

IN THE SUPREME COURT OF FLORIDA

NORTH PORT ROAD AND DRAINAGE
DISTRICT, a dependent
special district of the
State of Florida,

Case No.: SC10-1220
DCA Case No.: 2D09-2221
L.T. Case No.: 2008CA018622NC

Petitioner,

vs.

WEST VILLAGES IMPROVEMENT
DISTRICT, an independent
special district of the
State of Florida,

Respondent.

ANSWER BRIEF ON JURISDICTION OF RESPONDENT,
WEST VILLAGES IMPROVEMENT DISTRICT

Margaret E. Wood, Esq.
Florida Bar No.: 0014071
Caldwell Pacetti Edwards Schoech &
Viator, LLP
Attorneys for Respondent
One Clearlake Centre
250 South Australian Ave.
Suite 600
West Palm Beach, Florida 33401
Tel.: (561) 655-0620
Fax: (561) 655-3775

Philip M. Burlington, Esq.
Florida Bar No.: 285862
Burlington & Rockenbach, P.A.
Attorney for Respondent
Courthouse Commons
444 West Railroad Ave.
Suite 430
West Palm Beach, Florida 33401
Tel.: (561) 721-0400
Fax: (561) 621-0465

TABLE OF CONTENTS

	<u>Pages</u>
Table of Citations	iii
Statement of the Case and Facts	1-3
Summary of Argument	3-4
Argument	5-9
Conclusion	9
Certificate of Service	10
Certificate of Compliance	11

TABLE OF CITATIONS

<u>Cases</u>	<u>Pages</u>
<i>Blake v. City of Tampa</i> , 115 Fla. 348, 156 So. 97 (1934)	2-4,6-8
<i>City of Gainesville v. State</i> , 863 So. 2d 138 (Fla. 2003)	8-9
<i>City of Gainesville v. State</i> , 778 So. 2d 519 (Fla. 1 st DCA 2001)	9
<i>Curry v. State</i> , 682 So. 2d 1091 (Fla. 1996)	7
<i>Dep't of Revenue v. Johnston</i> , 442 So. 2d 950 (Fla. 1983)	7
<i>Education Foundation of Osceola v. Remington Community Development District</i> , 946 So. 2d 1069 (Table) (Fla. 2006)	4
<i>N&L Auto Parts Co. v. Doman</i> , 117 So. 2d 410 (Fla. 1960)	8
<i>Nooe v. State</i> , 930 So. 2d 579 (Fla. 2006)	7
<i>Remington Community Development District v. Education Foundation of Osceola</i> , 941 So. 2d 15 (Fla. 5 th DCA 2006)	2-9
<i>West Villages Improvement District v. North Port Road and Drainage District</i> , 35 Fla. Law Weekly D1215, 2010 WL 2145479(Fla. 2d DCA May 28, 2010)	1-2,4-9
 <u>Statutes and Rules</u>	
Rules 9.030(a)(2)(A)(v) and (vi), Florida Rules of Appellate Procedure	5
Article V, Section 3(b)(4), Florida Constitution	5
 <u>Attorney General Opinions</u>	
Attorney General Opinion 08-51 (2008)	9
Attorney General Opinion 90-47 (1990)	9
Attorney General Opinion 90-85 (1990)	9

STATEMENT OF THE CASE AND FACTS

Respondent, West Villages Improvement District, agrees with Petitioner, North Port Road and Drainage District's, Statement of the Case and of the Facts, but clarifies and elaborates as follows:

Respondent is an independent special district of the State of Florida located in Sarasota County, Florida, created and operating in accordance with the Constitution and laws of the State of Florida, including Chapter 2004-456, Laws of Florida, as amended, and applicable provisions of Chapter 298, Florida Statutes, and other applicable Florida Statutes. See *West Villages Improvement District v. North Port Road and Drainage District*, 35 Fla. L. Weekly D1215, 2010 WL 2145479 at 1.

Petitioner is a municipal dependent special district of the State of Florida, wholly contained within the boundaries of the City of North Port, Florida (the "City"), created and operating pursuant to its Enabling Ordinance at Article III, Sections 66-47 through 66-65, Code of Ordinances of the City of North Port, Florida. See *id.*

After the City adopted Ordinance No. 08-11, which amended Petitioner's Enabling Ordinance to provide for the first time that Petitioner shall levy its non-ad valorem assessments against governmental real property, Respondent submitted to Petitioner timely written and verbal objections. See *id.* Once

the City established Petitioner's non-ad valorem assessment rates and non-ad valorem assessment roll, which included Respondent's real property, Respondent timely filed with Petitioner nine (9) administrative appeals challenging the 2008 non-ad valorem assessments levied against Respondent's real property. See *id.* Petitioner denied all of Respondent's appeals, whereupon Respondent timely filed a Petition for Writ of Certiorari seeking review of Petitioner's decision in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida. See *id.* The Circuit Court denied Respondent's Petition in its final Order rendered April 15, 2009. See *id.*

Thereafter, Respondent timely filed its Petition for Writ of Certiorari with the Florida Second District Court of Appeal ("Second DCA") seeking second-tier certiorari review. See *id.* In its decision granting certiorari, *West Villages Improvement District v. North Port Road and Drainage District* ("West Villages"), the Second DCA held that the circuit court departed from the essential requirements of law by failing to apply the principles established by this Court in *Blake v. City of Tampa*, 115 Fla. 348, 156 So. 97 (1934). See *id.* at 2. Furthermore, the Second DCA disagreed with Petitioner's interpretation of *Remington Community Development District v. Education of*

Foundation of Osceola, 941 So. 2d 15 (Fla. 5th DCA 2006)
("Remington"), stating:

We therefore reject NPRDD's argument that *Remington* supports its position that it may lawfully impose non-ad valorem assessments on West Villages' property despite the absence of legislative authority. But to the extent that our conclusions conflict with the Fifth District's opinion in *Remington*, we certify conflict.

Id. at 4.

Contrary to Petitioner's assertion in its Statement of the Case and of the Facts, the Second DCA did not find that its opinion conflicted with *Remington*. See *id.* Nor did the Second DCA state, as Petitioner further asserts, that the issue of conflict between *West Villages* and *Remington* is whether a special district may levy non-ad valorem assessments against government real property when there is no statutory exemption to prevent such a levy. See *id.* The Second DCA stated only that there may be a conflict between the two cases and that to the extent that such a conflict exists, the Second DCA certified conflict. See *id.*

SUMMARY OF ARGUMENT

On second-tier certiorari review, the Second DCA found that this Court's decision in *Blake* requires express or necessarily implied legislative authorization to impose a special assessment upon public property. The Second DCA rejected Petitioner's argument that *Remington*, a Fifth District Court of Appeal

("Fifth DCA") decision, in effect superseded the principles established by this Court in *Blake*. The Second DCA did not find *Remington* applicable to the instant case, but certified conflict only to the extent there was any conflict between the two decisions.

As suggested by the Second DCA in its opinion, Respondent asserts that there is no conflict between *West Villages* and *Remington*. The issue in *Remington* was whether a charter school enjoyed the same statutory exemption from special assessments as public schools. *West Villages* did not involve any statutes or statutory construction, but rather the issue was whether a municipal dependent special district (Petitioner) had the express or implied legislative authorization to levy non-ad valorem assessments against real property owned by a governmental entity (Respondent). The issues, reasoning, and conclusions of these two cases are completely dissimilar and, therefore, there is no conflict between them.

Finally, as provided by Rule 9.120(d), Florida Rules of Appellate Procedure, questions of great public importance certified by the district courts to the supreme court are not briefed on jurisdiction.¹

¹ In *Remington*, the Fifth District Court of Appeal certified two questions of great public importance. 941 So. 2d 15, 18. This Court declined to accept jurisdiction to consider the two questions. *Education Foundation of Osceola v. Remington Community Development District*, 946 So. 2d 1069 (Table) (Fla. 2006).

ARGUMENT

I. THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN *WEST VILLAGES IMPROVEMENT DISTRICT V. NORTH PORT ROAD AND DRAINAGE DISTRICT* DOES NOT CONFLICT WITH THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN *REMLINGTON COMMUNITY DEVELOPMENT DISTRICT V. EDUCATION FOUNDATION OF OSCEOLA*.

The Florida Supreme Court's jurisdiction to review questions or conflicts certified by a district court of appeal is provided in Article 5, Section 3(b)(4) of the Constitution of the State of Florida and Rule 9.030(a)(2)(A)(v) and (vi), Florida Rules of Appellate Procedure. According to the foregoing, this Court may exercise its discretion to refuse jurisdiction where there is no conflict between district court opinions, or even where such conflict does exist. Respondent urges the Court to reject jurisdiction in the instant matter because there is no conflict between the decision of the Second DCA in *West Villages* and the Fifth DCA's decision in *Remington* and, therefore, the Court should not expend its limited resources on the instant matter.

In *Remington*, the Remington Community Development District ("CDD") challenged a summary judgment in favor of a charter school, which held that the school was exempt from special assessments levied by the CDD. The *Remington* court addressed two issues. First, the Fifth DCA considered whether the charter school was entitled to a statutory exemption from non-ad valorem assessments applicable to public schools. The court held that

the charter school was not exempt from the non-ad valorem assessments on this basis because the statute that contains the exemption for public schools, section 1013.51, Florida Statutes, is not applicable to charter schools. The court noted that the legislature expressly excluded charter schools from all of the provisions of Chapter 1013, Florida Statutes. See § 1002.33(16)(a), Fla. Stat. Second, the Fifth DCA considered whether a lien could be enforced against the charter school's real property for failure to pay said CDD assessments. Relying on *Blake*, the court concluded that only mandamus could be used to enforce the lien.

The *Remington* court did not pass upon the issue at bar in *West Villages*, which was whether a municipal dependent special district may levy non-ad valorem assessments on government real property without express or necessarily implied legislative authorization. Moreover, the parties involved in *Remington*, a community development district operating under Chapter 190, Florida Statutes, and a charter school are entirely different from the parties in *West Villages*, a municipal dependent special district operating under a municipal ordinance and an independent special district. This Court should reject jurisdiction in the instant matter on the grounds that these two cases involved, and were decided upon, facts and issues that are entirely distinct. See *Nooe v. State*, 930 So. 2d 579, 579-80

(Fla. 2006) (declining jurisdiction because the two cases were decided on different issues and, therefore, there was no express and direct conflict); *Dep't of Revenue v. Johnston*, 442 So. 2d 950 (Fla. 1983) (finding no conflict because the facts of the two cases "are not analytically the same"); *Curry v. State*, 682 So. 2d 1091 (Fla. 1996) (dismissing petition because "[t]he cases address different propositions of law which are not in conflict").

Furthermore, the *Remington* court did not establish a new principle of law or alter an existing principle of law. The Second DCA rejected Petitioner's interpretation of *Remington*, which Petitioner restated in its jurisdictional brief, that unless there is a statutory exemption, a special district may levy a special assessment against another local government entity. The Second DCA disagreed:

We do not read *Remington* so broadly. The issue in *Remington* was whether a charter school qualified for the statutory exemption provided for in section 1013.51.

West Villages Improvement District, 2010 WL 2145479 at 4. The Second DCA continued by stating:

But there is no holding in *Remington* that all public property is subject to special assessments absent a statutory exemption.

Id. Because *Remington* did not hold that special assessments may be levied against public property if there is no statutory

exemption, the *Remington* decision does not alter the principles of law established in *Blake* or conflict with *West Villages*.

This Court has long held that accepting jurisdiction is only appropriate where there is a conflict in the principles of law underlying the subject cases:

In certiorari proceedings under the provisions of amended Article V authorizing this Court to settle conflicts in decisions, we have consistently held that we will not look into the facts in order to determine whether a conflict exists. The question of a conflict is of concern to this Court only in those cases where the opinion and judgment of the district court announces a principle or principles of law that are in conflict with a principle or principles of law of another district court or this Court. Our concern is with the decision under review as a legal precedent to the end that conflicts in the body of the law of this State will be reduced to an absolute minimum and that the law announced in the decision of the appellate courts of this State shall be uniform throughout. That is the obvious purpose of the constitutional provision and the limitations of our power to review decisions of the district courts in this respect.

N&L Auto Parts Co. v. Doman, 117 So. 2d 410, 412 (Fla. 1960)
(footnote omitted).

There is no conflict between *West Villages* and *Remington*; the facts, issues, and conclusions in the cases are entirely different. Furthermore, *Remington* did not change the principles established by this Court in *Blake*, which are well-settled in the State of Florida. See *City of Gainesville v. State*, 863 So. 2d 138, 143 n.3, 144 (Fla. 2003); *Gainesville v. State*, 778 So. 2d 519, 521-22 (Fla. 1st DCA 2001); Op. Att'y Gen. Fla. 08-51

(2008); Op. Att'y Gen. Fla. 90-85 (1990); Op. Att'y Gen. Fla. 90-47 (1990). For these reasons, this Court should decline to accept jurisdiction in this case.

CONCLUSION

Wherefore, based upon the foregoing, Respondent, West Villages Improvement District, respectfully requests that this Court deny jurisdiction in the instant matter because there is no express and direct conflict between the Second District Court of Appeal's decision in *West Villages Improvement District v. North Port Road and Drainage District* and the Fifth District Court of Appeal's opinion in *Remington Community Development District v. Education Foundation of Osceola*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail this _____ day of August, 2010, to the following persons:

Terry E. Lewis, Esq.
Maggie D. Mooney-Portale, Esq.
Lewis Longman & Walker, PA
1001 Third Avenue West, Ste. 670
Bradenton, FL 34205
Attorneys for Petitioner

Robert C. Robinson, Esq.
Jackson C. Kracht, Esq.
Nelson Hesse
2070 Ringling Blvd.
Sarasota, FL 34237
Attorneys for Petitioner

Margaret E. Wood, Esq.
Florida Bar No.: 0014071
Caldwell Pacetti Edwards Schoech &
Viator, LLP
Attorneys for Respondent
One Clearlake Centre
250 South Australian Ave.
Suite 600
West Palm Beach, Florida 33401
Tel.: (561) 655-0620
Fax: (561) 655-3775

Philip M. Burlington, Esq.
Florida Bar No.: 285862
Burlington & Rockenbach, P.A.
Attorney for Respondent
Courthouse Commons
444 West Railroad Ave.
Suite 430
West Palm Beach, Florida 33401
Tel.: (561) 721-0400
Fax: (561) 621-0465

CERTIFICATE OF COMPLIANCE

I ALSO HEREBY CERTIFY that this Answer Brief on Jurisdiction of Respondent complies with the font requirements of Rule 9.210, Fla. R. App. P.

Margaret E. Wood, Esq.
Florida Bar No.: 0014071
Caldwell Pacetti Edwards Schoech &
Viator, LLP
Attorneys for Respondent
One Clearlake Centre
250 South Australian Ave.
Suite 600
West Palm Beach, Florida 33401
Tel.: (561) 655-0620
Fax: (561) 655-3775

Philip M. Burlington, Esq.
Florida Bar No.: 285862
Burlington & Rockenbach, P.A.
Attorney for Respondent
Courthouse Commons
444 West Railroad Ave.
Suite 430
West Palm Beach, Florida 33401
Tel.: (561) 721-0400
Fax: (561) 621-0465