers the State's conduct and use of the money, in contrast to the infringement of the Class Plaintiffs' constitutional rights and the loss of their property for the last four years, only the Class Plaintiffs can accurately be described as the innocent victims.

However, this Court need not dwell on which group has been victimized more than the

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[10] Further, the State's claim that it was "ready and able" to pay the refunds since at least October 28, 1994, is disingenuous in light of its stipulation that no refunds can take place until the issue of interest and other points are resolved and the trial court expressly authorizes the refunds. [R. 1793, 2002].

other. As this Court has repeatedly ruled, the State and private litigants should be treated equally once the merits have been litigated. Simple fairness requires that the Class Plaintiffs be treated like every other litigant in Florida, and therefore receive postjudgment interest on their judgment.

II. PREJUDGMENT INTEREST SHOULD BE AWARDED BECAUSE EQUITABLE CONSIDERATIONS FAVOR THE CLASS PLAINTIFFS.

Unlike postjudgment interest, which is mandatory under § 55.03, an award of prejudgment interest requires a consideration of the equities in each individual case. See Chiles v. United Faculty of Florida, 615 So. 2d 671, 678 (Fla. 1993); Broward County v. Finlayson, 555 So. 2d 1211, 1213 (Fla. 1990). A review of the case law demonstrates that awarding prejudgment interest is the exception, rather than the rule. In each of those cases, however, Florida courts have acknowledged that an award of prejudgment interest depends heavily on "equitable considerations".

As this Court noted in Palm Beach County, this is not an instance of choosing between innocent victims. The State conducted no legal research regarding the constitutionality of this § 319.231 before it was passed into law, nor did the State conduct any legal research after demand was made a few months later by Class Plaintiffs' counsel. Instead, the State engaged in an extensive enforcement blitz against the public and deliberate delay tactics against the Class in the litigation. As a result of the State's deliberate acts, the constitutional rights of hundreds of thousands of Florida taxpayers were infringed. As noted in Class Plaintiffs' Initial Brief and argued before the trial court,[11] the State has been unjustly enriched by the fact that it had the

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[11] The State claims that Class Plaintiffs make no references to the record to justify an award of prejudgment interest based on the equitable principles applicable thereto. (Answ.

use of millions of Class Plaintiffs' dollars for almost four years. How do the equities favor a State which forced compliance with a blatantly unconstitutional statute through fines and penalties and collected millions of dollars? How do the equities support a State which has constantly delayed resolution of the case on the merits, resulting in thousands of more class members, as it continued to collect Vehicle Impact Fees throughout the litigation? If the facts in this case do not warrant the recovery of prejudgment interest, it is difficult to imagine any other factual situation which would give meaning to this Court's language regarding equitable considerations.

Perhaps Florida courts have been reluctant to permit prejudgment interest for fear that it would have a "chilling effect" upon the Legislature's enactment of taxes. Where should the Court draw the line in an analysis of equitable considerations in tax refund cases? The facts in this case set the appropriate standard. Prejudgment interest should be awarded where the State engages in a deliberate act that infringes the constitutional rights of its citizens, with no effort to determine the constitutionality of the bill before its enactment or to otherwise act in complete disregard of the law. Such a standard would not only protect the sacred constitutional rights of Florida citizens, but also encourage responsible lawmaking. Prejudgment interest would not be awarded if legal research has been performed prior to the enactment of statutes that are

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Br. at 25-28). The State, however, apparently overlooks Class Plaintiffs' citation to the 45 exhibits contained in the Appendix in support of Class Plaintiffs' Motion for Prejudgment Interest [R Supp., Vol. I], and Class Plaintiffs' lengthy and detailed discussion of the State's inequitable conduct in conjunction with those exhibits. [R 1897-1912]. Further, the State's contention that the "Appellants did not produce any evidence whatsoever to show injury to any member of the class," (Answ. Br. at 28), is singularly without merit in light of this Court's finding that the Vehicle Impact Fee deprived the Class of its constitutional rights and that the "only clear and certain remedy is a full refund to all who have paid this illegal tax." Kuhnlein I, 646 So. 2d at 726.

subsequently determined to be unconstitutional. Thus, such a standard would give real substance to the assumption that statutes are constitutionally valid.

The assessment of prejudgment interest would commence at the time the constitutional infirmities were first brought to the attention of the State, rather than when the statute was passed. Finlayson, 555 So. 2d at 1214. Such a standard would provide the State with the opportunity to correct its unconstitutional conduct after it has been brought to its attention, and yet permit an award of prejudgment interest if the State decides to have the judiciary solve the problem it created. Here, prejudgment interest would accrue from December 20, 1991, when counsel for the Class detailed the unconstitutionality of § 319.231 in a letter to various state officials. [R. Ex. 11, Supp. Vol. I].

In this State, sovereign immunity is not a bar to the recovery of prejudgment interest for torts and breaches of contract. Are our federal and state constitutional rights any less important? The standard Class Plaintiffs advance herein will not only properly compensate Florida taxpayers for the infringement of those rights, but also provide an incentive and an opportunity for the State to prevent and/or correct such unconstitutional conduct in the future.

Respectfully submitted this 2nd day of June, 1995.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile to ERIC J. TAYLOR, ESQUIRE, Assistant Attorney General, The Capitol, Tax Section, Tallahassee, Florida 32399-1050; and JOSEPHINE A. SCHULTZ, Assistant General Counsel, Office of the Comptroller, Hurston South Tower, #S225, 400 West Robinson Street, Orlando, Florida 32801; and by U. S. Mail to ROBERT W. SMITH, ESQUIRE, 430 North Mills Avenue, Suite 1000, Orlando, Florida 32803, this 2nd day of June, 1995.

CHRISTOPHER K. KAY