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## ARTICLE

### ADHERE RESOLUTELY TO A MISTAKE: THE FLORIDA TAXPAYER-STANDING CASES

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#### INTRODUCTION

I am sure that there are a number of articles on taxpayer standing,<sup>1</sup> and I probably would not have written this Article if I had not come across a certain comment of the Louisiana Supreme Court while researching another topic. Chief Justice Edward Bermudez for the Louisiana Supreme Court made the following comment in 1887, and it seemed to make so much sense that it became the springboard for a highly critical look at what the Florida Supreme Court has done in recent years with the issue of taxpayer standing:

The first question to be determined is whether the plaintiffs have a standing in court. It is unnecessary to indulge in

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1. The only article with which I am familiar is Richard D. Connor, Jr., *Taxpayer Standing in Florida: Is Everybody Nobody?* 14 *Stetson L. Rev.* 687 (1985). For a discussion of Judge James E. Lehan's scholarly dissent in *Godheim v. City of Tampa*, 426 So. 2d 1084 (Fla. 2d Dist. App. 1983), which is of law-review quality, consult *infra* notes 264–278 and accompanying text.

any discussion of the long-mooted, but now apparently settled, question, whether tax-payers, or even one of them, have a right to contest judicially, as plaintiffs, the validity of municipal ordinances at which they level the charge of illegality for any cause. The settled doctrine, after much contrariety of opinions and considerable vacillation among the courts, seems to be that the right of property holders or taxable inhabitants is recognized to resort to judicial authority to restrain municipal corporations and their officers from transcending their lawful powers, or violating their legal duties, in any unauthorized mode which will increase the burden of taxation, or otherwise injuriously affect tax-payers and their property; such as an unwarranted appropriation and squandering of corporate funds, an unjustifiable disposition of corporate property, an illegal levy and collection of taxes not due or exigible, etc. We accept this conservative doctrine. The recognition of that privilege is predicated on the principle that it is proper that those who may be immediately affected by the abuse should be armed with the power to interfere directly and at once in their own name, in a mode which affords an easy, prompt, and adequate preventive relief against an evil which might otherwise entail irremediable wrong. The exercise of that right or privilege is the more justified when the law does not vest the state or an officer with the power to seek redress. In such instances the action is regarded as having a public character, and as being a public proceeding, in which the public complains.<sup>2</sup>

After the Fifth District Court of Appeal failed to convince the Florida Supreme Court to change its misguided rule on taxpayer standing, the court vividly illustrated the concept of “irremediable wrong” as follows:

We recognize, as does Clayton, that absent a constitutional basis for a challenge,<sup>[3]</sup> the . . . standing rule, applied to cases of this type,<sup>[4]</sup> creates a rare situation [where] there is a wrong

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2. *Handy v. City of New Orleans*, 1 So. 593, 595 (La. 1887). *Handy* involved the City of New Orleans illegally leasing wharves and “fixing excessive wharfage rates, which are destructive of the interests of commerce, and of the inhabitants.” *Id.* at 594. In other words, the City’s actions would, in the long run, cost it money and, thus, would have a negative impact on the taxes that the City would have to levy. *Id.*

3. For a discussion of the one genuine exception to the Florida Supreme Court’s current taxpayer-standing rule, consult *infra* notes 157–166 and accompanying text.

4. In *Clayton v. School Board of Volusia County*, a taxpayer alleged that the School Board violated a Florida statute when it acquired real property, likely resulting in paying a costly price. 696 So. 2d 1215, 1216 (Fla. 5th Dist. App. 1997).

without a remedy. That is because even though the citizen taxpayer, who is also a voter, may “throw the rascals out” at the next election, even if such action exacts a measure of retribution it will not restore the looted treasury nor undo the illegally increased tax obligation.<sup>5</sup>

*THE HISTORY OF TAXPAYER STANDING AND RELATED ISSUES IN FLORIDA UNTIL RICKMAN v. WHITEHURST*

*Cotten v. County Commission of Leon County*<sup>6</sup> is the earliest case that *Rickman v. Whitehurst*<sup>7</sup> cited for its discussion of standing, and the earliest case that I have located. *Cotten* does not discuss the taxpayer-standing issue; rather, it merely appears to assume the existence of standing when taxpayers sought an injunction “to restrain the County Commissioners of Leon County from levying and collecting a tax imposed by them to meet an [installment] of stock subscribed by the County in the Pensacola and Georgia Railroad Company.”<sup>8</sup> The taxpayers alleged that the legislative act, under which the County purchased the stock, was unconstitutional.<sup>9</sup>

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5. *Id.* at 1216. To see how similar the Fifth District’s interpretation of *Rickman v. Whitehurst*, 74 So. 205 (Fla. 1917), is to this Article’s interpretation, compare *Clayton*, 696 So. 2d at 1217 n. 3, with *infra* note 45 and subsequent text.

Apparently, the district court’s opinion offended the School Board, and it asked the court to clarify it. The court obliged as follows:

because the lower court did not adjudicate the merits of the cause, there has been no determination that an illegal action took place. That is, of course, true. But, the School Board suggests that by using the term “illegal action” in our opinion we may have indicated that we believe that the law was violated in the purchase of the property in the present case. We have not, and cannot, make that determination from the record before us.

. . .

Obviously, whether the School Board acted improperly in this case has not been determined and, quite possibly, will never be determined because of the standing limitation.

*Clayton*, 696 So. 2d at 1218. One wonders if this pleased the School Board.

6. 6 Fla. 610 (1856).

7. 74 So. at 207.

8. *Cotten*, 6 Fla. at 611. It must have been this assumption, rather than any discussion of taxpayer standing, that caused the Florida Supreme Court to cite this case in *Rickman*.

9. *Id.* This allegation probably would not have brought it under the much-later authority that limited taxpayer standing to issues concerning the unconstitutionality of a legislative appropriation act. Thus, because appropriations spend tax monies, taxpayers could sue. See *infra* nn. 157–159 and accompanying text (discussing a rule that found taxpayer standing if the unconstitutionality of an appropriation act was alleged).

The first clear statement regarding taxpayer standing is found in *Lanier v. Padgett*,<sup>10</sup> when the Florida Supreme Court asserted the following:

The complainants, simply as tax-payers, in their own behalf and in behalf of other tax-payers, have a standing which entitles them to a remedy against a threatened wrongful proceeding which might involve them and the whole people of the county in great expense and confusion, and jeopardize the titles to property.<sup>11</sup>

In *Peck v. Spencer*,<sup>12</sup> the Court opined that,

[r]esident tax-payers have the right to invoke the interposition of a court of equity to prevent an illegal disposition of the [monies] of a municipal corporation, or the illegal creation of a debt which they, in common with other property holders,<sup>[13]</sup> may otherwise be compelled to pay.<sup>14</sup>

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10. 18 Fla. 842 (1882). *Lanier* concerned the legality of an election to change the county-site, as it was then called. *Id.* at 843.

11. *Id.* at 846–847 (citing John Adams, *Doctrine of Equity* 212 (T. & J.W. Johnson 1850); *Hartwell v. Armstrong*, 19 Barb. S. Ct. 166 (U.S. 1854); *English v. Smock*, 34 Ind. 115, 119 (1870); *Galloway v. Jenkins*, 63 N.C. 147 (1869); *Lane v. Schomp*, 20 N.J. Chancery 82 (1869); *LeRoy v. Servis*, 2 Caine’s Cases 175, 179 (N.Y. 1805)). To review pertinent portions of the above-referenced authorities, consult *infra* Appendices A–F respectively. *McKinney v. County Commissioners* cited this aspect of *Lanier* with approval. 3 So. 887, 888 (Fla. 1888). The *McKinney* Court held that, “[i]f [an election to change the county-site] has been held and was illegal, and action is about to be taken pursuant thereto by the county officers, a bill, properly framed, will lie, under *Lanier* . . . to restrain such action.” *Id.*; see also *McKinney v. Bd. of Commrs.*, 4 So. 855, 858 (Fla. 1888) (assuming taxpayer standing and citing *Lanier* on other grounds).

12. 7 So. 642 (Fla. 1890). In *Peck*, *Spencer* sued as a taxpayer and questioned the legality of an election and the payment of legal fees for the allegedly illegal election of a mayor by the City of Daytona. *Id.* at 643. Interestingly, under Florida’s current special-injury rule, *Spencer* probably would have had standing, because not only did he and other taxpayers suffer from wrongful expenditures of tax monies, but he also had a special or unique injury because he lost the mayoral race in an allegedly illegal election. *Id.*; see *infra* n. 293 (providing Florida’s current special-injury rule).

13. A principal source of tax revenue for municipal corporations was and is the ad valorem tax on real property. Fla. Const. art. IX, §§ 2, 5 (1885); Fla. Const. art. VII, § 9 (1968). However, consult *infra* note 136 for a discussion of ad valorem taxes as the basis for taxpayer standing.

14. *Peck*, 7 So. 644 (citing *Lanier*, 18 Fla. 842; *Murphy v. City of Jacksonville*, 18 Fla. 318 (1881); *Cotten*, 6 Fla. 610; 10 Am. & Eng. Ency. L. 962 (1889)). To review pertinent portions of the *American & English Encyclopedia of Law*, consult *infra* Appendix G.

In 1906, the Court followed the same rule in *Anderson v. Fuller*, 41 So. 684 (Fla. 1906). In *Anderson*, the plaintiff sued as a citizen and taxpayer, and alleged that the City of Tampa entered into illegal contracts to construct a sewage system, which would result in increased costs to the taxpayers and real property owners. *Id.* at 684. In regard to his

In 1904, a line of cases, extending back to 1884,<sup>15</sup> intruded into taxpayer-standing cases and held that one could not seek injunctive relief for the abatement of a public nuisance without alleging an injury that was special to oneself.<sup>16</sup> In *Strickland v. Knight*,<sup>17</sup> the appellants sought an injunction to prevent the Hillsborough County Commissioners from granting an alcoholic-beverage license in violation of the law.<sup>18</sup> The Florida Supreme Court held that,

[i]ndividuals cannot have relief in equity against even an admitted public nuisance unless they make a case of special and particular injury to themselves. They must sustain an injury not common to the public. The gist of the action, the gravamen of the complaint, should be the special, and particular injury. For the common injury there can be no redress save by some authorized action in behalf of the people.<sup>19</sup>

Justice William A. Hocker dissented on the basis that he could not distinguish between the taxpayers' right to sue under the circumstances presented in *Lanier* and those presented in *Strickland*.<sup>20</sup> His understanding of the general equitable principles at work was very different from that of the Court majority. First, the view of the latter:

The illegality of the act sought to be enjoined is clear, but that fact alone does not authorize an injunction, even against public officers, for [equity] courts will not enjoin an unlawful act in

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ability to do so, the Florida Supreme Court held "That the complainant as a taxpayer in said city can properly maintain the bill filed to restrain the paying out of public moneys upon void and unauthorized contracts there can be no question." *Id.* at 688 (citing *Peck*, 7 So. 642; *City of Bluffton v. Miller*, 70 N.E. 989 (Ind. App. 1904); *Frame v. Felix*, 31 A. 375 (Pa. 1895)). For this Article's consideration of *Peck*, review *supra* notes 12–14 and accompanying text. To review pertinent portions of *Miller* and *Frame*, consult *infra* Appendices H–I respectively.

Similarly, *Whitner v. Woodruff* recognized taxpayer standing as follows: "Whether as taxpayers seeking to prevent the further unauthorized expenditure of money, or as abutting [property] owners peculiarly interested in the diversion of the proposed [new street], the complainants have a standing in a court of equity." 67 So. 110, 111 (Fla. 1914).

15. *E.g. Garnett v. Jacksonville, St. Augustine & Halifax River Ry. Co.*, 20 Fla. 889 (1884).

16. *Strickland v. Knight*, 36 So. 363, 364 (Fla. 1904). Additionally, in the Florida Supreme Court's opinion, there could not be relief at law either. *Garnett*, 20 Fla. at 902.

17. 36 So. 363.

18. *Id.* at 363–364.

19. *Id.* at 364–365.

20. *Id.* at 365–367 (Hocker, J., dissenting).

the absence of allegations showing some distinct ground of equity jurisdiction. [After describing the plaintiff's allegations and the tax increase used to control the environment caused by the use of the alcoholic-beverage license, the Court went on to find that the requirements for special injury were not met.]<sup>21</sup>

Then, Justice Hocker's dissenting view:

In 1 Spelling on Injunctions and other Extraordinary Remedies, [Section] 609, page 504, it is said: "The general rule governing the jurisdiction in equity against public officers is that equity will interpose in behalf of individuals to restrain all illegal and unauthorized acts by them under color and claim of official authority which tend to impair public rights, or will result in irreparable or serious injury to private citizens, or when preventive relief is necessary to prevent a multiplicity of suits."<sup>22</sup>

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21. *Id.* at 364–365. For this proposition, the Florida Supreme Court cited several cases beginning with *Garnett*, in which the Court opined,

We will not stop to discuss the question, but will simply say that it is the settled law here and elsewhere that an individual cannot recover damages at law, or have relief in equity, against even an admitted public nuisance unless he makes a case of special and particular injury to himself. He must sustain an injury not common to the public.

*Garnett*, 20 Fla. at 902. The *Strickland* Court also relied on *Jacksonville T. & K. W. Ry. Co. v. Thompson*, which, similar to *Garnett*, involved railroad construction next to the plaintiff's property. 16 So. 282, 282–283 (Fla. 1894); *Garnett*, 20 Fla. at 897. Interestingly, the *Thompson* Court traced the rule, that one cannot invoke a court's equity jurisdiction to block a public nuisance that does not cause some "special or particular injury," to "Paine v. Patrich, Carth. 191 (of the third year of the reign of William and Mary over two centuries ago)." *Thompson*, 16 So. at 283. The Florida Supreme Court modernized the English court's language as follows:

Resolved, that the plaintiff cannot have this action, because the ground of it is for a common nuisance, for which an action will not lie, unless there is some special damage alleged, or where the party grieved can have no other remedy. . . . [Since the plaintiff alleged no special injury,] this action will not lie, and chiefly to avoid multiplicity of actions; for by the same reason that it may be brought by the plaintiff it may be maintainable by every person passing that way.

*Id.*

The difficulty of the *Strickland* Court using these cases as precedent is that there was no claim of an unlawful government act—except in *Garnett*, 20 Fla. at 904, in which the City of St. Augustine's legal authority to authorize the railroad construction was challenged because it became a public nuisance—and, thus, no possibility of taxpayer injury. Even if the Court's statement regarding public nuisance and equitable relief was correct, that theory should not have had bearing on a mixed case of public nuisance and taxpayer standing. To see how this is similar to Justice Hocker's *Strickland* dissent, consult *supra* note 20 and accompanying text.

22. *Strickland*, 36 So. at 365 (Hocker, J., dissenting). To review pertinent portions of *Spelling on Injunctions*, consult *infra* Appendix J. After citing additional authority, Justice

The rule announced in *Lanier* was followed in *Crawford v. Gilchrist*,<sup>23</sup> when Governor Albert W. Gilchrist sued in his official capacity “and also as a resident taxpayer” to enjoin Secretary of State H. Clay Crawford from publishing certain proposed amendments to the Florida Constitution, because it was questionable whether such amendments had “been validly proposed and agreed to by the Legislature.”<sup>24</sup> The Florida Supreme Court made the following comment regarding Governor Gilchrist suing in his individual capacity: “A resident taxpayer has the right to enjoin the illegal creation of a debt which he, in common with other property holders and taxpayers, may otherwise be compelled to pay.”<sup>25</sup> *Crawford* was followed in a somewhat similar

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Hocker conceded that he “[had] not discovered a case where the foregoing general principle has been applied to such a case as the one at bar, but [knew] of no good reason why it should not be.” *Strickland*, 36 So. at 365–366 (Hocker, J., dissenting). He then added,

The question whether a court of equity could enjoin the illegal removal of a courthouse on a bill filed by private citizens and taxpayers is one upon which there is conflict of authority; but our court adopted the view that such a power should be exercised, and such taxpayers and citizens were proper parties to a bill for such a purpose, in *Lanier v. Padgett*, 18 Fla. 842.

*Id.* at 366. Justice Hocker’s question was why *Lanier* should be decided one way and *Strickland* another.

To hold that citizens may enjoin the county commissioners from illegally removing a county site which may involve the former in a little additional expense and trouble, and that they may not enjoin the same commissioners from doing an act tending to a violation of the prohibition laws, thereby involving the citizens in unnecessary and illegal burdens, both financial and moral, would be a logical absurdity.

*Id.*

23. 59 So. 963 (Fla. 1912); *supra* n. 11 and accompanying text (providing *Lanier*’s rule).

24. *Crawford*, 59 So. at 966.

25. *Id.* at 967 (citing *Peck*, 7 So. 642; *Lanier*, 18 Fla. 842; *Crampton v. Zabriskie*, 101 U.S. 601 (1879)). In *Crampton*, United States Supreme Court Justice Stephen Johnson Field asserted that,

[o]f the right of resident tax-payers to invoke the interposition of a court of equity to prevent an illegal disposition of the [monies] of the county or the illegal creation of a debt which they in common with other property-holders of the county may otherwise be compelled to pay, there is at this day no serious question.

101 U.S. at 609.

In *Crawford*, the Florida Supreme Court then further opined that, “[w]here the object is the enforcement of a public right, the people are regarded as the real party, and the relator need not show that he has any legal interest in the result. It is enough that he is interested as a citizen in having the laws executed and the duty in question performed.”

59 So. at 967 (quoting *Fla. Cent. & P. R. Co. v. State*, 13 So. 103 (Fla. 1893)).

In this case the acts enjoined are ministerial in their nature; they involve no discretion; the interests and rights of all the people of the state are thereby vitally affected; the individual rights of the complainant as a citizen, a taxpayer, and an elec-

case with these words: “The suit is properly maintained by Bowden, a resident, citizen, and taxpayer of the city.”<sup>26</sup>

In 1898, the Florida Supreme Court, in *Chamberlain v. City of Tampa*,<sup>27</sup> opined that,

[c]ourts of equity have jurisdiction to restrain municipal corporations and their officers from making unauthorized appropriations, or otherwise illegally or wrongfully disposing of the corporate funds, to the injury of property holders and taxpayers in the corporation, and a bill for this purpose is properly brought by an individual taxpayer on behalf of himself and other taxpayers in the municipality.<sup>28</sup>

#### RICKMAN: THE BASIS FOR “THE MISTAKE”

In 1917, the Florida Supreme Court decided *Rickman*,<sup>29</sup> which formed the basis for Florida’s current rule on taxpayer standing. Simply stated, it is my belief that the Court—either by carelessness or intent—has misread *Rickman*.

In 1911, by special law, the Florida Legislature established “the Punta Gorda special road and bridge district.”<sup>30</sup> The *Rickman* Court described the district and its functions as follows:

After the special road district was created a special tax was levied to pay the interest upon and retire the bonds issued under the act and pursuant to the election. The bond issue amounted to \$200,000. The money which was realized from the

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tor are also substantially affected in common with other taxpayers and electors by the indebtedness incurred and by the acts performed. There is no adequate remedy [at] law. These considerations, in the light of reason and the authorities, clearly make the complainant, who sue[d] as Governor and also as a citizen, taxpayer and elector, a proper party to these injunction proceedings.

*Id.* (citing *Ellingham v. Dye*, 99 N.E. 1 (Ind. 1912); *State ex rel. Lamb v. Cunningham*, 53 N.W. 35 (Wis. 1892)). To review pertinent portions of *Ellingham* and *Lamb*, consult *infra* Appendices K–L respectively.

26. *City of Jacksonville v. Bowden*, 64 So. 769, 771 (Fla. 1914) (involving an alleged illegality of charter amendments to be put before the electorate).

27. 23 So. 572 (Fla. 1898).

28. *Id.* at 574 (citing Thomas M. Cooley, *Law of Taxation* 764–767 (2d ed., Callaghan & Co. 1886); John F. Dillon, *Municipal Corporations* vol. II, §§ 914–922 (4th ed., Little, Brown & Co. 1890); Carter Pitkin Pomeroy & John North Pomeroy, Jr., *Equity Jurisprudence* vol. I, § 260 (2d ed., Bancroft-Whitney Co. 1892); 10 Am. & Eng. Ency. L. 962). To review pertinent portions of the above-referenced authorities, consult *infra* Appendices M–O and G respectively.

29. 74 So. 205.

30. *Id.* at 206.



sale of the bonds was turned over to the bond trustees. The act under which the . . . district was created and the bonds issued requires the board of county commissioners to have prepared proper plans and specifications for the construction of the roads and bridges in the newly created special district, and after advertising the same as the law prescribed, to award the contract for such construction to the lowest responsible bidder.<sup>31</sup>

Instead of using the competitive-bidding process for the bridge projects, the DeSoto County Commission—in at least some of the road work—purchased the necessary construction equipment and used day labor to build the road.<sup>32</sup> Because this violated the competitive-bidding requirement of Florida law, Rickman sued as “a citizen and taxpayer of DeSoto county, and the owner of real [property] situated in the . . . district,” and sought an injunction to prevent the County and district from proceeding with construction without seeking competitive bids.<sup>33</sup>

The Florida Supreme Court took the case on appeal after Rickman had lost in the circuit court.<sup>34</sup> At the outset, the Court recognized the then-extant rule for taxpayer standing, as follows:

In the first place [Rickman] has the right to [stay in court] if the [use of day labor was] unauthorized and not within the powers of the board of county commissioners, and tended to produce a resultant injury to the complainant by increasing the burden of his taxes. The right of a citizen and taxpayer to maintain a suit to prevent the unlawful expenditure by public officials of public [monies], unless otherwise provided by legislative enactment, is generally recognized. The nature of the powers exercised by county commissioners who are vested by law with the power of levying taxes for county purposes and the expenditure of county funds, the danger of the abuse of

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31. *Id.*

32. *Id.* In its answer to Rickman’s suit, the Board of County Commissioners stated that it had tried to use the competitive-bidding process for part of the projects, but “the bids received were considered to be excessively high.” *Id.* Special Law, Chapter 7002, Laws of 1915, which was enacted subsequent to the law that created the road district, provided that a unanimous vote of the Board and bond trustees would authorize the construction to be done by day labor if that was “to the best advantage.” *Id.* It has been suggested that Rickman argued that Chapter 7002 was unconstitutional; however, the Court never reached this issue because it ultimately ruled that Rickman had no standing. *Id.* at 207.

33. *Id.* at 206.

34. *Id.* at 206–207.

such powers which are delegated to them by legislative enactment and the necessity for prompt action to prevent their flagrant abuse and irremediable injuries flowing therefrom would seem to fully justify courts of equity in interfering upon the application of a county taxpayer and citizen.<sup>35</sup>

In setting out the reason for its rule, the Court opined that,

[t]he principle on which the right rests is that the taxpayer is necessarily affected and his burdens of taxation increased by any unlawful act of the county commissioners which may increase the burden to be borne by the taxpayers of the county, and no relief from such injury is obtainable elsewhere than in a court of equity.<sup>36</sup>

The Court then made the following comment, which later justices must have ignored when they changed the rule and misread *Rickman* as requiring some “special injury” to taxpayers beyond the illegally increased tax liability:

The right of the complainant to maintain this suit therefore would seem to depend upon the peculiar injury which may result to him from the expenditure of the funds realized from the sale of the bonds in a manner other than by letting the contract for road construction to the lowest responsible bidder as [Florida law] requires. The taxpayer’s injury specially induced by the unlawful act is the basis of his equity, and unless it is alleged and proved, there can be no equitable relief.<sup>37</sup>

However, the Court continued and found that *Rickman* “cannot invoke the aid of equity merely to prevent an unlawful corporate act however much the act may shame his sense of pride in the faithful observance by public officials of the obligations of their public duties.”<sup>38</sup>

So, it all appears to come down to the following question: Assuming that the County and the bridge district were legally re-

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35. *Id.* at 207 (citing *Crawford*, 59 So. 963; *Chamberlain*, 23 So. 572; *Peck*, 7 So. 642; *Crampton*, 101 U.S. 601; *Cotten*, 6 Fla. 610; Howard C. Joyce, *Injunctions* vol. I, § 361 (Matthew Bender & Co. 1909); Eugene McQuillin, *Municipal Corporations* vol. V, § 2575 (Callaghan & Co. 1913)). To review portions of *Injunctions* and *Municipal Corporations*, consult *infra* Appendices P–Q respectively.

36. *Rickman*, 74 So. at 207.

37. *Id.*

38. *Id.*

quired to use the competitive-bidding process—and not day labor—to construct roads and bridges,<sup>39</sup> did the use of day labor increase Rickman’s tax liability?<sup>40</sup> If so, he would have had the special or peculiar injury required to invoke the aid of a court of equity. If not, he would not have had the necessary injury.

Rickman did not allege that the use of day labor would cost more than the competitive-bidding process.<sup>41</sup> In responding to Rickman’s complaint, the County and district suggested that,

the policy of letting the work of construction out by day labor . . . could be done within the limit of the amount voted for the purpose and . . . that only about one-fourth of the money voted for that purpose has been expended, and the work done by day labor had been done at a saving of about “30 percent over the contract prices proposed.”<sup>42</sup>

This was the fatal flaw in Rickman’s attempt to enlist the aid of a court of equity.

What, then, gives the complainant his standing in equity? Is it the mere abstract conception that an act done by the county officials not in strict conformity of law ipso facto operates to injure a citizen of the county? If so, then any citizen of the county, whether taxpayer or not, whether he resides in the special road district or beyond its limits, may maintain the action.<sup>43</sup>

Had the Florida Supreme Court stopped at this point, it is doubtful that the opinion would have provided the basis for “the mistake,” which is the subject of this Article. The Court did not stop. The penultimate paragraph contains two propositions that

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39. Thus, for the purpose of deciding whether Rickman suffered the requisite injury, the Court appeared to assume the unconstitutionality of the Florida statute that authorized the use of day labor. *See supra* n. 32 (discussing Rickman’s claim of unconstitutionality).

40. The idea here appears to be that, if by using day labor and the machinery that the County and district purchased, the road and bridge construction would have cost more than using the competitive-bidding process, then the cost of the roads and bridges might have exceeded the total monies raised by the sale of the bonds. This, in turn, would necessitate either the sale of more bonds to which were pledged by the County’s and district’s ad valorem taxing power, or making up the excess cost from the County’s and district’s ad valorem tax revenues. In either case, Rickman’s tax liability would be increased.

41. *Rickman*, 74 So. at 207.

42. *Id.* at 206.

43. *Id.* at 207.

should have been considered together. The latter, read without reference to the former, allowed room for “the mistake” to which the Court now steadfastly adheres. The first of the two statements is consistent with the rest of the opinion.

We have upon investigation of the authorities, . . . found no case in which such a suit has been maintained *where it did not appear that special injury would result to the complainant as a taxpayer in the increased public burden as a result of the unauthorized act.*<sup>44</sup>

The Court then continued its comment predicated upon the basis that Rickman had not suffered a special injury in the nature of an increased tax burden. In other words, could he stay in a court of equity without it? It is the following comment that appears to be the villain of the piece, if read as discussing the general taxpayer-standing rule, rather than as discussing the taxpayer’s ability to stay in court without alleging an illegal increase in his tax liability:

In a case where a public official is about to commit an unlawful act, the public by its authorized public officers must institute the proceeding to prevent the wrongful act, unless a private person is threatened with or suffers some public or special damage to his individual interests, distinct from that of every other inhabitant, in which case he may maintain his bill.<sup>45</sup>

Correctly read, this is the rule that applied to Rickman because he suffered no threat of increased tax liability. Incorrectly read and in isolation from the rest of the *Rickman* opinion, it suggests that, in addition to his threatened pecuniary injury, a taxpayer must suffer some special injury. To repeat, it is this incorrect reading that arguably led to “the great mistake.” It should make no difference whether the rule is described as either the pecuniary injury of increased tax liability caused from public wrongdoing or a special injury different from that suffered by the public generally—alternatively, the increased tax liability as one form of special injury and an injury different from that suffered by the public generally as another form of special injury. In the

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44. *Id.* (emphasis added).

45. *Id.*

latter case, it must be realized that the two forms of special injury are mutually exclusive—that is to say, it does not take both.

*TAXPAYER-STANDING CASES BETWEEN RICKMAN  
AND “THE MISTAKE”*

In *Hathaway v. Munroe*,<sup>46</sup> the Florida Supreme Court recognized that, “[a] citizen taxpayer may have a right to maintain a suit to enjoin the execution of illegal contracts involving payments from a public fund to which the citizen taxpayer is a contributor.”<sup>47</sup> *Hathaway* involved the State Road Department’s alleged use of illegal contracts for highway construction, which the circuit court enjoined at the behest of Munroe.<sup>48</sup> The circuit judge<sup>49</sup> refused to vacate the injunction, and the State appealed, asked for a supersedeas, denied that Munroe had standing, and argued that it had statutory authority to issue the road-construction projects.<sup>50</sup> Once the Court recognized Munroe’s standing as a taxpayer, the only issue was whether to grant the supersedeas that the State had requested so it could proceed with letting the contracts, pending the Court’s final decision.<sup>51</sup> This question is not of direct concern, although it has a bearing on one view of why the supersedeas should have been granted.

The *Hathaway* Court consisted of six justices who generally agreed with the principle of taxpayer standing. However, only three justices thought that the principle was applied correctly to confer standing upon Munroe.

Justice Louie W. Strum, joined by Justice Armstead Brown, asserted the following:

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46. 119 So. 149 (Fla. 1929).

47. *Id.* at 150.

48. *Id.*

49. Because the circuit judge was sitting on the court’s equity side, he was called the chancellor. However, the distinction between equity and law was abolished in 1967, and now the circuit judge, whether he is handling matters of law or equity, is called the judge. *Emery v. Intl. Glass & Mfg., Inc.*, 249 So. 2d 496, 498 (Fla. 2d Dist. App. 1971).

50. *Hathaway*, 119 So. at 150.

51. *Id.* at 150–151. At the time, the Florida Supreme Court sat in two divisions—A and B. *See id.* at v (providing the makeup of the Court divisions). In *Hathaway*, the Court sat *en banc*. *Id.* at 149. In actuality, it appears that, due to the importance of the issue, the Court, in deciding the supersedeas question, decided the merits too. *Id.* at 150–151. As Chief Justice William H. Ellis pointed out in the dissent, “the granting of a supersedeas in this case would be in effect a summary disposition of the case upon its merits.” *Id.* at 153 (Ellis, C.J., dissenting).

In my judgment, complainant's allegations as to the injury he will suffer as a taxpayer by the consummation of the proposed official action of the defendants do not meet the test prescribed by this court in either *Rickman* . . . , or in *Anderson v. Fuller*,<sup>52</sup> . . . so as to entitle complainant by the method attempted in his bill to protect as a taxpayer, the integrity of 1929 revenues of the road department against the letting of contracts involving disbursement from those funds, even though such contracts be illegal and unauthorized.<sup>53</sup>

Regrettably, Justice Strum did not explain exactly why the taxpayer-standing rule, put forth in *Rickman* and *Anderson*, would not cover Munroe. Because he argued that his views would apply even if the contracts were "illegal and unauthorized," perhaps Justice Strum's difficulty with Munroe's standing as a taxpayer was Munroe's stake in the scope of tax liability, which was inadequate to create the requisite injury. *Rickman* and *Anderson* both involved local government tax expenditures;<sup>54</sup> thus, it is necessary to assume that, although Rickman's and Anderson's stake in the local-government pie was a big enough slice for taxpayer injury, Munroe's stake in the much-larger pie of the State Road Department's funds was not enough.

In addition, Justice Rivers H. Buford did not think that Munroe met *Rickman*'s requirements for taxpayer standing;<sup>55</sup> however, he appeared to misread *Rickman* in the same way that a later Florida Supreme Court would.<sup>56</sup> Justice Buford quoted the following two paragraphs as his understanding of the "*Rickman* Rule," which are represented as being from Justice William H. Ellis' *Rickman* opinion; however, they are word-for-word from the *Rickman* Court's two-paragraph syllabus—today, we call these headnotes.

"A citizen and taxpayer of a county may maintain a bill in chancery against public officials of the county to restrain the unlawful expenditure of public funds, upon a showing made in

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52. 41 So. 684.

53. *Hathaway*, 119 So. at 151 (Strum & Brown, JJ., concurring specially).

54. For a discussion of *Rickman*, consult *supra* notes 29–45 and accompanying text. For a discussion of *Anderson*, review *supra* note 14.

55. *Hathaway*, 119 So. at 152 (Buford, J., concurring).

56. *E.g. N. Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154 (Fla. 1985).

such bill of peculiar injury to him which may result from such unlawful expenditure of such funds.

“To entitle anyone to relief against real or imaginary evils or injuries which are supposed to flow from unauthorized acts of public officials, he must bring his case under some acknowledged head of equity jurisdiction and show what special injury he will sustain from such unauthorized acts distinct from that suffered by every other inhabitant.”<sup>57</sup>

These two paragraphs, taken together and considered without a careful reading of Justice Ellis’ entire *Rickman* opinion, could lead a reader to conclude that a taxpayer must show something beyond an added tax liability caused by governmental illegal acts.<sup>58</sup> This is exactly “the mistake” to which this Article’s title refers.

As previously explained,<sup>59</sup> a correct reading of Justice Ellis’ *Rickman* opinion would lead the reader to conclude that only if a taxpayer could not allege increased tax liability—as Rickman could not—then and only then, would he have to allege some special injury beyond a mere illegality that would affect taxpayers and the general public the same way.

In *Hathaway*, now-Chief-Justice Ellis dissented on the issue of the supersedeas.<sup>60</sup> In doing so, he set out his understanding of

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57. *Hathaway*, 119 So. at 152 (Buford, J., concurring) (quoting *Rickman*, 74 So. at 205).

58. See *supra* n. 45 and subsequent text (providing the paragraph that led to “the great mistake”). Two years later, *Rickman* was understood correctly in *Thursby v. Stewart*, 138 So. 742 (Fla. 1931), which involved the legality of Volusia County’s proposed expenditure of public money to support a county fair. *Thursby* recognized, “That a citizen and taxpayer may enjoin an unauthorized expenditure of public money.” *Id.* at 749 (citing *Robert G. Lassiter & Co. v. Taylor*, 128 So. 14 (Fla. 1930); *Rickman*, 74 So. 205; *Whitner*, 67 So. 110; *Anderson*, 41 So. 684).

However, in a case that the Court did not find to be factually on point, *McGregor v. Burnett* described *Rickman* as holding that, “to entitle him to litigate such a suit he must make a showing of peculiar injury to himself as a result of such expenditure.” 141 So. 599, 599 (Fla. 1932). Such a statement is sufficiently incomplete so as to lead to exactly “the mistake” that is discussed in this Article.

59. *Supra* n. 45 and subsequent text.

60. The crux of Chief Justice Ellis’ dissent on the supersedeas is summed up in the following words:

If a supersedeas is granted which would suspend the operation of the chancellor’s order, there would be no obstacle in the way of the letting of the proposed contracts which could be done before this court could determine this case upon its merits. The injury to the complainant, which is the basis of his equity, would have been in such event committed, and the question so far as he is concerned will have become a moot one, for there would be no other redress.

the opinion he wrote in *Rickman* and what he believed the Court majority followed in *Hathaway*, as follows:

The right of the complainant, appellee here, as a citizen and taxpayer to the relief prayed for in the bill [which the lower court held in his favor]. The complainant rests his equity upon the proposition that a taxpayer is necessarily affected and his burdens of taxation increased by any unlawful act of a state agency which may increase the burden to be borne by taxpayers of the county or state, and that no relief from such injury is obtainable elsewhere than in a court of equity. In other words, a taxpayer's injury, specially induced by the unlawful act, is the basis of his equity, upon which he may seek relief to restrain the commission of such unlawful acts.

That proposition was definitely and in like terms declared by this court to be the law in this state.<sup>61</sup>

In *Carlton v. Jones*,<sup>62</sup> a taxpayer sued to restrain the Wauchula City Council from spending public funds by council resolution on projects that required a city ordinance.<sup>63</sup> In regard to the taxpayer's standing, the Florida Supreme Court opined, "That the complainant suing as a taxpayer may maintain the suit is established in this jurisdiction by the opinions and judgments in the cases of [*Whitner v. Woodruff*,<sup>64</sup> *Crawford*, and *Hathaway*]." <sup>65</sup>

The Court recognized taxpayer standing again in *Tacker v. Board of Commissioners of Polk County*,<sup>66</sup> when the legality of a ballot proposition regarding the "recall of slot machine licensing" was at issue.<sup>67</sup> The Court had no doubt on the standing issue and asserted the following:

[In as much] as the result of the question if unlawfully submitted may adversely affect their statutory rights,<sup>68</sup> citizens and

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Thus the granting of a supersedeas in this case would be, in effect, a summary disposition of the case upon its merits.

*Hathaway*, 119 So. at 153 (Ellis, C.J., dissenting).

61. *Id.* at 152 (citing *Rickman*, 74 So. 205).

62. 158 So. 170 (Fla. 1934).

63. *Id.* at 170.

64. 67 So. 110.

65. *Carlton*, 158 So. at 170–171. To review Justice Buford's views on taxpayer standing, consult *supra* notes 55–58 and accompanying text.

66. 170 So. 458 (Fla. 1936).

67. *Id.* at 458.

68. Although the Court described the interest of citizens and taxpayers as "statutory



taxpayers have an equitable standing to have enforced by injunction the observance of the statutory condition that is precedent to any legal right in the County Commissioners to call an election under section 12-A [of the Slot Machine Act].<sup>69</sup>

In *Armstrong v. Richards*,<sup>70</sup> the Florida Supreme Court recognized taxpayer standing in a slightly different context from that which has been discussed previously. As the Court described, *Armstrong* involved,

a class suit to require the appellants to account for and pay over to the city of Daytona Beach certain sums of money which were alleged in the bill of complaint to be the property of the city of Daytona Beach and had been fraudulently and unlawfully withheld from the city by the appellants pursuant to a conspiracy to so defraud the city of Daytona Beach.<sup>71</sup>

It would not be inaccurate to say that the Court waxed eloquent on the question of taxpayer standing.

It is too well settled to be seriously questioned that a taxpayer has the right to maintain a suit against officers who have squandered or dissipated public funds . . . .<sup>[72]</sup> In [*Chamberlain*,] it was held: “Courts of equity have jurisdiction to restrain municipal corporations and their officers from making unauthorized appropriations, or otherwise illegally or wrongfully disposing of the corporate funds, to the injury of property holders and taxpayers in the corporation, and a bill for this purpose is properly brought by an individual taxpayer on behalf of himself and other taxpayers in the municipality.”<sup>[73]</sup> . . .

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rights,” it must have been referring to the revenue impact derived from the licensing of slot machines on the taxpayers’ monetary obligations. It appeared that a violation of a statutory prerequisite to the election had been violated. Apparently, this violation provided the illegality of the public-official aspect of *Rickman*’s taxpayer-standing rule.

69. *Id.* at 459 (citing *Duval County v. Jennings*, 164 So. 356 (Fla. 1935); *Crawford*, 59 So. 963). For a discussion on *Crawford*, consult *supra* notes 23–26 and accompanying text. *Jennings* is not directly on point, as it involved a bondholder’s interest—not a taxpayer’s interest—in enjoining an election that would affect the value of his bond. *Jennings*, 164 So. at 356–357.

70. 175 So. 340 (Fla. 1937).

71. *Id.* at 341.

72. *Id.* (citing *Valentine v. Robertson*, 300 F. 521 (9th Cir. 1924); *Chamberlain*, 23 So. 572; McQuillin, *supra* n. 35, at § 2582). To review pertinent portions of the *Municipal Corporations* treatise, consult *infra* Appendix R. To review the discussion of *Chamberlain*, consult *supra* notes 27–28 and accompanying text.

73. *Armstrong*, 175 So. at 341 (citing *Drake v. Thomas*, 92 So. 878 (Fla. 1922); *Anderson*, 41 So. 684; 19 R.C.L. § 441, p. 1167). To review the discussion of *Anderson*, consult

. . . Assuming that it is settled that the taxpayer may maintain the suit to compel the return to the public treasury of [monies] which have been unlawfully withheld from the treasury by officials, or others in conspiracy with officials, it appears to follow, necessarily, that [the] suit must be instituted and maintained in equity because as a taxpayer the claimant has no right to recover in his own behalf against the defendant, but he must recover, if at all, a judgment or decree which will require the wrongdoer to return to or pay over to the municipality that which such wrongdoer has misappropriated or unlawfully withheld from the public treasury. Certainly there can be no difference in the basic principles upon which rests the right of a taxpayer to enjoin ultra vires acts of public officers and those in collusion with them, and upon which rests the right of the taxpayer to require an accounting from and disgorgement by public officers and those in collusion with them.<sup>74</sup>

In *Pierce v. Isaac*,<sup>75</sup> a taxpayer sued to enjoin the Ocean Shore Improvement District from honoring an agreement for refunding bonds,<sup>76</sup> which seemingly took the place of an earlier agreement,<sup>77</sup> at an increased cost to the District in fees of approximately \$22,000.<sup>78</sup> The Florida Supreme Court found that the increased fee was within the District's power absent "allegations of fraud, bad faith or improper conduct."<sup>79</sup> What is important for the purposes of this Article is that the Court went out of its way to compliment the taxpayer who brought the suit.

The taxpayer here is to be commended for his vigilance rather than be censured for seeking a decision of the Court upon the

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*supra* note 14. To review pertinent portions of 19 R.C.L. § 441, consult *infra* Appendix S.

In *Drake*, the Court granted the taxpayers' request to restrain the City of Lake Worth from publishing, in violation of law, the City's delinquent tax list in a West Palm Beach newspaper—rather than in the Lake Worth newspaper—and to further restrain the sale of lands pursuant to the wrongly published delinquent tax list. 92 So. at 878.

74. *Armstrong*, 175 So. at 341.

75. 184 So. 509 (Fla. 1938).

76. The contract was dated September 1, 1938. *Id.* at 511.

77. The earlier contract was dated January 1938. *Id.* at 510–511.

78. *Id.* at 512.

79. *Id.* In regard to the increased fee, the Court opined that, [i]t is very probable that different members of this Court would hesitate to pay an additional sum of \$20,000 for practically the same service provided for in the first contract [dated January 1938], but these matters must address themselves to the sound judgment and conclusions of the different communities transacting the said business.

*Id.*

case at bar. He has manifested a keen interest in local government which he is called upon by taxation and good citizenship to support and maintain.<sup>80</sup>

There is an additional twist to this initial *Pierce* case and a subsequent *Pierce v. Isaac*<sup>81</sup> case, involving the same parties and the same bonds. In the initial case, the Florida Supreme Court pointed out that “[i]t affirmatively appears on the record that a gross saving[s] in the sum of \$411,550 will accrue to the District if the September, 1938, contract is carried out.”<sup>82</sup> It is unclear what change this would make to the figures had the contract dated September 1, 1938, not apparently superseded the January 1938 contract. In his dissent of the subsequent *Pierce* case, based principally upon a *res judicata* argument, Justice Brown asserted the following:

I see no reason . . . why the appellee, who was complainant in the court below, had any legal or equitable right, either as a member of said Board or as a tax payer, to enjoin the Board from carrying out the said contract of September 1st, which this court found would result in a gross saving of \$411,550 to said District.<sup>83</sup>

Thus, as in *Rickman*, absent a showing of special injury, a taxpayer cannot stay in court by alleging that an illegality results in a saving to the public treasury.

One example has already been mentioned when, in a case not involving taxpayer injury, an incomplete statement of the “*Rickman* Rule” seemed to state the exact opposite of what was actually held in *Rickman*.<sup>84</sup> However, in 1941, the Florida Supreme Court released an opinion that would end up causing far more damage. In *Henry L. Doherty & Co. v. Joachim*,<sup>85</sup> the issue before the Court was the vacation of a pathway near the Atlantic Ocean.<sup>86</sup> Using the colorful language for which he and Justice

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80. *Id.* at 512–513.

81. 184 So. 669 (Fla. 1938).

82. *Pierce*, 184 So. at 512.

83. *Pierce*, 184 So. at 672 (Brown, J., dissenting).

84. *Supra* n. 58 (making an example of *McGregor*). For additional information on the incorrect reading of the “*Rickman* Rule,” review *supra* the text following note 45.

85. 200 So. 238 (Fla. 1941); *infra* n. 298 (providing an additional discussion on *Henry L. Doherty & Co.*).

86. *Henry L. Doherty & Co.*, 200 So. at 239.

Glenn Terrell were well known,<sup>87</sup> Justice Elwyn Thomas described the situation as follows:

One may not read [the plaintiff's allegations] without comprehending the disappointment of property owners in a famous resort who having bought within easy walking distance of the sea awake suddenly to find that if they are to be lulled by the waves lapping the sands; charmed by the sunlight dancing upon the water; fascinated by myriads of minnows fleeing for their lives before the ruthless charge of a cavalla; or interested by a stately liner standing for Miami, close in to avoid the resistance of the Gulf Stream, they must go three times as far through a business district in a most roundabout way. It must be annoying, too, to make this contribution so others with no greater rights may not be disturbed by their passing.<sup>88</sup>

The Court went on to discuss the standing issue as follows:

Both parties seem to recognize the rule announced in *Rickman v. Whitehurst*, . . . that in the event an official threatens an unlawful act, the public by its representatives must institute the proceedings to prevent it, unless a private person can show a damage peculiar to his individual interests in which case equity will grant him succor.<sup>89</sup>

Although the plaintiff attempted to show special injury,<sup>90</sup> the Court found the facts to be otherwise.

[T]here is nothing in what we have observed in this record to show a result to complainants different in kind from that to others in the same community, the neighbor next door or the man across the street.

That there has been injury we have no doubt; that it is greater in degree than that of many others in the community we believe; that it is different in kind we cannot agree.<sup>91</sup>

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87. See generally M. Lewis Hall, *The Judicial Sayings of Justice Glenn Terrell* (Harrison Co. 1964) (providing a collection of Justice Terrell's unique expressions and analogies).

88. *Henry L. Doherty & Co.*, 200 So. at 239–240.

89. *Id.* at 239. The Court pointed out that “[t]his rule has been specifically applied to the act of obstructing a public street.” *Id.* (citing *Bozeman v. City of St. Petersburg*, 76 So. 894 (Fla. 1917)).

90. *Id.*

91. *Id.* at 240 (citing *Robbins v. White*, 42 So. 841 (Fla. 1907); *Thompson*, 16 So. 282); see *supra* n. 21 (discussing *Thompson*). In *Robbins*, although the plaintiff sued as “citizen, resident, and taxpayer,” her complaint had nothing to do with things that a taxpayer’s suit

Applying the “Rickman Rule” to these facts is not the main problem;<sup>92</sup> rather, it is the effect of the Court’s restatement of the rule because *Henry L. Doherty & Co.* did not involve a taxpayer injury. Put differently, of course the plaintiff would have to show special or peculiar injury if he could not show monetary injury as a taxpayer. The rule, as the Court wrote it, can be read incorrectly to suggest that the monetary injury to a taxpayer is also insufficient because he suffers it along with other taxpayers. This vice has been mentioned before.<sup>93</sup>

Similar to its holding in *Henry L. Doherty & Co.*, the Florida Supreme Court began to cite the “Rickman Rule” in other cases that did not involve taxpayer-standing issues. In *Biggs v. Willson*,<sup>94</sup> the Court’s entire opinion consisted of the following one paragraph:

It appearing that the respondents have no such interest as justifies their bringing suit for injunction against the petitioners, the certiorari is granted and the order denying the motion to dismiss is quashed and the chancellor is directed to dismiss the cause and dissolve the injunction.<sup>95</sup>

Noting the style of the *Biggs* case and its reference to *State ex rel. Clarkson v. Philips*<sup>96</sup>—which was not a taxpayer-standing case—it is probably safe to assume that *Biggs* was not a taxpayer-standing case either.

In *Lewis v. Peters*,<sup>97</sup> the Florida Supreme Court correctly applied the “Rickman Rule” in a true taxpayer-standing case. In *Lewis*, the plaintiffs sought an injunction to enjoin the Panama City Housing Authority from entering into an agreement, under

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might involve; rather, it concerned the legality of a street closing. 42 So. at 841–842.

92. To see how this resembles the public-nuisance situation, consult *supra* notes 15–22 and accompanying text.

93. *Supra* n. 45 and subsequent text (discussing problems resulting from incorrect readings of the “Rickman Rule”).

94. 60 So. 2d 399 (Fla. 1952).

95. *Id.* at 399 (citing *Rickman*, 74 So. 205; *State ex rel. Clarkson v. Philips*, 70 So. 367 (Fla. 1915)). *Clarkson* did not involve taxpayer standing; rather, the issue concerned national residency requirements for procuring a hunting license. 70 So. at 368. The Court found that the requirements did not adversely affect the plaintiff; therefore, he had no standing. *Id.* at 370–371.

96. 70 So. 367.

97. 66 So. 2d 489 (Fla. 1953).

various Florida statutes regarding urban renewal,<sup>98</sup> with the United States Navy.<sup>99</sup> The agreement was, among other things, to condemn<sup>100</sup> certain land<sup>101</sup> and,

turn [it] over to private sources for the building of the necessary [housing] units . . . which eventually would come under the control and ownership of such private operators who in the first instance would provide the necessary finances therefor.<sup>102</sup>

As the Court described, the issue was “whether the [Housing Authority had] the authority under the law under which it operates to acquire property and then turn it over to private interests for development.”<sup>103</sup> Before answering this question in the negative<sup>104</sup> and, thus, essentially affirming the lower court,<sup>105</sup> the Court addressed the question of taxpayer standing.

There is no question that the appellee had the right to institute this suit as a resident taxpayer to enjoin the illegal act of a statutory commission in the expenditure of public funds which he in common with other property owners and taxpayers might otherwise be compelled to contribute to or pay.<sup>106]</sup>

If the acts complained of were unauthorized and not within the powers of the board and tended to produce a resulting injury of the plaintiff by increasing the burden of his taxes, he certainly has a right to maintain this action.<sup>107]</sup> . . . In *Wester v. Belote*,<sup>108]</sup> . . . this Court said: “Citizens and taxpayers, when

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98. *Id.* at 492.

99. The Navy—the Navy Mine Countermeasures Station—wanted low-cost housing for its personnel, which the Navy was unable to provide. *Id.* at 491.

100. The word “acquire” was actually used. *Id.*

101. The land was known as the “Maritime No. 1 project.” *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at 493 (relying on *Adams v. Hous. Auth. of City of Daytona Beach*, 60 So. 2d 663 (Fla. 1952)). As the *Lewis* Court described,

[*Adams*] held that a statute which authorized the taking of private property for private use and authorized expenditure of public funds for private purpose and authorized appropriation of public funds for private gain and profit violated the Constitution of Florida.

*Id.* *Grubstein v. Urban Renewal Agency of City of Tampa*, 115 So. 2d 745 (Fla. 1959), later changed this ruling.

105. *Lewis*, 66 So. 2d at 490.

106. *Id.* at 492 (citing *Crawford*, 59 So. 963); *supra* nn. 23–25 and accompanying text (discussing *Crawford*).

107. *Lewis*, 66 So. 2d at 492 (citing *Hathaway*, 119 So. 149; *Rickman*, 74 So. 205).

108. 138 So. 721 (1931).

suing as such, undoubtedly have the right to injunctive relief to protect the public treasury against illegal disbursements of public funds.”<sup>109</sup>

In *Bennett v. City of Fort Lauderdale*,<sup>110</sup> the Florida Supreme Court continued its practice of citing *Rickman* in cases that did not involve taxpayer standing. The plaintiffs sought an injunction to prevent the Florida East Coast Railway Company from installing two grade crossings over the City’s railroad, on the theory that such crossings were not in the master plan that the voters originally approved.<sup>111</sup> In addition to finding that the locations of both grade crossings were legal,<sup>112</sup> the Court cited *Rickman* and held that, as to one of the grade crossings, “the plaintiffs did not introduce any evidence or attempt in any other way to show damage to them or their property.”<sup>113</sup>

The same thing, involving the Second District Court of Appeal, appears to have happened in *Pirtle v. City of Titusville*,<sup>114</sup> when the plaintiff sought declaratory and injunctive relief with regard to two deeds of dedication.<sup>115</sup> The circuit judge had,

dismissed the complaint and in his order found that there was no showing in the complaint nor in the proof that there would be any injury resulting to the plaintiff different in kind from that sustained by the public generally, *nor that the action sought to be enjoined would result in any increase in taxes or any special injury to the plaintiff*.<sup>116</sup>

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109. *Lewis*, 66 So. 2d at 492 (quoting *Wester*, 138 So. at 726, and citing *City of Daytona Beach v. News J. Corp.*, 156 So. 887 (Fla. 1934) (involving taxpayers who successfully obtained injunctive relief to protect the public treasury from the illegal disbursement of public funds)). For the question of taxpayer standing, the Florida Supreme Court principally relied upon *Wester*, which involved a taxpayer questioning the legality of compliance with the statutory-competitive process. 138 So. at 723–724. The *Wester* Court asserted, “Citizens and taxpayers, when suing as such, undoubtedly have the right to injunctive relief to protect the public treasury against illegal disbursements of public funds which it is charged will result from the carrying out of an unauthorized or illegal contract.” *Id.* at 726.

110. 78 So. 2d 567 (Fla. 1955).

111. *Id.* at 567–568.

112. *Id.* at 568.

113. *Id.*

114. 101 So. 2d 397 (Fla. 2d Dist. App. 1958).

115. *Id.* at 398.

116. *Id.* (emphasis added). The reader should note that “any increase in taxes” and “any special injury to the plaintiff” is phrased correctly, in the alternative.

The Second District affirmed and asserted that, “[w]e are of the opinion that upon the record presented there was no showing of interest in the plaintiff different from the public generally.”<sup>117</sup>

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117. *Id.* (citing *Town of Flagler Beach v. Green*, 83 So. 2d 598 (Fla. 1955); *Bryan v. City of Miami*, 56 So. 2d 924, 926 (Fla. 1951); *Lykes Bros., Inc. v. Bd. of Commrs. of Everglades Drainage Dist.*, 41 So. 2d 898 (Fla. 1949); *Metropolis Publg. Co. v. City of Miami*, 129 So. 913 (Fla. 1930); *Rickman*, 74 So. 205).

In *Metropolis Publishing*, the plaintiff sought to enjoin the City of Miami from issuing a building permit to erect a service station “directly or diagonally across” the street from its million-dollar building. 129 So. at 913–914. The Court, relying on *Rickman*, quoted the following from Justice Ellis’ opinion:

“To entitle any one to relief against real or imaginary evils or injuries which are supposed to flow from unauthorized acts of public officials, he must bring his case under some acknowledged head of equity jurisdiction and show what special injury he will sustain from such unauthorized acts distinct from that suffered by every other inhabitant.”

*Id.* at 914 (quoting *Rickman*, 74 So. at 206). This type of use of *Rickman* continues to blur the distinction between taxpayer standing and standing based upon other classifications.

*Lykes Bros.* is somewhat ambiguous on the operation of taxpayer standing, but instructive on equity jurisdiction and the relationship between that jurisdiction and the substantive question of law presented. In *Lykes Bros.*, the plaintiffs/appellants had three separate relationships with the Everglades Drainage District—they owned land within it, paid ad valorem taxes to it, and held bonds issued by it. 41 So. 2d at 899. The taxpayer aspect of the suit seemed to be the concern,

that the action of the District in dedicating [some of] its lands to water conservation purposes pursuant to local laws would, to the extent of the lands dedicated, take from the debt service fund of the District created by law for the retirement of bonds a potential asset in the way of proceeds which might be realized from the sale of such lands which otherwise would be available for the retirement of outstanding bonds, thereby depleting the debt service fund to such an extent as to require substantial additional ad valorem taxes from the appellants for works or improvements for which they or their lands would receive no benefits.

*Id.*

The entanglement of the alleged taxpayer injury—“to require substantive additional ad valorem taxes from the appellants”—with other alleged injuries is the first ambiguity. *Id.* The Court’s rationale for reversing the dismissal of the appellant’s complaint is the second.

We entertain the view that, though the amended bill is lacking in many of the specific and definite allegations as to an “infringement of personal or property rights” which would be appropriate to sustain the appellants’ right to attack the constitutionality of the statutes brought in question, the appellants should be given the opportunity to submit evidence within the scope, and in support of, the allegations of their bill, so that it may be determined as a question of fact whether, in truth, they have the right to assail the challenged statutes and, if so, whether the statutes are unconstitutional on any grounds urged by the appellants.

*Id.* at 901.

It is simply not possible to tell what impact *Lykes Bros.* had on taxpayer standing without knowing what the Court would have done if the appellants had proven the real possibility of a tax increase and nothing more. At least the Court did not cite *Rickman*.

*Bryan* involved a pure taxpayer suit to enjoin the execution of “a certain housing contract” and a related referendum to be held at the same time as a primary election. 56 So. 2d at 925. The trial court found that the plaintiff did not have standing in regard to the referendum because the costs of the referendum had already been incurred; therefore,



There is a potentially important difference between the circuit judge's order, which, in the italicized portion, correctly states the "*Rickman* Rule," and the district court's statement affirming the circuit court. The latter statement, perhaps, may be attributed to the fact that this does not appear to be a taxpayer case. However, the citation to *Rickman* in a case that does not involve taxpayer standing could be the beginning of what turned out to be the current misunderstanding. Put differently, the more often that the "*Rickman* Rule" is explained simply as not allowing taxpayer standing without special injury, the easier it becomes to find that an increased tax burden is no longer a special injury. This trend will prove to be ominous for the continued survival of *Rickman*'s original meaning.

In *Guernsey v. Haley*,<sup>118</sup> the plaintiffs alleged that state officers unlawfully removed certain paintings and other artworks from the Ringling Museum of Art, in Sarasota, Florida.<sup>119</sup> The Second District held that the individual Sarasota residents did not have standing to seek declaratory and injunctive relief, because their injury was not different from any other Sarasota resident.<sup>120</sup> Even though the Second District referred to *Rickman*,<sup>121</sup> together with *Metropolis Publishing Co. v. City of Miami*,<sup>122</sup> *Bryan v. City of Miami*,<sup>123</sup> *Pirtle*,<sup>124</sup> *Lykes Bros., Inc. v. Board of*

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there was no injury. *Id.* This was "without prejudice to the Plaintiff to re-submit the matter to the Court in the event the measure mentioned in the ballot attached to the Complaint [was] approved by the electors." *Id.* In affirming the trial court, the Florida Supreme Court correctly stated the "*Rickman* Rule," although it did not cite *Rickman*.

It is generally held, unless otherwise provided by Statute, that a taxpayer cannot sue to enjoin an illegal or unauthorized act on the part of a municipal corporation *unless such act will result in an increase of his taxes, or will otherwise result in direct or indirect pecuniary injury to him.*

*Id.* at 926 (emphasis added) (citing *Lykes Bros.*, 41 So. 2d 898; Eugene McQuillin, *Municipal Corporations* vol. VI, §§ 2751, 2755 (2d ed., Callaghan & Co. 1937); 52 Am. Jur. *Taxpayers' Actions* § 3 (1944)). To review pertinent portions of *Municipal Corporations* and the *American Jurisprudence* treatise, consult *infra* Appendices T–U respectively.

In *Green*, a case that did not involve taxpayer standing, the Court opined that the plaintiff had "the burden of showing that the claimed injury was different in *kind* as distinguished from different in *degree* from the injury that might be suffered by the public generally." 83 So. at 600 (emphasis in original).

118. 107 So. 2d 184 (Fla. 2d Dist. App. 1958).

119. *Id.* at 187.

120. *Id.* at 187–188.

121. 74 So. 205; *supra* nn. 29–45 and accompanying text (discussing *Rickman*).

122. 129 So. 913; *supra* n. 117 (discussing *Metropolis Publ.*).

123. 56 So. 2d 294; *supra* n. 117 (discussing *Bryan*).

124. 101 So. 2d 397; *supra* nn. 114–115 and accompanying text (discussing *Pirtle*).

*Commissioners of Everglades Drainage District*,<sup>125</sup> and the second edition of *Municipal Corporations*, volume 6, sections 2751 and 2755,<sup>126</sup> it is important to note that *Guernsey* was not a taxpayer-standing case. As the district court pointed out, “The only allegation in the complaint as to the right and authority of the two plaintiffs to question the acts of the appellants, defendants below, is that the plaintiffs are residents of the County of Sarasota, State of Florida.”<sup>127</sup> Thus, this was a classic case of citizen standing, which is what taxpayer standing became before “the mistake” when no illegal threat to increase that person’s taxes was shown.<sup>128</sup>

In *R.L. Bernardo & Sons, Inc. v. Duncan*,<sup>129</sup> the First District Court of Appeal turned back the appellant’s attempt to apply the part of the “*Rickman* Rule” that pertains to situations where a taxpayer cannot show a threatened increase in his tax burden and, thus, must show some other injury that is essentially unique to him.<sup>130</sup> Duncan sued “as citizen and property owner,”<sup>131</sup> alleging, among other things,<sup>132</sup> that the City of Panama City had made an illegal advance payment to R.L. Bernardo & Sons, with whom it had contracted for certain public improvements.<sup>133</sup> However, Duncan failed to allege that he was a taxpayer.<sup>134</sup> Obviously, this failure is related to the issue of taxpayer standing, but it does not actually implicate the key issue of what taxpayer standing is.<sup>135</sup> This subsidiary issue did—in a backhand sort of way—seem

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125. 41 So. 2d 898; *supra* n. 117 (discussing *Lykes Bros.*).

126. To review the relevant portions of *Municipal Corporations*, consult *infra* Appendix T.

127. *Guernsey*, 107 So. 2d at 185.

128. This is, in effect, what happened in *Rickman*. For an additional discussion, review *supra* note 38 and accompanying text.

129. 134 So. 2d 297 (Fla. 1st Dist. App. 1961). As will appear in the discussion of this case, the Florida Supreme Court quashed in part and remanded the district court’s decision. *R.L. Bernardo & Sons, Inc. v. Duncan*, 145 So. 2d 476, 478 (Fla. 1962).

130. *R.L. Bernardo & Sons*, 134 So. 2d at 302–303.

131. *Id.* at 298.

132. “The purpose of the suit was manifold, but it is necessary to discuss only the grounds alleged in the complaint on which relief was granted and which form the subject of this appeal.” *Id.* at 298–299.

133. *Id.* at 299.

134. *Id.*

135. This failure to allege and prove taxpayer status caused the First District to consider the novel question of whether the trial court could take judicial notice that Duncan paid at least excise taxes. *Id.* at 299–300, 302. This was bolstered by the trial judge’s finding that the court could consider R.L. Bernardo & Sons’ deposition of Duncan when, “Dun-

to establish that taxpayer standing works only if the taxpayer pays ad valorem taxes.

It should be recalled that part of the trial court's original rationale on Duncan's original taxpayer status was that payment of excise taxes would suffice.<sup>136</sup> The First District dodged the ques-

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can testified that he was a citizen, resident and freeholder of Panama City [and] that the property owned by him was occupied as his home, the assessed valuation of which exceeded the homestead tax exemption allowed by [Article 10, Section 7 of the Florida] Constitution." *Id.* at 304. Since the district court "fail[ed] to find where this evidence was controverted . . . it must be accepted as true." *Id.* R.L. Bernardo & Sons challenged this on petition for rehearing, on the theory that the district court could not consider the deposition since it was never entered into evidence during the trial. *Id.* at 306. While recognizing this as the general rule, the district court found that it would not apply the rule because (1) this was an equity case and the trial judge was the trier of the fact, and (2) the trial judge had already considered the deposition on motion for summary judgment. *Id.* at 306-307. On these bases, the court denied the petition for rehearing. *Id.* at 308.

The Florida Supreme Court quoted much of the First District's decision that pertained to the use of the deposition—the only issue presented—and remanded for the "district court [to] decide whether the [trial judge] erred in deciding that it was not necessary that Duncan be an ad valorem taxpayer in order to maintain this suit and have such further proceedings as it may determine to be necessary." *R.L. Bernardo & Sons*, 145 So. 2d at 478. On remand, the First District reversed much of the trial court's ruling that took "judicial notice of the fact that all citizens of the City of Panama City are required to pay excise taxes and in assuming, without proof, that [the] plaintiff is in fact a payer of excise taxes to the city." *R.L. Bernardo & Sons, Inc. v. Duncan*, 147 So. 2d 542, 544 (Fla. 1st Dist. App. 1962). However, the district court then remanded the case to the trial court.

[I]n view of the fact that from the record it affirmatively appears that [the] plaintiff's status as a payer of excise taxes to the City of Panama City is readily susceptible of proof, and that through understandable inadvertence or oversight proof of his status as a taxpayer of ad valorem taxes to the City of Panama City was omitted during the formal presentation of evidence before the [trial judge], we believe that the ends of justice will best be served by remanding this cause to the trial court for the taking of further testimony on this single issue. In obedience to the mandate of the Supreme Court that we direct such further proceedings as may be determined necessary, the decree appealed is reversed insofar as it finds that [the] plaintiff is a taxpayer entitled to maintain this action, and the cause is remanded with directions that further testimony be taken on this issue and that an appropriate decree [be] entered thereon consistent with the views expressed herein.

*Id.* (footnote omitted).

On remand, the trial judge "permitted [Duncan] to amend his complaint by alleging that he was a taxpayer of Panama City. [And proof] that [he] was a payer of ad valorem taxes to the City of Panama City was admitted in evidence." *R.L. Bernardo & Sons, Inc. v. Duncan*, 179 So. 2d 581, 582 (Fla. 1st Dist. App. 1965). The district court affirmed the trial court's action; thus, at last, Duncan was proved to be an ad valorem taxpayer. *Id.*

136. *R.L. Bernardo & Sons*, 134 So. 2d at 299; see *supra* n. 135 (discussing the trial court's assumption). As the First District explained,

The [trial court] found that it was immaterial whether Duncan paid ad valorem taxes in determining whether he was a taxpayer within the spirit and intent of the law. The court found from the evidence that only a small portion of the city's budget was derived from ad valorem taxes, and that a much larger portion of the budget was derived from the imposition of excise taxes against the citizens of the city.

tion by finding that a deposition could be used to show that Duncan paid ad valorem taxes.<sup>137</sup> The Florida Supreme Court, on the other hand, refused to allow use of the deposition to establish Duncan's status as an ad valorem taxpayer<sup>138</sup> and commented that, on remand, the district court would be required to "decide whether the [trial judge] erred in deciding that it was not necessary that Duncan be an ad valorem taxpayer in order to maintain this suit."<sup>139</sup> This, of course, was the question that the First District had wanted the opportunity to decide.<sup>140</sup>

The district court's orders to the trial judge seem to require that Duncan be allowed to prove that he paid excise taxes and to plead and prove that he paid ad valorem taxes.<sup>141</sup> For reasons that are by no means clear, it appears that the trial judge "permitted [Duncan] to amend his complaint by alleging that he was a taxpayer of Panama City. Proof that [he] was a payer of ad valorem taxes to the City of Panama City was admitted in evidence."<sup>142</sup> So, *R.L. Bernardo & Sons* never answered the fascinating question of whether paying local taxes—other than ad valorem taxes—would suffice for taxpayer standing.

With these issues out of the way, attention can now be paid to the First District's handling of the "*Rickman* Rule." The court's first discussion of the taxpayer-standing question<sup>143</sup> is quite clear.

[T]he [trial judge] recognized the law of Florida as originally enunciated in the early development of our jurisprudence which established the principle that a citizen, taxpayer and owner of property has a right to maintain a suit in equity to question the acts of public officials which tend to produce a re-

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*R.L. Bernardo & Sons*, 134 So. 2d at 303.

137. *Id.* at 303–304. The court stated,

The decisions heretofore rendered by the appellate courts of this state have required that the plaintiff in a taxpayer's suit allege and prove that he pays ad valorem taxes in order to qualify as a taxpayer within the meaning of the law. The decree appealed presents an intriguing question and is one on which this court would welcome the opportunity of passing.

*Id.* at 303.

138. *R.L. Bernardo & Sons*, 145 So. 2d at 478.

139. *Id.*

140. *Supra* n. 137 and accompanying text (discussing the "intriguing question").

141. *Supra* n. 135 (discussing whether Duncan's deposition should be admitted as evidence).

142. *R.L. Bernardo & Sons*, 179 So. 2d at 582.

143. This is distinguished from proof that one is a taxpayer.

sultant injury to the plaintiff by increasing the burden of his taxes. The rule generally recognizes the right of a citizen and taxpayer to maintain a suit to prevent the unlawful expenditure by public officials of public monies unless otherwise provided by legislative enactment.<sup>144</sup>

In the battle over the pleading-and-proof issue, when attempting to establish that one's status as a taxpayer must be pleaded and proven, the First District appeared to drift into a discussion of the taxpayer-standing role itself:

[D]ecisions in which it is generally held that even though the plaintiff is a taxpayer, he cannot maintain a suit in equity to restrain public officials in the performance of authorized contracts or other lawful acts permitted by law on the ground that the action of the public officials is illegal or unauthorized unless he can show that the acts complained of will increase his taxes, otherwise result in direct or indirect pecuniary injury to him, or will increase the public burden.<sup>145</sup>

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144. *R.L. Bernardo & Sons*, 134 So. 2d at 299 (citing *Rickman*, 74 So. 205). At this point, the court made the following comment that does not square with what it actually did:

The sole question presented by this issue was whether one who qualifies as a citizen and property owner living within a community will be presumed to be a taxpayer of that community within the spirit and intent of the principles announced by the . . . [Florida] Supreme Court without specific allegations or proof regarding the amount and nature of taxes paid by him.

*Id.* This question was obviously answered. The district court then discussed and applied the "*Rickman* Rule." *Id.* Thus, the sole question could not have been the question of pleading and proof as discussed in *supra* note 135.

145. *R.L. Bernardo & Sons*, 134 So. 2d at 301 (citing *Guernsey*, 107 So. 2d 184; *Bryan*, 56 So. 2d 924; *Belmont v. Town of Gulfport*, 122 So. 10 (Fla. 1929) (holding that being a payer of only poll taxes does not make one a taxpayer within the meaning of the taxpayer-standing rule); *Rickman*, 74 So. 205).

The district court's following description of *City of DeLand v. Boyd*, 147 So. 575 (Fla. 1933), on its face, is troubling: "The [Florida] Supreme Court held that private individuals, as such, have no standing in a court of equity to sue solely for the protection of the rights of the general public, and that *tax suits form no just exception to the rule.*" *R.L. Bernardo & Sons*, 134 So. 2d at 302 (emphasis added). In actuality, *Boyd* held that whatever rights the plaintiffs had to enjoin the sale of their property for unpaid taxes did not apply; they could not seek to "enjoin the tax sale complained of as to the property of noncomplaining property owners not parties to the suit." 147 So. at 576. *Boyd* then cited *Brown v. Florida Chautauqua Assn.*, 52 So. 802 (Fla. 1910), in which the Court had to decide whether only a public nuisance had been alleged or whether some special injury to the plaintiff was alleged. *Id.* at 804. In making its decision, the Court stated the general rule that equity will not entertain a suit to enjoin a public nuisance unless the complainant could also show special injury to himself or herself. *Id.* at 804–805. For further discussion of the public-nuisance situation as distinguished from the taxpayer-standing situation, review *supra*

It is this point in the opinion that made reference to Duncan's argument that, essentially, taxpayer standing should not be limited to real property—ad valorem—taxpayers.<sup>146</sup> The district court responded as follows:

The Supreme Court of Florida in a series of decisions has established the principle that a citizen and taxpayer, when suing as such, undoubtedly has the right to injunctive relief to protect the public treasury against illegal disbursements of public funds which it is charged will result from the carrying out of an unauthorized or illegal contract. In such cases no other showing is required of complainant other than he allege his status as a citizen and taxpayer and point out that the threatened disbursement of public funds is for an unauthorized or illegal purpose, whether any actual fraud or misconduct was intended or contemplated thereby or not.<sup>147</sup>

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notes 85–95 and accompanying text. The First District's comment in *R.L. Bernardo & Sons*, 134 So. 2d at 302, that "tax suits form no just exception to the rule," must be read in the context of the case. That is, one who, without merit, sues to stop a tax sale of his property cannot sue to stop the tax sale of the property of others.

146. *Id.*

147. *Id.* (citing *News J. Corp.*, 156 So. 887; *Wester*, 138 So. 721; *Robert G. Lassiter & Co.*, 128 So. 14). In *Robert G. Lassiter & Co.*, the Florida Supreme Court found taxpayer standing under the following facts:

1. [That] the contract, after being let upon competitive bidding, was subsequently modified to provide for an entirely different type of work at a different price, without submitting the contract for the work as modified to competitive bids.

2. That the work was improperly and unskillfully done, and the city should have been required to secure an abatement in price to the extent that the contract was unperformed, in settling with the contractor.

128 So. at 15. As to taxpayer standing, the Court opined, "we can see no reason why appellee in the instant case should not have relief by injunction." *Id.* at 18.

In *Wester*, the Florida Supreme Court opined,

That a contract made by public officers in violation of the statutes requiring them to be let pursuant to competitive bids, to the best responsible bidder, is absolutely void, and that no rights can be acquired thereunder by the contracting party, is beyond question in this jurisdiction. . . . And that payments under such a contract will be enjoined at the suit of a citizen and taxpayer of the affected county is also not to be denied under the decisions of this court.

138 So. at 724 (citing *Robert G. Lassiter & Co.*, 128 So. 14; *Anderson*, 41 So. 684). Of course the "Rickman Rule" clarifies the point that the taxpayer must actually suffer a pecuniary injury as a taxpayer. The Court went on to cite, with approval, out-of-state cases that, where illegal or void contracts have already been executed, and payments of money made by the public officers under them, a suit in equity lies at the instance of a citizen and taxpayer to obtain an accounting and recover the payments back for the benefit of the public treasury, when no other remedy is available.

*Wester*, 138 So. at 724. The Court further found that,

In addition, the district court found that,

[i]f under these authorities<sup>148</sup> a citizen and taxpayer has the right to injunctive relief to restrain the illegal disbursement of public funds, he would likewise have the right to declaratory relief adjudging that a disbursement of public funds already made was illegal and unauthorized, coupled with the right to have such illegal disbursement returned to the public treasury.<sup>149</sup>

R.L. Bernardo & Sons' attempt to use *Rickman*<sup>150</sup> to their advantage failed<sup>151</sup> but led to the following confusing discussion of the *Rickman* decision, caused, no doubt, by *Rickman*'s ambiguous language, as previously discussed.<sup>152</sup>

The [Florida Supreme Court in *Rickman*] recognized the rule that a citizen and taxpayer had the right to maintain a suit to prevent the unlawful expenditure of public monies, but only if he could allege and prove that the unlawful expenditure sought to be enjoined would result in special injury to the plaintiff as a taxpayer in an increased public burden. *The special injury to the taxpayer would have to be shown to be distinct from that of every other inhabitant, the difference being in kind and not in degree.* The decision state[d] that in the absence of a showing of special injury or an increase in the public burden, suits to enjoin public officials from making illegal expenditures of public funds must be brought by an authorized public officer in the protection of public interest.<sup>153</sup>

It is the italicized portion of the above quote that causes the problem. The statement of the "*Rickman* Rule" would be correct if an

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[t]he present controversy falls within the rule that an injunction to a taxpayer will not be granted to restrain the exercise of discretionary powers of [the] county commissioners as to contracts and expenditures in the county, where no abuse of power, fraud, corruption, or unfair dealing is proved.

*Id.* at 727. In other words, the county commissioners had to make a "bona fide effort" to comply with the competitive-bidding statutes even if the contract specifications were "insufficient." *Id.* at 726–727.

148. *Supra* n. 147 (discussing *Robert G. Lassiter & Co., Wester, and News J. Corp.*).

149. *R.L. Bernardo & Sons*, 134 So. 2d at 302.

150. *Supra* nn. 29–45 and accompanying text (discussing *Rickman*).

151. *R.L. Bernardo & Sons*, 134 So. 2d at 302–303.

152. *Supra* n. 45 and subsequent text (discussing the language in *Rickman*).

153. *R.L. Bernardo & Sons*, 134 So. 2d at 302–303 (emphasis added).

“or” preceded “the.”<sup>154</sup> The latter part of the quote appears to correct this mistake.

R.L. Bernardo & Sons argued what seems to amount to the “no special injury” part of the “*Rickman* Rule.” Apart from *Rickman*, it relied on *Bryan* and *Guernsey*—two cases in which the plaintiffs could show neither taxpayer injury nor special injury.<sup>155</sup>

It is our view that the principle on which [the] appellant relies has no application to the facts in this case, but that the principle which controls is that set forth in the decisions first above mentioned which permits a citizen and taxpayer to restrain public officials from making illegal or unauthorized expenditures of public funds.<sup>156</sup>

In spite of the distraction caused by the pleading-and-proof issues, *R.L. Bernardo & Sons* is a strong endorsement of the “*Rickman* Rule” as correctly understood.

The first origin of “the mistake” can be said to have occurred originally in *Department of Administration v. Horne*.<sup>157</sup> Certain members of the Florida Legislature sued in their capacity “as ordinary citizens and taxpayers” to have an appropriation act declared unconstitutional.<sup>158</sup> This led the Court to make what appears to be a superficial examination of *Rickman*,<sup>159</sup> out of which the so-called “*Rickman* Rule” grew.<sup>160</sup> The Court summarized the rule as follows:

“The principle on which [taxpayer standing] rests is that the taxpayer is necessarily affected and his burdens of taxation increased by any unlawful act of the county commissioners which may increase the burden to be borne by the taxpayers. . . . The right of the complainant to maintain this suit therefore would seem to depend upon the peculiar injury which may result to him from the expenditure of the funds. . . . The taxpayer’s injury specially induced by the unlawful act is the

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154. For an additional discussion of the “*Rickman* Rule,” review *supra* text following note 45.

155. For additional information on *Bryan* and *Guernsey*, review *supra* notes 117–128 and accompanying text.

156. *R.L. Bernardo & Sons*, 134 So. 2d at 303.

157. 269 So. 2d 659 (Fla. 1972).

158. *Id.* at 659–660.

159. *Supra* nn. 29–45 and accompanying text (discussing *Rickman*).

160. *Horne*, 269 So. 2d at 662.



basis of his equity, and unless it is alleged and proved, there can be no equitable relief.”<sup>161</sup>

So far, so good, then came the following damaging comment: “Essentially, the ‘Rickman Rule’ requires a showing of special injury.”<sup>162</sup> At that point, without more,<sup>163</sup> the Court created an exception to special injury, which is, as the Court recognized, patterned somewhat loosely on the United States Supreme Court’s decision in *Flast v. Cohen*,<sup>164</sup> and basically allows taxpayer standing without special injury if the unconstitutionality of an appropriation act is alleged.<sup>165</sup>

The principal problem, of course, is not with the exception but, rather, with defining just what the exception is an exception to. Put differently, how did the Florida Supreme Court in *Horne* understand special injury?

The Court further opined,

Despite our reluctance to open the door to possible multiple suits by “ordinary citizens”, nonetheless, it is the “ordinary citizen” and taxpayer who is ultimately affected and who is sometimes the only champion of the people in an unpopular cause. We would therefore not deny this right of attack by a responsible taxpayer upon allegedly illegal expenditures (appropriations) of public monies, as transcending possible unwarranted litigation that might in some instances ensue.<sup>166</sup>

Does this statement apply to the “*Rickman* Rule” or to the exception? The only clue is the use of the word “appropriations” in the above quote. Whatever may be the case, the cursory treatment that the “*Rickman* Rule” was given in *Horne* could not help but cause problems.

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161. *Id.* (quoting *Rickman*, 74 So. at 207).

162. *Id.*

163. The Court apparently did not recognize that special injury was a requirement for taxpayer standing if, and only if, the threatened illegal expenditure would not cause an increase in the taxpayers’ taxes. See e.g. *supra* n. 61 (providing Justice Ellis’ understanding of what he wrote in *Rickman*). Or, the Court believed that the alleged unconstitutional appropriation would not increase the taxpayers’ taxes. Who can say?

164. 392 U.S. 83 (1968). *Flast* created an exception to the federal-no-taxpayer-standing rule if (1) the challenged activity is based on only the power to tax and spend for the general welfare, and (2) the challenged activity violated the First Amendment’s Establishment Clause. *Id.* at 102–103.

165. *Horne*, 269 So. 2d at 662–663.

166. *Id.* at 663.

The monumental beginnings of dreadful damage done to *Rickman's* true intent<sup>167</sup> continued in *Save Sand Key, Inc. v. United States Steel Corp.*,<sup>168</sup> the first case subsequent to *Horne* to actually cite *Horne*.<sup>169</sup> Taxpayer standing was not an issue in *Save Sand Key*,<sup>170</sup> rather, the Second District Court of Appeal attempted to expand the concept of standing in what might be called “citizen standing cases.”<sup>171</sup> The damage to the taxpayer-standing issue arose from the district court’s description of the “*Rickman* Rule,”<sup>172</sup> which was limited to the following comment:

[I]n *Department of Administration v. Horne*,<sup>[173]</sup> a taxpayers’ suit to avoid an illegal appropriation, our Supreme Court . . . rejected the “special injury” rule in recognizing “standing” to sue when the plaintiff’s attack was based on constitutional grounds.<sup>174</sup>

The Second District went on to point out that *Horne* was patterned on *Flast*,<sup>175</sup> which, according to the court, represented a federal trend to “broaden ‘standing to sue,’” just as *Horne* represented the same “trend in Florida.”<sup>176</sup> If what is meant, is a trend

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167. See *supra* n. 135 (discussing the question of whether excise taxes could be considered in determining taxpayer standing).

168. 281 So. 2d 572 (Fla. 2d Dist. App. 1973).

169. *Id.* at 574.

170. *Save Sand Key* sued not as taxpayer but as “a non-profit citizens’ group.” *Id.* at 572.

171. *Id.* at 575–577.

172. See *supra* nn. 29–45 and accompanying text (providing a discussion of *Rickman*).

173. See *supra* nn. 157–166 and accompanying text (describing the beginning of the mistaken interpretation of *Rickman*).

174. *Save Sand Key*, 281 So. 2d at 574.

175. See *supra* n. 164 and *infra* n. 176 and accompanying text (noting the exception to the federal-no-taxpayer-standing rule established in *Flast*).

176. *Save Sand Key*, 281 So. 2d at 575. In a very narrow sense, *Flast* broadened the federal-no-taxpayer-standing rule to allow taxpayer standing if the alleged injury flowed from, and only from, an exercise of Congress’ delegated power to tax and spend for the general welfare and if, and only if, the exercise of power was alleged to violate the First Amendment’s Establishment Clause. *Flast*, 392 U.S. at 103, 105–106; but see *Valley Forge Christian College v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 480 (1982) (providing that a federal gift of land to a religious college was not based on the power to tax and spend).

Because the Second District equated *Flast* and *Horne* as expanding taxpayer standing, it is not unreasonable to assume that the court misunderstood the “*Rickman* Rule,” just as *Horne* apparently misunderstood it. Such a misunderstanding would result in an expansion of no taxpayer standing without some other special injury—not a very likely circumstance—to the limited *Horne* taxpayer-standing rule patterned on *Flast*. Put differently, to consider *Horne* as “broadening” the Florida taxpayer-standing rule requires the belief that

to broaden taxpayer standing in the sense that appropriations will now be included in taxes if the allegation is of a constitutional violation, then no real damage is done. However, a more obvious reading is that the true meaning of *Rickman*<sup>177</sup> had been forgotten, misunderstood, or ignored,<sup>178</sup> and, in its place, a taxpayer-standing rule evolved that required taxpayers to have an interest different in kind from the rest of the taxpaying public.<sup>179</sup> An alternative explanation is that, once again, the very different rules for nontaxpayer standing intruded into the meaning of taxpayer standing.

On petition for certiorari, the Florida Supreme Court, in *United States Steel Corp. v. Save Sand Key, Inc.*,<sup>180</sup> vigorously

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taxpayer standing virtually did not exist before the *Horne* exception to the special-injury rule.

This view is bolstered by the court's reference to *Henry L. Doherty & Co.* for the proposition that, "[i]n general, it may be said, it developed that if almost any injury was suffered jointly with the public a single citizen so victimized could not be heard to complain unless his injury was special in that it differed in kind and degree from the public's [injury]." *Save Sand Key*, 281 So. 2d at 574 (citing *Boucher v. Novotny*, 102 So. 2d 132 (Fla. 1958); *O'Dell v. Walsh*, 81 So. 2d 554 (Fla. 1955); *Henry L. Doherty & Co.*, 200 So. 238; *Rickman*, 74 So. 205).

In *Boucher*, the plaintiffs sought to enjoin "alleged violations of setback requirements of a municipal zoning ordinance." 102 So. 2d at 133. The Florida Supreme Court held that "the complaining citizen is without redress in equity unless he can allege and prove special damages peculiar to himself and differing in kind rather than in degree from the damages suffered by the people as a whole." *Id.* at 135 (citing *Richard v. Gulf Theatres*, 21 So. 2d 715 (Fla. 1945); *Henry L. Doherty & Co.*, 200 So. 238; *Brown*, 52 So. 802). *Richard*, like *Brown* and *Henry L. Doherty & Co.*, was not a taxpayer case, but rather one that fell into the category of public nuisances and similar situations to which the special injury, as *Boucher* described, clearly applies whether rightly or wrongly. *Boucher*, 102 So. 2d at 135.

In *O'Dell*, the Court again found no special injury when the plaintiff sought to enjoin the obstruction of a public road. 81 So. 2d at 554–555. Not surprisingly, *Henry L. Doherty & Co.* was among the cases cited. *Id.* at 555; see *supra* nn. 85–93 and accompanying text (explaining the Court's reasoning in *Henry L. Doherty & Co.*).

Thus, neither *Boucher*, *O'Dell*, nor *Henry L. Doherty & Co.* were taxpayer cases, but this is not surprising since *Save Sand Key* was not either. However, it is disturbing that *Save Sand Key* cited to *Rickman*, which, of course, was a taxpayer case, without any attempt to distinguish it. *Save Sand Key*, 281 So. 2d at 574. Therefore, the crucial question is whether *Rickman* was cited for its actual situation where the plaintiff, who sued as taxpayer, could show no pecuniary injury from the alleged illegality and, thus, was in that broader category of plaintiffs, such as those in *Henry L. Doherty & Co.*, *O'Dell*, and *Boucher*? Or, the question might be whether *Rickman* was cited to show that even taxpayers who could show pecuniary injury were no different. Once again, who knows?

177. For a comparison of the correct and incorrect readings of *Rickman*, consult *supra* text following note 45.

178. See *supra* n. 176 (discussing cases that did not distinguish *Rickman* properly).

179. *Id.*

180. 303 So. 2d 9 (Fla. 1974).

turned down the Second District's apparent attempt to expand the standing rules generally.<sup>181</sup> As with the district court's opinion, my primary concern here is not with the general standing problem but, rather, with what the Court said about taxpayer standing. Suffice it to say, the Court rebuked the Second District for not following Florida Supreme Court precedent<sup>182</sup> and seemed to assert that the special-injury rule should apply across the board with *Horne*'s narrow exception.<sup>183</sup>

The Court's discussion of taxpayer standing is basically a slightly enhanced version of what that Court supplied in *Horne*. The key, if misguided, words are as follows: "Essentially, the "Rickman Rule" requires a showing of special injury."<sup>184</sup> No! No! No! Correctly read, the "Rickman Rule" requires special injury only if the taxpayer cannot show pecuniary injury to himself.<sup>185</sup> Since *Save Sand Key* is not a taxpayer-standing case, *Rickman* can be understood to require special injury since *Save Sand Key* obviously could not sue as a taxpayer.<sup>186</sup> The Court's apparent misreading of *Rickman* was compounded when it asserted, "Clearly, by its decision in [*Horne*] . . . this Court did not intend to abrogate in any way the special injury rule in cases [such] as those *sub judice*, but, in fact, recognized that it would still obtain in other cases."<sup>187</sup>

The question must be asked, what other cases? Does it include public nuisance and similar cases in which the special-injury rule has always applied?<sup>188</sup> Or, does it now include tax-

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181. *Supra* nn. 168–179 and accompanying text (noting the Second District's discussion of *Rickman*). "We think it's time to say, therefore, that the "special injury" concept serves no valid purpose in the present structure of the law and should no longer be a viable expedient to the disposition of these cases. Given *any* right, fundamental justice demands its protection." *Save Sand Key*, 281 So. 2d at 575 (emphasis in original).

182. *Save Sand Key*, 303 So. 2d at 11.

183. For a description of the mistaken interpretation of *Rickman* in the *Horne* exception, consult *supra* notes 157–166 and accompanying text.

184. *Save Sand Key*, 303 So. 2d at 13 (quoting *Horne*, 269 So. 2d at 662).

185. *Supra* text following n. 45 (providing the correct reading of the "Rickman Rule"). In the alternative, *Rickman* requires special injury in the form of some pecuniary injury to the taxpayer caused by government illegality or, failing that, some special injury different in kind from that suffered by the public. *Id.* To repeat, in a taxpayer lawsuit, the taxpayer's failure to allege and prove pecuniary injury caused by government wrongdoing leaves the taxpayer in the position of complaining essentially as a citizen and applying the several equity standing rules. *Id.*

186. There was no possible claim of threatened illegal expenditure of public funds.

187. *Save Sand Key*, 303 So. 2d at 13 (emphasis added).

188. *Supra* nn. 15–19 and accompanying text (concerning the history of taxpayer-

payer standing where the taxpayer suffered pecuniary injury in which this rule has never,<sup>189</sup> or almost never,<sup>190</sup> applied?

In *Williams v. Howard*,<sup>191</sup> the plaintiffs brought suit, under the Florida Declaratory Judgment Act, challenging the constitutionality of the statutory transfer of “non-quasi-judicial powers from the Parole and Probation Commission to the Department of Offender Rehabilitation.”<sup>192</sup> Ultimately, the Florida Supreme Court found that the plaintiffs—minority members of the Parole and Probation Commission—did not have standing;<sup>193</sup> however, the Court’s comment is ambiguous as to the effect of *Horne* on the then reasonably clear status of taxpayer standing<sup>194</sup> up to that case and the Court’s decision in *Save Sand Key*.<sup>195</sup>

We also concur in the trial court’s finding that the allegations of the complaint were not specific as to any unlawful expenditures of public monies arising from the asserted invalidity of Section 20.315(6), Florida Statutes. We conclude, however, that such deficiency in the allegations of the complaint is fatal to the standing [of the minority members of the Commission] to maintain the suit as citizens and taxpayers. See *Rickman v. Whitehurst* . . . the principles of which are reaffirmed in [*Department*] of *Administration v. Horne* . . . as to the point here under consideration.<sup>196</sup>

The problem, of course, is just which view of *Rickman*’s principles did *Horne* reaffirm?

If *Williams* was ambiguous regarding the continued existence of taxpayer standing, *Krantzler v. Board of County Commissioners of Dade County*<sup>197</sup> was not, because the Third District Court of Appeal vigorously applied the original understanding of taxpayer standing.<sup>198</sup> The plaintiffs sued as “citizens and residents of Dade

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standing cases).

189. *Chamberlain*, 23 So. at 574.

190. *E.g. Horne*, 269 So. 2d 659.

191. 329 So. 2d 277 (Fla. 1976).

192. *Id.* at 278.

193. *Id.* at 279.

194. *Supra* nn. 66–69 and accompanying text (explaining how *Tacker* applied taxpayer standing).

195. *Supra* nn. 180–183 and accompanying text (describing the Court’s reaction to the Second District’s expansion of taxpayer standing).

196. *Williams*, 329 So. 2d at 279–280.

197. 354 So. 2d 126 (Fla. 3d Dist. App. 1978).

198. *Id.* at 128.

County” to enjoin the future distribution of informational pamphlets regarding the imposition of a sales tax<sup>199</sup> by referendum that was claimed to be incomplete and misrepresentational; thus, it violated the Dade County Citizens’ Bill of Rights.<sup>200</sup> They appealed a dismissal with prejudice of their complaint to the district court.<sup>201</sup>

The district court held, first, that the plaintiffs’ failure to allege that they were taxpayers—while necessary to a taxpayer lawsuit—should not have been fatal, and they should have been allowed to amend their complaint.<sup>202</sup> Second, the amended complaint would have to be tested against the “*Rickman* Rule.”<sup>203</sup> That rule was discussed by a lengthy quote from *Rickman*<sup>204</sup> clearly showing that no special injury was needed beyond the

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199. Presumably, there was a general law of authority for this. See Fla. Const. art. VII, § 1(a) (providing for forms of taxation in Florida).

200. *Krantzler*, 354 So. 2d at 127. The court set out the pertinent parts of the Bill of Rights as follows:

(A) This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure all persons fair and equitable treatment, the following rights are guaranteed:

2. *Truth in government.* No county or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

(C) Remedies for violations. In any suit by a citizen alleging a violation of this article filed in the Dade County Circuit Court pursuant to its general equity jurisdiction, the plaintiff, if successful, shall be entitled to recover costs as fixed by the court. Any public official or employee who is found by the court to have willfully violated this article shall forthwith forfeit his office or employment.

(D) Construction. All provisions of this article shall be construed to be supplementary to and not in conflict with the general laws of Florida.

*Id.* at 128–129.

201. *Id.* at 127.

202. *Id.* at 128.

203. *Id.*

204. *Supra* nn. 35–36 (providing the referenced quote from *Rickman*). For the taxpayer-standing rule, the district court also referred to *Kathleen Citrus Land Co. v. City of Lakeland*, 169 So. 356 (Fla. 1936), *Peck*, 7 So. 642, *Crompton*, 101 U.S. 601, and Eugene McQuillin, *Municipal Corporations* vol. XVIII, §§ 52.01–52.08 (3d ed., 1977). To review pertinent portions of *Municipal Corporations*, consult *infra* Appendix V. In *Kathleen Citrus*, the Florida Supreme Court held that a Lakeland corporate taxpayer had “a right to maintain a suit to enjoin the execution of [allegedly] illegal contracts involving payments from a public fund to which the citizen taxpayer is a contributor.” 169 So. at 358 (citing *Hathaway*, 119 So. 149); *supra* nn. 46–61 and accompanying text (discussing the taxpayer-standing rule as applied in *Hathaway*).

plaintiffs' pecuniary injury,<sup>205</sup> which is, of course, the original understanding of the "*Rickman* Rule." Third, the court linked the alleged violations of the Dade County Citizens' Bill of Rights to taxpayer standing.<sup>206</sup>

If a tax paying citizen of Dade County could not contest alleged violations of this Bill in a court of equity, he would have no recourse for misappropriations of his tax dollars, and the stated purposes of the Bill would be ignored.<sup>207</sup>

Insofar as taxpayer standing was concerned, lastly, the court found that even though the money had been spent—allegedly illegally—there was ample basis for equity jurisdiction.<sup>208</sup>

The Florida Supreme Court has held that,

"It is too well settled to be seriously questioned that a taxpayer has the right to maintain a suit against officers who have squandered or dissipated public funds, or who have unlawfully disposed of . . . public funds."

. . .

"[I]t appears to follow, necessarily, that suit must be instituted and maintained in equity because as a taxpayer the claimant has no right to recovery in his own behalf against the defendant, but he must recover, if at all, a judgment or decree which will require the wrongdoer to return . . . that which such wrongdoer has misappropriated . . . from the public treasury. Certainly there can be no difference in basic principles upon which rests the right of a taxpayer to enjoin ultra vires acts of public officers . . . and upon which rests the right of the taxpayer to require an accounting from and disgorgement by public officers."<sup>209</sup>

And, as the district court pointed out, "On the facts before us, plaintiffs not only sought reimbursement of funds which they alleged were improperly spent, but also sought an injunction against future promotional brochures."<sup>210</sup>

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205. *Krantzler*, 354 So. 2d at 128.

206. *Id.* at 128–129.

207. *Id.* at 129.

208. *Id.*

209. *Id.* (quoting *Armstrong*, 175 So. at 341). For a further discussion of *Armstrong*, review *supra* notes 70–74 and accompanying text.

210. *Krantzler*, 354 So. 2d at 129.

The *Horne* Court's apparent interpretation of *Rickman*—requiring a special injury beyond the threat of increased taxes<sup>211</sup>—began to flower in *Paul v. Blake*.<sup>212</sup> In *Paul*, ad valorem taxpayers filed suit for declaratory and injunctive relief in Dade County because of certain ad valorem tax exemptions of leasehold interests where the Government was the lessor.<sup>213</sup> The plaintiffs claimed that the ad valorem tax exemptions violated the Florida Constitution.<sup>214</sup> The Third District found that the plaintiffs did not suffer a special injury “distinct” from the general taxpaying public;<sup>215</sup> thus, they did not have standing on that basis.

It is the established law of this state that a taxpayer of the state or county<sup>[216]</sup> has standing to bring a declaratory decree and [an] injunctive action against the proper public officials to restrain the unlawful exercise of the state or county's taxing or spending authority only upon a showing of special injury to

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211. *Supra* nn. 157–166 and accompanying text (providing *Horne's* interpretation of *Rickman*).

212. 376 So. 2d 256 (Fla. 3d Dist. App. 1979).

213. *Id.* at 258.

214. *Id.*

215. *Id.* at 260. The court rejected the plaintiff's argument that standing is not required when a taxpayer files an action attacking an unlawful tax exemption; thus, in effect, it held that *State ex rel. Dofnos Corp. v. Lehman*, 131 So. 333 (Fla. 1930), did “not reveal the announcement of a contrary rule.” *Paul*, 376 So. 2d at 259 n. 2 (failing to cite the other cases that the plaintiff argued in its appellate brief).

*Lehman* was different in that the Florida Supreme Court found that a taxpayer could sue *in mandamus* to force a city tax assessor to comply with a state law that required an official to comply with a requirement that the tax rolls be certified. 131 So. at 333–334. The Court described the mandamus rule as being “designed to safeguard the interest of the taxpaying public and to secure fairness in valuation and uniformity in assessment, thus assuring to every one that his property will be assessed according to value and *the burden of taxation fairly distributed.*” *Id.* at 334 (emphasis added).

Of course, this does not implicate an unlawful expenditure of public funds, but the principle appears to be the same. If what the Government is doing will affect a taxpayer's tax liability negatively, then the taxpayer has standing. Read this way, *Lehman* did indeed announce a rule contrary to the way the district court, in *Paul*, understood *Rickman*. The fact that the certification law was changed so that it no longer applied to the State or counties does not seem to suggest that there is one taxpayer-standing rule for the State and counties and another rule for municipal corporations.

216. Curiously, the Third District did not include municipal corporations and special districts with taxing power. This does not seem to suggest that a different rule applies to them. Indeed, just a few years before, the court held that, in a taxpayer suit against a county, no injury beyond the pecuniary damage to the taxpayer plaintiff was required. *Krantzler*, 354 So. 2d at 128–129. Additionally, Judge Phillip A. Hubbart, who wrote *Paul's* panel opinion, was one of the judges on the unanimous panel in the earlier case. *Paul*, 376 So. 2d at 258; *Krantzler*, 354 So. 2d at 127; *see supra* nn. 197–210 and accompanying text (describing the holding in *Krantzler*).



such taxpayer which is distinct from that sustained by every other taxpayer in the taxing unit.<sup>217</sup>

The district court did, without any apparent justification or authority, expand the *Horne* rule to a constitutional challenge to the ad valorem tax exemptions.<sup>218</sup> In doing so, it found that “the danger of increased taxpayer suits” was outweighed by the “fundamental belief that such an unconstitutional exercise of the taxing and spending power is intolerable in our system of government.”<sup>219</sup>

In *Brown v. Firestone*,<sup>220</sup> the Florida Supreme Court, in the process of finding that a taxpayer would have standing under *Horne*<sup>221</sup> to challenge the nature of the Governor’s item vetoes as being in violation of the Florida Constitution,<sup>222</sup> made the following less-than-helpful comment regarding taxpayer standing in general: “In certain instances a party will not have standing unless he can show a ‘special injury.’”<sup>223</sup> This enigmatic pronouncement was made in response to the fact that the plaintiffs “claim[ed] no special or extraordinary injury.”<sup>224</sup> This comment about the general taxpayer-standing rule, along with its reference to *Rickman*, could mean that, in the absence of showing pecuniary injury, a taxpayer had to show some injury different in kind, not merely in degree, from the rest of the public. This is, of course, the correct way to interpret *Rickman*.<sup>225</sup> The comment could also mean that the “certain instances” amount to every taxpayer case that falls outside of the *Horne* exception.<sup>226</sup> Since *Rickman*, but not *Horne*, is cited for this proposition, it certainly could be argued that the former interpretation is correct.

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217. *Paul*, 376 So. 2d at 259 (citing *Horne*, 269 So. 2d at 659; *Henry L. Doherty & Co.*, 200 So. 238; *Rickman*, 74 So. 205).

218. *Id.* at 259–260.

219. *Id.* at 259.

220. 382 So. 2d 654 (Fla. 1980).

221. *Supra* nn. 157–166 and accompanying text (discussing the holding in *Horne*).

222. *Brown*, 382 So. 2d at 657–662.

223. *Id.* at 662 n. 2 (citing *Rickman*, 74 So. 205).

224. *Id.* at 662.

225. For additional discussion comparing the correct and incorrect readings of *Rickman*, review *supra* text following note 45.

226. See *supra* nn. 157–166 and accompanying text (discussing the exception established in *Horne*).

It is also interesting to note that, in *Brown*, the taxpayer-standing rule is put in the context of the Florida Supreme Court's "long [commitment] to the rule that a party does not possess standing to sue unless he or she can demonstrate a direct and articulable stake in the outcome of a controversy."<sup>227</sup> Although neither of the authorities cited for this proposition mentions the federal-taxpayer-standing rule,<sup>228</sup> this linkage between taxpayer standing and what sounds somewhat like the federal rule on case or controversy may not bode well for taxpayer standing given the federal rule that is linked to case or controversy.<sup>229</sup>

The Third District Court of Appeal again weighed in on the taxpayer-standing issue with the following confusing comment in *Tew v. School Board of Dade County*:<sup>230</sup>

Tew, suing solely in his capacity as an ad valorem taxpayer, filed a complaint challenging the use of Dade County School Board funds for the public education of recently arrived "refugee" children. Because no constitutional or statutory provision expressly forbids such expenditures, we agree with the trial court which, in dismissing the cause with prejudice, held that the plaintiff-appellant did not have standing to maintain the action.<sup>231</sup>

The court's reference to *Paul* was a pretty good indication of which way the wind was blowing by this time in the Third District. But even so, the brief, one-paragraph opinion is puzzling. Was the trial judge's discussion made on the merits, in that the School Board had not done anything illegal? If so, how did the

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227. 382 So. 2d at 662 (citing *Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972) (involving standing to challenge a campaign-finance law); *Smith v. Ervin*, 64 So. 2d 166 (Fla. 1953) (concerning a zoning change in adjacent property that had a negative effect on the plaintiff's property)).

228. A federal taxpayer suffers no cognizable injury, even if the expenditure violates the United States Constitution, unless the challenged expenditure is based upon Congress' delegated power to tax and spend, and the expenditure is in violation of an explicit limitation on that expenditure in the form of the First Amendment's Establishment Clause. *E.g. Flast*, 392 U.S. at 105–106; *Frothingham v. Mellon*, 262 U.S. 447, 487 (1923); see also *supra* nn. 164, 176 and accompanying text (describing *Flast's* exception to the federal-no-taxpayer-standing rule).

229. *E.g. Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59 (1978).

230. 389 So. 2d 1224 (Fla. 3d Dist. App. 1980).

231. *Id.* at 1224 (citing *Paul*, 376 So. 2d 256; *Rickman*, 74 So. 205). For additional information on *Paul*, consult *supra* notes 212–219 and accompanying text. For an additional discussion on *Rickman*, consult *supra* notes 29–45 and accompanying text.

court make a decision on the merits if Tew did not have standing? Perhaps Tew failed to allege any illegality. If he did not, he would not have had standing as a taxpayer, but this is not what the court said. Under *Rickman*, at least as originally understood, as a taxpayer, Tew should have had the opportunity to plead and prove, if he could, that the School Board's funds were being spent illegally with a concomitant detrimental effect on his taxes.

In *Florida Wildlife Federation v. State Department of Environmental Regulation*,<sup>232</sup> the Florida Supreme Court found that the special-injury rule of standing did not apply to "suits brought under the EPA," because the Legislature had indicated that it should not.<sup>233</sup> In its brief discussion of the special-injury rule, the Court indicated that,

[t]his Court originally formulated the special injury rule as a method of forestalling a multiplicity of suits.<sup>[234]</sup> . . . Under the rule, which developed in the area of public nuisance law, an individual could maintain suit to enjoin a nuisance only if that person could show injury different both in kind and degree from that suffered by the public at large.<sup>[235]</sup> The rule has been extended to taxpayer's suits.<sup>236</sup>

The cryptic phrase about the special-injury rule being extended to taxpayer suits with its reference to *Rickman* is, as has already been suggested,<sup>237</sup> subject to two very different interpretations. The first interpretation, relying upon the correct understanding of *Rickman*,<sup>238</sup> would be that, in a taxpayer suit, if the taxpayer cannot show a threatened tax increase because of some alleged illegal act of the government that he is suing, then the suit becomes nothing more than a challenge to the alleged illegal-

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232. 390 So. 2d 64 (Fla. 1980).

233. *Id.* at 67.

234. *Id.* (citing *Brown*, 52 So. 802; Tim E. Sleeth, *Public Nuisance: Standing to Sue without Showing "Special Injury"*, 26 U. Fla. L. Rev. 360 (1974)).

235. *Id.* (citing *Brown*, 52 So. at 804).

236. *Id.* (citing *Rickman*, 74 So. 205). The Court's reference to the special-injury rule as having to be "both in kind and degree" is puzzling. The special-injury rule has been described as having to be *not* in degree but in kind. *E.g. Henry L. Doherty & Co.*, 200 So. at 240. Beyond that, how can an injury be both unless it was really two separate injuries—one in degree and the other in kind?

237. *Supra* text following n. 45 (comparing the correct and incorrect readings of *Rickman*).

238. *Id.*

ity itself. In that situation, the taxpayer must show some injury peculiar to himself.<sup>239</sup> As the Court described in *Rickman*,

The taxpayer's injury specially induced by the unlawful act is the basis of his equity, and unless it is alleged and proved, there can be no equitable relief. His position is not contradistinguished from that of all other taxpayers, or citizens who are not taxpayers, and therefore cannot invoke the aid of equity merely to prevent an unlawful corporate act however much the act may shame his sense of pride in the faithful observance by public officials of the obligations of their public duties.<sup>240</sup>

The second way to interpret the Court's cryptic comment about taxpayer standing and special injury is that, as in public-nuisance suits,<sup>241</sup> the threatened monetary injury caused by an illegal act is not a sufficient equity, and the taxpayer must show an injury peculiar to himself not in degree but in kind.<sup>242</sup> This appears to be the current rule,<sup>243</sup> but it cannot be traced to *Rickman* correctly.

In *Florida Wildlife's* brief discussion of the special-injury rule, the Court cited *Horne* as an exception to apply when alleging that the Legislature's use of its taxing and spending power is not just illegal, but also unconstitutional.<sup>244</sup> This very narrow holding seems to have been extended to an allegation of the unconstitutionality of any expenditure of public funds.<sup>245</sup> The same question that arose in the *Rickman* case arises here. Does the *Horne* exception keep a taxpayer in court in a situation where he cannot allege monetary injury from a threatened increase in taxes or, in the alternative, is it necessary to keep him in court even if he can allege the threatened increase in taxes? The Court's unhelpful contribution to this issue in *Brown* has already been discussed.<sup>246</sup>

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239. *Id.*

240. *Rickman*, 74 So. at 207.

241. *E.g. Strickland*, 36 So. at 364–265.

242. *Supra* n. 236 (concerning the special-injury rule).

243. For a discussion of the Florida Supreme Court's interpretation of the special-injury rule, consult *infra* note 293 and accompanying text.

244. *Fla. Wildlife*, 390 So. 2d at 67.

245. *Id.* at 67–68; *supra* nn. 157–166 and accompanying text (discussing the holding in *Horne*).

246. For a discussion of the less-than-helpful comment, consult *supra* notes 220–229 and accompanying text.

Whatever the meaning of its more recent forays into the taxpayer-standing issue, the Court clearly appeared to cross the line in *Department of Revenue v. Markham*.<sup>247</sup>

The complaint for declaratory relief contained no allegation of any special injury, and it did not attack the constitutionality of the taxing statutes in question. It has long been the rule in Florida that, in the absence of a constitutional challenge, a taxpayer may bring suit only upon a showing of special injury which is distinct from that suffered by other taxpayers in the taxing district.<sup>248</sup>

The Court's reliance upon *Paul* strengthened this impression.<sup>249</sup>

In *Department of Education v. Lewis*,<sup>250</sup> the Florida Supreme Court again appeared to read *Rickman* as requiring a special injury whether or not the taxpayer plaintiff potentially suffered a monetary injury from public officials' illegal behavior.<sup>251</sup> The Court found that a citizen taxpayer had standing to challenge a

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247. 396 So. 2d 1120 (Fla. 1981).

248. *Id.* at 1121 (citing *Horne*, 269 So. 2d 659, and *Rickman*, 74 So. 205). Note how the Court, in this quote, leaves no room for the idea that the taxpayer needs to show special injury only if he cannot show pecuniary injury from a threatened increase in his taxes. Also, note the Court's comment that this has "long been the rule in Florida." *Id.* Compare this with the quote, *supra* notes 106–107, from the Florida Supreme Court's opinion in *Lewis*.

To the Court's characterization of its new version of taxpayer standing as having "long been the rule in Florida," I can only respond, Baloney!

249. *Markham*, 396 So. 2d at 1122. As the Court quoted in *Paul*, the Third District opined,

This rule [the new version of taxpayer standing] is based on the sound policy ground that without a special injury standing requirement, the courts would in all likelihood be faced with a great number of frivolous lawsuits filed by disgruntled taxpayers who, along with much of the taxpaying public these days, are not entirely pleased with certain of the taxing and spending decisions of their elective representatives. It is felt that absent some showing of special injury as thus defined, the taxpayer's remedy should be at the polls and not in the courts. Moreover, it has long been recognized that in a representative democracy the public's representatives in government should ordinarily be relied on to institute the appropriate legal proceedings to prevent the unlawful exercise of the state or county's taxing and spending power.

*Id.* (quoting *Paul*, 376 So. 2d at 259 (citing *Henry L. Doherty & Co.*, 200 So. at 239)). Whether this "sound judicial policy" is really that sound is doubtful. "[E]ven though the citizen taxpayer, who is also a voter, may "throw the rascals out" at the next election, even if such action exacts a measure of retribution it will not restore the looted treasury nor undo the illegally increased tax obligation." *Clayton*, 696 So. 2d at 1216; *supra* nn. 3–5 and accompanying text (expanding on the quoted passage from *Clayton*).

250. 416 So. 2d 455 (Fla. 1982).

251. *Id.* at 459; *supra* nn. 29–45 and accompanying text (providing a discussion of *Rickman*).

provision in a legislative appropriation act on the theory that it violated the Florida Constitution.<sup>252</sup> Not surprisingly, the Court cited *Horne* for this proposition,<sup>253</sup> which, of course, found that a constitutional challenge to taxing or spending was an exception to the special-injury requirement.<sup>254</sup> However, the Court also cited *Rickman*, which, on the one hand, tended to give the impression that, but for the *Horne* exception, the citizens and taxpayers could not have stayed in court. But, on the other hand, it could perhaps be argued that the plaintiffs, in building their theory of standing on *Horne*, did not even attempt to allege a threatened increase in their tax burden. Indeed, it is difficult to see how an increased tax burden could be linked to an alleged legislative attempt to use an appropriation bill to enact substantive law. So, it can be argued that, because no apparent attempt was made to allege threatened pecuniary injury, the Court hardly could have intended to comment on that aspect of *Rickman*.

*THREE DISTRICT COURT DECISIONS: THE ORIGINAL  
UNDERSTANDING OF RICKMAN WINS 7-2*

In *Godheim v. City of Tampa*,<sup>255</sup> the Second District Court of Appeal aligned itself 2-1 with the Third District's earlier decision in *Paul*, which interpreted *Rickman* to mean that alleging that an official's misconduct threatened a pecuniary injury was not enough for a taxpayer to have standing.<sup>256</sup> Some special injury to the plaintiff, not in degree but in kind,<sup>257</sup> was necessary.<sup>258</sup> The

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252. *Lewis*, 416 So. 2d at 459. The two constitutional provisions were Article III, Sections 6 and 12. Section 12 provides that, "[l]aws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." The Court described Section 12 as being "a corollary of [A]rticle III, [S]ection 6, which requires that all laws be limited to a single subject and matters properly related to that subject." *Id.*

253. *Id.*

254. *Horne*, 269 So. 2d at 663.

255. 426 So. 2d 1084. Godheim sued as citizen and taxpayer,

to enjoin the city from entering into a contract with Waste Management, Inc., for the design, construction and operation of a solid waste disposal and resource recovery facility. The complaint alleged that in awarding the contract . . . the city had violated the competitive bidding requirements of its own municipal ordinance as well as the Consultants Competitive Negotiations Act, [S]ection 287.055, Florida Statutes (1981).

*Id.* at 1085.

256. *Id.* at 1088; *Paul*, 376 So. 2d at 259-260.

257. See *supra* n. 91 and accompanying text (referring to *Henry L. Doherty & Co.*, which

Second District also found that this was the Florida Supreme Court's prevailing view.<sup>259</sup> While recognizing that *Rickman* did not have to be interpreted that way,<sup>260</sup> the court found that,

[a]t this point, . . . it makes no difference that others might read *Rickman* in a different light.<sup>[261]</sup> The [Florida] [S]upreme [C]ourt has, in fact, unmistakably interpreted *Rickman* to mean that the plaintiff must show a special injury different from other taxpayers in order to have standing to bring a taxpayer's suit.<sup>262</sup>

The *Godheim* majority did, when all is said and done, make somewhat of a case that the Court had decided, however wrongly, that for a taxpayer to have standing, it is not enough to allege a threatened pecuniary injury from government wrongdoing that does not rise to the level of a constitutional violation. Rather, a taxpayer must allege an injury that is peculiar to him or her in kind, rather than in degree.<sup>263</sup>

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required an injury "different in kind" for standing).

258. *Paul*, 376 So. 2d at 259.

259. *Godheim*, 426 So. 2d at 1087–1088.

260. *Id.* at 1087.

261. *Id.* The court noted that,

[t]he appellant makes a plausible argument that [*Rickman's* holding] has been misinterpreted. For example, the *Rickman* court may have only concluded that the taxpayer had no standing because there was no allegation that the cost of building the roads and bridges by day labor would exceed the cost of construction through competitive bidding; thus, there was no threat of increased taxation.

*Id.*

262. *Id.* The district court further asserted,

The [Florida Supreme Court] obviously believed this to be the law when it decided *Department of Administration v. Horne* because otherwise there would have been no need to make an exception to the special injury requirement in cases involving constitutional challenges. If there was any remaining uncertainty, it was dispelled in *Department of Revenue v. Markham* when the [S]upreme [C]ourt quoted with approval from that portion of *Paul v. Blake* which set forth the policy grounds for the special injury standing requirement.

*Id.* at 1087–1088.

This treatment of *Horne* is just too glib. As this Article's discussion of *Horne* pointed out, *supra* notes 157–166, it was not clear what the exception applied to. The *Horne* exception easily could have applied to the actual *Rickman* scenario where the taxpayer could not show threatened pecuniary injury. In other words, a taxpayer, such as *Rickman*, could stay in court if he met the *Horne* standards. The *Godheim* majority's interpretation of *Markham* and its reliance on *Paul* is closer to what those two cases actually stand for, but, again, it is not entirely clear that the Florida Supreme Court, in *Markham*, viewed the "*Rickman* Rule" the same as the *Godheim* majority.

263. *Godheim*, 426 So. 2d at 1087–1088.

However, the majority's argument virtually is lost in the shadow of Judge James E. Lehan's dissent which, in my opinion, rises to the level of law-review quality. The crux of Judge Lehan's take on the *Rickman* opinion can be summed up in the following sentence: "The teachings of *Rickman* are that unless a taxpayer complaining of an unlawful government action suffers from an increased tax burden, he must show special injury."<sup>264</sup> This is the same conclusion that I reached based upon a reading of *Rickman* and the interpretation that subsequent cases placed upon *Rickman*—especially those closest in time to *Rickman*.<sup>265</sup> He then concluded that, "[a]s Justice Ellis' opinion then goes on to show, the Florida Supreme Court was not willing to give a taxpayer standing to sue on the 'mere abstract conception' of an unlawful act by a governmental body."<sup>266</sup> Judge Lehan set out his understanding of the "true 'Rickman Rule,' based upon a reading of the whole *Rickman* opinion"<sup>267</sup> in the following way:

- (1) A taxpayer has standing to sue for an unlawful governmental act which increases his tax burden.
- (2) If a taxpayer cannot show such increased tax burden from such unlawful act, he must show either
  - (a) some other special injury distinct from that suffered by others, or
  - (b) that the action taken by the governmental body was unconstitutional.<sup>268</sup>

In the next segment of his dissenting opinion, Judge Lehan traced some of the earlier Florida Supreme Court cases that he considered to be consistent with his view of the "true Rickman Rule."<sup>269</sup> He paid particular attention to two cases—*Markham*

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264. *Id.* at 1091 (Lehan, J., dissenting).

265. *Supra* text following n. 45 (discussing the correct and incorrect readings of *Rickman*).

266. *Godheim*, 426 So. 2d at 1091–1092 (Lehan, J., dissenting) (quoting *Rickman*, 74 So. at 207). The lack of pecuniary injury turns the case into what has been called citizen standing, where the rule has always been that a special injury is required.

267. *Id.* at 1092.

268. *Id.* Part 2(b) represents the *Horne* addition to the "*Rickman* Rule." Judge Lehan concluded his understanding of the "true *Rickman* Rule" by asserting that, "[o]therwise, any relief must come either at the ballot box or from a lawsuit brought by some other public officer." *Id.*

269. *Id.* (citing *Wester*, 138 So. 721 (following the settled rule that citizen taxpayers may enjoin the payments of monies under a contract that public officers made in violation



and *Horne*—that can be said to have changed the “*Rickman* Rule.”

In *Markham*, it was Judge Lehan’s view that Markham’s lack of standing was generally consistent with Rickman’s lack of standing.<sup>270</sup> Rickman could not allege an increased tax burden because it was cheaper for the road-and-bridge district to use day labor than to use the competitive-bidding process as the law required.<sup>271</sup> Similarly, Markham could not allege an increased tax burden. As Judge Lehan explained,

*Markham* did not necessarily involve an alleged increased tax burden through governmental action; to the contrary, the plaintiff property appraiser in *Markham*, by trying to prevent taxation of non residents’ property, was trying to *prevent a reduction* of his own tax burden which, of course, was a part of overall gross tax revenues.<sup>272</sup>

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of statutes requiring a competitive-bidding process); *Robert G. Lassiter & Co.*, 128 So. 14 (granting the taxpayer standing for injunctive relief after the City of Sebring failed to following the competitive-bidding process); *Hathaway*, 119 So. 149 (holding that the citizen taxpayer had standing to enjoin the execution of illegal contracts involving payments from a public fund to which he was a contributor); *Anderson*, 41 So. 684 (holding that taxpayers have standing to restrain the spending of public monies when contracts are void and unauthorized); *Peck*, 7 So. 642 (finding that all resident taxpayers have the right to prevent a municipal corporation’s illegal spending through a court of equity)).

270. *Id.* at 1093. “Accordingly, *Markham* is entirely consistent with *Rickman* in that both cases involved lack of standing on the part of a plaintiff who did not allege an increased tax burden, in contrast to taxpayer-plaintiff in the instant case.” *Id.*

271. *Supra* n. 38 and accompanying text (identifying an increased tax burden as the key to conferring standing on a taxpayer and finding that was neither alleged nor proven in *Rickman*).

272. *Godheim*, 426 So. 2d at 1092 (Lehan, J., dissenting) (emphasis in original). There is a practical question of whether taxation of the nonresidents’ household goods and personal effects actually would have reduced Markham’s tax liability. The logical assumption would be that, if these were taxed more, revenue would pour into the coffers of Broward County and its municipal corporations, the Broward School District, and all local special districts with taxing power. However, as the First District pointed out in *Markham*, there might be less, not more, revenue, which would potentially increase Markham’s taxes.

The affidavit [of Representative Sessums] further recites that he had been approached by persons, including tax assessors [now called property appraisers], who advised him of the extreme difficulty in valuation of household goods and personal effects; that the valuation of that type of property was extremely subjective; and that the cost of making the [appraisals] would outweigh the tax revenues to be derived therefrom.

*Dept. of Revenue v. Markham*, 381 So. 2d 1101, 1109 (Fla. 1st Dist. App. 1979) (footnote omitted). Of course, all of this was for naught when the Court ruled that Markham had no standing. *Markham*, 396 So. 2d at 1121; *supra* nn. 247–248 and accompanying text (addressing the Florida Supreme Court’s inconsistency when considering taxpayer standing).

However, in *Colding v. Herzog*, the Florida Supreme Court upheld the Second District’s

Judge Lehan then turned his attention to *Horne*,<sup>273</sup> and his views can be summed up in the following sentence: “To the extent that *Horne* is an exception to *Rickman* it is only an exception to the portion of the *Rickman* case which requires special injury other than that represented by a taxpayer’s increased tax burden.”<sup>274</sup> He then asserted that, “[t]he holding by the majority [in *Godheim*] also appears to be not only against the weight of the law in other jurisdictions but against what apparently has been generally perceived to be Florida law.”<sup>275</sup> Lastly, Judge Lehan’s argument on the public policy question, described as “highly debatable policy choices,”<sup>276</sup> seems to be predicated upon the following consideration: “for every wrong, there is a remedy.”<sup>277</sup> He continued,

If a reply would be made, as in *Paul*, that that concept should not be applicable when potential hindrances of the efficient operation of a democratic governmental body are at stake, I would suggest that a democratic governmental body should be

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decision, which considered the same issue regarding the taxation of household goods and personal effects were subject to Florida’s ad valorem tax and held that they were not “irrespective of whether the goods [were] owned by residents or non-residents.” 467 So. 2d 980, 981 (Fla. 1985). As the Court described, the Legislature had determined that “the expense of assessment and collection would exceed the revenue generated from the tax.” *Id.* at 983. Additionally, the Court clearly stated that *Markham* was decided solely on the standing issue and that “this Court neither rejected nor disapproved the legal analysis in the district court’s *Markham* decision.” *Id.* at 982.

Putting all of this together, if, in *Markham*, the Court had recognized that *Markham*, in seeking the authority not to assess the household goods and personal property of non-residents, was actually trying to prevent an illegal *increase* in his taxes, caused when the appraisal and collection cost exceeded the amount the tax would bring in, then he would have in effect been alleging an increase in his taxes, and the Court would have had to question whether this was adequate standing under the “*Rickman* Rule.” The end result of all this is to dramatize Judge Lehan’s point that the *Markham* Court could not have considered the issue of standing based on an alleged illegality that would cause a tax increase.

273. *Supra* nn. 162–166 and accompanying text (illustrating how the ambiguity in *Horne* caused problems).

274. *Godheim*, 426 So. 2d at 1093 (Lehan, J., dissenting). Essentially, I have taken the same view as *Horne*, and I differ with Judge Lehan’s analysis in that “special injury” is required only if the plaintiff taxpayer cannot show a threatened increase in his taxes through illegal activity. The threatened tax increase should not be described as special injury.

275. *Id.* at 1095 (Lehan, J., dissenting) (citing McQuillin, *supra* n. 204, at § 52.14). To review pertinent portions of *Municipal Corporations*, consult *infra* Appendix W.

276. *Godheim*, 426 So. 2d at 1096 (Lehan, J., dissenting) (quoting *Paul*, 376 So. 2d at 259).

277. *Id.*

able to withstand assault by taxpayers asserting unlawfully increased tax burdens.<sup>278</sup>

In *Fornes v. North Broward Hospital District*,<sup>279</sup> the Fourth District Court of Appeal sided with Judge Lehan's *Godheim* dissent and held that alleging an increased tax burden due to a governmental illegal act was sufficient to grant standing upon a taxpayer.<sup>280</sup> The court, in my opinion, correctly opined that,

[a]lthough there are numerous cases in Florida involving a taxpayer's suit to prevent the illegal expenditure of public funds, at the present time there appears to be some uncertainty regarding the requirements for standing to bring such a suit. That uncertainty is well presented by the majority and dissenting opinions in the *Godheim* case relied upon by the trial court.<sup>[281]</sup> Since all of the arguments pro and con are presented therein, we will not unduly belabor the point here. Suffice to say, we are persuaded by the dissenting opinion authored by Judge Lehan because it is supported by a long line of Florida Supreme Court decisions holding that a taxpayer has standing to sue to prevent the illegal expenditure of public funds where he alleges that such expenditures will increase his tax burden.<sup>282</sup>

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278. *Id.* Judge Lehan went on to say,

Such assaults, if restricted to those involving allegations of increased taxes, in contrast to simply abstract allegations of governmental wrongs (which was what was really to be discouraged by the benchmark case of [*Rickman*]) should not unduly hamper, and should, in fact, strengthen, the democratic process founded upon a government of laws.

*Id.*

279. 455 So. 2d 584 (Fla. 4th Dist. App. 1984). *Fornes* sued the Hospital District and claimed that it had violated the competitive-bidding requirement in its charter by drawing "the specifications . . . to permit favoritism and collusion." *Id.* at 585.

280. *Id.* For a discussion of Judge Lehan's dissent in *Godheim*, review *supra* notes 264–278 and accompanying text.

281. *Fornes*, 455 So. 2d at 585. The trial court followed the *Godheim* majority and held that the taxpayer had no standing. *Id.*

282. *Id.*; see *supra* n. 269 (providing the cases that the *Fornes* court relied upon, and that Judge Lehan cited in his *Godheim* dissent). In addition, the Fourth District made reference to *Lewis*, 66 So. 2d 489, and *Ashcroft v. Melbourne Civic Improvement Board*, 232 So. 2d 436 (Fla. 4th Dist. App. 1970). *Fornes*, 455 So. 2d at 585; see *supra* nn. 97–109 and accompanying text (discussing *Lewis*). In *Ashcroft*, the Fourth District reversed the trial court's dismissal of a complaint that alleged a misuse of public money when the City of Melbourne spent public funds to build an irrigation system at a public golf course leased to a private golf club. 232 So. 2d at 436–437 (citing *Mayes Prtg. Co. v. Flowers*, 154 So. 2d 859 (Fla. 1st Dist. App. 1963); *Lewis*, 66 So. 2d 489).

In *Mayes Printing Co.*, the First District, in a case involving a violation of a competi-

Additionally, the court correctly stated that,

[t]he difficulty in determining the present status of the law on this question stems primarily from [*Markham, Horne, and Paul*] and their interpretation of [*Rickman*]. Those cases state that the “*Rickman Rule*” still obtains, but the *Godheim* majority cites them as support for the position that, in order to have standing, the taxpayer must suffer a special injury distinct from other taxpayers. The *Rickman* opinion, which has apparently not been overruled, found that an allegation of an increased tax burden fulfills the standing requirement because it constitutes a peculiar injury distinct from other inhabitants.<sup>283</sup>

“Impressed” with Judge Lehan’s policy arguments,<sup>284</sup> the Fourth District provided the following example:

[I]f an offended taxpayer cannot sue to prevent such activity, who will? Even other bidders may not have standing unless they, too, are taxpayers. Furthermore, an interesting question presents itself, should the enforcement of competitive bidding laws be left solely to the public officials and the bidders?<sup>285</sup>

The court then certified the following question to the Florida Supreme Court:<sup>286</sup>

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tive-bidding statute, adopted the trial judge’s memorandum opinion as follows:

“There is a long line of decisions of the appellate courts of this state to the effect that a taxpayer may enjoin the expenditure of public moneys, with respect to an illegal contract. [*E.g. Robinson’s, Inc. v. Short*, 146 So. 2d 108 (Fla. 1st Dist. App. 1962); *Wester*, 138 So. 721; *Robert G. Lassiter & Co.*, 128 So. 14.] There is also authority that where a public contract is let in violation of law, a citizen and taxpayer may sue in equity for an accounting and recover back for the benefit of the public treasury money paid pursuant to the void contract.”

154 So. 2d at 865.

In *Robinson’s*, the First District opined that,

[i]t naturally follows that if a citizen and taxpayer, when suing as such, has the right to injunctive relief to protect tax funds against illegal disbursement which will result from the carrying out of an unauthorized or illegal contract and if such citizen and taxpayer has the right to declaratory relief adjudging that a disbursement already made was illegal and such right is coupled with the right to have such illegal disbursement returned to the public treasury, he would likewise have the right to declaratory relief at any stage of the awarding and performance of an illegal contract.

146 So. 2d at 111.

283. *Fornes*, 455 So. 2d at 585–586 (emphasis in original).

284. *Id.* at 586.

285. *Id.*

286. See Fla. Const. art. V, § 3(b)(4) (providing the Florida Supreme Court with jurisdiction to hear certified questions from the district courts of appeal either of great public

Does a taxpayer who alleges that the taxing authority is acting illegally in expending public funds, which will increase his tax burden, have standing to sue to prevent such expenditure, or is it necessary that he suffer some other special injury distinct from other taxpayers (as opposed to other inhabitants) or launch a constitutional attack upon the taxing authority's action in order to have standing?<sup>287</sup>

In *Bull v. City of Atlantic Beach*,<sup>288</sup> the First District also followed Judge Lehan's *Godheim* dissent<sup>289</sup> and relied upon the Fourth District's *Fornes* decision.<sup>290</sup> The court certified the same question to the Florida Supreme Court as that certified in *Fornes*.<sup>291</sup>

In the *Godheim*, *Fornes*, and *Bull* trilogy, the district judges on the three panels voted 7–2 that the “*Rickman* Rule,” correctly understood, meant that a taxpayer has standing if he alleges that government wrongdoing would cause him an increased tax burden. It was only if the taxpayer could not do so that special injury was required.<sup>292</sup>

#### “THE MISTAKE”

In spite of this, the Florida Supreme Court had little difficulty finding that a showing of threatened pecuniary injury caused by government wrongdoing was not enough to grant taxpayer standing and that a taxpayer could stay in court only if he was able to show either a special injury different *in kind* from all other taxpayers or a constitutional violation.<sup>293</sup> In *North Broward Hospital District v. Fornes*,<sup>294</sup> the Court's majority opinion seemed

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importance or in conflict with another district court's decision).

287. *Fornes*, 455 So. 2d at 586.

288. 463 So. 2d 336 (Fla. 1st Dist. App. 1985). *Bull* involved an alleged violation of competitive-bidding requirements that the taxpayer claimed would increase his tax burden. *Id.* at 337.

289. *Id.* at 338. For an indepth discussion on Judge Lehan's *Godheim* dissent, consult *supra* notes 264–278 and accompanying text.

290. *Bull*, 436 So. 2d at 337–338; see *supra* nn. 279–287 and accompanying text (discussing *Fornes*).

291. *Bull*, 436 So. 2d at 338; see *supra* n. 287 and accompanying text (providing the certified question in *Fornes*).

292. *Supra* n. 45 and subsequent text (providing the correct interpretation of the “*Rickman* Rule”).

293. *Fornes*, 476 So. 2d at 154–156.

294. 476 So. 2d 154.

to be a model of “here’s the result we want, now how do we get there.” Not surprisingly, given the long history of caselaw—mostly Supreme Court caselaw—that went the other way, the Court had very few cases with which to work.<sup>295</sup> And that caselaw, with the exception of the Third District’s *Paul* decision,<sup>296</sup> was ambiguous at best.

The Court signaled, from the outset, that it would “continue to adhere to precedent and hold that absent a constitutional challenge, a taxpayer must allege a special injury distinct from other taxpayers in the taxing district to bring suit.”<sup>297</sup> If this is truly the rule, why bother to call the issue one of taxpayer standing? What benefit does that status bring to the plaintiff beyond a suit by any citizen such as in *Save Sand Key*?

The Court began the defense of its indefensible position with reference to *Henry L. Doherty & Co.* and asserted that, since 1941, it had “consistently held that a mere increase in taxes does not confer standing upon a taxpayer to challenge a governmental expenditure.”<sup>298</sup> The Court majority, however, was not off to an auspicious start.

To begin with, as Justice Raymond Ehrlich’s dissent pointed out, *Henry L. Doherty & Co.* “does not [even] address a taxpayer suit to enjoin illegal expenditures.”<sup>299</sup> Rather,

[it] involved a land-use decision which converted a pathway used by pedestrians and cyclists to private ownership. The petitioner alleged that the ordinance vacating the pathway was improperly enacted without notice and that he was inconvenienced by the loss of easy access from his property to the beach. The Court held that petitioner’s injury was no different in kind from that suffered by others who would no longer be able to use the walkway, thus he lacked standing to protest the ordinance. This case did *not* involve illegal expenditures of tax revenues

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295. *Fornes* applied the following cases to its analysis: *Henry L. Doherty & Co.*, *Horne*, *Markham*, *Save Sand Key*, *Paul*, and a misconstrued interpretation of *Rickman*. *Id.* at 155–156. *Godheim*’s majority opinion was mentioned only in the context of the *Fornes* trial court’s reliance upon it. *Id.* at 155.

296. *See supra* nn. 256–258 and accompanying text (discussing *Paul* in the context of the *Godheim* case).

297. *Fornes*, 476 So. 2d at 154.

298. *Id.* at 155 (citing *Henry L. Doherty & Co.*, 200 So. 2d 238).

299. *Id.* at 157 (Ehrlich & Shaw, JJ., dissenting).

and therefore is not controlling—or even applicable—to the case now before the Court.<sup>300</sup>

Also, reconsider the Court's use of the following quote from its decision in *Henry L. Doherty & Co.* to justify the result it clearly wanted to reach in *Fornes*:

“Both parties [in *Henry L. Doherty & Co.*] seem to recognize the rule announced in *Rickman v. Whitehurst*, . . . that in the event an official threatens an unlawful act, the public by its representatives must institute the proceedings to prevent it, unless a private person can show a damage peculiar to his individual interests in which case equity will grant him succor.”<sup>301</sup>

Of course, this is part of the “*Rickman* Rule” correctly understood! Because the taxpayer in *Rickman* could not show threatened monetary injury, he was stuck with the general equity principles seen in public-nuisance cases—that equity will provide relief only if the plaintiff's injury is different in kind from the public generally.<sup>302</sup> Looked at this way, it might have been a mistake for the *Henry L. Doherty & Co.* Court to use *Rickman* at all. However, because *Rickman* was used, the Florida Supreme Court in *Fornes* was under an obligation to recognize the context in which the rule was used and not to blatantly mischaracterize its meaning! Only Justices Ehrlich and Leander J. Shaw, Jr., through the dissent, were willing and able to carry out this obligation, which might be called an obligation to intellectual honesty!<sup>303</sup>

For the Florida Supreme Court to assert that, since *Henry L. Doherty & Co.*, it had not found taxpayer standing for mere tax increases,<sup>304</sup> was simply not the truth—even though *Henry L. Do-*

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300. *Id.* (emphasis in original). The conclusions made earlier in this Article, *supra* nn. 92–93 and accompanying text, regarding the misuse of the “*Rickman* Rule” in *Henry L. Doherty & Co.* bears repeating here.

301. *Fornes*, 476 So. 2d at 155 (quoting *Henry L. Doherty & Co.*, 200 So. at 239).

302. *See e.g. supra* nn. 15–16 and accompanying text (discussing the requirements for a taxpayer to have standing to abate a public nuisance).

303. *Fornes*, 476 So. 2d at 157 (Ehrlich & Shaw, JJ., dissenting). One is reminded of Justice Potter Stewart's comment in *Hugdens v. National Labor Relations Board*, “Our institutional duty is to follow until changed the law as it now is, not as some Members of the Court might wish it to be.” 424 U.S. 507, 518 (1976). Thus, in addition to the “obligation to intellectual honesty,” there is the concomitant “institutional duty” that Justice Stewart referred to. Justices Ehrlich and Shaw were true to this “institutional duty.”

304. *Fornes*, 476 So. 2d at 155.

*herty & Co.* was not a taxpayer-standing case. What comes closer to being the truth, and what the Court inadvertently may have had in mind were the cases similar to *Henry L. Doherty & Co.*—nontaxpayer-standing cases that relied on *Rickman*—that were decided subsequently. If it was, that inadvertence helped lead to the result in *Fornes*.

However, even after *Henry L. Doherty & Co.*, the Court in *Lewis* clearly enunciated *Rickman*'s original understanding as follows:

There is no question that the appellee had the right to institute this suit as a resident taxpayer to enjoin the illegal act of a statutory commission in the expenditure of public funds which he in common with other property owners and taxpayers might otherwise be compelled to contribute to or pay.<sup>305</sup>

Additionally, the Court clearly seemed to approve the original understanding of taxpayer standing in *R.L. Bernardo & Sons*,<sup>306</sup> when it reversed the First District Court of Appeal on the issue of whether one's status as a taxpayer could be enough to establish taxpayer standing through a deposition that had not been alleged in the complaint.<sup>307</sup> On remand, the Court stated that the district court would have to "decide whether the [trial judge] erred in deciding that it was not necessary that [the plaintiff] be an ad valorem taxpayer in order to maintain this suit."<sup>308</sup> This certainly seems to be a vindication of *Rickman*'s original understanding.

Since their creation in 1957, the district courts of appeal have seemed to, at least to some extent, followed *Rickman*'s original understanding. For example, in *R.L. Bernardo & Sons*,<sup>309</sup> the First District opined that, "[t]he [*Rickman*] rule generally recognizes the right of a citizen and taxpayer to maintain a suit to prevent the unlawful expenditure by public officials of public monies

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305. *Lewis*, 66 So. 2d at 492. For an additional discussion of *Lewis*' application of the "*Rickman* Rule," consult *supra* notes 97–109 and accompanying text.

306. 145 So. 2d at 447–478. For a more complete discussion of *R.L. Bernardo & Sons*, consult *supra* notes 138–139 and accompanying text.

307. *R.L. Bernardo & Sons*, 145 So. 2d at 478.

308. *Id.*

309. 134 So. 2d 297. For an additional discussion on *R.L. Bernardo & Sons*, consult *supra* notes 129–156 and accompanying text.



unless otherwise provided by legislative enactment.”<sup>310</sup> Additionally, in *Krantzler*, the Third District asserted that,

[t]he Supreme Court of Florida has held that “[i]t is too well settled to be seriously questioned that a taxpayer has the right to maintain a suit against officers who have squandered or dissipated public funds, or who have unlawfully disposed of . . . public funds.”<sup>311</sup>

If the precedent was as clear as the Court suggested in *Fornes*, then the First and Third District Courts of Appeal were in blatant violation of that precedent.<sup>312</sup> It is true that the Third District went the other way in *Paul*,<sup>313</sup> and there was the 2–1 district court opinion in *Godheim*.<sup>314</sup>

After *Henry L. Doherty & Co.*, courts began to reference the “*Rickman* Rule” in cases that did not involve taxpayer standing. This appears to have first occurred in *Biggs*,<sup>315</sup> and, in 1955, the Court did it again in *Bennett*,<sup>316</sup> a case that did not involve an alleged illegal tax increase, but rather an issue of whether the City had violated its master plan in the location of two railroad grade crossings.<sup>317</sup>

The district courts of appeal were also using *Rickman* in cases that did not involve threatened tax increases because of alleged unlawful government activities. In *Pirtle*,<sup>318</sup> the plaintiff asked for declaratory injunction relief regarding two deeds for dedication.<sup>319</sup> As the Second District pointed out, the circuit judge

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310. *R.L. Bernardo & Sons*, 134 So. 2d at 299 (citing *Rickman*, 74 So. 205).

311. 354 So. 2d at 129 (quoting *Armstrong*, 175 So. at 340). For further discussion of the Third District’s adherence to the original “*Rickman* Rule” in *Krantzler*, review *supra* notes 197–208 and accompanying text.

312. See *Hoffman v. Jones*, 280 So. 2d 431, 433–434 (Fla. 1973), where the Florida Supreme Court instructed the district courts of appeal that, when in disagreement with Supreme Court precedent, the courts should decide *in accordance with that precedent* and, then certify a question that would, in effect, ask the Supreme Court to reconsider its precedent.

313. *Supra* nn. 212–219 and accompanying text (discussing *Paul*).

314. *Supra* nn. 255–263 and accompanying text (discussing *Godheim*).

315. 60 So. 2d 399; see *supra* nn. 94–95 and accompanying text (discussing *Biggs*’ one-paragraph opinion, which applied *Rickman* even though taxpayer standing was not an issue).

316. 78 So. 2d 567.

317. *Id.* at 567–568; see *supra* nn. 110–113 and accompanying text (providing an in-depth discussion of *Bennett*).

318. 101 So. 2d 397.

319. *Id.* at 398.

understood the distinction that had to be made when the “*Rickman* Rule” was applied to a case that did *not* involve a threatened monetary injury to a taxpayer caused by public officials’ alleged wrongdoing. The circuit judge correctly noted that, under the general equitable rule, the plaintiff must allege and ultimately prove that “there would be any injury resulting to the plaintiff different in kind from that sustained by the public generally.”<sup>320</sup> He then took notice of the taxpayer-standing exception, finding that the plaintiff failed to plead or prove—which of course he could not—“that the action sought to be enjoined would result in any increase in taxes.”<sup>321</sup> He then added the rest of the “*Rickman* Rule”—“or any special injury to the plaintiff.”<sup>322</sup> In other words, the circuit court recognized that, absent the taxpayer-type allegations regarding a tax increase caused by public wrongdoing, the general equity rule<sup>323</sup> required an injury “different in kind from that sustained by the public generally,”<sup>324</sup> or a “special injury.”<sup>325</sup> The confusion that now exists is illustrated in the following language that the Second District used to affirm the circuit court’s dismissal of Pirtle’s complaint: “We are of the opinion that upon the record presented there was no showing of interest in the plaintiff different from the public generally.”<sup>326</sup>

So far, that is fine. However, the court was describing the general equity rule;<sup>327</sup> therefore, instead of citing *Rickman* as authority,<sup>328</sup> it should have cited a case like *Strickland*.<sup>329</sup> Thus, *Rickman* could wrongly be thought of as doing no more than applying the general equity rule even to taxpayers who allege pecu-

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320. *Id.*

321. *Id.*

322. *Id.*

323. To understand the general equity rule, review the following explanation provided in *Strickland*: “Individuals cannot have relief in equity against even an admitted public nuisance unless they make a case of special and particular injury to themselves. They must sustain an injury not common to the public.” 36 So. at 364–365.

324. *Pirtle*, 101 So. 2d at 398.

325. *Id.*

326. *Id.*

327. *Supra* n. 323 (providing *Strickland*’s explanation of the general equity rule).

328. *Pirtle*, 101 So. 2d at 398. For a discussion of other cases that *Pirtle* cited, review *supra* note 117 and accompanying text.

329. *Id.*

niary injury caused by government wrongdoing, which, of course, is just what the Florida Supreme Court did in *Fornes*.<sup>330</sup>

This unfortunate trend continued at the district-court level in *Guernsey*.<sup>331</sup> Suffice it to say, that to cite *Rickman* in such a case could involve *only* the general equity rule of an injury different from the public generally, or “special injury” in a case that does not remotely contain a claim of increased taxation caused by public wrongdoing can only continue to befog the original meaning of the “*Rickman* Rule.”

In *Fornes*, the Florida Supreme Court put out the word, wrong though it was, and it was heard. In *City of Treasure Island v. Peoples Committee for Common Sense Government*,<sup>332</sup> the Committee sought and received “a temporary injunction prohibiting the City from spending public funds to advertise its position on an upcoming referendum vote.”<sup>333</sup> Having obviously taken counsel of *Fornes*, the Committee sought to stay in court by arguing *Horne*’s constitutional challenge rule.<sup>334</sup> Judge Lehan, for the majority, concluded that, even though under *Horne* the taxpayer plaintiff does not need to show special injury, the plaintiff does have to show “that it is a taxpayer and is therefore affected by the spending of tax money which it is challenging.”<sup>335</sup> Making reference to *Fornes*’ interpretation of *Rickman*, the Court referred to *Godheim*’s majority opinion and *Rickman*.<sup>336</sup> In a footnote, it referenced *Fornes* itself.<sup>337</sup>

### A LOST CHANCE AT REDEMPTION

In *Clayton v. School Board of Volusia County*,<sup>338</sup> the Fifth District Court of Appeal was obviously unhappy with *Fornes*’ version of *Rickman*<sup>339</sup> but was, of course, obliged to follow it.

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330. See *supra* nn. 293–304 and accompanying text (discussing the *Fornes* case).

331. 107 So. 2d 184; see *supra* nn. 118–128 and accompanying text (discussing the *Guernsey* case).

332. 505 So. 2d 1116 (Fla. 2d Dist. App. 1987).

333. *Id.* at 1116.

334. *Id.*; *supra* nn. 157–166 and accompanying text (discussing *Horne*’s constitutional challenge rule and its ambiguity when applied to the “*Rickman*” Rule).

335. *Peoples Comm.*, 505 So. 2d at 1116 (citing *Markham*, 396 So. 2d 1120).

336. *Id.*

337. *Id.* at n. 1.

338. 667 So. 2d 942 (Fla. 5th Dist. App. 1996). Clayton sued to stop the Volusia County School Board from paying “in excess of \$500,000” in a negotiated settlement of an eminent-domain proceeding. *Id.* at 943. Thus, the question of property value never reached the

Our analysis is not a criticism of the 1985 [Florida] [S]upreme [C]ourt. We recognize the authority of the [S]upreme [C]ourt and our obligation to apply the law as directed by its decisions. We do not believe it inappropriate, however, after a reasonable period of time and after observing the effect of a particular decision on the litigants that come before us, to request that the [S]upreme [C]ourt review a decision that is so often challenged before our court. It is up to the [S]upreme [C]ourt to determine whether the request deserves consideration.<sup>340</sup>

As the Fifth District asserted, it had to decide whether Clayton had standing under *Fornes*.<sup>341</sup> While the court recognized the effect of the *Fornes* rule,<sup>342</sup> it obviously sided with Justices Ehrlich's and Shaw's dissent.<sup>343</sup> Thus, the court interpreted *Chamberlain* to support taxpayer standing because the Florida Supreme Court made it clear that taxpayers could sue to prevent tax increases caused by the misconduct of a municipal corporation's offices.<sup>344</sup>

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eminent-domain jury. *Id.* The settlement amount was "over twice the amount of the appraisals in the record." *Id.* It was Clayton's view that this transaction violated Florida Statutes Section 235.054(1)(b), which placed the following requirements on the School Board: (1) "obtain at least two appraisals by appraisers approved pursuant to [Florida Statutes Section] 253.025," and (2) "approve the purchase by an extraordinary vote" in the event that "the agreed purchase price exceeds the average appraised value." *Id.* The School Board's "bare majority vote" approved the purchase. *Id.* It was the School Board's position that Section 235.054(1)(b) did not apply because the transaction was part of an eminent-domain proceeding. *Id.* However, this question was not addressed because the circuit court held that Clayton did not have standing under the *Fornes* rule. *Sch. Bd. of Volusia County v. Clayton*, 691 So. 2d 1066, 1067 (Fla. 1997).

339. *See supra* nn. 3–5 and accompanying text (requiring special injury rather than paying more taxes to obtain standing).

340. *Clayton*, 667 So. 2d at 943 n. 1.

341. *Id.* at 943. The district court recognized that, "Clayton admittedly is not economically impacted differently from any other taxpayer." *Id.* The court then wryly commented that the *Fornes* rule "truly creates a standing rule that is an anomaly: if everyone is injured, no one can sue." *Id.* This was obviously a sore point for the court, which later commented that,

[t]he Board argues here that the protection of the public interest even in cases such as this is adequately left in the exclusive hands of the Attorney General and the State Attorney. This argument is refuted by the obvious fact that only Clayton has stepped [forward] to protect the public interest in this case.

*Id.* at 944 n. 2.

342. *Id.*

343. "A careful reading of [*Chamberlain*, *Rickman*, and *Henry L. Doherty & Co.*] lends support to Justice Ehrlich's contention" that the Supreme Court had "misread the precedent" in *Fornes*. *Id.* at 943.

344. *Chamberlain*, 23 So. at 574; *see supra* nn. 27–28 and accompanying text (providing the district court's quote in *Chamberlain*).

In the alternative, the Fifth District interpreted *Florida ex rel. Clayton v. Board of Regents*<sup>345</sup> as providing a second exception—the “unique circumstances of the case’ exception”—to the *Fornes* ruling that taxpayers must suffer a special injury; the *Horne* constitutional argument exception was the first exception.<sup>346</sup> The court conceded, as it almost had to, “that it is not clear exactly what the specific circumstances were in *Regents* that authorized standing.”<sup>347</sup> This is a charitable description of what the Florida Supreme Court said of this issue in *Regents*. However, perhaps, “[seeing] through a glass, darkly”<sup>348</sup> would have been more apropos, although certainly not a way in which the district court would be comfortable describing the landmark of the Supreme Court. The lead-in to the statement was:

Clayton<sup>349</sup> asserts that [Betty] Castor’s appointment [to the presidency of the University of South Florida] is void based on the common law rule that a government body with appointment powers [the Board of Regents of which Castor was a member] may not appoint one of its own to a position.<sup>350</sup>

Clayton sought a writ of mandamus, and the Florida Supreme Court found that it had jurisdiction under Article V, Section 3(b)(8) of the Florida Constitution.<sup>351</sup> Then came the following statement: “Although, under the unique circumstances of this case, we do find that Clayton has standing to bring the petition.”<sup>352</sup> No wonder the Fifth District was puzzled.

Nevertheless, it forged ahead.

Since we assume that the new “unique circumstances of the case” rule on standing applies to all courts when dealing with a mandamus petition, it is our obligation to help shape the limits

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345. 635 So. 2d 937 (Fla. 1994).

346. *Clayton*, 667 So. 2d at 945. For an additional discussion of *Horne*, consult *supra* notes 157–166 and accompanying text.

347. *Clayton*, 667 So. 2d at 945.

348. 1 *Corinthians* 13:12 (King James).

349. The *Regents* Clayton and the *School Board* Clayton are the same person. *Clayton*, 691 So. 2d at 1068 n. 1.

350. *Regents*, 635 So. 2d at 937.

351. *Id.*

352. *Id.*

and better define such rule subject to [Florida] [S]upreme [C]ourt review and correction.<sup>353</sup>

In order to do so, the Fifth District recognized that it “should determine and explain the standard for this new exception.”<sup>354</sup> With virtually no Florida Supreme Court explanation of the new rule, the district court reached the following conclusion:

the “unique circumstances” doctrine may apply when one challenges the very authority of the public board to take the contested action or, as in our case, contends that no action was lawfully taken by the board because it failed to obtain the necessary vote yet proceeded as though it had officially acted.<sup>355</sup>

The Fifth District was undoubtedly propelled to this view of the action the Court took in *Regents*, because that Court asserted, “[taxpayer standing] is an issue that almost daily faces the trial court and regularly faces us.”<sup>356</sup>

Putting a reasonable interpretation—although not the only interpretation—on the Fifth District’s take on the “unique circumstances” situation, it could be argued that the court was laying the groundwork for the “unique circumstances” to encompass all of taxpayer standing. After all, what issue confronted the trial and district courts with “great regularity” other than the taxpayer-standing problem? Now, admittedly, *Regents* and the *Clayton* case before the Fifth District were both *mandamus* cases, presumably on the theory that neither the Board of Regents nor the Volusia County School Board had discretion in their respective situations; thus, *mandamus* was the appropriate remedy. But, this could apply to many, if not all, of the taxpayer-standing cases. Could it not?

For example, in *Fornes*,<sup>357</sup> it could be argued that, even though the North Broward Hospital District had discretion to design the specifications for the competitive-bidding process, that discretion did not run to, as Fornes alleged, drawing them “so as to permit favoritism and collusion and stifling of the competitive

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353. *Clayton*, 667 So. 2d at 945.

354. *Id.*

355. *Id.* at 946.

356. *Id.* at 945.

357. For a discussion of *Fornes*, consult *supra* notes 293–304 and accompanying text.

bidding process required under the district charter.”<sup>358</sup> We are not told of the exact nature of Fornes’ complaint. Although, the district court did assert that, “[s]imultaneously with the filing of the complaint, Fornes filed a motion for a preliminary injunction.”<sup>359</sup> But even if Fornes sought declaratory and injunctive relief under Chapter 87 of the Florida Statutes, was that scenario much different from the *mandamus* scenario? If the Board of Regents did not, as alleged, have the common-law authority to appoint one of its members to the presidency of a university—thus, subjecting itself to a *mandamus* action<sup>360</sup>—and the Volusia County School Board did not have the authority to pay the price it did without the Board’s supermajority vote,<sup>361</sup> why would it be different if a taxpayer sought declaratory and injunctive relief against alleged rigged bidding specifications that did not fit neatly under a *mandamus* cause of action?<sup>362</sup> So, perhaps in *Clayton*, the Fifth District saw the “special circumstances rule” as providing a way around the special-injury requirement for taxpayer lawsuits vaguely similar to, but far more extensive than, the *Horne* constitutional exception.<sup>363</sup>

As another, or at least an additional, reason for the “unique circumstances” doctrine, the district court suggested that, “the [Florida] [S]upreme [C]ourt was merely recognizing a position similar to the one announced by the New Mexico Supreme Court in *State ex rel. Clark v. Johnson*, 904 P.2d 11, 18 (N.M. 1995).”<sup>364</sup> The New Mexico Supreme Court “simply elect[ed] to confer standing on the basis of the importance of the public issues involved.”<sup>365</sup> The referenced public issues were “of constitutional and fundamental importance; in resolving those issues, we will contribute to

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358. *Fornes*, 455 So. 2d at 585.

359. *Id.* As to the nature of the *Fornes* case, Judge John Antoon II dissented and suggested that Fornes “sought injunctive relief.” *Clayton*, 667 So. 2d at 947 (Antoon, J., dissenting).

360. *Regents*, 635 So. 2d at 937.

361. *Clayton*, 667 So. 2d at 943.

362. *Fornes*, 455 So. 2d at 585.

363. For an additional discussion on *Horne*, consult *supra* notes 157–166 and accompanying text.

364. *Clayton*, 667 So. 2d at 946.

365. *Id.* (citing *Clark*, 904 P.2d at 18 (quoting *State ex rel. Segó v. Kirkpatrick*, 524 P.2d 975 (N.M. 1974)).

this state's definition of itself as [a] sovereign."<sup>366</sup> The Fifth District concluded by opining that,

[w]e believe that the issue of whether a public board can take official action with less than the requisite vote is of sufficient public importance to warrant standing under the "unique circumstances" standard or under the constitutional question exception.<sup>367</sup>

Then the district court certified the following two questions as being of great importance under Article V, Section 3(b)(4) of the Florida Constitution:

DOES THE "UNIQUENESS OF THE PARTICULAR CASE" STANDARD PERMIT A TAXPAYER CHALLENGE TO THE ACTION OF A PUBLIC BOARD WHICH IS ALLEGED TO BE ACTING IN EXCESS OF ITS STATUTORY AUTHORITY AND WHICH ACTION EITHER INCREASES THE TAX BURDEN OR WASTES PUBLIC MONEY?<sup>368</sup>

. . .

DOES THE ACTION OF A PUBLIC BOARD WHICH EITHER INCREASES TAXES OR WASTES PUBLIC MONEY RISE TO THE LEVEL OF A CONSTITUTIONAL ISSUE WHEN IT IS ASSERTED THAT THE PUBLIC BOARD EXCEEDED ITS AUTHORITY GRANTED BY THE LEGISLATURE?<sup>369</sup>

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366. *Id.* (citing *Clark*, 904 P.2d at 18). *Clark* revolved around the "assert[ion] . . . that the governor [had] exercised the state legislature's authority." *Id.* It is difficult to tell whether, in bringing up *Clark*, the district court suggested that the *Horne* constitutional exception was implicated, or whether the court suggested that the "unique circumstances" exception was in the nature of, in the words of the New Mexico Supreme Court, an issue "of constitutional and fundamental importance." *Id.* (quoting *Clark*, 904 P.2d at 18). If the former, why did the Florida Supreme Court not elect to make reference to *Horne*? If the latter, could the Florida Supreme Court make use of this concept in petition for review in light of the aspects of its allocated discretionary jurisdiction in Article V, Sections 3(b)(4) (question of great public importance) and 3(b)(5) (question of great public importance or crucial to the administration of justice needing immediate resolution and the effect of the rule of constitutional interpretation) of the Florida Constitution? In any event, these questions did not have to be reached because of the way the Florida Supreme Court disposed of the issue. See *infra* n. 377 and accompanying text (providing a discussion of *Clayton*).

367. *Clayton*, 667 So. 2d at 946.

368. *Id.*

369. *Id.*



The court then reversed the circuit court's dismissal of Clayton's case and remanded for the entry of an order in his favor.<sup>370</sup>

Judge John Antoon II, in his dissent, stated that he believed the Florida Supreme Court's decision in *Fornes* was controlling in *Clayton*.<sup>371</sup> Furthermore, this *Clayton* case got no help from *Regents* because, "While it is unclear what the 'unique circumstances' were in [the *Regents*] case, [Judge Antoon] reject[ed] the majority's conclusion that the terse reference was intended to create an exception to the holding in *Fornes*."<sup>372</sup> However, Judge Antoon did suggest the following certified question "in an abundance of caution":

DOES A VOTER OR TAXPAYER HAVE STANDING TO PURSUE MANDAMUS RELIEF WHEN CHALLENGING THE LEGALITY OF THE GOVERNMENT'S EXPENDITURE OF FUNDS?<sup>373</sup>

In concluding his dissent, Judge Antoon seemed to suggest that, had an unfettered choice been his, he would have sided with Justice Ehrlich's dissent in *Fornes* and with at least part of the *Clayton* majority.<sup>374</sup> However, he believed that the Court decision in *Fornes* precluded that.<sup>375</sup>

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370. *Id.* at 947.

371. *Id.* (Antoon, J., dissenting).

372. *Id.* at 947–948. Judge Antoon expanded on this thought as follows:

[T]he [Florida] [S]upreme [C]ourt did not cite to *Fornes* [in *Regents*] and did not explain what was meant by the reference. Although the majority elevates this phrase to the status of a rule of law, in my view, it is at best obscure dictum. However, even if this language were intended to create such an exception to the law of standing, it would not apply in the instant case because there is nothing "unique" in either Clayton's status as a taxpayer or in Clayton's choice of mandamus as his vehicle for relief. Furthermore, I conclude that it is unlikely that, in so ruling, the [Florida] [S]upreme [C]ourt intended to make the distinction Clayton urges us to make here; that is, that standing to challenge government action exists when a challenger seeks mandamus relief but not when injunctive relief is sought. If such a distinction were intended, the [Florida] [S]upreme [C]ourt would have clearly said so. In any event, the decision in *Board of Regents* is certainly distinguishable inasmuch as that case did not pertain to a taxpayer challenge concerning the expenditure of public money, but instead, involved a citizen's challenge to the appointment of a university president, and as a result, the *Regents* court did not even cite to or mention the ruling in *Fornes* in its discussion of the standing issue.

*Id.* at 948. For a discussion of *Regents*, consult *supra* notes 345–370.

373. *Clayton*, 667 So. 2d at 948 (Antoon, J., dissenting).

374. *Id.*

375. *Id.*

The Florida Supreme Court was having none of what the Fifth District sought to do in *Clayton*. First, the Court refused to reconsider the *Fornes* decision<sup>376</sup> and stated that “[t]he requirement that a taxpayer seeking standing allege a ‘special injury’ or a ‘constitutional challenge’ is consistent with long established precedent.”<sup>377</sup>

As previously discussed,<sup>378</sup> even though the Florida Supreme Court cited *Rickman* in *Henry L. Doherty & Co.*, it did so in a non-taxpayer context.<sup>379</sup> A close reading of *Henry L. Doherty & Co.* reveals that neither the word “tax” nor the word “taxpayer” appears anywhere in the opinion. In plain terms, *Henry L. Doherty & Co.* does not stand for the proposition for which the Supreme Court cited it. It certainly did not involve taxpayer standing unless its reference to *Rickman* can be read to include a nontaxpayer suit that is akin to either a citizen complaint<sup>380</sup> or a public-nuisance case.<sup>381</sup> In either case, even if its reference to *Rickman* can somehow be expanded to include a taxpayer suit, it clearly would be *obiter dicta*. In any event, *Clayton*’s reference to *Henry L. Doherty & Co.* is lifted directly from *Fornes*, word-for-word.<sup>382</sup>

The Court also managed to extricate itself from its *Regents* comments.

We found [in *Regents*] that Clayton did have standing to bring the petition because of the *unique* circumstances presented there.<sup>[383]</sup> Accordingly, we will not extend that decision beyond the unique circumstances present in that case. Further, we make it clear that our finding that unique circumstances existed in that case should not be interpreted as having created an exception to *Fornes*.<sup>384</sup>

It is interesting to note that, in *Clayton*, the Court seemed to expand the *Horne* constitutional exception, which originally re-

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376. *Clayton*, 691 So. 2d at 1067–1068.

377. *Id.* at 1068 (citing *Henry L. Doherty & Co.*, 200 So. 238; *Rickman*, 74 So. 205).

378. *Supra* nn. 92–93 and accompanying text.

379. *Henry L. Doherty & Co.*, 200 So. at 239.

380. *Supra* nn. 167–190 and accompanying text (discussing *Save Sand Key*, where the plaintiff sued as a citizens’ group).

381. *Supra* nn. 15–21 and accompanying text (providing a discussion on public-nuisance cases).

382. Compare *Clayton*, 691 So. 2d at 1068, with *Fornes*, 476 So. 2d at 156.

383. *Clayton*, 691 So. 2d at 1068 (citing *Regents*, 635 So. 2d at 938) (emphasis added).

384. *Id.* (emphasis in original).

quired “an attack upon *constitutional* grounds based directly upon the Legislature’s *taxing and spending* power.”<sup>385</sup> That being the nature of the *Horne* constitutional exception, it appears that the Court, in granting Clayton’s request for “leave to file an amended complaint where he can assert a constitutional violation,”<sup>386</sup> granted leave to do the impossible. Clayton’s differences with the Volusia County School Board were over an alleged violation of a statutory limit in the Board’s spending power.<sup>387</sup> How Clayton could have parlayed these facts into a constitutional violation by the Florida Legislature of its taxing and spending power is anything but clear. He apparently did not try. In any event, the Florida Supreme Court quashed the Fifth District’s decision, answered “no” to the first certified question,<sup>388</sup> and did not reach the second question because Clayton did not allege a constitutional violation.<sup>389</sup>

As alluded to earlier,<sup>390</sup> on remand, the Fifth District was not overjoyed by the Florida Supreme Court’s *Clayton* decision.<sup>391</sup> The Fifth District recognized, as it had to, that the Court had stuck with its *Fornes* taxpayer-standing rule.<sup>392</sup> Following the Court’s lead,<sup>393</sup> the Fifth District “affirm[ed] the trial court’s dismissal of the complaint but remand[ed] with instructions that Clayton be permitted, if he [could], to allege a constitutional basis for his challenge.”<sup>394</sup> As previously noted,<sup>395</sup> it was difficult, if not impossible, to determine how Clayton could accomplish this. It may very well be indicative of how frustrated the Fifth District was with the current state of taxpayer standing that it actually suggested to Clayton that he might try to allege a constitutional chal-

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385. *Id.* at 1067 (quoting *Fornes*, 476 So. 2d at 155 (quoting *Horne*, 269 So. 2d at 663)) (emphasis in original).

386. *Id.* at 1068.

387. *Id.* at 1067.

388. *Id.* at 1068.

389. *Id.*

390. *Supra* nn. 3–5 and accompanying text (discussing the Fifth District’s approval of *Clayton*’s dissent).

391. *Id.*

392. *Clayton*, 696 So. 2d at 1216.

393. *See supra* nn. 376–389 and accompanying text (discussing the Florida Supreme Court’s decision in *Clayton*).

394. *Clayton*, 696 So. 2d at 1216 (footnote omitted).

395. *Supra* nn. 385–387 (discussing the impossibility of establishing a claim that the School Board committed a constitutional violation).

lenge. However, the district court exhibited doubt in the following statement:

While we are not convinced that it is the type of “constitutional challenge” contemplated by the [Florida] [S]upreme [C]ourt, we note that Clayton’s complaint at least has a constitutional connection. Article II, [S]ection 8 of the Florida Constitution provides that: “A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.” Article II, [S]ection 5 requires the public officer to take an oath to “faithfully perform the duties” of his office, a duty that presumably includes the obligation to obey the statutory laws of this state. If such public officer, or group of public officers, refuse to follow statutory directions, they have violated an obligation created by the [C]onstitution.<sup>396</sup>

Given the Court’s adherence to the *Horne* rule, that the constitutional exception runs only to legislative violations of the Constitution in the exercise of taxing and spending power,<sup>397</sup> and the Court’s reluctance to see any expansion of taxpayer lawsuits, the Fifth District’s attempt to give Clayton some sort of constitutional basis for his suit against the School Board was probably doomed to failure as the district court indeed recognized.<sup>398</sup> The Fifth District was of the view that the *Fornes* taxpayer-standing rule was not only wrong,<sup>399</sup> but also “unique.”<sup>400</sup> In its conclusion, the dis-

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396. *Clayton*, 696 So. 2d at 1216 n. 2.

397. *Horne*, 269 So. 2d at 662–663.

398. It should be noted that at least part of the constitutional basis that the Fifth District suggested may not be self-executing; thus, it would need legislative implementation. *St. Johns Med. Plans, Inc. v. Gutman*, 721 So. 2d 717, 719 (Fla. 1998); see *Martin v. City of Gainesville*, 800 So. 2d 687, 688 (Fla. 1st Dist. App. 2001) (suggesting that, in the exercise of its power to tax and spend, a municipal corporation’s constitutional violation could come under the *Horne* exception).

The Third District’s opinion in *St. John Medical Plans, Inc. v. Gutman*, 696 So. 2d 1294 (Fla. 3d Dist. App. 1997), made two references to the *Clayton* cases. After finding that the plaintiffs did not have standing, the district court cited the Fifth District *Clayton* case to indicate the following contradiction: *Clayton* noted “that while the appellant’s complaint may not allege a ‘constitutional challenge’ as contemplated by the Florida Supreme Court, it might at least have a ‘constitutional connection’ with [A]rticle II, [S]ection 8.” *Id.* at 1295 n. 3 (citing *Clayton*, 696 So. 2d 1215). Next, *Gutman* referenced the Florida Supreme Court’s reaffirmance of the *Fornes* rule in *Clayton. Id.* (citing *Clayton*, 691 So. 2d at 1068).

399. *Clayton*, 696 So. 2d at 1217 n. 3.

400. *Id.* at 1216 (citing *Beshear v. Ripling*, 728 S.W.2d 170, 171 (Ark. 1987) (holding that a taxpayer had standing to challenge the legality of public-fund expenditures); *County of Sonoma v. State Bd. of Equalization*, 195 Cal. App. 3d 982, 989 (Cal. App. 1st Dist. 1987) (granting a taxpayer standing to challenge the Board’s interpretation and applica-

strict court provided taxpayers with suggestions regarding potential amendments to add taxpayer-standing language to the Florida Constitution or the Florida Statutes.<sup>401</sup> It then affirmed the trial court's dismissal of Clayton's suit, but remanded the case to the trial court "for further action consistent with . . . Clayton, 691 So. 2d 1066."<sup>402</sup> Judge Antoon, who appeared generally sympathetic to Clayton's cause but unwilling to challenge the Florida Supreme Court,<sup>403</sup> concurred "in [the] result only."<sup>404</sup>

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tion of a tax law); *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. App. 1993) (establishing that the two appellants had standing because they had "a real and definite interest in preventing an illegal expenditure of tax money;" thus, their motivation for bringing suit was irrelevant); *Champ v. Poelker*, 755 S.W.2d 383, 387 (Mo. App. 1988) (finding that taxpayers did not have standing where they did not have a "legitimate interest in connection with [the] bonds" because general revenue was not involved; thus, the taxpayers did not suffer "a direct, pecuniary injury in the form of an increased tax burden."); *Neb. Sch. Dist. No. 148 v. Lincoln Airport Auth.*, 371 N.W.2d 258, 261 (Neb. 1985) (asserting that a resident taxpayer may sue "to prevent the illegal disposition of money of a municipal corporation or the illegal creation of a debt which he, in common with other property holders, may be compelled to pay"); *Texfi Indus., Inc. v. City of Fayetteville*, 261 S.E.2d 21, 23 (N.C. App. 1979) (asserting that the "[r]ule that a taxpayer has no standing to challenge questions of general public interest that affects all taxpayers equally does not apply where a taxpayer shows that the tax levied upon him is for an unconstitutional, illegal or unauthorized purpose"); *William Penn Parking Garage, Inc. v. City of Pitt.*, 346 A.2d 269, 282 n. 21 (Pa. 1975) (recognizing that "a taxpayer is permitted to sue in order to prevent waste or illegal expenditure of public funds.")).

401. *Id.* at 1217. The court's suggestions included the following:

[I]f [taxpayers] desire to prevent or reverse an illegal disposition of public funds, the illegal creation of a public debt or the illegal assessment of taxes, [they] may wish to consider again amending their constitution in order to specifically include injuries caused by the misfeasance or malfeasance of public officials within the "any injury" provision presently appearing in Article I, [S]ection 21 of their constitution: "the courts shall be open to every person for redress of any injury." Or they may prevail upon the Legislature to create such cause of action under its authority granted by the "Taxpayers' Bill of Rights" (Article I, Section 25) which provides:

By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state.

*Id.* The Taxpayers' Bill of Rights, which came from the constitutional directive, is found at Florida Statutes Section 213.015. As of the writing of this Article, it does not contain the suggested provision. Additionally, Article I, Section 21 of the Florida Constitution has not, as of this writing, been amended along the lines suggested by the Court.

402. *Clayton*, 696 So. 2d at 1217.

403. *See supra* nn. 371-373 and accompanying text (discussing Judge Antoon's concurring opinion).

404. *Clayton*, 696 So. 2d at 1217 (Antoon, J., concurring).

### CONCLUSION

It will suffice here to call the reader's attention to two points. First, there is the suggestion that an illegality that has a negative effect on a taxpayer's pocketbook should be left to public watchdogs. If that is an unstated reason for the *Fornes* rule,<sup>405</sup> it is not a good one unless the Legislature makes a provision for a public ombudsman to deal with the illegal expenditure of tax monies and similar problems that taxpayer suits once handled.<sup>406</sup> And, of course, that worthy should have an adequate staff. In *Save Sand Key*, admittedly not a taxpayer-standing case, but one that cited *Rickman*, the Attorney General sided with *Save Sand Key* and then withdrew.<sup>407</sup> And, of course, as the Fifth District pointed out in *Clayton*,

The [School] Board argues here that the protection of the public interest even in cases such as this is adequately left in the exclusive hands of the Attorney General and the State Attorney. This argument is refuted by the obvious fact that only Clayton has stepped [forward] to protect the public interest in this case.<sup>408</sup>

And finally on this point, in happier times, the Florida Supreme Court itself once opined that,

[t]he tax payer here is to be commended for his vigilance rather than be censured for seeking a decision of the Court upon the case at bar. He has manifested a keen interest in local government which he is called upon by taxation and good citizenship to support and maintain.<sup>409</sup>

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405. Even if the Court did not state it as a reason, it is the only result that can follow from it, short of retribution at the ballot box. *Supra* nn. 3–5 and accompanying text (discussing the Fifth District's opinion in *Clayton*).

406. *Supra* nn. 10–11 and accompanying text (discussing *Lanier*).

407. *Save Sand Key*, 303 So. 2d at 10. For a further discussion of *Save Sand Key*, review *supra* notes 168–190 and accompanying text.

408. *Clayton*, 667 So. 2d at 944 n. 2.

409. *Pierce*, 184 So. at 512–513. It appears that the Court found the taxpayer to have standing, otherwise how could it rule against him on the merits? See *supra* n. 80 and accompanying text (discussing the *Pierce* case).

Today, one supposes that such a vigilant taxpayer can do little more, absent an allegation of constitutional violation,<sup>410</sup> then campaign to “throw the rascals out.”<sup>411</sup>

As to the second point, if the United States Supreme Court has an “institutional duty to follow until changed the law as it now is,”<sup>412</sup> the Florida Supreme Court, in *Fornes*,<sup>413</sup> should have had a related “institutional duty” to have *forthrightly changed* the taxpayer-standing rule rather than contend that it had been changed decades ago.<sup>414</sup> That would not have made the rule any less unpalatable, but it would have improved the Court’s veracity. The *Fornes* Court might have said the following: We now elect to clear up this State’s decisional law by (1) generally recognizing that, prior to today, taxpayers were held to have standing and by (2) declaring a change in the law so that a taxpayer does not have standing unless he or she can show a special injury unique, not in degree but in kind, from other taxpayers or, failing that, he or she can show a constitutional violation by the taxing entity.

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410. For example, in *Combs v. City of Naples*, the Second District commented that, [the appellant’s] status as a City resident does, however, provide him standing to maintain count 4, which is a taxpayer suit challenging on constitutional grounds the City’s exercise of its taxing and spending authority. Such actions do not require a showing of special injury.

834 So. 2d 194, 197 (Fla. 2d Dist. App. 2002) (citing *Horne*, 269 So. 2d 659; *Paul*, 376 So. 2d 256). For the principal discussion of *Horne*, consult *supra* notes 157–166 and accompanying text. For the principal discussion of *Paul*, consult *supra* notes 212–219 and accompanying text.

411. *Clayton*, 696 So. 2d at 1216.

412. *Supra* n. 303 (providing Justice Stewart’s comment in *Hugdons*).

413. *Supra* nn. 293–303 and accompanying text (discussing *Fornes*’ holding).

414. *Fornes*, 476 So. 2d at 155.