

CONSTITUTIONAL LAW

Constitutional Law: Amendments

Ford v. Browning, 992 So. 2d 132 (Fla. 2008)

The authority of the Taxation and Budget Reform Commission (TBRC) to propose constitutional revisions is limited to amendments that concern taxation and the Legislature's process of developing the State's budget.

FACTS AND PROCEDURAL HISTORY

TBRC was created in 1998 under Article XI, Section 6 of the Florida Constitution. It is currently authorized to convene every twenty years to review and study matters related to the State's taxation and budgetary system and to propose certain types of amendments to the Florida Constitution. Two of the constitutional amendments proposed by TBRC for the November 2008 general election were challenged on the basis that TBRC lacked the authority to propose constitutional revisions on those subjects.

- Amendment 7 concerned the freedom of religion provision in Article I, Section 3. If approved, it would have removed the existing restriction on State revenue being used in the aid of any religion and inserted a new provision to prevent the exclusion of an individual or entity from a public program on the basis of religion.
- Amendment 9 concerned the public education provision in Article IX, Section 1. If approved, it would have directed school districts to devote at least 65% of funding to classroom instruction and explicitly stated that the State's duty to provide public education is not exclusively limited to public schools.

Upon certification as a question of great public importance, the Supreme Court of Florida held that TBRC had exceeded its constitutional authority in submitting the disputed constitutional

amendments and enjoined the Secretary of State from placing the amendments on the upcoming general election ballot.

ANALYSIS

The dispute over TBRC's authority to propose amendments to the Florida Constitution centered upon the interpretation of Article XI, Subsections 6(d) and 6(e). Subsection 6(d) authorizes TBRC to undertake study and review of certain subjects, and Subsection 6(e) authorizes TBRC to undertake several duties—including the proposal of constitutional amendments.

The supporters of the disputed amendments argued that TBRC acted within its authority because the amendments concerned State revenue expenditures. They argued that it would be inconsistent to allow TBRC to examine constitutional limitations on taxation and expenditures at the State and local levels under Subsection 6(d) if it was not also allowed to propose constitutional amendments on those subjects under Subsection 6(e).

The Court rejected this reasoning, concluding instead that Subsections 6(d) and 6(e) serve separate and distinct functions. Subsection 6(d) authorizes the broad scope of TBRC's authority to review and study matters. Subsection 6(e), in contrast, sets forth four specific duties that TBRC is authorized to perform. The duty to propose constitutional amendments was limited to amendments relating to the State's budgetary process.

The supporters of the amendments argued that the term "[S]tate budgetary process" includes any matters that raise or expend revenue, but the Court rejected this interpretation for several reasons. First, if "[S]tate budgetary process" includes any matters that raise or expend revenue, then the word "process" (which is commonly understood as a series of steps taken toward an end) is rendered meaningless. Second, the supporters' interpretation would render the word "taxation" (which appears immediately prior to "[S]tate budgetary process") to be superfluous, because taxation is synonymous with the raising of revenue. Third, such an interpretation would be inconsistent with TBRC's internal rules and a similar term ("[S]tate budgeting process") which is used in the Florida Statutes and elsewhere in the Florida Constitution.

Rejecting the supporters' interpretation of Article XI, Subsection 6(e), the Court concluded that the Florida Constitution au-

thorizes TBRC to propose constitutional amendments that concern only taxation or the Legislature's procedures for composing and considering the State's budget. Having defined the scope of TBRC's authority in this area, the Court then examined the two disputed amendments to determine if they represented a proper exercise of TBRC's authority.

Amendment 7 would have removed the existing restriction on State funds being used in the aid of any religion and inserted a new provision to prevent the exclusion of an individual or entity from a public program on the basis of religion. The Court concluded that this amendment exceeded TBRC's constitutional authority because it did not comply with the Court's concept of the State budgetary process.

Amendment 9 would have directed school districts to devote at least 65% of funding to classroom instruction and explicitly stated that the State's duty to provide public education is not exclusively limited to public schools. Accordingly, the Court concluded that TBRC exceeded its constitutional authority because the amendment "involves merely specific expenditures and not the budgetary process." *Ford*, 992 So. 2d at 141 (emphasis added).

SIGNIFICANCE

Ford v. Browning restricts the scope of TBRC's authority to propose constitutional amendments under Article XI, Section 6 of the Florida Constitution to two specific subjects—taxation and the Legislature's procedure for developing the State's budget.

Ford v. Browning also represents another chapter in the ongoing battle over the constitutionality of school vouchers in the state of Florida. In *Bush v. Holmes*, a State statute that authorized a system of school vouchers was held to be unconstitutional by the First District Court of Appeal and the Supreme Court of Florida—but for two different reasons. The First District Court of Appeal held that the voucher program was unconstitutional because it authorized the use of State revenue to fund sectarian schools in violation of the no-aid provision found in Article I, Section 3 of the Florida Constitution. 886 So. 2d 340, 366 (Fla. 1st Dist. App. 2004). The Supreme Court, expressly declining to approve or disapprove of the First District's holding as to the no-aid provision, held instead that the program was unconstitutional because it diverted public funding into an alternative schooling

system not subject to the “uniformity” requirement of Article IX, Section 1(a) of the Florida Constitution. 919 So. 2d 392, 412–413 (Fla. 2006). The amendments at issue in *Ford v. Browning* can be seen as an attempt to moot the arguments used against school vouchers by the First District and the Supreme Court in their *Bush v. Holmes* decisions.

RESEARCH REFERENCES

- 10 Fla. Jur. 2d *Constitutional Law* §§ 9–10 (2009) (providing an overview of the TBRC).
- Student Author, *Recent Developments: Constitutional Law*, 33 Fla. St. U. L. Rev. 1227, 1234 (2006) (discussing the dispute over school vouchers in *Bush v. Holmes*).

Brett B. Pettigrew

Constitutional Law: Citizen Initiative

***Florida Hometown Democracy, Inc. PAC v. Browning*,**
980 So. 2d 547 (Fla. 1st Dist. App. 2008)

Legislative enactments and administrative rules regulating the citizen initiative process must be essential to ensuring ballot integrity in order to be constitutional. Adding additional requirements to the citizen initiative method of producing constitutional amendment proposals, which are not necessary to ballot integrity, must be accomplished by amending the Constitution.

FACTS AND PROCEDURAL HISTORY

Florida Hometown Democracy, a political action committee, brought suit against the State of Florida, challenging the constitutionality of Section 25 of chapter 2007-30, Laws of Florida, and two emergency rules implemented by the Florida Department of State, all of which modified the citizen initiative by creating a process in which a person could revoke his or her signature from a petition. The trial court granted summary judgment in favor of the State and denied Florida Hometown Democracy’s petition for declaratory and injunctive relief. Florida Hometown Democracy appealed on the merits.

ANALYSIS

Article XI, Section 3 of the Florida Constitution provides that the power to revise or amend the constitution by a voter initiative is reserved to the people. Although the power to propose constitutional amendments through a petition process is constitutionally protected as autonomous from legislative authority, the courts allow for some legislative interference, but only when necessary to ensure ballot integrity. Examining precedent, the court noted that legislation tends to ensure ballot integrity when it seeks to enforce compliance with requirements specified in the constitution, but frustrates ballot integrity when it unnecessarily inhibits the constitutionally protected process. The court reasoned that because there was no reference to signature revocation in the constitution, no compliance requirement was being served. The court explained that the disputed legislation was not necessary to ensure ballot specification, and instead served to “burden the initiative process with requirements that are not prescribed by the constitution.” *Fla. Hometown Democracy*, 980 So. 2d at 549. Thus, the court held the legislation unconstitutional and reversed the trial court’s decision.

SIGNIFICANCE

Florida Hometown Democracy reflects on the delicate balance between providing for both citizen initiatives and legislative amendments to the Constitution. Legislation that further regulates the citizen initiative process, but does not serve some constitutional compliance function, such as ensuring ballot integrity, will be held unconstitutional.

RESEARCH REFERENCE

- 10 Fla. Jur. 2d *Constitutional Law* §§ 4, 11 (2009).

April Justus

Constitutional Law: Ordinances***Island Silver & Spice, Inc. v. Islamorada,*
542 F.3d 844 (11th Cir. 2008)**

An ordinance imposing size limitations on interstate “formula retail” establishments has the practical effect of discriminating against interstate commerce. Therefore, “formula retail” ordinances are subject to the elevated-scrutiny test under the Dormant Commerce Clause of the United States Constitution. Additionally, under the elevated-scrutiny test, preserving a “small town” character is a legitimate local purpose.

FACTS AND PROCEDURAL HISTORY

In January 2002, Village of Islands (Islamorada) enacted an ordinance imposing size limitations on “formula retail” establishments. Subsequently, in June 2002, a developer sought to establish a Walgreens “formula retail” drug store in Islamorada by purchasing Island Silver & Spice (Island Silver), a local retail store. Although Island Silver and the developer entered into a contract, the developer withdrew after unsuccessfully challenging the ordinance. Island Silver then filed a complaint against Islamorada in the United States District Court for the Southern District of Florida.

At the district court, Island Silver claimed that the ordinance’s “formula retail” provisions violated the Dormant Commerce Clause. The district court agreed and invalidated the ordinance’s “formula retail” provisions. Islamorada appealed, and the United States Court of Appeals for the Eleventh Circuit affirmed the district court’s decision granting Island Silver injunctive and monetary relief.

ANALYSIS

The court first noted that “[t]he Dormant Commerce Clause prohibits ‘regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.’” *Island Silver & Spice, Inc.*, 542 F.3d at 846 (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273 (1988)). Two tests are applied to scrutinize an ordinance under the Dormant Commerce Clause. An ordinance that “directly regulates or discriminates against

interstate commerce,” or has the effect of favoring “in-state economic interests,” will be analyzed under an elevated-scrutiny test, whereby, the burden is on Islamorada to show that the ordinance “[advances] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.” *Island Silver & Spice, Inc.*, 542 F.3d at 846 (quoting *Bainbridge v. Turner*, 311 F.3d 1104, 1109 (11th Cir. 2002)). However, if the ordinance is shown to have only “indirect effects on interstate commerce,” the court will balance the municipality’s interest against the burden on interstate commerce and will invalidate the ordinance only where “the burden on interstate commerce clearly exceeds the local benefits.” *Id.* (quoting *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986)).

The court concluded that the ordinance was subject to the first test requiring elevated scrutiny because the ordinance discriminated against interstate commerce. In reaching its conclusion, the court noted that the ordinance did not facially discriminate against interstate commerce. However, the ordinance effectively prevented the establishment of new interstate chains. On this basis, the court reasoned that the ordinance had the practical effect of discriminating against interstate commerce and therefore applied the elevated-scrutiny test.

In applying the elevated-scrutiny test, the court ultimately found that Islamorada failed to demonstrate that the ordinance’s formula retail provisions advanced a legitimate local purpose. The court first rejected the ordinance’s stated local purpose to preserve a “small town” character. Although the court noted that preserving a “small town” character was a legitimate local purpose, it found that Islamorada did not demonstrate it had any “small town” character to preserve. The ordinance was not necessary to preserve any historic characteristics in Islamorada, and it permitted the continued operation of pre-existing “formula retail” businesses, small retail stores, and large non-chain businesses, all of which failed to preserve Islamorada’s “small town” character.

Additionally, the court rejected the ordinance’s stated local purpose to encourage small-scale and natural uses. Islamorada’s zoning still allowed Island Silver to operate as a business comprising over 12,000 square feet, which greatly exceeded the ordinance’s size limitations. Islamorada failed to explain why the ordinance singled out standardized establishments, and there was

no evidence indicating Islamorada had a unique natural environment.

Finally, the court rejected the ordinance's purpose to reduce traffic and garbage because Islamorada had other regulations that satisfied this purpose. Therefore, because Islamorada failed to demonstrate that the ordinance's "formula retail" provisions advanced a legitimate local purpose, the court found that the provisions failed to satisfy the elevated-scrutiny test. Consequently, the court held that the "formula retail" provisions violated the Dormant Commerce Clause and affirmed the district court's decision.

SIGNIFICANCE

In *Island Silver*, the court applied the Dormant Commerce Clause of the United States Constitution to invalidate "formula retail" provisions in a local land use ordinance. Consequently, when an ordinance regulates "formula retail" establishments and has the practical effect of discriminating against interstate commerce, practitioners should be prepared to defend the ordinance's constitutionality in federal court under the elevated-scrutiny test. Moreover, because preserving a "small town" character is a legitimate local purpose under the elevated-scrutiny test, practitioners should defend an ordinance's constitutionality on this ground when appropriate.

RESEARCH REFERENCES

- 15A Am. Jur. 2d *Commerce* § 89 (2002 & 2008).
- 15 C.J.S. *Commerce* § 9 (2000 & Supp. 2008).

Matthew E. Kahn

Constitutional Law: Ordinances

***Phantom of Brevard Inc. v. Brevard County*,**
3 So. 3d 309 (Fla. 2008)

When a State statute is silent as to a specific area of legislation, the local government has broad authority to enact ordinances that further restrict that area and may create variances between counties without violating the uniformity clause in the

statute. County ordinances will conflict with a State statute only if the subject matter of the ordinance is one reserved exclusively for the State legislature, or if the ordinance or statute cannot co-exist—meaning compliance with one requires violation of the other.

FACTS AND PROCEDURAL HISTORY

Phantom of Brevard, Inc. (Phantom) sought to have a Brevard County (County) ordinance declared unconstitutional, arguing that the ordinance was preempted by Chapter 791 of the Florida Statutes. The circuit court found in favor of the County, following the Second District's decision to uphold a similar fireworks ordinance. Phantom appealed and the Fifth District affirmed in part and reversed in part. The Fifth District held that Chapter 791 does not expressly preempt the regulation of fireworks, and the legislative history does not support implied preemption. However, the Fifth District found certain provisions of the County ordinance to be in conflict with Chapter 791. One provision was Section 10, entitled "Evidence of financial responsibility." Businesses in the County must comply with Section 10 in order to receive a permit to sell fireworks. Section 10 requires all sellers of fireworks to keep an insurance policy providing liability for not less than \$1,000,000. Failure to maintain such a policy results in a suspended permit. The Fifth District reasoned that the ordinance conflicted with Chapter 791 of the Florida Statutes because Chapter 791 "shall be applied uniformly throughout the [S]tate." Fla. Stat. § 791.001. According to the Fifth District, Chapter 791 does not contain any financial-responsibility standards, and it would not be uniformly applied if some counties required a particular level of insurance while other counties did not. The Fifth District's decision conflicted with the Second District, which upheld a similar ordinance in *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d Dist. App. 2005). Both Phantom and the County sought review of whether the "Evidence of financial responsibility" ordinance provisions conflict with Chapter 791.

ANALYSIS

Chapter 791, the Sale of Fireworks chapter, begins by stating that the "[C]hapter shall be applied uniformly throughout the

[S]tate.” Fla. Stat. § 791.001. The County fireworks ordinance had several sections that restrict the sale of fireworks, and Section 10 states that there must be evidence of financial responsibility to keep a permit. The County contended that this Section does not conflict with Chapter 791, and the Supreme Court of Florida agreed with the County. Chartered counties, such as the County, have broad powers of self-government under the Florida Constitution. Chartered counties may enact ordinances that are not inconsistent with State law. There are two ways that ordinances can be inconsistent with State law. First, a county cannot legislate in an area if that subject has been preempted to the State for exclusive legislation. Alternatively, in an area where State and local government can legislate concurrently, the local government cannot enact an ordinance that directly conflicts with a State statute.

Phantom alleged that the County’s firework ordinance directly conflicted with the State Statute. The appropriate test for conflict is whether compliance with one provision requires violating the other provision. The Supreme Court held that there is nothing in the “Evidence of financial responsibility” provision that conflicts with Chapter 791 because Chapter 791 does not address financial responsibility or liability insurance. Chapter 791 requires only a \$500 bond for licenses and permits for outdoor displays. Fla. Stat. § 791.03 (2008). Therefore, when enacting the “Evidence of financial responsibility” section, the County chose to legislate in an area where the state legislature was silent. The ability of different counties to create additional requirements does not violate the “applied uniformly throughout the [S]tate” clause of the Statute. Chapter 791 cannot be applied in a non-uniform manner when an issue is not regulated by the State. The local ordinance is simply creating a variance between counties, and this is permissible. Consequently, the Supreme Court quashed the Fifth District’s decision.

SIGNIFICANCE

Phantom reinforces established legal precedent concerning the constitutional issue of preemption and direct conflict. In order for a local ordinance to be unconstitutional because it conflicts with a State statute, the subject matter of the ordinance must be reserved solely for the State legislature, or the ordinance and the statute cannot coexist without violation of one when complying

with the other. When the State legislature is silent on an issue, the local government can create more restrictive ordinances so long as the ordinances do not directly conflict with any other part of the State statute. The local government has broad authority to legislate when the State government is silent.

RESEARCH REFERENCE

- 10A Fla. Jur. 2d *Constitutional Law* §§ 428, 430 (2009).

Matthew Ransdell

Constitutional Law: Property Appraiser Standing

The Crossings at Fleming Island v. Echeverri,
991 So. 2d 793 (Fla. 2008)

Public officials cannot defend nonperformance of statutorily required duties based on the constitutionality of the statute. Laws must be enforced uniformly, not selectively.

FACTS AND PROCEDURAL HISTORY

The Fleming Island Community Development District (District) is a residential community that owns and operates public recreational facilities. The District filed three complaints for declaratory and injunctive relief against the county property appraiser (Appraiser), tax collector, and the executive director of the Florida Department of Revenue. The District argued that pursuant to Florida Statutes Section 189.403(1), a community development district is to be treated as a municipality for ad valorem tax purposes, and therefore, the District was wrongfully denied exemptions. The Appraiser raised the affirmative defense that Section 189.403(1) was unconstitutional and that the properties were not entitled to exemptions. The District filed motions to strike the affirmative defense, claiming the appraiser lacked standing to challenge the constitutionality of a statute.

The trial court granted the motion, and after a trial, the court found that the properties were exempt and ordered a refund. The Appraiser appealed to the First District Court of Appeal, arguing that he had standing to challenge the constitutionality of the statute to protect public funds. The First District affirmed the

trial court's ruling that the properties were exempt and held that the Appraiser could challenge the constitutionality of the exemption by raising it as an affirmative defense. The First District filed a certified conflict with the Second District Court of Appeal's decision in *Sun 'N Lake of Sebring Improvement District v. McIntyre*, where the court ruled that a property appraiser lacked standing to challenge the constitutionality of a statute. 800 So. 2d 715 (Fla. 2d Dist. App. 2001). The Florida Supreme Court reviewed the case in order to resolve the conflict between the two district courts of appeal.

ANALYSIS

The Court began with the premise established in *State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers*, in which the Florida Supreme Court held that officers within the state's executive branch may not refuse to administer a statute because they believe it to be unconstitutional. 94 So. 681 (Fla. 1922). The Court opined that there have been no common law or statutory developments since *Atlantic Coast Line* that alter the basic separation of powers principle that property appraisers must abide by all applicable Florida statutes. However, the Court noted that in prior dictum, the Court had approved two situations that comprise the defensive-posture exception to the general rule against constitutional defenses to nonperformance. First, government officers may raise the constitutionality of a statute upon showing that they will be injured in person, property, or rights by engaging in the disputed action. Second, government officers may challenge the constitutionality of an action that would require the expenditure of public funds. However, the Court expressly disapproved the defensive-posture exception noting that while

property appraisers have a superior perspective regarding tax statutes and are perhaps uniquely situated to protect taxpayers from unconstitutional exemptions, we find the policy interest against selective enforcement of the law more compelling.

The Crossings at Fleming Island, 991 So. 2d at 799–800. The Court further observed that the will of the people is embodied in the legislative acts of their representatives, and citizens have an expectation that laws will be carried out. The Court explained

that there are two circumstances in which property appraisers may seek judicial review. First, taxpayers have the right to seek review of a property tax assessment before a property appraisal adjustment board. If a property appraiser is dissatisfied with the outcome, the appraiser may seek judicial review in state circuit court. Second, property appraisers are authorized to challenge the validity of any rule, regulation, or action of the Department of Revenue or any other state administrative agency. However, the Court noted that these limited defenses do not form a basis for property appraisers to challenge state statutes. Accordingly, the Court quashed the First District's decision and approved the Second District's proscription of property appraisers raising constitutional defenses in taxpayer lawsuits.

SIGNIFICANCE

The Crossings at Fleming Island resolves the conflict between two district courts of appeal and clarifies that property appraisers may not defensively raise the constitutionality of a statute in an action filed by a taxpayer. Although property appraisers have a limited right to challenge determinations by boards of adjustment and regulatory action by the Department of Revenue, this case further demonstrates the restrictive nature of property appraisers' rights to defend taxpayer suits and to challenge legislative acts.

RESEARCH REFERENCES

- 51A Fla. Jur. 2d *Taxation* § 1197 (2006 & Supp. 2009).
- 10A Fla. Jur. 2d *Constitutional Law* § 431 (2009).

Matthew Ransdell
Forrest J. Bass

Constitutional Law: Standing

Young Apartments, Inc. v. Town of Jupiter, Florida,
529 F.3d 1027 (11th Cir. 2008)

A landlord whose interests are sufficiently close to the interests of its tenants and who have suffered direct or indirect injury has standing to bring a Section 1983 action on its own behalf and

on behalf of its tenants. The complaint does not need to state expressly whether the public official is being sued as an individual or in his or her official capacity. The court can make that determination based on the circumstances of the case. Finally, a government entity cannot waive or contract away its police powers.

FACTS AND PROCEDURAL HISTORY

Young Apartments, Inc. (Young Apartments) owned an apartment complex in Jupiter, Florida (Town). The Town had a growing Hispanic population of immigrant workers seeking jobs. Young Apartments, and the surrounding apartments in the area, had affordable rental prices. As a result, most of the area, including Young Apartments, was occupied by Hispanics. The Hispanic population became a point of contention with some of the Town's residents. Young Apartments alleged that the Town attempted to eliminate affordable housing available to the Hispanic immigrants by adopting Ordinance No. 6-04 (Ordinance). Young Apartments alleged that the Ordinance was meant to be discriminatory, and quoted participants of the January 2004 meeting of the Town Planning and Zoning Commission as saying that the Ordinance was intended to eliminate the "problem" posed by the "workers on Center Street." The Ordinance targeted overcrowding, and allowed the Town to focus on landlords of Hispanic immigrants without affecting other property owners. It required that no more than five persons occupy any housing unit, unless all the members of the housing unit were related by blood or marriage.

After the Ordinance was adopted, the Town council continued to discuss public complaints regarding the immigrant workers, and Andrew Lucasik (Town Manager) and Robert Lecky (Building Official) pledged to continue enforcement efforts. According to Young Apartments, the Town allegedly responded to the complaints by increasing the enforcement of the Ordinance in order to put additional pressure on Hispanic immigrants to leave the Town.

On January 11, 2005, Town officials entered thirty rental units on Young Apartments' property, without an inspection warrant, and initiated four separate code-enforcement cases. Young Apartments knew that if the defects in the units were not corrected, the apartments could be demolished. Therefore, Young

Apartments negotiated a repair schedule. The first two deadlines were met, but the third deadline was not. The Town condemned fourteen of the thirty units and ordered them to be vacated. The condemnation led a potential purchaser of Young Apartments to cancel its purchase agreement. Young Apartments alleged that the Town intended to eliminate Hispanic immigrant workers through the enforcement of the Ordinance.

Young Apartments filed a seven-count complaint against the Town, the Town Manager, and the Building Official. The complaint alleged Fourth and Fourteenth Amendment violations against all three defendants, as well as an action for breach of contract against the Town. The district court granted the Town Manager and the Building Official's motion to dismiss in its entirety, finding that Young Apartments did not state a cause of action against the Town Manager or the Building Official in their individual capacities, and that Young Apartments lacked standing to bring a Fourth Amendment claim against the officials. With regard to the Town, the court dismissed all claims except those related to the selective enforcement of the Ordinance. The court found that Young Apartments did not have standing to assert race-based claims on behalf of its Hispanic residents. The court then granted summary judgment for the Town on the selective enforcement counts. Young Apartments appealed, contesting the district court's determination that Young Apartments lacked standing to bring race-based discrimination claims against the Town; Young Apartments' failure to state a claim against the Town Manager and the Building Official in their individual capacities; and Young Apartments breach of contract claims against the Town.

ANALYSIS

The lower court divided the Fourteenth Amendment allegations into two categories, enactment and enforcement. The court concluded that a non-Hispanic landlord lacks standing to bring a racial discrimination claim on behalf of its Hispanic residents. Therefore, Young Apartments could not challenge the enactment of the Ordinance. The court reviewed the enforcement of the Ordinance under the rational-basis standard. Young Apartments appealed to the Eleventh Circuit Court of Appeals, challenging the trial court's ruling on its standing on the racial-discrimination

claims. In order to show standing, the Eleventh Circuit explained that the plaintiff must show “(1) that he has suffered an actual or threatened injury, (2) that the injury is fairly traceable to the challenged conduct of the defendant, and (3) that the injury is likely to be redressed by a favorable ruling.” *Young Apts.*, 529 F.3d at 1038. If the plaintiff cannot establish these elements, the complaint must be dismissed. The court explained that Young Apartments met the elements of this test—it had suffered a financial injury based on lost rent and a lost sale, it claimed the injury was based on the passing of the Ordinance and the subsequent enforcement, and the injury could be remedied by the damages and injunctive relief sought. Therefore, Young’s amended complaint satisfied the constitutional requirements for standing.

The Eleventh Circuit reversed the district court’s ruling that a non-Hispanic landlord could not bring a racial discrimination case on behalf of its residents. Young Apartments sued the Town to remedy its injury resulting from the Town’s targeting of Hispanics. The direct injury to Young Apartments from the enactment and enforcement of the Ordinance created standing. Further, prudential consideration did not prevent Young Apartments from bringing such claims. Prudential concerns provide a means for courts to use self restraint on speculative and ill-defined cases. There is an exception to this principle that allows businesses to advocate, on behalf of clients and customers, against discriminatory actions. In addition, the interests of Young Apartments and the Hispanic residents were sufficiently aligned, and did not have to be identical or intimately close. Young Apartments could properly frame the issues for this dispute, and there was a sufficient nexus between the landlord and resident in the case to create a zealous advocate for the tenants’ rights at issue. Young Apartments was uniquely positioned and had standing to pursue the discrimination claims against the Town.

Because Young Apartments had standing, the district court should have applied strict scrutiny instead of a rational-basis test. The appropriate strict scrutiny test for a seemingly neutral law is that the law is unconstitutional if “discrimination was a substantial or motivating factor in the government’s enactment of the law, [] and the government cannot rebut that claim by showing ‘that the provision would have been enacted in the absence of any racially discriminatory motive.’” *Id.* at 1044–1045 (quoting *John-*

son v. Governor of Fla., 405 F.3d 1214, 1223 (11th Cir. 2005). The Eleventh Circuit explained that Young Apartments was entitled to raise its unequal enforcement claim insofar as it can establish that relevant evidence concerning discrimination-based claims was not presented because of the district court's erroneous decision concerning lack of standing.

The district court also dismissed Young Apartments' complaint against the Town Manager and Building Official. Although it was unclear whether the two officials were being sued in their individual or official capacities, the lower court determined that the two were being sued in their official capacity because there was language in the complaint relating to their official duties. On appeal, Young Apartments argued that the lower court misconstrued the complaint and that the claim was made against the two men in their individual capacities. The court explained that plaintiffs "have a duty to 'make plain who they are suing and to do so well before trial.'" *Id.* at 1047. However, the Eleventh Circuit reversed because a plaintiff is not required to designate specifically that they are bringing claims against defendants individually or officially. The court concluded that Young Apartments' claims were raised against the officials in their individual capacities because the complaint alleged that the officials were personally motivated by race, and the officials' titles were never mentioned in the complaint.

Finally, the court addressed Young Apartments' breach of contract claim. Young Apartments argued that it had reached a contractual agreement with the Town regarding the repairs. However, the court reasoned that the Town merely agreed to toll any fines for a limited period of time—any such contract would be void as against public policy because a local government cannot contract away police powers which are necessary for the general welfare. The Town could neither waive nor contract away its police powers, and therefore this ruling was affirmed.

SIGNIFICANCE

Young Apartments clarifies three points of law. First, a landlord can bring a discrimination claim on behalf of its tenants as long as it can meet the requirements of standing by alleging its own injury as well. Further, the interests of the group discriminated against and the individual suing must be sufficiently close

for zealous representation. Second, a complaint need not state expressly that a public official is being sued in his or her individual capacity because that determination can be made when looking at the circumstances of the case. Finally, public policy prohibits a local government from waiving or contracting away its police powers.

RESEARCH REFERENCE

- 10A Fla. Jur. 2d *Constitutional Law* §§ 207, 447–448 (2009).

Matthew Ransdell