

IN THE SUPREME COURT OF FLORIDA

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CASE NO. 96,674

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ROB TURNER, as Hillsborough County Property Appraiser,  
Appellant

vs.

HILLSBOROUGH COUNTY AVIATION AUTHORITY,  
a body public and corporate,  
NEW YORK YANKEES PARTNERSHIP, an Ohio limited partnership  
TAMPA SPORTS AUTHORITY,  
a body corporate and politic of the State of Florida,  
HILLSBOROUGH COUNTY, a political subdivision of the State of Florida, and  
DOUG BELDEN, as Hillsborough County Tax Collector,  
Appellees.

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ON A CERTIFIED CONFLICT FROM THE SECOND DISTRICT  
COURT OF APPEAL  
CASE NO. 98-03123

FROM THE CIRCUIT COURT IN AND FOR HILLSBOROUGH COUNTY,  
FLORIDA  
CASE NO. 98-2586

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ANSWER BRIEF OF THE  
HILLSBOROUGH COUNTY AVIATION AUTHORITY

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Donald W. Stanley, Jr., Esq.  
Florida Bar Number 231525  
James S. Eggert, Esq.  
Florida Bar Number 949711  
101 E. Kennedy Boulevard  
Suite 1240  
Tampa, Florida 33602  
Telephone (813) 223-5351  
Attorneys for Hillsborough

County Aviation Authority

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**CERTIFICATE OF TYPE SIZE AND STYLE**

The undersigned counsel for Hillsborough County Aviation Authority hereby certifies that the type size and style for the brief is 14-point CG Times.

## **STATEMENT OF THE CASE AND FACTS**

The real property in question in this suit (the “Property”) is owned by the Hillsborough County Aviation Authority (“HCAA”), leased to The Tampa Sports Authority, and licensed to the New York Yankees Partnership (“New York Yankees”) as a baseball facility. (R: 1, 6-7) The dispute began when Rob Turner (“Turner”), the Hillsborough County Property Appraiser, denied HCAA’s application for a tax exemption on the Property. (R: 1, T: 24) After HCAA filed a petition with the Value Adjustment Board (“VAB”), the VAB ruled favorably to HCAA, concluding that the part of the baseball facility on which baseball diamonds and public seating were located qualified for a tax exemption afforded in Section 196.012(6), Florida Statutes, which exempts from taxation “any sports facility with permanent seating.” (T: 24)

Turner filed suit against HCAA, alleging that the decision of the VAB violated Article 7, Section 3(a) of the Florida Constitution. (R: 2) Turner alleged that the action was brought to either “reinstate the denial of the exemption on the subject property” or to “reinstate the original decision of partial denial of exemption for subject property [sic]”. (R: 2)

The New York Yankees and the Tampa Sports Authority moved to intervene on the ground that they were contractually responsible to HCAA for the payment of any ad valorem real estate taxes assessed on the Property, and the motion was granted. (R: 6-7, 33)

The Defendants moved to dismiss the Complaint on several grounds, including

the ground that Turner did not have standing to challenge the constitutionality of the statute. (R: 13-15) The trial court granted the motion to dismiss. (R: 61) The Second District Court of Appeals below affirmed the lower court's decision on the ground that Turner had no standing to initiate the action and acknowledged a conflict in its opinion with *Fuchs v. Robbins*, 738 So. 2d 339 (Fla. 3d DCA 1998).

## SUMMARY OF ARGUMENT

*Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.*

*--Henry Clay*

The important question presented in this case is whether county officers possess power to ignore laws that relate to their official duties. In this case, the Property Appraiser of Hillsborough County decided to ignore a statutory exemption from taxation that applied to property owned by HCAA. He justified his disregard for the statute based on his opinion that the statutory exemption was unconstitutional, although no court had declared it such. Turner maintains that it was appropriate for him to ignore the exemption on his first review of the application, and then challenge the property owner's attempts to enforce the exemption throughout the administrative and judicial review of his decision.

Government officers should obey the law. In a country of laws, property owners should not have to ask administrative courts and judges to tell property appraisers to enforce applicable statutory exemptions that no court has held unconstitutional. The people should be able to trust the property appraiser to obey the laws enacted by the legislature. It is Turner's duty to obey them, not decide whether he thinks they are constitutional or not. Only the judiciary may pass upon the constitutionality of statutes in a proceeding in which there is a case or controversy between persons with a real stake in the outcome. Turner has no personal stake in the enforcement of the stadium

exemptions. By disregarding the exemption, Turner has not only encroached upon legislative and judicial power; he has also eliminated the case or controversy requirement from the constitutional review of statutory exemptions.

Turner dabbles in the most dangerous kind of political power-grabbing: stealing power belonging to other branches of government. In ignoring the statutory exemption, he exercises power that the legislature consciously withheld, the judiciary never delegated, and the Florida Constitution never granted. If this Court countenances Turner's conduct, then Florida's ad valorem property taxpayers will cease living under a government of laws, and will live instead under a government of property appraisers.

## ARGUMENT

### **I. The substantive issues of this case are properly before this Court.**

Turner begins his brief suggesting that the case is not ripe for review, but his argument, which is solely technical and procedural, is ill taken. It is appropriate and even preferable for appellate lawyers to make and accept factual assertions in the statement of facts in their briefs and to concede facts or law which are not ultimately in question. Judge Fulmer rightly ruled in the opinion below that it was “undisputed that Turner was of the opinion that the sports facility exemption was unconstitutional,” and that Turner’s brief below conceded that HCAA’s exemption was denied because Turner believed section 196.012(6) violated Article VII, section 3(a). *Turner v. Hillsborough County Aviation Authority*, 739 So. 2d 175, 178-179 (Fla. 2d DCA 1999). It would be an unproductive use of judicial resources to remand this case to determine facts which Turner has already conceded. The procedural reconfiguration proposed by Turner will not clarify, ripen or in any other way assist this Court in determining the question of Turner’s standing to challenge the constitutionality of section 196.012(6).

Moreover, Turner’s claim that his proposed procedural reposturing will somehow make his claim unripe is non-sensical. If section 196.012(6) is a valid exemption that applies to the property in question, then it is a complete defense to Turner’s claim; no part of Turner’s case would survive.

In light of these considerations, Turner’s technical posturing does not present any issue rendering a substantive review of this case premature.

**This Court’s previous rulings demonstrate that Turner is without standing to challenge the constitutionality of duly enacted statutes.**

The standing of property appraisers is not a matter of first impression in this Court. In *Department of Revenue v. Markham*, 396 So. 2d 1120 (Fla. 1981), this Court set out the applicable principles governing a property appraiser’s standing to challenge the constitutionality of duly enacted legislation. The *Dept. of Revenue v. Markham* case is an offspring of this Court’s seminal decision in *State ex rel. Atlantic Coast Line R. Co. v. State Bd. Of Equalizers*, 94 So. 681 (Fla. 1922), which eloquently sets forth the reasons why both this Court and the lower courts of this state have exercised rigorous limitations on the standing of property appraisers and other public officials from challenging the constitutionality of duly enacted legislation.

**The *Dept. of Revenue v. Markham* case controls the instant appeal and demonstrates that Turner has no authority to challenge section 196.012(6).**

In *Dept. of Revenue v. Markham*, the property appraiser of Broward County filed a declaratory action challenging a taxation statute. *Dept. of Revenue v. Markham* at 396 So. 2d 1121. The property appraiser in that case “expressed his dissatisfaction with the wisdom of the law” and filed an action not only in his official capacity, but also as a citizen and a taxpayer.<sup>1</sup> *Id.* This Court held that the property appraiser, in his official capacity, did not have standing to challenge the law in question since, “disagreement with a constitutional or statutory duty, or the means by which it is to be

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<sup>1</sup> In the instant case, Turner sued only in his official capacity, not his individual capacity. (R: 1)

carried out does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion.” *Id.* This Court stated that the property appraiser was “under” the statute in question and “had a clear statutory duty to comply with the prescribed Department of Revenue regulations” construing the statute. *Id.*

This Court also cited approvingly to Judge Ervin’s dissenting opinion in the lower proceeding<sup>2</sup> where he commented that the property appraiser did not claim that the Department of Revenue’s rule was unclear concerning his duties, but rather *simply disagreed* with the Department’s construction of the statute, “arguing the statute’s economic merits.” *Dept. of Revenue v. Markham*, 381 So. 2d 1101, 1113 (Fla. 1<sup>st</sup> DCA 1979). Judge Ervin reasoned that the property appraiser could not maintain that the Department’s interpretation of the statute in any way conflicted with his own constitutional or statutory duties since “as tax assessor<sup>3</sup> he can have no interest adverse to the law as construed by the court and applied by his superior executive officers.”

If a property appraiser has no standing to challenge a regulation promulgated by the Department of Revenue pursuant to duly enacted legislation, then certainly Turner has no standing to challenge a statute directly, as he has attempted to do in the instant case. As noted by Judge Fulmer below, Turner desires to ignore the sports facility

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<sup>2</sup> In contrast to the overruled majority opinion below, this Court commented, “A more thorough, contrary analysis of the standing issue appears in Judge Ervin’s dissent.” *Markham* at 1121.

<sup>3</sup> Property appraisers were formerly known as “tax assessors”. *Spooner v. Askew*, 345 So. 2d 1055, 1058 (Fla. 1976).

exemption afforded in section 196.012(6) on the ground that he believes that it is unconstitutional. *Turner* at 178. The *Markham* case controls. Turner’s disagreement does not amount to a “justiciable controversy” and Turner has a “clear statutory duty” to comply with the provisions of Chapter 196. See *Dept. of Revenue v. Markham*, 396 So. 2d at 1121. In short, Turner has no standing.

***Markham is the legitimate progeny of this Court’s decision in Atlantic Coast Line.***

As noted above, *Atlantic Coast Line* is the seminal case in Florida governing the standing of public officials to challenge the constitutionality of legislation affecting their duties. In *Atlantic Coast Line*, a railway company filed a petition for writ of mandamus seeking to force the Board of Equalizers<sup>4</sup> to take jurisdiction of an appeal regarding the assessment and valuation by the comptroller of Florida of certain property owned by the railway company. The Board of Equalizers, being of the opinion that the act giving them jurisdiction was unconstitutional, declined to entertain the railway company’s petition. This Court held that because the legislative act in question had not been judicially declared unconstitutional, the claim by the Board of Equalizers that it was unconstitutional was unwarranted, unauthorized and afforded no defense to failing to enforce the same. *Id.* at 685. The *Atlantic Coast Line* case has set the standard for

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<sup>4</sup> The Board of Equalizers consisted of the governor, attorney general and state treasurer. *Atlantic Coast Line* at 682.

public officials' challenges to legislative acts to this day.

**The *Atlantic Coast Line* decision vigorously restricts the standing of public officials to challenge duly enacted legislation since such challenges disrupt the orderly administration of government.**

This Court reasoned that “every law found upon the statute books is presumptively constitutional until declared otherwise by the courts” and that it should not pass upon a statute’s constitutionality since “ministerial officers must obey it, until in a proper proceeding its constitutionally is judicially passed upon.” *Atlantic Coast Line* at 682. This Court recognized such challenges as “most important” since they raise the question of whether a branch of the government other than the judiciary may declare an act of the legislature to be unconstitutional. *Id.* Of course, this question harps back to Chief Justice Marshall’s landmark opinion in *Marbury v. Madison*<sup>5</sup> which “first laid down the doctrine that the judiciary was clothed with power to pass upon the constitutionality of legislative acts.” *Atlantic Coast Line* at 682.

This Court rejected the argument that the oath taken by a public official to obey the constitution gives him or her the right to declare any act of the legislature unconstitutional. Every public official’s oath to uphold the Constitution is to be exercised in the context of the judiciary’s oversight role in the constitutionality of legislative enactments:

The contention that the oath of a public official requiring him to obey the constitution places upon him the duty or

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<sup>5</sup> 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60 (1803).

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.* at 682–683. This Court concluded that accepting this sort of logic would “lead to strange results” and “set at naught other binding provisions of the constitution.” *Id.*

Contrary to the above, Turner argues that “a public official can challenge a statute when he believes it will cause him to violate his oath to support the state constitution.”<sup>6</sup> Turner does not even bother to distinguish *Atlantic Coast Line*, citing instead to a dissenting opinion in *Barr v. Watts*, 70 So. 2d 347 (Fla. 1953). Obviously, a dissenting opinion does not signal a retreat from a clear principle articulated by this Court.

*Atlantic Coast Line* warns that permitting ministerial officers to question the constitutionality of laws would lead to chaos:

To allow a ministerial officer to decide upon the validity of law would be subversive of the great objects and purposes of government, for, if one such office may assume infallibility, all other like officers may do the same and thus an end be put to civil government, one of whose cardinal principles is subjection to the laws.

*Id.* at 683–684. This observation takes into account the difference between an

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<sup>6</sup> Turner’s Initial Brief at p. 13.

individual's challenge to the constitutionality of an act as against that of a ministerial officer. While an individual has the freedom to refuse to obey the law he believes to be unconstitutional, he does so "at his peril" and assumes the risk of fines or imprisonment should the courts uphold the law. *Atlantic Coast Line* at 683. A ministerial officer, on the other hand, who refuses to enforce any law because "in his opinion it is unconstitutional" takes no risk because he is not subject to any penalty if his opinion is not sustained by the courts. In short, a ministerial officer engaging in such behavior takes upon himself the "right and power to nullify a legislative enactment," the "same power" existing in the lower courts which are authorized to declare an act unconstitutional, subject to review by the Supreme Court. *Id.* Turner's notions would lead to the disruption of the orderly administration of government.

**This Court has followed *Atlantic Coast Line* for almost forty-five years.**

Although in 1937, this Court temporarily receded from the position set forth in *Atlantic Coast Line*,<sup>7</sup> it strongly reaffirmed *Atlantic Coast Line* fifteen years later in *Barr v. Watts*, 70 So. 2d 347 (Fla. 1953). Indeed, in *Barr*, this Court denied that it ever had "receded" from the rule adopted in *Atlantic Coast Line* and concluded, "we do not feel bound by the dictum" in the previous case "and reaffirm the rule" of *Atlantic Coast Line* that the "right to declare an act unconstitutional . . . cannot be exercised by the

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<sup>7</sup> See *Estate ex rel. Harrell v. Cone*, 177 So. 854 (Fla. 1937).

officers of the executive department under the guise of the observance of their oath of office to support the constitution.” *Id.* at 350–351.

In *Barr*, this Court reiterated the “chaos and confusion” which would result if ministerial officers were allowed the luxury of challenging the constitutionality of duly enacted legislation:

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 as expressed in the legislative acts of their duly elected representatives. The state’s business cannot come to a stand-still 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.

*Id.* at 351. This Court has cited approvingly to *Atlantic Coast Line* on numerous occasions. *State v. Family Bank of Hallindale*, 623 So. 2d 474, 478 (Fla. 1993); *Department of Education v. Lewis*, 416 So. 2d 455, 458 (Fla. 1982); *Davis v. Gronemeyer*, 251 So. 2d 1, 3 (Fla. 1971). *Atlantic Coast Line* remains the judicial polestar for navigating constitutional challenges by public officials.

**Turner’s lack of standing is also supported by a line of district court cases interpreting and applying this Court’s decisions in *Atlantic Coast Line* and *Barr*.**

The standing of property appraisers to challenge the constitutionality of statutes is also not uncharted in the district courts of this State. At least six reported decisions

touch directly on the issue, four of which held that a property appraiser had no standing, and the remaining two of which are distinguishable as will be discussed below.

**Four opinions out of the district courts of appeal have held that the property appraiser has no standing to challenge duly enacted legislation.**

In *Maxwell v. Good Samaritan Hospital Association, Inc.*, 195 So. 2d 255 (Fla. 4<sup>th</sup> DCA 1967), the hospital filed a complaint alleging that it was exempt from the payment of certain taxes. The property appraiser of Palm Beach County, despite the exemption, assessed taxes on the real and personal property of the hospital “declining to recognize” the hospital’s application. *Id.* at 256. The property appraiser filed an affirmative defense alleging that the hospital was not entitled to the exemption because it denied admission to negro patients and denied the use of its facilities to negro physicians and dentists solely on the basis of race. *Id.* The court concluded that the property appraiser did not have standing to challenge the hospital’s exemption, noting that “the tax collector of each county is an officer of the state and, as such, is obligated to carry out the provisions of the state law setting forth his duties and responsibilities.” *Id.* The court held that the property appraiser was required to obey the state law which granted the hospital exemption and held that the property appraiser had impermissibly imposed “additional conditions or restrictions upon those shown to be entitled to the

exemption as set forth in the statute.” *Id.* The instant case presents identical issues since, like the property appraiser of Palm Beach County, Turner simply “declined to recognize” the stadium exemption afforded by statute. Turner’s claim should be rejected out of hand for the same reasons.

In *Miller v. Higgs*, 468 So. 2d 371 (Fla. 1<sup>st</sup> DCA 1985), the property appraiser of Monroe County filed a two count complaint seeking declaratory and injunctive relief and contending that certain amendments to Chapter 196 of the Florida Statutes were an “unconstitutional reclassification of leasehold interests in government owned land as intangible personal property instead of real property, thereby diverting revenue from local government to state government, placing an unequal tax burden on owners of real property, and creating a favorable and exempt class of tax payers.” *Id.* at 374. The trial court dismissed the property appraiser for lack of standing. *Id.* The First District upheld the trial court’s conclusion since “state officers and agencies are required to presume the legislation affecting their duties is valid, and they do not have standing to initiate litigation for the purpose of determining otherwise.” *Id.* Turner’s assertion, “It is the property appraisers in this state and across the nation that rise to the call when questionable statutes provide tax breaks to various special interest groups,”<sup>8</sup> is as erroneous as the opinion of the property appraiser from Monroe County some fourteen

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<sup>8</sup> Turner’s Initial Brief at p. 22.

years ago which was rightly rejected out of hand by the First District under the principles of *Atlantic Coast Line*.<sup>9</sup>

In *Jones v. Department of Revenue*, 523 So. 2d 1211, 1212 (Fla. 1<sup>st</sup> DCA 1988), the property appraiser challenged the validity of a statute which permitted the Department to estimate the level of ad valorem tax assessments for each county during the years in which a county is not subject to an in depth review by the Department. The property appraiser contended that the statute was an improper delegation of legislative authority. *Id.* at 1214. The court held that the property appraiser did not have standing to challenge the constitutionality of the statute since “a property appraiser does not have standing to bring a suit to challenge the validity of a taxing statute or regulation” and “state officers and agencies are required to presume that the legislation affecting their duties is valid.” *Id.* Turner’s challenge in the instant case is improper for the same reasons.

Lastly, in *Brazilian Court Hotel Condominium Owners Association, Inc. v. Walker*, 584 So. 2d 609 (Fla. 4<sup>th</sup> DCA 1991), a condominium association alleged that the assessed valuation of their property was excessive and that the property appraiser failed to consider the statutory criteria for just valuation. *Id.* at 610. The condominium

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<sup>9</sup> This Court issued a limited disapproval of *Miller* in *Capital City Country Club, Inc. v. Tucker*, 613 So. 2d 448 (Fla. 1993). The disapproval does not reverse *Miller*’s holding that the property appraiser had no standing to raise a constitutional issue, but only addressed other issues. *See, Capital City*, pages 451–453. *Miller*’s holding that a property appraiser does not have standing to challenge the constitutionality of a statute remains fully intact.

association in that case filed suit pursuant to a statute that enabled condominium associations to institute tax suits on behalf of individual owners. *Id.* at 611. The property appraiser argued that this statutory provision was unconstitutional, but the court held that the property appraiser, a constitutional officer, lacked standing to challenge the statute. *Id.* Similarly, Turner lacks standing to oppose the constitutionality of the stadium exemption in this case.

All of these cases faithfully apply the rationale of *Atlantic Coast Line* and *Barr*. If the Court were to overturn the Second District's opinion in this case it would also effectively overturn the well-reasoned opinions described above, and interrupt the consistent application of *Atlantic Coast Line* to property appraisers over the past thirty years. Turner offers no sufficient reason to alter the course charted by *Atlantic Coast Line* and skillfully navigated by the district courts.

**The only reported cases permitting the property appraiser to challenge the constitutionality of taxing statutes are not well-reasoned.**

In *Markham v. Yankee Clipper Hotel, Inc.*, 427 So. 2d 383 (Fla. 4<sup>th</sup> DCA 1983), *rev. den.* 434 So. 2d 888 (Fla. 1983), the Fourth District, while permitting a property appraiser to raise a constitutional challenge to a statute, gave no rationale for the ruling and, without explanation, cited to *Department of Education v. Lewis*, 416 So. 2d 455, 459 (Fla. 1982). Ironically, in *Lewis*, this Court held that the Department of Education, the State Board of Education and the Commissioner of Education did *not* have standing

to challenge a provision in an appropriations bill. At best, the *Yankee Clipper* case is ambiguous authority since it is unclear whether the court perhaps concluded that the property appraiser qualified for a recognized exception, such as the public funds exception, to the rule against standing.<sup>10</sup> However, in view of the many other thoroughly reasoned authorities discussed above disallowing a property appraiser from challenging the constitutionality of a statute, *Yankee Clipper* should be disregarded, particularly in view of the fact that the court offered no substantive analysis of the standing issue at all.

The other opinion worthy of note is Judge Sorondo's concurring opinion in *Fuchs v. Robbins*, 738 So. 2d 338 (Fla. 3<sup>rd</sup> DCA 1999), the case upon which conflict was certified to this court; Judge Sorondo did not challenge the long-standing authority of *Atlantic Coast Line*, but instead relied on the theory that, despite the general prohibition against the standing of public officials to challenge statutes, public officials may challenge the constitutionality of statutes in litigation as an affirmative defense. The right application and viability of Judge Sorondo's theory merits its own discussion which is set forth in Section V of this Answer Brief.

**Turner's distinction between his alleged "ministerial" and "non-ministerial" duties is not helpful to the decision of this cause.**

Turner expends the greatest portion of his brief – seven pages – toward his

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<sup>10</sup> See Section V for a discussion of the public funds exception.

argument that the case law permits him to challenge the constitutionality of statutes as long as it is within the universe of what he described as his “non-ministerial duties.” For the reasons set forth below, Turner’s position is without merit.

**Any distinction between “ministerial” and “non-ministerial” duties is irrelevant.**

Turner asserts that public officials can challenge the constitutionality of statutes when the statute affects purely “ministerial duties.”<sup>11</sup> Turner incorrectly argues a “consistent line of reasoning” emerges in the history of this Court’s decisions permitting challenges where “ministerial duties” are concerned.

*Atlantic Coast Line*’s prohibition of public official challenges is built on public policy. The rule ensures the orderly administration of government by public officials who are charged with faithfully administering the laws. Turner does not cite a single case from *Atlantic Coast Line* or its progeny the outcome of which was determined by whether or not the public official in question was performing a “ministerial” or “non-ministerial” function. The rule in *Atlantic Coast Line* and its progeny does not rest on a subtle distinction between ministerial and non-ministerial duties, but rather on the efficient administration of government and on the separation of constitutional powers. Turner’s contrived “line of reasoning” argument vainly attempts to deflect the historic momentum of *Atlantic Coast Line*.

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<sup>11</sup> Turner’s Initial Brief at p. 7.

HCAA does not deny that *Atlantic Coast Line* and *State ex. rel. Stephens Timbercove v. Lang*, 179 So. 401 (Fla. 1938) make reference to “ministerial duties,” as do other cases in *Atlantic Coast Line*’s wake. However, these cases do not suggest, as Turner argues, that a “ministerial” versus “non-ministerial” test is the applicable standard in resolving whether or not a public official has standing to challenge the constitutional validity of a statute. The standard proposed by Turner is not only wooden and mechanistic, but also trivializes the importance this Court has historically placed on the orderly administration of the laws in resolving whether or not public officials have standing to challenge them.

At great length, Turner cites cases that discuss the distinction between ministerial and non-ministerial duties<sup>12</sup>, but the cases he cites are about the property appraiser’s discretion in determining property values, not about whether he has standing to wage constitutional challenges. The well-established line of cases recognizing the property appraiser’s discretion in determining the valuation of real property, while valid in the field of judicial review of real property valuations, has no application to a property appraiser's authority to evaluate the constitutionality of a statutory exemption. Turner builds his case on irrelevant authority.

Having built his argument around irrelevant authority, Turner finds himself in the

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<sup>12</sup> Turner’s Initial Brief at p. 7-8.

uncomfortable position of having to distinguish all the cases in the lineage of *Atlantic Coast Line*. Turner tries to distinguish the *Brazilian Court* decision by arguing that the statute at issue had no relation to a property appraiser's non-ministerial duties.<sup>13</sup> Turner conveniently overlooks the fact that *Brazilian Court* did not even find it necessary to determine whether ministerial or non-ministerial duties were involved in the first place. It does not discuss the distinction precisely because whether a duty was "ministerial" or "non-ministerial" *is not important*. Turner's treatment of *Jones, supra*, falls prey to the same error.

Similarly, Turner distinguishes the *Dept. of Revenue v. Markham* and *Miller, supra*, cases on the contrived ground that they involved declaratory judgment actions.<sup>14</sup> The undersigned counsel fails to see why the fact that these cases involved declaratory judgment actions renders them irrelevant. Neither of those opinions regard the declaratory judgment aspect of the case as significant; they both reason instead that public officials should obey the law. As this Court said in *Dept. of Revenue v. Markham*, the property appraiser had a clear statutory duty to comply with the authorized Department of Revenue regulations. *Dept. of Revenue v. Markham* at 1121. Likewise, in *Miller*, the court said that "state officers and agencies are required to presume the legislation effecting their duties as valid." *Miller* at 374.

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<sup>13</sup> Turner's Initial Brief at p. 11.

<sup>14</sup> Turner's Initial Brief at p. 12.

Finally, Turner's reliance on *Reid v. Kirk*, 257 So. 2d 3 (Fla. 1972), is misplaced. *Reid* sets out the rule that a public official may only seek a declaratory judgment when he is "willing to perform his duties, but is . . . prevented from doing so by others." This record does not show that Turner was willing to perform his statutory duties but was prevented from doing so by others. He has simply failed to grant a legislated exemption because he disagreed with it.

In sum, Turner's theorizing about "ministerial" versus "non-ministerial" duties is nothing less than a brand of historical revisionism. Just like the stadium exemption, Turner ignores the rationale in *Atlantic Coast Line*, the polestar for property appraiser standing.

**The property appraiser has no duty or authority to pass upon the constitutionality of statutes.**

Even if Turner's distinction between ministerial and non-ministerial duties could be countenanced, the distinction is of no consequence since it is simply *never* the duty of a property appraiser to pass upon the constitutional validity of a duly enacted statute. The duties of property appraisers are defined by statute, and the Florida Constitution does not permit property appraisers to operate in judicial and legislative spheres.

**The Florida legislature has not afforded property appraisers discretion to pass upon the constitutionality of its enactments.**

The Florida Constitution provides for the election in each county of a property

appraiser. Art. VIII, § 1(d), Fla. Const.<sup>15</sup> This is the only place where the Florida Constitution mentions the property appraiser; it sets out no specific duties or responsibilities characteristic to the office of property appraiser, and indeed suggests that the duties of that office will be “prescribed by general law.” As this Court has said, “One cannot infer that because [property appraisers] are created in the constitution that their duties as constitutional officers cannot be taken away by the legislature.” *Burns v. Butscher*, 187 So. 2d 594, 595 (Fla. 1966). In this sense, property appraisers are no different than counties of this state who “do not possess any indicia of sovereignty,” but are “creatures of the legislature,” and are “subject to the legislative prerogatives in the conduct of their affairs.” *See Weaver v. Heidtman*, 245 So. 2d 295, 296 (Fla. 1<sup>st</sup> DCA 1971). A conflict between the powers of the state and the power of a property appraiser has been aptly described as a “contest between the sovereign and its child.” *District School Board of Lee County v. Askew*, 278 So. 2d 272, 276 (Fla. 1<sup>st</sup> DCA 1973).

The general duties of the property appraiser are described in Florida Statutes Chapters 194 through 196. Specifically with respect to exemptions, section 196.193(3)(a)(c) prescribes the duties of the property appraiser when he or she receives an application for exemption. In that event the property appraiser is directed to

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<sup>15</sup> The property appraiser is included in a litany of other county officers – the sheriff, tax collector, supervisor of elections, and clerk of the circuit court. Any county may abolish any of the offices as long as the duties of the office are transferred to another office.

determine:

(1) Whether the applicant falls within the definition of any one or several of the exempt classifications, (2) Whether the applicant requesting exemption uses the property predominantly or exclusively for exempt purposes, and (3) The extent to which the property is used for exempt purposes.

In making these determinations, the legislature has said that the property appraiser shall “use the standards set forth in this chapter as applied by regulations of the Department of Revenue.” *Id.* Neither the legislature nor the Department of Revenue has granted property appraisers authority to make discretionary judgments about the constitutionality of those statutory exemptions or regulatory standards.

Additionally, section 194.036(1)(a) explicitly prohibits property appraisers from challenging the constitutionality of statutes. That provision defines the terms under which a property appraiser, such as Turner in the instant case, may appeal a decision of a value adjustment board (“VAB”).<sup>16</sup> The property appraiser may only appeal the decision upon establishing the appropriate “criteria” have been met. The statutory criteria authorizes an action when the property appraiser determines and assesses in a legal proceeding a “specific constitutional violation” in the decision of the VAB. § 194.036(1)(a), Fla. Stat. However, the legislature was quick to add an exception,

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<sup>16</sup> Turner alleged in his complaint that the instant action was brought pursuant to section 194.036. (R: 2).

stating “nothing herein shall authorize the property appraiser to institute suit to challenge the validity of any duly enacted legislative act of this state.” *Id.* Therefore, even if a property appraiser is convinced that an enactment is unconstitutional, the legislature forbids him or her from instituting legal proceedings to challenge its validity.

If Turner can be likened to a “child” of the sovereign, he is a very disobedient one. In the instant proceedings, Turner is not exercising what lawfully may be regarded as his “duties”, whether he characterizes them as “ministerial” or “non-ministerial.” Like a disobedient child, Turner has rebelled against the Florida legislature, challenging the constitutionality of section 196.012(6).

**Turner is incorrect when he asserts that property appraisers exercise quasi-judicial functions.**

Turner is wrong to think that property appraisers exercise quasi-judicial functions. Chapter 194 of the Florida Statutes sets out the scheme for administrative and judicial review of property taxes, and the property appraiser is afforded no judicial role in the process.<sup>17</sup> Turner’s understanding that he is clothed with judicial function

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<sup>17</sup> At best, the legislature states that a taxpayer disagreeing with an assessment may request an informal conference with the property appraiser about it. However, because the conference is expressly not a “prerequisite to administrative or judicial review of property assessments,” it is clear that the conference and, by logical inference, the prior assessment by the property appraiser is not any part of administrative or judicial review in the legislative scheme. § 194.011(2), Fla. Stat.

in a “quasi-judicial setting”<sup>18</sup> plainly disagrees with the legislative design of property assessment review. While this court has held that Value Adjustment Boards are quasi-judicial bodies established to hear petitions and complaints against decisions of the property appraiser, it has never afforded the property appraiser a similar status. *See Leadford v. Department of Revenue*, 478 So. 2d 808, 810 (Fla. 1985). While property appraisers are obviously empowered to decide whether or not a statutory exemption applies to a particular taxpayer, Turner, by an unfounded leap of logic, infers that he also possesses quasi-judicial power to test the constitutionality of the statute itself.

**C. Turner’s position would effectively permit property appraisers to assume judicial and legislative power.**

**Turner’s position will authorize property appraisers to ignore duly enacted exemption statutes free of judicial oversight.**

When Turner suggests that a property appraiser may “challenge a statute,” he equivocates about what sort of challenge he means. Turner might simply mean that property appraisers have standing to file a declaratory judgment action to seek the advice of the judiciary when in doubt about the validity of a statute. Such is *not* the situation in this case. Turner did *not* file a declaratory judgment action. He never took action to, as Turner insinuates, “seek the guidance”<sup>19</sup> of the judiciary regarding the constitutionality of the sports facility exemption in section 196.012(6), nor does he

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<sup>18</sup> Initial Brief at p. 9.

<sup>19</sup> Initial Brief at p. 12.

appear to seek such guidance from this Court today.

To the contrary, as noted by Judge Fulmer below:

Turner denied the request for exemption because he did not believe the property was being used by the New York Yankees for governmental purposes set forth by the Florida Constitution, Article VII, Section 3(a).

*Turner*, 739 So. 2d at 179. By his own characterization, Turner did not seek judicial guidance of any kind in advance or in connection with his rejection of the statute. To the contrary, Turner felt free to ignore the sports facility exemption because, in his own mind, he believed it to be unconstitutional. Moreover, when the Value Adjustment Board applied the statute, Turner filed a lawsuit advocating *against* the statute's validity. For all practical purposes, Turner extended his challenge long before and regardless of any pleadings laid in the courts of this State.

Turner's conduct shows that he thinks property appraisers can decide for themselves whether or not they will obey duly enacted legislation. If they have a philosophical disagreement with a statutory exemption, Turner argues they can ignore the exemption. One might ask why Turner, if he disagrees with the legislature, may not likewise disagree with this Court should it hold the exemption constitutional. Turner can offer no principled reason why he should obey this Court yet disobey the legislature. If, as Turner suggests, his own constitutional convictions are a sufficient

basis for his conduct, why should he heed the command of *any* branch of the state government?

**2. By ignoring the statutory exemption, Turner has encroached upon judicial functions.**

Contrary to Turner's presumption, it is the unique function of the judiciary, not property appraisers or other county officers, to pass upon the constitutionality of statutes. Constitutional review is a judicial act belonging uniquely to the field of judicial expertise.

Turner's reliance on *Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072 (Fla. 1994), is misplaced. *Sebring* merely reiterates the longstanding rule that statutes involving exemptions must be strictly construed. Turner misconstrues this general instruction as a personal mandate to disregard a statute he believes is unconstitutional. That is a gross misapplication of *Sebring*. The rule that property exemptions are to be strictly construed is directed to property appraisers no more or no less than to property owners, judges, value adjustment boards and special masters. The court's mere articulation of this rule does not cloak any of these persons, including the property appraiser, with authority to disregard the terms of a statute.

The power to set aside duly enacted legislation resides exclusively in the judiciary. *Barr v. Watts, supra*, 70 So. 2d at 350. This rule is part of the state's

organic law, and is set in the constitutional framework of our state government. Turner misses this point entirely. Turner simply presumes, without deliberation, that such determinations properly belong to him in his office as property appraiser.<sup>20</sup> Nevertheless, it is, the judiciary, not Turner, that is charged with interpreting the Constitution.

**Turner’s position undermines the orderly administration of ad valorem tax exemptions in this state.**

The implications of permitting property appraisers to ignore or directly challenge ad valorem tax exemptions are enormous. Section 196.199(1) and (2) affords exemptions for property used for “governmental,” “municipal” or “public” purposes. These terms are defined in section 196.012(6), the provision challenged here by Turner exempts not merely sports facilities, but also property used in connection with aviation, airports, maritime ports, convention centers, visitor centers, concert halls, arenas, stadiums, parks, beaches, historic preservation parks or recreation facilities in connection with the federal government’s Department of Interior, federal lands used in connection with the federal government Space Exploration Program, and property used by the federal government for national defense. Are Turner and all the other property appraisers of this state free to deny exemption applications because they are of the opinion that one or more of these exemptions are unconstitutional? Section 196.012(6)

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<sup>20</sup> Initial Brief at p. 10.

is not the only legislation in danger of such challenges; Chapter 196 is replete with legislatively defined exemptions which, by Turner’s reasoning, property appraisers statewide are free to ignore based on their personal “non-ministerial” discretionary judgments about their constitutionality.<sup>21</sup>

Beyond this, what if property appraisers were to disagree about the constitutionality of various exemptions? Exemptions recognized in one county might be ignored in another. Differing opinions among property appraisers would “produce such collisions in the administration of public affairs as to materially impede the proper and necessary administrations of government.” *Atlantic Coast Line* at page 685. Indeed, “an end [would] be put to civil government, one of whose cardinal principles is subjection to the law.” *Atlantic Coast Line* at 683–684. Florida is not in amalgam of fiefdoms in which every property appraiser independently and sovereignly exercises his or her constitutional judgment in the review of tax exemptions. This Court has already recognized the “obvious tension” between the constitutional duties of property

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<sup>21</sup> The following is a sampling of exemption provisions which, under Turner’s theory, would be subject to property appraiser constitutional scrutiny: 196.081 (exemption for certain permanently and totally disabled veterans and surviving spouses of veterans); 196.019 (exemption for disabled veterans confined to wheelchairs); 196.101 (exemptions for totally and permanently disabled persons); 196.175 (renewable energy source exemption); 196.181 (exemption of household goods and personal effects); 196.185 (exemption of inventory); 196.1961 (exemption for historic property used for certain commercial or non-profit purposes); 196.197 (additional provisions for exempting property used by hospitals, nursing homes, and homes for special services); 196.1975 (exemption for property used by non-profit homes for the aged); 196.198 (educational property exemption); 196.1985 (labor organization property exemption); 196.1986 (community centers exemptions); 196.1994 (space laboratories exemption); 196.1995 (economic development ad valorem tax exemption); 196.1997 (ad valorem tax exemption for historic properties); 196.2001 (not for profit sewer and water company property exemption); and 196.202 (property of widows, widowers, blind persons and totally and permanently disabled).

appraisers and “the development of statewide uniformity by state and local officials.” *Spooner v. Askew*, 345 So. 2d 1055, 1058 (Fla. 1976), *also see Burns v. Butscher*, 187 So. 2d 594, 595 (Fla. 1966) (“The exercise of unbridled discretion by 67 tax assessors without their being anchored to any master plan would result in imbalance.”) Surely nothing close to uniformity will ever be achieved if this Court breathed life into Turner’s notions of property appraiser jurisprudence.

**The defensive shield doctrine does not support Turner’s challenge to section 196.012(6).**

This Court has said that when “the operation of a statute is brought into issue in litigation brought by another against a state agency or officer, the agency or officer may defensively raise the question of the law’s constitutionality.” *Dept. of Education v. Lewis*, 416 So. 2d 455, 458 (Fla. 1982). This statement expresses what this brief shall refer to as the “defensive shield doctrine.” This doctrine is the basis upon which the Second District in this case certified conflict with the Third District in *Fuchs v. Robbins, supra*. Turner argues that the defensive shield doctrine warrants reversal of the opinion below. Turner’s arguments are not convincing.

**A. The defensive shield doctrine on its face does not apply to Turner since he is not a defendant in this case.**

Turner is the Plaintiff in this action. He filed the complaint below and is therefore engaged in actively advocating against the application of the stadium seating

exemption. He is therefore in no posture to assert the defensive shield doctrine. He cannot “defensively” raise the question of a law’s constitutionality when he has initiated the litigation.

In order to avoid this embarrassment, Turner argues that the defensive shield doctrine allowed him to raise the constitutionality of the stadium exemption “defensively” after he denied HCAA’s application for exemption and HCAA filed its petition before the VAB. Turner relies on *Fuchs v. Robbins, supra*. In that opinion, Judge Sorondo argued that the litigation begins not when the property appraiser filed suit in circuit court, but when the taxpayer challenges the property appraiser’s assessment by petitioning the VAB. *Fuchs* So. 2d at 349.

Judge Fulmer was correct to conclude that *Fuchs v. Robbins* exalts form over substance and ignores the doctrine of *Atlantic Coast Line*. In the instant matter, Turner ignored the stadium exemption statute, believing it was unconstitutional. The rule of *Atlantic Coast Line* required Turner to obey the statute, regardless of his opinions about its constitutionality. Applying the defensive shield doctrine under these circumstances would only reward Turner for disregarding the statute. “[T]o suggest that Turner can ignore the law by denying an exemption based on his belief that it is unconstitutional and thus be allowed to ask the court to approve his disobedience by upholding his denial” indeed “defies logic” and violates *Atlantic Coast Line*. *Turner*,

739 So. 2d at 178.

**B. Even if it applied to this case, the defensive shield doctrine should be abandoned.**

The above considerations inevitably lead to the conclusion that the defensive shield doctrine is at odds with *Atlantic Coast Line*. The notion that public officials may defensively challenge the constitutionality of statutes that citizens are seeking to enforce against them nullifies the most basic precept of *Atlantic Coast Line*: executive functionaries should never nullify the law by neglecting or refusing to execute it. *Atlantic Coast Line*, 94 So. at 683.

A review of the genealogy of the defensive shield doctrine in Florida law reveals how unexamined this doctrine is and offers a fine illustration of how a single seed of dictum sown in a judicial opinion can grow into a field of weeds if not carefully cultivated. The doctrine came to prominence in this Court's opinion in *Department of Education v. Lewis*, 416 So. 2d 455 (Fla. 1982). In that case the Department of Education, the State Board of Education, and the Commissioner of Education brought an action challenging an appropriations law. This Court held that they did not have standing since "state officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise." *Id.* at 458. Nestled on page 458 of the opinion is this dictum:

If, on the other hand, the operation of the statute is brought

into issue in litigation brought by another against a state agency or officer, the agency or officer may defensively raise the question of the law's constitutionality. *City of Pensacola v. King*, 47 So. 2d 317 (Fla. 1950); *State ex rel. Harrell v. Cone*, 130 Fla. 158, 177 So. 854 (1937); *State ex rel. Florida Portland Cement Co. v. Hale*, 129 Fla. 588, 176 So. 577 (1937).

*Lewis* was obviously not decided on this rule since the public officers in question had initiated the litigation and were not in a defensive posture. Therefore the statement was entirely gratuitous.

None of the cases cited in the above quotation actually support the proposition asserted<sup>22</sup>. Closest to the point, *State ex rel. Harrell v. Cone* stated in dictum that an official may defensively raise the question of a law's constitutionality in a proceeding for *mandamus*. *Cone*, 177 So. at 856.<sup>23</sup> The *Cone* dictum, which appeared in 1937, laid dormant for some forty-five years before it reappeared, revised and expanded, in the *Lewis* dictum. *Lewis* introduced a new concept; whereas *Cone* limited the scope of constitutional challenges to *mandamus*, the *Lewis* dictum would permit them in any "litigation brought by another." The defensive shield doctrine was blooming.

Twelve years after the *Lewis* dictum, the First District in *Florida Pharmacy Ass'n., Inc. v. Lindner*, 645 So. 2d 1030, 1032 (Fla. 1<sup>st</sup> DCA) cited the defensive shield

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<sup>22</sup> *City of Pensacola* rests not on the defensive shield doctrine, but on the public funds exception. *Portland Cement* never mentions the defensive shield doctrine at all.

<sup>23</sup> It should be noted that the *Cone* case is of questionable precedential value. In *Cone*, this Court was equally divided, with three justices voting for and three against the petition for writ of mandamus. Even though the writ of mandamus failed in that case for the lack of a majority, cases where the members of the court are evenly divided possess "no force as judicial precedent." *State v. City of Miami Beach*, 23 So. 2d 720, 721 (Fla. 1945).

doctrine, apparently only as dictum since the court held that the public funds exception applied.<sup>24</sup> So even twelve years after the defensive shield doctrine bloomed in the *Lewis* dictum, it appears that the defensive shield doctrine had never once actually been applied in a reported decision where a court explicitly relied on that doctrine to allow a public official to challenge the constitutionality of a statute. The defensive shield doctrine was dictum, and *only* dictum.

It was not until 1998, in the concurring opinion of Judge Sorondo in *Fuchs v. Robbins, supra*, that the defensive shield doctrine finally condensed out of the cloud of dictum, and the Third District, on the basis of that doctrine, permitted a property appraiser to challenge the constitutionality of a statute, not because he was at risk of personal liability for expending public monies irresponsibly, but merely by the happy coincidence that he was a defendant rather than a plaintiff in a lawsuit.

For nearly half a century of the defensive shield doctrine has languished in a field of weeds. This Court is today in the position to reassess the doctrine's viability and clarify its previous statements. HCAA believes this Court should put the defensive shield doctrine to rest.

The defensive shield doctrine, as articulated by Judge Sorondo in *Fuchs v. Robbins*, runs contrary to the principles of *Atlantic Coast Line*. When presented with

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<sup>24</sup> The court explained that the statute challenged in that case would have required the public agency to reimburse prescription drugs out of public funds. *Florida Pharmacy* at 1030.

a constitutional challenge to a statute, the court must first determine the power of the officer to refuse to perform a statutory duty because in his opinion the law is unconstitutional. *Atlantic Coast Line* at 684. If the defensive shield doctrine permits an officer charged with executing a law to ignore it because in his or her opinion it is unconstitutional, and furthermore permits him or her to defend such neglect on the ground of personal opinion, then *Atlantic Coast Line* is simply no longer viable. The defensive shield doctrine and *Atlantic Coast Line* are inherently inconsistent.

It is the defensive shield doctrine, not this court's opinion in *Atlantic Coast Line* that has strayed from sound principle. If the defensive shield doctrine is true as articulated in *Fuchs v. Robbins, supra*, then the property appraiser has more power over legislation than the governor of Florida. An act of the legislature still becomes a law even if the governor does not approve it, and the governor is dutybound to execute the laws so passed, even if he does not approve of them. *Atlantic Coast Line*, 94 So. at 683. The property appraiser, who is not even afforded a veto power, would be more powerful than the governor if he or she could refuse to enforce the law and then assert the defensive shield doctrine when challenged. Therefore, the defensive shield doctrine should be pulled out from the roots and discarded from Florida's jurisprudence.

The best way to retire the defensive shield doctrine is to observe that the *Lewis* dictum has never signified anything other than the traditionally recognized public fund

exception to the general rule that a ministerial officer may not challenge the constitutionality of legislation.

**The public funds exception is not applicable to Turner in this case.**

Turner relies upon *State ex rel. Florida Portland Cement Co. v. Hale*, 176 So. 577 (Fla. 1937) and *Green v. City of Pensacola*, 108 So. 2d 897 (Fla. 1<sup>st</sup> DCA 1959) in support of his argument that public funds are at issue in the instant case. The public funds exception permits a public officer to wage a constitutional challenge where there is a necessity to protect public funds. *Barr v. Watts*, 77 So. 2d 347, 350 (Fla. 1953). Turner's reliance on *Florida Portland Cement* and *Green* is misplaced and evidences an overreaching application of the public funds exception.

In *Green*, the State Attorney General, on the relation of the State Comptroller sued the City of Pensacola alleging that it had refused to pay a gross receipts tax on natural gas sold by the city to its inhabitants. *Green* at 899. The action alleged that the City had refused to pay the tax because it claimed it was exempt under the provisions of a special act of the legislature. *Id.* The court rejected the City's position that the Comptroller had no standing to question the constitutionality of their exemption because the law "directly affect[ed] public funds and the Comptroller's duty to collect, control and disburse the same." *Id.* at 901.<sup>25</sup>

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<sup>25</sup> The same litigation fostered another appeal which found its way to this Court on the substantive issue of the constitutionality of the special act itself. *State ex rel. Green v. City of Pensacola*, 126 So. 2d 566 (Fla. 1961). Apparently none of the parties appealed the decision of the First District to the Supreme Court. This court never commented on the propriety of the First District's conclusion regarding the standing of the Comptroller to assert a

The cases decided by this Court permitting an officer to challenge the constitutionality of legislation on the basis of the public funds exception have done so where public funds were required to be *expended* by the state. There is no authority from this court stating that the mere inability to obtain funds for the general tax revenue has anything whatsoever to do with the stated “public funds” exception. *See, e.g., State ex rel. Juvenal v. Neville*, 167 So. 650, 651 (Fla. 1936) (board of county commissioners had standing to challenge the constitutionality of an act which would have required them to pay sums of money).

In *Florida Portland Cement, supra*, the very case relied upon by Turner, this Court highlighted the underlying rationale of its decision in *Atlantic Coast Line, supra*, which laid out the framework for determining when an officer may challenge the constitutionality of legislation. The underlying rationale of the public funds exception is the public officer’s personal liability or interest in the enforcement of the legislation. If obedience to the challenged legislation will result in personal liability or the liability of his or her bondsman, this Court has afforded standing to the officer. In *Florida Portland Cement* the petition sought to coerce the state road department to enforce a statute which would have required it “to pledge or expend public funds.” *Florida Portland Cement* at 585. Understanding the department’s dilemma, this Court noted:

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constitutional challenge.

The act here under consideration is of such a nature that its constitutionality may well have been, and in good faith, doubted. One who is required to pay our public funds should be at least reasonably certain that the same are paid out under valid law. [*citations omitted*].

*Id.* Under these circumstances, the court held that the department was entitled to challenge the validity of the legislation. The court also noted that even though the officer's good faith doubt about the constitutionality of the act may justify him from declining to pay out public funds unless a controlling court order is obtained, that basis alone will not justify the court in striking down the act as being unconstitutional. *Id.* In any event, it was the *personal liability* which the department had in mind in hold in the public funds exception applicable.<sup>26</sup>

A review of this Court's controlling authority suggests that the First District in *Green* simply took the public funds exception too far. Whereas the rationale for the public funds exception is grounded in the notion of the *personal liability* of an officer, the *Green* case abandoned that rationale, and adopted the innovation that a public officer is in some general sense "charged with the duty to protect the public funds" and

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<sup>26</sup> Similar results were obtained in this court in *City of Pensacola v. King*, 47 So. 2d 317 (Fla. 1950) where the legislative act in question may have made it necessary for the public utilities commission to expend public funds in order to hold a hearing. Again, in *Kaulakis v. Boyd*, 138 So. 2d 505 (Fla. 1962), the public funds exception was permitted where the act "would have required the [Board of County Commissioners of Dade County] to expend public funds in satisfaction of [a] judgment." *Id.* at 507. Also, see *Arnold v. Shumpert*, 217 So. 2d 116 (Fla. 1968), (permitted Board of County Commissioners to challenge the constitutionality of a statute which would have required the expenditure of public funds to pay insurance premiums); *Branca v. City of Miramar*, 634 So. 2d 604 (Fla. 1994), (permitting the City to challenge the constitutionality of an ordinance which would have required expenditure of public funds for a pension plan for elected city officials).

therefore possesses general standing to object to legislative exemptions which might limit money coming into the public coffers. *Green*, 108 So. 2d at 901. The *Green* court ignored the pecuniary standard evidenced by this court's numerous opinions defining the public funds exception. The First District's rationale is directly at odds with *Atlantic Coast Line* and its progeny and, if consistently applied would hopelessly expand public officials' standing to challenge statutes that they believe reduce tax revenues. Such an unwieldy rule should be rejected outright.

Turner in the instant case is not charged with the disbursement of public funds. He merely challenges an exemption which he believes will prevent money from coming into the public coffers and interprets the public funds exception, as the First District did in *Green*, to give him a general standing to, as he puts it, "rise to the call when questionable statutes provide tax breaks to various special interest groups."<sup>27</sup> The record does not show that Turner would have faced any personal liability for enforcing the stadium seating exemption, nor that his bondsman would have been implicated. In a sad twist of irony, Turner is in this cause expending public funds to challenge a statute which it is his duty to uphold and obey. The people of Florida, through their elected representatives in the legislature, have already decided that they do not want the tax revenues that Turner seeks to recover. The only public funds being expended

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<sup>27</sup> Turner's Initial Brief at p. 22.

are those spent by Turner in this case to thwart the will of the people. The public funds exception does not vindicate Turner's conduct.

### **CONCLUSION**

For all the reasons set forth above, HCAA requests that this Court affirm the decision of the Second District court of Appeal on the grounds set forth therein.

Respectfully submitted,

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Donald W. Stanley, Jr. Esq.  
Florida Bar Number 231525  
James S. Eggert, Esq.  
Florida Bar Number 949711  
101 E. Kennedy Boulevard  
Suite 1240  
Tampa, Florida 33602  
Telephone (813) 223-5351  
Attorneys for Hillsborough  
County Aviation Authority

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to **WILLIAM D. SHEPHERD, ESQUIRE**, Hillsborough County Property Appraiser's Office, 16<sup>th</sup> Floor, County Center, 601 East Kennedy Boulevard, Tampa, Florida 33602; **ROBERT E.V. KELLEY, JR.**,

**ESQUIRE**, Post Office Box 1288, Tampa, Florida 33601-1288; **HENRY E. THOMAS, SR., ESQUIRE**, 601 East Kennedy Boulevard, 14<sup>th</sup> Floor, Tampa, Florida 33602; and **JOHN I. VAN VORIS, ESQUIRE**, Post Office Box 3324, Tampa, Florida 33601, this \_\_\_\_\_ day of December, 1999.

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James S. Eggert

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