IN THE SUPREME COURT OF FLORIDA
CASE NO.S 96-182, 96-183

THE MIAMI BEACH OCEAN
RESORT, INC., and LAWRENCE
FUCHS, as the Executive Director
of the Department of Revenue,
State of Florida,

Petitioners

vs.

JOEL W. ROBBINS, as Property
Appraiser of Dade County, Florida

Respondent.

_____/

AMENDED
BRIEF OF AMICI CURIAE
FLORIDA ASSOCIATION OF COUNTIES,
FLORIDA ASSOCIATION OF COUNTY ATTORNEYS AND
FLORIDA LEAGUE OF CITIES

On Appeal From the
Third District Court of Appeal
Case No. 98-275

SARAH M. BLEAKLEY
Florida Bar No. 291676
HEATHER J. MELOM
Florida Bar No. 0105082
Nabors, Giblin & Nickerson, P.A.
315 South Calhoun St., Suite 800
Tallahassee, Florida 32301
(850) 224-4070
(850) 224-4073 Facsimile

SPECIAL COUNSEL FOR AMICI CURIAE,
FLORIDA ASSOCIATION OF COUNTIES,
FLORIDA ASSOCIATION OF COUNTY ATTORNEYS
AND FLORIDA LEAGUE OF CITIES

ADDITIONAL COUNSEL

LEE KILLINGER
Florida Bar No. 0607320
Post Office Box 549
Tallahassee, Florida 32302
(850) 922-4300

ATTORNEY FOR AMICUS CURIAE
FLORIDA ASSOCIATION OF
COUNTIES

DENISE DYTRYCH
Florida Bar No. 642118
Post Office Box 1989
West Palm Beach, Florida 33401
(561) 355-2225

ATTORNEY FOR AMICUS CURIAE
FLORIDA ASSOCIATION OF
COUNTY ATTORNEYS

HARRY MORRISON, JR.
Florida Bar No. 339695
Post Office Box 1757
Tallahassee, Florida 32302-1757
(850) 222-9684

ATTORNEY FOR AMICUS CURIAE
FLORIDA LEAGUE OF CITIES

TABLE OF CONTENTS

Page

Table of Contents Cont. ***Page***

TABLE OF AUTHORITIES

Page(s)

Cases

Table of Authorities Cont. ***Page(s)***

Florida Constitution

Table of Authorities Cont. ***Page(s)***

Florida Statutes

Miscellaneous

CERTIFICATION OF TYPE SIZE AND STYLE

The undersigned hereby certifies that this brief of The Florida Association of Counties, the Florida Association of County Attorneys and the Florida League of Cities as amici curiae is submitted in 12 point Courier New.

STATEMENT OF THE CASE AND FACTS

Amici adopts of the Statement of the Case and Facts of the Respondent, JOEL W. ROBBINS, in this appeal.

SUMMARY OF THE ARGUMENT

This Court should affirm the Third District Court of Appeal's en banc decision below, declaring section 192.042(1), Florida Statutes, unconstitutional as violating Article VII, section 4, Florida Constitution (1968). Article VII, section 4 of the Florida Constitution of 1968, provides that all property must be assessed at its just value for ad valorem taxation purposes. Although "just value" is not defined in the Florida Constitution, the Florida courts have long equated just value with fair market value. See Southern Bell Telephone and Telegraph Co. v. County of Dade, 275 So. 2d 4 (Fla. 1973). However, this provision enumerates certain classifications of property — such as agricultural land — that may have an ad valorem taxation value at less than just value. Because this constitutional provision specifically mentions certain classifications of property that may constitutionally be treated differently, the Supreme Court of Florida has held that the Legislature may not craft other classifications of property and accord them different tax treatment. See Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433 (Fla. 1973).

However, this is precisely what the Legislature did when it adopted section 192.042(1), Florida Statutes, which provides that improvements to properties not substantially complete on January 1 must be assessed at no value. This statute creates a classification of property and prevents this class from being

assessed at its just value for ad valorem taxation purposes. Such treatment is unconstitutional under the 1968 Florida Constitution. While this statute may have been upheld under the 1885 Florida Constitution and those cases interpreting the former Constitution, those decisions construing the former Constitution have been superceded by the 1968 Constitutional Revision.

While the Legislature is prohibited from creating classifications for taxation, under Article VII, section 4, Florida Constitution (1968), the Legislature is specifically empowered to prescribe regulations to secure just value. It has been asserted that section 192.042(1), Florida Statutes, is not a prohibited "classification," but is a regulation designed to secure just value. However, rather than securing just value, this statute mandates that obviously valuable improvements, with substantial value in the marketplace, be assessed at no value. This statute, whether deemed a classification or a regulation, shields a large amount of improved property from ad valorem taxation and shifts the burden of taxation from owners of not substantially complete structures to other property owners. Thus, rather than securing just value, section 192.042(1), Florida Statutes, artificially eliminates the fair market value of all incomplete improvements, and, therefore, is unconstitutional.

Respondent, JOEL W. ROBBINS, as Property Appraiser of Dade County ("Property Appraiser"), had standing to properly contest the

constitutionality of section 192.042(1), Florida Statutes. Although generally constitutional officers lack standing to attack those statutes affecting their duties, several exceptions to this general standing rule apply in the present situation and grant the Property Appraiser standing. The first applicable exception is the defensive posture exception, which allows a public officer to contest the validity of a statute once the operation of that statute is brought into the litigation by the other party, as occurred in the present case. The second applicable exception is the public funds exception, which provides that when a public officer is charged with the control of public funds, his official capacity gives him a sufficient interest to confer standing. Both exceptions are clearly applicable to the Property Appraiser in the present situation and the Third District Court of Appeal's holding that the Property Appraiser had standing to attack section 192.042(1), Florida Statutes, should be upheld.

ARGUMENT

I. THE STATUTORY PROVISION WHICH PROVIDES THAT IMPROVEMENTS OR PORTIONS NOT SUBSTANTIALLY COMPLETE ON JANUARY 1 SHALL HAVE NO VALUE FOR AD VALOREM TAXATION PURPOSES IS UNCONSTITUTIONAL AS VIOLATIVE OF THE JUST VALUATION PROVISIONS OF ARTICLE VII, SECTION 4, FLORIDA CONSTITUTION.

The Florida judiciary is charged with upholding the Florida Constitution. Although it is a general maxim of statutory construction that the courts should strive to construe the acts of the Florida Legislature in harmony with the Florida Constitution whenever possible, the courts are likewise constrained to "strike down those acts of the legislature which violate our Constitution." ITT Community Development Corp. v. Seay, 347 So. 2d 1024, 1029 (Fla. 1977). In other words, when the Legislature transcends its taxing power and violates a limitation placed by the Florida Constitution, the judiciary has a duty to declare the legislative act invalid. The en banc Third District Court of Appeal performed its duty below by striking section 192.042(1), Florida Statutes, as violating the just valuation provisions of Article VII, section 4 of the Florida Constitution (1968). This decision was correct and should be affirmed by this Court.

A. The Third District Court of Appeal Was Correct In Holding That Separate Standards of Valuation May Only Be Established For Those Classifications Of Property Specifically Enumerated In Article VII, Section 4, Florida Constitution.

Prior to 1968, the Florida Legislature was accorded wide discretion in the valuation of property for ad valorem taxation purposes. Under the 1885 Florida Constitution, the Legislature's valuation authority was found in Article IX, section 1. This provision read, in part:

> The Legislature shall provide for a uniform and equal rate of taxation ... and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, education, literary, scientific, religious or charitable purpose.

Art. IX, § 1, Fla. Const. (1885). Generally, under this provision of the 1885 Constitution, the Legislature could create classifications of property that could be taxed on different bases so long as that classification was reasonable. See Lanier v. Overstreet, 175 So. 2d 521 (Fla. 1965).

However, the Florida Constitution was revamped in 1968. During this constitutional revision, the state's Constitutional Revision Commission evaluated the 1885 Constitution and elected to change, among other provisions, Article IX, section 1 of the 1885 Constitution. The Revision Commission's recommended change to this

section was then approved by the people of the State of Florida. The new valuation provision, Article VII, section 4, of the Florida Constitution of 1968, read:

> By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:
>
> (a) Agricultural land or land used exclusively for non-commercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.
>
> (b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value.

Art. VII, § 4, Fla. Const. (1968). Since its original enactment in 1968, Article VII, section 4 has been amended several times to provide for additional classifications of property that could be valued at less than just valuation for ad valorem taxation purposes. For example, the Legislature amended the just valuation provision to provide that "land producing high water recharge to Florida's aquifers" may be classified by general law and assessed solely on the basis of charter or use. See Art. VII, § 4(a), Fla. Const. Additionally, a citizen's initiative petition added subsection (c), which modified just valuation for homestead property:

> (c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided

herein....

Art. VII, § 4(c), Fla. Const. The most recent amendment to provide a classification of property which may be assessed at less than just value is the historical property amendment. This amendment was proposed by the Constitutional Revision Commission and approved by the voters in 1998:

> (d) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

Art. VII, § 4(d), Fla. Const.

As illustrated above, while both the 1885 and the 1968 provisions grant the Florida Legislature the power to prescribe regulations to secure just value, the 1968 revision specifically enumerated certain classifications of property — for example, agricultural land — that could be valued at less than just value for ad valorem taxation purposes. This additional language that specified the classifications of property that may be treated differently for ad valorem taxation purposes has been interpreted by the Florida courts as being a limitation on the Legislature's power to create classifications for taxation purposes. The maxim of statutory interpretation expressio unius est exclusio alterius — the expression of one thing is the exclusion of another —

prevents the Legislature from crafting additional property classifications. Additionally, the fact that Article VII, section 4 has been amended several times since its original enactment in 1968 to include additional classifications is further recognition that the Legislature may not create classifications for taxation purposes unless accomplished by specific constitutional amendment.

For example, in Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433 (Fla. 1973), this Court considered whether a taxing statute violated Article VII, section 4 of the Florida Constitution when it provided that lands platted as lots would be valued for tax assessment purposes on the same basis as unplatted acreage of similar character until 60 percent of the individual lots have been sold. The Supreme Court determined that this statute violated the just valuation requirements and, in doing so, specifically remarked on the change caused by the 1968 revision.

> This section [Article VII, section 4, Florida Constitution (1968)] is different from the prior "just valuation clause" contained in Article IX, Section 1 of the 1885 Florida Constitution, in that the two subsections were added by the 1968 revisers. Apparently the revisers felt that the four classes of property mentioned in these two subsections should be valued according to different standards than all other property. The rule expressio unius est exclusio alterius applies, however, so that by clear implication no separate standards for valuation may be established for any other classes of property.

Id. at 434 (emphasis added). Thus, the new 1968 Constitution has removed from the legislature the power to make classifications of

property to be evaluated under different valuation standards. Id. Accordingly, this Court found that the subject statute was an unconstitutional classification and rejected the argument that the statute was merely a regulation designed to secure just valuation.

> We find it impossible to consider Fla. Stat. s. 195.062(1), F.S.A., as establishing a proper valuation criterion. The statute does no more than establish a classification of property to be valued on a different standard than all other property. Under the 1968 Constitution, Article VII, Section 4, this is no longer within the prerogative of the legislature to do.

Id. at 435.

This Court later restated and elaborated on this reasoning in Williams v. Jones, 326 So. 2d 425 (Fla. 1975). The question posed was whether the Legislature had the power constitutionally to treat leasehold interests in public lands as real property for ad valorem tax purposes. The Court upheld the leasehold classification because it forced the lessees to pay their fair share of the tax burden and resulted in just valuation for tax purposes. Id. at 430. The Court also directly acknowledged that Article VII, section 4 of the 1968 Florida Constitution, operated as a limitation on the Legislature.

> The limitation imposed by the foregoing section was clearly intended to be a check upon the Legislature so as to prohibit it from classifying property for ad valorem taxation in such a manner as to result in a valuation of any class of property at less than just value, subject to the provisos of subsections (a) and (b). In short, the clear intent of

> the revisers of the Constitution was to prohibit the Legislature from making only those classifications which would result in some property being taxed at less than its just value, except for the categories enumerated in subsections (a) and (b).

Id. (emphasis added). Thus, under the provisions of Article VII, section 4 of the Florida Constitution of 1968, the Legislature is prohibited from crafting any classifications of property for ad valorem taxation that would result in less than just valuation, except for those classifications specifically described in the accompanying subsections. Id. at 431. See also Valencia Center, Inc. v. Bystrom, 543 So. 2d 214 (Fla. 1989) (legislature cannot establish different classifications of property for tax purposes other than those enumerated in Article VII, section 4 of the Florida Constitution); ITT Community Development Corp., 347 So. 2d at 1026 (alternative method of valuation whereby properties are auctioned 10 months after January 1 violates Article VII, section 4, Florida Constitution, because it does not arrive at just valuation on the taxing date).

In the present case, as in Interlachen, Williams, Bystrom and ITT Community Development, the Legislature created a classification of property — structures not substantially complete. The challenged statute, section 192.042(1), Florida Statutes, states:

> All property shall be assessed according to its just value as follows:
>
> (1) Real property, on January 1 of each year. Improvements or portions not substantially

> complete on January 1 shall have no value placed thereon. "Substantially completed" shall mean that the improvements or some self-sufficient unit within it can be used for the purpose for which it was constructed.

§ 192.042(1), Fla. Stat. Clearly, this statute has established a separate standard of value for a class of property — property not substantially complete on January 1. The mandate that this class of property "shall have no value placed thereon," does not operate to secure just value. On the contrary, in some instances it directs the property appraisers of the state to disregard obviously valuable improvements, resulting in a valuation for ad valorem taxation purposes that is less than just value or fair market value. Accordingly, as in Interlachen, this statute violates Article VII, section 4 of the Florida Constitution (1968).

B. The Third District Court of Appeal Was Correct In Not Following The Seacoast Towers Case And Its Progeny, Which Were Decided Under The Provisions Of The 1885 Florida Constitution.

Despite the clear direction of the Supreme Court of Florida in Interlachen, the Appellants argue that Culbertson v. Seacoast Towers East, Inc., 212 So. 2d 646 (Fla. 1968) and its progeny, Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383 (Fla. 4th DCA 1983), are controlling on the constitutionality of section 192.042, Florida Statutes. However, in the present matter the en banc panel of the Third District Court of Appeal was correct in declaring that the Seacoast Towers decision was no longer viable because the

"legal logic behind Seacoast, and L. Maxcy[1] as well, was ousted in 1968 when a new state constitution was adopted by the people." Fuchs v. Robbins, 24 Fla. L. Weekly D1529, D1531 (Fla. 3rd DCA June 30, 1999) (en banc) (Fuchs II). As recognized by the Third District Court, the Seacoast Towers case was decided under the 1885 Florida Constitution and its drastically different taxation provisions; therefore, it is not applicable after the 1968 constitutional revision.

The Seacoast Towers case involved a challenge to the constitutionality of the substantially complete statute, section 193.11(4), Florida Statutes, under the 1885 Florida Constitution. This section is an earlier version of the current section 192.042, Florida Statutes, and provided as follows:

> All taxable lands upon which active construction of improvements is in progress and upon which such improvements are not substantially completed on January 1, of any year shall be assessed for such year, as unimproved lands. Provided, however, the provisions hereof shall not apply in cases of alternation or improvement of existing structures.

Seacoast Towers, 212 So. 2d at 647 (citing section 193.11(4), Fla. Stat.). Without much discussion, the court found the separate classification of property was constitutional because, under the

---

[1] L. Maxcy, Inc. v. Federal Land Bank of Columbia, 111 Fla. 116, 150 So. 248 (Fla. 1933) (Supreme Court concluded under the provisions of the 1885 Florida Constitution that the legislature could free immature fruit trees from taxation pursuant to its reasonable tax classification powers).

1885 Florida Constitution, the Legislature was given the authority to tax different classes of property differently so long as the classification was reasonable. See Lanier, 175 So. 2d at 521. In the Seacoast Towers case the court found there was a reasonable relationship between the classification and the Legislature's power to prescribe regulations to secure just valuation. Id. at 647. Thus, the Seacoast Towers decision may have been correctly decided under the 1885 Florida Constitution. However, given the drastic changes in the Legislature's power to classify property for just valuation purposes under the 1968 Constitution, the reasonable relationship test in Seacoast Towers is no longer viable.

Given the Seacoast Towers case is no longer viable under the 1968 Florida Constitution, the Appellants' reliance on the Yankee Clipper case in support of section 192.042(1), Florida Statutes, is unpersuasive because Yankee Clipper expressly relied on the reasoning of the Seacoast Towers case. In the Yankee Clipper case the Broward County Property Appraiser challenged section 192.042, Florida Statutes, as violating the just valuation provisions of the Florida Constitution. The Fourth District Court of Appeal rejected this argument and relied on two cases for support, Seacoast Towers

and Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973).[2] Neither of these cases was decided under Article VII, section 4 of the 1968 Florida Constitution. However, rather than analyzing the new just valuation provision of the 1968 Constitution, the Fourth District Court of Appeal merely declared, "The constitutional change in 1968 is insignificant." Yankee Clipper, 427 So. 2d at 384 n. 3. As stated above and acknowledged in Talbot "Sandy" D'Alemberte's official comment on Article VII, section 4, Florida Constitution (1968), "The new section dealing with assessment of property contains numerous changes from the old provision which directed the Legislature to prescribe regulations to secure a just valuation of all property . . ." Art. VII, § 4, Fla. Const. commentary (1968). In fact, the Fourth District's conclusion that the 1968 revision is "insignificant" is directly contrary to binding precedent from the Supreme Court of Florida. See Interlachen, 304 So. 2d at 434; Williams, 326 So. 2d at 430. That the Yankee Clipper decision is in error is especially apparent given that the Supreme Court of Florida had already held in both

[2]Lehnhausen v. Lake Shore, is equally inapplicable to the determination of whether Article VII, section 4, Florida Constitution (1968), has been violated. The Lehnhausen case merely found that all taxation classifications must be reasonable in order to comport with the strictures of the Equal Protection Clause of the United States Constitution. The case did not involve the Florida Constitution, it contains no discussion of the limitations placed upon the Florida Legislature's ability to create taxation classifications by Article VII, section 4, Florida Constitution (1968), and, in fact, the Lehnhausen case did not even originate in Florida.

Interlachen and Williams that the Legislature was prohibited from crafting new classifications of property for ad valorem tax purposes under the 1968 Florida Constitution. Interestingly, the Yankee Clipper Court did not cite or attempt to distinguish either of these binding precedents.

Because the Seacoast Towers case was decided under the 1885 Florida Constitution and the Yankee Clipper case was based on outdated and inapplicable law, the reasoning in both cases should not be followed. The Third District Court in the present matter was correct in not relying on this line of cases. Rather, the new interpretation of Article VII, section 4 of the 1968 Florida Constitution, which was announced in Interlachen and Williams, should control the determination that section 192.042(1), Florida Statutes, is unconstitutional.

C. The Third District Court of Appeal Was Correct In Deciding That Even If The Substantially Complete Statute Is A Regulation That The Legislature Is Empowered To Prescribe, It Does Not Secure Just Valuation And, Thus, Violates Article VII, Section 4, Florida Constitution.

The Third District Court of Appeal correctly held that section 192.042(1), Florida Statutes, is unconstitutional, even if it is deemed a legislative regulation, because it fails to secure "just value." Article VII, section 4 of the Florida Constitution of 1968, provides that the Florida Legislature must prescribe

regulations to secure a just valuation of all property for ad valorem taxation. See Art. VII, § 4, Fla. Const.; see also § 193.011, Fla. Stat. (factors to consider in deriving just valuation). It is argued that section 192.042(1), Florida Statutes, is such a regulation. Appellant, Miami Beach Ocean Resort, asserted that while the Florida Legislature may be prevented from deriving new classifications for ad valorem taxation purposes, the Legislature is not prevented from prescribing regulations, such as the substantially complete provisions of section 192.042(1), Florida Statutes. The Third District Court of Appeal correctly dismissed this argument because section 192.042(1) does not secure just value and even authorized regulations, as opposed to prohibited classifications, must secure just value. This statute allows property with some value to completely escape taxation.

"Just value" is not defined in the Florida Constitution, however, the Florida courts have provided much guidance on just valuation. Just value has been equated with fair market value. See Bystrom v. Valencia Center, Inc., 432 So. 2d 108, 110 (Fla. 3rd DCA 1983). The Supreme Court of Florida has defined "just value" to be that price which a willing buyer, who is not obliged to buy, would pay a willing seller, who is not under duress to make a sale. See Southern Bell Telephone and Telegraph Co. v. County of Dade, 275 So. 2d 4 (Fla. 1973). Based on these definitions, section

192.042(1), Florida Statutes, does not secure just valuation. It is axiomatic that an improvement under construction will have some value. In fact, the Miami Beach Ocean Resort's hotel improvements had an uncontested value of $3.7 million on January 1, 1992, even when incomplete. Merely because a structure is under construction does not make it worthless. A willing buyer and a willing seller would undoubtedly both place at least some value on the structure,[3] and the property appraisers of the State of Florida are more than able to determine the value of a building that is being constructed or renovated. Further, as the lower court found, there is a market for not substantially complete property. See Report of General Master at 18. For example, Appellant, Miami Beach Ocean Resort, purchased the subject property when it was not substantially complete in order to renovate the structure.

In reality, the substantially complete statute shields a large amount of property from the payment of ad valorem taxes. By allowing property that is not substantially complete to escape taxation until the next January 1 when it may be completed, the Legislature has created an unconstitutional tax break and unfairly shifted the costs of providing governmental services to other tax

[3]The Appraisal of Real Property, Tenth Edition, states at page 266 that "many older hotels and apartment buildings that have been rehabilitated as hotels have unique architectural styles and a sense of luxury that is difficult to replicate in new structures. The desire to rehabilitate older buildings is widespread, affecting large, historic structures in urban centers as well as small inns in picturesque country settings."

payers.[4] A fair approximation of the dollar amount of this lost tax revenue can be calculated by referring to the official state estimates from a legislative proposal that would allow the local governments to capture these revenues. Every year for the past decade, the Florida Legislature has considered legislation known as the "Partial Year Ad Valorem Tax Legislation" or more simply the "Partial Year Bill." See, e.g., SB 402 (1996 Regular Session) (attached as Appendix A). The Partial Year Bill would require newly developed property to be taxed as soon as it becomes substantially completed throughout the year instead of the current system of taxing all substantially complete property as to its value on January 1. According to official state estimates, the Partial Year Bill would subject an additional $5.5 billion in new construction to ad valorem taxation each year.[5] Further, it is estimated that the passage of the Partial Year Bill would generate additional ad valorem tax revenue of $121 million annually for

---

[4]See Collier County v. State, 733 So. 2d 1012 (Fla. 1999). In this case, Collier County attempted to compensate for the substantial loss of revenue due to section 192.042(1), Florida Statues, by enacting the "interim governmental services fee," which was deemed unconstitutional by this Court. The constitutionality of section 192.042(1) was not at issue in that case and this Court did not rule on it. Id. at 1015.

[5]Estimates for SB 402, by the State Revenue Estimating Conference *Impact Conference Results-1996 Regular Session* (Oct. 25,1996) at page 212 (attached as Appendix B).

local governments at the state average millage rate.[6] Similarly, the nullification of the substantially complete statute would increase the ad valorem tax base for local governments by an amount capable of producing taxes equal to or slightly less than the Partial Year Bill. Consequently, the substantially complete statute grants about $120 million in tax exemptions to new development.

Due to these lost revenues, the substantially complete statute has the effect of shifting the burden of ad valorem taxation from owners of structures under construction to owners of other property. When adopting a budget, local governments produce ad valorem tax revenue by applying a millage rate against the aggregate taxable value of all the properties in the ad valorem tax base. See § 200.069, Fla. Stat. By operation of the substantially complete statute, the aggregate taxable value does not include the value of property not substantially complete. Consequently, for those local governments that are not at their millage caps, the millage rates applied against the other property must be increased to produce the same amount of ad valorem tax revenue as may be produced from an ad valorem tax base that includes property not

[6] Id. Faced with stiff opposition from the construction industry and others in the development community as well as the major electric utilities, the Partial Year Bill has failed to become law.

substantially complete.[7] Thus, the burden of ad valorem taxation falls more heavily upon the owners of other property to pay for the relief granted by the statute to the owners of not substantially complete structures.

Accordingly, it is clear that rather than securing just valuation, section 192.042(1), Florida Statutes, allows valuable improvements to escape taxation and shifts the burden of government from the owners of not substantially complete structures to the other property owners. "Democratic philosophy mandates that every taxpayer be treated consistently, and that everyone contribute his fair share, no more and no less, to the tax revenues." ITT Community Development Corp., 347 So. 2d at 1028. The owners of not substantially complete property are getting a free ride on the backs of other property owners.

> [T]his 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 Section 1, Article IX of the Constitution. Courts have no more important function than to direct the current of the law in harmony with sound democratic theory.

Williams, 326 So. 2d at 429 (quoting Bancroft Inv. v. City of Jacksonville et al., 27 So. 2d 162 (Fla. 1946)). Thus, whether it

---

[7]County, municipal and school millage rates are capped by the Florida Constitution at 10 mills each, unless otherwise set by the Legislature. Special districts may levy millage at a rate authorized by law and approved by the voters. See Art. VII, § 9(b), Fla. Const.

is dubbed a "regulation" or a "classification," section 192.042(1), Florida Statutes, not only violates the just valuation provisions of the Florida Constitution, but it also does injustice to our democratic theory of government. Accordingly, because the Florida Legislature has transcended its taxing authority, this Court must uphold the Third District Court of Appeal's decision to strike section 192.042(1), Florida Statutes, as unconstitutional.

II. THE THIRD DISTRICT COURT OF APPEAL CORRECTLY HELD THAT THE PROPERTY APPRAISER HAD STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE "SUBSTANTIALLY COMPLETE" STATUTE.

While it is true that constitutional officers generally lack standing to initiate litigation which attacks the constitutionality of a statute affecting their duties, there are several well recognized exceptions to this general rule that grant standing to constitutional officers in particular circumstances. See Department of Education v. Lewis, 416 So. 2d 455, 458-59 (Fla. 1982). The Third District Court of Appeal correctly found that the Property Appraiser had standing to challenge the constitutionality of section 192.042(1), Florida Statutes, because at least one of the recognized exceptions was applicable.[8] See Fuchs v. Robbins, 23 Fla. L. Weekly D2529, D2529 (Fla. 3rd DCA Nov. 18, 1998) (Fuchs

[8]Although not discussed by the Third District Court of Appeal, the Petitioners waived the argument that the Property Appraiser lacked standing by failing to properly raise the standing issue before the trial court. See Krivanek v. Take Back Tampa Political Committee, 625 So. 2d 840 (Fla. 1993).

I); Fuchs II, 24 Fla. L. Weekly at D1533 n. 1. This decision was well founded in Florida case law and should be upheld by this Court.

A. The Property Appraiser Has Standing To Contest The Validity of Section 192.042(1), Florida Statutes, Because The Appraiser Raised His Objection To The Statute In A Defensive Posture.

A well recognized exception to the general rule against administrative officer standing is that the constitutionality of a legislative enactment can be raised defensively by a public officer. As stated by this Court in Department of Education v. Lewis, "If, on the other hand, the operation of a statute is brought into issue in litigation brought by another against a state agency or officer, the agency or officer may defensively raise the question of the law's constitutionality." Lewis, 416 So. 2d at 458 (citing City of Pensacola v. King, 47 So. 2d 317 (Fla. 1950), State ex rel. Harrel v. Cone, 177 So. 854 (Fla. 1937) and State ex rel. Florida Portland Cement Co. v. Hale, 176 So. 577 (Fla. 1937)).

This defensive posture exception is the one cited by the panel of the Third District Court of Appeal below for finding that the Property Appraiser had standing to challenge the constitutionality of section 192.042, Florida Statutes. The Third District Court noted that "where the operation of a statute is brought into issue by another party in the litigation, the officer may, in defense,

question the validity of the statute." Fuchs I, 23 Fla. L. Weekly at D2529. In explaining the application of the exception, the court explained: "Here, it was the Taxpayer who raised the issue of whether the property was substantially completed pursuant to section 192.042. The Property Appraiser challenged the validity of section 192.042 after the taxpayer put forth evidence showing that the property was not "substantially complete" on January 1, 1992." Id. The Third District Court of Appeal adopted this reasoning and this decision should be upheld by this Court.[9] See Fuchs II, 24 Fla. L. Weekly at D1533 n.1.

B. The Property Appraiser Has Standing To Contest The Constitutionality of Section 192.042(1), Florida Statutes, Because The Present Controversy Involves The Control Of Public Funds.

Another well recognized and equally applicable exception to the general rule against constitutional officer standing to contest the validity of statutes affecting their duties is the public funds exception. This exception to the general rule against standing is clearly applicable in the present case because the Property

[9]This decision appears to be in conflict with a recent decision from the Second District Court of Appeal, Turner v. Hillsborough County Aviation Authority, 24 Fla. L. Weekly D2034 (Fla. 2nd DCA Sept. 3, 1999). However, the Second District Court in that case applied an overly restrictive reading of prior case law and statutes in concluding that the Property Appraiser lacked standing to challenge an exemption statute under either the defensive posture exception or the public funds exception, which is discussed below.

Appraiser's duties in assessing property and the affect of section 192.042(1) on the administration of these duties directly impacts on the control of public funds. Accordingly, the Property Appraiser has a sufficient interest in the validity of section 192.042(1) to support standing.

One of the first cases to recognize this exception was City of Pensacola v. King, 47 So. 2d 317 (Fla. 1950), where this Court recognized that "where [an executive or administrative officer] is charged with the control and disbursement of public funds, his official capacity gives him an interest in its execution that he may challenge the validity of the act." Id. at 319. In the King case this Court found that the Florida Railroad and Public Utilities Commission had standing to attack the constitutionality of a legislative act that authorized the Commission to determine the size of a suburban territory for purposes of regulating auto transportation. The Court reasoned that the public funds exception applied because "To determine this and perhaps other questions, it may become necessary for the Commission to have a hearing requiring the expenditure of public funds." Id.

The public funds exception was next recognized by this Court in Barr v. Watts, 70 So. 2d 347 (Fla. 1953). Although this exception to the rule against standing was not applicable in this case, the Court remarked that:

> [T]here is, of course, an exception to this rule — and that is, when the public may be

> affected in a very important particular, its pocket-book. In such case, the necessity of protecting the public funds, is of paramount importance, and the rule denying to ministerial officers the right to question the validity of the Act must give way to a matter of more urgent and vital public interest.

Id. at 351. In Green v. City of Pensacola, 108 So. 2d 897 (Fla. 1st DCA 1959), the public funds exception was applied to grant standing to the state Comptroller. The Comptroller was charged with collecting an excise tax from the City. The City refused to pay the tax. alleging that it was exempt pursuant to a special act. The Comptroller challenged the constitutionality of the exemption act. The First District Court of Appeal held that the Comptroller's duty to collect the excise tax and his associated duty to protect the public funds of the State of Florida triggered the public funds exception to the general rule against standing. Id. at 901.

> [I]t is our view that the Comptroller was legally entitled to question the constitutionality of the special act which purports to exempt the City of Pensacola from the payment of gross receipts tax as required by general law, which act directly affects public funds and the Comptroller's duty to collect, control and disburse the same.

Id. See also Kaulakis v. Boyd, 138 So. 2d 505 (Fla. 1962) (holding that county commissioners have standing to challenge a provision in the Dade County Home Rule Charter waiving sovereign immunity because any judgments against the county would require the expenditure of public funds).

In the present case the public's "pocket-book" is clearly affected by section 192.042(1), Florida Statutes, in that it shields a large amount of property from being assessed at its just value for annual property taxation. Consequently, the Property Appraiser is legally entitled to question the validity of this statute because it directly affects the public funds and the Property Appraiser's legal duty to control such funds.

C. Alternatively, Respondent Robbins Should Be Found To Have Standing As An Ordinary Citizen And Taxpayer To Challenge The Constitutionality Of Section 192.042(1), Florida Statutes.

In the event this Court determines that Respondent Robbins does not have standing in his official capacity as Property Appraiser of Dade County, Robbins should be found to have standing to challenge section 192.042(1), Florida Statutes, as an ordinary citizen and taxpayer. See Department of Education v. Lewis, 416 So. 2d at 458 (finding that the Commissioner of Education and a Trustee of Miami-Dade Community College did not have official standing to challenge a proviso in an appropriations bill, but that both men did possess standing as ordinary citizens and taxpayers).

The well established rule on taxpayer standing is that a taxpayer may only bring suit upon a showing of special injury or a constitutional challenge. See North Broward Hospital District v. Fornes, 476 So.2d 154, 155 (Fla. 1985); School Board of Volusia

County v. Clayton, 691 So. 2d 1066, 1068 (Fla. 1997). In the present case there is a constitutional challenge that section 192.042(1), Florida Statutes, is unconstitutional as in violation of Article VII, section 4, Florida Constitution (1968). Accordingly, as an ordinary citizen and taxpayer, Respondent Robbins meets the test for taxpayer standing to challenge the substantially complete statute. Although this case was originally brought by Respondent Robbins in his official capacity as Property Appraiser of Dade County, the official posture of this case is a mere procedural formality that should not bind this Court.

CONCLUSION

The Florida courts are obligated to "strike down those acts of the legislature which violate our Constitution." ITT Community Development Corp., 347 So. 2d at 1029. The substantially complete statute, section 192.042(1), Florida Statutes, does just that. By mandating that real property improvements that are not substantially complete as of January 1 to have no value placed on them, this statute violates the just valuation requirements of Article VII, section 4, Florida Constitution (1968). The Third District Court of Appeal performed its duty by striking this statute as unconstitutional. Accordingly, this Court should affirm that decision in its entirety, including the finding that the Property Appraiser had standing to contest the validity of section 192.042(1), Florida Statutes.

Respectfully submitted,

SARAH M. BLEAKLEY, Esq.
Florida Bar No. 291676
HEATHER J. MELOM, Esq.
Florida Bar No. 0105082
Nabors, Giblin & Nickerson, P.A.
315 South Calhoun Street, Suite 800
Tallahassee, Florida 32302
(850) 224-4070
(850) 224-4073 Facsimile

SPECIAL COUNSEL FOR AMICI CURIAE, FLORIDA ASSOCIATION OF COUNTIES FLORIDA ASSOCIATION OF COUNTY ATTORNEYS AND FLORIDA LEAGUE OF CITIES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail to ARNALDO VELEZ, 255 University Drive, Coral Gables, Florida 33134; JAY W. WILLIAMS, Assistant County Attorney, Stephen P. Clark Center, Metro-Dade Center, 111 Northwest 1st Street, Suite 2810, Miami, Florida 33128-1993, JOSEPH MELLICHAMP; Assistant Attorney General, Office of the Attorney General, Tax Section, The Capitol, Tallahassee, Florida 32399-1050; VICTORIA L. WEBER, Donna E. Blanton, Thomas R. Julin and Edward M. Mullins, Steel Hector & Davis, 215 S. Monroe Street, Suite 601, Tallahassee, Florida 32301; KEITH HETRICK, Florida Home Builders Association, 201 East Park Avenue, Tallahassee, Florida 32301; and STUART H. SINGER, Richard J. Brenner, AND Rima Y. Mullins, Kirkpatrick & Lockhart LLP, 201 South Biscayne Boulevard, Miami Center, 20th Floor, Miami, Florida 33131, this 15th day of October, 1999.

Heather J. Melom

C:\Supreme Court\04-04-02\96182acFlaAssocCoAtty.wpd