

Supreme Court of Florida

No. SC07-1556

**THE CROSSINGS AT FLEMING ISLAND COMMUNITY
DEVELOPMENT DISTRICT, etc.,**

Petitioner,

vs.

LISA REINHARDT ECHEVERRI, etc., et al.,

Respondents.

[July 3, 2008]

WELLS, J.

This case is before the Court for review of the decision of the First District Court of Appeal in Zingale v. Crossings at Fleming Island Community Development District, 960 So. 2d 20 (Fla. 1st DCA 2007) (Crossings). The district court certified that its decision is in direct conflict with the decision of the Second District Court of Appeal in Sun 'N Lake of Sebring Improvement District v. McIntyre, 800 So. 2d 715 (Fla. 2d DCA 2001) (Sun 'N Lake), “on the issue of whether a property appraiser has standing to defensively raise the constitutionality of a statute.” Zingale v. Crossings at Fleming Island, No. 1D06-2026, 1D06-2158

(Fla. 1st DCA order filed June 26, 2007). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const. Based on the reasoning explained below, we hold that a property appraiser acting in his or her official capacity does not have standing to raise the constitutionality of a statute as a defense in an action filed by a taxpayer.

FACTS AND PROCEDURAL HISTORY

The Crossings at Fleming Island Community Development District (District) is a community development district in Clay County, Florida, established by general law, as set forth in chapter 190, Florida Statutes. The District is a residential community that owns and operates several public recreational facilities, including a golf course, a swim and tennis center, a second swim center, and four playgrounds. Beginning in December 2000, the District filed three complaints in the Fourth Judicial Circuit Court in and for Clay County for declaratory and injunctive relief against Wayne Weeks, as the Clay County Property Appraiser (Appraiser), Jimmy Weeks, as the Clay County Tax Collector (Tax Collector), and Jim Zingale, as the Executive Director of the Florida Department of Revenue (DOR). The District asserted that pursuant to section 189.403(1), Florida Statutes (1999), a community development district is to be treated as a municipality for ad valorem tax purposes, and thus the Appraiser wrongfully denied exemptions for the above listed properties during the years 2000, 2001, and 2002. Alternatively, the District asserted that it was entitled to equitable relief because the Appraiser

denied the exemptions in violation of its equal protection rights and Florida's uniformity and equality laws. The Appraiser raised the affirmative defense that section 189.403(1) was unconstitutional and argued that the properties were not entitled to exempt status. Crossings, 960 So. 2d at 22.

The District filed motions to strike the affirmative defense in each now-consolidated case, arguing that the Appraiser lacked standing to challenge the constitutionality of a statute. After a hearing, the trial court granted the motions to strike. Crossings at Fleming Island Cmty. Dev. Dist. v. Weeks, No. 02-1024-CA (Fla. 4th Cir. Ct. order filed May 14, 2003) (Order Striking Affirmative Defense); Crossings at Fleming Island Cmty. Dev. Dist. v. Weeks, No. 01-920-CA (Fla. 4th Cir. Ct. order filed July 7, 2003) (same); Crossings at Fleming Island Cmty. Dev. Dist. v. Weeks, No. 00-921-CA (Fla. 4th Cir. Ct. order filed July 7, 2003) (same).

After a one-day bench trial, the trial court found that the golf course (excluding the bar, restaurant, and pro shop), the swim and tennis center, the swim center, and the playgrounds were exempt from ad valorem taxation for tax years 2000 through 2002 because the properties were used for activities that were essential to the health, morals, safety, and general welfare of the people within the District. The trial court ordered the Tax Collector to refund ad valorem taxes paid on the exempt properties for those years. The trial court also found as independent grounds for relief that the Appraiser violated the uniformity and equality

requirements of Florida law by the disparity of treatment of the District's property from property of similar character and use owned by other entities in Clay County. Crossings at Fleming Island Cmty. Dev. Dist. v. Weeks, Nos. 2000-921-CA, 2001-920-CA, 2002-1024-CA (Fla. 4th Cir. Ct. amended final judgment filed Apr. 17, 2006).

The Appraiser appealed to the First District, arguing that the trial court erred in finding that the golf course and the swim and tennis center were entitled to ad valorem tax exemption; in granting the District's motion to strike his affirmative defense that section 189.403(1) was unconstitutional; and in denying a motion for recusal. The Appraiser argued on appeal that he had standing because he may defensively raise the constitutionality of a statute and, alternatively, because he may raise the constitutionality of a statute to protect public funds. The DOR challenged all of the exemptions on appeal. Crossings, 960 So. 2d at 24, 26.

The First District affirmed the trial court's holding that the properties were exempt from ad valorem taxation pursuant to section 189.403(1), Florida Statutes (1999), and section 196.199(1), Florida Statutes (1999) (creating statutory exemption for property of "municipalities of this state or of entities created by general or special law . . . which is used for governmental, municipal, or public purposes"). The First District reversed the trial court's alternative basis for

granting relief, finding that no disparate treatment had been proven. Crossings, 960 So. 2d at 26.

The First District also reversed the trial court's ruling that the Appraiser lacked standing to challenge the constitutionality of section 189.403(1). Citing to Fuchs v. Robbins, 818 So. 2d 460, 464 (Fla. 2002), the First District held that the Appraiser could defensively raise the constitutionality of a statute in a lawsuit filed by a taxpayer. Crossings, 960 So. 2d at 28. Because it found that the appraiser had standing due to his procedural status as a defendant, the First District did not address the Appraiser's alternative public funds argument. Id. at 26. Ultimately, the First District reversed and remanded for the trial court to address the Appraiser's affirmative defense.¹

Following the First District's decision, the District filed a motion to certify conflict with the Second District's decision in Sun 'N Lake, where the Second District held that a property appraiser did not have standing to challenge the constitutionality of section 189.403(1) in a tax suit filed by an independent special district. The First District granted the motion. The DOR, joined by the Appraiser,

1. Judge Kahn concurred in part and dissented in part. He would have affirmed the trial court's ruling that the Appraiser did not have standing based on the reasoning expressed in Justice Bell's concurring opinion in Sunset Harbour Condominium Ass'n v. Robbins, 914 So. 2d 925, 933-38 (Fla. 2005) (Bell, J., specially concurring), and the Second District's decision in Sun 'N Lake. Crossings, 960 So. 2d at 29.

filed a motion for rehearing, motion for rehearing en banc, or in the alternative, motion to certify a question of great public importance, each of which was denied.

ANALYSIS

In Fuchs, this Court held that a property appraiser seeking review of an adverse decision of the county value adjustment board did not have standing to file an action pursuant to section 194.036(1), Florida Statutes (1997), to argue that an applicable taxing statute was unconstitutional. After explaining that section 194.036(1) preserved the historical rule that a public official acting in his or her official capacity does not have standing to initiate an action challenging the validity of a statute and holding that the property appraiser in Fuchs thus lacked standing, the Court added that a property appraiser may raise such a challenge as “a constitutional defense in an action initiated by the taxpayer challenging a property assessment” or where “the taxing statute at issue involves the disbursement of public funds.” Fuchs, 818 So. 2d at 464.² As this Court

2. Section 194.036(1), Florida Statutes (1997), defines the limited circumstances in which a property appraiser may file an action contesting the decision of the value adjustment board relating to a tax assessment. Particularly, section 194.036(1)(a) states that “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 this state.” § 194.036(1)(a), Fla. Stat. (1997) (emphasis added). Section 194.036(2) provides that a taxpayer could bring an action to contest a tax assessment pursuant to section 194.171 without placing conditions on this statutory right. While the statute expressly prohibits a property appraiser from instituting a suit challenging the constitutionality of a statute, the question at issue in Fuchs, it does not place any

recognized in Sunset Harbour, our discussion in Fuchs of whether a property appraiser would have standing to challenge the constitutionality of a statute as a defense in a taxpayer suit was obiter dictum because the property appraisers in the conflict cases underlying Fuchs both filed lawsuits challenging the tax exemption statutes. Sunset Harbour, 914 So. 2d at 928.

In the instant case, the District argues that the First District erred in relying on the defensive posture dictum in Fuchs to hold that a property appraiser has standing to challenge the constitutionality of a statute as a defense in an action filed by a taxpayer. The District, joined by the Florida Chamber of Commerce as amicus curiae, urges this Court to disapprove the defensive posture dictum and quash the First District's decision. In contrast, the Appraiser, joined by the Florida Association of Property Appraisers, Inc., and numerous other property appraisers as amici curiae, asks this Court to approve the dictum and the First District's decision. In the alternative, the property appraisers ask this Court to find the public funds exception applicable to property appraisers challenging taxing statutes and affirm on that basis the First District's holding that the Appraiser had standing to challenge section 189.403(1). Finally, the Appraiser argues on appeal that the

restrictions on a property appraiser's answer to a suit filed by a taxpayer or expressly sanction defenses previously prohibited by common law. Thus, section 194.036 was not cited to support the defensive posture exception discussed in Fuchs and does not resolve the question currently before the Court.

First District erred in affirming the trial court's decision that the golf course, swim and tennis centers, and playgrounds are exempt from ad valorem taxation pursuant to sections 189.403(1) and 196.199(1), Florida Statutes (1999), because the properties are used exclusively for an exempt public purpose. We decline to review this issue and limit our review to the issue upon which the district court has certified conflict.

Similarly, we decline to review whether the public funds exception is applicable to property appraisers wishing to challenge the constitutionality of taxing statutes. While the Appraiser raised the public funds exception on appeal to the First District, it appears from the record that the Appraiser failed to raise the issue before the trial court. Because the issue was not presented to the trial court, we decline to address the issue at this time. See Moss v. Moss, 939 So. 2d 159, 166 (Fla. 2d DCA 2006) (declining to review issue not properly preserved for appellate review and explaining that “[t]he trial court could not err by denying a claim that was never actually presented to it”). We do caution that past precedent indicates that the public funds exception is a narrow exception. See, e.g., Dep’t of Educ. v. Lewis, 416 So. 2d 455, 459 (Fla. 1982) (holding that public funds exception did not confer standing to challenge constitutionality of proviso in appropriations bill upon Department of Education, State Board of Education, and Commissioner of Education in his official capacity, and distinguishing such

entities and officials from comptroller, who “as the state’s chief officer for disbursement of funds, would have standing to challenge a proviso in an appropriations bill”).

Turning to the paramount issue before this Court, we find that this Court’s decision in State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers, 94 So. 681 (Fla. 1922), which held that a public official may not defend his nonperformance of a statutory duty by challenging the constitutionality of the statute, is binding authority in the instant case. The Atlantic Coast Line decision promotes an important public policy of ensuring the orderly and uniform application of state law and is consistent with over eighty years of legislative enactments relating to tax assessment litigation. Accordingly, we disapprove the defensive posture exception dictum from Fuchs, which is inconsistent with the rule of Atlantic Coast Line, and quash the First District’s decision.

The controversy underlying Atlantic Coast Line began in 1921, when the Legislature created the position of the State Equalizer of Taxes and a State Board of Equalizers. Ch. 8584, Laws of Fla. (1921). The Equalizer’s duty was to examine the tax rolls of the counties to ascertain whether tax valuations across property classes were reasonably uniform and to give orders and directions to the county property appraisers to accomplish a reasonably uniform tax assessment. County commissioners were charged with ensuring that the county property

appraisers followed the State Equalizer's orders and directions. In the event a board of county commissioners was dissatisfied with the State Equalizer's orders, it could appeal to the State Board of Equalizers, consisting of the Governor, the State Treasurer, and the Attorney General. Id. §§ 1-5.³ The Act also provided that the State Comptroller was to assess all property in the state owned by railroad companies and that a railroad company dissatisfied with its assessment could appeal directly to the Board of Equalizers. Id. §§ 6-7.

In Atlantic Coast Line, a railway company was dissatisfied with the Comptroller's assessment of its property and filed an appeal with the State Board of Equalizers pursuant to chapter 8584, section 7. When the board refused to hear the appeal, the railway petitioned for a writ of mandamus compelling the board to hear its appeal, and the board responded by arguing that sections 6 and 7 of the law were unconstitutional. The Court framed the issue presented as whether a ministerial officer has "the right or power to declare an act unconstitutional, or to raise the question of its unconstitutionality without showing that he will be injured in person, property, or rights by its enforcement." Atlantic Coast Line, 94 So. at

3. Chapter 8584, Laws of Florida (1921), relating to the equalization of property taxes across counties, was repealed, and the position of State Tax Equalizer was abolished in 1931. Ch. 15027, § 1, Laws of Fla. (1931). Currently, the DOR serves this oversight function by reviewing many stages of the tax assessment and collection process, and setting policies and procedures for tax assessors, tax collectors, and county value adjustment boards. See generally ch. 195, Fla. Stat. (2007).

682. In answering in the negative, the Court explained 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 683. The Court found that to allow a public official to refuse to obey a law would be “the doctrine of nullification, pure and simple.” Id. As a result, the Court held that an allegation of unconstitutionality is “unwarranted, unauthorized, and affords no defense” in a mandamus proceeding. Id. at 685.

In the years following Atlantic Coast Line, Florida courts identified several exceptions to the general rule that public officials may not refuse to administer a statute due to a belief that it is unconstitutional. However, in Barr v. Watts, 70 So. 2d 347 (Fla. 1953) (granting petition for writ of mandamus to compel State Board of Law Examiners to permit applicant to sit for admission examination), the Court reaffirmed the rule from Atlantic Coast Line that the “right to declare an act unconstitutional . . . cannot be exercised by the officers of the executive department under the guise of the observance of their oath of office to support the Constitution” and clarified the narrow circumstances in which a public official has standing to challenge a statute. Barr, 70 So. 2d at 351. The Court explained that allowing executive officers to refuse to administer statutes not yet judicially passed upon would result in “chaos and confusion” and that 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.” Id. at 351. The Court then specifically disapproved dictum from City of Pensacola v. King, 47 So. 2d 317 (Fla. 1950), and State ex rel. Harrell v. Cone, 177 So. 854 (Fla. 1938), that could be interpreted as authorizing a public official to refuse to apply a statute on the theory that it would be a violation of his oath of office to apply a statute that he or she believes is unconstitutional. Barr, 70 So. 2d at 350.

In its own dicta, the Barr Court approved two exceptions to the general rule that a ministerial officer may not raise the constitutionality of a statute with which he or she is charged to administer. First, citing Atlantic Coast Line, the Court found that a ministerial officer may raise the constitutionality of a statute upon showing that “he will be injured in his person, property, or rights by its enforcement.” Barr, 70 So. 2d at 350. Second, citing Steele v. Freel, 25 So. 2d 501 (Fla. 1946), the Court found that a ministerial officer may challenge the constitutionality of a statute where “his administration of the Act in question will require the expenditure of public funds.” Barr, 70 So. 2d at 350.

Notably, while the Board of Law Examiners was the defendant in the Barr litigation, no defensive posture exception was discussed. Instead, the defensive posture exception cited by the First District appears in this Court’s decisions in

Fuchs and Lewis, neither of which concerned a public official defensively raising the constitutionality of a statute. Lewis in turn cited three cases in support of the defensive posture exception: City of Pensacola; Cone; and State ex rel. Florida Portland Cement Co. v. Hale, 176 So. 577 (1937). In each, a public official raised a challenge to a statute as a defense in an action initiated by another party, but none of the cases expressly relied on a defensive posture exception. Rather, as pointed out by Justice Bell in his specially concurring opinion in Sunset Harbour, each can be read in terms of the public officials having standing as a result of the official's duty to control or disburse public funds. 914 So. 2d at 935-37.

In summary, we have found no support for the defensive posture exception. The dictum in Fuchs is inconsistent with the rule of Atlantic Coast Line, which remains good law, and thus Fuchs should be disapproved.⁴ While we recognize

4. We disapprove the defensive posture dictum rather than distinguish Fuchs, which concerned a taxpayer appeal from a decision of the value adjustment board rather than an action filed in the circuit court without first seeking administrative review, because a taxpayer's decision whether to first seek administrative review does not render the holding of Atlantic Coast Line any less applicable. Section 194.034(b), Florida Statutes (1999), which outlines procedures for value adjustment board hearings, provides that "[n]othing herein shall preclude an aggrieved taxpayer from contesting [in circuit court] his or her assessment in the manner provided by s. 194.171, whether or not he or she has initiated an action pursuant to s. 194.011 [providing for informal conferences with property appraisers and petitions to value adjustment board]." Allowing property appraisers to raise some types of defenses in an appeal from a decision of the value adjustment board and not in a direct action to the circuit court, or vice versa, would not be in keeping with the statutory directive that a taxpayer's circuit court action

that property appraisers have a superior perspective regarding taxing statutes and are perhaps uniquely situated to protect taxpayers from unconstitutional exemptions, we find the policy interest against selective enforcement of the law more compelling. As the Court in Barr explained:

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.

70 So. 2d at 351.

Moreover, no common law or statutory developments in the realm of ad valorem taxation since our decision in Atlantic Coast Line have altered the basic principle, rooted in the doctrine of separation of powers, that property appraisers must abide by all applicable Florida statutes when assessing property and thus do not have standing to challenge the constitutionality of such statutes. To the contrary, a review of the statutory and common law history of tax assessment litigation confirms that while property appraisers have been given some statutory rights to contest property assessments and assessment policies, they have not been granted standing in their official capacities to challenge taxing statutes—regardless

should not be affected by whether or not that taxpayer has first petitioned the value adjustment board.

of whether the property appraiser happens to be a plaintiff or a defendant in the action.

Historically, taxpayers have had a statutory right to administrative review of property assessments. Any taxpayer who felt “aggrieved at the valuation placed upon any item of property” could complain to the board of county commissioners at its meeting in August of each year. § 716, Rev. Gen. Stat. Fla. (1920). The role of the county commissioners in the tax assessment process varied little until 1969. During this period, a taxpayer who was dissatisfied with the value assigned to his or her property could raise an objection before the board of county commissioners, and if dissatisfied with the decision of the board, the taxpayer could authorize the tax appraiser to advertise and conduct a public auction to determine the value of the disputed property. § 193.271, Fla. Stat. (1967). There was no statutory recourse for a property appraiser who was dissatisfied with the decision of the board.

Beginning in 1921, the Legislature created a second avenue of review of a tax assessment by enacting chapter 8586, which “Vest[ed] in Courts of Chancery the Jurisdiction to Inquire Into and Determine the Legality of Tax Assessments and to Enjoin the Collection of Illegal Taxes on Real or Personal Property.” Ch. 8586, Laws of Fla. (1921). This Act provided that the chancery courts had jurisdiction in all cases involving the legality of any tax. But like the previously available

administrative review before the board of county commissioners, the Act was designed to give taxpayers, not property appraisers, access to the courts to adjudicate tax disputes. See id. (requiring “complainant” to “tender into court and file with the bill of complaint the full amount of any such tax, assessment or toll which he shall admit to be legal and due by him, or file with the bill of complaint a receipt showing payment of the same prior to the institution of the suit”).

In 1969, the Legislature created county boards of tax adjustment to assume the responsibilities relating to ad valorem taxation of the county boards of commissioners, including the duty to hear taxpayer complaints about tax assessments. Ch. 69-140, § 2, Laws of Fla.; see also §§ 194.032, 194.062, Fla. Stat. (1969).⁵ The board of tax adjustment has been known by several names since 1969, most recently becoming the value adjustment board in 1991, but has at all times consisted of three members of the governing body of the county and two members of the county school board. In 1974, the statutes were revised to expressly provide that a taxpayer’s decision to pursue an administrative hearing before the board of tax adjustment would not preclude an action in the circuit court

5. At that time, the Legislature also enacted a statute that enabled a taxpayer who was dissatisfied with the board’s decision to seek arbitration, although the arbitration statute was repealed just two years later. § 194.033, Fla. Stat. (1969); ch. 69-140, § 5, Laws of Fla.; ch. 71-371, Laws of Fla. Notably, the statute enabled taxpayers, not property appraisers, to seek arbitration of the board’s decision.

pursuant to section 194.171, Florida Statutes. Ch. 74-234, § 6, Laws of Fla.

However, property appraisers continued to have no statutory right to instigate a legal challenge to a tax assessment.

In 1976, the board of tax adjustment was renamed the property appraisal adjustment board. Ch. 76-133, § 6, Law of Fla. More significantly, that same year the Legislature amended section 194.032, Florida Statutes, to provide a method of appealing the board's decision to the circuit court—the first legislation to grant property appraisers a statutory right to file a lawsuit challenging a tax assessment. Ch. 76-234, § 3, Laws of Fla.⁶ Newly created subsection 194.032(6) provided that a taxpayer could file an action in the circuit court pursuant to section 194.171 to contest an assessment and that a property appraiser who disagreed with the decision of the board could appeal to the circuit court in limited circumstances.

Specifically, the statute authorized an appraiser to seek judicial review if:

1. The property appraiser determines and affirmatively asserts in any legal proceedings that there is a specific constitutional or statutory violation, or a specific violation of administrative rules, in the board's decision, except that 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 this state;

6. While this process is referred to as an “appeal” of the board's decision, actions brought in the circuit court pursuant to section 194.032, now section 194.036, are original actions, not appeals. Williams v. Law, 368 So. 2d 1285, 1286 (Fla. 1979).

2. There is a variance from the property appraiser's assessed value in excess of the following: 15 percent variance from any assessment of \$50,000 or less; 10 percent variance from any assessment in excess of \$50,000 but not in excess of \$500,000; 7 1/2 percent variance from any assessment in excess of \$500,000 but not in excess of \$1,000,000; or 5 percent variance from any assessment in excess of \$1,000,000; or

3. There is an assertion by the property appraiser to the Department of Revenue that there exists a consistent and continuous violation of the intent of the law or administrative rules by the Property Appraisal Adjustment Board in its decisions.

§ 194.032(6)(a), Fla. Stat. (1977) (emphasis added).⁷ The 1976 act likewise revised section 194.181(1) to include an appraiser appealing from a decision of the board pursuant to section 194.032 as a potential plaintiff in a tax suit. Ch. 76-234, § 4, Laws of Fla. As discussed above, in Fuchs the Court considered the scope of a property appraiser's standing pursuant to section 194.036(1)(a). The Court expressly adopted the Second District's reasoning that "[t]his statutory prohibition of constitutional challenges by property appraisers is in accord with the general common law principle denying ministerial officers the power to challenge the constitutionality of statutes." Fuchs, 818 So. 2d at 464 (quoting Turner v. Hillsborough County Aviation Authority, 739 So. 2d 175, 179-80 (Fla. 2d DCA 1999) (citing Atlantic Coast Line; Barr)).

7. The provisions governing appeals of the board's decisions were moved to their own statute, section 194.036, Florida Statutes, in 1983. Except for minor editorial changes, the conditions for appealing the board's decisions remain unchanged.

Soon after the 1976 legislation enabling property appraisers to appeal adverse decisions of the property appraisal adjustment board, this Court was asked to decide whether property appraisers had standing to file a declaratory action alleging uncertainty about how to apply various advisory opinions by the Attorney General. See Dep't of Revenue v. Markham, 396 So. 2d 1120 (Fla. 1981). We held that property appraisers generally do not have standing to initiate declaratory actions to avoid performing their official duties.

For important policy reasons, courts have developed special rules concerning the standing of governmental officials to bring a declaratory judgment action questioning a law those officials are duty-bound to apply. As a general rule, a public official may only seek a declaratory judgment when he is “willing to perform his duties, but . . . prevented from doing so by others.” Reid v. Kirk, 257 So. 2d 3, 4 (Fla. 1972). Disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion. See Askew v. City of Ocala, 348 So. 2d 308 (Fla. 1977). Since the property appraisers under section 195.027(1), Florida Statutes (1977), 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 (footnote omitted).

While Markham was pending before this Court, the Legislature amended section 195.092, Florida Statutes, which previously allowed the DOR to file suit against any public official charged with executing Florida's tax laws, to provide:

The property appraiser or any taxing authority shall have the authority to bring and maintain such actions as may be necessary to

contest the validity of any rule, regulation, order, directive or determination of any agency of the state, including but not limited to disapproval of all or any part of an assessment roll or a determination of assessment levels.

Ch. 80-274, § 6, Laws of Fla. In essence, the Legislature partially overruled Markham before it was released.⁸ However, importantly for the current inquiry, the Legislature did not authorize property appraisers to challenge state statutes.

Moreover, subsequent decisions have relied on the reasoning in Markham to hold that property appraisers do not have standing to file declaratory actions challenging the constitutionality of a taxing statute. For example, in Miller v. Higgs, 468 So. 2d 371 (Fla. 1st DCA 1985), disapproved on other grounds by Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448 (Fla. 1993), the Monroe County Property Appraiser filed a declaratory action alleging that chapter 80-368, Laws of Florida, was an unconstitutional reclassification of leasehold interests in government-owned land. The First District affirmed the trial court's ruling that the property appraiser lacked standing as a property appraiser. Miller, 468 So. 2d at 374 (citing Markham). The First District explained that “[s]tate officers and agencies are required to presume that the legislation affecting their duties is valid, and they do not have standing to initiate litigation for the purpose of determining

8. The Court did not address newly enacted section 195.092(2), Florida Statutes (Supp. 1980), in its decision because that statute was not applicable to Markham's suit filed in 1978. Markham, 396 So. 2d at 1121 n.1.

otherwise.” Id. (citing Lewis; Barr); see also Jones v. Dep’t of Rev., 523 So. 2d 1211, 1214 (Fla. 1st DCA 1988) (holding that property appraiser did not have standing in his official capacity to pursue declaratory judgment challenging validity of taxing statute).

In summary, this review has revealed that while throughout the 1970s and 1980s the Legislature acted to empower property appraisers to seek judicial review of tax assessments and DOR regulations and directives, the Legislature did not alter the common law principle expressed in Atlantic Coast Line and Markham that property appraisers, as public officials, lack standing to challenge the constitutionality of a statute. Accordingly, we find Atlantic Coast Line to be binding in the instant case and hold that the property appraiser did not have standing to raise the constitutionality of section 189.403(1) as a defense.

CONCLUSION

Based on the foregoing, we resolve the conflict among the district courts by holding that a property appraiser does not have standing in his or her official capacity to raise the constitutionality of a statute as a defense in a tax suit filed by a taxpayer. In the case on review, the trial court did not err in striking the property appraiser’s affirmative defense challenging the constitutionality of section 189.403(1). We therefore quash the decision of the First District in this case and

approve the decision of the Second District in Sun 'N Lake on the issue of property appraiser standing.

It is so ordered.

QUINCE, C.J., and ANSTEAD, PARIENTE, CANTERO, and BELL, JJ., concur.
LEWIS, J., concurs in result only.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND
IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Certified
Direct Conflict of Decisions

First District - Case No. 1D06-2026 and 1D06-2158

(Clay County)

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Kristina Kulpa, Hendry County Property Appraiser, Alvin Mazourek, Hernando

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as Amici Curiae

IN THE SUPREME COURT OF FLORIDA

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ON PETITION FOR DISCRETIONARY REVIEW

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IN SUPPORT OF RESPONDENTS

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Escambia County Property Appraiser

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**STATEMENT OF THE IDENTITY AND INTEREST
OF AMICUS CURIAE**

Greg Brown is the Property Appraiser of Santa Rosa County. Chris Jones is the Property Appraiser of Escambia County. For the past several years, Mr. Brown and Mr. Jones have defended lawsuits in the First Judicial Circuit and the First District Court of Appeal, in which certain ad valorem tax exemptions were at issue. In these cases, Mr. Brown and Mr. Jones denied tax exemptions to private parties who held long-term leaseholds on government property. They denied the exemptions on the grounds that these private parties had all of the benefits and burdens of ownership and were, therefore, the equitable owners of such property. These private parties have sued Mr. Brown and Mr. Jones. In defense, both Mr. Brown and Mr. Jones have raised the equitable ownership argument. In addition, they have pled affirmative defenses based on the Florida Constitution's prohibition of exemptions for private users of government property.

On the merits, the First District Court of Appeal agreed that the private parties with improvements on long-term leases of government land held the benefits and burdens of ownership of the improvements. Therefore, the Court held that such private parties were the equitable owners of the improvements. *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005); *Alvin's Stores v. Jones*, No. 07-0149 (Fla. 1st DCA

Oct. 22, 2007)(per curiam affirmance of the Property Appraiser's position). In these two cases, Mr. Brown and Mr. Jones have briefed the issue of their standing to assert constitutional defenses in litigation. Both contend herein that the defensive posture exception and the public funds exception provide them with standing to raise constitutional issues when they are defendants in tax assessment challenges in court.

SUMMARY OF THE ARGUMENT

The Petitioner's argument relies on a general rule that county officers do not have standing to challenge statutes defining their ministerial duties. This general rule is inapplicable to discretionary decisions by Property Appraisers in performing statutory duties relating to granting or denying requests for ad valorem tax exemptions. The Legislature has decreed that Property Appraisers are to perform the initial review of such exemption applications. In performing this statutory role, Property Appraisers must construe complex Florida Statutes relating to ad valorem tax exemptions, including those defining public purposes and governmental functions. Because the role to be performed in reviewing the law to grant or deny these tax exemption applications is not "ministerial," the case law allowing the remedy of mandamus to mandate the performance of ministerial duties is inapplicable.

In contrast to those mandamus cases seeking to enforce the performance of ministerial duties, this case comes in the context of a deliberate process mandated by

the Legislature for (a) committing the initial discretionary function of reviewing tax exemptions to the Property Appraiser; and (b) allowing for full judicial review of those discretionary decisions under Section 194.171, Florida Statutes. Because this statutory process provides for full judicial review, no Separation of Powers issues arise. This Court has recognized that Property Appraisers may raise constitutional defenses in this type of property tax litigation. Both the “defensive posture” exception and the “public funds” exception provide standing to Property Appraisers and Tax Collectors to raise constitutional issues in defense of lawsuits initiated by taxpayers.

ARGUMENT

I. PROPERTY APPRAISERS AND TAX COLLECTORS HAVE STANDING TO RAISE CONSTITUTIONAL DEFENSES IN ACTIONS INITIATED BY TAXPAYERS CHALLENGING PROPERTY TAX ASSESSMENTS.

A. Standing.

The Petitioner contends that a Property Appraiser has no standing to raise affirmative defenses on constitutional grounds, even when a private taxpayer has sued a Property Appraiser regarding an exemption issue. The Petitioner’s argument ignores fundamental policy considerations and the Legislature’s scheme for review of contested ad valorem tax exemptions. The issue on appeal is purely a legal question that is to be reviewed *de novo*.

The Florida Legislature has devised a statutory process whereby taxpayers submit applications for tax exemptions directly to the Property Appraisers, who have the initial authority to grant or deny such exemptions. §196.011, Fla. Stat. (2007). In deciding whether to grant an application for exemption, the Property Appraiser must interpret many statutes, including those defining “exempt use” and “public purpose.” §196.012, Fla. Stat. (2007). For example, Section 196.012(6) defines a public purpose to be performed when the lessee under a governmental leasehold performs a function or purpose “which would otherwise be a valid subject for the allocation of public funds.”

These statutes provide for full judicial review of disputes over tax exemption questions, which serves as a constitutional check on the Property Appraiser’s ability to unlawfully deny exemption requests. In directing these controversies to the Courts, this statutory system also serves as a corresponding check on the Legislature’s ability to nullify the Florida Constitution through the enactment of exemptions that exceed their legislative powers. These checks and balances are twofold. First, the taxpayer may appeal the decision of the Property Appraiser on an exemption question to the Value Adjustment Board. Second, if either the taxpayer or the Property Appraiser disagrees with the determination of the Value Adjustment Board, the dissatisfied party can sue in circuit court under Section 194.171, or Section 194.036, Florida Statutes.

The Legislature also requires the stay of all collection efforts until the Courts have had a full opportunity to hear the tax dispute. §194.171, Fla. Stat. (2007).

In the manner set forth above, the Legislature has ensured that, even though Property Appraisers initially determine whether an exemption application should be granted, the executive's power is not unbridled. Moreover, because an exemption issue can be challenged in circuit court, the system also ensures that the Legislature's power is not unbridled. The Legislature cannot overstep its constitutional bounds, nor can the Executive overstep its own bounds. In this system, there is no ability for a Property Appraiser to nullify any statute.

Historically, this scheme for review of exemptions has allowed Florida Courts to pass on many important tax issues. An example of how this system of checks and balances has worked to serve Floridians well is found in the *Sebring* tax cases. *Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072 (Fla. 1994)(*Sebring I*); *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238, 240 (Fla. 2001)(*Sebring II*). In the *Sebring I* case, a racetrack operation had attempted unsuccessfully to convince a Property Appraiser that the track served a public purpose. The case proceeded through the lower court system to this Court, which rejected the racetrack's argument. This Court held that the racetrack property, which was leased from a governmental entity, was not exempt because the property was not used for "governmental"

purposes. *Sebring I*, 642 So. 2d at 1073 (citing *Williams v. Jones*, 326 So. 2d 425 (Fla. 1975)). This Court quoted *Williams v. Jones* for the proposition that “the Constitution” mandates taxation of governmental property used for proprietary functions. *Sebring I*, 642 So. 2d at 1073.

In the aftermath of *Sebring I*, the Florida Legislature changed the law in an attempt to broaden the definition of public purpose. The new legislation would have exempted many more private entities using government property for profit. The legislation “would have created an ad valorem tax exemption for situations where private enterprise leases government property to be utilized for profit-making endeavors such as convention and visitor centers, sports facilities, concert halls, arenas and stadiums, parks or beaches. The exemption for these ventures was to be accomplished by statutorily defining these types of activities as serving ‘a governmental, municipal or public purpose of function.’” *Sebring II*, 783 So. 2d at 240. Again, the Property Appraiser was the line of defense to this attempt to obtain an unfair tax advantage by private parties.

In a landmark decision, this Court held the legislative attempt to create an ad valorem tax exemption for racetracks operating on government property was unconstitutional. Again, this Court ruled in favor of the Property Appraiser, finding that the legislative amendments violated Article VII, sections 3 and 4, of the Florida

Constitution. Given the stake that the people of Florida have in ensuring a fair system of taxation, this Court expressed no reservation in allowing the Property Appraiser to present these important arguments.

In *Williams v. Jones*, this Court described the importance of reviewing legislation that would grant tax exemptions not authorized under our constitutions: “[W]e approach it on the premise that this is a democracy in which every parcel of property is expected to bear its due portion of the burden of government, unless exempted by the legislature in the manner provided by . . . the Constitution. Courts have **no more important function** than to direct the current of the law in harmony with sound democratic theory.” *Williams v. Jones*, 326 So. 2d at 429 (quoting Justice Terrell’s opinion in *Bancroft v. City of Jacksonville*, 27 So. 2d 162 (1946)). In these instances, “the necessity of protecting the public funds, is of paramount importance, and the rule denying to ministerial officers the right to question the validity of the Act must give way to a matter of more urgent and vital public interest.” *Barr v. Watts*, 70 So. 2d 347, 351 (Fla. 1953).

The Petitioner’s and Florida Chamber’s argument against allowing legitimate challenges to rogue legislative acts would prevent the judiciary from passing on these constitutional questions. Such rogue legislative acts have included not only the attempts referred to in the *Sebring* cases, but also other attempts by the Legislature to

grant unconstitutional tax advantages. *See AMFI Investment Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978)(in striking Special Act granting unconstitutional tax treatment to private users of government property, this Court held: “[The] Florida Constitution requires that all property used for private purposes bear its just share of the tax burden . . . with certain exceptions specifically enumerated in the constitution”); *Archer v. Marshall*, 355 So. 2d 781 (Fla. 1978)(“We . . . hold this special act to be unconstitutional on the ground that it provides for an indirect exemption from ad valorem taxes not authorized by our state constitution”). In *Archer v. Marshall*, the Court admonished: “It is fundamentally unfair for the Legislature to statutorily manipulate assessment standards and criteria to favor certain taxpayers over others.” *Id.*, at 784.

Ironically, the Petitioner argues that the Courts must decide such questions, not the executive branch, even though its position in this case would rob the Courts of the ability to consider constitutional issues. In truth, the Petitioner seeks to cut off any effective challenge to tax exemptions not authorized in the Florida Constitution, creating an unacceptable risk that the Legislature will not be properly restrained in fashioning special interest exemptions. The Petitioner's argument, if accepted, would not enhance the powers of the Court, but would dilute them.

The point is not whether the judiciary or the executive will decide these constitutional questions. The statutes already direct the final resolution of these tax disputes to the Courts. The Property Appraiser in this case requests only that he have standing to petition the Courts to hear all legitimate defenses in such a lawsuit.

The question is also not whether one branch of government is supreme over another, but whether the Florida Constitution is supreme over all branches. As noted by this Court in *Sebring* in reference to conflicts between branches of government: “Neither department . . . can control the other in the exercise of its legitimate functions. To the judges belongs the power of expounding the laws; and although in the discharge of that duty they may render a law inoperative by declaring it unconstitutional, it does not arise from any supremacy which the judiciary possesses over the Legislature, BUT FROM THE SUPREMACY OF THE CONSTITUTION OVER BOTH.” *Sebring*, 783 So. 2d at 244, n. 5 (emphasis supplied by the Court)(quoting *State ex rel. Bisbee v. Drew*, 17 Fla. 67, 84 (1879)(in turn quoting *Greir v. Taylor*, 15 S.C.L. (4 McCord) 206, 210 (S.C. 1827). If the Florida Constitution is to be supreme over all branches, it must be given due consideration when raised as an issue in a lawsuit.

Taxpayers elect Property Appraisers as constitutional officers to secure a fair and equitable tax roll, which includes the power to make the initial determination on

tax exemption requests. The Florida Chamber agrees, in its *amicus* brief, that if an officer's duties are set forth in the Florida Constitution, they have standing to raise the constitutionality of statutes affecting these duties. See Chamber Brief, p. 14 (“Infringement on the powers of the judiciary is not an issue in cases such as *Cone* and *Croom*, where a public officer is exercising powers granted by the Constitution . . .”).¹

No party to this appeal could disagree that Property Appraisers are instrumental in performing duties defined in Article VII of the Florida Constitution, which mandates that valuations must secure a “just valuation” for all property (Article VII, Section 4) and that “all property” used for private purposes is subject to taxation unless expressly exempt under one of the enumerated descriptions in the Florida Constitution (Article VII, Section 3). Thus, the Property Appraisers' duties are indisputably tied to the Florida Constitution and, even under the Chamber's analysis, standing exists for the Property Appraisers to defend on constitutional grounds.

¹ The Chamber's quote addressed the cases of *State ex rel. Harrell v. Cone*, 177 So. 854 (Fla. 1937) and *Board of Public Instruction for Santa Rosa County v. Croom*, 48 So. 641 (Fla. 1909). The Chamber cites subsequent cases as being erroneous and “overly expansive” in their interpretation of *Cone*. Chamber Brief, p. 14-15. Thus, the Chamber would have this Court overlook *stare decisis* not just in overturning *Fuchs* and *Lewis*, but also several other cases that the Chamber deems to be “overly expansive” or erroneous.

If the Property Appraiser is denied the ability to submit important questions to the courts, then such challenges are unlikely to proceed. Individual taxpayers simply do not have the ability to fight the special interests who, as evidenced in *Sebring*, often take any route necessary through the judiciary or the legislature in an attempt to carve special tax treatment for themselves. Moreover, private individuals would not typically know when others are attempting to gain tax advantages in using public property for private purposes. Thus, this Court recognizes that “[t]he appraiser may . . . raise such a constitutional defense in an action initiated by the taxpayer challenging a property assessment.” *Fuchs v. Robbins*, 818 So.2d 460, 464 (Fla. 2002). This Court’s description of when an appraiser may raise a constitutional defense reflected good policy when it was included in the *Fuchs v. Robbins* opinion. No sound policy rationale exists to change this rule.

B. Atlantic Coast Line.

The Petitioner relies heavily on *State ex rel. Atlantic Coast Line Railway Co. v. State Bd. of Equalizers*, 94 So. 681 (1922). The case stands for the following proposition: “[E]very act of the Legislature is presumptively constitutional until judicially declared otherwise.” *Id.* at 683. Moreover, “[t]he right to declare an act unconstitutional is purely a judicial power, and cannot be exercised by the officers of the executive department under the guise of the observance of their oath of office to

support the Constitution.” *Id.* at 683. In this case, the Property Appraiser is not exceeding his powers or ignoring the judicial process. To the contrary, he is seeking a judicial declaration by submitting his defense on the constitutional question to the Courts for resolution.

In *Atlantic Coast Line*, a railroad company sought to appeal a tax assessment to the Board of Equalizers of the State of Florida. The statute at issue provided such a remedy. Nevertheless, the board declined to hear the appeal on the grounds that the statute providing jurisdiction for such an appeal was unconstitutional in the board’s judgment. The railroad company filed a petition for a writ of mandamus in order to force the board to take jurisdiction of their appeal.

The question before the Supreme Court in *Atlantic Coast Line* was not whether a constitutional officer had standing to submit a constitutional question to the Court for resolution, but instead “the right of a branch of the government, **other than the judiciary**, to declare an act of the Legislature to be unconstitutional.” *Id.* at 682 (emphasis added). In essence, the point of *Atlantic Coast Line* was to preclude an executive branch agency from exercising a de facto doctrine of “nullification” to void a statute that it does not like with no judicial involvement whatsoever.

In contrast with *Atlantic Coast Line*, the Property Appraiser in this case is asking the judiciary to consider a constitutional question. This does not raise the

danger presented by *Atlantic Coast Line*. In *Atlantic Coast Line*, the Supreme Court discussed the issue in the context of the historical conflict between early United States Presidents and the Supreme Court of the United States on the fundamental question of whether the courts or the executive branch could determine the constitutionality of statutes. Again, this is not an issue in this case, because the questions at hand have all been submitted to the Courts as affirmative defenses.

In both *Atlantic Coast Line* case and *Barr v. Watts*, 70 So. 2d 347 (Fla. 1953), the plaintiffs filed petitions for writs of mandamus. Mandamus is a remedy directed at non-discretionary acts. The remedy of mandamus is used to enforce the general rule that county officers may not refuse to perform duties that are “ministerial” in nature. *See Barr v. Watts*, 70 So. 2d at 353 (applying general rule barring such challenges to “duties that are ministerial only”).

In this case, the Property Appraiser has performed his ministerial duty of accepting applications for tax exemptions. However, the Legislature has not only assigned a ministerial duty to the Property Appraiser, but also the duty of applying the myriad of Florida Statutes regarding the qualification of a taxpayer for an exemption. Under this statutory process, a Property Appraiser exercises discretion in applying the statutory definitions pertaining to exemptions. Thus, the general rule barring county

officers from challenging statutes defining their ministerial duties does not even apply in this case.

The statutory process for tax exemption review specifically provides for judicial review under section 194.171, Florida Statutes. Because there is a statutory process for reaching the Courts in this case (unlike the *Atlantic Coast Line* case and *Barr v. Watts* cases), the Separation of Powers issues do not arise. In an action under this statutory process, the parties should have the unfettered ability to raise all questions related to an assessment or an exemption.

1. Defensive Posture Exception.

The general rule of *Atlantic Coast Line*, as noted by the Petitioner, is subject to two judicially recognized exceptions. The first exception applies when certain public officers raise such constitutional questions **in defense**. This Court has held a Property Appraiser has standing to raise an affirmative defense regarding the constitutionality of the statute. *Fuchs v. Robbins*, 818 So.2d 460, 464 (Fla. 2002) (“The appraiser may also raise such a constitutional defense in an action initiated by the taxpayer challenging a property assessment.”); *see also Dept. of Education v. Lewis*, 416 So.2d 455 (Fla. 1982)(if “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”).

The Petitioners complain that the holding in the 2002 *Fuchs v. Robbins* case was dicta, citing the 1922 *Atlantic Coast Line* case. Whether dicta or not, this Court was not ambiguous when it stated: “The appraiser may also raise such a constitutional defense in an action initiated by the taxpayer challenging a property assessment.” Petitioners contend that the concurring opinion in *Sunset Harbour Condominium v. Robbins*, 914 So.2d 925 (Fla. 2005) served to change or clarify the prior rulings. Yet, the majority in *Sunset Harbour* neither expressed nor implied any willingness to alter the holding in *Fuchs v. Robbins*. Moreover, Justice Bell, the author of the concurring opinion, recognized that his own comments were dicta. *Sunset Harbour*, 914 So.2d 925, 933, n. 7. The concurrence actually did not advocate overturning of any prior case law. Instead, the concurrence suggested only that the basis for standing to raise constitutional questions in past cases was the “public funds exception,” not a “defensive posture exception.”

All of these opinions constituted an attempt to delineate for the bench and bar the guidelines for when a Property Appraiser may challenge such a statute on constitutional grounds. Through this Court’s two most recent pronouncements on the issue of standing, i.e., *Fuchs v. Robbins* in 2002, and *Lewis* in 1982, this Court has

refined its position on the issue.² That position allows a Property Appraiser to raise constitutional issues in defense to taxpayer initiated litigation.

2. Public Funds Exception.

A second exception to the general rule is that officers can challenge the constitutionality of statutes under the public funds exception. This Court has upheld the public funds exception as a clear and well defined exception to the principle that a ministerial officer cannot generally challenge the constitutionality of a statute. In *Barr v. Watts*, 70 So. 2d 347, 351 (Fla. 1953), this Court held:

[T]here is, of course, an exception to this rule-and that is, **when the public may be affected in a very important particular, its pocket-book.** In such case, the necessity of protecting the public funds, is of paramount importance, and the rule denying to ministerial officers the right to question the validity of the Act must give way to a matter of more urgent and vital public interest.

Id. at 351 (emphasis added).

In this passage in *Barr*, this Court carefully defined the scope and purpose of the public funds exception. *Barr* was cited with approval by Justice Bell in his

² In terms of whether judicial pronouncements in this context constitute dicta, the First District in *Green v. City of Pensacola*, 108 So.2d 897, 901 (Fla. 1st DCA 1959) stated: "It might be said with some justification that the expression of our Supreme Court last above quoted is dictum in that the control of expenditure of public funds was not involved in that case. We perceive no reason, however, why the court should have qualified the general rule adhered to in that opinion by reiterating the exception last mentioned unless it was to again bring to the attention of the bench and bar that the exception remained a sound principle of law to be observed in those cases falling within its purview."

concurrence in *Sunset Harbour Condominium v. Robbins*, 914 So.2d 925 (Fla. 2005). In fact, Justice Bell quoted *Barr*, in stating his opinion that the exceptions to *Atlantic Coast Line*, as discussed in *Dept. of Education v. Lewis*, 416 So. 2d 455 (Fla. 1982), were more consistent with the public funds exception than the “defensive posture” exception. *Sunset Harbour*, 914 So. 2d at 935 (concurring opinion).

In fact, all of the varying opinions on the standing issue can be harmonized to the extent that all agree with the passage from *Barr*, which confirms that public officers have standing to raise constitutional issues in litigation, when “the public may be affected in a very important particular, its pocket-book.” The *Barr* case did not limit the exception to acts involving the disbursement of funds. Instead, this Court described the exception as including any instance in which the public pocketbook “may be affected.”

The valuation and exemption decisions committed to the discretion of Florida’s Property Appraisers form the backbone for the collection of the great majority of local taxes. These decisions are compiled into the certified tax roll for the local taxing units, to which the taxing units apply the tax rates for purposes of funding local government, including the district school boards and their operation of our public schools. If a party gains an exemption through this process, the burden on all other taxpayers must be increased to meet the local governmental budgetary requirements.

The tax roll prepared by the Property Appraiser not only serves as the basis for local government and the public school system, the level of assessment also plays a major part in the State of Florida's funding of schools. The Florida Legislature has enacted statutes that provide for state funding of local schools based on a formula that is based on the Property Appraisers' calculation of the taxable value for school purposes. §1011.62, Fla. Stat. (2007). If the Property Appraiser submits revised data, based on the outcome of litigation before the value adjustment board or before the courts, the state and local funding is subject to revision.

The role that the Property Appraiser plays in establishing a basis for the funding of local government and schools public is vital to the collection of money for the public pocket-book. The necessity of protecting the public funds from those who would deprive the schools of funds through unconstitutional measures is of paramount importance. Thus, any rule denying to Property Appraisers the right to question the validity of an exemption or assessment must give way to the more urgent and vital public interest in an equitable tax system based on just valuation of all private property.

The public funds exception applies not only to Property Appraisers, but also to Tax Collectors, who frequently appear as defendants in tax cases. *See* §194.181, Fla. Stat. (2007). Tax Collectors are constitutional officers, who are charged with the duty

to collect and disburse funds to the county, city, school boards and other taxing units. *See e.g.*, Art. VIII, §1(d), Fla. Const.; §197.332; §197.383 (“tax collector shall distribute taxes collected to each taxing authority”); §197.3045 (in the context of deferred taxes and interest, “tax collector shall distribute payments received”). Therefore, they certainly have the power to raise affirmative defenses relating to the constitutionality of allowing favorable tax treatment for private taxpayers claiming exemptions not authorized by the Florida Constitution.

The Petitioner and the Chamber have ignored many important cases invoking the public funds exception in their briefing, including *Kaulakis v. Boyd*, 138 So.2d 505 (Fla. 1962). In that case, this Court upheld the public funds exception, holding that the governmental entity had not only the right but “indeed, the duty” to challenge the validity of the pertinent statute. *Id.* at 507. Here, the Property Appraiser also has a duty to the public to protect the public pocketbook. There is no question that state and local government funding stands to be affected in this type of case. Moreover, there is no question that all parties have committed the pertinent questions to the judiciary for resolution. Therefore, there is no Separation of Powers question, and the Property Appraiser has standing to raise the question of whether the exemption at issue complies with Article VII of the Florida Constitution.

CONCLUSION

An elected Property Appraiser in Florida has unique, statutory responsibilities, relating to the handling of applications for ad valorem tax exemptions. The Legislature has devised a statutory process by which taxpayers can challenge a Property Appraiser's denial of an exemption request. This statutory process guarantees a right of judicial review. Because the role to be performed in reviewing tax exemption applications is not "ministerial," the case law allowing the remedy of mandamus to force the performance of ministerial duties is inapplicable. Here, the Property Appraiser is attempting to bring to the attention of the judiciary an affirmative defense relating to an exemption question. Public policy dictates that the Property Appraiser should be allowed to present all relevant defenses to the Courts in actions relating to tax assessments. Allowing standing to present such questions to the Courts does not present a Separation of Powers issue. Instead, such standing serves to preserve the supremacy of the Florida Constitution over all branches of government.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font requirements of Rule 9.210(a), Florida Rules of Appellate Procedure, have been complied with in this Brief and the size and style of type used in this brief is Times New Roman 14 point.

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