In The Supreme Court Of Florida

CASE NO. 87,403

THE SCHOOL BOARD OF VOLUSIA COUNTY,
Petitioner

vs.

JAMES B. CLAYTON
Respondent

DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT OF FLORIDA
ON CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE

RESPONDENT'S ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

Respondent is aware of Rule *9.2* 10(c), ***Fla. R. App. P.*** providing that a Statement of the Case and Facts shall be omitted in an Answer Brief "unless there are areas of disagreement, which should be clearly specified." Petitioner's Statement of the Case and Facts, however, has been challenged in respondent's Motion to Strike, filed herewith, on the ground that it fails to comply with Rule 9.2 10((b)(3), ***Fla. R. App. P.***, requiring "references to the appropriate pages of the record or transcript." Instead, petitioner included numerous documents in an appendix to the Initial Brief, without indicating whether any, some, or all of those documents attached were part of the "record proper" before the trial court or the Fifth District Court of Appeal. A large appendix without record citations is no substitute for a Statement of the Case and Facts. Respondent accordingly has included the following Statement of the Case and Facts, with record citations.

For the purposes of this Statement of the Case and Facts, the record citations will follow the following format: "R=" refers to the Record before the Fifth District Court of Appeal of Florida. "#" after "R" refers to a Volume Number. Any numbers after the volume number are page numbers, "RSC" refers to the Record at the Supreme Court. Example: R2- 125 refers to Volume 2 of the record before the Fifth District Court of Appeal, page 125.

The School Board of Volusia County ("BOARD") adopted a resolution permitting an eminent domain action to acquire 15.10 acres of land located in DeBary, Florida, owned by DeBary Estates Associates, Inc. ("DEBARY ESTATES"). (R 3-255-326) Accordingly, the BOARD filed its Petition for Eminent Domain, During the eminent domain action, the landowner,

DEBARY ESTATES, filed a Motion for Stay of Proceedings and Injunctive Relief against the BOARD and the BOARD's law firm, Cobb Cole & Bell, alleging that Cobb Cole & Bell had an "extreme conflict of interest" because this firm had represented DEBARY ESTATES and its predecessor, **MAGNOLIA SERVICE CORPORATION,** for almost two decades and specifically Cobb Cole & Bell represented DEBARY ESTATES with respect to the establishment and development of the planned unit development that was the subject of the eminent domain action (R 2- 124- 130) Only rarely had the landowner ever used any other law firm, according to DEBARY ESTATES. (R 2- 124- 130) DEBARY ESTATES additionally alleged that Cobb Cole & Bell went as far as to suggest that the landowner should refrain from hiring other counsel in the eminent domain case because Cobb Cole & Bell could create a "Win/Win" situation. (R 2-125) DEBARY ESTATES further alleged that Cobb Cole & Bell represented another party Defendant in the eminent domain case, the City of DeBary, and that Cobb Cole & Bell specifically had handled matters concerning the subject property with respect to the City of DeBary. (R 2-127)

Pursuant to DEBARY ESTATES' Motion for Stay of Proceedings and Injunctive Relief and Motion for Evidentiary Determination of Conflict of Interest, the Circuit Court conducted an evidentiary hearing. (R 2-145) Based upon the evidentiary hearing, the Circuit Court entered a Stipulated Order Granting Stay which enjoined Cobb Cole & Bell from participating in the eminent domain action. However, the Circuit Court permitted Cobb Cole & Bell and DEBARY ESTATES to attempt to mediate the eminent domain case as **one** last permissible action. (R 2-141) The possible results would

have been that the parties settle at mediation or Cobb Cole & Bell would withdraw from the eminent domain case and the BOARD would retain new counsel. (R 2- 141)

Cobb Cole & Bell and DEBARY ESTATES mediated the eminent domain action and reached the following agreement, subject to BOARD approval:

A The legal description was changed from 15.10 acres to 18 acres, (which deviated from the BOARD's resolution, the eminent domain petition, and the Lis Pendens). (R 3-255-326) (R 2-231)

B. The BOARD was to pay $550.000.00 for the new subject property, plus $65.000.00 in attorney's fees and costs, even though the only appraisals used were for the original 15.10 acres, and the appraisals averaged $229,750.00. (R 2-231)

C. The BOARD was to provide various other benefits to DEBARY ESTATES such as: constructing a six-foot high Norwegian brick wall, provide landscaping, permit easements, provide to DEBARY ESTATES excess fill dirt, and extend water and sewer lines for the benefit of DEBARY ESTATES, (R 2-231)

Even though the Memorandum of Settlement Agreement between the BOARD and DEBARY ESTATES involved 18 acres, the map attached to the Final Judgment reflected that 30 acres were purchased. (R 3-255-326) In fact, DEBARY ESTATES ultimately sought relief from the original stipulated judgment alleging that it agreed to only sell 18 acres. (R 3-255-326) (R 2-233) The Circuit Court consequently entered another stipulated order, extending the stay through December 30, 1994, requiring another Final

Judgment be entered by that date, or again Cobb Cole & Bell was to withdraw by January 3, 1995. (R 2-233) Ultimately, the issue over the 18 acres versus the 30 acres was resolved by the BOARD and DEBARY ESTATES, in favor of DEBARY ESTATES (R 3-255-326)

On or about January 13, 1995, the Respondent in this Appeal, James B. Clayton ("CLAYTON"), filed a Petition for Writ of Mandamus contending, among other things, that the purchase of the subject property by the BOARD was void because of the BOARD's lack of compliance with Fla. Stat. §235.054, in that the BOARD did not authorize the purchase by the required extraordinary vote. (R 1-1-5) The Circuit Court issued an Alternative Writ of Mandamus on January 19, 1995, requiring the BOARD to respond in writing. (R 1-15) CLAYTON amended his Petition on February 1, 1995, adding more detail to his contentions, to include, among others, the fact that the BOARD's action violated its own School Board policies 608 I.C.1., 608 I.C.2 and 608 I.D. (R 1-85-86) One of the many allegations in CLAYTON's Amended Petition was that the BOARD was never presented with the proper legal description of the subject sale. (R 1-85-86)

The BOARD filed a Motion to Quash the Alternative Writ or in the Alternative to Dismiss the Petition, contending that CLAYTON lacked standing and that the BOARD complied with Fla. Stat. 5235.05, arguing that their acquisition was by way of eminent domain and was not a purchase subject to Fla. Stat. §235.054. (R 1-16-84)

On February 15, 1995, the Circuit Court entered its Order Quashing the Alternative Writ of Mandamus and Dismissing Cause With Prejudice, concluding that CLAYTON lacked standing and had failed to state a cause of

action, in that the BOARD was not required to comply with Fla. Stat §235.054 nor School Board Policy 608, because the action was governed by Fla. Stat. 5235.05, the School Board's right of condemnation. (R 5-602)

On or about February 7, 1995, CLAYTON filed a Motion for Rehearing which was denied and on March 1, 1995, he filed a Notice of Appeal to the Fifth District Court of Appeal. (R 5-607) (R 5-624)

During the pendency of the appeal before the Fifth District Court of Appeal, CLAYTON filed a Motion to Stay because DEBARY ESTATES had filed the aforestated Motion for Relief from Stipulated Order of Taking and Final Judgment in the Circuit Court, alleging that it had agreed to sell 18 acres, not 30 acres as reflected in the original judgment. (R 3-255-326)

Moreover, Cobb Cole & Bell represented to the BOARD at its February 14, 1995 meeting that it acquired 30 acres in the settlement, informing the BOARD that it received twice as much land as was reflected in the original appraisals. (RSC 9- 16) This issue became moot when the BOARD, through Cobb Cole & Bell, stipulated with DEBARY ESTATES to another Final Judgment limited to the 18 acres. (R 3-255-326)

The Fifth District Court of Appeal reversed and remanded, ruling that CLAYTON had standing and had stated a cause of action, in that the BOARD was required to approve the mediated agreement with an extraordinary vote required by Fla. Stat. §235.054, because the purchase price exceeded the average of the two appraisals. (RSC-40-52) The BOARD subsequently filed its Notice and Amended Notice to Invoke Discretionary Jurisdiction before this Court. (RSC 57-60)

SUMMARY OF ARGUMENT

Respondent, JAMES B. CLAYTON, has standing to bring his amended petition for a writ of mandamus against the Volusia County School Board because he is a citizen and taxpayer of Volusia County, Florida. His standing is established by cases decided by this Court, most recently in ***State ex ret. Clayton v. Board of Regents,*** 635 So.2d 937 (Fla. 1994).

North Broward Hospital District v. Fornes, 476 So.2d 154 (Fla. 1985), cited by petitioner and by the trial court as authority for a denial of respondent's standing to sue, is either distinguishable because it was an injunction action, rather than a mandamus action, or is consistent with respondent's standing to sue because respondent has raised a constitutional challenge, or comes within the "unique circumstances" standard for determining standing issues.

In the alternative, ***Fornes*** should be reconsidered, in light of the passage of time, and the difficulties experienced by the trial and appellate courts of this state in the resolution of standing issues. Any such reconsideration of ***Fornes*** should be based not upon fluid federal standing rules, but upon a redefinition of the particular circumstances to be weighed and considered by the courts of this state in each case in resolving the standing issues before them.

The District Court of Appeal should be affirmed on the merits because there are in truth only two methods by which school boards may acquire title to land: voluntary purchase and eminent domain. A mediation agreement, though reached in the context of an eminent domain proceeding, is still a voluntary purchase. If the amount of the purchase price

proposed in a mediated agreement in an eminent domain action exceeds the average of the required appraisals for the property, an extraordinary vote of the school board is required for approval.

Since Clayton alleged that the purchase price of the mediated agreement exceeded the average of the required appraisals for the property, and that the school board did not approve that voluntary purchase by the required extraordinary vote, Clayton's amended petition stated a cause of action. The trial court accordingly erred, and the Fifth District Court of Appeal's reversal of the trial court should be affirmed.

Finally, respondent's amended petition for mandamus is not a collateral attack upon the final judgment entered in the eminent domain proceeding.

I.
RESPONDENT HAS STANDING

A
THIS COURT SHOULD RECONSIDER ITS DECISION IN *FORNES*

B.
"UNIQUENESS OF THE PARTICULAR CASE STANDARD"

Perhaps encouraged by this court's opinion in State ***ex rel. Clayton v. Board of Regents,*** 635 So.2d 937 (Fla. 1994) (granting this respondent standing in a mandamus action based upon the unique circumstances of that particular case), the Fifth District Court of Appeal now urges this Honorable Court to reconsider its opinion in ***North Broward Hospital District v. Fornes,*** 476 So.2d 154 (Fla. 1985), saying:

> We do not believe it inappropriate, . . . after a reasonable period of time and after observing the effect of a particular decision on the litigants that come before us, to request that the supreme court review a decision that is so often challenged before our court.

The Fifth District Court then proceeded to review the cases leading up to the opinion in ***Fornes,*** suggesting that ***Fornes*** may indeed have been erroneously decided.

This section of the respondent's Answer Brief is intended to respond to both sections 1 A and B of the Petitioner's Initial Brief.

Initially, respondent would respectfully suggest that a reconsideration of ***Fornes*** might not be required. This court has recently recognized standing in this very same respondent in the ***Board*** of ***Regents*** case cited above, notwithstanding the admitted absence there of any "special injury." The same arguments on standing presented here were also presented in the briefs in the ***Board of Regents*** case.

One alternative to a reconsideration of ***Fornes***, therefore, might be to clarify the "unique circumstances of the case" standard by noting that ***Board*** of Regents and the instant case were both mandamus actions, seeking a ministerial compliance with clear legal duties, and requiring the exercise of no discretion or judgment on the part of their respondents. ***Fornes***, on the other hand, involved a request for injunctive relief, and thus arguably encroached further upon the judgment or discretion of the responding parties. Standing rules might plausibly differ for such different forms of relief.

Mandamus is one of the few, if not the last, avenues for a citizen to compel his or her government to perform a ministerial duty which is required by law. Where the object is the enforcement of a public duty, the State of Florida has permitted its citizens access to the courts by way of mandamus, from 1879 through 1994, without alleging a special injury or an argument on constitutionality. ***State of Florida ex rel. Clayton v. Board of*** Regents, 635 So.2d 937 (Fla. 1994); ***North Palm Beach v. Cochran,*** 112 So.2d 1 (Fla. 1959); ***State ex rel. Ayres v. Gray*** , 69 So. 2d 187 (Fla. 1953); ***State ex rel. Stewart v. Mayo,*** 35 So.2d 13 (Fla. 1948); ***Florida Industrial Commission v. State ex rel. Orange State Oil*** Co., 21 So.2d 599 (Fla. 1945); ***Kneeland v. Tampa Northern R. Co.,*** 116 So. 48 (Fla. 1927); ***Florida Cent. & P.R. Co. v. State ex rel. Mayor, etc. of Town of Tavares***, 31 Fla. 482, 13 So. 103 (Fla. 1893); ***State v. Crawford,*** 28 Fla. 441, 10 So. 118 (Fla. 1891); ***McConihe v State, 17*** Fla. 238 (Fla. 1879); ***Krantzler v Bd. of County Com'rs of Dade Cty.,*** 354 So.2d 126 (Fla. 3rd DCA 1978).

Petitioner's authorities cited in its Answer Brief before the Fifth

District Court of Appeal were either suits for injunction or for declaratory relief, except for Brown ***v. Firestone***, 382 So.2d 654 (Fla. 1980). ***Firestone***, however, in the absence of a contest on the issue, found standing. However, in dicta, the court wrote that "this Court has long been committed to the rule that a party does not possess standing to sue unless he or she can demonstrate a direct and articulable stake in the outcome of a controversy" Firestone at 662.

Firestone cites ***Department of Administration v. Home, 269*** So.2d 659 (Fla. 1972), thus reiterating its concern for potential abuse of available judicial remedies by legislators dissatisfied with the outcome of a particular legislative session. Interestingly, however, ***Firestone*** expressly authorized mandamus by a citizen taxpayer to challenge a gubernatorial veto even when the gubernatorial veto was of an unconstitutional qualification or restriction in a general appropriations bill. There could logically be in such an action no special injury or constitutional challenge.

If this Honorable Court is inclined to respond to the District Court's request to reconsider ***Fornes***, however, (a request in which this respondent would respectfully join), respondent would urge a review of the broader standing issue, rather than simply another review of the "pre-***Rickman***" [***Rickman v. Whitehurst,*** 73 Fla. 152, 74 So. 205 (19 17)] and "post-***Rickman***" standing decisions.

More is at stake, here, than a single decision or a series of decisions on standing. What is at stake, it is submitted, is the very integrity of the judicial process, the proper functioning of our tripartite system of government, and the proper scope of citizen access to that system of

government. This case thus presents this court with nothing less than a unique opportunity to examine, and better define, our system of participatory democracy.

Petitioner asserts that the decision in *Fornes* is "parallel to Federal decisions holding standing to be an element of subject matter jurisdiction" citing *U.S. v. Richardson,* 418 U.S. 166, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974).

Professors Charles Alan Wright, of the University of Texas, Arthur R. Miller, of Harvard University, and Edward H. Cooper, of the University of Michigan, have written a multi-volume text entitled **Federal Practice and Procedure** (West Publishing Company, 1984). Volume Thirteen of that work, beginning with Section 3531, contains an exhaustive treatment of the standing issue in federal courts, from much of which the following discussion derives, and should be attributed.

After providing a two-page list of law review articles and treatises on standing in its first footnote, the article begins with this statement:

> Standing doctrines are employed to refuse to determine the merits of a legal claim, on the ground that even though the claim may be correct the litigant advancing it is not properly situated to be entitled to its judicial determination.

Thus, standing may be an appropriate device for defining the relationship between the courts on the one side and legislative or executive institutions on the other, After all, a judicial determination is essentially undemocratic, and should, for that reason, be used sparingly. On the other hand, litigation "is itself a form of participatory government, and. . . there must be at least one establishment institution prepared to listen to the

grievances of the disaffected, [footnote omitted]. . . . Political processes are inadequate even to protect the broadly political and general interests of all citizens, because of undue responsiveness to small group pressure and self-interest." 13 **Federal Practice and Procedure** (West Publishing Company, 1984), § 3531.3, at pages 412 and 415.

Standing may also be used to avoid unnecessary judicial decisions, thus conserving judicial resources (curbing a multiplicity of suits), and coincidentally limiting the number of "wrong" decisions that may adversely (and unintentionally) impact upon other important issues.

Standing rules may also enhance the adversary system by providing litigants who will be tangibly affected by the decision. That intuitive judgment is answered, of course, by the equally intuitive response that plaintiffs of principle might well be more effective advocates than traditional parties. A more practical approach might be for courts to simply evaluate the litigating capacities of a particular plaintiff and his attorneys; even seeking other plaintiffs or attorneys to make up for any perceived deficiencies, if necessary, appropriate, or desirable.

Requiring defined, focused, and specific fact situations may also help illuminate otherwise abstract issues and help establish the limits of a given decision for future cases.

How much more refreshing and helpful it would be if courts were to address standing issues in those terms, rather than in impractical formulas or meaningless phrases. Gone would be disingenuous or anomalous requirements that something must first be demonstrated that can never (or almost never) be demonstrated [a "special injury" greater than an increase

in taxes, ***Godheim v. City of Tampa, 426*** So.2d **1084, at 1090 (Fla. 2d DCA** 1983)(dissenting opinion of Judge Lehan) or "if everyone is injured, no one can sue" (majority opinion below in the instant case)].

Instead, all standing issues would simply turn upon the unique facts of each particular case. This plaintiff lacks standing because the case is moot; that plaintiff lacks standing because the case is not yet ripe for decision; this plaintiff, because the case is more properly decided in a political forum: that plaintiff, because the case is too abstract or nonspecific to be capable of an adequate development of the facts essential to its determination.

The lack of a clearly articulated, easily understood and widely accepted theory of standing actually defeats most of the benefits a standing rule is designed to achieve. Litigants use standing as another threshold tactic for delay. Courts use standing as a means to avoid unpopular decisions, or, worse, to disguise their decisions on the merits. Arbitrary and unarticulated standing preferences defeat rights that really deserve judicial protection.

Standing determinations should instead begin with the presumption that standing will be denied only for a good, articulated, and persuasive reason. The opinion should clearly, honestly, and directly state that reason. If the complaint would state a cause of action had it been brought against a private party, there is no good reason to deny standing, After that, the court should simply state why it believes this particular case should not be heard and decided: e.g., it needs more factual information for decision than these litigants are likely to provide; that decision, because of the broad public policy issues involved in its determination, is more **appropriately** made by

the legislative, than the judicial branch of government.

Petitioner suggests that this court continue to follow the federal standing rules.

It was in ***Department of Administration v. Home, 269*** So.2d 659 (Fla. 1972), that the federal standing rules were first incorporated into a Florida decision. The then recent U.S. Supreme Court decision in ***Flast v. Cohen,*** 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968), provided a convenient means to resolve both a standing problem and a political problem. At the time the decision was announced, it was already moot. The course of subsequent federal decisions on standing, however, clearly should not be used as a model for Florida standing issues.

Federal standing requirements are based upon perceived limitations on judicial authority imposed by Article III of the U.S. Constitution (authorizing the federal courts to hear "cases" or "controversies"), and "prudential" limitations, or limitations based upon the exercise of prudent judicial self-restraint. Professors Wright, Miller, and Cooper, from their extensive review of the federal standing decisions in **Federal Practice and Procedure.** cited above, report "all of these concepts, both constitutional and prudential, are slippery." If, as petitioner suggests, the "uniqueness of the particular case" standard is a "slippery slope" [IB, p. 14], his alternative, the federal standing rules, is no better.

More importantly, there is a fundamental difference between the U.S. Constitution and the Florida Constitution on the issue of access to the courts. Where the federal constitution has been interpreted to limit access to "cases" or "controversies," Article I of the Florida Constitution, entitled

"Declaration of Rights", provides, to the contrary, in its Section 2 1: "The courts shall be open to *every person for redress of any injury,*. . . .(emphasis supplied) ."

There are, accordingly, two cogent reasons to avoid importing federal standing rules into Florida jurisprudence: a) the federal rules are "slippery"; and b) they are based upon a federal constitution that has been construed to limit private access to the courts, in contrast to the Florida Constitution which expressly *guarantees* private access to the courts.

How then, should the court interpret its standing decisions, assuming a reconsideration of ***Fornes*** is appropriate, and assuming it is not willing to accept the innovative approach suggested above? Happily, a reconciling interpretation of ***Rickman v.* Whitehurst, 73** Fla. 152, 74 So. 205 (1917), has already been made by Judge Lehan in his highly persuasive dissenting opinion in ***Godheim, supra.,*** at page 1090, et seq. Acceptance of that interpretation will not only reconcile the past decisions of this court, but will confer standing upon Clayton in the instant case, and restore some accountability to public agencies and officers, such as the local school board.

WHEREFORE, this Honorable Court is respectfully requested to distinguish ***Fames,*** or reconsider ***Fornes***, or find the amended petition alleges a constitutional challenge, or establish a clearer and more practical standing rule, and, upon the authority of ***Board of Regents***, and the long line of mandamus cases, and accord respondent standing in this case.

C

DOES THE ACTION OF A PUBLIC BOARD WHICH EITHER INCREASES TAXES OR WASTES PUBLIC MONEY RISE TO THE LEVEL OF A CONSTITUTIONAL ISSUE WHEN IT IS ASSERTED THAT THE PUBLIC BOARD EXCEEDED ITS AUTHORITY GRANTED BY THE LEGISLATURE?

Petitioner seeks to avoid the force of the certified question by quibbling about its language.

Surely petitioner does not intend to suggest that the absence of the qualification "not inconsistent with general law" from Article IX, § 4, *Fla. Const.* (school boards), that is found in Article VIII, § l(g)(charter governments) and (in words of similar import) in §2(b)(municipalities), implies that school boards are not subject to the restrictions of general law.

If petitioner does not intend to suggest that school boards are immune from general law, then petitioner must address the cited legislative restrictions upon its authority to acquire land. Whether a school board's authority to acquire land is "granted" or "limited" by the legislature, then, is mere quibbling.

Perhaps petitioner intends to suggest that because there is no such qualifying language in the cited constitutional provision pertaining to school boards, an alleged violation of general law cannot rise to the level of a constitutional violation, If that were petitioner's argument, it fails to account for § 1 of Article IX, *Fla. Const.* which provides:

> Adequate provision shall be made *by law* for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require. (emphasis supplied).

Such an argument also fails to account for §6 of Article IX, ***Fla. Const.*** which provides:

> The income derived from the state school fund shall, and the principal of the fund may, be appropriated, but only to the support and maintenance of free public schools.

The allegations of respondent's petition for mandamus can legitimately, therefore, be considered allegations of violations of general law that rise to constitutional levels, considering only the Article cited by the petitioner. Another pertinent constitutional article will be discussed *infra.*

Petitioner next argues that "it is not apparent'* that the challenged settlement will increase taxes or waste public money. That, of course, is not the issue at this point in a standing determination. It was *alleged* that the challenged settlement would increase taxes or waste public money. For the purposes of determining standing, that allegation must be taken as true. Petitioner's *de hors* the record assertions regarding the merits of its decision, or its argument based upon its discretion to act, are accordingly both beside the point and premature. The order under review in the instant case is the dismissal of the Amended Petition for Writ of Mandamus for lack of standing and for failure to state a cause of action, before any hearing on the merits of the amended petition.

Respondent enthusiastically endorses an affirmative answer to the certified question. An affirmative answer to this certified question would also avoid the necessity to reconsider ***Fornes,*** because it would be a determination that a challenge of constitutional proportion has in effect been alleged in this case, thus qualifying this case for the recognized exception to the ***Fornes*** standing rules,

Further support for such a determination can be found in ***Thursby v. Stewart,*** 103 Fla. 990, 138 So. 742 (1932). In that case, Volusia County paid $400 (and adopted a budget providing for an additional appropriation of $6,000.00) to the Volusia County Fair Association, Inc., a private, non-profit corporation. Isaac A. Stewart, as a property owner and taxpayer, successfully challenged that expenditure and enjoined the county from any further such payments, on the ground that they would violate §9, Article X ***Fla. Const.*** (now, § 10, Article VII, ***Fla. Const.***) The court said:

> That a citizen and taxpayer may enjoin an unauthorized expenditure of public money, is well established. Rickman v. Whitehurst, 73 Fla. 152, 74 So. 205, Whitner v. Woodruff, 68 Fla. 465, 67 So. 110; Anderson vs. Fuller, 51 Fla. 380, 41 So. 684, 6 L.R.A. (NS) 1026, 120 A.S.R. 170, Lassiter & Co. vs. Taylor, 99 Fla. 819, 128 So. 14.

Article VII, §10 of the Florida Constitution provides:

> Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person: . . . .

Certainly the allegations of the petition for mandamus filed herein allege an agreement that might reasonably be construed to be a violation of that constitutional provision. Not only was it alleged that the school board paid more than twice the appraised value of the parcel in question, but the proposed agreement called for the school board to make expensive improvements to the property, all for the substantial, and *private,* benefit of the subdivision developer from whom the land was purchased.

Even if this court chooses not to reconsider ***Fornes***, or to grant an exception to ***Fornes*** under the unique circumstances of this case, therefore,

this court should at least allow the filing of an amendment to the petition for mandamus below, to officially characterize what has been already factually alleged, as a "constitutional" violation.

WHEREFORE, respondent respectfully urges this Honorable Court to answer the certified question in the affirmative.

11.

IS A SETTLEMENT OF EMINENT DOMAIN PROCEEDINGS GOVERNED EXCLUSIVELY BY THE STANDARDS APPLICABLE TO VOLUNTARY PURCHASES OF LAND?

III.

FLA. STAT. 235.054 (1995) IS NOT THE EXCLUSIVE AUTHORITY FOR SCHOOL BOARD PURCHASES OF LAND.

Respondent submits the following combined response to petitioner's Points II and III.

Petitioner first complains either that the District Court cited no authority for its conclusion (1) that the legislature had given school boards only two methods for obtaining title to real property, or that the District Court cited no authority for its conclusion (2) that a negotiated agreement, whether in the context of an eminent domain proceeding or not, must comply with the statutory and regulatory restrictions applicable to a voluntary purchase.

No citation of authority was necessary as to the first. Reference to Chapter 235, *Fla.* Stats. (1993)(The Educational Facilities Act) discloses but two methods for school boards to obtain title to real property: voluntary purchase (5235.054, ***Fla. Stats.*** (1994), and eminent domain (§235.05, ***Fla. Stats.*** (1993). Petitioner has cited no other statutory authority.

It argues, at p. 21 of the Initial Brief:

> Since §235.054 did not exist prior to 1984, then either there was some pre-existent source of authority for purchases+ or else purchases were completely unauthorized prior to that date and may now be collaterally challenged by any citizen in mandamus proceedings.

Petitioner thus relies upon a "straw man argument" that school boards

did not possess the authority to purchase land prior to 1984. Respondent has not made that argument. That argument is not a logical extension of, nor is it required by the argument Respondent makes.

Respondent merely observes that *whatever* authority school boards may have had to purchase property *prior* to 1984, their authority was restricted by §235.05 and §235.054, ***Fla. Stats.*** in 1984. From and after 1984, therefore, the only time period that is relevant to the issues in this case, school boards had only two methods to obtain title to real property.

School boards (or the Florida Department of Education) had ample opportunity to challenge the constitutionality of such legislative restrictions on any inherent authority they may have believed they had, but they did not. They had ample opportunity to seek amendments to those sections, if they felt them inappropriate or unduly restrictive, but they did not.

It is now too late, in the context of an effort to escape accountability for its failure to comply with those procedures, for this local school board to argue that it is free to ignore those legislative mandates, at will, upon some preexisting "inherent authority".

If petitioner's complaint about the District Court's lack of citation is with the second part of the District Court's conclusion, that a negotiated agreement is a negotiated agreement, whether it occurs within or without the context of an eminent domain proceeding, again, no citation was necessary, but for a different reason. No citation was necessary because the District Court's conclusion was the logical result of its careful consideration of the statutory scheme, and its construction of the applicable statutes *in pari materia*, and in such a manner as to give full effect to each.

The issue presented and resolved so quickly and easily by the District Court was whether a public body could "shed" its legislative and regulatory restrictions in a mediation proceeding as easily as Superman could "shed" his outer clothing (and his human limitations) in a telephone booth, or whether, instead, a public body remains a public body, subject to its legislative and regulatory restrictions, whether it is acting in the context of a mediation proceeding or not.

In the instant case, the Volusia County School Board attempted to "shed" the following express legislative directives during the mediation of an eminent domain case:

1) Required resolution of authority *adopted prior to the institution of eminent domain proceedings* stating the use for which the property is to be acquired and that the property is necessary for that purpose. §73.021(1), *Fla.* Stats. (1993); *See:Tosohatchee Game Preserve, Inc. v. Central and Southern Florida Flood Control District, 265* So.2d 681 (Fla. 1972); *Florida East Coast Railway Company v. City of Miami,* 346 So.2d 621 (Fla. 3rd DCA 1977); *City of Ocala v. Red Oak Farm, Inc.,* 636 So.2d 81 (Fla. 5th DCA 1994);

2) The necessity for an accurate legal description *in the petition* specifically describing the parcel to be condemned; §73.021(2), *Fla.* Stats. (1993):

3) The necessity for a "super majority" vote when the purchase price exceeds the average of two appraisals: §235.054(1)(c) *Fla. Stats.* (1994);

AND the following requirements of its *own* Facilities Development Policies (Number 608):

4) The necessity for 30 days public notice before final approval of purchase by the school board at a public meeting (C. 1.);

5) The necessity that all agreements for the sale and

purchase of real property shall specify that said agreement is subject to approval by the school board *and the Department of Education* (C.2.);

4) The necessity for two written appraisals of the property to be purchased (D.).

The mediation proceeding itself was further tainted by a *stipulated* order entered after an evidentiary hearing upon Defendant's Motion for Evidentiary Determination of Conflict of Interest, that provided, in pertinent part:

> . . . In addition, except for participation and preparation for the mediation referenced in paragraph 3 below, Petitioner's counsel, Cobb Cole & Bell, is enjoined from participating in any other aspect of this eminent domain matter, including counseling Petitioner with regard to the eminent domain action or advising or contacting any expert witnesses that may be called to testify in this matter, , , ,
>
> 4. In the event that the mediation referenced above does not result in the entry of a stipulated final judgment in this matter by December 2, 1994, pursuant to the stipulation of the parties, Petitioner's counsel, Cobb Cole & Bell, shall withdraw as counsel for Petitioner in this eminent domain matter by December 5, 1994 and *shall refrain from any participation in any aspect of Petitioner's continued involvement in this eminent domain action.* . . .(emphasis supplied) (R2- 14 1)

In addition, the stipulated order prohibited disclosure of information by Cobb Cole & Bell to any substitute counsel, including a transcript of the evidentiary hearing on conflict of interest; it expunged a document from the public record and placed it under court seal; and it preserved Defendant's opportunity to challenge any experts who may have received information about the case from Cobb Cole & Bell. (R2- 141).

It is thus apparent that petitioner's counsel (who continue to represent petitioner in the instant matter despite the broad language of the lower court's order emphasized above) *stipulated* that it had a conflict of

interest between the interest of the Volusia County School Board, and the interest of the condemnee. The respondent's concern whether the interest of the school board (and that of the county's taxpayers) was adequately represented in that "shotgun" mediation proceeding was accordingly understandable.

In such a context, the need for a supermajority vote for approval of any resulting agreement becomes even more important. That the resulting agreement, reached under the threat of an immediate and involuntary withdrawal of counsel, was made upon terms so blatantly generous to the condemnee, only adds fuel to already smoldering suspicions.

Seminole *County* ***v. Delco*** *Oil, Inc.,* 669 So.2d 1162 (Fla. 5th DCA 1996) has no discernable bearing on the instant case, whatsoever. Its only commonality is that the parties quickly reached a settlement of an eminent domain case. None of the issues presented, argued, or decided in the instant case were either expressly presented, argued, or decided in that case.

Seminole County ***v. Clayton***, (no relation to the instant respondent) 665 So.2d 363 (Fla. 5th DCA 1995) similarly has no discernable bearing on the instant case. Petitioner asserts that the "court ignored Fla. Stat. §125.355(1)(b) (1995), which imposes on counties the same requirements that Fla. Stat. §235.054 imposes on school boards," Nothing in that opinion, however, suggests that the court "ignored" that statute, For all that appears in the opinion on the subject (which is absolutely nothing), all statutory requirements could have been met, or, in the alternative, no one stepped forward to challenge any omission or raise any issues of statutory compliance.

What petitioner apparently cannot accept is that the District Court simply did not agree that a school board could avoid any legislative restrictions on its voluntary purchases by first filing an eminent domain action and then completing a voluntary purchase during mediation. Instead, the District Court chose to construe all applicable statutes in such a manner as to give full force and effect to them all, rather than to allow the regulated entity its choice of the statute by which it wished to be regulated.

Petitioner's argument based upon the words "if this procedure is utilized" suffers from the same myopia. The actual meaning, purpose or intent of those words, even if discernable, is irrelevant. Petitioner's argument here is the same as that addressed above: school boards may purchase land independently of 8235.054, ***Fla.*** *Stats. (1994).*

To grant school boards such authority, however, would eviscerate §235.054. Instead, the District Court chose the proper course, to give full meaning, force, and effect to §235.05, 5235.054, AND to §44.1011, ***Fla. Stats.***(1993).

Those are the three statutes to be construed: §235.05, ***Fla.*** **Stats.** (1993)(granting the power of eminent domain to the school board); 5235.054, ***Fla.*** *Stats.* (1994)(regulating agreements to purchase land by the school board) and §44.1011 ***Fla.*** *Stats.* (1993)(defining mediation).

Those sections provide, in pertinent part:

8235.05 Right of eminent domain.-

(1) There is conferred upon the school board in each of the several districts in the state the authority and right to take private property for any public school purpose or use when, in the opinion of the school board, such property is needed in the operation of

any or all of the public schools within the district, , , . .

§235.054 **Proposed purchase of real property by a board: confidentiality of records: procedure.-**

(1)(c)The board will not be under any obligation to exercise the option unless the option contract is approved by the board at the public hearing specified in this section. . . .For each purchase in an amount in excess of $500,000, the board shall obtain at least two appraisals . . . . If the agreed purchase price exceeds the average appraised price of the two appraisals, the board is required to approve the purchase by an extraordinary vote. . . .

(2) Nothing in this section shall be interpreted as providing an exemption from, or an exception to, s. 286.011.

544.10 11 **Definitions.-**

(2) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process *with the objective* ***of*** *helping the disputing parties reach a mutually acceptable and voluntary agreement. . , .*(emphasis supplied).

Sections 235.05 and 235.054, each applicable to the school board, should be construed *in pari materia*..

Statutes that relate to the same person or thing or to the same class of persons or things or to the same or closely allied subject or object are regarded as in pari materia. ***Lanier v. Bronson, 2*** 15 So.2d 776 (Fla. ***4th*** DCA 1968). ***See also: Okaloosa County Water and*** Sewer District ***v. Hilburn***, 160 So.2d 43 (Fla. 1964); ***Central Truck Lines, Inc. v. Railroad Commission,*** 118 Fla. 526, 160 So. 22 (Fla. 1935).

In ***Florida Jai Alai, Inc. v. Luke Howell Water & Reclamation District,*** 274 So.2d 522 (Fla. 1973), the court said:

We have also adopted the view that a statute should be construed and applied so as to give effect to the evident legislative intent, even if it varies from the literal meaning of the statute. Deltona Corporation v. Florida Public Service Com'n, 220 So.2d 905 (Fla. 1969). Legislative intent should be gathered from consideration

> of the statute as a whole rather than from any one part thereof. State v. Hayles, 240 So.2d 1 (Fla. 1970). A law should be construed together with any other statute relating to the same subject matter or having the same purpose if they are compatible. Garner v. Ward, 251 So.2d 252 (Fla. 1971).

Viewed *in pari materia,* the legislative intent expressed in the first two statutes is clearly to address the two primary means by which a school board may acquire land: (1) by agreement, and (2) by eminent domain. The legislature clearly sought to protect public monies in the first by requiring a super majority vote in favor of agreements in excess of the average appraised value, and in the second by delegating such valuation to a jury's verdict after a trial (normally held between adversaries unable to reach an agreement).

The two provisions are not incompatible, but complement each other. Both legislative purposes can and should be given effect.

Does Chapter 44, ***Fla. Stats.*** (1993) on mediation, overrule that statutory scheme? Not at all. By definition, mediation "is an informal and nonadversarial process *with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. . . .*"(emphasis supplied) §44.10 11, ***Fla. Stats.*** (1993). Chapter 44, therefore, only provides another method for arriving at an agreement. Such an agreement, in order to give effect to the legislative plan, should, therefore, be governed by the express language of 8235.054.

Note also that §235.054(2), ***Fla. Stats.*** (1994) expressly preserves the applicability of §286.0 11, ***Fla. Stats.*** (1993) (the "Sunshine Law"), to land acquisitions by school boards, Would the legislature have expressly preserved government "in the sunshine" with respect to land acquisitions while, at the same time, intending that land acquisitions by secret agreement could occur

"out of the sunshine" in an eminent domain mediation proceeding?

The following rules of statutory construction are of assistance in answering these questions:

> 'Courts, in construing a statute, must, if possible, avoid such construction as will place a particular statute in conflict with other apparently effective statutes covering the same general field.' Howarth v. City of DeLand, 117 Fl. 692, 701, 158 So. 294, 298 (1934). '[W]here two statutes operate on the same subject without positive inconsistency or repugnancy, courts must construe them so as to preserve the force of both without destroying their evident intent, if possible.' Mann v. Goodyear Tire and Rubber Company, 300 So.2d 666, 668 (Fla. 1974). quoted in ***Wakulla*** County ***v. Davis,*** 395 So.2d 540 (Fla. 1981).

In ***Snively*** Groves, Inc. ***v. Mayo,*** 135 Fla. 300, 184 So. 839 (1938). the court said:

> Where statutes in pari materia are fairly susceptible of two constructions, one of which will give effect to both, and the other of which will defeat one or both, the former construction is preferred, it being the function of the courts under the maxim *'ut res magis valeat quam pereat'* [that it may rather become operative than null] to find means within the terms of the statutes by which to sustain rather than to strike down or defeat the legislative purpose. [citations omitted] Where possible, that construction should be adopted which harmonizes and reconciles statutory provisions, and [sic] court should endeavor to find a reasonable field of operation that will preserve the force and effect of each. [citation omitted]. . . ,
>
> 'It is the general rule, in construing statues, 'that construction is favored which gives effect to every clause and every part of the statute, thus producing a consistent and harmonious whole. A construction which would leave without effect any part of the language used should be rejected, if an interpretation can be found which will give it effect'.' [quoting from Goode v. State, 50 Fla. 45, 39 So. 461]

Thus 8235.05 and 8235.054, being *in pari materia,* and not in conflict with each other, should be read together in such a manner as to give to each its full operation within the sphere contemplated.

Another rule of statutory construction also applies to the issues

presented here:

> 'It is a well settled rule of statutory construction , . . that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms.' Adams v. Culver, 111 So.2d 665, 667 (Fla. 1959) quoted in ***Shiners Hospitals for Crippled Children v. Zrillic***, 563 So.2d 64 (Fla. ***1990); See also: Kiesel v. Graham, 388*** So.2d 594 (Fla. 1st DCA 1980).

Section 235.05 is a general statute granting eminent domain authority to school boards. Section 235.054 is a specific statute covering a particular subject matter, to wit, land acquisitions by agreement. Section 235.054 therefore should control over §235.05.

Petitioner next cites 1990 Op. Atty. Gen. 164, #90-53, for the proposition that a municipality need not comply with §166.045, ***Fla. Stats.*** (1994)(the parallel provision for municipalities) if the municipality had another method for purchasing land in its charter or by ordinance. A key proviso in that opinion was omitted, however. That opinion interprets a statutory amendment to 5166.045 not present in §235.054:

> (c) Notwithstanding the provisions of this section, any municipality that does not choose with respect to any specific purchase to utilize the exemption from 119.07(1) provided in this section may follow any procedure not in conflict with the provisions of chapter 119 for the purchase of real property which is authorized in its charter or established by ordinance.

After opining that the quoted statute meant what it said, the attorney general went on to opine that any municipality that did not have any charter or ordinance setting forth a procedure for the acquisition of real property would be required to comply with §166.045, ***Fla. Stats.***

Petitioner argues from that opinion and amendment that the legislature meant that §235.054 be interpreted in the same manner. The

obvious response is that if the legislature had intended to amend §235.054 in the same manner, it would have done so. The difference between home rule municipalities and school boards as "home rule" entities, is obvious. It was clearly not the legislature's intent to grant school boards the right to adopt their own "home rule" legislation or regulations on how they would acquire title to property.

Petitioner next argues that such a construction of 5235.054 renders it violative of the "one-subject" rule of Article III, §6, ***Fla. Const.***. That argument has no place here, for no one is here challenging the act upon that ground. Such an issue is not either presented, or ripe, for decision in the posture of this case. It should not distract this Court from the plain meaning of the statutes before it.

More importantly, petitioner mischaracterizes Chapter 84-298, ***Laws of Florida*** (1984). It implies that the sole subject of that act was "governmental meetings and records". Chapter 84-298, to the contrary, carried a lengthy title:

> An act relating to governmental meetings and records: creating ss. 125.355, 166.045; and 235.054, F.S.; providing for the confidentiality of appraisals, offers and counteroffers with respect to the purchase of real property by counties, municipalities and school boards; providing for the keeping of certain records; requiring appraisals: providing for extraordinary votes: . . . .

New Section 235.054 was headed: "Proposed purchase of real property by a school board; confidentiality." It provided that "[i]n any case where a school board, pursuant to the provisions of this chapter, seeks to acquire by purchase any real property for educational purposes, all appraisals, offers, or counteroffers shall be in writing and shall be exempt

from the provisions of chapter 119 until an option contract is executed, . . ."

Instead of being just "an act related to government meetings and records," therefore, Chapter 84-298, ***Laws of Florida*** (1984) was instead, an act relating to proposed purchases of real property by a school board, which, incidentally, contained a limited exception from the public records law.

Petitioner finally argues that the District Court quoted from and cited §235.054 as amended in 1995, whereas the allegedly illegal act occurred in 1994. That is true. What is not true, however, is that the language differences might have made a difference in the District Court's decision.

Both the 1994 and the 1995 statutes required an extraordinary vote of the school board for voluntary purchases under the circumstances presented in this case. Different paragraph numbers, and a rearrangement of the pertinent language make no difference in that requirement. It is obvious from reading the District Court's opinion that it was the failure to meet that requirement for an extraordinary vote that prompted the District Court's decision on the merits, not the presence or absence of the words upon which petitioner relies: "if this procedure is utilized," Those words were not mentioned in the District Court's opinion. Their only significance lies in petitioner's argument that Chapter 84-298, ***Laws of Florida*** (1984) provides an optional method for school boards to purchase land, The District Court expressly rejected that argument.

WHEREFORE, respondent respectfully submits that the District Court correctly determined that Clayton's Amended Petition for Mandamus stated a cause of action because §235.054 restricts school boards from approving a voluntary purchase of land for a price more than twice the average appraised

value with less than an extraordinary vote, and the school board cannot "shed" that requirement by first filing an eminent domain action.

Iv.
MAY MANDAMUS BE UTILIZED AS A MEANS OF COLLATERAL ATTACK ON AN UNAPPEALED CONDEMNATION JUDGMENT, WHERE THE CONDEMNEE IS NOT JOINED?

The answer to the question posed in this point heading is no. The question posed in the point heading, however, states no issue present in this case.

Petitioner first argues that mandamus, being a discretionary writ, may be refused when it will be attended by no beneficial results, citing ***State ex rel.*** Lloyd ***v. City of Fort*** Pierce, 206 So.2d 251 (Fla. 4th DCA 1968). Pointing out that it has already paid the purchase price for the land and commenced construction on a new school, petitioner argues that even if this court concludes that in doing so it had acted without authority, and in violation of general law, there should now be no remedy for such misconduct.

First, petitioner has not yet "put itself out of its power to do" the act required, to use the words quoted in the Initial Brief [at p. 23]. Petitioner may still rescind its void approval of the mediated purchase agreement, as requested in the Amended Petition for Writ of Mandamus, without "unbuilding the school." It may then either retroactively approve the mediated purchase agreement (or any negotiated modification thereof) by the required "extraordinary vote," or it may validly exercise its eminent domain authority and proceed to trial and verdict.

If the resulting valid eminent domain judgment is for an amount less than the amounts already paid (as respondent would predict), petitioner can then decide what, if any, effort should be made to collect the excess payments from the condemnee. If that judgment exceeds the amount

already paid, (as petitioner apparently expects) petitioner can simply pay the difference to the condemnee.

Second, and more importantly, this point is premature. The order of the trial court under review dismissed the amended petition for writ of mandamus for lack of standing and for failure to state a cause of action. It did not reach the merits of the petition. No decision concerning whether the writ would accomplish a beneficial result should be made until after a trial on the merits of the petition,

Third, does petitioner really intend the full implications of its argument on this point? According to the language quoted in its brief [on p. 21]:

> . . . A peremptory writ of mandamus will not usually issue commanding an officer to do what is not within his power to do, ***and though, by putting it out of his power to perform a duty, he may become liable in damages,*** still, where he cannot perform the act, and this is clear to the court, mandamus will not be issued against him. (emphasis supplied),

Even if the trial court, after a trial on the merits, were to refuse to issue the writ, therefore, on the ground that although petitioner may have acted in excess of its authority, it no longer had the power to correct the error, the trial court should do so without prejudice to a subsequent action by respondent against the school board for damages.

Petitioner next cites ***De Groot v. Sheffield***, 95 So.2d 912 (Fla. 1957), asserting that it is "directly on point." [IB, at p. 24]. It is not.

That case held that the quasi-judicial action of an administrative agency could not be collaterally attacked in the defense of a petition for writ of mandamus. A judgment *dismissing* a petition for writ of mandamus against

the Duval County School Board was accordingly reversed.

In that case, the relator, an employee of the Duval County School Board, sought reinstatement as an employee of the school board by petition for writ of mandamus, alleging in his petition for a writ of mandamus that the school board was prohibited by general law from abolishing his position without the approval of the civil service board.

The school board defended the petition by attempting to collaterally attack the decision of the civil service board whichhad refused to approve the school board's resolution to abolish the relator's position.

The relator argued successfully before this court that if the school board had wished to review the action of the civil service board in refusing to abolish his position, it should have done so by certiorari, and not in the defense of his petition for mandamus.

Respondent in the instant case, is not seeking review of an agency's decision in the defense of a mandamus action. Respondent was not a party to the condemnation action, or the mediated voluntary purchase agreement. He was therefore not entitled to any judicial review of the eminent domain proceeding.

Instead, respondent here, as the petitioner successfully did in De ***Groot,*** merely seeks to require the school board to comply with general law.

Petitioner cites ***Powell v.*** **Civil** ***Service Board*** **of** ***Escambia*** **County, 154** So.2d 9 17 (Fla. 1st DCA 1963) for the proposition that mandamus cannot be used to collaterally attack a quasi-judicial determination by an administrative agency. In that case, an employee sought review of a decision of the civil service board upholding his discharge. He simply chose the wrong vehicle,

and waited too long to file it. After the time for the filing of a petition for certiorari review had expired, the deputy filed a mandamus action. In response to the writ, the civil service board issued findings of fact. The deputy subsequently filed a petition for certiorari from the decision of the civil service board. The district court of appeal held that mandamus could not be used to review the civil service board, and its filing after the expiration of the time limit for filing a petition for writ of certiorari did not extend the time limits for such filing. The deputy's petition for certiorari was accordingly dismissed.

Petitioner concludes this point by reciting "facts" (without benefit of record citation), and argues from those "facts" that parties with legal interests affected by these proceedings have not been made parties in this proceeding.

In ***Lassiter & Co. v. Taylor***, *99* Fla. 8 19, 128 So. 14, 69 A.L.R. 689 (1930), a taxpayer sought an injunction against the City of Sebring to prevent it from making payments on a paving contract on the ground that the city failed to comply with bidding requirements, Granting the injunction over a similar objection, this Honorable Court said:

> . . . the law does not imply a liability against a county where its county commissioners proceed in the matter in violation of the express mandatory provisions of the statute and the party seeking to enforce the liability is charged with the duty of ascertaining the legality of the proceedings. There is no implied authority in county commissioners to do something for the county which the statute expressly forbids. [citations omitted].
>
> . . .
>
> . . . we can see no reason why appellee in the instant case should not have relief by injunction, though the *pavement was down at the time* ***of the filing of*** *the bill* ***of*** *complaint.*

We now have before us a case where the contract was made in violation of a mandatory provision of the charter, which requires such contracts to be let to the lowest responsible bidder. We quite agree with the Supreme Court of California, when it says:

> 'This then, is the undoubted rule, that, when a contract is expressly prohibited by law, no court of justice will entertain an action upon it, or upon any asserted rights growing out of it. And the reason is apparent; for to permit this would be for the law to aid in its own undoing. Says the Supreme Court of the United States in President, etc., v. Owens, 2 Pet. 527: 'No court of justice can, in its nature, be made the handmaid of iniquity. Courts are instituted to carry into effect the laws of the country. How can they become auxiliary to the consummation of violations of law? There can be no civil right were there can be no legal remedy, and there can be no legal remedy for that which is itself illegal." (emphasis supplied).

WHEREFORE, Petitioner's Point IV is without merit and has no application to the instant case.

CONCLUSION

Respondent respectfully requests first that this Honorable Court affirm the opinion and decision of the Fifth District Court of Appeal of Florida, on respondent's standing in mandamus, either by distinguishing ***Fornes***, or by clarifying ***Board*** of Regents, construing the amended petition to allege a constitutional challenge, or, in the alternative, reconsider ***Fornes***, adopt broader, clearer, and more practical standing rules; secondly, that this Honorable Court affirm the opinion and decision of the Fifth District Court of Appeal of Florida that school boards may not "shed" statutory and policy requirements in the context of a mediated agreement reached after the commencement of an eminent domain proceeding.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Answer Brief has been served by hand to C. Allen Watts, of Cobb, Cole & Bell, 150 Magnolia Avenue, Daytona Beach, FL 32115-2491, attorney for the School Board of Volusia County, this 1st day of May, 1996.

Attorney