IN THE
SUPREME COURT OF FLORIDA

FLORIDA DEPARTMENT OF REVENUE, Appellant, v. JOSEPH C. HOWARD and JOYCE FORMAN, et al., Appellees.	Appeal No. SC03-2270 Lower Case No. 1D02-3762

REPLY BRIEF OF APPELLANT, FLORIDA DEPARTMENT OF REVENUE

On Appeal From the District Court of Appeal,
First District of Florida

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

CHRISTOPHER M. KISE
SOLICITOR GENERAL
Florida Bar No. 0855545

LOUIS F. HUBENER
Chief Deputy Solicitor General
Florida Bar No. 0140084

NICHOLAS BYKOWSKY
Assistant Attorney General
Florida Bar No. 111295

Office of the Attorney General
The Capitol, Suite PL-01
Tallahassee, FL 32399-1050
(850) 414-3681
Attorneys for the Appellant
Florida Department of Revenue

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT 1

I. APPELLEES HOWARD AND FORMAN DO NOT CHALLENGE THE LEGISLATURE'S TAXING AND SPENDING POWER, ARE NOT AFFECTED BY SECTION 193.016, AND THEREFORE HAVE NO STANDING TO CHALLENGE THE STATUTE. 1

II. SECTION 193.016, FLORIDA STATUTES, IS CONSTITUTIONAL 5

A. Section 193.016 Is A Procedural Statute And Does Not Violate Uniformity Requirements or Create An Impermissible Classification. 5

B. Section 193.016 Does Not Create An Arbitrary Class of Property. 10

C. Section 193.016 Does Not Unconstitutionally Interfere With The Property Appraisers' Exercise Of Discretion. . . . .
13

CONCLUSION 15

CERTIFICATE OF SERVICE 16

CERTIFICATE OF COMPLIANCE 17

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Charlotte County Board of Commissioners v. Taylor, 650 So. 2d 146 (Fla. 2nd DCA 1995) 2

Department of Administration v. Horne, 269 So. 2d 659 (Fla. 1972) 2

Department of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994) 2

Eastern Air Lines, Inc. v. Dep't of Revenue, 455 So. 2d 311 (Fla. 1984) 3,11

Fuchs v. Robbins, 818 So. 2d 460 (Fla. 2002) 5

Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433 (1974) . . . . *passim*

Jones v. Dep't of Revenue, 523 So. 2d 1211 (Fla. 1st DCA 1985) 2

Lanier v. Overstreet, 175 So. 2d 521 (Fla. 1956) 8,9

Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991) 4

Miller v. Publicker, Inc., 457 So. 2d 1374 (Fla. 1984) . 3,4

Renish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000), review denied, 790 So. 2d 1107 (Fla. 2000), cert. denied, 534 U.S. 993 (2001) 2

Sartori v. Dep't of Revenue, 714 So. 2d 1136 (Fla. 5th DCA 1998) 12

School Board of Lee County v. Askew, 278 So. 2d 272 (Fla. 1973) 13

Sunset Harbour North Condominium Ass'n v. Robbins, 837 So. 2d 1181 (Fla. 3rd DCA 2003) 5

Tyson v. Lanier, 156 So. 2d 833 (Fla. 1963) 8,9

Valencia Center, Inc. v. Bystrom, 543 So. 2d 215 (Fla. 1989) 9

Walter v. Schuler, 176 So. 2d 81 (Fla. 1965) 8

Ward v. Brown, 2003 WL 1088219 (Fla. 1st DCA 2003), rev. granted, 848 So. 2d 1157 (Fla. 2003) 12

Williams v. Jones, 326 So. 2d 425 (Fla. 1975) 5,7,9

Zapo v. Gilreath, 779 So. 2d 651 (Fla. 5th DCA 2001) . . . 12

FLORIDA CONSTITUTION

Article VII, section 2 5

Article VII, section 4 . . . . *passim*

Article IX, section 1 6,8

FLORIDA STATUTES

Section 192.001 13

Section 193.011 9

Section 193.015 14

Section 193.016 . . . . *passim*

Section 193.023 14

Section 193.0235 14

Section 193.063 14

Section 193.073 14

Section 193.075 14

Section 193.085 14

Section 193.114 14

Section 193.481 14

ARGUMENT

I. APPELLEES HOWARD AND FORMAN DO NOT CHALLENGE THE LEGISLATURE'S TAXING AND SPENDING POWER, ARE NOT AFFECTED BY SECTION 193.016, AND THEREFORE HAVE NO STANDING TO CHALLENGE THE STATUTE.

Contrary to the assertion of Howard and Forman in their answer brief, the Department seeks no change in the law regarding the standing of taxpayers to bring a constitutional challenge. Well-settled Florida law confirms the Department's argument that Howard and Forman lack standing to bring this action challenging section 193.016, Florida Statutes.

In their second amended complaint, appellees Howard and Forman alleged they are residents of Florida and own real property in Dade, Orange and Broward Counties. R 5:723-725. The second amended complaint, however, did not allege they had any assessment proceedings, any proceedings before any value adjustment board, or any lawsuit pending against a property appraiser that implicated section 193.016, Florida Statutes. Appellees alleged without elaboration that they had or anticipated having an "adverse interest" with respect to the defendants. R 5:723-725, ¶¶ 6 & 7. The second amended complaint is devoid of any factual allegations establishing

real, concrete, present or future injury from the challenged law. In fact, appellees do not show they are affected by the law.[1]

Appellees contend that anyone may challenge the validity of a tax statute even if the statute prescribes only procedure and even if the challenger suffers no demonstrable injury. They rely for this proposition on Department of Administration v. Horne, 269 So. 2d 659 (Fla. 1972), Charlotte County Board of Commissioners v. Taylor, 650 So. 2d 146 (Fla. 2nd DCA 1995), Jones v. Dep't of Revenue, 523 So. 2d 1211 (Fla. 1st DCA 1985), Renish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000), review denied, 790 So. 2d 1107 (Fla. 2000), cert. denied, 534 U.S. 993 (2001), and Department of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994). Their reliance is misplaced. The Horne decision simply eliminated the special injury requirement, i.e., that a plaintiff suing as a taxpayer show some injury different in kind from that suffered by the general public, and only in cases where the statute challenged was alleged to violate specific constitutional limitations on the taxing and spending authority of the legislature. Neither Horne nor any of the other

[1]Appellees also alleged, again without elaboration, that their millage rates would increase as a result of section 193.016. R 5:723, ¶ 11. Nothing in the complaint supports this claim, nor did either of the lower courts find that this naked allegation sufficed to confer standing.

decisions cited above holds that a person unaffected by a tax law has standing to challenge it; otherwise, courts would be issuing advisory opinions on tax laws at the behest of the idle and the curious.

Section 193.016, Florida Statutes, however, neither imposes a tax on Florida residents nor directs the expenditure of any funds by the state or any Florida county. This statute is procedural only and simply requires that a property appraiser i) consider certain information in determining the just value of tangible personal property, and ii) explain why the valuation is being increased from one year to the next.[2] In his dissenting opinion in the district court, Judge Benton correctly construed the statute "as imposing process requirements that do not inherently - and ought not be interpreted to - interfere with the constitutional imperative" of just valuation as required by article VII, section 4, Fla. Const. Slip op. at 7 (emphasis added). Thus, section 193.016 violates no specific constitutional limitation on the taxing authority of the legislature.

Moreover, because appellees have failed to show they are

---

[2]That is, "the property appraiser shall assert additional basic and underlying facts not properly considered by the value adjustment board as the basis for the increased valuation." See § 193.016, Fla. Stat.

harmed or even affected by section 193.016, this case is controlled by Miller v. Publicker, Inc., 457 So. 2d 1374, 1375 (Fla. 1984) (holding that taxpayers "may challenge the constitutionality of a statute after showing that enforcement of the statute will injuriously affect the plaintiff's personal or property rights"), and Eastern Air Lines, Inc. v. Dep't of Revenue, 455 So. 2d 311, 316-317 (Fla. 1984) (holding that Eastern Air Lines had no standing to challenge as discriminatory certain refund provisions applying to businesses in which it did not engage). In Miller, the plaintiff, an importer of ethyl alcohol, established "the devastating effect" the tax exemption on gasohol containing domestically produced ethyl alcohol would have on its business. Id. at 1375-1376. In sharp contrast to Miller, any possible effect of section 193.016, Florida Statutes, on the personal or property rights of Howard and Forman relating to property taxation is speculative at best.

Nor may Howard and Forman "bootstrap" their claim of standing through collusive pleading with the appellee property appraisers.[3] Although both property appraisers "admitted" the pertinent standing allegations in their answers to the second amended complaint, R5:805, 830, it is fundamental that parties cannot stipulate to standing if it does not exist. See Martinez

[3] See Howard and Forman's Answer Brief, footnote 4.

v. Scanlan, 582 So. 2d 1167, 1171, n.2 (Fla. 1991) ("mere mutual agreement between parties cannot confer subject matter jurisdiction upon a court"). In addition, the property appraisers are not in a truly "defensive" posture as to appellees Howard and Forman. Indeed, the position of the two property appraisers has from the beginning been closely aligned with appellees Howard and Forman. There was no genuine dispute between the property appraisers on one hand and Howard and Forman on the other. Therefore, standing cannot be based on this Court's decision in Fuchs v. Robbins, 818 So. 2d 460 (Fla. 2002).[4]

II. SECTION 193.016, FLORIDA STATUTES, IS CONSTITUTIONAL.

Howard and Forman and the Miami-Dade and Broward property appraisers contend that i) section 193.016 violates the "uniformity requirement" of article VII, section 4, Florida Constitution, ii) any just valuation regulations enacted by the legislation must apply to both tangible and real property, and iii) section 193.016 creates an unconstitutional or arbitrary classification. These arguments are without merit.

---

[4]There is still some claimed uncertainty about when a property appraiser has standing to challenge a law as unconstitutional. Sunset Harbour North Condominium Association v. Robbins, 837 So. 2d 1181 (Fla. 3rd DCA 2003), appeal pending, Case No. SC03-520.

A. Section 193.016 Is A Procedural Statute And Does Not Violate Uniformity Requirements Nor Create An Impermissible Classification.

Article VII, section 4 states in pertinent part that "[b]y general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation" and provides an exception for the classes of property specified in subsections 4(a) and (b). The constitution's uniformity requirement, however, pertains to <u>taxation</u> <u>rates</u> and is now set forth in article VII, section 2. <u>See</u> <u>Williams v. Jones</u>, 326 So. 2d 425, 430 (Fla. 1975). It has no bearing on this case.

Nevertheless, the appellees argue that any law conducive to the determination of just valuation must apply "uniformly" to all property subject to ad valorem taxation, regardless of whether the property is real or tangible. For this erroneous proposition, appellees rely on dicta in <u>Interlachen Lakes Estates, Inc. v. Snyder</u>, 304 So. 2d 433 (1974). With respect to article VII, section 4, the <u>Interlachen</u> Court stated:

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

> standards for valuation may be established for any other classes of property.
>
> Under the 1885 Constitution, we had held that the legislature could tax different classes of property on different bases, as long as the classification was reasonable. Lanier v. Overstreet, 175 So. 2d 521 (Fla. 1956). The people of this State, however, by enumerating in their new Constitution which classifications they want, have removed from the legislature the power to make others.
>
> It is true that the constitutional provision allows the Legislature to prescribe regulations for the purpose of securing a just valuation of _all_ property, but such regulations must apply to _all_ property and not to any one particular class. The regulations contemplated by the Constitution are those which establish the criteria for valuing property; and _all_ property--save those four classes specifically enumerated in the Constitution–must be measured under the same criteria.

_Id._ at 434-435 (emphasis in original).

It is not, and cannot be, the _holding_ of the _Interlachen_ decision that a regulation that applies to the just valuation of real property necessarily must apply to tangible personal property--or vice versa. Indeed, in the following year a unanimous Court, per Justice Sundberg, clarified what Justice Ervin had written in _Interlachen_:

> Justice Ervin, for the Court concluded [in _Interlachen Lakes Estates_] that such valuation [of platted agricultural land] was impermissible under Article VII, Section 4, Florida Constitution, because it provided

> for valuation of a class of property at less than just value, such property not being within the provisos to Article VII, Section 4 . . . . This case stands for the proposition only, then, that the Legislature is precluded from classifying property for valuation purposes at less that just valuation except in the instances of the provisos to Article VII, Section 4.

Williams v. Jones, 326 So. 2d 425, 431 (Fla. 1975). The Williams decision prefaced its discussion of Interlachen with the statement that, "[i]n short, the clear intent of the revisers of the Constitution was to prohibit the Legislature from making only those classifications which could result in some property being taxed at less than its just value, except for the categories enumerated in subsections (a) and (b)." Id. at 430.

Beyond their failure to recognize that section 193.016 is a procedural statute, appellees' argument does not explain how a "classification" of property could possibly violate article VII, section 4 as long as it resulted in the determination of just value. Neither article VII, section 4 of the 1968 constitution nor the nearly identical language of article IX, section 1 of the 1885 constitution[5] prohibited classifying

---

[5]In the 1885 Florida Constitution, article IX, section 1 provided in pertinent part as follows:

> **Section 1. Uniform and equal rate of taxation; special rates. -** The Legislature

property as long as such classification resulted in a "just value" determination. That is the thrust of Justice Sundberg's comment quoted above. The problem with the "classification" cases arising under the 1885 constitution was that (with some hindsight) they did not necessarily reflect just value as that term came to be understood.[6]

Thus, section 193.016 cannot be held in violation of article VII, section 4 simply because appellees label it a

---

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

[6]See, e.g., Tyson v. Lanier, 156 So. 2d 833 (Fla. 1963) (4-3 decision construing statute as authorizing assessment of platted subdivision lands as agricultural land if land was used for agricultural purposes), and Lanier v. Overstreet, 175 So. 2d 521 (Fla. 1965) (4-3 decision upholding constitutionality of same statute and reasoning that "just value" did not include "potential use" at "some future time"). This classification was rejected under the 1968 constitution in Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433 (Fla. 1974).

At bottom, Tyson and Overstreet appear to reflect uncertainty over the meaning of the term just valuation, a question apparently not settled until the Court's decision in Walter v. Schuler, 176 So. 2d 81 (Fla. 1965), when the Court embraced the concept of "fair market value." Although Walter was decided the same day as Overstreet, the latter decision did not discuss the application of the fair market value standard. Tyson, Overstreet and Interlachen are best read as reflecting the evolving meaning of just valuation. Neither Tyson nor Overstreet held the legislature could classify property and authorize its assessment at less than just value.

"classification" that applies only to tangible personal property. Indeed, if a regulation must apply to all forms of property subject to ad valorem taxation, as appellees argue, this Court would have to strike down section 193.011 because several of the factors prescribed there for a just valuation determination can apply only to real property--specifically, sections 193.011(2)(3)(5) and part of (8). Although appellees cite Valencia Center, Inc. v. Bystrom, 543 So. 2d 215 (Fla. 1989), in support of their argument, the decision actually supports the point Justice Sundberg made earlier in Williams. Valencia held that the just valuation assessment should take into account the property's potential use for a thirteen-story building to arrive at fair market value and not simply the below-market lease to which the property was subject.

Unfortunately, the First District did not have the benefit of the clarification provided in Williams v. Jones and the majority below adopted appellees' broadbrush characterization of article VII, section 4. However, even without that clarification, Judge Benton, dissenting, clearly understood that Interlachen and Valencia concerned discriminatory classifications that did not result in proper just value determinations. The majority, responding, merely pointed to the Interlachen language that Justice Sundberg was later at pains to

clarify.

B. Section 193.016 Does Not Create An Arbitrary Class of Property.

Appellees assert that the effect of section 193.016 is to create a new class of property to receive "favored" tax treatment, and also complain that others paying ad valorem taxes do not have the right to have just valuation determined on an "irrelevant prior-year consideration."

These arguments depend on a distorted reading of section 193.016. In fact, the only pertinent question is whether section 193.016 precludes the determination of just value. It does not. The first sentence merely requires the property appraiser to procedurally "consider" the value adjustment board's reduction of the assessment in the prior year, if the reduction was not appealed. The property appraiser is in no way bound by that reduction. The second sentence simply provides that if the property appraiser adjusts the value board's reduced assessment upward, he must articulate facts not properly considered by the board. All this sentence does is discourage relitigation of the same issue in the absence of new or previously not considered information. It benefits the taxpayer who would have to bear the expense of repeated appeals to the value adjustment board based on the same facts. And assuming that property appraisers act on the basis of reasonably

objective facts, section 193.016 could reduce the time they spend in administrative litigation.

As Judge Benton recognized, section 193.016 simply prescribes procedure, and adherence to that procedure will hopefully lead to some economies. His dissent cuts to the heart of the matter:

> In enacting section 193.016, the Legislature did not "tax different classes of property on different bases." Interlachen, 304 So. 2d at 434. It prescribed certain procedures. Considering last year's assessment--whether adjusted by the value adjustment board or not--in the course of arriving at this year's assessment--whether of tangible personalty or of realty–is a perfectly reasonable way to proceed, and is no more an impediment to attaining just valuation than considering last year's sales is.

Slip opinion at 9-10 (footnote omitted).

Appellees' various assertions that section 193.016 is arbitrary or discriminatory are also without merit. As this Court ruled in Eastern Air Lines, Inc. v. Dep't of Revenue, 455 So. 2d 311 (Fla. 1984):

> When the state legislature, acting within the scope of its authority, undertakes to exert the taxing power, every presumption in favor of the validity of its action is indulged. Only clear and demonstrated usurpation of power will authorize judicial interference with legislative action. In the field of taxation particularly, the legislature possesses great freedom in classification. The burden is on the one

> attacking the legislative enactment to negate every conceivable basis which might support it. The state must, of course, proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. A statute that discriminates in favor of a certain class is not arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy.

Id. at 314 (internal citations omitted). See also Zapo v. Gilreath, 779 So. 2d 651 (Fla. 5th DCA 2001) (tax statute is not invalid simply because it contains classifications that are underinclusive).

Appellees have not shown that section 193.016, insofar as it may be deemed to "classify" property, is invalid under the foregoing criteria.[7] They merely complain that persons who pay taxes on real property do not have the benefit of a similar procedure, nor do persons whose tangible property assessment has been reduced by a court. But the legislature may have rationally concluded, with respect to assessment of tangible

---

[7]Section 193.016 is not a classification such as was considered in the dubiously decided case of Sartori v. Dep't of Revenue, 714 So. 2d 1136 (Fla. 5th DCA 1998), but a guide to the exercise of the property appraiser's judgment. See Ward v. Brown, 2003 WL 1088219 (Fla. 1st DCA 2003), rev. granted, 848 So. 2d 1157 (Fla. 2003)(distinguishing Sartori). The term "classification" is used here to denote differentiations for equal protection analysis. The distinction is important because any kind of "classification" that arises out of section 193.016 would not form the basis, by analogy, for a tax refund, on the dubious theory of a mistaken classification, under the four-year statute of limitation period.

property, that court action is relatively rare and that final court action is unlikely to occur within a year. Moreover, the legislature may well have distinguished between tangible personal property and real property. For example, it may have reasonably assumed that tangible property does not fluctuate as much in value as real estate and that, generally, it tends to decline in value because of depreciation.[8]

Section 193.016 carries with it a strong presumption of constitutionality. Accordingly, not having shown the "classification" to be palpably arbitrary and not having attempted to negate every basis that might support the distinctions they have drawn, appellees' challenge must fail.

C. Section 193.016 Does Not Unconstitutionally Interfere With The Property Appraisers' Exercise of Discretion.

The appellees argue at some length that section 193.016 unconstitutionally usurps the property appraisers' "constitutional discretion" to assess property. It does no such thing. The property appraisers' discretion is like the discretion conferred on all state officers, and it is simply the

[8]"Tangible personal property" is defined in section 192.001(11)(d), Florida Statutes. With no attempting to be exhaustive, the term would include such items as computers, construction equipment, tools, hotel and motel furnishings and equipment, office furniture and equipment, restaurant and bar equipment, and telecommunications equipment.

good faith exercise of considered judgment in the performance of their duties, recognizing the imprecision inherent in fixing property values. School Board of Lee County v. Askew, 278 So. 2d 272, 277 (Fla. 1973). The appellee property appraisers quote from this decision but ignore the most relevant sentence on page 277: "We have held [with respect to tax assessors] that the Legislature has the power to regulate the method of assessments, but not to interfere with the assessor's discretion." (Emphasis added.)

Section 193.016 clearly regulates the procedure for assessing tangible personal property.[9] It does not interfere with the exercise of discretion or dictate the result. It directs that property appraisers in one particular instance must state the facts on which their just valuation determination rests. One might infer from the property appraisers' argument that they would prefer never having to explain the facts underlying any assessment. However, no case cited by the property appraisers, and none discovered by undersigned counsel, holds that the discretion accorded state officers prevents them from disclosing the facts and reasons underlying the official

---

[9]Chapter 193 imposes numerous standards and requirements, substantive and procedural, that property appraisers must observe. See, e.g., §§ 193.015, 193.023, 193.0235, 193.063, 193.073, 193.075, 193.085, 193.114, 193.481, Fla. Stat.

exercise of that discretion.

CONCLUSION

Because appellees Howard and Forman have demonstrated no injury to themselves attributable to section 193.016, they lack standing to challenge that statute. Even if they have standing, however, the district court erred in finding section 193.016, facially unconstitutional in its entirety. The decision below should therefore be reversed.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

CHRISTOPHER M. KISE
SOLICITOR GENERAL
Florida Bar No. 0855545

____
LOUIS F. HUBENER
Chief Deputy Solicitor General
Florida Bar No. 0140084

NICHOLAS BYKOWSKY
Florida Bar No. 111295
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
The Capitol, Suite PL-01
Tallahassee, FL 32399-1050
850-414-3681
850-410-2672 (Facsimile)
Attorneys for the Appellant
Florida Department of Revenue

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: EVAN J. LANGBEIN, Esquire, Langbein & Langbein, P.A., Aventura Corporate Center, Suite 506, 20801 Biscayne Boulevard, Miami, Florida 33180; GAYLORD A. WOOD, JR., Esquire, Wood & Stuart, 304 SW 12th Street, Fort Lauderdale, Florida 33315-1549; STEVEN A. SCHULTZ, Esquire, ZACK KOSNITZKY, 100 SE 2nd Street, Suite 2800, Miami, Florida 33131; TOM LOGUE, Assistant Dade County Attorney, 2810 Stephen P. Clark Center, 111 NW First Street, Miami, Florida 33128-1993; EDWARD A. DION, County Attorney for Broward County, ANDREW J. MEYERS, TAMARA M. SCRUDDERS, BETH-ANN HERSCHAFT, Governmental Center, Suite 423, 115 South Andrews Avenue, Fort Lauderdale, Florida 32301; and to LARRY E. LEVY, Esquire and LOREN E. LEVY, Esquire, The Levy Law Firm, 1828 Riggins Lane, Tallahassee, Florida 32308 (attorneys for *amicus* Property Appraisers' Association of Florida, Inc.) this ___ day of May, 2004.

____
LOUIS F. HUBENER
Chief Deputy Solicitor General

CERTIFICATE OF COMPLIANCE

I hereby certify that the Department's Reply Brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2), in that this Brief uses Courier New 12-point font.

____
LOUIS F. HUBENER
Chief Deputy Solicitor General

D:\Brief Temp\03-2270_rep.wpd