SUPREME COURT OF FLORIDA

Case No: **SC19-1819**

PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

GARY JOINER, Pasco County Property Appraiser; ET AL.,

Respondents.
_____/

L.T. Case Nos.
2D17-1040
51-2015-CA-1376

ANSWER BRIEF OF RESPONDENT, MIKE WELLS, JR., PASCO COUNTY PROPERTY APPRAISER

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PRELIMINARY STATEMENT

Petitioner, Pinellas County, Florida, will be referred to herein as "Pinellas County." Respondent, Mike Wells, Jr., Pasco County Property Appraiser, is the successor to Gary Joiner, and will be referred to herein as the "property appraiser." References to the record on appeal will be delineated as (R- page #). References to the Initial Brief on the Merits will be delineated as (IB-page #).

STATEMENT OF THE CASE AND OF THE FACTS

This ad valorem tax case involves Pinellas County's action contesting the property appraiser's assessment of 36 parcels of real property (subject property) owned by it but located in Pasco County. The subject property is known as the Cross Bar/A1 Bar Ranch. Pinellas County purchased some, but not all, of the parcels comprising the Cross Bar Ranch in 1976. (R-636) Pinellas County purchased some, but not all, of the parcels comprising the A1 Bar Ranch in 1990. (*Id.*)

In total, the properties consist of approximately 12,400 acres within Pasco County. (R-637) Pinellas County initially acquired the property during the height of the water wars when there was competition for local water services among Pinellas, Hillsborough and Pasco counties. (R-487) The property previously had been used for cattle ranching and orange groves.

The use of the property is revealed in a series of agreements between Pinellas County and various private individuals

and/or for-profit companies. These agreements are attached to the property appraiser's Request for Admissions.[1]

One of the agreements was a Renewal Agreement for Professional Land Management Services at A-1-Bar and Cross Bar Ranches with Albert E. Roller. (R-637, 408-426) Under the agreement, Mr. Roller was provided use of three residences on the property and was authorized to farm 1,500 acres. (R-638) Mr. Roller's farming activities included cattle grazing and hay production. (R-639) Mr. Roller previously had entered into an agreement with the county in 1992, and the renewal extended the timeframe until November 2017. (R-408-410)

The agreement reflected annual compensation to Mr. Roller of $323,530. (R-410) A credit for use of the residences and the right to farm the 1,500 acres was to be applied against that compensation. (R-411) Pinellas County does not share in any revenue generated from Mr. Roller's farming activities, but asserted that the activities benefitted the residents of Pinellas and Pasco

[1] Seemingly persuaded by Pinellas County's argument that its property located in Pasco County was immune from ad valorem taxation regardless of use, the trial court limited discovery to a Request for Admissions. (R-398)

counties by "protecting the aquifer and water resources, providing areas for recreation, education and wildlife habitat, preserving natural resources, and demonstrating that farming is consistent with well fields." (R-639)

Between 1992-1996, approximately 4,400 acres of pastureland was converted to a pine timber operation by planting pine seedlings. (R-647) One of the purposes of the timber operation was to attempt to make the properties financially self-sustaining. (R-648) The pine plantations also were established to protect aquifer recharge areas. (*Id.*) Harvesting of the pine timber began in April 2012 and is expected to continue for 10 years, with an expected gross harvest value of $3,120,000. (*Id.*)

Pinellas County also entered into an agreement with Natural Resource Planning Services, Inc. (NRPS). (R-640, 427-453) NRPS was responsible for forestry operations and wildlife management and was entitled to 15 percent of the gross proceeds of pine straw sales and 10 percent of the gross receipts of the sale of timber. (R-641) NRPS also was paid for its wildlife management services. (R-453)

An agreement with Central Florida Mulch, Inc. (CFM), paid Pinellas County for the right to harvest pine straw. (R-642, 454-460) The projected payments under the agreement were $2,379,037. (R-459) Boyette Timber, Inc., agreed to purchase surplus timber. (R-646) The estimated annual revenue to Pinellas County was $605,000. (R-488, 518-552)

As of the 2014-2016 tax years, therefore, the property supported active forestry and pine straw production, cattle grazing and hay production, productive well fields owned by Tampa Bay Water, approximately 6,000 acres of environmental wetlands, lakes, and wildlife habitats, and an educational center. (R-487) To facilitate these endeavors, Pinellas County entered into agreements with private parties for wildlife management, timber and pine straw harvesting, forestry, and caretaking of the properties.

Since the properties were initially acquired by Pinellas County, they had been subject to ad valorem taxation in Pasco County and received an agricultural classification, which results in a valuation based solely on the use of the property pursuant to section 193.461, Florida Statutes (2021). (R-271-74, 637) In its Initial Brief, Pinellas County represents that it "voluntarily paid 'contributions in

lieu of taxation' in amounts equal to what the ad valorem taxes would have been if the Property had not been immune." (IB-2) The limited record does not exactly support such a representation.

The record includes an exchange of correspondence between Pinellas County and the property appraiser in 1996. A letter from the property appraiser states that an analyst for Pinellas County Utilities recently visited the office and "indicated that Pinellas County prefers to pay a property tax rather than be immunized from tax on the Cross Bar Ranch and Al-Bar Ranch properties." (R-271) The property appraiser stated that he was "pursuing your request and Pinellas County will receive a tax bill" in November (*Id.*)

Two days later, Pinellas County responded that it had "been paying taxes in Pasco County since it purchased the properties in 1976 and 1989." (R-273) "We continue to keep the properties in agricultural production as good land stewards. We believe continued taxation under the Green Belt provision, as any private property owner would be taxed, is the responsible position for our holding in Pasco County." (*Id.*) The letter stated that the analyst had not requested a tax bill but, instead, the county would make a

contribution in lieu of taxation to Pasco County based on the Green Belt provisions. (*Id.*)

The record includes tax bills reflecting payment thereof for the 2014 tax year and a receipt for payment of taxes in 2015. (R-275-287) The 2016 taxes were paid into the court registry. (R-653) The Complaint alleges that Pinellas County paid the 2014 taxes. (R-3) In response to requests for admissions, Pinellas County admitted "that the Subject Properties have been assessed ad valorem taxes since Pinellas County acquired them" and that it had "paid the annual ad valorem taxes for the Subject Properties since acquiring them, through the year 2014 and thereafter." (R-637)

During an audit of the management of the property, the Division of Inspector General for the Clerk of the Circuit Court and Comptroller included a finding that the property may be exempt from ad valorem taxation. (R-508-9) The audit recommended that the possibility that some or all of the parcels could be exempt should be evaluated. (R-509) As a result, Pinellas County filed suit contesting the 2014 tax year. (R-1) Pinellas County sought to discontinue its payment of taxes and asserted that the properties were immune from taxation.

The parties subsequently filed cross motions for summary judgment. (R-59, 655) Essentially, the opposing legal arguments were focused on whether Pinellas County's immunity from ad valorem taxation for real property it owned terminated at its geographical boundary. Pinellas County argued that its immunity from ad valorem taxation existed without regard to the location of the property within Florida and without regard to the use thereof. (R-64) The property appraiser disagreed and argued that immunity must be confined to the boundary of the county. (R-661) Moreover, any immunity from taxation was inappropriate where the use of the property was to generate profits for the county and the private, for-profit companies using the property. (R-669)

The trial court entered final summary judgment in favor of Pinellas County. (R-678) "As a political subdivision of the state, Pinellas County is entitled to sovereign immunity which includes immunity from ad valorem taxation of its properties. This immunity applies regardless of whether those properties are located within the boundaries of Pinellas County or in another county within the state of Florida." (R-679)

On appeal, the second district court reversed the trial court's decision. *Joiner v. Pinellas Cnty.*, 279 So.3d 860 (Fla. 2d DCA 2019). The court held that a county's immunity from taxation did not extend beyond a county's jurisdictional boundaries. *Id.* As the district court explained:

> Pasco County and Pinellas County might each derive its sovereignty from the state, of which each are subdivisions. *But it does not follow that each may exert its sovereignty within the territory of the other so as to vitiate the constitutional power the other enjoys within its own jurisdiction.* The distinction between an exemption and an immunity from taxation—asserted by Pinellas County to justify such encroachment on the power of its neighbor—is actually a distraction. States are immune from taxation, but that immunity does not eliminate their obligation to pay taxes on property situated in another political entity's jurisdiction.
>
> In other words, even though an immunity from taxation indicates 'the absence' of the 'power to tax,' *Dickinson*, 325 So. 2d at 1, some political entities actually do have the power to tax other entities that are immune from taxation: those political entities in whose territorial jurisdiction the otherwise immune entities' property lies. This is true of states, Indian tribes, and nations. Nothing about the distinction between immunity and exemption makes this untrue with regard to a county. *Political entities only have sovereign immunity where they are sovereign and, to paraphrase a*

> *point cogently expressed by Judge Casanueva in his concurring opinion: Pinellas and Pasco cannot both be sovereign on the same matter in the same place.*

Id. at 866 (emphasis added, underline in original).

After rejecting Pinellas County's claim that the property located in Pasco County was immune from taxation, the district court remanded the case to the trial court to determine whether the property could be statutorily exempt from taxation. *Id.* The district court also certified the following question to this Court:

> IS PROPERTY OWNED BY A COUNTY LOCATED OUTSIDE ITS JURISDICTIONAL BOUNDARIES IMMUNE FROM AD VALOREM TAXATION BY THE COUNTY IN WHICH THE PROPERTY IS LOCATED?

Id. This Court is respectfully requested to answer the certified question in the negative and approve the district court's decision.

SUMMARY OF ARGUMENT

I. IMMUNITY FROM AD VALOREM TAXATION IS LIMITED TO THE JURISDICTIONAL BOUNDARY OF THE COUNTY.

The issue presented in this case, i.e., whether real property owned by one county but located in another county retains its immunity from ad valorem taxation, has not been previously

addressed by this Court. Proper analysis of the issue requires an understanding of the fundamental principles of immunity from taxation and how they are applied concurrently between two co-equal political subdivisions. Without question, property owned by Pinellas County and located therein is immune from ad valorem taxation. That immunity from taxation, however, cannot continue to exist when the property is located within the geographical boundaries of another county. Any immunity from taxation must yield to the power of the neighboring county to tax.

The public policy underlying immunity from taxation is that it must be presumed that the sovereign would not tax itself, and the child cannot tax its parent. In the present scenario, this underlying public policy is simply not present. The two counties comprise distinct geographic boundaries and distinct property therein. The counties are co-equals and each has identical dignity. By imposing the tax immunity of one political subdivision owning property outside of its jurisdictional boundaries over the taxing power of an equal political subdivision within its territorial limits, this Court would be endorsing the notion that one county is supreme over the other county, which is without basis.

It is therefore inappropriate for Pinellas County to assert immunity from ad valorem taxation on its properties located in Pasco County. Pinellas County cannot unilaterally subjugate Pasco County by simply acquiring real property therein. The immunity from taxation of Pinellas County does not vitiate the taxing powers of Pasco County.

II. COUNTY-OWNED PROPERTY THAT IS USED BY PRIVATE, FOR PROFIT CORPORATIONS AND INDIVIDUALS FOR PROPRIETARY PURPOSES IS SUBJECT TO AD VALOREM TAXATION.

Even if county-owned property retains its immunity from taxation when located in another county, the use of the property by for-profit corporations and individuals should subject it to ad valorem taxation. All governmentally-owned property that is used by for-profit corporations for proprietary purposes must pay ad valorem taxes to the same extent as other taxpayers. Although the taxation of such property is constitutionally required, it also has been statutorily recognized in section 196.199, Florida Statutes (2021).

STANDARD OF REVIEW

A trial court's order granting summary judgment is reviewed *de novo*, with the appellate court viewing the facts in a light

most favorable to the non-moving party. *Treasure Coast Marina, L.C. v. City of Fort Pierce,* 219 So.3d 793, 795 (Fla. 2017); *Maronda Homes, Inc. v. Lakeview Reserve Homeowners' Ass'n, Inc.*, 127 So.3d 1258 (Fla. 2013).

ARGUMENT

I. IMMUNITY FROM AD VALOREM TAXATION IS LIMITED TO THE JURISDICTIONAL BOUNDARY OF THE COUNTY.

Pinellas County argues that its immunity from taxation was not expressly waived, therefore, it extends to the subject property. Pinellas County incorrectly frames the issue. Because the powers of these two co-equal political subdivisions are in direct conflict, this Court must initially determine whether the property is entitled to immunity from taxation before it can proceed to analyze whether there was any waiver of that immunity. *See Pan-Am Tobacco Corp. v. Dep't of Corrections*, 471 So.2d 4, 5 (Fla. 1984) ("We therefore hold that where the state has entered into a contract fairly authorized by the powers granted by general law, the defense of sovereign immunity will not protect the state from action arising from the state's breach of that contract.").

Without question, property owned by Pinellas County and located therein is immune from ad valorem taxation. That immunity from taxation, however, cannot continue to exist when the property is located within the geographical boundaries of another county. Any immunity from taxation must yield to the power of the neighboring county to tax and is limited to the jurisdictional boundaries of the county asserting the immunity. All governmental powers necessarily have limitations thereon.

A. Pinellas County, a political subdivision of the State, does not enjoy the same immunity from taxation as the State.

To understand why immunity from taxation should not extend past Pinellas County's jurisdictional boundaries requires a discussion of the fundamentals of government and the relationship between the state and its counties. Pinellas County asserts that, as a political subdivision of the state, it possesses an equal level of authority as that of the state. As a result, it should be entitled to immunity from taxation, even on property located in another county. Pinellas County relies on Florida's well-established principle of immunity from taxation to support its argument. (IB-10)

In Florida, it is well-established that the state and its political subdivisions are immune from taxation. *Cason v. Dep't of Mgmt. Servs.*, 944 So.2d 306, 309 (Fla. 2006); *Dickinson v. City of Tallahassee*, 325 So.2d 1, 3 (Fla. 1975). Such immunity "is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government." *Dickinson*, 325 So.2d at 3 (quoting *State ex rel. Charlotte Cnty. v. Alford*, 107 So.2d 27, 29 (Fla. 1958)). "The question of 'immunity' is more than merely a facial exercise in constitutional and statutory construction. There are compelling policy reasons for the doctrine in terms of fiscal management and constitutional harmonization." *Id.* at 4.

An oft-cited Florida case for the proposition that county-owned property is immune from ad valorem taxation is *Park-N-Shop, Inc., v. Sparkman*, 99 So.2d 571 (Fla. 1957). There, county-owned land was leased to private businesses under a contractual provision that no ad valorem taxes would be assessed on the land, but the buildings would be subject to taxation. *Id.* at 571. This Court held that "property of the state and of a county, which is a political division of the state, Sec. 1, Article VIII, is *immune* from taxation." *Id.* at 573. This Court reasoned that it would be illogical for the county to tax

itself via a contractual provision. "We decline to hold that it should assess taxes against its own land, pay the money to itself, then surcharge the lessees for the amount." *Id.* at 574.

The present situation is distinguishable, as the owner of the property is a county holding extraterritorial land, not a county holding property within its own boundary. The county in which the property is situated is not taxing itself, rather it is taxing the property owned by a sister county that is of equal dignity. *Park-N-Shop* addressed a scenario where the property at issue was owned by the county attempting to impose the ad valorem tax and is inapplicable when a county is assessing a property owned extraterritorially by another county.

The general rule that counties are immune from ad valorem taxation should not extend to situations where the county is seeking tax immunity for property located beyond its jurisdictional boundary. "Immunity from ad valorem taxation, which this Court has recognized as necessary to the proper functioning of state government, must be kept within narrow bounds." *Canaveral Port Auth. v. Dep't of Revenue*, 690 So.2d 1226, 1227 (Fla. 1996) (footnotes omitted). *Canaveral Port Auth.*, relying upon *Dickinson*, *Park-N-Shop*,

and *Alford*, observed that immunity from taxation was "necessitated by the compelling policy reasons of fiscal management and constitutional homogenization." 690 So.2d at 1227. This Court declined to extend immunity from taxation to a special district because only those entities expressly recognized in the Florida Constitution as performing a function of the state are entitled to immunity. As such, immunity from ad valorem taxation is "limited to counties, entities providing the public system of education, and agencies, departments, or branches of state government." *Id.* at 1228.

The fundamental governance and intergovernmental finance considerations underlying this Court's decisions in *Canaveral Port Auth.*, *Dickinson*, *Park-N-Shop*, and *Alford* cease to exist when the tax immunity is claimed beyond the jurisdictional boundaries of the state and its political subdivisions. Simply stated, the State of Florida should have no claim of sovereign immunity from ad valorem taxation on lands owned in Georgia, and a county likewise

has no such tax immunity for property owned beyond its jurisdictional boundaries.[2]

Being a political subdivision of the state, moreover, is not equivalent to being the state itself. Contrary to Pinellas County's argument, a county is not the same as the state. Though state sovereign powers flow through to its county subparts, to say that the state and its counties are one in the same oversimplifies and ignores the actual constitutional structure of state and local governments.

Under the Florida Constitution there is a clear distinction between the state and local government. The organization of the state is set forth in Articles III and VIII of the Constitution. Local government is set forth in Article VIII. Under Article VIII, the state is divided into political subdivisions called counties. Art. VIII, § 1(a),

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[2] The fundamental premise of immunity from taxation must be distinguished from municipal exemptions, which require specific constitutional authorization. *See* Art. V, § 3, Fla. Const. Section 3(a) contains language authorizing the legislature to require a municipality owning property outside its jurisdictional boundaries to make payment to the jurisdiction where the property is located. The language recognizes the holdings in *Gwin v. City of Tallahassee*, 132 So.2d 273 (Fla. 1961), and *Saunders v. City of Jacksonville*, 25 So.2d 648 (Fla. 1946), where the Court concluded that the provision of electricity was a valid municipal purpose, even when the facilities are located outside the municipality.

Fla. Const.; *Amos v. Matthews*, 126 So. 308, 320 (Fla. 1930). Counties have their own form of government, supervised by their own county officers, and raise and expend their own county funds. Art. VIII, § 1, Fla. Const. The Florida Constitution and Florida Statutes confer upon each county the authorization to tax all property within the county. *See* Art. VII, § 9, Fla. Const. (providing that counties shall be authorized by law to levy ad valorem taxes); § 125.016, Fla. Stat. (2021) (authorizing counties to levy ad valorem tax "upon all property in the county"). The constitution mandates that the State pass general laws authorizing local governments to levy ad valorem taxes on real estate and tangible personal property. *Collier Cnty. v. State*, 733 So.2d 1012, 1014 (Fla. 1999). In contrast, the State is prohibited from levying ad valorem taxes. Art. VII, § 1(a), Fla. Const.

In an early case, this Court examined at length the differences between a county and the state. *Amos*, 126 So. at 321. This Court rejected the argument that a county is a mere arm of the state; that it is simply the state acting locally, stating:

> *It is contended in this case that a county is a mere arm or agency of the state; that it is merely 'the state acting locally.' The foregoing résumé of our constitutional system negatives this theory*

> *so far as the administration of purely local affairs is concerned.*
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> * * * *
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> While a county in the performance of certain functions is an agency or arm of the state, it is also something more than that. If a county were no more than a mere agent of the state—the state acting locally—bonds issued by a county would in effect constitute state bonds, and therefore by virtue of section 6 of article 9 of the Constitution would be void ab initio. *While the county is an agency of the state, it is also under our Constitution, to some extent at least, an autonomous, self-governing, political entity with respect to exclusively local affairs, in the performance of which functions it is distinguished from its creator, the state, and for its acts and obligations when acting in purely local matters the state is not responsible.*

Id. at 321 (emphasis added). This Court further recognized that the Constitution "contemplates that an exclusively state purpose must be accomplished by state taxation; an exclusively county purpose, *in which the state has no sovereign interest*, by county taxation." *Id.* (emphasis added).

It is well settled that the state cannot usurp the powers of county officers in the determination of property values for ad valorem tax purposes. *See Dist. Sch. Bd. of Lee Cnty. v. Askew*, 278 So.2d 272 (Fla. 1973) (holding state cannot supplant the property

appraiser's valuation with its opinion of the value without overcoming the presumption of correctness accorded to the property appraiser's valuation); *Dep't of Rev. v. Ford*, 438 So.2d 798 (Fla. 1983) (holding lack of statewide uniformity of assessments does not give a taxpayer a cause of action to reduce a tax assessment); *Spooner v. Askew*, 345 So.2d 1055 (Fla. 1977) (holding state officials cannot compel property appraisers to increase assessments based on interest in statewide uniformity). With particular regard to ad valorem taxation, a county is not the same as the state.

This Court has previously recognized the state's immunity from taxation by a city in *Dickinson*. There, the City of Tallahassee sought to impose a tax on all purchases of electricity, water, and gas. The ordinance specifically exempted purchases of the federal government and churches but contained no exemption for the state.

This Court observed that the "state's immunity from taxation is so well established in Florida's jurisprudence that little elaboration is needed here" and concluded that the City could not tax the state. *Id.* at 3. This Court held as follows:

> If we were to adopt the City's suggestion that the State is only exempt from taxation, the present Florida Constitution would enable the

> cities to tax the State and its counties without their being able to tax the cities. The City sees no harm in this, saying that the Legislature can at any time, by statute, change that result. That solution, however, does not answer the more significant question of initial legislative awareness. It does not explain why the Legislature would authorize state taxation by the municipalities without some advance indication as to which municipalities would choose to tax the State and to what extent. The State would have no way to anticipate revenue needs or appropriate funds sufficient to meet those variant tax burdens. *Thus, it is inconsistent with sound governmental principles to suggest that a state which cannot finance itself on a deficit basis would indirectly authorize an indeterminate amount of revenue to be taken from all of its citizens for the benefit of some of its municipal governments*. A more logical approach to intergovernmental finance would require, as the State contends, a clear and direct expression of the State's intention to subject itself to selective, local tax burdens.

Id. at 4-5 (emphasis added).

This Court's holding in *Dickinson*, upholding state immunity from taxation, is consistent with the federal government's immunity from taxation by the states. *See* U.S. Const. Art. VI; *McCulloch v. Maryland*, 17 U.S. 316 (1819). *McCulloch* involved Maryland's attempted taxation of notes issued by the national bank located in Maryland. In declaring the federal government immune

from state taxation, the United States Supreme Court viewed the issue in terms of the state's "power" to tax the federal government. *Id.* at 394-5. As the Court stated:

> There must be, in this case, an implied exception to the general taxing power of the states, because it is a tax upon the legislative faculty of congress, upon the national property, upon the national institutions. *Because the taxing powers of the two governments are concurrent in some respects, it does not follow, that there may not be limitations on the taxing power of the states, other than those which are imposed by the taxing power of Congress.* Judicial proceedings are practically a subject of taxation in many countries, and in some of the states of this Union. *The states are not expressly prohibited in the constitution, from taxing the judicial proceedings of the United States. Yet such a prohibition must be implied, or the administration of justice in the national courts might be obstructed by a prohibitory tax.*
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> All the property and all the institutions of the United States are, constructively, without the local, territorial jurisdiction of the individual states, in every respect, and for every purpose, including that of taxation. *This immunity must extend to this case, because the power of taxation imports the power of taxation for the purpose of prohibition and destruction.*

Id. (emphasis added).

In reaching its decision, the Court rejected the argument that, because the federal government could tax state banks, the states had the concomitant power to tax federal banks. *Id.* at 436. Again, the Court viewed the issue in terms of the respective powers of the federal and state governments. As the Court stated:

> But it is said, that Congress possesses and exercises the unlimited authority of taking [sic] the State banks; and therefore, the States ought to have an equal right to tax the Bank of the United States. *The answer to this objection is, that, in taxing the state banks, the States in Congress exercise their power of taxation. Congress exercises the power of the people; the whole acts on the whole. But the state tax is a part acting on the whole.*

Id. at 398 (emphasis added).

The holding in *McCulloch* provided the foundation for the federal Intergovernmental Tax Immunity "ITI" Doctrine, which concerns the respective taxing power of sovereign governments. *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 810 (1989). The underlying principle of the ITI Doctrine is the need to protect each sovereign's governmental operations from undue interference by the other. *Id.* at 814. A central inquiry in the application of the ITI Doctrine is whether, and to what extent, the tax implemented by the

sovereign will impinge upon a legitimate governmental goal of another sovereign. *Alarid v. Sec'y of N.M. Dep't of Taxation & Revenue*, 118 N.M. 23 (N.M. Ct. App. 1994). The ITI Doctrine has been applied in several cases concerning the taxing powers of the federal government with that of the state government, working to safeguard sovereigns from improper influences. *Alarid*, 118 N.M. 23; *Harmon v. Dir. of Revenue*, 894 S.W.2d 154 (Mo. 1995); *Ragsdale v. Dep't of Revenue*, 895 P.2d 1348 (Or. 1995).

Federal and Florida law share the same basic principles and structure. Just as state taxation is a child acting on the parent in the federal government, county taxation is a child acting on the parent in state government. *See McCulloch*, 17 U.S. at 398. Although counties share some powers with the state, ad valorem taxation is a local government function that is separate and distinct from the functions of the state. *See Amos*, 126 So. at 321. Pinellas County is a political subdivision of the state just as Pasco County.

Counties are equal political subdivisions where the rights of one county does not surpass another county. As the second district court concluded:

> Because counties are political subdivisions of the State, their ad valorem taxation power must necessarily yield to the immunity of the State, whose boundaries subsume all county property. But that does not mean that a county's taxation authority must yield to another county, whose boundaries, of course, are neither overlapping nor coextensive with any other county.
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> Like a county's assertion of immunity from municipal taxes on property the county owns within its own boundaries, *see Dickinson*, 325 So. 2d at 3, the State's assertion of immunity from county taxation is not extraterritorial. However, a state that owns property outside its territorial boundaries cannot assert immunity from taxation by the jurisdiction in which that property lies, such as another state. *In fact, this court is unaware of any political entity – not states, not Indian tribes, not nations – that can claim sovereign immunity from taxation for its extraterritorial land holdings. Pinellas County apparently aims to be the first.*

Joiner, 279 So.3d at 862 (emphasis added). The district court correctly pointed out that immunity from taxation is limited by jurisdictional boundaries. *Id.* This is true within Florida as well as between states, nations, and Indian tribes. All governmental powers necessarily have limitations. Pinellas County lacks the unfettered power to acquire any property throughout the state, claim that it is immune from taxation, and unilaterally eliminate any responsibility

for payment of the taxes necessary to fund governmental services in the political subdivision where the property is located.

B. Florida's counties, as political subdivisions of the State, are co-equal entities in power, dignity, and authority.

It is a fundamental constitutional principal that states are entitled to equal sovereignty. *Shelby Cnty. v. Holder*, 570 U.S. 529, 544 (2013).[3] States are "equal in power, dignity, and authority." *Id.* "There can be no distinction between the several states of the union in the character of the jurisdiction, sovereignty and dominion which they may possess and exercise over persons and subjects within their respective limits." *Illinois Cent. R. Co. v. State of Illinois*, 146 U.S. 387, 434 (1892). The United States Supreme Court further explained the relationship between the states under the Due Process Clause of the Fourteenth Amendment:

> Nevertheless, we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution. The

[3] A recent article extensively discusses and defends the doctrine of equal sovereignty of states. Thomas B. Colby, *In Defense of the Equal Sovereignty Principle*, 65 Duke L. Journal 1087 (2016). The article provides historical context and support for the Supreme Court's holding in *Shelby County v. Holder*, 570 U.S. 529 (2013).

> economic interdependence of the States was foreseen and desired by the Framers. In the Commerce Clause, they provided the the Nation was to be a common market, a 'free trade unit' in which the States are debarred from acting as separable economic entities. *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 538, 69 S.Ct. 657, 665, 93 L.Ed. 865 (1949). But the Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States – a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980).

In an early case addressing state sovereignty, the United States Supreme Court held that a government obtaining extraterritorial property in another government's territory does not extend its sovereignty into the latter's territory. *State of Georgia v. City of Chattanooga*, 264 U.S. 472 (1924). There, the State of Georgia purchased territory in the City of Chattanooga, Tennessee, on which land a railroad yard was operated. *Id.* at 478. Subsequently, the City of Chattanooga sought to condemn the land and Georgia asserted that its immunity precluded the City from doing so. *Id.* at 479.

The Supreme Court held that land "acquired by one state in another state is held *subject to the laws of the latter and to all the incidents of private ownership*." *Id.* at 480 (emphasis added). Furthermore, the "sovereignty of Georgia was not extended into Tennessee" through the purchase of extraterritorial land. *Id.* at 481. The Supreme Court reasoned that, when Georgia purchased extraterritorial land, its "enterprise in Tennessee is a private undertaking" and it "occupies the same position there as does a private corporation authorized to own and operate a railroad, and as to that property, *it cannot claim a sovereign privilege or immunity*." *Id.* (emphasis added). When a political subdivision obtains extraterritorial land within another political subdivision it does not project its sovereignty into that territory. Rather, it takes the land as a private entity does, subject to the laws and authority of the jurisdiction in which the land is situated.

A government that obtains extraterritorial property holds this property in the same manner, and subject to the same burdens, as a private entity. In an action against the City of Augusta, Georgia, the plaintiff asserted that a municipality's ownership and operation of a bridge across state lines, extraterritorially, resulted in the loss of

tort immunity by the municipality. *City Council of Augusta v. Hudson*, 15 S.E. 678, 679 (Ga. 1891). The Georgia Supreme Court held that when the government acted extraterritorially "it must perform the duties and assume the burdens incident to carrying on this business" because the municipality "entered the state of South Carolina to engage in private business and enjoy the profits thereof." *Id.* Furthermore, whatever "immunity, if any, from liability to action of this sort, it may have possessed at home, as part of the government, the same was lost when *it divested itself of the attributes of sovereignty by undertaking such a business* in another state." *Id.* (emphasis added).

Similar to the relationship between states, Florida's counties are equal in power, dignity, and authority. The lands owned by Pinellas County within the jurisdictional boundaries of Pasco County are subject to the authority of Pasco County, therefore, they are appropriately subject to taxation. Consistent with the Supreme Court's decision in *Chattanooga*, Pinellas County's decision to acquire property in Pasco County does not vitiate the taxing powers of Pasco County. As such, the extraterritorial lands that Pinellas County owns are subject to ad valorem taxation.

Pinellas County accrues the benefits of owning private property within Pasco County and must assume the burdens associated with ownership of this private property. Immunity from ad valorem taxation on its extraterritorial properties is inappropriate and would result in a windfall to Pinellas County at the expense of Pasco County.

C. Property owned by foreign nations is subject to taxation absent treaty.

Property and transactions of foreign countries and their diplomats within the United States are not immune from taxation absent treaties between nations and guaranties of reciprocity. *See* 22 U.S.C. §§ 4301-4316 (the Foreign Missions Act, which provides real estate sale and use, occupancy, food, airline, gas, and utility tax exemptions to foreign officials, based on existing treaties and reciprocity between the nations); *see also City of New York v. Permanent Mission of India to the United Nations*, 618 F.3d 172, 175 (2d Cir. 2010) (holding that the Foreign Missions Act "permits the State Department to designate affirmative benefits such as tax exemptions and that the Act allows the State Department to make such tax exemptions preemptive of State and municipal tax laws").

Federal law provides a list of exceptions to a foreign nation's sovereign immunity, one of which is immovable property. *See* 28 U.S.C. § 1610(a)(4)(B). "American common law has long recognized an 'exception to sovereign immunity for actions to determine rights in immovable property.'" *Cayuga Indian Nation of N.Y. v. Seneca Cnty.*, 978 F.3d 829, 836 (2d Cir. 2020) (quoting *Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649, 1655 (2018) (Roberts, C.J., concurring)). This rule derives from two basic aspects of sovereign immunity:

> The first is that 'property ownership is not an inherently sovereign function.' *Permanent Mission of India to the United Nations v. City of New York*, 551 U.S. 193, 199, 127 S.Ct. 2352, 168 L.Ed.2d 85 (2007) ('*Permanent Mission of India II*'). Thus, when a state acquired lands outside if its own territory, courts traditionally treated that land as if it were owned by a private individual. *See Schooner Exch. V. McFaddon*, 11 U.S. (7 Cranch) 116, 145, 3 L.Ed. 287 (1812) ('A prince, by acquiring private property in a foreign country, may possibly be considered as subjecting that property to the territorial jurisdiction, he may be considered as so far laying down the prince, and assuming the character of a private individual.').
>
> The second is that each state has 'a primeval interest in resolving disputes over use or right to use of real property' located within its own territory. *Asociacion de Reclamantes v.*

> *United Mexican States*, 735 F.2d 1517, 1521 (D.C. Cir. 1984) (Scalia, J.). Land is 'indissolubly connected with the territory of a [s]tate,' *Upper Skagit*, 138 S. Ct. at 1658 (Thomas, J., dissenting); the boundaries of a state's territory, in turn, generally limit the reach of the state's sovereign powers, *see The Apollon* 22 U.S. (9 Wheat) 362, 370, 6 L.Ed. 111 (1824) ('The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens.'). A state therefore 'cannot safely permit the title to its land to be determined by a foreign power.' *Asociacion de Reclamantes*, 735 F.2d at 1521 (quoting 1 F. Wharton, Conflict of Laws § 278, at 636 (3d ed. 1905)).

Cayuga Indian Nation of N.Y., 978 F.3d at 836.

Federal law recognizes the challenging relationship between real property and immunity from taxation and has determined it is more reasonable to limit tax immunity as opposed to a sovereign's power over its own territory. *See* 28 U.S.C. § 1610(a)(4)(B). This relationship is at play between the two co-equal political subdivisions of Pinellas County and Pasco County. Like the federal courts, this Court should limit immunity from taxation to property located within the jurisdictional boundaries.

D. Property owned by Indian tribes outside their reservations or Indian country is not immune from taxation.

It is well established that states generally lack jurisdiction to levy taxes on Indians and Indian-owned lands located within reservations "'[a]bsent cession of jurisdiction or other federal statutes permitting it.'" *County of Yakima v. Confederated Tribes and Bands of Yamika Nation*, 502 U.S. 251, 258 (1992), quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973).[4] State governments lack jurisdiction to tax Indians and Indian-owned lands located within reservations unless Congress enacts legislation in which its intent to repeal exemption from state taxation is "'unmistakably clear.'" *County of Yakima*, 502 U.S. at 258, quoting *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765 (1985).

In contrast to Indians and Indian-owned lands located within reservations, state governments generally have taxing

[4] The United States Supreme Court limited the holding in *Yakima* in the context of sovereign immunity. *Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649, 1653 (2018) ("In short, *Yakima* sought only to interpret a relic of a statute in light of a distinguishable precedent; it resolved nothing about the law of sovereign immunity."). However, this does not affect the portion of the opinion relied on in this brief.

jurisdiction over Indians and Indian-owned lands located *outside* reservations. *Mescalero*, 411 U.S. at 145 (emphasis added). *Mescalero* involved a ski resort operated by a federally recognized tribe on off-reservation land leased from the federal government, which the tribe claimed was exempt from state taxation. *Id.* at 146.

The Supreme Court expressly rejected "the broad assertion that the Federal Government has exclusive jurisdiction over the Tribe for all purposes and that the State is therefore prohibited from enforcing its revenue laws against any tribal enterprise '[w]hether the enterprise is located on or off tribal land.'" *Id.* at 147-48 (alternation in original) (citation omitted). The Court then emphasized that "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Id.* at 148-49. Thus, the Court held that the state could impose a non-discriminatory gross receipts tax on the ski resort because, although operated by the tribe, it was located off the reservation. *Id.* at 145; *accord Wagnon v. Prairie Band Potawatomi*

Nation, 546 U.S. 95 (2005) (upholding state tax imposed on non-Indian and arising out of transaction that occurs off the reservation).[5]

Furthermore, Native American tribal sovereign immunity is not a defense to *in rem* actions against property owned extraterritorially by tribes. *See Cass Cnty. Joint Water Resource Dist. v. 1.43 Acres of Land in Highland Township*, 643 N.W.2d 685 (N.D. 2002); *Miccosukee Tribe of Indians of Fla. v. Dep't of Environmental Protection*, 78 So.3d 31 (Fla. 2d DCA 2011). In *Cass Cnty.*, a tribe of Chippewa Indians owned 1.43 acres of land approximately 200 miles from the reservation. 643 N.W.2d at 688. The court was presented with the issue of whether tribal sovereign immunity may be relied upon to defend extraterritorial property against an *in rem*, eminent domain proceeding by the jurisdiction in which the property was situated. As with an eminent domain action, an ad valorem property tax is an *in rem* action, as it flows exclusively from the ownership of realty upon which the action is brought. *Id.* at 692.

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[5] The general rule precluding state jurisdiction to levy taxes has been restated by the Supreme Court to apply to Indians and Indian-owned lands located within "Indian country." *Okla. Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114 (1993). Both formal reservations and informal reservations, lands held in trust for an Indian tribe by the federal government, are considered "Indian country." *Id.* at 124–25.

The court stated that, while the continued validity of the doctrine of tribal sovereign immunity is not in question, it was a novel question as to whether the doctrine protected extraterritorial property from *in rem* proceedings. *Id.* at 691. In holding that the sovereign immunity of the tribe did not prevent the *in rem* claim, the court found that "the district could validly exercise jurisdiction over this condemnation action." *Id.* at 694. The "private land which has been purchased in fee" is not immune simply because it is held in ownership by a tribe that is immune within its own boundaries. *Id.*

The second district court in *Miccosukee* relied upon *Cass County* to answer a similar question of whether a state agency's attempt to condemn extraterritorial property owned by a sovereign tribe was blocked by that tribe's sovereign immunity. 78 So.3d at 32. There, the court held that because the land was not "within the aboriginal homelands of the Tribe, is not allotted land, and is not held in trust by the federal government for the Tribe" the "Tribe's sovereign immunity is not implicated and does not bar this eminent domain action." *Id.* at 34. Therefore, property held extraterritorially by a sovereign tribe is not protected by immunity from an *in rem* proceeding brought by the jurisdiction in which the property is

situated. *See also Dep't of Revenue v. Seminole Tribe of Fla.*, 65 So.3d 1094 (Fla. 4th DCA 2011) (fuel tax on off-reservation purchases permissible even though on-reservation purchases were immune from taxation).

E. Pinellas County misplaces reliance upon cases involving eminent domain and sovereign immunity from tort.

In an attempt to support its argument that immunity from taxation extends beyond its jurisdictional boundaries, Pinellas County relies on case law involving eminent domain and sovereign immunity from tort. (IB-14-15) Pinellas County also relies on this Court's opinion in *Cason*. However, Pinellas County's reliance on these cases is misplaced.

To support its argument in the eminent domain context, Pinellas County relies on *Pinellas Cnty. v. Baldwin*, 80 So.3d 366, 369–70 (Fla. 2d DCA 2012). Pinellas County argues that *Baldwin* held that the exercise of sovereign power can occur outside a county's geographic boundaries. To the contrary, *Baldwin* merely addressed a venue issue and application of the sword-wielder doctrine exception to the home venue privilege.

In *Baldwin*, Pinellas County owned property located in Hillsborough County that previously had been used as a borrow pit. The plaintiff owned adjacent property in Hillsborough County that she claimed had become permanently flooded as a result of Pinellas County's use of its property. She filed an inverse condemnation action in Hillsborough County, naming Pinellas County as a defendant. *Id.* at 368.

Pinellas County moved to dismiss the complaint for improper venue and asserted the home venue privilege. In support of its motion, the County argued that the complaint failed to allege that the County had undertaken any governmental action outside the limits of its jurisdiction. *Id.*

The plaintiff responded to the motion by asserting the sword-wielder exception to the home venue privilege. The sword-wielder doctrine applies only in those cases where the official action complained of has in fact been or is being performed in the county wherein the suit is filed, or when the threat of such action in said county is both real and imminent. *Id.* at 369.

The trial court denied the motion to dismiss. On appeal, the second district court affirmed.

The district court held that construction undertaken by a county which results in the flooding of a landowner's property with a degree of permanency may result in a taking that gives rise to an action for inverse condemnation. *Id.* at 370. The plaintiff's complaint alleged that the County's activities on its property had caused her property to become permanently flooded. "If true, this would amount to a taking of Ms. Baldwin's property by the County." *Id.*

Pinellas County argues that the sword-wielder exception to the home venue privilege did not apply because the complaint did not allege that it was exercising any governmental powers within Hillsborough County. The district court expressly declined to address the issue, commenting that the "County's argument that the complaint fails to allege any facts demonstrating that the County is exercising its governmental power in Hillsborough County *is beside the point*." *Id.* (emphasis added). As the court further stated:

> The facts alleged in the complaint—which remain to be proven—are that the County has appropriated Ms. Baldwin's property without paying her any compensation. Ms. Baldwin is not 'required to prove in an inverse condemnation action brought after the condemning authority has taken [her] property without due process that such taking was for a public purpose.' *Kirkpatrick v. City of*

> *Jacksonville*, 312 So.2d 487, 490 (Fla. 1st DCA 1975).

Id. In fact, the district court observed that "there may be a question about the County's authority to exercise the power of eminent domain in another jurisdiction in the manner alleged in the complaint." *Id.*

Pinellas County next argues that sovereign immunity from tort liability is not restricted to jurisdictional boundaries, relying upon *Ryan v. Roy*, 801 So.2d 203, 204 (Fla. 4th DCA 2001). (IB-14) In *Roy*, a city police officer on duty stopped at a convenience store located just outside the city to get a drink. *Id.* at 204. Before the officer went inside, he observed a vehicle fitting the description of a vehicle under criminal investigation. After calling the dispatcher, the officer began to walk into the store but two large dogs jumped from the vehicle and came towards him in a threatening manner. The officer shot at the dogs, unfortunately striking a bystander in the ankle with one of the bullets. *Id.*

The injured bystander filed suit and the officer argued he was entitled to tort immunity. *Id.* The fourth district determined that the case hinged on whether the officer was in the scope of his

employment during the incident, making him immune from suit as set forth in section 768.28, Florida Statutes (2021). *Id.* The officer's supervisor testified that the City considered the officer to be on duty, that he had permission to go outside of his jurisdiction, and his actions protecting himself were within the scope of his employment. *Id.*

In holding that the officer was entitled to statutory immunity, the fourth district court determined that the officer was within the scope of his employment even though he was outside of his jurisdiction. *Id.* at 205. Thus, the district court's only discussion of the officer's location outside of his jurisdiction concerned whether he was within the course and scope of his employment.[6] *Id.*

The legal concepts underlying tort immunity, and the limited waiver thereof set forth in section 768.28, are not determinative of, or analogous to, the tax immunity issues of the

[6] A law enforcement officer's investigative power is limited by jurisdictional boundaries. *See Phoenix v. State*, 455 So.2d 1024, 1025 (Fla. 1984); *see also Stouffer v. State*, 248 So.3d 1165, 1168–69 (Fla. 4th DCA 2018) ("The 'power of police to conduct investigations and to gather evidence outside of their jurisdiction' is subject to the 'under color of office' doctrine, which is 'a limitation on the power of police to conduct investigations and to gather evidence outside their jurisdiction.'") (citations omitted)).

instant case. Tort immunity lacks the inextricable conflict between the respective powers of two, co-equal political subdivisions. For such reasons, the discussion of immunity from taxation does not implicate, and should not be considered as dispositive of, the same issues presented in considering tort immunity.

Lastly, Pinellas County relies on this Court's opinion in *Cason* for the proposition that any waiver of immunity from taxation should not be inferred. In *Cason*, the state owned property in Columbia County that it used to operate a youthful offender prison. *Id.* As a result of nonpayment of ad valorem taxes on the property, the county tax collector sold two tax certificates for the taxes due. *Id.* The Florida Department of Management Services eventually filed a complaint to enjoin the sale of the property, but it was not within the sixty days required by section 194.171(2), Florida Statutes. *Id.*

This Court had to determine whether the provisions of section 194.171 applied when the state was the owner of the property and was immune from taxation. *Id.* at 309. This determination depended on whether the state was considered a "taxpayer" under the statute. *Id.* at 312. This Court ultimately determined that the

state did not fall under the definition of a "taxpayer," so it was not subject to the sixty-day requirement in the statute. *Id.* at 316.

Pinellas County and Pasco County are essentially siblings. They are co-equal governmental entities in every sense of the term, and one should not be ranked in priority over the other. The power to be shielded from ad valorem taxes is one inherent power. Likewise, the power to levy taxes on property within the county is another, equal power. The powers of both counties are in direct conflict. To concede that Pinellas County does not have to pay ad valorem taxes on property it owns extraterritorially would be to rank the status of Pinellas County over that of Pasco County.

Counties consist of separate and distinct geographical boundaries. The commercial and residential property within each boundary is rightfully considered separate and distinct from surrounding counties. The power of counties to levy and collect taxes from their occupants is separate and distinct from other counties. The school systems and judicial forums unique to each county are separate and distinct from neighboring counties. Law enforcement powers and public utility obligations for each county are treated as separate and distinct from adjacent counties. Maintenance of

infrastructure and various forms of public transportation inherent to a county's operations are separate and distinct from nearby counties. As such, it is clear that counties are separate and distinct entities that are each tasked with operating for the smooth and effective governance of its citizens.

Given all of the responsibilities that counties possess, the resources to pay for these duties are finite. In part, counties rely on the funds derived from various sources, including ad valorem taxes on the property within its geographical border, to aid in funding the necessary activities of the county government for the benefit of the citizens within. A consistent system for assessing ad valorem taxes within a county is fundamental to the overall fiscal management of that county. Simply put, the power to collect ad valorem taxes is an essential power granted to counties in order to fund and provide the proper benefits to the citizens of that area. This power should not be tossed aside lightly to yield to another county's power to own property that is not even within its own geographic bounds.

The county posits that, by simply holding title to property anywhere in the state, it is automatically immune from ad valorem taxation for that parcel. Under the county's overly simplistic

approach, no consideration would be made for the use of the property, the presence of leases or other encumbrances on the property, the management arrangement of the property, or the effect that the non-payment of ad valorem taxes would have on the host county's overall financial position. The county pushes for one baseline, all-or-nothing condition: is the property owned by a county government? Even if the property lies outside of the boundaries of the county itself and serves no public purpose, no further discussion is necessary because no ad valorem taxes could even possibly be assessed. The intruding county that holds title can do whatever it wants on the property without the concomitant responsibility of having to pay ad valorem taxes to the host county.

As previously stated by the majority, there is no political entity – not states, not nations, and not Indian tribes – that can claim sovereign immunity from taxation for its extraterritorial land holdings. *Joiner*, 279 So. 3d at 862. Where there is direct conflict between counties — which are co-equal political subdivisions — ad valorem tax immunity should be limited to the jurisdictional boundary of the county. If the doctrine of tax immunity were given an absolute application regardless of the extraterritorial nature of the

property, as urged by Pinellas County, it would result in a skewed application of the immunity from taxation doctrine and ultimately have unjust and impractical consequences.

For example, Pasco County could purchase The Vinoy Renaissance Resort in St. Petersburg (within Pinellas County). The hotel, a luxurious 4-star staple of the area, also features a marina that has boat slips to accommodate vessels via short and long-term leases. Assume arguendo that Pasco County officials determined that this water access serves a public purpose for its citizens. Nevertheless, the use of the property or public purpose involved would not even be relevant according to Pinellas County. The result of the acquisition would be to remove a property from the tax roll of Pinellas County for the benefit of Pasco County. Pinellas County would be deprived of a considerable amount of revenue from the tax assessments but still responsible for providing fire and police protection, while Pasco County would be able to utilize the property free from any ad valorem taxation.

Under the approach that Pinellas County urges this Court to adopt, nothing would be wrong with the purely commercial purpose of the county, and they would be able to circumvent the

typical ad valorem taxes assessed to any other non-governmental entity within the same commercial market. This would remove a well-established and high income-producing property from Pinellas County's tax roll, which would have significant consequences on the overall financial resources for the county.

In a similar manner, a county could acquire ownership of large portions of vacant land in another county for the purpose of operating a landfill so that property in its county could be used for more profitable and appealing purposes. The acquisition not only would remove the property from the tax base but also burden that county with an obviously undesirable land use that most likely diminished the value of neighboring parcels.

Another example would be a decision by a highly developed county to acquire land and a water plant in another, more rural county. Again, the tax base is lessened and the county disadvantaged by the unilateral decision of a county with greater fiscal resources to acquire property outside its boundaries.

All of these potential scenarios are easily avoided by limiting the governmental power of immunity from taxation to the jurisdictional boundary of the county. All governmental powers have

necessary limitations; no county should have the unfettered power to acquire property in another county and claim immunity from taxation to the detriment of the citizens of that county.

In the present scenario, the two counties comprise distinct geographic boundaries and distinct property therein. The counties are co-equals, and each has identical powers. By imposing the tax immunity of one political subdivision of the state owning property outside of its jurisdictional boundaries over the taxing power of another, equal political subdivision within its territorial limits, this Court would be endorsing the notion that one entity is supreme over the other, which is plainly without basis. The property within the boundaries of Pasco County is subject to the benefits and burdens of being located therein. Additionally, the burdens of governance fall upon the county in which the property is situated, while the county holding the property extraterritorially receives the benefits of this governance, as would a private entity. The immunity from taxation of Pinellas County does not extend beyond its jurisdictional boundaries to vitiate the taxing powers of Pasco County.

II. COUNTY-OWNED PROPERTY THAT IS USED BY PRIVATE, FOR PROFIT CORPORATIONS AND INDIVIDUALS FOR PROPRIETARY PURPOSES IS SUBJECT TO AD VALOREM TAXATION.

Even if county-owned property retains its immunity from taxation when located in another county, the use of the property by for-profit corporations and individuals for proprietary purposes should subject it to ad valorem taxation. Immunity from taxation has been waived when the property is used by private, for-profit entities using it to generate business profits. *See* § 196.199, Fla. Stat. (2021).

The taxable status of governmentally-owned property used for private purposes is determined by the "function by utilization" test set forth in *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974), and *Williams v. Jones*, 326 So.2d 425 (Fla. 1975). It is the *use* of governmentally owned property by private, for profit corporations or individuals that determines its taxable status and not solely the *ownership* thereof. Thus, property used for proprietary purposes is taxable regardless of whether the property is owned by the state, county, municipality, authority, or other governmental entity. Property used for governmental purposes, on the other hand, is not

subject to ad valorem taxation. Proprietary purposes promote the comfort, convenience, safety and happiness of citizens, whereas governmental functions concern the administration of some phase of government. *Sebring Airport Auth. v. McIntyre*, 642 So.2d 1072, 1074 (Fla. 1994).

Subsequent to this Court's decision in *Park-N-Shop*, the legislature enacted section 196.199, Florida Statutes (2021), in response thereto. *Williams*, 326 So.2d at 434. Section 196.199 provides in pertinent part as follows:

> (1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:
>
> * * * *
>
> *(c) All property of the several political subdivisions and municipalities of this state or of entities created by general or special law and composed entirely of governmental agencies*, or property conveyed to a nonprofit corporation which would revert to the governmental agency, *which is used for governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law.*
>
> * * * *
>
> *(2) Property owned by the following governmental units but used by*

> *nongovernmental lessees shall only be exempt from taxation under the following conditions:*
> *(a) Leasehold interests in property of the United States, of the state or any of its several political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state shall be exempt from ad valorem taxation and the intangible tax pursuant to paragraph (b) only when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in s. 196.012(6).* In all such cases, all other interests in the leased property shall also be exempt from ad valorem taxation. However, a leasehold interest in property of the state may not be exempted from ad valorem taxation when a nongovernmental lessee uses such property for the operation of a multipurpose hazardous waste treatment facility.

(Emphasis added.) Section 196.199 must be read in conjunction with section 196.001, Florida Statutes (2021), which provides that:

> *Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:*
> (1) All real and personal property in this state and all personal property belonging to persons residing in this state; and
> *(2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.*

By enacting section 196.199, the legislature effectively has overruled *Park-N-Shop*. *See Williams*, 326 So.2d at 434. Accordingly,

the function by utilization test should be applied regardless of whether the property is owned by the state, county, municipality, or other governmental unit. Such a result treats all private, for-profit users of governmental property equally; all will be subject to ad valorem taxation. All "privately used property bears a tax burden in some manner and this is what the Constitution mandates." *Williams*, 326 So.2d at 433. The focal point should be the use of the property made by the private, for-profit corporation or individual as opposed to the identity of the governmental unit owning the property.

This Court is advised that the Fourth District Court has reached a contrary conclusion and determined that county-owned property is immune regardless of the use for proprietary purposes. *Markham v. Broward County*, 825 So.2d 472 (Fla. 4th DCA 2002). There, the district court rejected an argument that county-owned property leased to private, for-profit businesses was subject to ad valorem taxation under sections 196.001 and 196.199. The court concluded that the statutes did not clearly and unambiguously waive immunity from taxation and that the "exemptions in chapter 196 apply only to property which does not have immunity. County property is immune." *Markham*, 825 So.2d at 473. The decision

conflicts with the long line of cases discussing the function by utilization test. *See Sebring Airport Auth. v. McIntyre*, 783 So.2d 238 (Fla. 2001); *Capital City Country Club v. Tucker*, 613 So.2d 448 (Fla. 1993); *Walden v. Hillsborough Cnty. Aviation Auth.*, 375 So.2d 283 (Fla. 1979); *Archer v. Marshall*, 355 So.2d 781 (Fla. 1978); *Lykes Bros., Inc. v. City of Plant City*, 354 So.2d 878 (Fla. 1978); *Volusia Cnty. v. Daytona Bch. Racing & Recreational Facilities Dist.*, 341 So.2d 498 (Fla. 1976); *Williams; Straughn*.

In reaching its decision in *Cason*, this Court specifically observed that section 196.199 demonstrates that the legislature "has heeded the dictate that intent to authorize taxes on lands of the State must be expressed in 'clear and unmistakable terms.'" 944 So.2d at 314. This Court commented that the legislature had declared state property to merely be exempt when leased to a nongovernmental lessee serving a governmental purpose as set forth in section 196.199(2). In contrast, property used by leaseholders for nongovernmental purposes was subject to taxation.

This Court is respectfully requested to hold that it is the *use* of the governmentally-owned property by private, for-profit corporations or individuals that determines its taxable status and

conclude that the properties owned by Pinellas County and located in Pasco County are subject to taxation because they are used for proprietary purposes as opposed to governmental purposes. Any purported immunity from taxation — to the extent it could extend beyond county boundaries — has been expressly waived.[7]

CONCLUSION

Based upon the aforementioned arguments and authorities, this Court respectfully is requested to answer the certified question in the negative and approve the district court's decision.

[7] Although this case may be of great significance between the parties, no real showing has been made that it is of great public importance. This Court has previously accepted and then declined jurisdiction in cases involving certified questions of public importance in property tax cases. *See Dade Cnty. Property Appraiser v. Lisboa*, 737 So.2d 1078 (Fla. 1999) (case involving whether an alien seeking political asylum could satisfy the requirements to qualify for Florida's homestead tax exemption failed to present an issue of great public importance because it required consideration of a narrow issue with unique facts); *Barnett v. Dep't of Mgmt. Servs.*, 953 So.2d 461 (Fla. 2007) (declining jurisdiction because the circumstances of the case were too fact-specific).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been e-filed with the Clerk via the Florida Court's E-filing Portal, and a copy has been served via the portal on the following on the **27th** day of June 2022:

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.045(e), the undersigned counsel certifies that the font size and style used in the foregoing Answer Brief is 14-point Bookman Old Style, and that it contains 10,909 words in compliance with Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2)(B) and (E).

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