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**IN THE SUPREME COURT OF FLORIDA**

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**CASE NO. 96,674**

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ROB TURNER, as property appraiser,

Petitioner,

vs.

HILLSBOROUGH COUNTY AVIATION AUTHORITY,  
a public body corporate under the laws of the State of Florida,  
the TAMPA SPORTS AUTHORITY,  
a body corporate in politic of the State of Florida,  
and the NEW YORK YANKEES PARTNERSHIP,  
an Ohio limited partnership,

Respondents.

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ON REVIEW FROM THE  
SECOND DISTRICT COURT OF APPEAL  
LAKELAND, FLORIDA  
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**ANSWER BRIEF OF  
PETITIONER THE NEW YORK YANKEES PARTNERSHIP  
AND THE TAMPA SPORTS AUTHORITY**

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**CERTIFICATE OF TYPE, SIZE AND STYLE**

Counsel for Respondents, the New York Yankees Partnership and the Tampa Sports Authority, certify that this Answer Brief is typed in 14 point (proportionately spaced) Times New Roman.

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## INTRODUCTION

This case explores the standing of the Hillsborough County Property Appraiser to challenge the constitutionality of the tax exemption granted by Section 196.012(6), Florida Statutes. Enforcing the long-settled principle that public officials must uphold the laws of Florida, not challenge them, the Second District affirmed the trial court's dismissal of the Property Appraiser's lawsuit below. The court, however, certified a conflict with *Fuchs v. Robbins*, 24 Fla. L. Weekly D1529 (Fla. 3d DCA June 30, 1999) in which the Third District permitted the Dade County Property Appraiser to challenge the constitutionality of a statute.

This brief, filed on behalf of The New York Yankees Partnership and the Tampa Sports Authority, demonstrates that the Second District's holding is correct. Both the common law and the very statute that grants the Property Appraiser the power to bring this litigation forbid the Property Appraiser from challenging the laws he is elected to enforce.

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<sup>1</sup> In this brief “R” refers to the record on appeal and “T” refers to the transcript of the hearing on the motion to dismiss.

## STATEMENT OF THE CASE AND FACTS

The property at issue in this lawsuit (Folio No. 109052.0050) (the “Property”) is owned by the Hillsborough County Aviation Authority (“Aviation Authority”), leased to Tampa Sports Authority (the “Sports Authority”), and licensed to the Yankees (R. 1, 6-7). The Property is a public sports facility containing four baseball diamonds with permanent seating open to the public.

<sup>2</sup> The property also contains locker rooms and other facilities not open to the public.

*Id.*

The Florida legislature passed a statute that declares sports facilities like the Aviation Authority’s exempt from taxation.

<sup>3</sup> In assessing 1997 taxes on the Property, the Property Appraiser declined to apply the statutory exemption, based on his opinion that the statute was unconstitutional.

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<sup>2</sup> See T. 24 (noting that the Hillsborough County Value Adjustment Board found the baseball diamond portion of the Property was a public facility).

<sup>3</sup> Fla. Stat. § 196.012(6) (1997). The exemption reads in relevant part: "The use by a lessee, licensee or management company of real property or a portion thereof as a . . . sports facility with permanent seating . . . is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public, with or without charge for admission."

<sup>4</sup> In another case, the Second District later agreed with the Property Appraiser’s view of the statute as applied to a racetrack. That decision is currently on appeal to this Court and was argued September 2, 1999. *Sebring Airport Authority v. McIntyre*, 718 So. 2d 296 (Fla. 2d DCA 1998), *appeal filed*, Oct. 8, 1998.

The Aviation Authority appealed the Property Appraiser's decision to the Value Adjustment Board (the "VAB"). The VAB decided that the exemption applied to that portion of the property used as a public facility. It established the assessment of the property accordingly. The tax rolls were re-certified reflecting the adjusted assessment on March 11, 1998 (R. 38, 41).

On April 7, 1998, the Property Appraiser sued in circuit court. The Property Appraiser sued the Aviation Authority and Melvin B. Smith, the Hillsborough County Tax Collector but did not name the Department of Revenue as a party (R. 1). The Complaint alleged that the VAB's assessment "violated Article VII, Sec. 3(a) of the Florida Constitution" (R. 2). The Yankees and the Sports Authority successfully intervened as defendants, since they would ultimately have to pay the taxes under their contracts with the Aviation Authority (R. 7, 33-35).

The Authority moved to dismiss the Complaint on several grounds alleging, among other things, that the Property Appraiser did not have standing to challenge the constitutionality of the statute and the Property Appraiser had failed to join the Florida Department of Revenue (DOR) as an indispensable party (R. 13-15). The Yankees and the Sports Authority adopted the Aviation Authority's Motion (R. 43-44).

On July 16, 1998, the trial court heard the Motion to Dismiss.

<sup>5</sup> The court agreed that the DOR was an indispensable party to the Property Appraiser's challenge to the constitutionality of Section 196.012(6). The court then ruled that it was futile to grant the Property Appraiser leave to amend his Complaint, because the deadline for adding the DOR had passed. Because the court ruled that these grounds warranted dismissal with prejudice, it chose not to reach the standing issues. The Property Appraiser moved for reconsideration, which was denied (R. 292-293).

The Property Appraiser appealed and the Second District affirmed. *Turner v. Hillsborough County Aviation Authority*, 739 So. 2d 175 (Fla. 2d DCA 1999). Choosing to begin its analysis with the standing issue instead of the failed joinder of DOR, the Second District held that the Property Appraiser had no standing to challenge the constitutionality of Section 196.012(6). In reaching this conclusion, the court noted its disagreement with *Fuch v. Robbins*, 24 Fla. L. Weekly D1529 (Fla. 3d DCA June 30, 1999) and certified the conflict to this Court. The Property Appraiser's petition followed.

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<sup>5</sup> The transcript of the hearing is at T. 1-26.

## SUMMARY OF THE ARGUMENT

The Property Appraiser does not have standing to challenge the constitutionality of a statute. Declaring a statute unconstitutional is the unique prerogative of the courts. The Property Appraiser's unilateral decision to ignore, and then challenge, a statute he considered unconstitutional violates the separation of powers required by the Florida Constitution.

Neither the "public funds" nor "defensive use" exceptions apply to permit the Property Appraiser's lawsuit. First, there is no threat that public funds will be disbursed illegally as is required to support the narrow public funds exception. Indeed, neither the collection nor the disbursement of public funds is at stake, only the allocation of the tax burden among Hillsborough County taxpayers.

The Property Appraiser's claim that he may challenge the constitutionality of the exemption "defensively" ignores that there is nothing defensive about his actions. He first refused to apply the exemption, based only on his opinion of its constitutionality and then brought suit to declare the statute unconstitutional. These offensive challenges are forbidden by decisions of this Court.

The Property Appraiser's lawsuit is also forbidden by statute. The very statute that grants the Appraiser the right to challenge the VAB's decision forbids him from challenging the constitutionality of the statutes he was elected to enforce. There can be no question concerning the legislature's power to regulate the duties of constitutional officers such as the Property Appraiser. Regulation of the Property

Appraiser's duties does not intrude on procedural matters reserved to this Court.

The decision of the Second District Court of Appeal should be affirmed.

## ARGUMENT

### **THE PROPERTY APPRAISER DOES NOT HAVE STANDING TO SUE TO CHALLENGE THE CONSTITUTIONALITY OF FLORIDA STATUTES SECTION 196.012(6).**

The question before this Court can be put bluntly: Does the Hillsborough County Property Appraiser have a duty to enforce the law, or can he ignore laws with which he disagrees and force the taxpayer to resort to legal action to enforce compliance? This Court answered that question long ago in the clearest of terms holding that the power to declare an act unconstitutional is the sole prerogative of the courts. *State ex rel. Atlantic Coast Line R.R. Co. v. State Bd. of Equalizers*, 84 Fla. 592, 94 So. 681 (1922). Ministerial officers must obey the law until judicially determined otherwise. *Id.* at 682. Observing that permitting governmental officers to ignore the law “is the doctrine of nullification, pure and simple,” this Court ruled that the right to declare an act unconstitutional “cannot be exercised by the officers of the executive department. . . .” *Id.* at 683.

The principle that governmental officers must obey the laws, even those laws they believe to be unconstitutional, long predates the *Atlantic* decision. Tracing the venerable history of this rule, this Court’s opinion in *Atlantic* quotes Abraham Lincoln’s articulation of this high duty of state officials to follow the law:

I do suggest that it will be much safer for all, both in official and private stations, to conform to and abide by all those acts which stand unrepealed than to violate any of them trusting to find impunity in having them held to be unconstitutional.

Lincoln’s First Inaugural Address, as quoted in *Atlantic*, 94 So. at 683.

This Court strongly reaffirmed this principle in *Barr v. Watts*, 70 So. 2d 347 (Fla. 1953) holding that the Florida Board of Law Examiners was without power to ignore the law, regardless of their opinion of its constitutionality. This Court noted the “chaos and confusion” that would result from permitting government officials to pick and choose which laws they would obey:

We now have in this state to carry on the state’s business almost 100 state agencies, boards and commissions, most of whose members hold office by virtue of executive appointment. 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 standstill while the validity of any particular statute is contested by the very board or agency charged with the responsibility of administering it and to whom the people must look for such administration.”

70 So. 2d at 351. As indicated by the cases in the margin, the courts continue to enforce these principles today.

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<sup>6</sup> *Department of Educ. v. Lewis*, 416 So. 2d 455 (Fla. 1982) (state officers and agencies do not have standing to initiate litigation to declare legislation invalid); *Department of Revenue v. Markham*, 396 So. 2d 1120 (Fla. 1981) (property appraiser cannot challenge the constitutionality of legislation); *Brazilian Court Hotel Condominium Owners Ass'n v. Walker*, 584 So. 2d 609 (Fla. 4<sup>th</sup> DCA 1991) (same); *Jones v. Department of Revenue*, 523 So. 2d 1211 (Fla. 1<sup>st</sup> DCA 1988) (same); *Miller v. Higgs*, 468 So. 2d 371 (Fla. 1<sup>st</sup> DCA 1985)(same). These holdings are reflective of similar decisions from other jurisdiction. See, e.g., *Connecticut Ass'n of Bds. Of Educ. v. Shedd*, 499 A.2d 797 (Conn. 1985); *Bd. of Supervisors of Linn County v. Department of Revenue*, 263 N.W.2d 227 (Iowa 1978); *State ex. rel. New Orleans Canal & Banking Co. v. Heard*, 18 So. 746 (La. 1895); *Neeland v. Clearwater Memorial Hosp.*, 257 N.W. 2d 366 (Minn. 1977); *City of Buffalo v. State Bd. Of Equalization and Assessment*, 272 N.Y.S. 2d 168 (App. Div. 1966); *In*

Although it acknowledges the general rule, the Property Appraiser's brief promptly challenges it by raising arguments that have already been rejected by this Court. First, the Property Appraiser suggests that he is bound by his oath to defend the Constitution and that this oath trumps his obligation to obey the law as written. The problem with this argument, as this Court long ago observed, is that the judiciary and not the executive determines whether an act is constitutional:

The fallacy [in the argument] is that every act of the Legislature is presumed 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.

*Atlantic*, 94 So. at 683. *See Barr*, 70 So. 2d at 350 (government officials may not attack the constitutionality of a statute under the guise that it would be a violation of their oath of office to obey the law).

Next, the Property Appraiser argues that only lower level bureaucrats must follow the law but that constitutional officers when performing discretionary rather than ministerial tasks are free to ignore their statutory obligation. The flaw in this argument is obvious. No state officer has the discretion to disobey the law. Indeed, this Court in *Atlantic* made clear that all state officials, from the lowest bureaucrat to the Governor must comply with the law. Illustrating its rationale, this Court noted that the Governor's veto power would be superfluous if the Governor could just refuse to enforce any law he or she believed to be unconstitutional. *Atlantic* at

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*re Appeal of Martin*, 209 S.E. 2d 766 (N.C. 1974). *But see Wooden v. Louisiana Tax Com'n*, 650 So. 2d 1157 (La. 1995).

683. No official, not even the governor, is above the law. *Id.*

Not surprisingly, in light of this telling illustration, the principles outlined in Atlantic have been applied specifically to statutory challenges raised by property appraisers. *See, e.g., Department of Revenue v. Markham*, 396 So. 2d 1120 (Fla. 1981). In *Markham*, the Broward County Property Appraiser, like the Property Appraiser here, brought an action asking the court to declare unconstitutional a tax exemption passed by the legislature. This Court held unequivocally that the Property Appraiser had no standing to raise this challenge. Because property appraisers "had a clear statutory duty to comply with the prescribed Department of Revenue regulations governing the taxability of household goods, they clearly lacked standing for declaratory relief in their governmental capacities." *Id.* at 1121. *See also Brazilian Court Hotel Condominium Owners Ass'n, Inc. v. Walker*, 584 So. 2d 609, 611 (Fla. 4<sup>th</sup> DCA 1991) ("the property appraiser, as a constitutional officer, lacks standing to challenge the amendment."); *Jones v. Department of Revenue*, 523 So. 2d 1211, 1214 (Fla. 1<sup>st</sup> DCA 1988) ("property appraiser does not have standing to bring a suit to challenge the validity of taxing statute or regulation."); *Miller v. Higgs*, 468 So. 2d 371 (Fla. 1<sup>st</sup> DCA 1985) (same).

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<sup>7</sup> The only case to the contrary is *Markham v. Yankee Clipper Hotel, Inc.*, 427 So. 2d 383 (Fla. 4<sup>th</sup> DCA 1983). *Yankee Clipper's* analysis is all of one sentence and, curiously, the only authority cited reiterates the general rule that state officials may not challenge the constitutionality of statutes. 427 So. 2d at 384, citing, *Dept. of Educ. v. Lewis*, 416 So. 2d 455 (Fla. 1982). The other cases cited by the Property

Even if the Property Appraiser's discussion of ministerial versus discretionary functions were relevant, there is nothing discretionary about the Property Appraiser's actions here. There is no dispute that the baseball diamonds at issue here fit within the language of 196.012(6) as a sports facility with permanent seating open to the public. The only basis for the Property Appraiser's refusal to grant the exemption is his opinion that 196.012(6) is unconstitutional. This is precisely the issue foreclosed to him under *Atlantic, Markham*, and their progeny. The Property Appraiser's ministerial duty here was simply to apply the statute as written. See *Escambia County v. Bell*, 717 So. 2d 85, 88 (Fla. 1<sup>st</sup> DCA 1998) (tax collector's duty to apply statute is "wholly ministerial").

### **The "Public Funds" and "Defensive Use" Exceptions Do Not Apply.**

Recognizing the difficulty presented by the standing rules articulated by this Court, the Property Appraiser strains to fit within one of two narrow exceptions to the rule, the "public funds" and "defensive use" exceptions. Neither apply. Indeed, if the exceptions were read as broadly as the Property Appraiser suggests, there would be nothing left of the general rule.

### **The Public Funds Exception**

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Appraiser shed little light on this issue. In *Davis v. Granemeyer*, 251 So. 2d 1 (Fla. 1971) the plaintiffs did not challenge the validity of a state statute. The question was whether a county ordinance had been duly enacted or whether the ordinance conflicted with a state statute. Similarly, in *Reid v. Kirk*, 257 So. 2d 3 (Fla. 1972) no constitutional challenge was at stake. At issue was a difference of opinion concerning the scope of the Tax Assessor's duties.

A few cases have recognized that a government official may have standing to challenge a law when necessary to protect against an illegal disbursement of public funds. *See, e.g., Barr v. Watts*, 70 So. 2d 347, 350-51 (Fla. 1953). However this exception has been applied narrowly and its application has been rejected where the impact on public funds is indirect or incidental. In each case where the public funds exception has been applied, a challenge was necessary to protect against an imminent but illegal disbursement of public funds. *See, e.g., State ex rel. Harrell v. Cone*, 130 Fla. 158, 177 So. 854 (1937); *State ex rel. Florida Cement Co. v. Hale*, 129 Fla. 588, 176 So. 577 (Fla. 1937), *overruled in part on other grounds*, 306 U.S. 375 (1939); *Green v. City of Pensacola*, 108 So. 2d 897 (Fla. 1<sup>st</sup> DCA 1959).

By contrast, no disbursement of funds is imminent or even contemplated in this case. Thus, the Property Appraiser attempts to expand the public funds exception in reliance on the companion case of *Fuchs v. Robbins*, 24 Fla. L. Weekly D1529 (Fla. 3<sup>rd</sup> DCA June 30, 1999). Although the Third District recognizes in *Fuchs* that there are no cases applying the public funds exception absent the imminent disbursement of public funds, the Third District suggests that the Property Appraiser's *collection* of public funds is as compelling a justification as the disbursement of funds. 24 Fla. L. Weekly at 1532-33 (Soronto, J., concurring). The flaw in this argument is that the Property Appraiser's actions here have no impact on either the collection or disbursement of public funds. The determination that the exemption applies will not reduce the collection of public funds over the long term.

If the value of property appraised in Hillsborough County is reduced, the millage rate will be raised accordingly. Thus, although the tax burden may be allocated slightly differently among taxpayers, there will be no impact on the ultimate tax revenues collected by the County.

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To accept the Property Appraiser's argument would permit the exception to swallow the rule. Virtually any government activity has some affect on the collection or disbursement of revenue. Presumably, the legislature has focused on this revenue impact in its adoption of the statute at issue. It is not for a Property Appraiser to challenge the wisdom of this determination, but to enforce it. Only when a statute compels what may be an illegal and immediate disbursement of funds should the exception apply. *See Harrell v. Cone*, 177 So. 854 (comptroller challenging statute compelling immediate disbursement of public funds); *Portland Cement*, 176 So. 577 (same).

### **The Defensive Use Exception**

The Property Appraiser next suggests that he can challenge the constitutionality of a statute defensively. As shown below, there is nothing defensive about the Property Appraiser's actions. Moreover, the so-called "defensive use" exception does not apply to the facts of this case.

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<sup>8</sup> Any concern over this allocation of the tax burden should be raised by the taxpayers, not the appraiser. *See infra* at 19-21.

That a government official may raise the unconstitutionality of a statute as a defense is far more often acknowledged in principle than applied in fact. Indeed, the only case cited by the Property Appraiser actually applying the exception under facts similar to this case is *Fuchs v. Robbins*. However, *Fuchs* misreads the scope of the exception. This Court has never suggested that a Property Appraiser or any other governmental officer may knowingly ignore his or her duties under a statute, thus forcing the taxpayer to file suit to vindicate the statute, and then raise the unconstitutionality of the statute as a defense to the taxpayers lawsuit. To the contrary, one need go no further than the *Atlantic* case to demonstrate the error in this approach.

In *Atlantic*, a case involving the assessment of property owned by the Atlantic Coastline Railways, the Board of Equalizers refused to hear the railroad's appeal. The Board argued that the statute that provided the railroad with its appellate rights was unconstitutional. This Court issued a writ of mandamus forcing the Board of Equalizers to comply with the statute, holding that the Board had no standing to argue the unconstitutionality of the statute, even though the Board was in precisely the same "defensive" posture as the Property Appraiser is here. Significantly, the Court's analysis goes beyond the question of whether the Property Appraiser has standing to challenge a statute by filing a lawsuit. Equally important is the Court's conclusion that government officials must obey the law until declared otherwise by the judiciary. 94 So. at 682. The whole purpose of the *Atlantic* case was to compel

the Board to comply with the law. The Property Appraiser's "defensive" use of unconstitutionality was rejected.

Similarly, in *Barr* the issue was whether the state Board of Law Examiners was obligated to obey the law. This Court ruled that they were and rejected the Board's "defensive" argument that the statute was unconstitutional. 70 So. 2d at 348-50.

Other cases have specifically rejected attempts by a property appraiser to challenge a statute defensively. For example, in *Brazilian Court Hotel Condominium Owners Ass'n. v. Walker*, 584 So. 2d 609, 611 (Fla. 4<sup>th</sup> DCA 1991), the property appraiser defended a lawsuit arguing that the statute cited by plaintiffs was unconstitutional. The court held that the property appraiser was without standing to defend on that basis. Similarly in *Maxwell v. Good Samaritan Hospital Ass'n.*, 195 So. 2d 255, 256 (Fla. 4<sup>th</sup> DCA 1967), the court held that the tax assessor had no authority to challenge the exemption relied upon by the plaintiff. *See also Steele v. Freel*, 157 Fla. 223, 25 So. 2d 501 (Fla. 1946) (court rejected standing of clerk of court to raise constitutionality of a statute defensively).

In any event, the Property Appraiser's actions here can hardly be characterized as defensive. First, the Property Appraiser, just like the public officials in *Atlantic* and *Barr* refused to obey a valid statute based on his interpretation that the statute was unconstitutional. As a result, the taxpayers here were forced to incur the expense of an appeal to the VAB to compel compliance

with the law. Unsatisfied with the decision of the VAB to obey the statute, the Property Appraiser then affirmatively filed suit suggesting to the Court that “the Value Adjustment Board’s decision violated Article VII, Section 3(a) of the Florida Constitution” (R. 2).

There is nothing defensive about refusing to obey a statute on the books. There is nothing defensive about filing a lawsuit based on the alleged unconstitutionality of that statute. If the Property Appraiser’s arguments were to be accepted by this Court, there is no case that could not be placed in this same “defensive” posture merely by ignoring the law and compelling Florida citizens to resort to the judiciary to secure enforcement. The Second District correctly held that the defensive use exception does not apply to this case.

**The Property Appraiser’s Lawsuit is Also Forbidden by Statute.**

In addition to being prohibited by the common law, the Property Appraiser’s lawsuit is forbidden by the very statute granting him the power to appeal the VAB decision. Section 194.036 permits a Property Appraiser to appeal a decision of the VAB only under limited circumstances. The relevant limitation here appears in Section 194.036(1)(a) which states that a Property Appraiser may not appeal from a VAB decision based on its opinion of that the statute is unconstitutional:

Nothing herein shall authorize the Property Appraiser to institute any suit to challenge the validity of any portion of the constitution or of any duly enacted legislative act of the state.

Other limitations, not directly at issue here, forbid the Appraiser from

challenging variances between the VAB's decision and the Property Appraiser's original assessment when those variances fall beneath certain thresholds.

<sup>9</sup> The intent of these limitations is obvious. There is substantial time, trouble and expense involved in legal challenges brought by the Appraiser. The legislature has made a policy determination to limit such litigation even though the result may be a lower assessment. More important to the legislature was the policy of protecting taxpayer from drawn-out litigation when the amount in controversy does not justify the expense, or when, as in this case, the taxpayer's position is based on a duly enacted legislative act of this state. In such circumstances, the taxpayer has been granted the benefit of the doubt.

The Appraiser's argument that this statutory limitation is itself an unconstitutional attempt to regulate a rule of procedure is without merit. There can be no doubt that the legislature has the right to establish and therefore limit the powers and duties of constitutional officers. *See, e.g., State v. Walton County*, 93 Fla. 796, 112 So. 630, 632 (Fla. 1927) (legislature prescribes the powers and duties of county commissioners as constitutional officers); *Wright v. Knight*, 381 So. 2d 729, 730 (Fla. 3d DCA 1980) (tax collector only has such powers as granted by the legislature). Put simply, just as the legislature has the power to permit the Property

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<sup>9</sup> For example, a Property Appraiser may not appeal the VAB's decision unless the variance is 15% on any assessment of \$50,000 or less; 10% on any assessment between \$50,000 and \$500,000; 7.5% on any assessment between \$500,000 and \$1 million; or 5% on any assessment in excess of \$1 million. Section 194.036(1)(b).

Appraiser to take an appeal from a VAB decision, the legislature may constitutionally limit that power in certain circumstances. *See Burns v. Butscher*, 187 So. 2d 594, 595 (Fla. 1966) (duties of tax assessor can be fixed by the legislature); *Escambia County v. Bell*, 717 So. 2d 85, 87 (Fla. 1<sup>st</sup> DCA 1998) (tax collector has only such authority as is clearly conferred by statute); *Maxwell v. Good Samaritan Hosp. Ass'n*, 195 So. 2d 255, 256 (Fla. 4<sup>th</sup> DCA 1967) (tax assessor cannot exercise powers in excess of that granted by the legislature).

Defining the powers and duties of a constitutional officer does not intrude upon this Court's prerogative to adopt and apply rules of standing. Thus, the Appraiser's cases are inapposite. For example, in *Rogers & Ford Constr. Corp. v. Carlandia Corp.*, 626 So. 2d 1350 (Fla. 1993), this Court confirmed the legislature's power to regulate substantive rights such as granting the power to sue or be sued. However, the legislature could not make a statutory determination of who is or is not a real party in interest. *Id.* at 1351. Thus, in *Avila South Condominium Assoc. v. Kappa Corp.*, 347 So. 2d 599 (Fla. 1977), it was unconstitutional for the legislature to enact a statute declaring that a condominium association is the proper party to bring a class action on behalf of the unit owners. *Id.* at 608. This Court confirmed, however, that it was constitutional for the legislature to determine whether a condominium association has the power to sue or be sued. *Id.* The legislature's substantive limitation upon a Property Appraiser's powers is not an unconstitutional intrusion into matters of procedure.

### **The Property Appraiser's Lawsuit is Not in the Public Interest.**

The Property Appraiser closes with the plea, "If I cannot sue, who will?" Initial Brief at 21. The Appraiser forgets that ultimately it is the taxpayers who pay the assessment and the taxpayers who should be heard to complain if the legislature has misallocated property tax burdens. It is not the Property Appraiser's place to make that argument on the taxpayers' behalf. For precisely this reason, some jurisdictions limit the standing of governmental officials on real party in interest grounds. These cases conclude that the taxpayer, not the government, is the proper party. *See, e.g., Board of Supervisors of Linn County v. Department of Revenue*, 263 N.W. 2d 227, 232-33 (Iowa 1978); *In re Appeal of Martin*, 209 S.E. 2d 766, 772 (N.C. 1974). These cases are consistent with Florida law that limits standing to only those with a direct stake in the outcome of the litigation. *See, e.g., State ex rel. Watson v. Kirkman*, 27 So. 2d 610 (Fla. 1946); *Steele v. Freel*, 25 So. 2d 501 (Fla. 1946).

A decision to overturn long-settled decisions such as *Atlantic*, *Barr*, and *Markham* and permit the Property Appraiser to serve as the taxpayers' surrogate

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<sup>10</sup> The property appraiser's argument that Section 194.036(1)(a) is an unconstitutional rule of procedure proves too much. For example, no one could seriously suggest that Section 607.0302, Florida Statutes, which grants a corporation the right to sue or be sued, intrudes on matters of procedure. With such statutes the Legislature is conferring substantive rights, not determining questions concerning who is the real party in interest.

would come at great cost. If the Appraiser has the power to ignore this statute, what principled distinction will hold other government officials to their obligation to comply with the law? Every act of the legislature has its proponents and detractors. No doubt there are government officials with sincere and deeply held disagreements with virtually every action of consequence taken by the legislature. A government composed of officials that can choose to ignore those laws with which they disagree cannot function.

Taxpayers have the right to expect that their government officials will obey the law. If a law is invalid, there are many citizens who will be willing to take up the challenge. However, no taxpayer should have to initiate or defend expensive litigation to compel a public official to obey the law.

All statutes are presumed constitutional until declared otherwise. *See, e.g., People's Bank of Indian River County v. State*, 395 So. 2d 521 (Fla. 1981).

Although the judiciary has the power to declare statutes unconstitutional, wisely it has exercised this power circumspectly and with great deference to the legislative process. Thus, Florida courts have adopted numerous rules of construction to assure that constitutional challenges are successful only on rare occasions. For example, the courts diligently apply rules of standing to ensure that only those parties directly affected by the statute may bring the claim.

<sup>11</sup> If a case can be resolved without declaring the statute constitutional, the courts must do so.

<sup>12</sup> If a statute can be interpreted so as to render it constitutional, that interpretation must be adopted.

<sup>13</sup>

No such safeguards apply to the Property Appraiser's position. If the Property Appraiser's broad view of the public funds or defensive use exceptions is upheld, any state officer could refuse to enforce or could file a challenge to any legislation for any reason including personal bias, spite, or simple political disagreement with the legislative outcome. The executive, like the judiciary, should give deference to the will of Florida's citizens as expressed by the legislative process. This Court should adhere to the counsel of *Atlantic* and its progeny and avoid the chaos and confusion that must result from approval of the Property Appraiser's position. Although there are extraordinary circumstances where narrow exceptions to the general rule espoused by *Atlantic* exist, the Property Appraiser cannot fit within them. Unless the exceptions are to swallow the rule, the decision below must be affirmed.

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<sup>11</sup> See, e.g., *Watson*, 27 So. 2d 610.

<sup>12</sup> See, e.g., *Firestone v. News-Press Publ'g Co.*, 538 So. 2d 457 (Fla. 1989).

<sup>13</sup> See, e.g., *State ex rel. Young v. Duval County*, 76 Fla. 180, 79 so. 692, 696 (1918).

## **CONCLUSION**

For all the foregoing reasons, the decision of the Second District Court of  
Appeal should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by  
U.S. Mail to: **William D. Sheppard, Esquire**, 601 East Kennedy Boulevard, 15th Floor,  
Tampa, Florida 33602-4932, **Henry E. Thomas, Sr., Esquire**, 601 East Kennedy Boulevard,  
14th Floor, Tampa, Florida 33602; **Donald W. Stanley, Jr., Esquire**, Post Office Box 2111,  
Tampa, Florida 33601, this \_\_\_\_ day of December, 1999.

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