IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1556

L.T. NOS. 1D06-2026, 1D06-2158

THE CROSSINGS AT FLEMING ISLAND
COMMUNITY DEVELOPMENT DISTRICT,

Petitioner,

-vs-

LISA RINEHARDT ECHEVERRI, etc., et al.,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA

BRIEF BY LEAVE OF COURT OF AMICI CURIAE,

ABE SKINNER, AS COLLIER COUNTY PROPERTY APPRAISER,
KRISTINA KULPA, AS HENDRY COUNTY PROPERTY APPRAISER,
ALVIN MAZOUREK, AS HERNANDO COUNTY PROPERTY APPRAISER
ED HAVILL, AS LAKE COUNTY PROPERTY APPRAISER,
FRANCIS AKINS, AS LEVY COUNTY PROPERTY APPRAISER,
LAUREL KELLY, AS MARTIN COUNTY PROPERTY APPRAISER,
SHARON OUTLAND, AS ST. JOHNS COUNTY PROPERTY APPRAISER,
DAVID JOHNSON, AS SEMINOLE COUNTY PROPERTY APPRAISER,
RONNIE HAWKINS, AS SUMTER COUNTY PROPERTY APPRAISER,
MORGAN B. GILREATH, JR., AS VOLUSIA COUNTY PROPERTY APPRAISER,

IN SUPPORT OF RESPONDENT,
HON. WAYNE G. WEEKS, CFA, AS CLAY COUNTY PROPERTY APPRAISER

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STATEMENT OF INTEREST

Amici Curiae are elected Florida Property Appraisers. Two of the Amici (Hon. Abe Skinner, Collier County, and Hon. Ed Havill, Lake County) have faithfully followed, then defensively and successfully challenged the constitutionality of the "construction work in progress" statute, Section 192.042(2), Florida Statutes, which gives a tax break primarily to telecommunications companies and public utilities not available to other taxpayers, and Section 193.621, Florida Statutes, which provides a tax break to owners of pollution control equipment.

Taxpayers have brought several lawsuits now pending in several Circuit Courts invoking Section 193.017, Florida Statutes, which provides an assessment lower than just (market) value to the owners of apartment projects financed in part by investors compensated with tax credits which can be used like cash towards their Federal income tax liabilities. Several amici curiae have defensively challenged the constitutionality of that statute.[1]

[1] The Legislature tacitly recognized the lack of Constitutional support for this statute by enacting SJR-4B in the 2007 Legislative Special Section B, proposing an amendment to Article VII, Section 4 of the Florida Constitution which would authorize assessment of this class of property at less than market (just) value. In a suit brought by Mayor Eric Hersh of Weston both in his official and individual capacity, Hon. Charles A. Francis, Leon County Circuit Judge, struck the proposed amendment from the November, 2007 ballot due to the misleading, hence unconstitutional, wording of the summary. *Hersh v. Browning*, Case No. 37-2007-CA-1862, Summary Judgment of Sept. 24, 2007. (See decision at http://blogs.orlandosentinel.com/news_politics/files/summary_judgement.pdf.)

SUMMARY OF ARGUMENT

Tax assessment challenges are unknown at the common law and the Legislature has prescribed the only proper parties to such an action in Section 194.181, Florida Statutes. The plaintiff is the taxpayer and the defendant is the Property Appraiser. If relief is sought concerning the collection of a tax, the Tax Collector must also be a party. If an assessment is challenged as contrary to the Florida Constitution, the Department of Revenue is required to be a party defendant. These are the only parties to a tax suit.

Obviously, the taxpayer who benefits from a legislative tax break has no incentive to challenge its constitutionality. The Attorney General is required to uphold and defend the constitutionality of statutes, so he cannot challenge them. The Tax Collector is a nominal party. The only logical party to protect the interests of the other taxpayers in the county is the Property Appraiser.

As long as the Property Appraiser has applied a statute in good faith, he or she should have standing to defensively challenge its constitutionality. Without such standing, the checks and balances which must attend acts of the Legislature would be totally lacking and the Legislature would be free to enact business-friendly statutes which would be immune from judicial review.

ARGUMENT

Whether this Court should approve the holding of the District Court of Appeal, Second District, in *Sun 'N Lake of Sebring Improvement District V. McIntyre*, 800 So.2d 715 (Fla. 2d DCA 2001), disapprove the holding of the District Court of Appeal, First District in the instant action, and hold that the Property Appraiser does not have standing to defensively challenge the constitutionality of Section 189.403(1), Florida Statutes.

Historical Perspective

This Court articulated the five bedrock principles that limit the Legislature's power to enact property tax statutes which will pass muster under the 1968 Constitution:

A. By specifically enumerating the classes of property which the Legislature can establish and provide for assessment at less than just (market) value, Article VII, Section 4, Const.Fla. 1968 prohibits the Legislature from creating any others.

B. Except for the five enumerated classes of property, the Legislature may not direct the assessment of any property at less than just (market) value.

C. The phrase "all property" in Art. VII, Sec. 4, Const.Fla. 1968, means "all property." A statute which singles out a particular class of property for assessment on a different basis fails for that reason.

D. Just value is legally synonymous with market value, i.e., the familiar willing buyer/willing seller amount, and except for the favored five enumerated classes of property, the Legislature may not

mandate assessments at less than just value.

E. No matter how it is characterized, a statute which when applied results in an assessment at less than just value or of less than all interests in the property constitutes an exemption from taxation, and Article VII, Section 3 strictly limits exemption to properties used for those and only those purposes.

Each case which established these principles ultimately came to this Court because the Property Appraiser challenged the constitutionality of the Legislature's acts.

> A. By specifically enumerating the classes of property which the Legislature can establish and provide for assessment at less than just (market) value, Article VII, Section 4, Const.Fla. 1968 prohibits the Legislature from creating any others.

Before 1968, this Court held that the Legislature was free to classify properties and order that they be assessed at less than just (market) value. For example, even though the 1885 Constitution did not permit appraisal of agricultural land at less than just value, this Court had no difficulty in finding that law constitutional. *Tyson v. Lanier*, 156 So. 2d 833 (Fla. 1963)[2] The late Wade H. Lanier,

[2] "The organic requirements for 'a uniform and equal rate of taxation' and 'a just valuation of all' property, do not forbid but contemplate proper classification of property in making just valuations for taxation. * * *" That is exactly what the legislature did when it enacted § 193.11(3), Florida Statutes, F.S.A. The said act classified property being used for agricultural purposes in a category by itself for assessment purposes and directed that it be assessed as 'agricultural lands upon an acreage basis' when so used. The only restriction on the legislature's power appears to be that it be 'not arbitrary, unreasonable, and unjustly discriminatory, and apply similarly to all under like conditions.' ... *Id.* @ 837 (quoting

Jr., long time Osceola County Tax Assessor, raised the issue of the statute's unconstitutionality which this Court decided. But for his having raised the issue, the constitutionality of the agricultural classification law would never have reached this Court and the sea of change in the 1968 Constitution limiting the Legislature's power to classify would not have come about.

The 1968 constitutional tsunami washed away the Legislature's ability to arbitrarily achieve a tax break for a particular class of favored property owners by legislatively creating that class.

State ex rel. Atty. Gen. V. City of Avon Park, 108 Fla. 641, 149 So. 409, 416 (1933); citations omitted.

Chief Justice Drew's dissent cogently noted, "The classification effected by the statute here involved is not, in fact, a classification of land on the basis of any inherent characteristic but instead is a 'classification' of taxpayers or owners of taxable realty so as to single out those who choose or are able to subject their land to agricultural use and accord to that group alone the right to have the 'just value' of their property determined on the basis of actual use rather than on the basis of the same criteria controlling the valuation of other property. Whatever might be the validity of an act which classified taxable realty generally on the basis of actual use, an inequality is obvious when a law requires, as does this statute, a different assessment basis for parcels of land having identical salable or market value, whenever one parcel may be subjected to agricultural use. In any event, nowhere in the voluminous record at bar is there any effort to justify the classification attempted by demonstrating that the purpose of the act, I. e., to prevent consideration of potential uses in addition to actual use, has a unique relationship to the particular class affected, or that no other property shares the need for protection from market considerations for assessment valuation purposes. The net effect of such a provision is to exempt, in the case of lands currently used for agricultural purposes, that portion of any actual value attributable to other reasonably susceptible uses. As repeatedly adjudicated, any exemption outside the constitutionally prescribed classes must fall. *Id.* @ 839. This Court adhered to in *Tyson* in *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965).

Article VII, Section 4 of the 1968 Constitution enumerates the classes of property for which the Legislature may classify on the basis of character or use and prescribe assessment at other than just value: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes. Tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation. Property owned by persons entitled to a homestead exemption is limited to a maximum of a 3% increase in assessment. Period.

The stunning effect of this seemingly-innocent enumeration became clear in *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So.2d 433 (Fla 1974). The tax break which this Court struck in *Interlachen* was a *lagniappe* for the land development industry, the Rose Law, namesake law of Orlando Realtor, land developer, orange grower and State Senator, the late Walter W. Rose. The Rose Law provided that platted lots belonging to a developer must be assessed as unplatted acreage until 60% of the lots had been sold.

The constitutionality of the statute was defensively challenged by the late Clinton R. “Clint” Snyder, Tax Assessor of Putnam County.

This Court adopted Justice Drew’s dissent in *Tyson v. Lanier*, *supra*, and applied the principle of *expressio unius est exclusio alterius* to strictly limit the Legislature’s ability to favor various

constituencies through its previous power to create classifications of property.[3] To paraphrase the late William McChesney Martin Jr., chair of the Federal Reserve Board from 1951 to 1970, this Court took away the Legislature's punch bowl just as the party started getting interesting.

Two other teachings of *Interlachen* are pertinent. The first is that when Art. VII, Section 4 says that the Legislature is required to adopt regulations for the valuation of "all" property, it means "all" property, not just some, so that a statute which only pertains to the valuation of a class of property outside those enumerated in the Constitution fails to pass muster. "This Court has in the past pointed out the fundamental unfairness of statutorily manipulating assessment standards and criteria to favor certain taxpayers over others. *See Walter v. Schuler*, 176 So.2d 81 (Fla. 1965)." *Id*. @ 435.

Interlachen finally holds that a statute fails if it prescribes assessment at less than just value for property not specifically enumerated in Article VII, Section 4, Const.Fla. 1968.

> B. Except for the five classes of property, the Legislature may not direct the assessment of any property at less than just (market) value.

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[3] "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." *Interlachen*, 304 So. 2d at 434. (Emphasis in original)

Interlachen did not deter the Legislature. The late Dean of the Florida Senate, Verle A. Pope of St. Augustine, sponsored "Pope's Law," primarily to benefit the nearby, massive ITT land development in Palm Coast. Pope's Law, sometimes referred to as the 'sudden death school of tax assessment,' authorized a taxpayer to request the tax assessor to conduct an auction of his property assessed at $200,000 or less, with his proposed assessment being the opening bid. If no bids were received, that figure set the assessment. If a higher bid were received, the taxpayer was required to sell the property to the highest bidder or forfeit his deposit.

Dade County taxpayer William Segal brought a writ of mandamus against the Dade County Tax Assessor to require him to follow Pope's Law, and in defense, the Tax Assessor, represented by Hon. John Fletcher, now retired from the District Court of Appeal, Third District and one of the giants in Florida ad valorem tax law, claimed the statute was unconstitutional. The trial court agreed. The Comptroller, who at the time had the supervisory power now delegated to the Department of Revenue, intervened after final judgment for the purpose of filing an appeal. This Court held that he could not. *Dickinson v. Segal*, 219 So.2d 435 (Fla. 1969). So much for the concept that the Attorney General will take the lead in challenging unconstitutional statutes.[4]

[4] The Attorney General and Department of Revenue were firmly allied with the taxpayer in two cases challenging the constitutionality of the substantial completion law, *Markham v. Yankee Clipper Hotel, Inc.* and *Sunset Harbour Condominium Association v. Robbins.*

In *ITT Community Development Corporation v. Seay*, 347 So.2d 1024 (Fla. 1977), this Court reviewed a decision whereby John Seay, Tax Assessor of Flagler County, defensively challenged ITT's request to invoke Pope's Law on the grounds that it was blatantly unconstitutional. This Court agreed, holding that the procedure of a forced auction 10 months after the January 1 assessment date could not possibly arrive at the willing buyer/willing seller amount as of the tax lien date.

The Legislature folded its benevolent wings around the Sotille family of Miami, which owned land in downtown Coral Gables, zoned for a high-rise office building but occupied by a Publix store under a long term lease. The Property Appraiser assessed the property as a vacant high-rise office building site. After Valencia lost the fight of whether Section 193.011(2), Florida Statutes, required assessment at present use rather than highest and best use,[5] the Legislature obligingly enacted Section 193.023(6), Florida Statutes, which provided that "any" property owner owning property subject to a pre-1965 lease which had been judicially determined to restrict development, must only be assessed based on the highest and best use permitted by the lease.

This Court held that the statute veritably reeked of unconstitutionality; it created a class of property for favorable tax treatment contrary to *Interlachen, supra*, and that the effect of the

[5] *Bystrom v. Valencia Center, Inc.*, 432 So.2d 108 (Fla. 3d DCA 1983), rev.den., 444 So.2d 418 (Fla. 1984).

statute was not to tax all interests in the property together as required by this Court's *Morganwoods Greentree* decision. *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214 (Fla. 1989).

It goes without saying that Frank Bystrom, the Dade County Property Appraiser, defensively raised the unconstitutionality of the statute upon which the Sottile family relied for a tax break.

> C. In Article VII, Section 3, the Florida Constitution requires of the Legislature: "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation...." (e.s.) The phrase "all property" in Art. VII, Sec. 4, Const.Fla. 1968, means "all property;" a statute which singles out a particular class of property fails for that reason.

This principle was firmly established by *Interlachen, ITT* and *Valencia Center*.

> D. The "just valuation" of article VII, section 4, which the legislature is mandated to guarantee, is synonymous with "fair market value," *Valencia Center, Inc.*, *supra*; *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965).

This Court has defined fair market value as:

"The amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell." *Id.*; see also *Valencia Center*; *ITT Community Dev*. Except for the favored five enumerated classes of property, the Legislature may not mandate assessments at less than just value.[6] *See also, Mazourek v. Wal-Mart Stores, Inc.,* 831 So.

[6] The term "just valuation" is defined in Rule 12D-1.002(5), Florida Administrative Code, as "The price at which the property, if offered for sale in the open market, with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent, under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the

2d 85 (Fla. 2002).

> E. An assessment at less than just value or of less than all interests in the property constitutes an exemption from taxation, and Article VII, Section 3 strictly limits exemption to properties used for those and only those purposes.

Archer v. Marshall, 355 So.2d 781 (Fla. 1978), *Am Fi Inv. Corp. v. Kinney*, 360 So.2d 415 (Fla. 1978) firmly establish these principles.

In 1979, the Florida Advisory Council on Intergovernmental Relations released a study on property assessment and exemption issues, which identified ten statutes which appeared to conflict with this standard. The relevant portions of the study are included as Appendix A.

An assessment must include all interests in the property, no matter by whom owned. Taxpayers have received legislative blessing to value less than all interests in the property. In *Schultz v. TM Florida-Ohio Realty LTD. Partnership*, 577 So. 2d 573, 575 (Fla. 1991), *quoting Department of Revenue v. Morganwoods Greentree, Inc.*, 341 So. 2d 756, 758 (Fla. 1977), this Court affirmed the general rule that "in the levy of property tax the assessed value of the land must represent all the interests in the land. This means that despite the mortgage, lease, or sublease of the property, the landowner will still be taxed as though he possessed the property in fee simple."

These examples demonstrate the vital role that Property

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exigencies of the other."

Appraisers play in maintaining a check on legislative authority to draft unconstitutional tax breaks for the favored few. Without Property Appraiser standing to challenge the Legislatures departures from our organic document, each of these unconstitutional enactments would be in effect today, though plenty of others remain in their stead.

Present Perspective

The Time Share Statute Despite the history of this Court striking down unconstitutional legislative attempts to bestow favorable tax treatment to favored interests, the odious legislative practice continues. The constitutionality of sections 192.037(10) and (11), Florida Statutes, is currently before the courts of this state. These sections provide that time share property shall be assessed at 50% of original cost. The Property Appraisers challenging the constitutionality of the Time Share statute defensively raised the constitutionality of these subsections, because the various Plaintiffs relied on the same in an attempt to obtain a reduction in assessment of their timeshare properties. The Property Appraisers applied the subsections in good faith in making the challenged assessments.

The Time Share subsections do not apply to all property, hence they are unconstitutional under *Interlachen, supra*.[7] The Time

[7] "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

Share subsections mandate assessment at other than the willing buyer/willing seller amount, i.e., at less than just value, hence they conflict with the just valuation provisions of the Constitution and this Court's holdings in *Valencia Center* and *ITT Community Dev.*, *supra*. The Time Share subsections create a classification of property to be assessed on other than the just (market) value standard. This is not permitted pursuant to Article VII, §4, Const.Fla. 1968, because under the 1968 Constitution, the Legislature is only permitted to authorize assessment of the classes of property enumerated therein at less than just (market) value.[8] Fee time share property is not one of those classes. For that reason, The Subsections are unconstitutional. Finally, the Time Share Subsections create an irrebuttable presumption that fee time share property purchased from the developer must be assessed by deducting from the willing buyer/willing seller amount, the seller's costs and expenses of sale, thereby resulting in assessments at less than just (market) value. The property appraisers are not afforded an opportunity to rebut the presumption, therefore the statute fails. *Agency for Health Care Administration v. Associated Industries of Florida, Inc.,* 678 So. 2d 1239 (Fla.

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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 434-35.

[8] The classes are agricultural land, land producing high water recharge to Florida's aquifer, land used exclusively for non-commercial recreation, stock in trade, livestock and property receiving a Homestead Exemption. See *Williams v. Jones*, 326 So.2d 425, 430 (Fla. 1975), *Valencia Center, Inc. v. Bystrom*, *supra*, at 216.

1996).

The Affordable Housing Tax Credit Statute

Section 193.017, Florida Statutes, provides:

> Property used for affordable housing which has received a low-income housing tax credit from the Florida Housing Finance Corporation, as authorized by s. 420.5099, shall be assessed under s. 193.011 and, consistent with s. 420.5099(5) and (6), pursuant to this section.
>
> (1) The tax credits granted and the financing generated by the tax credits may not be considered as income to the property.
>
> (2) The actual rental income from rent-restricted units in such a property shall be recognized by the property appraiser.
>
> (3) Any costs paid for by tax credits and costs paid for by additional financing proceeds received under chapter 420 may not be included in the valuation of the property.
>
> (4) If an extended low-income housing agreement is filed in the official public records of the county in which the property is located, the agreement, and any recorded amendment or supplement thereto, shall be considered a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement.

The Affordable Housing Tax Credit subsections do not apply to all property, therefore they are unconstitutional under *Interlachen, supra.* The subsections create a class of property to be assessed on other than the just (market) value standard, which is not one of the Constitutionally enumerated classes of property which may be assessed at other than just value. *See Valencia Center,* and *ITT, supra.* By enacting the subsections, the Legislature impermissibly created an exemption for the benefits flowing from the property,

namely the tax credits. The property appraisers are required, as this Court noted in *Morganwoods Greentree, supra*, to assess all of the interests in property together in fee simple, rather than as an encumbered fee, as the Legislature provides in the tax credit statute. Finally, the tax credit statute fails because it creates an irrebuttable presumption that property financed by an owner who expects to receive tax credits during the years of its ownership as a limited partner has no value as to that portion of the rights flowing from ownership of the property. The property appraisers are not given an opportunity to rebut the presumption by showing that the value of the financing provided by the limited partner who is rewarded with the tax credits is part of the value of the property. The statute is therefore unconstitutional under *Associated Industries, supra.*

These two statutes, which are presently before the courts, are a microcosm of the tax problems the State of Florida faces. As this Court saw when it reviewed the Constitutional Amendment to increase the Homestead Exemption and make the Save Our Homes Cap portable, the taxpayers of the State are fed up, and demanding equitable treatment under the law. Unfortunately, the amendment will provide fertile ground for those local governments which seek to avoid it by simply raising their millage rates.

Allowing unfettered drafting of unconstitutional exemptions from taxation by every industry with the means to afford a lobbyist exacerbates this problem by passing the tax burden on to the

increasingly overtaxed taxpayers of this state who are not so favored. One man's exemption is another man's tax. While the Chamber of Commerce is quick to note the doctrine of Separation of Powers in its brief, it fails to recognize the important check on legislative power that the courts provide. Because no individual taxpayer will have the necessary special injury to have standing to challenge these various acts, the Property Appraisers of this state are the only ones who can place the constitutionality of these enactments before the courts.

A Look to the Future

Nothing is more frustrating to a student of this Court's opinions and the Constitution than addressing a committee of the Legislature which is about to recommend some tax break or another in the guise of a classification, and being told "It's not our job to consider constitutionality, it's the Courts'." As the Chamber of Commerce notes in its Statement of Interest, it "routinely advocates on behalf of its members with respect to property tax issues before the Florida Legislature and the executive and judicial branches in the State of Florida." The Chamber is by no means alone in its advocacy. Indeed, one would be naive to expect that extra-constitutional enactments to benefit select taxpayers are a thing of the past.

Judging from the bills awaiting the Legislative session, there

will be more forthcoming.

In the 2007 session, Senate Bill 674 would have removed consideration of highest and best legal use from the Property Appraiser's consideration, leaving property to be assessed based on its present use. In this year's session, House Bill 129 would allow the owners of certain classes of property such as owners of residential rental property, shopping centers and marinas and properties used for commercial fishing purposes - not enumerated in the Constitution - to enter into a five year deed restriction with the County Commission to continue the present use of the property, which would require the Property Appraiser to ignore the highest and best legal use and value the property only based upon its present use. House Bill 735 would allow tax exemption to organizations thinking about putting their vacant land to a charitable use/ this Court has held that actual use of property for an exempt purpose on the tax day is required for a grant of exemption. House Bill 7001 would seemingly define for-profit educational institutions as non-profit entities for purposes of exemption from property taxation.

Not one single taxpayer in the State of Florida has standing to challenge these acts. These acts are only subject to judicial review if Property Appraisers are allowed to continue to place the issue of the constitutionality of these exemptions before the courts of this state. Our pro-business colleagues are undoubtedly frustrated that the fruits of their legislative labors are being plucked before they

ripen, by courts that feel a stronger tie to the Constitution than the legislators who pass these bills do. But the separation of powers does not occur in a vacuum, it exists with checks and balances, in which each branch of government exists to offer a check on the power of the other branches. The Judicial Branch is the only chance that many taxpayers have to have to force the Legislature to stand for them on the basis of constitutionality, rather than dollar amount. If Property Appraisers are denied standing to challenge the extra-constitutional enactments of the Legislature, this important Judicial check on Legislative power will be effectively exterminated.

Conclusion

The Court should affirm the decision of the First District Court of Appeal, which correctly notes that this Court has explicitly held that a Property Appraiser has standing to defensively challenge the constitutionality of a statute.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief and Appendix thereto was served by mail this 4th day of March, 2008 on

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the font size and style used in the foregoing Brief is 12 Courier and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a).

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J. Christopher Woolsey