

IN THE SUPREME COURT OF FLORIDA

PINELLAS COUNTY, FLORIDA

Petitioner,

CASE NO.: SC19-1819

DCA CASE NO.: 2D17-1040

LT CASE NO.: 15-CA-1376

v.

GARY JOINER, ETC., ET AL.

Respondent.

**PETITIONER PINELLAS COUNTY'S INITIAL BRIEF ON THE
MERITS**

ON DISCRETIONARY REVIEW FROM THE SECOND DISTRICT
COURT OF APPEAL
STATE OF FLORIDA

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PRELIMINARY STATEMENT

Petitioner, Plaintiff below, Pinellas County, a political subdivision of the State of Florida, is hereinafter referred to as “Pinellas County.” Respondent, Mike Wells as Property Appraiser for Pasco County is hereinafter referred to as “Pasco Property Appraiser.”

References to the record will be designated as “R. Vol.:Page.” References to the Second District Court of Appeal’s decision will be in accordance with its official record citation.

Emphasis is supplied unless otherwise noted. All statutory references are to the 2014 version, unless otherwise noted.

STATEMENT OF THE CASE AND FACTS

This case involves a significant question of law of great public importance. The Second District Court of Appeal certified the question: “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.” Pinellas County agrees with the dissenting opinion below suggesting that the question is more appropriately framed as

“IS SOVEREIGN IMMUNITY FROM TAXATION OF COUNTY-OWNED PROPERTY WAIVED WHEN THAT PROPERTY IS LOCATED WITHIN THE BOUNDARIES OF ANOTHER COUNTY?”

Pinellas County owns real property located within Pasco

County

Pinellas County, a political subdivision of the State of Florida, owns real property located within Pasco County. (R. Vol. II:105-191). These parcels are collectively known as the Cross-Bar/Al Bar Ranches (hereinafter, “the Property”). (R. Vol II:636). After acquiring the Property, Pinellas County initially paid ad valorem taxes on the Property. (R. Vol II:637). In 1996, the Pasco County Property Appraiser, serving at that time, notified Pinellas County that he had determined the Property was immune from ad valorem taxation. (R. Vol II:271). Until 2014, Pinellas County 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. (R. Vol II:273, 637). In 2014, the Division of Inspector General for the Pinellas County Clerk and Comptroller questioned these voluntary contributions. (R. Vol II:478, 508-509).

Pinellas initiates litigation regarding tax immunity

In 2015, Pinellas County filed suit in the Circuit Court in and for Pasco County seeking, in relevant part, an order declaring the Property to be immune from ad valorem taxation for the 2014 tax year and enjoining the assessment and collection of future ad valorem taxes on the Property while owned by Pinellas County. (R. Vol II:1). The Pasco Property Appraiser denied the Property was immune from taxation. (R. Vol II:37). Pinellas County moved for Summary Judgment on the basis of sovereign immunity from ad valorem taxation. (R. Vol II:59-287). The Pasco Property Appraiser filed a Cross-Motion for Summary Judgment, arguing, in part, that “[a]ny immunity from taxation is limited to the jurisdictional boundary of Pinellas County and, therefore, the subject property is taxable.” (R. Vol II:655-674).

In granting summary judgment for Pinellas County, the trial court found:

As a political subdivision of the state, Pinellas County is entitled to sovereign immunity which includes immunity from the 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. Sovereign immunity can only be waived by the state of Florida. The

state has not waived sovereign immunity for the ad valorem taxation of properties owned by counties outside their county lines.

(R. Vol II:678-679). Judgment was entered for Pinellas County and the Pasco Property Appraiser appealed. (R. Vol. II:681; 684).

On May 3, 2019, in a split decision, the Second District Court of Appeals overturned the trial court, concluding that “Pinellas County's property cannot be immune in Pasco County, **because Pinellas County is not sovereign there.**” (R. Vol I:152-1533) (underlining in original).

Pinellas County filed an Alternative Motion for Rehearing, Rehearing En Banc, for Certification to the Supreme Court of Florida as an Issue of Great Public Importance, or for Clarification. (R. Vol I:167-185). On September 25, 2019, the Second District Court of Appeals denied the request for rehearing and rehearing en banc, but granted the motion for clarification and certification. (R. Vol I:201-225), *Joiner v. Pinellas County*, 279 So. 3d 860 (Fla. 2d DCA 2019). The majority certified the following question to the Florida Supreme 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.*, at 866.

The majority decision concluded “political entities only have sovereign immunity where they are sovereign.” *Id.*, at 866. Over a strong dissent, the majority held that the “explicit taxation authority [derived from “the constitutional language guaranteeing each county the right to tax all real property within its boundaries”] cannot be abrogated by common law taxation immunity that no Florida court has ever held to extend beyond an immune sovereign’s territorial boundaries.” *Id.* The court reasoned that although “Pasco County and Pinellas County might each derive its sovereignty from the state, of which each are subdivisions . . . 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.” *Id.*

The concurrence opined that Pinellas County was not “operating as a sovereign” in Pasco County, paraphrasing from the movie *Highlander* that “there can only be one” sovereign and that “the mantle of sovereign rests on the shoulders of Pasco County because the land at issue rests within the territorial boundary

establishing its constitutional domain” and “the protection provided by sovereign immunity is not within the rights held by Pinellas County.” *Id.*, at 867.

The dissent opined, “[b]ecause neither the Florida Constitution nor the controlling statutes express a waiver of the immunity from taxation of county-owned property, I would affirm the trial court's order. Absent such a waiver, the property owned by Pinellas County within the boundaries of Pasco County remains immune from taxation.” *Id.*, at 868.

Pinellas County sought this Court’s discretionary review, which was granted on February 21, 2022.

STANDARD OF REVIEW

The issues before the Court on the certified question involve pure questions of law arising from undisputed facts and, turns on whether the ability of one county to tax property within its borders impliedly waives the sovereign immunity of another county and, therefore, a de novo standard of review applies. *City of Largo v. AHF-Bay Fund, LLC*, 215 So. 3d 10, 14 (Fla. 2017); *Treasure Coast Marina, LC v. City of Fort Pierce*, 219 So. 3d 793, 795 (Fla. 2017).

SUMMARY OF THE ARGUMENT

Rather than applying Pinellas County's sovereign immunity from taxation, which has not been waived by the Florida legislature, the majority concentrated its analysis on the sources of Pasco County's general ability to tax and inferred a waiver of Pinellas County's sovereign immunity from taxation. In doing so, the majority disregarded the controlling and long-standing principles of immunity law enunciated by this Court in *Park-N-Shop* and its progeny. *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Dickinson v. Tallahassee*, 325 So. 2d 1, 3 n.6 (Fla. 1975); *Canaveral Port Auth. v. Dep't of Revenue*, 690 So. 2d 1226 (Fla. 1996); *Fla. Dep't of Rev. v. City of Gainesville*, 918 So. 2d 250 (Fla. 2005). The well-reasoned dissent ignored the hypothetical policy considerations presented by the Pasco Property Appraiser and noted that the legislature could appropriately address any potential abuses. The majority, however, seemingly found the policy implications of potential abuses compelling enough to establish a new limitation on the sovereign immunity of a political subdivision of the State of Florida. The broad language used by the court limited sovereign immunity in a way in which it had never before been limited,

arguably impacting sovereign immunity far beyond the facts of this case and the issue of ad valorem taxation. Furthermore, the ruling of the Second District contradicts the comprehensive statutory scheme for the assessment and collection of taxes in Florida. This Court should reverse that holding and expressly recede from the lower court's broad language surrounding the waiver of Pinellas County's sovereign immunity.

ARGUMENT

I. SOVEREIGN IMMUNITY FROM TAXATION OF COUNTY-OWNED PROPERTY IS NOT WAIVED WHEN THAT PROPERTY IS LOCATED WITHIN THE BOUNDARIES OF ANOTHER COUNTY.

The question certified by the Second District Court of Appeals (hereinafter "Second District") was: "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?" As certified, the question emphasizes the location of the property as opposed to the County's inherent immunity from taxation. As stated by the majority, "[r]esolution of the legal question here turns upon whether any [real] property owned by a county, regardless of the property's

geographic location [within the State of Florida], is immune from [ad valorem] taxation or whether this immunity is confined to property that a county owns within its own borders.” *Joiner v. Pinellas County*, 279 So. 3d 860, 862 (Fla. 2d DCA 2019). However, instead of pursuing that question, the court concentrated on analyzing the sources of Pasco County’s general authority to tax and the potential policy implications of Pinellas County’s sovereign immunity therefrom. Focusing on Pasco County’s authority to tax property within its geographic boundaries and ignoring the immunity from taxation of other sovereigns within Pasco County, the court fashioned a waiver of Pinellas County’s sovereign immunity.

Pinellas County, therefore, encourages this Court to rephrase the certified question, adopt, and answer in the negative, the question posed by the dissent: “IS SOVEREIGN IMMUNITY FROM TAXATION OF COUNTY-OWNED PROPERTY WAIVED WHEN THAT PROPERTY IS LOCATED WITHIN THE BOUNDARIES OF ANOTHER COUNTY?”

Pinellas County adopts the very well-reasoned dissenting opinion as its argument. However, the broad, sweeping language of the majority opinion and concurrence regarding sovereign immunity, requires Pinellas County to set forth the history and

application of intrastate sovereign immunity in Florida. This history and application establish that sovereign immunity is not limited by intrastate geographic boundaries and that any waiver of sovereign immunity must be legislative.

A. As a Political Subdivision of the State, absent a waiver of immunity, Pinellas County is immune from taxation.

- i. Counties are political subdivisions of the State and derive their sovereign immunity therefrom.*

Pinellas County, as a political subdivision of the State of Florida, shares in the State's sovereign immunity. Art. VIII, § 1(a) Fla. Const. ("The state shall be divided by law into political subdivisions called counties."); *Arnold v. Shumpert*, 217 So. 2d 116, 120 (Fla. 1968) ("A county is a division of the state. It enjoys the state's sovereign immunity unless the Legislature by a general law provides otherwise."); *Canaveral Port Auth.*, 690 So. 2d 1226 (Fla. 1996). Since at least 1885, Florida counties have been constitutionally recognized as political subdivisions of the state. *Keggin v. Hillsborough County*, 71 So. 372 (Fla. 1916). However, "the principle of immunity is not constitutionally dependent" and arises from common law concepts of sovereign immunity. *Dickinson*, 325

So. 2d at 3 n.6; accord *Cason v. Fla. Dep't of Mgmt. Servs.*, 944 So. 2d 306, 308 (Fla. 2006). “The doctrine of sovereign immunity, which provides that a sovereign cannot be sued without its own permission, . . . was a part of the English common law when the state of Florida was founded and has been adopted and codified by the Florida Legislature.” *American Home Assurance Co. v. Nat'l R.R. Passenger Corp.*, 908 So. 2d 459, 471 (Fla. 2005).

ii. *The tax immunity of the state and its political subdivisions is well-established and rests on the broad grounds of fundamentals in government.*

The state’s immunity from taxation is well-established. *Cason*, 944 So. 2d at 309; *Dickinson*, 325 So. 2d at 5. “[T]he state and its political subdivisions, [including counties,] are immune from taxation because there is no power to tax them.” *Dickinson*, 325 So. 2d at 3; accord *Canaveral Port Auth.*, 690 So. 2d at 1228 (clarifying immunity and exemption stating, “We recognize the confusion on this issue may have arisen because of cases that have stated that ‘the state and its political subdivisions, *like a county*, are immune from taxation since there is no power to tax them.”). This immunity from taxation also “is not dependent upon statutory or constitutional provisions but rests upon broad grounds of

fundamentals in government.” *Cason*, 944 So. 2d at 309, citing *State ex. rel. Charlotte County v. Alford*, 107 So. 2d 27, 29 (Fla. 1958).

iii. The sovereign immunity of political subdivisions of the state is defined by the state’s geographic boundaries and is recognized to extend beyond a political subdivision’s geographic boundaries.

The Pasco Property Appraiser successfully but incorrectly argued that cases discussing the state’s immunity to taxation were distinguishable from this case. *Joiner*, 279 So. 3d at 862-863. Controlling case law shows otherwise. Further clouding the issue, the Pasco Property Appraiser presented cases relating to a state’s immunity from taxation by another state, Indian tribal or national immunity, and immunity due to federalism. (R. Vol I:45- 57). The resolution of these inapposite cases on are governed by laws or legal concepts inapplicable here. As such, the issue before this Court is governed by existing, well-established, Florida law. “[P]roperty of the state and of a county which is a political subdivision of the state . . . is immune from taxation.” *Park-N-Shop*, 99 So. 2d at 573.

Instead of relying on the well-settled principle of a county’s sovereign immunity from taxation, the Second District focused on

Pasco County's general authority to tax all property within Pasco County. *Joiner*, 279 So. 3d at 864, citing Art. VII, § 9, Fla. Const. and § 125.016 Fla. Stat. In so doing, the majority and concurring opinions focused on **geographic** boundaries with the majority opinion stating that "Pinellas and Pasco cannot both be sovereign on the same matter in the same place." *Joiner*, 279 So. 3d at 684. This logic belies the historical application of sovereign immunity from taxation and the reality that the nature of government in Florida is such that a county may include property held by multiple sovereigns as demonstrated in *Dickinson* where the Court considered "the validity of a utility tax imposed by the City of Tallahassee on the State of Florida..., on Leon County..., and on the Leon County School Board." *Dickinson*, 325 So. 2d at 2.

In tying Pinellas County's geographic boundaries to limitations on Pinellas County's sovereign immunity, the Second District de facto limited Pinellas County's sovereign immunity in a novel way. The Second District rejected Pinellas County's argument that:

The constitutional sovereign immunity of the state of Florida flows to its subdivisions and cloaks both Pinellas County and Pasco County. Each county's sovereign immunity emanates, not from the county itself, but rather from the state. Therefore, Pinellas County's properties are

immune from ad valorem taxation within the state of Florida.

Joiner, 279 So. 3d at 864. However, it is well-recognized that each county, lacking inherent power and deriving powers from the sovereign state, is not an independent sovereign. *Amos v. Matthews*, 126 So. 308, 321 (Fla. 1930). Therefore, it is axiomatic and recognized that the sovereignty of a Florida county extends throughout the state's boundaries.

In the context of sovereign immunity from tort liability, the argument that immunity ends at geographic boundaries has been rejected. In *Ryan v. Roy*, a police officer was found to be cloaked with sovereign immunity while outside the boundaries of his municipality on an employer-approved break when he shot at menacing dogs using his service weapon and accidentally struck a civilian. *Ryan v. Roy*, 801 So. 2d 203, 204 (Fla. 4th DCA 2001). Rejecting the argument that the officer was not cloaked with the protections of sovereign immunity because he was outside of his governmental employer's jurisdiction, the Fourth District decided the case based strictly on whether the officer was in the course and scope of his employment at the time of the accidental shooting. *Id.*

In the context of eminent domain, the Second District has previously recognized that the exercise of “sovereign power” can occur outside of a county’s geographic boundaries. *Pinellas County v. Baldwin*, 80 So. 3d 366, 369-370 (Fla. 2nd DCA 2012). In *Baldwin*, Ms. Baldwin filed suit for inverse condemnation against Pinellas County in the Circuit Court of Hillsborough County, based on flooding alleged to have occurred on her property in Hillsborough County due to actions of Pinellas County. Pinellas County moved to dismiss for improper venue, in addition to other grounds. The Second District stated, “[T]he sword-wielder exemption applies to the County’s claim of the home venue privilege [for activities taken in a neighboring county],” confirming that Pinellas County was acting as a sovereign power when it took action in Hillsborough County. *Id.* at 370-371. Analogously, in the instant case, Pinellas County is acting as a sovereign when owning property in a neighboring county.

In the case at bar, the Second District majority stated that Pinellas County was urging the Second District to extend sovereign immunity. *Joiner*, 279 So. 3d at 866. Pinellas County was urging no such thing. Pinellas County continues to urge that it is necessary to

view sovereign immunity from taxation as it views other influences of sovereignty and sovereign immunity.

As this Court stated, “governmental immunity derives entirely from the separation of powers.” *Fla. Highway Patrol v. Jackson*, 288 So. 3d 1179, 1185 (Fla. 2020). The key inquiry, therefore, is whether or not the state has consented for its political subdivisions to be subjected to ad valorem taxation on real property held outside the subdivision’s geographic boundaries — not whether, as the Second District asserted, sovereign immunity from taxation has been “extend[ed] beyond an immune sovereign’s territorial boundaries.” *Joiner*, 279 So. 3d at 866; *see Jackson*, 288 So. 3d at 1185 (stating, “we observed that ‘the *presence of sovereign immunity* does not render the state’s actions nontortious (it simply means that the State has *not consented to suit* in its courts with regard to certain claims).” (emphasis in the original and internal citations omitted)).

B. Waivers of Sovereign Immunity Must be Clear and Unequivocal and Legislative.

“In Florida, sovereign immunity is the rule, rather than the exception.” *Pan-Am Tobacco Corp. v. Dep’t of Corr.*, 471 So. 2d 4, 5

(Fla. 1984). It is well-settled in Florida that waivers of sovereign immunity must be “clear and unequivocal” and will not be found “as a product of inference or implication” since “the immunity of the sovereign is a part of the public policy of the state [and is] enforced as a protection of the public against profligate encroachments on the public treasury.” *Spangler v. Fla. State Turnpike Auth.*, 106 So. 2d 421, 424 (Fla. 1958); *see Everton v. Willard*, 468 So. 2d 936, 946 (Fla. 1985) (stating, “[t]he legislature is the primary guardian of the public purse....”). While the Legislature has the power to waive sovereign immunity and authorize the ad valorem taxation of property and lands of the state or its political subdivisions, a waiver must be express and cannot be inferred. *Cason*, 944 So. 2d at 309 (“the authority to tax the State cannot be inferred.”), citing *Alford*, 107 So. 2d at 29.

Inferring a waiver of sovereign immunity where the Legislature has not expressly waived it, violates the separation of powers doctrine. *See* Art. II, § 3 Fla. Const. (stating, “[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless

expressly provided herein.”). This Court “has traditionally applied a strict separation of powers doctrine” which includes the “fundamental prohibition[] that no branch may encroach upon the powers of another.” *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004) (citations omitted).

As this Court stated in *Cason*, “the authority to tax the State . . . must be manifested by ‘clear and direct expression of the State’s intention to subject itself to’ the tax.” *Cason*, 944 So. 2d at 310, citing *Dickinson*, 325 So. 2d at 4. This Court’s long-standing refusal to infer a waiver of sovereign immunity from taxation is exemplified in *Alford*: In 1955, the Florida Legislature passed a law authorizing a property appraiser (at that time called a tax assessor) to “enter [lands held by the Game and Fresh Water Fish Commission] upon the tax rolls of the county.” Ch. 30275 Laws of Florida (1955). In considering this law, which purported to place properties of the state on a county tax roll, the Court found that “a casual examination of the act under consideration leads to the inescapable conclusion that the act does not — even though it professes to do so — constitutionally authorize the taxation of these state owned lands.” *Alford*, 107 So. 2d at 29. The *Alford* court

specifically found that, “at most” the legislation attempted to direct “annual payment . . . *in lieu of taxes.*” *Id.* (emphasis in original).

In examining the provision of article VII, section 9 of the Florida Constitution and section 125.016, Florida Statutes, the Second District failed to appropriately follow this Court’s approach to examining the tort immunity waiver provisions of section 768.28, Florida Statutes. Had it done so, it would have focused its inquiry on whether Pinellas County remained sovereignly immune from taxation *notwithstanding* Pasco County’s ability to tax. *See Jackson*, 288 So. 3d at 1185. In *Jackson*, the court summarized prior decisions that “reaffirmed that in Florida, governmental immunity derives entirely from the separation of powers” and that “the sovereign immunity inquiry consists of whether the governmental entity remains sovereignly *immune from suit* notwithstanding the legislative waiver present in section 768.28, Florida Statutes.” (italics in original, internal citations and quotations omitted), citing *Wallace v. Dean*, 3 So. 3d 1035, 1044 (Fla. 2009). Therefore, instead of focusing on whether or not Pasco County was generally authorized to tax, the Second District should have focused on whether Pinellas County remained sovereignly immune.

Article VII Section 9(a) of the Florida Constitution states in relevant part, “Counties . . . shall . . . be authorized by law to levy ad valorem taxes . . .,” and does not speak to immunity. The statutory authority for counties to impose ad valorem taxes states, “[a]nnually an ad valorem tax... may be levied upon all property in the county, which shall be levied and collected as other county taxes are levied and collected Said tax may be levied, collected, and expended for any of the purposes herein specified notwithstanding the cost and expense thereof” § 125.016, Fla. Stat. The Legislature could easily draft the statutory authority to impose ad valorem taxes to state, “annually an ad valorem tax . . . may be levied upon all property in the county, including property owned by other political subdivisions of the state . . .,” but it has not.

Under Florida law, sovereign immunity is fundamentally different from the protection provided by an exemption. Whereas “sovereign immunity is the rule, rather than the exception,” the converse is true of an exemption. Importantly, while an exemption must be expressly **granted**, the State enjoys sovereign immunity unless immunity is expressly **waived**. Thus, the Legislature's **inaction** does not constitute a waiver of sovereign immunity.

City of Key West v. Fla. Keys Cmty. Coll., 81 So. 3d 494, 497-98 (Fla. 3d DCA 2012), quoting *Pan-Am*, 471 So. 2d 4, 5 (emphasis in original; internal citation omitted). Courts have long recognized that “taxes can be levied, assessed, and collected only in the express method pointed out by statute.” *State ex rel. Seaboard A.L.R. Co. v. Gay*, 35 So. 2d 403 (Fla. 1948). The Florida Legislature has neither expressly waived sovereign immunity from ad valorem taxation for property held by one county within the geographic boundaries of another county, nor has it expressly authorized counties to levy, assess, or collect ad valorem taxes against other Florida sovereign entities.

C. The judicially inferred waiver of sovereign immunity additionally contradicts the statutory scheme for the assessment and collection of ad valorem taxes.

This Court’s reasoning in *Cason* supports the finding that Pinellas County’s property is immune from ad valorem taxation, regardless of where the property lies within the State, and allows for a cohesive reading of the statutory scheme for assessment and collection of taxes.

The Florida Constitution requires that “[b]y general law regulations shall be prescribed which shall secure a just valuation

of all property for ad valorem taxation” with some exceptions which are inapplicable to the case at bar. Art. VII § 4, Fla. Const. This is effectuated through a comprehensive statutory scheme for the assessment and collection of taxes, including the collection of delinquent taxes. *See Dawson v. Saada*, 608 So. 2d 806 (Fla. 1992) (“Florida’s statutory scheme governing the sale of real property for the collection of delinquent taxes and the validity of tax deeds issued pursuant to such is comprehensive.”) Immunities and exemptions are considered in the effectuation of the Constitutional requirement for “just valuation.” *Gainesville*, 918 So. 2d at 255 (citing article VII, section 4 of the Florida Constitution, before stating, “[h]owever, governmentally owned property is generally excluded from taxation, through either immunity or exemption. An exemption presupposes an ability to tax, whereas an immunity implies the absence of that ability. The state and counties are immune from taxation. Unlike counties, municipalities are not subdivisions of the state and are therefore subject to taxation absent an exemption.” (internal citations omitted)).

As this Court stated in *Palm Beach County Canvassing Bd. v. Harris*, “related statutory provisions must be read as a cohesive whole.” 772 So. 2d 1273, 1287 (Fla. 2000).

Florida Statutes chapters 193 and 194 address assessments, chapter 196 addresses exemptions and chapter 197 addresses collections, sales and liens. With few exceptions, delinquent taxpayers are subject to having their property sold at tax deed sale. Challenges to assessments are governed, in part, by section 194.171, Florida Statutes.

In considering the application of section 194.171, Florida Statutes, which had previously been found to broadly apply to taxpayers’ actions challenging the assessment of taxes, this Court concluded that the State and its political subdivisions are not taxpayers because “the State and its political subdivisions are immune from taxation since there is no power to tax them.” *Cason*, 944 So. 2d at 313.

As to the application of Chapter 196 to counties, the Fifth District Court of Appeal considered privately owned property leased by a county and found that “[a]bsent a waiver in the state constitution itself, which does not exist, counties do not need to

qualify for statutory tax exemptions pursuant to Chapter 196, because the legislature lacks the power to tax them by passing statutes.” *First Union Nat’l Bank v. Ford*, 636 So. 2d 523 (Fla. 5th DCA 1993). Similarly, the Fourth District Court of Appeal has found, “[t]he exemptions in chapter 196 apply only to property which does not have immunity. County property is immune.” *Markham v. Broward County*, 825 So. 2d 472, 473 (Fla. 4th DCA 2002). The non-taxability of the State and its political subdivisions is further evidenced by the provisions of section 197.432, Florida Statutes. Although “the tax collector shall commence the sale of tax certificates on the real property on which taxes have not been paid,” “[a] certificate may not be sold on, and a lien is not created in, property owned by any governmental unit which has become subject to taxation due to lease of the property to a nongovernmental lessee.” §§ 197.432(1), (10), Fla. Stat. Affording Pinellas County’s Property less protection from forced sale than property owned by a governmental unit but leased to a non-governmental lessee would be an absurd result. *See State v. Presidential Women’s Cntr.*, 937 So. 2d 114 (Fla. 2006) (stating, “[s]tatutory provisions should not be construed in a manner that

would lead to an absurd result.”) Recognizing that property held by the State and its political subdivisions is immune, regardless of its geographic location within the State, allows for a logical application of the comprehensive statutory scheme for taxation.

Should the Legislature decide that there should be a different result in the application of sovereign immunity to this comprehensive statutory scheme for taxation and collection of taxes, it is within the sole purview of the Legislature to make that change. *See Spangler*, 106 So. 2d at 424; *see also Everton*, 468 So. 2d at 946. It should not be inferred by the court. *See Cason*, 944 So. 2d at 309.

CONCLUSION

The case at bar is one of first impression, only as to the specific factual scenario of one county owning real property within another county whose property appraiser assesses the property for ad valorem taxation. Because of the Constitutional structural underpinnings of governments and political subdivisions in Florida, it is not uncommon for there to be multiple sovereigns in the same place at the same time. To the extent that one county’s sovereign immunity from taxation may result in a hypothetical inequity to

another county, it is, pursuant to the Florida Constitution, within the legislature's discretionary authority to remedy that inequity. See *Ford v. Orlando Utilities Comm'n*, 629 So. 2d 845, 847 (Fla. 1994). Absent the legislature enacting such a waiver of sovereign immunity, any property owned by Pinellas County within the jurisdictional boundaries of the State of Florida remains immune from taxation.

The impacts of a government's sovereign immunity are far-reaching and fundamental. These impacts are most dramatically seen in the budgetary planning and exposure of the public treasury. Decisions about making policy are inherently wrapped in the understanding that tax-payer dollars are only exposed where there has been – and only to the limits of – a legislative waiver of sovereign immunity. Should the Legislature deem it necessary to address the concerns raised by the Pasco Property Appraiser, the Legislature is uniquely empowered to enact general law expressly waiving sovereign immunity from ad valorem taxation in order to address legislative concerns. See *American Home Assurance*, 908 So. 2d at 471-472 (stating, “the Florida Constitution provides that the Legislature can abrogate the state's sovereign immunity . . .

[and] [o]nly the Legislature has the authority to enact a general law that waives the state's sovereign immunity . . . [f]urther, any waiver of sovereign immunity must be clear and unequivocal . . . [and] will not be found as a product of inference or implication." (internal citations omitted)). The decision on appeal invades the province of the Legislature in this regard.

The District Court in this case improperly focused on the location of Pinellas County's Property resulting in a sweeping ruling that not only infers a waiver of immunity from tax, but, if allowed to stand, will likely be cited by future plaintiffs as a stripping of county sovereignty for activities alleged to have occurred outside a county's geographic boundaries within the State. This Court should, instead, consider the fundamental question of whether Pinellas County's sovereignty has been clearly, unequivocally, and expressly waived by the Legislature.

Based on the forgoing, Pinellas County respectfully requests that this Court adopt the question posed by the dissent as the rephrased question, "IS SOVEREIGN IMMUNITY FROM TAXATION OF COUNTY-OWNED PROPERTY WAIVED WHEN THAT PROPERTY IS LOCATED WITHIN THE BOUNDARIES OF ANOTHER COUNTY?";

and answer the question in the negative with directions to remand and require reinstatement of the trial court's order granting judgment for Pinellas County.

Alternatively, Pinellas County requests this Court answer the question as certified, "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" in the Affirmative.

To the extent that this Court finds an alternative basis to find the County liable for an ad valorem tax assessed by the Pasco Property Appraiser, Pinellas County respectfully requests this Court recede from the general statements that Pinellas County is not sovereign outside of its geographic boundaries within the State of Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 27, 2022, I filed a copy of the foregoing through the Florida Courts E-Filing Portal, which causes electronic service to all counsel of record, including:

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Florida Rule of Appellate Procedure 9.045, that this brief complies with the word count limitation of Rule 9.210, Florida Rules of Appellate Procedure, in that it contains 5,292 words (including words in headings, footnotes, and quotations), according to the word-processing system used to prepare this document. This document also complies with the line spacing, type size and type face requirements of Rule 9.045, Florida Rules of Appellate Procedure by using Bookman Old Style 14-point font.

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