IN THE SUPREME COURT OF FLORIDA

SUNSET HARBOUR NORTH CONDOMINIUM ASSOCIATION and STATE OF FLORIDA, DEPARTMENT REVENUE,	)	
Appellants,	)	Case No. SC03-520
v.	)	
JOEL W. ROBBINS, Property Appraiser for Miami-Dade County,	)	Lower Tribunal No. 3D02-2316
Appellee.	)	

_____/

BRIEF OF FLORIDA POWER & LIGHT COMPANY,
SUBMITTED BY LEAVE OF COURT,
AS AMICUS CURIAE IN SUPPORT OF THE APPELLANTS

_____

On Appeal from the District Court of Appeal,
Third District, State of Florida

_____

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Statement of Interest

Amicus Curiae Florida Power & Light Company ("FP&L") is a public utility pursuant to chapter 366, Florida Statutes. FP&L owns property and pays property taxes in 38 counties throughout Florida. It, therefore, has a special interest in the orderly administration of the state's property tax laws. FP&L files this brief in support of the taxpayer, an Appellant in this case.

FP&L has litigated recently a question that goes to the Court's jurisdiction in this matter, and that is whether a property appraiser has standing to challenge indirectly, via an affirmative defense, the constitutionality of a statute governing his conduct, when he cannot do so directly by filing a complaint. *See Florida Power & Light Company v. Ernie R. Mastroianni, Duval County Property Appraiser*, Case No. 99-07418 CA (Fla. 4th Cir. Ct.) (appraiser challenge to constitutionality of statute on pollution control equipment). In a partial summary judgment in that case entered on December 5, 2002, the trial court determined that the property appraiser lacked standing to challenge, via an affirmative defense, the constitutionality of the property tax statute at issue there. (Copy at Appendix A).

The issue in this case that concerns FP&L as a property owner and taxpayer goes beyond the validity of section 192.042(1), Florida Statutes. At issue in general is whether public officers will be allowed to challenge the constitutionality of statutes they are charged with enforcing, and in particular whether property

appraisers will be allowed to challenge tax laws concerning a variety of issues. To that end, the Court may wish to inquire of the Attorney General regarding the current inventory of property tax cases in which property appraisers have challenged recently various longstanding tax statutes, including those on affordable housing, pollution control equipment, construction work in progress and special district property owned and used by the special districts.

Summary of the Argument

Standing is a proper inquiry of this Court at this time because it goes to the Court's jurisdiction to hear the case. Because it is jurisdictional, it can, in cases like this, be raised for the first time on appeal. It cannot be stipulated to or waived by the parties.

Longstanding precedent established in *Atlantic Coast Line Railway Co.* precludes the property appraiser from challenging the constitutionality of a Florida statute, whether offensively or defensively. Exceptions to the general rule that permit certain "defensive challenges" in limited circumstances are grounded upon a public official's defense of independent constitutional powers - - a situation not present in this case.

This Court should reject the illogical notion that a public official can bring himself within the parameters of a legitimate defensive challenge by disobeying the law and then "defending" against a lawsuit when called before a court to answer for that disobedience. Instead, this Court should reaffirm the rule of law set forth in *Atlantic Coast Line Railway Co.,* as recently affirmed in *Fuchs v. Robbins.*

Argument

I. The issue of standing is a proper inquiry of this Court, even though it was not raised below, because it presents the question of whether a class of litigants may bring a particular claim as a matter of law.

Although the property appraiser's standing to challenge the constitutionality of section 192.042(1), Florida Statutes, was not litigated below, *Sunset Harbour North Condominium Association*, 837 So.2d 1181, 1181, n. 1 (Fla. 3rd DCA, 2003), Appellant Sunset Harbour has raised this issue in its initial brief. Thus, it is a proper subject of an amicus brief. More importantly, it is at any time a proper inquiry of this Court because "[t]he determination of standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party." *Rogers & Ford Const. v. Carlandia Corp.*, 626 So.2d 1350, 1352 (Fla. 1993). Jurisdiction can be raised for the first time on appeal. *84 Lumber Co. v. Cooper*, 656 So.2d 1297, 1298 (Fla. 2nd DCA 1994). And, as the Second District has explained, even if the parties fail to raise this jurisdictional issue, 'lack of jurisdiction is a fundamental error of law which we may notice of our own initiative." *Watson v. Schultz*, 760 So.2d 203, 204 (Fla. 2nd DCA 2000).

Because standing to sue is a threshold jurisdictional issue, "[a] stipulation to jurisdiction over the subject matter where none exists is ineffectual." *Grand Dunes, Inc. v. Walton County*, 714 So.2d 473, 475 (Fla. 1st DCA 1998), citing *Polk County v. Sofka*, 702 So.2d 1243, 1245 (Fla. 2nd DCA 1973). Likewise, the parties

cannot waive subject matter jurisdiction. *Peltz v. District Court of Appeal, Third District*, 605 So.2d 865, 865 (Fla. 1992).

It is true that cases exist in which the courts have held that standing was waived when not presented to the trial court. FP&L has found no prior decision that articulates a basis for distinguishing between cases in which standing was deemed waived because it was not raised below, and those in which it was deemed jurisdictional and thus worthy of consideration even when raised for the first time on appeal.

However, FP&L suggests that the cases in which courts have deemed standing was waived tend to be cases in which standing was dependent upon a specific factual showing, such as that required to demonstrate that the personal stake or special injury requirement was met. For instance, in *Cowart v. City of West Palm Beach*, 255 So.2d 673 (Fla. 1971), the Court ruled that the City had waived its right to contest, for the first time on appeal, the standing of a father to bring a wrongful death action on behalf of his illegitimate son. The Court explained that if the issue had been raised at trial, the father might have been able to prove common law marriage, a factual question, and that "under these circumstances, the right to question plaintiff's standing to sue was waived." *Id.* at 675 (e.a.). Where standing turned on an evidentiary issue, the Court sought to protect the litigant from ambush on appeal.

Cowart later was relied upon in *Krivanek v. Take Back Tampa Political Committee*, 625 So.2d 840, 842 (Fla. 1993), wherein the Court held that a supervisor of elections who failed to contest the standing of a political committee at trial had waived the right to contest standing on appeal. It is unclear from the face of the opinion why the Court reached this conclusion, but perhaps it viewed the committee -- like the father in *Cowart* – as a party entitled to the opportunity to demonstrate facts sufficient to prove a personal stake that supported standing.

In contrast, cases in which the courts have allowed standing to be raised and addressed for the first time on appeal seem to be cases in which the standing determination turned on a question of law rather than facts specific to a particular party. *See Grand Dunes, Inc.*, and *Rogers, supra.* This case is one in which a determination of standing does not turn on specific factual determinations that may be outside the record; instead, it turns upon the uncontested status of Appellee Robbins as a public officer who seeks to challenge the constitutionality of a statute, and a legal interpretation of the applicable common law regarding same. Thus, the issue of the property appraiser's standing is properly before this Court.

II. Under *State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalization,* and under *Turner,* as adopted by this Court in *Fuchs v. Robbins,* the property appraiser lacked standing to challenge the constitutionality of section 192.042(1), Florida Statutes.

Once again, a property appraiser has refused to follow a statute enacted by the Legislature regarding the valuation of property. *Sunset Harbour North*

Condominium Association v. Robbins, 837 So.2d 1181 (Fla. 3rd DCA 2003). Once again, the appraiser argues that the statute should be ignored because it is unconstitutional. And once again, this Court confronts a case posing the question of whether the appraiser – or any other public officer -- may refuse to follow the law and seek after-the-fact vindication by asking the judicial branch to affirm his initial holding that a statute is unconstitutional.

If this case seems familiar, it is because the same dispute was before this Court in *Fuchs v. Robbins*, 818 So.2d 460 (Fla. 2002). There, this Court resolved a conflict among the district courts of appeal by reversing a decision of the Third District in *Fuchs v. Robbins*, 738 So.2d 338 (Fla. 3rd DCA 1999), and adopting the contrary opinion of the Second District in *Turner v. Hillsborough County Aviation Authority*, 739 So.2d 175 (Fla. 2nd DCA 1999).

In doing so, this Court confirmed the continuing vitality of *State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers*, 94 So. 681 (Fla. 1922), on which the Second District's decision in *Turner* was grounded. *See Fuchs v. Robbins*, 818 So.2d at 464. Thus, the Court held that a property appraiser may not challenge the constitutionality of a statute he is charged with enforcing, whether offensively or defensively. Indeed, *Turner* explicitly recognized that when a property appraiser's disobeyance of the law provokes the litigation, he cannot be considered to be in a defensive posture.

Now, the Third District again has conferred standing on a property appraiser to challenge a property tax statute – this time via an "affirmative defense" in a lawsuit brought by the taxpayer after the appraiser refused to obey the law. *Atlantic Coast Line Railway Co., supra,* again provides the rule of decision. There, the Supreme Court disapproved just such a defensive challenge to a statute by public officers. Therefore, this Court should reverse the Third District.

Atlantic Coast Line Railway Co. articulated a clear rule of law grounded upon sound policy considerations, and it should be reaffirmed. Likewise, *Turner's* suggestion that a property appraiser may not do indirectly what he may not do directly should be reaffirmed. No policy rationale supports a rule of law that would prohibit a public officer from filing a constitutional challenge to a statute, but would allow that same officer to challenge the statute via an "affirmative defense" after he first disobeyed the law and then was called before a court to answer for that disobedience.

The Court also should refrain from allowing this challenge under the so-called "public funds" exception. Applying that exception to these facts would swallow the general rule set forth in *Atlantic Coast Line Railway Co*. A public officer who is not allowed to challenge the laws he is duty bound to administer should not be allowed to do so by way of artifice.

A. This Court's holding in *Atlantic Coast Line Railway Co.*, is controlling and prohibits the property appraiser from questioning the constitutionality of section 192.042(1), even if doing so as a defensive matter.

Property appraisers are constitutional officers who have no constitutional duties. Their only duties are set by law. *See* Art. VIII, § 1(d), Fla. Const. *See also Burns v. Butscher*, 187 So.2d 594, 595 (Fla. 1966). They assess the value of property. *See* §192.001(3), Fla. Stat. (2002). They do not impose or levy taxes, collect taxes or refund taxes. *See* § 200.065(2), Fla. Stat. (2002); § 192.001(4), Fla. Stat. (2002); § 197.182, Fla. Stat. (2002). They are not responsible for enacting tax laws or prescribing tax policy; that is a duty of the Legislature. Art. III, § 1; Art. VII, § 1(a), Fla. Const. And they are not responsible for declaring acts of the Legislature invalid. That is the province of the judiciary. Art. V, Fla. Const.

Like this case, *Fuchs* involved a constitutional challenge to section 192.042(1), Florida Statutes, which provides that real property shall be assessed on January 1st if it is "substantially completed," meaning that it "can be used for the purpose for which it was constructed." § 192.042(1), Fla. Stat. (2002).[1] The property appraiser of Miami-Dade County refused to apply this statutory rule to a partially constructed hotel building, and the taxpayer challenged the assessment. The Value Adjustment Board ("VAB") ruled for the taxpayer, and the appraiser filed a lawsuit challenging the VAB's decision and the validity of the statute.

[1] This statute has remained unchanged from the *Fuchs* case through today's date.

A panel of the Third District ruled that the appraiser had standing to challenge the constitutionality of the statute defensively, *Fuchs*, 738 So.2d at 339-340, and that the statute was constitutional. *Id.*, 738 So.2d at 340-341. On rehearing en banc, the Third District ruled that the statute was unconstitutional. The en banc court adopted the panel's decision and rationale on standing, *Fuchs*, 738 So.2d at 341 n. 1, thus also holding that the appraiser was acting in a defensive posture when he challenged the constitutionality of section 192.042(1).

In a similar dispute, the Second District held that the property appraiser of Hillsborough County did not have standing to challenge the constitutionality of a property tax statute in what the property appraiser attempted to characterize as a defensive posture. The Second District first rejected Turner's contention that he was in a defensive position, and then reasoned:

> [I]f the property appraiser had followed the law initially, as *State ex rel. Atlantic Coast Line Railway Co.* dictates he is obligated to do, the taxpayer would not have been forced to petition the VAB and set the litigation in motion. It both defies logic and violates the rule of *State ex re. Atlantic Coast Line Railway Co.* to suggest that Turner can ignore the law by denying an exemption based on his belief that it is unconstitutional and then be allowed to ask the court to approve his disobedience by upholding his denial.

Turner, 739 So.2d at 178 (e.a.). The Second District noted that its decision was in conflict with the en banc decision in *Fuchs*, "wherein the Third District characterized a property appraiser's complaint filed pursuant to section 194.036 as a defensive action." *Turner*, 739 So.2d at 178 (e.a.).

In a unanimous per curiam decision, this Court held that "we approve the decision in *Turner,* and reverse the decision in *Fuchs*." *Fuchs*, 818 So.2d at 464. The Court ruled that the property appraiser could not challenge a property tax statute as unconstitutional, explaining:

> As aptly observed by the Second District in *Turner*, "[t]his statutory prohibition of constitutional challenges by property appraisers is in accord with the general common law principle denying ministerial officers the power to challenge the constitutionality of statutes." 739 So.2d at 179-80 (citing *State ex rel. Atlantic Coast Line Ry. Co. v. State Bd. of Equalizers*, 94 So. 681 (1922), and *Barr v. Watts*, 70 So.2d 347, 351 (Fla. 1953).

Fuchs, 818 So.2d at 464.

Thus, *Fuchs* and *Turner* both are grounded on *Atlantic Coast Line Railway Co.*, the polestar decision on the issue of whether a public officer may challenge the constitutionality of a statute he is obligated to enforce. And it is to *Atlantic Coast Line Railway Co.*, that the Court should turn to decide the present dispute.

In *Atlantic Coast Line Railway Co.*, a taxpayer challenged the Comptroller's assessment and valuation of its railroad property and appealed to the State Board of Equalizers, composed of the Governor, Attorney General and Treasurer. The Board refused to accept the appeal. The taxpayer filed a petition for a writ of mandamus, and the Board <u>defended</u> by challenging the constitutionality of the statute that gave it appellate jurisdiction. The Court ruled against the Board, holding that the Board's <u>defensive</u> challenge to the statute violated the separation

of powers doctrine because it impermissibly asserted "the right of a branch of the government other than the judiciary, to declare an act of the Legislature to be unconstitutional." *Atlantic Coast Line Railway Co.*, 94 So. at 682.

In support of its decision to issue the writ of mandamus requiring the Board to accept the taxpayer's appeal, the Court reasoned:

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

Id., 94 So. at 682-683 (e.a.).

The Court emphasized that the State Board of Equalizers – like the property appraiser in this case -- did not have a sufficient stake in the outcome of the litigation to challenge the constitutionality of the statute. It held that the Board lacked "any material interest, personal or pecuniary, that would be injuriously affected or prejudiced by the act questioned, entitling [the Board] to question [the statute's] constitutionality." *Id*., 94 So. at 684 (e.a.).

This general rule which prohibits a public officer from challenging a statute, whether offensively or defensively, has been applied in other cases. In *Barr v. Watts*, 70 So.2d 347 (Fla. 1953) – also cited by this Court in *Fuchs* -- the Court

disallowed a defensive challenge to a statute by the State Board of Law Examiners. *See Fuchs v. Robbins,* 818 So.2d at 464.

There, an applicant for admission to practice law in Florida brought a mandamus proceeding against the State Board of Law Examiners to allow her to take the examination pursuant to conditions specified by the Legislature in a statute. The Board defended its actions by challenging the constitutionality of the statute. The Court held that the Board lacked standing to challenge the law as a defense, and any argument that adherence to such law would cause Board members to violate their oath of office had been settled by *Atlantic Coast Line Railway Co.*

Thus, *Atlantic Coast Line Railway Co.,* as relied upon in *Barr, Fuchs* and *Turner,* is dispositive in this case. There is no difference between the State Board of Equalizers' defensive challenge to the taxation statute in *Atlantic Coast Line Railway Co.*, and the constitutional challenge to section 192.042(1), Florida Statutes, which the property appraiser brought as a purported defense in this case. Just as this Court ruled that the State Board of Equalizers was required to accept the constitutionality of that statute until it was judicially addressed in a proper case, so the Court should hold that the property appraiser here must accept the constitutionality of section 192.042(1), Florida Statutes, until that issue is judicially addressed in a proper proceeding.

B. The dictum in *Department of Education v. Lewis*, as cited in *Fuch*, does not provide a basis for the property appraiser to challenge this statute because he does not seek to vindicate any constitutional duties of his own.

The only plausible basis for the property appraiser to assert standing here is dictum in *Department of Education v. Lewis*, 416 So.2d 455 (Fla. 1982), coupled with acceptance of the illogical notion that a property appraiser is acting in a defensive posture even when it is his refusal to obey the law that sets the litigation in motion. The *Fuchs* Court seemed to leave the door open for a defensive action, even though that was exactly the factual basis for the rule in *Atlantic Coast Line Railway Co.* Quoting *Lewis,* 416 So.2d at 458, the *Fuchs* Court said a property appraiser may "raise also such a constitutional defense in an action initiated by the taxpayer challenging a property assessment." *Fuchs,* 818 So.2d at 464. Neither the circumstances in *Lewis* nor the cases cited by *Lewis* support such a sweeping exception to settled law. The Court's statement in *Fuchs* is dictum based upon dictum that should not be elevated to a rule of law.

Lewis involved a lawsuit by the State Department of Education and others to the constitutionality of appropriations proviso language. The Court held in *Lewis* that the Department of Education lacked standing to initiate a challenge to the statute because the "agency [did] not have a sufficiently substantial interest or special injury to allow the court to hear the challenge." *Lewis,* 416 So.2d at 458. During its discussion, the Court observed that "[i]f, on the other hand, the

operation of a statute is brought into issue in litigation by another against a state agency or officer, the agency or officer may defensively raise the question of the law's constitutionality." *Id.* Because *Lewis* involved an offensive challenge to a statute by a state agency, any statement in *Lewis* regarding a defensive challenge is dictum and "non-binding in the instant case." *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So.2d 339, 344 (Fla. 1986), *cert. denied, Mobil Oil Corp. v Board of Trustees of Internal Improvement Trust Fund of Florida*, 479 U.S. 1065 (1987). *See also Adams v. Aetna Cas. & Sur. Co.,* 574 So.2d 1142, 1153 n. 10 (Fla. 1st DCA 1991).

In support of the *Lewis* dictum, the Court cited three cases: *State ex rel. Harrell v. Cone*, 177 So. 854 (1937); *State ex rel. Portland Cement Co. v. Hale*, 176 So. 577 (1937), *overruled in part sub. nom., Hale v. Bimco Trading*, 306 U.S. 375 (1939); and *City of Pensacola v. King*, 47 So.2d 317 (Fla. 1950). All three turned upon the fact that the public officer questioning the constitutionality of a statute was required by its terms to expend public funds in furtherance of the statute.[2] Thus, the claimed right under the dictum in *Lewis* and now *Fuchs* for a

[2] A close reading of *Cone* reflects that the "public funds" exception is bottomed on a demonstration of a public officer's personal stake in the litigation under limited circumstances. In *Turner*, the Second District did not address whether a "disbursement of public funds" exception to the standing rule granted standing to the property appraiser, holding such an exemption was precluded by section 194.036(1)(a), Florida Statutes. *Turner*, 739 So.2d at 178. This holding also was adopted by the Court in *Fuchs*. *See Fuchs*, 818 So.2d at 464.

public officer to defensively challenge the constitutionality of a statute is nothing more than an overly broad assertion of the narrower "public funds" exception.

Cone involved a case in which the Comptroller refused to disburse road funds to Washington County, was sued in mandamus, and defended by challenging the constitutionality of the law requiring disbursement of the funds. After analyzing the Comptroller's constitutional duties to "examine, audit, adjust, and settle the accounts of all officers of the state," the Court concluded that the Comptroller was constitutionally charged with disbursement of public funds to a degree that gave him an adequate personal interest, *Cone,* 177 So. at 855-856, much as the Treasurer had such a personal interest in *Board of Public Instruction for Santa Rosa County v. Croom*, 48 So. 641 (Fla. 1909), the first of the cases that evolved into the "public funds" exception to *Atlantic Coast Line Railway Co.*[3]

Separation of powers issues do not arise in cases such as *Cone*, where a public officer is exercising powers granted by the Constitution and necessarily must challenge a statute that impinges upon those independent and constitutionally

[3] In *Atlantic Coast Line Railway Co.,* the Court distinguished its decision from *Croom* by reasoning that the Treasurer's interest in *Croom* was directly affected because he was "under a heavy bond," and either he or his bondsman would have to make good on any money paid out of the Treasury pursuant to an unconstitutional statute. *Atlantic Coast Line Railway Co.,* 94 So. at 684. "His right to raise the question of the constitutionality of the act involved did not grow out of his oath of office, nor out of his official position, but because he was liable to be injured pecuniarily." *Id.* No such personal exposure was evident in *Atlantic Coast Line*, so the general rule was controlling.

derived powers. Later cases erroneously interpret *Cone* more broadly, suggesting that it permits any public officer to challenge a statute if it authorizes the expenditure of public funds.

Hale was one of those cases. Decided within months of *Cone*, it involved a petition for writ of mandamus brought against the State Road Department to coerce compliance with a statute requiring inspection of cement imported from outside Florida. In defense, the State Road Department challenged the validity of the inspection law. The Court reasoned there was "no material difference between the status of the State Road Department in the instant case and the status of Mr. Croom as Comptroller and Mr. Knott as State Treasurer in that case" because both were required to expend public funds. *Hale*, 176 So. at 585. However, there was in fact a material difference in the status of the parties: Croom and Knott exercised powers granted by the Constitution; the State Road Department did not. Perhaps because the standing issue was not briefed, *see id.*, 176 So. at 584, the separation of powers doctrine which provided the crucial distinction between *Atlantic Coast Line Railway Co.* and *Cone* was not addressed here.

King involved a challenge by the Railroad and Public Utilities Commission to a statute authorizing the City of Pensacola to regulate taxicabs. The Court allowed the Commission to challenge the statute based upon the fact that the Commission would have to expend public funds administering the law. However,

all public officers expend or disburse public funds to administer laws. Surely that was no less true for the Board of Equalizers in *Atlantic Coast Line Railway Co.* and with the Board of Law Examiners in *Barr*.

The Court recognized as much within a few years of deciding *King*. As explained by the Second District in *Turner*, "[s]hortly after *King* was decided, the supreme court rejected this same argument, distinguished the dictum in *King* and re-affirmed the rule of *Atlantic Coast Line Railway Co. v. State Board of Equalizers*, 84 Fla. 592, 94 So. 681 (1922), that the 'right to declare an act unconstitutional ... cannot be exercised by the officers of the executive department under the guise of the observance of their oath of office to support the Constitution.'" *Turner*, 739 So.2d at 178 (citing *Barr, supra*). Like *Hale*, *King* has limited persuasive authority concerning the issue before this Court.

Thus, the dictum in *Fuchs* relies upon the dictum in *Lewis,* and both refer to a narrow exception to the rule in *Atlantic Coast Line* that a public officer may not challenge the constitutionality of a statute he is charged with enforcing – whether offensively or defensively – unless the challenge is grounded upon the public officer's own independent and constitutionally established duties which provide the necessary personal stake in the litigation.

In his concurring opinion in *Fuchs,* Judge Sorondo acknowledged that he was "unable to find a case which specifically equates the 'disbursement' of public

funds with the 'collection' of same for purposes of establishing standing in the present context[.]" *Fuchs,* 738 So.2d at 350. Nevertheless, he asserted that "it is absurd to conclude that standing would exist for one and not the other." *Id.* Even if the collection of taxes does equate to disbursement of public funds for purposes of a broad "public funds" exception on standing – which FP&L does not concede and which need not be decided in this case -- the critical point here is that property appraisers do not collect taxes. By law, that is the role of tax collectors. Property appraisers value property. § 192.001(3), Fla. Stat. (2002).

For this Court to hold that the mere expenditure of "public funds" allows an officer of the executive branch to determine the constitutionality of a duly enacted statute, and to undertake litigation on that issue without a personal stake in its outcome, would undermine the separation of powers doctrine. Allowing the property appraiser to challenge a taxation statute, whether as a defense or based on a "public funds" exception, would eviscerate *Atlantic Coast Line Railway Co.*

A property appraiser -- or any other public officer – who resorted to one of these gambits to challenge a statute would only breed disrespect for law. The Court should not permit such challenges, whether offensively or defensively, for the reasons set forth in such compelling language in *Barr*:

> The people of this state have the right to expect that each and every such state agency will promptly carry out and put into effect the will of the people expressed in the legislative acts of their duly elected representatives. The state's business cannot come to a standstill while

> the validity of any particular statute is contested by the very board or agency charged with the responsibility of administering it and to whom the people must look for such administration.

Barr, 70 So.2d at 351 (e.a.).

The Court should reaffirm the rule of law in *Atlantic Coast Line Railway Co.*

Conclusion

For the foregoing reasons, FP&L respectfully requests that this Court reverse the decision of the Third District Court of Appeal and hold that the Appraiser may not bring a constitutional challenge to section 192.042(1), Florida Statutes, whether by means of a claim included in a complaint or other initial pleading or as an affirmative defense in an answer or other responsive pleading.

Respectfully submitted this 6th day of May, 2003.

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Certificate of Compliance

I further certify that this brief is presented in 14-point Times New Roman and complies with the front requirements of Rule 9.210.

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