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IN THE FLORIDA SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

THE SEBRING AIRPORT AUTHORITY
and SEBRING INTERNATIONAL RACEWAY,
INC.,

Appellants,

v.

C. RAYMOND McINTYRE, PROPERTY
APPRAISER OF HIGHLANDS COUNTY,
FLORIDA; and J.T. LANDRESS,
TAX COLLECTOR OF
HIGHLANDS COUNTY, FLORIDA,

Appellees.

CASE NO. 94,118

CONSOLIDATED

THE DEPARTMENT OF REVENUE,
STATE OF FLORIDA,

Appellant,

v.

C. RAYMOND McINTYRE, PROPERTY
APPRAISER OF HIGHLANDS COUNTY,
FLORIDA; and J.T. LANDRESS,
TAX COLLECTOR OF
HIGHLANDS COUNTY, FLORIDA,

Appellees.

CASE NO. 94,105

ON APPEAL FROM THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA, LAKELAND, FLORIDA

**ANSWER BRIEF OF AMICUS CURIAE JOEL W. ROBBINS,
THE DADE COUNTY PROPERTY APPRAISER**

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CERTIFICATE OF TYPE SIZE AND STYLE

Undersigned counsel certifies that the type size and style used in this brief
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STATEMENT OF THE CASE AND FACTS

The Sebring Airport Authority leases the subject real property and improvements to Sebring International Raceway, Inc., a for-profit, private corporation which uses the property to operate a for-profit raceway. This Court previously ruled that the subject property was not entitled to a tax exemption, holding that "operating an automobile racetrack for profit is not even arguably the performance of a governmental-governmental function" which "is what the Constitution mandates." *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072, 1073 (Fla. 1994), quoting, *Volusia County v. Daytona Beach Racing and Recreational Facilities District*, 341 So.2d 498, 502 (Fla. 1977) (holding that a racetrack does not serve a governmental-governmental purpose as required by Constitution) and *William v. Jones*, 326 So.2d 425, 433 (Fla. 1975).

In 1994, the Florida Legislature enacted Session Law 94-353, the 1994 amendments to Florida Statutes section 196.012(6), amending the definition of "public purpose" for purposes of granting ad valorem tax exemptions to include, among other things, a "sports facility." Notwithstanding the prior decisions of this Court, Sebring International Raceway, Inc., again applied for a tax exemption.

Noting that "the use of the property has not changed since the prior litigation," the Second District Court of Appeal upheld the decision of the

property appraiser and trial court that the raceway was not entitled to an exemption. *Sebring Airport Authority v. McIntyre*, 718 So.2d 296, 297 (Fla. 1998). The Court held:

There is nothing in article VII, section 3 that allows the legislature to exempt from ad valorem taxation municipally owned property or any other property that is being used primarily for a proprietary purpose or for any purpose other than a governmental, municipal or public purpose. To the extent that section 196.012(6) attempts to exempt from taxation municipal property used for a proprietary purpose, the statute is unconstitutional.

718 So.2d at 298. This appeal followed.

SUMMARY OF ARGUMENT

One person's tax exemption is another's tax increase. The Florida Constitution grants the legislature broad authority to lower taxes across the board, but limits the legislature's authority to shift the tax burden from favored taxpayers to less-favored taxpayers by the use of tax exemptions. This Court has an honorable history of holding the legislature to the straight and narrow path that no exemptions from general ad valorem taxes will be provided except where expressly authorized in the Constitution. "This is a democracy in which every parcel of property is expected to bear its due portion of the burden of government, unless exempted by the legislature in the manner provided by . . . the Constitution. Courts have no more important function than to direct the

current of the law in harmony with sound democratic theory.” *Bancroft Inv. Corp. v. City of Jacksonville*, 27 So.2d 162, 170 (Fla. 1946).

Session Law 94-353 is unconstitutional because it purports to allow tax exemptions for municipal properties leased to private parties for commercial, proprietary purposes. The very purpose behind Article VII, section 3 of the 1968 Constitution was to remove from the legislature the power to grant such exemptions, which were perceived by the drafters of the 1968 Constitution as “creating inequities in the tax structure.” *Volusia County v. Daytona Beach Racing and Recreational Facilities District*, 341 So.2d 498, 501 (Fla. 1977).

Now is not the time for this Honorable Court to retreat from these sound principles. In the general election on November 3, 1998 the People of the State of Florida voted down proposed Amendment 10, which was designed to amend the organic law and give the Legislature the powers which the Petitioners claim for it in their brief. The recent rejection by Florida votes of Amendment 10 is dispositive of this appeal. In light of this reaffirmation of the will of the People to deny the Legislature the ability to grant such tax exemptions, and because they are not authorized by the Constitution, this Court should continue to stand by the wise and prudent principle that prohibits tax exemptions such as those created by Session Law 94-353.

In a very real sense, the core issue in this appeal was resolved almost 200 years ago when America's great Chief Justice John Marshall reasoned, "The powers of the legislature are defined and limited.... To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be bypassed by those intended to be restrained?" *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803).

ARGUMENT

I. SESSION LAW 94-353 IS UNCONSTITUTIONAL BECAUSE IT ALLOWS AD VALOREM TAX EXEMPTIONS FOR MUNICIPAL PROPERTIES LEASED TO PRIVATE PARTIES FOR PROPRIETARY, FOR-PROFIT PURPOSES WHEN THE VERY PURPOSE BEHIND ARTICLE VII, SECTION 3 OF THE 1968 CONSTITUTION WAS TO STOP SUCH EXEMPTIONS WHICH THE DRAFTERS PERCEIVED AS "CREATING INEQUITIES IN THE TAX STRUCTURE."

A. The Florida Constitution Limits The Legislature's Power To Grant Ad Valorem Tax Exemptions.

The Constitution of the United States represents a delegation of specific powers from the people and the states to the federal government. The federal government possesses only those powers that can be traced to specific grants of authority in the Constitution. The Florida Constitution, on the other hand, serves a different function. Unlike the federal government, the State of Florida, even without a written constitution delegating powers to it, has all inherent powers of sovereignty.

The Florida Constitution, therefore, serves, not as a *grant* of power (which is already inherent in the State), but instead as a *limitation* of the State's preexisting, inherent power. "It is well settled that the state Constitution is not a grant of power but a limitation upon power." *In re Apportionment Law Senate Joint Resolution No. 1305*, 263 So.2d 797, 805 (Fla. 1972).

In adopting the State Constitution, the people took particular care to strictly circumscribe the authority of the legislature to grant or expand exemptions from ad valorem taxes. The Supreme Court has summarized the effect of these constitutional limitations as follows:

the legislature is without power to provide for exempting from taxation any class of property which the Constitution itself makes no provision for exempting. The principle has been more than once affirmed in this state that *the Constitution must be construed as a limitation upon the power of the legislature to provide for exemption from taxation any property except those particularly mentioned classes specified in the organic law itself.*

L. Maxcy, Inc. v. Federal Land Bank, 150 So. 248, 250 (Fla. 1933) (emphasis added). Thus, "[t]he legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis." *Capital City Country Club v. Tucker*, 613 So.2d 448, 451 (1993).¹

¹ See, *Archer v. Marshall*, 355 So.2d 781, 784 (Fla. 1978) ("The Legislature is without authority to grant an exemption from taxes where the exemption has (Footnote continued)

The rationale for circumscribing the legislature's ability to grant or expand tax exemptions is simple and compelling: "one person's tax exemption will become another person's tax." *Redford v. Department of Revenue*, 478 So.2d 808, 812 (Fla. 1985) (Overton, J., concurring).

"The fundamental principles of our democratic system mandate that every taxpayer contribute his fair share to the tax revenues." *Dade County Taxing Authorities v. Cedars of Lebanon Hospital Corp., Inc.*, 355 So.2d 1202, 1204 (Fla. 1978). "This is a democracy in which every parcel of property is expected to bear its due portion of the burden of government, unless exempted by the legislature in the manner provided by ... the Constitution. Courts have no more important function than to direct the current of the law in harmony with sound democratic theory." *Id.*, quoting *Bancroft Inv. Corp. v. City of Jacksonville*, 27 So.2d 163, 170 (Fla. 1946).

no constitutional basis."). *Dade County v. Pan American World Airways, Inc.*, 275 So.2d 505, 515 (Fla. 1973) ("Exemptions from taxation must be authorized by the Constitution... [s]tatutory exemptions cannot be construed to exceed constitutional authorization.") (Ervin, J. dissenting); *Lanier v. Tyson*, 147 So.2d 365, 375 (Fla. 2d DCA 1962) ("The Constitution, having specified permissible exemptions, has excluded others."); *State ex rel. Burbridge v. St. John*, 197 So. 131 (Fla. 1940) ("The constitution expressly designates what property of corporations shall be exempt from taxation and of course the legislature is not empowered to add or to subtract....").

B. Session Law 94-353 Unconstitutionally Attempts to Extend Tax Exemptions To Municipal Property Used For Private, For-Profit Purposes Which Is Precisely What The 1968 Constitution Was Drafted To Prevent

Prior to the 1968 Constitution, municipal properties leased to private parties and used for proprietary purposes were routinely deemed exempt by the Legislature and the courts. In response, the 1968 Constitution was drafted, however, to eliminate such exemptions. Upon adoption of the 1968 Constitution, the Legislature lost all authority to grant exemptions to municipal properties used for private, proprietary, for-profit purposes. Because it represents an attempt to return to the era of the pre-1968 Constitution without amending the Constitution, Session Law 94-353 is unconstitutional.

(1) Article VII, Section 3, Florida Constitution

Section 3 (a) of Article VII of the Florida Constitution (1968) controls tax exemptions of municipal property. That section reads in part: "All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation."

As the Official Commentator to the Constitution explained, "In order to qualify for the constitutional mandatory municipal exemption, property must (1) be owned by a municipality and (2) be used exclusively by the municipality for either municipal or public purposes...." *Id.*, Commentary. Art.VII. section 3, Fla. Const. (West Stat. Ann. 1995).

Article VII, section 3 was adopted specifically to ensure that municipal property leased to private parties for non-public purposes is taxed in the same manner as private property used for non-public purposes. "Florida's 1968 Constitution requires the taxation of private leasehold in government-owned property used for non-public purposes." *Lykes Brothers, Inc. v. City of Plant City*, 354 So.2d 878, 881 (Fla. 1978).

This principle represented a substantial departure from the pre-existing law of exemptions: while "the 1885 Constitution did not require the Legislature to impose ad valorem taxes on private-use leasehold in governmental property, decisions construing the 1968 Constitution make clear that taxation of such property is no longer discretionary." 354 So.2d at 881, n. 14. This change in the Constitution lead to a series of Supreme Court cases in which this Court overruled existing precedent based on the new Constitution.²

² *Compare, Daytona Beach Racing and Recreational Facilities District v. Paul*, 179 So.2d 349 (1965) (under 1885 Constitution, Daytona racetrack is exempt from ad valorem taxes), **with** *Volusia County v. Daytona Beach Racing and Recreational Facilities District*, 341 So.2d 498, 501 (Fla. 1977) (under 1968 Constitution, Daytona racetrack not exempt from ad valorem taxes); *Hillsborough County Aviation Authority v. Walden*, 210 So.2d 193 (Fla. 1968) (under 1885 constitution, concession space leased at airport was tax exempt) **with** *Walden v. Hillsborough County Aviation Authority*, 375 So.2d 283 (Fla. 1974) (under 1968 constitution, concession space leased at airport was not tax exempt); *State v. Escambia County*, 52 So.2d 125, 130 (Fla. 1951) (Santa Rosa Island property leased for residential and commercial use could be exempted from taxation under 1885 constitution) **with** *Archer v. Marshall*, 355 So.2d 781, (Footnote continued)

(2) The Daytona Racetrack Cases

The change in the tax exempt status of the Daytona Racetrack illustrates the revolution in tax exemption law caused by the 1968 Constitution. Prior to the 1968 Constitution, the Supreme Court held that the Daytona Beach Raceway was entitled to a tax exemption even though it was owned by an incorporated local government and leased to a for-profit developer.

The Raceway was exempt, the court reasoned, because of "its manifest public purpose as a community recreational asset and business stimulant." *Daytona Beach Racing and Recreational Facilities District v. Paul*, 179 So.2d 349 (1965). The racetrack "harmonized with customs of the City of Daytona Beach where automobile racing was conducted along the beach of the Atlantic Ocean opposite the city for many years." 179 So.2d at 355. Under such a generalized understanding of public purpose, the Legislature would have the authority to exempt property like the Sebring Racetrack, even though a private party was using it for profit-making purposes.

The Court's decision in *Daytona*, however, was repudiated by the drafters of the 1968 Constitution. Under the new Constitution, the Supreme Court

784 (Fla. 1978) (Santa Rosa Island property leased for residential and commercial use could not be exempted from taxation under 1968 constitution).

subsequently held that the Raceway *was* subject to ad valorem taxation. The Court explained the Constitutional change:

[U]nder the Constitution of 1885, this Court decided that simply holding a proprietary interest in “a community recreational asset and business stimulant,” *Daytona Beach Racing & Rec. Fac. Dist. v. Paul*, 179 So.2d 349, 353 (Fla. 1965), like the speedway served a “municipal purpose.” **Perceiving decisions of this kind as creating inequities in the tax structure**, the draftsmen of the Constitution of 1968 limited the municipal purpose exemption to “property owned by a municipality and used exclusively by it for municipal purposes.

Volusia County v. Daytona Beach Racing and Recreation Facilities District, 341 So.2d 498, 501 (Fla. 1977) (emphasis added). “The Corporation’s operation of the speedway ‘is purely proprietary and for profit.’ The Corporation exists in order to make profits for its stockholders and uses the leasehold to further that purpose. This use is determinative.” 341 So.2d at 502. Under the new Constitutional provisions, “[o]perating an automobile racetrack for profit is not even arguably the performance of a ‘governmental-governmental’ function.” *Id.*

Like the Daytona speedway, the Sebring Racetrack can be argued to serve as “a community recreational asset and business stimulant... that harmonizes with the customs” of Sebring. 179 So.2d at 353. But, as the Court made clear in the later *Volusia* case, such generalized public purposes cannot justify a tax exemption under the 1968 Constitution when a private party which is “purely

proprietary and for profit” is using the property “to make profits for its stockholders.” 341 So.2d at 501.

(3) The Santa Rosa Island Cases.

The 1968 Constitution’s impact on exemption law is also illustrated by the change in the tax exempt status of the leased properties on Santa Rosa Island. In middle of this century, the government that owned Santa Rosa Island leased numerous parcels to individuals who then built private homes and businesses on them. In 1947, the legislature granted these leased properties a tax exemption. The Supreme Court held that this exemption was constitutional under the 1885 Constitution. *State v. Escambia County*, 52 So.2d 125, 130 (Fla. 1951).

In 1971, however, the legislature removed the tax exemption and began taxing the properties. This commencement of taxation on governmental properties leased for residential and commercial purposes was held constitutional under the 1968 Constitution. *Straughn V. Camp*, 293 So.2d 689 (Fla. 1974); *Williams v. Jones*, 326 So.2d 425 (1975).

The *Williams v. Jones* opinion is particularly significant, because it established the “governmental-governmental” versus “governmental-proprietary” test to determine what constitutes an “exclusive” “public” use as

those terms are used in Article VII of section 3 of the Constitution. The Supreme Court held

The exemptions contemplated under Sections 196.012 (5) and 196.199(2)(a), Florida Statutes, relate to "governmental-governmental" functions as opposed to "governmental-proprietary" functions. With the exemption being so interpreted all property used by private persons and commercial enterprises is subjected to taxation Thus all privately used property bears a tax burden in some manner and this is what the Constitution mandates.

Williams v. Jones, 326 So.2d 425, 433 (Fla. 1975). This formulation continues to be the constitutional touchstone for tax exemptions. *See, e.g., Volusia County v. Daytona Beach Racing and Recreational Facilities District*, 341 So.2d 498, 502 (Fla. 1977); *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072, 1073 (1994). As the last phrase of the above quote indicates, the distinction between "governmental-governmental" and "governmental-proprietary" is "what the Constitution mandates." *Id. See Volusia County*, 341 So.2d at 501.

The rationale for the *Williams v. Jones* "governmental-governmental" versus "governmental-proprietary" distinction rests on constitutional, not statutory principles. The constitutional principle provides that municipal property must be taxed in the same manner as private property used for similar purposes. For example, discussing the commercial properties on Santa Rosa Island on land leased from the government, the Court reasoned:

If such a commercial establishment operated for-profit on Panama City Beach, Miami Beach, Daytona Beach, or St. Petersburg Beach is not exempt from tax, then why should such an establishment operated for profit on Santa Rosa Island Beach be exempt? No rational basis exists for such a distinction.

Williams v. Jones, 326 So.2d at 433.

The constitutional basis of this rationale was explicitly recognized in *Archer v. Marshall*, 355 So.2d 781, 784 (Fla. 1978). In 1976, the Legislature attempted to change course by enacting a law that purported to require the governmental-owner of the island to reduce each taxpayer's rent by the amount of ad valorem taxes paid on the leased property. As with earlier attempts to create an exemption for the island, the Supreme Court held this law was unconstitutional:

Regardless of the term used to describe the set-off, the reduction in rent afforded the leaseholders has the effect of a tax exemption and as such is unconstitutional *since such exemption is not within the provisions of our state constitution*. *Williams v. Jones*, 326 So.2d 425 (Fla. 1975).

Archer v. Marshall, 355 So.2d at 784 (italics added). The Supreme Court in *Archer* used the *Williams v. Jones* test to declare a statute unconstitutional. To form a basis to declare a statute unconstitutional, of course, the *Williams v. Jones* test must be constitutionally based. This point is made explicit by the

Court's citation to *Williams v. Jones* for the highlighted proposition that "such exemption is not within the provisions of our state constitution."³

The facts of *Archer* present facts similar to Session Law 94-353's attempt to bootstrap the Sebring Racetrack into a tax exemption after the courts have already ruled that no exemption is allowed. Using the governmental-governmental versus governmental-proprietary test, the Supreme Court in *Williams v. Jones* held that the Santa Rosa Island properties were not entitled to a tax exemption under the "exclusive" municipal use language of the 1968 Constitution. The Court then struck down the legislatures attempt to evade the constitutional limitations on exemptions.

Similarly, application of the *Williams v. Jones* test to the Sebring Racetrack leads to the conclusion that the Racetrack is not entitled to a tax exemption, as this Court has previously held. The *Williams v. Jones* test of "governmental-governmental" versus "governmental-proprietary" derives from

³ In the same year, the Supreme Court declared unconstitutional a related law that required the government that owned Santa Rosa Island to make direct reimbursement of moneys paid for ad valorem taxes to the taxpayers who were leasing certain properties. Reasoning that "the Florida Constitution requires that all property used for private purposes bear its just share of the tax burden for the support of local government and education, with certain exceptions specifically enumerated in the constitution," the Supreme Court held that this act violated "Article VII, section 3, ... Florida Constitution (1968)." *Am Fi Investment Corp. v. Kinney*, 360 So.2d 415 (Fla. 1978).

the change in the 1968 Constitution. So long as the Sebring Racetrack's use remains the same, the Sebring Racetrack's tax status can be changed only by constitutional amendment; it cannot be transformed by legislative enactment. As in *Archer*, this Court should not condone the legislature's attempt to evade the Constitutional limitations on tax exemptions for municipal property leased to private parties.

(4) Sebring's Reliance on *Florida Boaters* is Misplaced.

The Sebring International Raceway, Inc.'s reliance on *Department of Revenue v. Florida Boaters Association, Inc.*, 409 So.2d 17 (Fla. 1982) is grossly misplaced. That decision re-affirms the limits on the Legislature's attempts to amend the constitution by redefining constitutional terms. *Florida Boaters* involved an interpretation of the Constitutional language which provides "boats..., as defined by law, shall be subject to a license tax..., but shall not be subject to ad valorem taxes." Article VII, section 1, Fla. Const. The Legislature enacted a statute excluding from the definition of "boats" all vessels used primarily for residential or other non-transportational purposes. The effect of the law was to declare that live-aboard boats would be subject to a license tax, but exempt from the larger ad valorem tax.

Recognizing the delegation to the legislature of substantial discretion to define "boat," the Court still held that the legislature's definition of boat violated

the limits placed by the constitution. "While the constitution gives the Legislature the authority to define 'boats'... the authority is not unlimited and must be exercised in a reasonable manner. The flexibility thus granted does not empower it to depart from the normal and ordinary meaning of the words chosen by the framers and adopters of the constitution." 409 So.2d at 19.

Florida Boaters involved a constitutional provision that delegated substantial authority to the Legislature to define a constitutional term. And yet the court held that such legislative discretion was limited. Such limitations apply with particular force to the instant matter, which involves a constitutional provision that is self-activating, and which delegates no such authority to the legislature.

The fallacy of Session Law 94-353 in this regard is its attempt to define the constitutional language "public purpose" in a manner that departs from the meaning of the term "chosen by the framers and adopters of the constitution." It is established beyond dispute that to prevent tax exemptions for Racetracks used for for-profit purposes was the very reason that Article VII, section 3 of 1968 Constitution was adopted. As this Court has explained,

[U]nder the Constitution of 1885, this Court decided that simply holding a proprietary interest in "a community recreational asset and business stimulant," *Daytona Beach Racing & Rec. Fac. Dist. v. Paul*, 179 So.2d 349, 353 (Fla. 1965), like the speedway served a

“municipal purpose.” Perceiving decisions of this kind as creating inequities in the tax structure, the draftsmen of the Constitution of 1968 limited the municipal purpose exemption to “property owned by a municipality and used exclusively by it for municipal purposes.

Volusia County v. Daytona Beach Racing and Recreation Facilities District, 341 So.2d 498, 501 (Fla. 1977).

Session Law 94-353’s definition is a blatant attempt to evade this limitation. Because the 1968 Constitution was enacted specifically to prevent the legislature from extending exemptions to racetracks operated for profit, Session law 94-353’s definition of public purpose as including racetracks cannot be deemed to fall within the “ordinary meaning of the words chosen by the framers and adopters of the constitution.” 409 So.2d at 19. *See, Sparkman v. State*, 58 So.2d 431, 432 (Fla. 1952) (legislature cannot add conditions to constitutionally based homestead tax exemption because “[e]xpress or implied provisions of the Constitution cannot be altered, contracted, or enlarged by legislative enactments.”).

II. AT THE LAST GENERAL ELECTION, THE VOTERS REJECTED THE CONSTITUTION REVISION COMMISSION'S PROPOSED AMENDMENT 10 WHICH WOULD HAVE ENDOWED THE LEGISLATURE WITH THE POWER TO DEFINE THE CONSTITUTIONAL TERM "PUBLIC PURPOSE," THE PRECISE POWER THAT APPELLANTS CLAIM FOR THE LEGISLATURE

On November 3, 1998, the people of Florida rejected a proposed Constitutional amendment that would have allowed the Legislature the powers that Sebring claims for it. This rejection by Florida voters indicates that the people do not intend that their organic law give the Legislature the power to expand the definition of "public purpose" to include for-profit use of municipal property. *See, e.g. Burke v. Charlotte County, Fla.*, 286 So.2d 199 (Fla. 1973) (quoting with approval lower court order stating "that attempts to amend the provision of the Constitution and substitute the words 'directly' and 'primarily' for the word 'exclusively' were defeated ... showed the intent of the framers of this provision of the Constitution....").

The 1997-98 Constitution Revision Commission proposed an amendment to the Constitution which would have given the Legislature the power to define "public purpose" in order to expand the exemptions of municipal property. Proposed Constitutional Revision No. 10 would have added the following language to Article VII, section 3:

All property owned by a municipality not otherwise exempt from taxation or by a special district and used for airport, seaport, or public purposes, **as defined by general law**, and uses that are incidental thereto, may be exempt from taxation as provided by general law.

Florida Dept. of State, *Proposed Constitutional Amendments and Revisions To Be Voted On November 3, 1998*, at 31 (June 23, 1998) (emphasis added).

In an article sponsored by the Constitution Revision Commission and introduced by its Chairperson, a member of the Commission explained the legal effect of this proposed amendment as follows:

The proposed amendment removes the determination of "public purpose" from the judicial arena and places it within the legislative branch. If adopted, it will allow the Legislature to determine when activities undertaken by private persons on property owned by cities or special districts serves a public purpose so as to warrant a property tax exemption.

M. Barnett and F. Maglione, Revision 10: *Proposing Solutions to the Property Tax Structure*, LXXII, No. 9 **Florida Bar Journal** 54,55 (Oct. 1998). See, D. Kearney, D. Ben-David & A. Martinez, *A Preview of Constitutional Revision* LXXII, No. 6 **Florida Bar Journal** 20, 26 (June 1998) (Commission's general counsels state that purpose of Revision 10 was to change the Court's "relatively stringent" definition of "public purpose.").

Of the thirteen proposed Constitutional amendments submitted to the people on November 3, 1998, Amendment 10 was the only one rejected at the

polls. The fact that the People selected this Revision for defeat has obvious implications that should not be ignored by this Court. The clear inference derived from the voters' rejection of amendment 10 is that the people do not intend for their organic law to give the legislature this power.

This conclusion is particularly inescapable since the voters have shown in the past that they are ready and willing to grant the Legislature the power to give tax exemptions when they agree with the underlying policy. *See, e.g.* Florida Constitution, Art. VII, section 3 (c)(new and expanded business in redevelopment zone), 3(d) (renewable energy source), 3 (e) (historic preservation). In fact, on November 3, 1998 the voters approved amendments expanding the power of the Legislature to give ad valorem tax exemptions to historic properties and low income elderly. *See, Proposed Constitutional Amendments Nos. 1 & 3, Constitutional Amendments at 1, 6.*

The November 3, 1998 election results are fatal to Sebring's appeal. They constitute a vote of approval of this Court's decisions from *Williams* and *Volusia* to *Sebring*, recognizing the constitutional limitations on the Legislature's ability to give tax exemptions to municipal property leased to private parties for for-profit purposes. They are an express rejection of Sebring's position in this appeal.

To adopt Sebring's urged interpretation of the Constitution after it was expressly rejected by the voters would be to take the will of the people as expressed in their organic law and break faith with it irreparably, irrevocably, irrecoverably, and irredeemably. That is something this Court has never done in the past; and this case presents no occasion to do so now.

CONCLUSION

For the above-stated reasons, it is respectfully requested that this Court uphold the decision of the District Court of Appeal. The organic law of Florida does not give the Legislature the power to grant tax exemptions to municipal property leased to private entities for for-profit use and therefore Session Law 94-353 is unconstitutional.

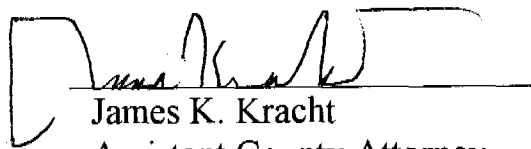
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 19th day of January, 1999, to: Paul R. Pizzo, Esq., Hala A. Sandridge, Esq., and Charles Tyler Cone, Esq., FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL AND BANKER, P.A., P.O. Box 1438, Tampa, Florida 33601; J. Wendell Whitehouse, Esq., 445 South Commerce Avenue, Sebring, Florida 33870; Clifford M. Ables, III, Esq., 457 South Commerce Avenue, Sebring, Florida 33870; Larry E. Levy, Esq., P.O. Box 10583, Tallahassee, FL 32302; and to Joseph C. Mellichamp, III, Esq., State Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050.


Assistant County Attorney