IN THE SUPREME COURT
STATE OF FLORIDA

LAWRENCE FUCHS, ET AL.

Appellants,

v. **CASE NO. 96,182**

JOEL W. ROBBINS, ET AL.

Appellee.

BRIEF OF AMICUS CURIAE FLORIDA POWER & LIGHT COMPANY

On Appeal from the Third District Court of Appeal

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INTRODUCTION

Amicus Curiae Florida Power & Light Company ("FP&L") is a public utility pursuant to chapter 366, Florida Statutes. FP&L owns property and pays property taxes in thirty-eight counties throughout Florida and, therefore, has a special interest in the orderly administration of the state's property tax laws. FP&L files this brief in support of the Florida Department of Revenue and the taxpayer, the Appellants in this case.

FP&L has recently litigated the question posed in this case of property appraisers' standing to attack the constitutionality of statutes governing their conduct. See Florida Power & Light Co. v. Putnam, Nos. 96-947-CA-17 & 96-1575-CA-17 (Consolidated)(Fla. 19th Cir. Ct.). The court in that case determined that the property appraiser did not have standing to challenge the constitutionality of the statute at issue.

This case requires the Court to decide whether property appraisers may exercise the judicial power to determine the constitutionality of statutes governing the valuation of property. Although the question of the constitutionality of section 192.042(1), Florida Statutes, is important and likely will be the focus of most of the argument to this Court, FP&L suggests that the question of standing is of overriding significance. At issue is whether property appraisers throughout Florida will be allowed to ignore the Legislature's requirements concerning the valuation not

only of incomplete structures, but also many other types of property, such as historically significant properties, pollution control devices, and construction works in progress.

FP&L filed a Motion for Leave to Appear as Amicus Curiae with this Court on September 3, 1999. An Order on FP&L's Motion has not yet been entered.

STATEMENT OF THE CASE AND THE FACTS

FP&L adopts Appellants' Statement of the Case and the Facts.

SUMMARY OF THE ARGUMENT

Longstanding precedent of this Court makes clear that the Appellee property appraiser lacked standing to raise a constitutional challenge to section 192.042(1), Florida Statutes, and that no "exceptions" to the general rule prohibiting public officials from challenging statutes are applicable. That longstanding precedent is grounded upon important constitutional principles and public policy considerations.

The Second District Court of Appeal recently considered the standing issue raised in this case and concluded that a property appraiser lacks standing to challenge laws that he has sworn to uphold and enforce. Turner v. Hillsborough County Aviation Authority, 24 Fla. L. Weekly D2034 (Fla. 2d DCA September 3, 1999). This Court should apply the reasoning of the Second District Court of Appeal to resolve this case.

Appellee property appraiser had no authority to challenge section 192.042(1) either offensively or defensively. Property appraisers must apply the laws they are sworn to uphold in making an assessment. A property appraiser who fails to do so cannot later claim that the statute is unconstitutional as a "defense" for his earlier failure to apply the law.

Standing principles recognized by this Court are critical to maintain the separation of powers, to ensure the orderly conduct of government, and to avoid the adjudication of issues in which the

parties do not have an adequate personal stake. The trial court's decision in this case to adjudicate the constitutionality of section 192.042(1) violates those principles.

Article VII, section 4 of the Florida Constitution delegates to the Legislature responsibility for enacting regulations to secure the constitutional requirement of just valuation. Among the decisions delegated to the Legislature is the question of when the various types of property shall be assessed. This Court has recently recognized this "timing" characteristic of section 192.042(1), Florida Statutes. Collier County v. State, 733 So. 2d 1012 (Fla. 1999).

Section 192.042(1), Florida Statutes, does not grant an exemption from the constitutional requirement that all property be assessed and taxed at just valuation. Rather, the statute regulates the timing of when assessments must occur and permits only "a temporary postponement of valuation and assessment of incomplete improvements on real property . . . ." Culbertson v. Seacoast Towers East, Inc., 212 So. 2d 646 (Fla. 1968). This Court should find that the timing aspects of section 192.042 do not impair the just value requirement and uphold the constitutionality of the statute.

ARGUMENT

I. THE PROPERTY APPRAISER DOES NOT HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF SECTION 192.042(1), FLORIDA STATUTES.

Appellee, the Dade County property appraiser, attacked the constitutionality of section 192.042(1), Florida Statutes, in an effort to nullify the Dade County Value Adjustment Board's application of the statute to valuation of the Appellant's hotel. In response to the property appraiser's challenge, the taxpayer argued not only that the statute is constitutional, but also that the property appraiser lacked standing to make such a constitutional challenge.

The Third District Court of Appeal panel determined that the property appraiser had standing because he mounted the constitutional challenge in "defense" of his original assessment, which was revised by the Value Adjustment Board. Fuchs v. Robbins, 23 Fla. L. Weekly D2529 (3d DCA November 18, 1998). That determination was upheld in a footnote by the court sitting en banc. Fuchs v. Robbins, 24 Fla. L. Weekly D1529, 1533 n.1 (Fla. 3d DCA June 30, 1999) (Fuchs II). Although the full court did not address the standing question other than to uphold the panel decision, Judge Sorondo addressed standing in a concurring opinion, arguing that the property appraiser had standing both "defensively" and under the "public funds" exception to the general rule that

prohibits public officials from challenging laws they are sworn to uphold. Fuchs II, 24 Fla. L. Weekly at D1532.

Contrary to both the panel decision of the Third District Court of Appeal and Judge Sorondo's concurring opinion, longstanding precedent of this Court makes clear that the property appraiser lacked standing to raise a constitutional challenge to the statute and that no "exceptions" to the general rule denying standing are applicable. See, e.g., Department of Revenue v. Markham, 396 So. 2d 1120, 1121 (Fla. 1981); Barr v. Watts, 70 So. 2d 347, 350 (Fla. 1953); State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers, 84 Fla. 592, 94 So. 681 (1922).

The Second District Court of Appeal recently considered the identical standing issue raised in this case and concluded that a property appraiser lacks standing to challenge laws that he has sworn to uphold and enforce. Turner v. Hillsborough County Aviation Authority, 24 Fla. L. Weekly D2034 (Fla. 2d DCA September 3, 1999). The court in Turner acknowledged conflict with the instant case and certified the conflict to this Court. 24 Fla. L. Weekly at D2306.[1]

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[1] The Florida Department of Revenue also addressed this exact standing issue eight years ago in Tampa Electric Co. v. Alderman, No. 89-26041-Division J (Fla. 13th Cir. Ct.), in a memorandum filed in support of its motion to strike a property appraiser's attack on the constitutionality of section 193.621. That memorandum is attached to this brief as Appendix A. The order granting the motion to strike is attached as Appendix B.

(continued...)

The Turner case involved a challenge by the Hillsborough County property appraiser to a Value Adjustment Board (VAB) decision applying section 196.012(6), Florida Statutes, which defines "public purpose" for determining entitlement to a tax exemption granted to certain governmental properties. The case began when the property appraiser assessed certain property without granting any portion of it the governmental tax exemption. A petition challenging the assessment was filed with the VAB, which reduced the assessment by applying the exemption. The property appraiser then filed suit in circuit court pursuant to section 194.036(1)(a), Florida Statutes.

The Second District Court held that the property appraiser lacked standing to challenge the statutory exemption, citing the "well-established, common law rule" outlined by this Court in Department of Education v. Lewis, 416 So. 2d 455, 458 (Fla. 1982), that "[s]tate officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to

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[1](...continued)
That case, like the instant case, had been commenced by a taxpayer that disagreed with the property appraiser's application of a statute and, as in the instant case, the property appraiser "defensively" argued that the statute should be held unconstitutional. The decision in the Tampa Electric Co. case is squarely contrary to the trial court's decision in this case.

FP&L attaches the Department of Revenue's memorandum as evidence of the Department's historic position on the question of the property appraiser's standing. The Department did not brief the standing question in this case before the Third District Court of Appeal.

initiate litigation for the purpose of determining otherwise." Turner, 24 Fla. L. Weekly at D2035. The court went on to hold that three exceptions to the general rule outlined in Lewis were inapplicable to the property appraiser.

A. The Second District Court of Appeal Correctly Recognized in *Turner* that Property Appraisers May Not Challenge Laws They are Sworn to Uphold Either Offensively or Defensively.

The Second District's rejection of the "defensive" exception to the general standing rule is in stark contrast with the opinion of the court below. Relying on dicta in Lewis, the Third District Court of Appeal found that Appellee property appraiser had standing because he challenged the constitutionality of the statute only after the taxpayer challenged the original assessment and, in the course of litigation, the taxpayer put forth evidence showing that the property was not "substantially complete" on January 1, 1992. Thus, the property appraiser was "defending" his original assessment. Fuchs, 23 Fla. L. Weekly at D2529; Fuchs II, 24 Fla. L. Weekly at D1532 (Sorondo, J., concurring).

However, as the Second District reasoned in Turner, such an argument ignores the fact that the property appraiser failed to follow his constitutional duty by applying section 192.042, Florida Statutes, in his original assessment. As that Court explains in noting its conflict with the court below:

> In a concurring opinion, Judge Sorondo explains that the litigation should be viewed as beginning not when the

> property appraiser filed suit in circuit court, but when the taxpayer challenged the property appraiser's assessment by petition to the VAB. Thus, he reasons, the property appraiser became a plaintiff only by a procedural requirement of the statute. We believe this analysis overlooks the fact that if the property appraiser had followed the law initially, as State ex rel. Atlantic Coast Line Railway Co. dictates he is obligated to do, the taxpayer would not have been forced to petition the VAB and set the litigation in motion. It both defies logic and violates the rule of State ex rel. Atlantic Coast Line Railway Co. to suggest that [the property appraiser] can ignore the law by denying an exemption based on his belief that it is unconstitutional and then be allowed to ask the court to approve his disobedience by upholding his denial.

Turner, 24 Fla. L. Weekly at D2036.[2]

This Court's decision in Department of Revenue v. Markham, 396 So. 2d 1120 (Fla. 1981), also makes clear that property appraisers have no standing to make such attacks whether they do so offensively or defensively. The Markham case arose from an action by property appraisers seeking a declaration as to whether household goods and personal effects of nonresidents were subject to ad valorem taxation. The Department of Revenue had promulgated a regulation indicating that these goods were subject to such taxation, but the property appraisers, contending that the administrative costs of collection would exceed the revenues

[2]Furthermore, Judge Sorondo's statement that the litigation began at the VAB, not in the circuit court, ignores the fact that an "appeal" from a decision of the VAB is in fact a de novo proceeding in the circuit court, and that it is not even necessary for a taxpayer to participate in a VAB proceeding before initiating an action in circuit court. See §§ 194.034(1)(b) and 194.036(3), Fla. Stat.

generated, challenged the constitutionality of the regulation. The trial judge overruled the Department's objection to the property appraisers' standing and held the regulation to be unconstitutional. The First District Court of Appeal, in a 2-1 decision, affirmed. Department of Revenue v. Markham, 381 So. 2d 1101 (Fla. 1st DCA 1979). Judge Ervin, dissenting, argued that the property appraisers had no standing to attack the Department of Revenue regulation.

This Court agreed with Judge Ervin, holding that "[f]or important policy reasons, courts have developed special rules concerning the standing of governmental officials to bring a declaratory judgment action questioning a law those officials are duty-bound to apply. As a general rule, a public official may seek a declaratory judgment only when he is 'willing to perform his duties, but . . . prevented from doing so by others.'" Markham, 396 So. 2d at 1121 (citation omitted). "Disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion." Id. "Since the property appraisers had a clear statutory duty to comply with the prescribed Department of Revenue regulations . . . , they clearly

lacked standing for declaratory relief in their governmental capacities." Id.[3]

The standing principles recognized in Markham are critical (1) to maintain the separation of powers, (2) to ensure the orderly conduct of government, and (3) to avoid the adjudication of issues in which the parties do not have an adequate personal stake. Numerous appellate decisions subsequent to Markham have upheld and applied the rule recognized in this case.[4] This Court should follow these decisions.

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[3] As the Department of Revenue pointed out in its memorandum in the Tampa Electric Co. case, there is no statutory basis for the property appraiser to assert standing. Ex. A at 8-10. Indeed, as the Second District Court of Appeal noted in Turner, section 194.036(1)(a), Florida Statutes, expressly prohibits a property appraiser from challenging the constitutionality of a statute.

[4] See, e.g., Brazilian Court Hotel Condominium Owners Ass'n, Inc. v. Walker, 584 So. 2d 609 (Fla. 4th DCA 1991) (holding that a property appraiser, as a constitutional officer, lacked standing to challenge a statute enabling condominium associations to institute tax suits on behalf of individual unit owners); Jones v. Department of Revenue, 523 So. 2d 1211, 1214 (Fla. 1st DCA 1988) (holding that a county property appraiser lacked standing in his official capacity to challenge the constitutionality of statute authorizing the Department of Revenue to estimate a county's level of assessment for the purpose of equalizing local efforts as required in state educational aid formula); Miller v. Higgs, 468 So. 2d 371 (Fla. 1st DCA 1985) (holding that a county property appraiser, as a county official, lacked standing to bring suit challenging the validity of a statute providing that leasehold interests in government-owned property, which were used for non-government purposes, would be taxed as intangible personal property, rather than real property), review denied, 479 So. 2d 117 (Fla. 1985).

B. **The Property Appraiser's Attack on the Statute Violates the Separation of Powers Doctrine.**

The rule recognized and applied in Markham is not of recent vintage, but rather is rooted in well-recognized and generally applied constitutional and common-law principles grounded in important public policy considerations. Perhaps the most fundamental of these principles is that of separation of powers. Art. II, § 3, Fla. Const.

The General Master in this case, whose order was adopted by the trial court, reasoned that "an unconstitutional act binds no one" and that the property appraiser had no duty to apply the substantial completion statute, section 192.042(1). See Report of General Master, Case No. 93-21009(10) (11th Cir. Ct. May 29, 1997) (attached as Appendix C). However, as the Second District correctly pointed out, only a court has authority to determine that a statutory provision is unconstitutional. Turner, 24 Fla. L. Weekly at D2035.

One of the earliest Florida decisions to examine the separation of powers issue thoroughly is State ex rel. Atlantic Coast Line Ry. v. State Bd. of Equalizers, which the Second District relied on in Turner. In that case, a taxpayer challenged the Comptroller's assessment and valuation of its railway and then sought to appeal the outcome of that challenge to the State Board of Equalizers, which consisted of the Governor, the Attorney General, and the Treasurer, pursuant to a new law vesting

jurisdiction in that board to hear such appeals. The board declined to accept the appeal on the ground that a title defect in the law rendered it unconstitutional. The taxpayer then brought a mandamus action seeking to compel the board's compliance with the new statute. *Defensively*, the board attacked the constitutionality of the new statute. 94 So. at 682.

This Court regarded the issue presented as "most important." "It involves the right of a branch of the government other than the judiciary, to declare an act of the Legislature to be unconstitutional." Id. Chief Justice Browne, writing for the Court, held:

> The contention that the oath of a public official requiring him to obey the Constitution places upon him the duty or obligation to determine whether an act is constitutional before he will obey it is, I think without merit. The fallacy in it is that every act of the Legislature is presumptively constitutional until judicially declared otherwise, and the oath of office "to obey the Constitution, not as the officer decides, but as judicially determined."

Id. at 682-83. "The right to declare an act unconstitutional is purely a judicial power and cannot be exercised by the officers of the executive department under the guise of the observance of their oath of office to support the Constitution." Id. at 683.

Chief Justice Browne further observed,

> It is no answer to say that the courts will not require a ministerial officer to perform an unconstitutional act. That aspect of the case is not before us. We must first determine the power of the ministerial officer to refuse to perform a statutory duty because in his opinion the

> law is unconstitutional. When we decide that, we do not get to the question of the constitutionality of the act, and it will not be decided.

Id. at 684.

In Atlantic Coast Line, the Supreme Court refused to allow the Board of Equalizers to raise the constitutionality of the statute at issue defensively and issued a peremptory writ of mandamus requiring the board to perform its duties under the law.

The Supreme Court similarly refused to allow the Board of Law Examiners in Barr v. Watts, also relied on by the Second District in Turner, to *defend* a lawsuit to enforce statutes by attacking the constitutionality of the statutes. Both Atlantic Coast Line and Barr unequivocally state that public officers have no more standing to attack a statute *defensively* than they may *offensively*.

The separation of powers problem does not exist, however, when a public officer who derives his or her authority directly from the Florida Constitution challenges the constitutionality of a statute. The Governor, the Attorney General, and the State Comptroller are examples of "constitutional officers" created by the State Constitution who are vested with specific constitutional duties. If the Legislature adopts statutes imposing duties upon them that they believe conflict with their constitutional duties, they may challenge those statutes without offending the principle of

separation of powers because they have an independent constitutional basis for doing so.[5]

Many of the cases recognizing a constitutional officer's standing have involved statutes that interfered with the State Comptroller's constitutional duties under article IV, section 4(d) of the Florida Constitution to "serve as the chief fiscal officer of the state," and to "settle and approve accounts against the state."[6] One leading case in this line is State ex rel. Harrell v. Cone, 130 Fla. 158, 177 So. 854 (Fla. 1937), and it explains that the Comptroller had standing not simply because the statute at issue required disbursement of public funds, but rather because "the Constitution requires him to examine, audit, adjust, and settle the accounts of all officers of the state." 177 So. at 856. Subsequent cases nevertheless suggest that Cone stands for the broad proposition that *any* public officer may attack the constitutionality of any statute that requires the disbursement of

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[5] See, e.g., Department of Admin. v. Horne, 269 So. 2d 659 (Fla.1972) (suit by the Attorney General); State ex rel. Landis v. S. H. Kress & Co., 115 Fla. 189, 155 So. 823 (1934) (same); State ex rel. Moodie v. Bryan, 50 Fla. 293, 39 So. 929 (1905); State ex rel. Russell v. Barnes, 25 Fla. 75, 5 So. 698 (1889) (same).

[6] See, e.g., Dickinson v. Stone, 251 So. 2d 268 (Fla. 1971); Green v. City of Pensacola, 108 So. 2d 897 (1st DCA 1959), aff'd, 126 So. 2d 566 (Fla. 1966); State ex rel. Harrell v. Cone, 130 Fla. 158, 177 So. 854 (1937); State ex rel. Russell v. Barnes, 25 Fla. 75, 5 So. 698 (1889).

public funds or that interferes with the public officer's statutory duties.[7]

Judge Sorondo in his concurring opinion in Fuchs II cited one of these cases, Kualakis v. Boyd, 138 So. 2d 505 (Fla. 1962), and found that the "public funds" exception provides standing to the property appraiser in the instant case, even though he acknowledged that he could find no case "which specifically equates the 'disbursement' of public funds with the 'collection' of same for purposes of establishing standing in the present context . . . ." Fuchs II, 24 Fla. L. Weekly at D1533. Judge Sorondo argued that it is "absurd" to conclude that standing would exist in "disbursement" cases but not in "collection" cases.

Judge Sorondo's broad reading of the cases he cites is erroneous given that Cone and its predecessors are bottomed on the fact that the Comptroller has specific constitutional duties regarding the disbursement of funds and may base a constitutional challenge on those duties.[8] Other public officers who may lack

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[7] See, e.g., Arnold v. Shumpert, 217 So. 2d 116 (Fla. 1968); Kualakis v. Boyd, 138 So. 2d 505, 507 (Fla. 1962); Barr v. Watts, 70 So. 2d 347 (Fla. 1953); City of Pensacola v. King, 47 So. 2d 317 (Fla. 1951); Steele v. Freel, 157 Fla. 223, 25 So. 2d 501 (1946).

[8] In Kualakis, the primary case on which Judge Sorondo relies, the defendants were county commissioners with authority over county funds under a home rule county charter analogous to the authority that the state comptroller has over state funds under the state constitution. This independent source of constitutional authority allowed the county commissioners to challenge the (continued...)

such constitutional duties would run afoul of the separation of powers doctrine if they were to attack statutes governing disbursement of public funds. For purposes of this lawsuit, however, the Court need not be concerned with those cases involving statutes requiring disbursements of public moneys because this lawsuit does not involve such a statute. This lawsuit simply involves a statute that prescribes a deadline by which property must be completed in order to be included on the current year's assessment roll. It does not require the property appraiser or the tax collector to expend public funds that they otherwise would not be required to expend.

The property appraiser and the tax collector are themselves constitutional officers, but this standing doctrine is not available to them because the Constitution does not impose any constitutional duties upon them. See Fla. Const. art. VIII, §

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[8](...continued)
constitutionality of a section of the home rule charter without violating the principle of separation of powers.

The Arnold case also involved an action against county commissioners in a charter county under a statute that would have required disbursement of public funds. In Steele, the Court found that the clerk of the court did not have standing to challenge the constitutionality of a tax deed redemption statute because the statute did not require the disbursement of public funds. Thus, it had no need to decide and did not decide whether a public officer could attack a statute merely because it required disbursement of public funds. Only in the King decision, was an agency without constitutional mooring, the Railroad and Public Utilities Commission, permitted to challenge the constitutionality of a state statute solely on the basis that the statute required an expenditure of public funds.

1(d). All of their duties are prescribed by general law. In Burns v. Butscher, 187 So. 2d 594 (Fla. 1966), the Florida Supreme Court emphatically pointed this out in a lawsuit commenced by tax assessors (now property appraisers) challenging the constitutionality of a statute requiring the tax assessors to use the forms and follow instructions given them by the Comptroller and otherwise directing the Comptroller to "'ride herd' on the tax assessors." The Court observed that, although the tax assessors are constitutional officers, "we cannot stop there and infer that because the assessors are created in the Constitution their duties as Constitutional officers as they are 'known at the common law cannot be taken away by the legislature' as the Attorney General suggests." Id. at 595. The Court then examined the language of the Constitution and found the tax assessors had no duties other than those "'prescribed by law.'" Id. "It does not stretch the meaning of this language," the Court observed, "to hold that the oppugned section falls neatly within the power vested in the legislature." Id.

The property appraiser here would have this Court believe that the Florida Supreme Court's dicta in Department of Education v. Lewis overruled all of the preceding law and announced a broad new rule authorizing state officers, including property appraisers, to attack the constitutionality of any statutes at issue in lawsuits brought against them. Lewis does no such thing. As an initial

matter, it is clear that Lewis could not have achieved this revolution in Florida law because it was the *plaintiffs* who challenged the constitutionality of the statute at issue in that case, not the defendant officials. Thus, any language in Lewis about the standing of *defendants* to raise constitutional issues defensively is dicta.

Moreover, it is clear from the cases cited by Lewis for its dicta regarding defensive challenges -- City of Pensacola v. King, 47 So. 2d 317 (Fla. 1950); State ex rel. Harrell v. Cone, 130 Fla. 158, 177 So. 854 (1937); State ex rel. Florida Portland Cement Co. v. Hale, 129 Fla. 588, 176 So. 577 (1937), overruled in part sub nom., Hale v. Bimco Trading, 306 U.S. 375 (1939) -- that the Lewis court's assertion that statutes may be attacked defensively is no more than a recognition of the fact that such defensive challenges can be made where separation of power problems are not present.

King arose from a taxicab company's application to the Florida Railroad and Public Utilities Commission ("RPUC") for a certificate allowing it to operate between the City of Pensacola and an adjoining suburban area. Because a statute authorized the City to regulate taxicabs within the city limits and adjoining territories, unless RPUC determined otherwise, the City petitioned the Florida Supreme Court to stop RPUC from exercising the City's statutory authority. In response, RPUC argued that the statute authorizing the City to regulate taxicabs was unconstitutional. The Florida

Supreme Court allowed RPUC to defend the case in this manner not because it was doing so *defensively,* but rather because the statute at issue required RPUC to spend public funds to conduct hearings to determine the area in which the City should be allowed to regulate taxicabs. It was this fact alone that conferred standing on RPUC.[9] Id. at 319.

The decision in State ex rel. Harrell v. Cone, 130 Fla. 158, 177 So. 854 (1937), discussed previously, is simply a decision which recognizes that the State Comptroller may attack the constitutionality of a statute on the ground that the statute interferes with his exercise of his constitutional duties. Hale, like King, involved a statute that required the disbursement of public funds. The court held, in no uncertain terms, that if the state agency "complied with the mandatory provision of the act, the members of that department would be required to pledge or expend public funds." 176 So. at 584. Citing Cone, the Court held that "One who is required to pay out public funds should be at least reasonably certain that the same are paid out under valid law." Id. at 585.

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[9] As discussed in note 8 supra, decisions such as King may go too far in holding that public officers may bring a constitutional attack solely because a statute requires disbursement of public funds. A public officer who does not have specific constitutional duties regarding the disbursement of public funds cannot ignore a statute requiring funds to be disbursed without violating the separation of powers doctrine.

Property appraisers do have standing to bring actions to prevent others from interfering with the exercise of their statutory duties.[10] When, however, the alleged interference is an act of the Legislature, the property appraiser lacks any constitutional authority upon which to rest a constitutional challenge to such supposed interference.

C. Allowing Public Officials Standing Would Disrupt the Orderly Conduct of Government

Florida courts do not deny public officials standing only because doing so would violate separation of powers principles; they also deny them standing because of the serious practical problems that would arise if public officials were free to refuse to follow the statutes that govern their conduct. In Barr, the Florida Supreme Court recognized the "chaos and confusion" that would result if an executive officer had the right to challenge the constitutionality of a statute he was charged with enforcing. Barr, 70 So. 2d at 351. The Court observed:

> We now have in this state to carry on the state's business in almost 100 state agencies, boards and commissions . . . . The people of this state have the right to expect that each and every such state agency will promptly carry out and put into effect the will of the people as expressed in the legislative acts of their duly elected representatives. The state's business cannot come to a stand-still while the validity of any particular statute is contested by the very board or

[10] See, e.g., Reid v. Kirk, 257 So. 2d 3 (Fla. 1972) (property appraiser allowed to challenge directive from the Department of Revenue); see also Fla. Stat. § 195.092(2) (authorizing property appraiser to challenge agency rules).

> agency charged with the responsibility of administering it and to whom the people must look for such administration.

Id.

An essential part of a well-regulated government is that public officials and citizens alike obey the law. See State ex rel. New Orleans Canal & Banking Co. v. Heard, 18 So. 746 (La. 1895). If property appraisers were permitted to obey only those laws that they, in their individual opinions, believed to be constitutional, the state government simply could not function. Individual taxpayers are entitled to rely on public officials obeying the law.[11]

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[11] This point has both practical and constitutional dimensions, and both impact the property appraiser's standing. Reliance on legislation precludes retroactive application of a judicial determination that a statute is unconstitutional. See, e.g., Aldana v. Holub, 381 So. 2d 231 (Fla. 1980) (decision holding statute unconstitutional applied prospectively only); ITT Community Dev. Corp. v. Seay, 347 So. 2d 1024 (Fla.1977) (ruling that ad valorem tax statute is unconstitutional applied prospectively only); Deltona Corp. v. Bailey, 336 So. 2d 1163 (Fla. 1976) (same); Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433 (Fla. 1973) ("Interlachen I") (same). Therefore, even if the statute at issue is declared unconstitutional, the property appraiser cannot increase the taxpayer's liability. This is yet another reason the property appraiser does not have standing to attack the constitutionality of the statute -- the ruling he seeks could not affect the case. Only in Interlachen Lakes Estates, Inc. v. Brooks, 341 So. 2d 993 (Fla. 1976), a decision arising from the Supreme Court's failure to consider the property appraiser's lack of standing when it declared a statute unconstitutional in Interlachen I, has a decision striking down a statute been held retroactive. That aberrational decision does not overturn the general body of law holding that taxpayers are entitled to rely on the constitutionality of tax laws until they are declared

(continued...)

D. Public Officials Lack a Sufficient Personal Interest in Ensuring Adequate and Expeditious Representation

A third reason public officials do not have standing to challenge state laws is because they lack a sufficient personal interest in the outcome of the litigation.[12] To have standing, parties must have a strong personal interest in the outcome of litigation to ensure that the matter warrants the court's attention and to ensure that the objecting party adequately and expeditiously represents the interest asserted. See, e.g., U.S. Steel Corp. v. Save Sand Key, Inc., 303 So. 2d 9 (Fla. 1974); Brasfield & Gorrie Gen. Contractor, Inc. v. Ajax Constr. Co., Inc., 627 So. 2d 1200 (1st DCA 1993), review denied, 639 So. 2d 975 (Fla. 1994); Gregory v. Indian River Co., 610 So. 2d 547 (Fla. 1st DCA 1992); General Dev. Corp. v. Kirk, 251 So. 2d 284 (Fla. 2d DCA 1971).

When, as here, the law imposes a duty on a public official, he cannot be injured or held personally responsible for performing that duty. See County Comm'rs of Franklin County v. State ex rel.

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[11](...continued)
otherwise.

[12] Some Florida cases express this principle as an "exception" to the general rule that public officers may not challenge the constitutionality of statutes. It is not, however, a true exception. Rather, it is simply an expression of the general standing rule that anyone who brings a lawsuit, whether a public official or not, must have a sufficiently substantial personal stake in the controversy that he will be motivated to act as a vigorous and effective advocate. See, e.g., Hillsborough Inv. Co. v. Wilcox, 13 So. 2d 448 (Fla. 1943) (refusing to adjudicate constitutionality of statute).

Patton, 24 Fla. 55, 3 So. 471 (1888); State v. Johnson, 102 Fla. 19, 135 So. 816 (1931). The property appraiser is an instrumentality of the state, which frees him from liability and precludes him from having a personal interest in the outcome of this litigation, which is essential to his standing to attack the constitutionality of section 192.042(1), Florida Statutes.

II. SECTION 192.042(1), FLORIDA STATUTES, IMPOSES A DEADLINE BY WHICH REAL PROPERTY MUST BE COMPLETED IN ORDER TO BE PLACED ON THE *CURRENT* YEAR'S ASSESSMENT ROLL AND DOES NOT VIOLATE ARTICLE VII, SECTION 4 OF THE FLORIDA CONSTITUTION.[13]

Article VII, section 4 of the Florida Constitution directs the Legislature in relevant part as follows:

> By general law regulations shall be prescribed which shall secure the just valuation of all property for ad valorem taxation . . . .[14]

The Legislature has responded to this directive by enacting the numerous provisions of Florida Statutes, including section 192.042, which provides:

> 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 completed on January 1 shall have no value placed thereon. "Substantially completed" shall mean that the improvement

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[13] FP&L adopts the additional arguments of Appellants concerning the constitutionality of section 192.042(1), Florida Statutes.

[14] The predecessor constitutional provision is Article IX, § 1, Fla. Const. (1885). It also provided that all property be assessed according to its just value.

> or some self-sufficient unit within it can be used for the purpose for which it was constructed.
> (2) Tangible personal property, on January 1, except construction work in progress shall have no value placed thereon until substantially completed as defined in s. 192.001(11)(d).
> (3) Intangible personal property, according to the rules laid down in chapter 199.

The framers of the constitution delegated to the Legislature the responsibility for deciding the specifics of how to secure just valuation. Among the decisions delegated to the Legislature is the question of <u>when</u> the various types of property, as defined by the Legislature, shall be assessed. The Legislature made those timing determinations in section 192.042, stating the deadline by which an improvement to real property must be completed in order to be considered part of the real property available for assessment on the current year's tax roll.

This Court has recently recognized the "timing" characteristic of section 192.042(1), Florida Statutes. In <u>Collier County v. State</u>, 733 So. 2d 1012 (Fla. 1999), this Court stated:

> The constitution requires the Legislature to enact the general law regarding the collection of ad valorem taxes, and <u>the Legislature has established a specific statutory scheme for the timing of the valuation and assessment.</u> Section 192.042(1) makes clear that partial year assessments are not authorized for improvements to real property substantially completed after January 1, which 'shall have no value placed thereon.' There is no ambiguity in the statute. It appears that any benefit to taxpayers was specifically contemplated by the legislative scheme.

<u>Collier County</u>, 733 So. 2d at 1018-19 (emphasis supplied).

In upholding the predecessor statute to section 192.042(1),[15] this Court noted the timing decisions contemplated by the statutory scheme and found them to be constitutional. Culbertson v. Seacoast Towers East, Inc., 212 So. 2d 646 (Fla. 1968). The Court reasoned that "[t]he statute constitutes only a temporary postponement of valuation and assessment of incomplete improvements on real property . . . ." Id. at 647. The Court specifically found that the statute did not grant an exemption from ad valorem taxation in violation of the constitution.[16] Id.

Similarly, section 192.042(1), Florida Statutes, does not grant an exemption from the constitutional requirement that all property be assessed and taxed at just valuation. Rather, the statute regulates the timing of when assessments must occur and permits only "a temporary postponement of valuation and assessment of incomplete improvements on real property . . . ." Id.

The court in Culbertson found that the Legislature had authority to enact regulations reasonably related to the

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[15] § 193.11(4), Fla. Stat. This section provided:

> 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 alteration or improvement of existing structures.

[16] The Court construed Article IX, § 1 of the 1885 constitution.

determination of just valuation of property for taxation purposes. Id. The Fourth District Court of Appeal, construing the current version of section 192.042(1), has reached the same conclusion. In Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383, 385 (Fla. 4th DCA 1983), the court stated:

> The legislature's determination that an incomplete structure, unusable for the purposes intended upon its completion, should not be assessed in that condition is a matter of perception. To this court it appears as a choice based on reason . . . .

The Third District Court of Appeal argued that to accept the proposition that section 192.042(1) was a timing statute, "one must overlook the actual major substantive effect of the statute . . . permanent loss of large sums in tax dollars. . ." Fuchs II, 24 Fla. L. Weekly at D1532. However, the statutory January 1st assessment deadline might also produce a gain of tax dollars in other property tax situations. For example, property that is completed on January 1st, but destroyed by hurricane or fire later in the year, will be assessed and charged taxes as though it was substantially complete and in use throughout the year because it was substantially complete and in use on January 1st.

The need for an orderly process for administering the property tax requires some drawing of lines. The Florida Constitution recognizes this in delegating to the Legislature the power to enact by general law regulations to secure a just value of property. One need only contemplate the task of determining statewide the precise

stage of completion of every house under construction on January 1st in order to appreciate the reasonableness of the Legislature's decision to define real property to include only those buildings that are substantially complete by that date. Therefore, this Court should find that the Legislature's decision in section 192.042(1) to impose a January 1st deadline by which an improvement must be completed in order to be treated as property on the current year's assessment roll is a regulation reasonably related to the determination of just valuation of property for taxation purposes, and the statute should be upheld.

CONCLUSION

For the reasons expressed, FP&L respectfully requests that this Court find that Appellee property appraiser did not have standing to attack the constitutionality of section 192.042(1). FP&L further requests that should this Court reach the constitutional issue, that it uphold the constitutionality of section 192.042(1) and order that the trial court's decision be vacated and the case remanded for reconsideration in light of the statute or for entry of judgment consistent with the ruling of the Value Adjustment Board.

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CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that the text and all footnotes of Brief of Amicus Curiae Florida Power & Light Company was typed using 12 point Courier New font and was fully justified. A three-and-a-half inch disk with a copy of Brief of Amicus Curiae Florida Power & Light Company has been furnished to the Supreme Court of Florida.

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Victoria L. Weber

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Brief of Amicus Curiae Florida Power & Light Company and the Appendix to the Brief of Amicus Curiae Florida Power & Light Company was sent by U.S. Mail on the ____ day of September, 1999, to the following:

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