047

IN THE SUPREME COURT OF FLORIDA

CASE NOS. 94,105 and 94,118

THE SEBRING AIRPORT AUTHORITY, et al.,

Appellants,

vs.

C. RAYMOND McINTYRE, Property Appraiser of Highlands County, Florida, et al.,

Appellees.

ON APPEAL FROM THE
SECOND DISTRICT COURT OF APPEAL
FLORIDA

AMICUS BRIEF OF THE FLORIDA LEAGUE OF CITIES, INC., THE CITIES OF LAKELAND, ORLANDO AND ST. PETERSBURG, AND THE TAMPA SPORTS AUTHORITY

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CERTIFICATE OF TYPE SIZE AND STYLE

Counsel for Amici certifies that the size and style of type used in this Amicus Brief is 14 point (proportionately spaced) Times New Roman.

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INTRODUCTION

This appeal concerns the constitutionality of a 1994 amendment to Section 196.012(6), Florida Statutes which declares that certain facilities built on municipal property, such as concert halls, arenas and stadiums, serve a public purpose and are therefore exempt from ad valorem taxation, even when leased to private interests. The court below disagreed with this declaration and ruled that the Legislature had exceeded its constitutional powers. The Amici join with the appellants, Sebring Airport Authority and Sebring International Raceway, Inc. (collectively "Sebring") in suggesting that the court below, not the Legislature, exceeded its constitutional bounds. It is the people through their elected representatives who declare what is a public purpose, and such declarations are subject to judicial review only when arbitrary or capricious.

This amicus brief is filed on behalf of the Florida League of Cities, an organization representing over 400 Florida municipalities and charter counties; the cities of Lakeland, Orlando, and St. Petersburg; and the Tampa Sports Authority (collectively, the "Amici"). This issue is of critical importance to Amici and the Florida governmental entities they represent. Affirmance of the decision below will have a devastating financial impact on existing lease agreements between municipalities and their lessees and will severely damage future attempts to build such facilities and attract long-term tenants such as professional sports franchises.

This brief will show that the Legislature's definition of public purpose was reasonable and must be affirmed. As shown below, this Court has long

held that concert halls, stadiums, and arenas serve a vital public purpose. However, such facilities are increasingly expensive to build and operate. Thus, most major facilities built in the United States in the last two decades have been built with substantial government participation. Some have been built entirely at taxpayer expense. But most such projects, particularly major stadiums, arenas, and sports facilities, are built only after complex negotiations in which government attempts to shift as much of the risk as possible to private parties. The result is a public/private "partnership" in which a private party, such as the Sebring International Raceway Corporation, shoulders economic risks in the hope of gaining future profits while the public reaps the immediate recreational, cultural and economic development benefits from the construction and operation of the facility.

In light of this economic reality, the sole question is whether the Florida Legislature acted outside the bounds of its constitutional power when it declared that such private/public partnerships serve an important public purpose and that such municipal facilities are exempt from ad valorem taxation regardless of their use by private parties. The Amici believe that the Legislature was correct to recognize the importance of such partnerships and acted well within its constitutional powers. Indeed, as recently as last year, this Court rejected a similar constitutional challenge and declared that disputes over public purpose should be resolved by voters, not by litigation. The judgment below should be reversed and the constitutionality of the 1994 amendment to Section 196.012(6) affirmed.

STATEMENT OF THE CASE AND FACTS

Amici adopt Sebring's statement of the case and facts.

SUMMARY OF THE ARGUMENT

The sole issue in this appeal is whether the Legislature has the power to declare what is a public purpose. This Court has already answered that question by ruling on many occasions that courts must defer to the Legislature's declaration of public purpose so long as it is not unreasonable, arbitrary, or capricious.

The court below erred when it held that only governmental-governmental as opposed to governmental-proprietary functions served a public purpose. In doing so, the court confused statutory construction with constitutional analysis. This Court has never ruled that the Legislature may not define public purpose to include governmental-proprietary functions. To the contrary, this Court has approved tax exemptions granted to governmental-proprietary and even purely proprietary businesses based on specific legislative declarations of public purpose such as the declaration at issue in this case.

The 1994 amendment to Section 196.012(6) was squarely within the Legislature's power. The decision below holding the amendment to be unconstitutional should be reversed.

ARGUMENT

I. THE LEGISLATURE DETERMINES PUBLIC PURPOSE SUBJECT ONLY TO NARROW JUDICIAL OVERSIGHT.

The tax assessor bears a heavy burden in this Court. Every statute enacted by the Legislature is presumed to be constitutional and any challenger must prove beyond a reasonable doubt that the statute conflicts with core constitutional principles. *Spencer v. Hunt*, 109 Fla. 248, 147 So. 282, 284 (1933). If there is any way to construe the statute so as to render it constitutional, the court must do so. *State v. Leone*, 118 So. 2d 781, 785 (Fla. 1960). Every reasonable doubt must be indulged in favor of the constitutionality of the Act. *Amos v. Mathews*, 99 Fla. 115, 126 So. 308, 315 (1930).

This is so because the Legislature's power is broad. Constitutional provisions serve only as a limitation upon the Legislature's powers, not a grant. Thus, unless there is an express or implied constitutional limitation of the Legislature's powers, it is free to take any action it deems to be in the public interest. *State v. Miller*, 313 So. 2d 656, 657 (Fla. 1975).

Against this backdrop, the constitutional question in this case can be stated plainly: Does the Legislature have the power to declare that a public facility such as a concert hall, stadium, or arena serves a public purpose even if used by a private entity? This Court has answered this very question "Yes" at least twice -- first in *Daytona Beach Racing and Recreational Facilities Dist. v. Paul*, 179 So. 2d 349 (Fla. 1965) and most recently in *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997). In *Poe*, the Court addressed Tampa's new community

stadium now known as Raymond James Stadium. The stadium was to be financed in part by $160 million in revenue bonds supported by a local option half-cent sales tax. In the bond validation proceeding, former Tampa mayor William Poe asked this Court to declare that the new community stadium did not serve a public purpose. Poe argued that the new stadium was essentially a profit making enterprise solely for the benefit of the Tampa Bay Buccaneers football team. Poe referred to a number of provisions in the agreement between the Bucs and the Sports Authority that Poe argued would transfer too much of the stadium's operating revenues to the Bucs.

This Court rejected Mayor Poe's challenge and ruled that the construction of the stadium served a public purpose despite the substantial benefits received by the Bucs. This Court surveyed the near unanimous authority holding that community stadiums, arenas, and convention centers served a public purpose. *Id.* at 676-77. The Court noted the substantial recreational and economic benefits that could be expected to accrue to the citizens of Tampa as a result of the construction of the stadium and the lease with the Buccaneers. *Id.* at 678-79. It concluded that the method of financing the stadium was a policy matter for elected representatives which could not be second-guessed. *Id.* at 679.

In making this decision, *Poe* relied heavily on a series of decisions relating to the construction and operation of the Daytona Motor Speedway. The most important of these decisions is the *Paul* case, which is virtually on point because it concerned whether the Daytona Raceway could be exempt from ad valorem taxation even though it was leased to a private enterprise. The

Legislature, in a special act passed in 1955, created a Speedway District in Daytona Beach to construct and operate a racing recreational facility. Chapter 31343, Special Acts of 1955. That facility, the Daytona Motor Speedway, was constructed in part through bonds validated after this Court declared the Speedway to serve a public purpose. *State v. Daytona Beach Racing and Recreational Facilities Dist.*, 89 So. 2d 34 (Fla. 1956). However, the Legislature did more than just authorize the issuance of bonds. The Special Act also expressly granted a tax exemption to the lands and facilities leased by the Facilities District. Section 13, Chapter 31343, Special Acts of 1955.

The Tax Collector of Volusia County, much like the tax collector in Sebring, challenged this tax exemption as unconstitutional because the Speedway was leased to and operated by a private party. This Court rejected the tax assessor's challenge. Deferring to the Legislature's determination of public purpose, the Court held that the fact that the Speedway was leased to a private party did not eliminate the public purpose behind the construction and operation of the Speedway. Importantly, the Court emphasized its limited role in reviewing the Legislature's determination of public purpose:

> As stated many times, this Court should accord the legislative discretion great respect in its designation of those facilities and things which serve public purposes and its determination of objects and purposes that may be given tax exemptions within the meaning of the exemption provisions of the Constitution, and especially should deference be accorded where the Legislature may reasonably be presumed to have followed guiding principles enunciated in cases decided by this Court.

Paul, 179 So. 2d at 355. In short, the Legislature had the constitutional power to grant such an exemption.

The *Poe* and *Paul* cases have strong historical roots. This Court has long given considerable deference to the Legislature's determination of what constitutes a public purpose. One of the earliest pronouncements appears in *City of Tampa v. Prince*, 63 Fla. 387, 58 So. 542, 542 (1912). In *Prince* this Court held that it is for the Legislature and not the court "to declare what is a municipal purpose and a duly enacted statute designating a municipal purpose is subject only to the provisions and principles of organic law." This principle is often repeated. *See State v. Inter-American Center Authority*, 84 So. 2d 9, 12 (Fla. 1955) (substantial deference must be given to legislative determination that an inter-american cultural facility serves a public purpose)[1]; *State v.*

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[1] This Florida authority mirrors substantial authority from other jurisdictions holding that the Legislature's determination of public purpose is subject to great deference. In numerous cases concerning sports and recreational facilities the courts have refused to second guess the financing arrangements negotiated by the municipality. *Ginsberg v. City and County of Denver*, 436 P.2d 685, 688 (Colo. 1968) ("if not clearly and palpably wrong the courts will not disturb the legislative determination" of public purpose); *R.E. Short Co. v. City of Minneapolis*, 269 N.W.2d 331, 336 (Minn. 1978) (the determination of public purpose is a legislative not a court function); *Rice v. Ashcroft*, 831 S.W.2d 206, 210 (Mo. Ct. App. 1991) (the only question is whether the Legislature's determination of public purpose is arbitrary or unreasonable); *New Jersey Sports & Exposition Authority v. McCrane*, 292 A.2d 580, 590-99 (Super. Ct. N.J. 1971) (collecting nationwide authority concerning the deference accorded to legislative findings), *appeal dismissed*, 409 U.S. 943 (1972); *Maready v. City of Winston-Salem*, 467 S.E.2d 615, 619 (N.C. 1996) (legislative determination of public purpose given great weight); *CLEAN v. State of Washington*, 928 P.2d 1054, 1061 (Wash. 1996) (legislature in a superior position to determine public purpose); *Libertarian Party of Wisconsin v. State of Wisconsin*, 546 N.W.2d 424, 434 (Wis. 1996) (what constitutes a public purpose is in the first instance a question for the Legislature).

Jacksonville, 53 So. 2d 306, 307 (Fla. 1951) (deferring to a Legislature's declaration that recreational facilities and sports arenas serve a public purpose stating "courts should bear in mind that they have no will or design of their own to serve in matters of this kind"); *State v. Florida State Improvement Com'n*, 47 So. 2d 627, 630 (Fla. 1950) ("a Legislative determination to the effect that a certain project shall constitute a city function is highly persuasive as to its purpose and should not be lightly set aside by the court.")

This deference has been applied specifically to the Legislature's power to grant tax exemptions. In words that could have been written for this case, this Court held that the Legislature must be given deference in matters of taxation and exemption from taxation:

> As stated many times, this Court should accord the legislative discretion great respect in its designation of these facilities and things which serve public purposes and its determination of objects and purposes that may be given tax exemptions within the meaning of the exemption provisions of the Constitution . . . Unless and until the Legislature repeals the tax exemption we hold it must stand. Its wisdom and policy in granting or continuing the exemption is now beyond our reach. . . .

Paul, 179 So. 2d at 355.

This deference is not surprising. As many courts have noted, the concept of what is a public purpose constantly evolves. It is the voters, through their elected representatives, who are in the best position to make this ever-changing assessment of whether a particular activity serves the public good. For example, in validating the bonds for the expansion of Miami International Airport, this Court noted that in the "Pony Express days" it may well have found no purpose

justifying the acquisition of the land. Noting that "what constitutes a county purpose is not static and inflexible" the Court agreed that the acquisition in fact served a public purpose by modern standards. *Seaboard Air Line R. Co. v. Peters*, 43 So. 2d 448, 454 (Fla. 1949); *Jasper v. Mease Manor, Inc.*, 208 So. 2d 821, 825 (Fla. 1968) (each generation must determine its own concept of public purpose). *State v. City of Tallahassee*, 142 Fla. 476, 195 So. 402 (1940).

As the Washington Supreme Court recently observed in evaluating Seattle's proposed new baseball stadium:

> In our view [the Legislature] is in a superior position to evaluate the extent to which a public purpose is served by the realization of the perceived benefits. What is a public purpose is not a static concept. Rather, it is a concept that must necessarily evolve and change to meet changing public attitudes. *The legislature with its staff and committees is the branch of government better suited to monitor and assess contemporary attitudes than are the courts.*

CLEAN v. State of Washington, 928 P.2d 1054, 1061 (Wash. 1996) (emphasis supplied). *See City of Oakland v. Oakland Raiders*, 646 P.2d 835, 842 (Cal. 1982) ("public use defies absolute definition, for it changes with varying conditions of society, new appliances in the sciences, [and] changing conceptions of the scope and functions of government); *Lifteau v. Metropolitan Sports Facilities Commission*, 270 N.W.2d 749, 754 (Minn. 1978) (addressing the Metrodome -- what is a proper public purpose evolves with changing economic and industrial conditions); *New Jersey Sports & Exposition Authority v. McCrane*, 292 A.2d 580, 591 (N.J. Super. Ct. 1971) (addressing the Meadowlands Sports Complex -- the selection of the means to accomplish a public purpose is peculiarly within the judgment of the Legislature).

The Legislature's power to declare what is a public purpose goes hand in hand with its power to reasonably interpret provisions of the Florida Constitution. For example, in *State v. Inter-American Center Authority*, 84 So. 2d 9 (Fla. 1955) this Court was asked to determine whether a trade center to be constructed in South Florida served a public purpose and was therefore constitutional. This Court rejected the constitutional challenge relying heavily on Section 4, Chapter 29830, Acts of 1955, which declared the center to be a public purpose.

Similarly, in *Dade County Classroom Teachers' Ass'n v. Ryan*, 225 So. 2d 903, 906 (Fla. 1969) the Legislature passed a statute defining the right of collective bargaining set forth in Article I, Section 6 of the Florida Constitution. This Court held that the Legislature's interpretation of the Constitution should be given great respect: "Legislative enactments regulating the subject matter embraced in said Section 6 should be accorded considerable deference by the judiciary, similarly, as we have accorded legislative enactments relating to tax exemptions authorized by Article IX, Section 1, and Article XVI, Section 16, Florida Constitution of 1885." Likewise, in *Jasper*, the Legislature determined that a home for the aged is a charitable purpose within the meaning of the Florida Constitutional provision authorizing tax exemptions for charitable purposes. This Court held that the Legislature's definition of charitable purpose was "within the legislative prerogative." *Jasper*, 208 So. 2d at 826.

This discussion of judicial deference is not to suggest that the Court has no role, only that its role is much more sharply limited than that exercised by

the court below. The court may declare the Legislature's declaration of public purpose to be unconstitutional only if it is unreasonable, arbitrary or capricious or clearly erroneous. *Department of Revenue v. Florida Boaters Ass'n*, 409 So. 2d 17, 19 (Fla. 1981); *State v. Florida State Improvement Com'n*, 47 So. 2d 627, 630 (Fla. 1950); *Northern Palm Beach County Water Control Dist. v. State*, 604 So. 2d 440, 442 (Fla. 1992) (Legislature's declaration of public purpose must be upheld unless clearly erroneous); *Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304 (0Fla. 1971) (same); *State v. Daytona Beach Racing & Recreational Facilities Dist.*, 89 So. 2d 34, 37 (Fla. 1956) ("since the Legislature determined that public purpose would be served, we should not find to the contrary unless it be found the Legislature was not just and reasonable or was arbitrary"); *State v. City of Jacksonville*, 53 So. 2d 306, 307 (Fla. 1951) (so long as the Legislature's action is reasonable the courts are without power to strike it down).

The tax collector's likely response to this overwhelming precedent will be to attempt to shift the focus of this case away from the Legislature's power to define public purpose. Instead, the tax collector will argue that the Legislature's declaration is in conflict with decisions of this Court narrowly defining public purpose to include only governmental-governmental functions as opposed to governmental-proprietary functions.[2] To make this argument, however, is to

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[2] *Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072 (Fla. 1994); *Volusia County v. Daytona Beach Racing and Recreational Facilities District*, 341 So. 2d 498 (Fla. 1976); *Williams v. Jones*, 326 So. 2d 425 (Fla. 1975), *appeal dismissed*, 429 U.S. 803 (1976).

ignore the distinction between statutory construction and constitutional interpretation.

No Florida case holds that the Legislature may not define public purpose to include governmental-proprietary functions as well as governmental-governmental functions. Quite to the contrary, as discussed above, this Court's *Poe* and *Paul* decisions concerning Tampa's community stadium and the Daytona Beach Speedway demonstrate that it is constitutional to define public purpose more broadly to include proprietary enterprises.[3] This Court's decisions embracing the governmental versus proprietary distinction are easily distinguished as addressing purely matters of statutory construction.

Consider once again the Daytona Speedway cases. In *Paul*, the Legislature granted a specific statutory tax exemption to the Daytona Beach Speedway District. This Court found that the exemption served a public purpose and was constitutional, despite the fact that the Speedway was leased to a profit-making concern. There is no hint in the opinion that the Legislature did not have the power to grant this exemption.

All this changed in 1973 when the Legislature passed a special act that stated that facilities of the Speedway District would be taxed in the same manner as any other property in Volusia County. Chapter 73-647, Special Acts

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[3] *Poe* and *Paul* are representative of many Florida cases finding governmental-proprietary projects to serve a public purpose. *Poe*, 695 So. 2d at 675-77 (collecting cases); *Rowe v. Pinellas Sports Auth.*, 461 So. 2d 72 (Fla. 1983) (construction of Tropicana Field); *Orange County Civic Facilities Auth. v. State*, 286 So. 2d 193 (Fla. 1973) (enlargement of Citrus Bowl); *State v. City of Tampa*, 146 So. 2d 100 (Fla. 1962) (original construction of Tampa Stadium).

of 1973. In other words, just as the Legislature may giveth, the Legislature may taketh away. Thus, when this Court was faced with the taxability of the Speedway in 1976, the situation was dramatically different. *Volusia County v. Daytona Beach Racing and Recreational District*, 341 So. 2d 498 (Fla. 1976). Now the Speedway's only argument for an exemption was the general statute that stated that municipal property used for public purposes was exempt from taxation. § 196.199(2)(a), Florida Statutes. In defining "public purpose" as used by this general statute, this Court was required to apply the well-settled rule that statutory tax exemptions are applied narrowly. *See, e.g., Williams v. Jones*, 326 So. 2d 425, 432 (Fla. 1975). In light of the Legislature's specific decision to *remove* the Speedway's tax exemption in Chapter 73-647, this Court not surprisingly defined public purpose as utilized by § 196.199(2)(a) very narrowly.

Thus, in making this determination the court was not reversing *Paul* -- far from it. This Court was simply acknowledging the general principle that tax exemptions are construed narrowly. But this is quite different from a holding that the Legislature had no power to define public purpose more broadly if it so desired. Indeed, as discussed above, with the exception of the decision of the court below, Florida courts have unanimously deferred to legislative determinations of public purpose and have found no impediment to the Legislature's powers unless exercised arbitrarily or capriciously.

Consider also, the famous line of tax decisions relating to the early development of Santa Rosa Island. To encourage development, the Legislature

offered an exemption from ad valorem taxation to all who settled or built businesses on the Island. Although this exemption covered both governmental-governmental and governmental-proprietary functions as well as purely proprietary businesses, this Court never suggested that the Legislature was without the constitutional power to grant such an exemption. Quite to the contrary, the exemption remained in place until repealed by the Legislature. *See Williams v. Jones*, 326 So. 2d 425 (Fla. 1975).

Upon the repeal of the exemption, the residents of the Island tried to do just what the Daytona speedway had tried -- they suggested that their property served a public purpose within the meaning of Section 196.012(5). Based on the Legislature's decision to repeal the Islander's specific exemption and the black letter law construing exemptions narrowly, this Court interpreted Section 196.012(5) narrowly to include only governmental-governmental functions. Once again, the court's decision was purely a matter of statutory construction. There is no hint in the decision that the Legislature could not define public purpose more broadly if it wished.[4]

Relying heavily on *Williams* and *Volusia*, this Court in *Sebring I* continued to make the same distinction between governmental-governmental and

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[4] Indeed, there are numerous statutes granting exemptions from ad valorem taxation to proprietary businesses. *See, e.g.*, §§ 196.1995 and 196.1996, Fla. Stat. (authorizing tax exemption for new businesses); § 196.1997, Fla. Stat. (authorizing tax exemption for historic properties); § 196.175 (authorizing tax exemption for property on which renewable energy sources are installed). *Cf.*, §§ 125.045 and 166.0219, Fla. Stat. (declaring the attraction of new business to be a public purpose). No court has held these statutes to be unconstitutional

governmental-proprietary functions.[5] However, as in *Williams* and *Volusia*, this Court's analysis was based upon the applicable statutes, not principles of constitutional interpretation. Indeed, in *Sebring I*, just as in the previous Speedway and Santa Rosa Island cases, the Court was merely interpreting a statute that generally exempted governmental property leased for a public purpose. § 196.012(6); 196.199(2)(a). The decision contains no constitutional analysis at all. Thus, these cases are not inconsistent with but rather are supportive of the notion that the Legislature has the power to decide whether a particular activity is exempt or constitutes a public purpose. When, as in *Paul*, the Legislature speaks with specificity, the Legislature's interpretation must be respected.

Put simply, this case is a sequel to *Paul*, rather than *Sebring I*. In this case, as in *Paul*, the Legislature has specifically decided that sports facilities such as the Sebring Raceway constitute a public purpose and therefore are exempt from taxation. As in *Paul*, the Legislature's interpretation of public purpose should be respected and the validity of the statute affirmed.

II. THE LEGISLATURE MADE A REASONABLE DETERMINATION THAT FACILITIES SUCH AS CONCERT HALLS, STADIUMS, AND ARENAS, SERVE A PUBLIC PURPOSE.

As demonstrated in Section I of this brief, this Court's role is to determine whether the Legislature's definition of public purpose is unreasonable, arbitrary, or capricious. To the contrary, the Legislature's finding of public purpose

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[5] *Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072 (Fla. 1994).

accords with an overwhelming body of caselaw from Florida and other jurisdictions. As discussed above, this Court in *Paul* approved a nearly identical tax exemption accorded to the Daytona Beach Speedway district. In *Poe*, this Court collected the substantial Florida authority holding that the development of public facilities such as stadiums and arenas serves an important public purpose even when built to support a profit-making lessee.

Although there has been very vigorous debate concerning the wisdom of public financing of arenas and stadiums, courts have unanimously recognized that their role in the debate is a narrow one. Thus, in numerous stadium cases going back to the 1930s concerning virtually every major stadium constructed in the United States, courts have found reasonable the Legislature's determination that such stadiums and arenas constitute a public purpose.[6] In light of this overwhelming precedent, the Legislature's decision could hardly be considered arbitrary or capricious.

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[6] *Ginsberg v. City & County of Denver*, 436 P.2d 685 (Colo. 1968); *State ex rel. Tomasic v. Unified Government of Wyandotte County*, 962 P.2d 543 (Kan. 1998) (construction of super speedway); *Kelly v. Marylanders for Sports Sanity, Inc.*, 530 A.2d 245 (Md. 1987); *Lifteau v. Metropolitan Sports Facilities Com'n*, 270 N.W.2d 749, 753-54 (Minn. 1978); *Rice v. Ashcroft*, 831 S.W.2d 206 (Mo. Ct. App. 1991); *Maready v. City of Winston-Salem*, 467 S.E.2d 615 (N.C. 1996); *New Jersey Sports & Exposition Auth. v. McCrane*, 292 A.2d 580 (N.J. Super. Ct. 1971), *appeal dismissed*, 409 U.S. 943 (1972); *Erie County v. Kerr*, 373 N.Y.S.2d 913 (N.Y. App. Div. 1975), *appeal denied*, 348 N.E.2d 619 (1976); *Bazell v. City of Cincinnati*, 233 N.E. 2d 864 (Ohio), *cert. denied*, 391 U.S. 601 (1968); *Meyer v. City of Cleveland*, 171 N.E. 606 (Ohio Ct. App. 1930); *In re Spectrum Arena, Inc.*, 330 F.Supp. 125 (E.D. Pa. 1971); *CLEAN v. State of Washington* 928 P.2d 1054 (Wash. 1996); *Libertarian Party of Wis. v. State*, 546 N.W. 2d 424 (Wis. 1996).

Several cases from outside Florida concern the Legislature's power to grant tax exemptions and thus are directly on point. For example, in *Metropolitan Sports Facilities Commission v. County of Hennepin,* 478 N.W.2d 487 (Minn. 1991), the Minnesota Legislature exempted certain sports facilities built by municipalities from ad valorem taxation even when leased to private parties. The intermediate appellate court in Minnesota ruled that there was no legitimate public purpose for such an exemption and struck it as unconstitutional. The Minnesota Supreme Court disagreed. Recognizing the complex financing arrangement often required to build such facilities, the court held that these decisions are "economic and political decisions to be made by legislative bodies not the court." *Id.* at 489. The court ruled that the tax exemption served a public purpose and was therefore constitutional.

Metropolitan Sports is representative of a number of cases rejecting constitutional challenges to similar tax exemptions. *See In re Spectrum Arena, Inc.*, 330 F. Supp. 125, 127 (E.D. Pa. 1971) (property tax exemption approved for basketball and hockey arena--the arena served a public purpose); *Erie County v. Kerr*, 373 N.Y.S.2d 913 (App. Div. NY 1975) (municipal stadium leased by the Buffalo Bills exempt from property taxes), *appeal denied*, 348 N.E.2d 619 (1976); *Dubbs v. Board of Assessment*, 367 N.Y.S.2d 898, 905-06 (N.Y. Sup. Ct. 1975) (approving tax exemption for Nassau County Arena despite the fact that the arena was leased to the New York Nets and Islanders).

These decisions are a recognition of the economic realities that drive the construction of modern stadiums, arenas, and concert halls. These facilities are

enormously expensive -- too expensive to be undertaken purely by private interests. Accordingly, they have long been financed and built by the government. And with good reason. As this Court has recognized, there are enormous benefits that flow from such facilities, particularly in Florida, a state so dependent upon tourism. In words that equally apply to this case, this Court described the benefits of the construction of the Daytona Speedway:

> tourism, both as between the areas of our state and as between the states of this nation, is a competitive business. The sand and the sun and the water are not sufficient to attract those seeking a vacation and recreation. Entertainment must be offered. . . . the public purpose here seems to be predominant and the private benefit in gain to be incidental.

State v. Daytona Beach Racing and Recreational Facilities Dist., 89 So. 2d 34, 37 (Fla. 1956).

This Court quantified that benefit in its recent *Poe* decision. Validating the bonds to finance Tampa's new community stadium, this Court recited the trial court's factual findings (reached after an extensive trial on the merits) concerning the public benefit of the new stadium. The trial court found that the stadium would have an economic impact on the Tampa Bay economy ranging from a high of $183,000,000 per year to a low of $83,000,000 per year. In addition, the Super Bowl to be held in Tampa in 2001 can be expected to yield an economic benefit in excess of $300,000,000. 695 So. 2d at 678. This Court also addressed the cultural and recreational benefits of the stadium noting that it was not to be used by the Tampa Bay Bucs alone. The stadium hosts more than 40 major events each year, including the Mutiny professional soccer games,

University of South Florida football games, high school football games, the annual Outback football game, equestrian events, tractor pulls, motor-cross events, and concerts. *Id.* at 678-79. In light of these substantial findings that the Stadium served a public interest, this Court refused to second-guess the economics of the deal between the Sports Authority and the Tampa Bay Buccaneers. *Id.* at 679.

As demonstrated by *Poe*, a substantial part of the economic benefit generated by such public facilities is actually generated by the lessee of the facility, often a professional sports franchise. For example, it was the agreement with the Bucs that made Tampa's new stadium a reality and generated the Super Bowl for Tampa in 2001 as well as likely additional Super Bowls to come. Thus, it should come as no surprise that such stadiums and arenas are rarely constructed without an existing relationship with a major tenant such as a professional sports franchise. This symbiosis between the lessee and the municipality makes sense. Such leases permit the government to shift the costs of construction and operating risks to the private lessee to the extent possible. In return, the lessee receives a share of the potential profits and the taxpayer enjoys the recreational, cultural and economic benefits of the new facility.[7]

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[7] Most of the case law centers around competition for sports teams. However, the principles discussed in this brief apply equally to community concert halls and other cultural venues. For example, if this Court fails to overturn the decision below, municipal performing arts centers that lease their facilities for a season of Broadway shows or classical music concerts face similar risks of ad valorem taxation.

The negotiations leading to these private-public partnerships can be intense and complicated. As noted by *Poe*, the competition for sports franchises is intense. Accordingly, it is not uncommon for such tenants to be offered tax-exempt status in return for their economic participation in the construction of the facility. Section 196.012(6) is a direct recognition by the Legislature of the value that such tax exemptions may have in securing the necessary private public partnership necessary to build these expensive but important facilities.[8] *See Metropolitan Sports*, 478 N.W.2d at 489-90 (tax exemptions are an integral part of complex financing arrangements necessary to construct a stadium).

This case provides an excellent example of this public/private partnership. At issue is perhaps Sebring's most famous tourist attraction, the race known as the Twelve Hours of Sebring. As noted by this Court in *Sebring I*, the race was operated by the City until 1991. Severe financial difficulties intervened and the City found it necessary to enter into a agreement that shifted responsibility for the race to a profit-making corporation. *Sebring*, 642 So. 2d at 1072-73. It is quite possible that without this lease, the City would have lost the race and the substantial tourism and economic development it generated. The lease not only served an important public purpose, it was vital to achieving that purpose. *See Paul*, 179 So. 2d 349.

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[8] The tax exemption is but one statute recognizing the importance of long-term relationships with professional sports teams. The legislature has also allocated state sales tax monies to help secure such leases. § 288.1162, *Fla. Stat.*

Eliminating the tax exemption would have immediate and grave consequences to the Amici. To use just two examples, consider the impact on Tampa's new community stadium and on Tropicana Field in St. Petersburg. The Tampa Sports Authority's license agreement with the Tampa Bay Buccaneers was drafted in reliance on Section 196.012(6) utilizing the assumption that there would be no ad valorem taxation. Based on the assumption that there would be no taxes, the license agreement specifies that any ad valorem taxes on the stadium will be paid by the Sports Authority. Similarly, St. Petersburg has agreed to pay any ad valorem taxes on baseball-dedicated facilities at Tropicana Field resulting from its License and Use Agreement with the Tampa Bay Devil Rays baseball team. Assuming Tampa's community stadium is taxed, the Tampa Sports Authority faces a tax bill of over $5 million per year. Assuming Tropicana Field is assessed at $180,000,000 (its construction price including recent improvements) the City of St. Petersburg faces a tax bill of $5.5 million per year. Although St. Petersburg would receive 55% of those tax revenues back through its interlocal agreement with the county, its yearly deficit would be roughly $2 million, enough to turn what was a profitable stadium operation into a loss.

While not conclusive, it is certainly important that these deals with the Buccaneers and the Devil Rays were negotiated against a statutory backdrop exempting these facilities from ad valorem taxation. *See Paul*, 179 So. 2d at 352 (it would be "unfair, if not bad faith" to remove the tax-exempt status through an inconsistent decision defining public purpose). This Court should be

very hesitant without good reason to alter these significant economic arrangements which were carefully negotiated with this statutory exemption in mind. *See Bedell v, Lassiter*, 143 Fla. 43, 196 So. 699 (1940 (Statute impairing contractual obligation is void).[9]

As important to the immediate practical impact of this Court's ruling is its impact on future negotiations between Amici and existing potential lessees such as professional sports franchises. Amici, as well as other cities, are directly involved in the competition for new professional sports teams. Amici will also be involved in renegotiations with existing lessees such as the Magic in Orlando, and the Detroit Tigers in Lakeland. As this Court recounted in *Poe*, there is a substantial economic benefit from having such long-term agreements in place. The competition for such tenants is intense and the promise of an exemption from ad valorem taxation is an important bargaining chip for Amici as they enter into these negotiations. In today's climate of competition for such tenants, it would be naive to think that these tenants will simply absorb the obligation for such taxes if the exemption is repealed. If these negotiations are to succeed, the economic deal will have to be restructured and the money going to the tax authorities will simply be extracted from somewhere else in the deal. The point

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[9] If this Court declares 196.012(6) unconstitutional, it would be in the awkward position of declaring that bonds may be validated because the stadium serves a public purpose while that same stadium is declared not to be a public purpose in analyzing the tax exemption. As this Court once recognized, there is no support for such a conflict. *Paul*, 179 So. 2d at 353.

is, elected officials and not the courts should make such economic decisions as they embark on these complex negotiations.

As alluded to above, others may disagree about the value of such long-term tenants or with the very concept of a public/private partnership. Others may disagree about the value of utilizing a tax exemption as an economic incentive to attract such tenants and to establish and promote economic partnerships. As this Court held in *Poe*, this debate should be resolved by our elected representatives, and not the Court. The only issue here is whether the Legislature's decision to provide such tax incentives was reasonable. Unless this Court is prepared to overrule *Poe*, *Paul*, and the numerous other cases in Florida holding that such decisions are properly within the legislative sphere, the judgment below must be reversed.

CONCLUSION

For all the foregoing reasons, the 1994 amendment to Section 196.012(6) is constitutional and the judgment below should be reversed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished via U.S. Mail on this 25th day of November, 1998 to: **Clifford M. Ables III, Esq.**, 457 South Commerce Avenue, Sebring, Florida 33870, Counsel for Appellee J.T. Landress, Highland County Tax Collector; **Joseph C. Mellichamp III, Esq.,** State Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050, Counsel for Appellant Dept. of Revenue, State of Florida; **Larry E. Levy, Esq.,** 1828 Riggins Lane, Tallahassee, Florida 32308, Counsel for Appellee C. Raymond McIntyre, Highland County Property Appraiser; **Paul R. Pizzo, Esq.,** Post Office Box 1438, Tampa, Florida 33601, Counsel for Appellants the Sebring Airport Authority and Sebring International Raceway; and **J. Wendell Whitehouse, Esq.,** 445 South Commerce Avenue, Sebring, Florida 33870, Counsel for Appellee Charles L. Bryan, Highland County Tax Collector.

Attorney

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