

IN THE SUPREME COURT OF FLORIDA

CASE NO.  
L.T. CASE NO. 2D03-3346

ABE SKINNER, as Collier County       :  
Property Appraiser,                    :  
  :  
          Petitioner                    :  
  :  
v.                                        :  
  :  
MICRODECISIONS, INC.,                :  
  :  
          Respondent.                   :  
-----:

**PETITIONER'S JURISDICTIONAL BRIEF**

On review from the District Court  
of Appeal, Second District  
State of Florida

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

This action arose in the context of a Public Records request in which Respondent MICRODECISIONS, INC. requested copies of the source files for Geographic Information Systems ("GIS") maps produced by Petitioner ABE SKINNER, the Collier County Property Appraiser. Skinner replied that he complies with the public records act by providing a copy of the GIS maps upon payment of the fee prescribed by law, but that the maps were copyrighted. The copyright does not prevent access to the GIS tax maps, it only prevents subsequent sale of the maps. The Property Appraiser informed MicroDecisions that the GIS tax maps could be commercially distributed if it purchased a commercial license for the GIS maps. Skinner provided the GIS maps before

MicroDecisions paid the cost of reproduction, the fee prescribed by law.

MicroDecisions filed suit in the Circuit Court for the Twentieth Circuit, in Collier County, claiming that because it could not sell the records that it had been provided, it had been denied access to public records. Despite the fact that it received of the requested records without paying the fee prescribed by law, MicroDecisions served the suit. Skinner removed the case to Federal District Court, claiming that MicroDecisions' claim was in reality not a claim about the denial of access to the public records in its possession, but rather a claim challenging ownership of a copyright - an exclusively federal issue. The District Court examined the four corners of the Complaint and remanded the case.

The Circuit Court held a hearing on cross Motions for Summary Judgment. It ruled that once MicroDecisions revealed its real claim in its Motion for Summary Judgment, it was clear that the heart of that claim was an issue of federal copyright law, particularly, "Who is entitled to hold a copyright?" The court granted Skinner's Motion for Summary Judgment, and MicroDecisions appealed.

The Second District Court of Appeal held that a Florida Constitutional officer has no right to hold a copyright because

there is no language in the *Florida Statutes* affirmatively authorizing such a right.<sup>1</sup> It also held that Chapter 119, *Florida Statutes*, abrogates federal copyright law, even though Chapter 119 contains no such language. It awarded attorney's fees for the case, despite the fact that the Petitioner provided the requested records even before MicroDecisions paid the fee prescribed by law for the requested records. Therefore, this holding permits persons to withhold payment of the fees for records and concoct a Public Records Act violation when the custodian of those records does not provide them because he has not been paid for them. *MicroDecisions v. Skinner*, 889 So. 2d 871 (Fla. 2<sup>nd</sup> DCA 2004).

#### **SUMMARY OF ARGUMENT**

The Second District Court of Appeal held that a property appraiser could not hold a copyright in the GIS tax maps produced by his office. Accordingly, the decision directly affects a class of constitutional officers - the property appraisers of the various counties in Florida. In so doing, the

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<sup>1</sup>It is worth noting that the same court copyrights its own web page, <<http://www.2dca.org>> despite the fact that there is no language in the Florida Statutes affirmatively authorizing this.

district court ruled on a matter that is exclusively one of federal law - who may claim entitlement to a copyright. The court may couch its decision as a public records case, but the actual holding in the case is that a Florida constitutional officer is not entitled to copyright protection for the GIS tax maps produced by his or her office. The District Court exceeded its jurisdiction in deciding a copyright matter.

Further, the District Court also created a duty to provide records upon request, prior to payment for them. This holding is contrary to cases holding that a custodian has no duty to provide records until the party requesting them pays. By awarding attorney's fees in this case, the District Court of Appeal extended the fees provision of the Public Records Act to situations where the requested records had already been provided.

#### **JURISDICTIONAL STATEMENT**

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly affects a class of constitutional officers. Article V, Section 3(b)(3) Fla. Const.; Fla. R. App. Proc. 9.030(a)(2)(A)(iii).

## ARGUMENT

### I. THE DECISION OF THE DISTRICT COURT EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS.

The Collier County Property Appraiser has been issued a copyright certificate from the United States Government for his GIS tax maps.<sup>2</sup> The Second District Court of Appeal held that Property Appraisers could not claim copyright protection for works created in their offices. Property Appraisers are a class of constitutional officers. Article VIII, Section 1(d) Fla. Const.; *Bystrom v. Whitman*, 488 So. 2d 520 (Fla. 1986).

Property Appraisers are expressly affected by this decision, which holds that Florida law abrogates their right to claim copyright protection under Federal law, even though Florida law does not specifically abrogate the Copyright Act. In so doing, the District Court necessarily decided that the protections afforded by Federal Copyright Act and Property Appraisers' duties mandated by Florida Public Records law were mutually exclusive, when a review of the actual laws as written demonstrates that they are not. The District Court based its

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<sup>2</sup>28 U.S.C. 1338(a) provides: The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. **Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.** Emphasis added.

decision, in part, upon an application of the well pleaded complaint rule, (involving remanding cases from Federal to State Court) to a summary judgment motion. The end result is that a class of constitutional officers is deprived of its federally guaranteed rights by a state court which had no jurisdiction nor necessity under state law to decide a federal issue.

**CONCLUSION**

This Court has discretionary jurisdiction to review the decision below, and the Court should exercise that jurisdiction to consider the merits of the Petitioner's argument.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Jurisdictional Brief and Appendix was served by mail this \_\_\_\_\_ day of

\_\_\_\_\_, 2005, on Jonathan D. Kaney, Jr., Esq., Jonathan D. Kaney III, Esq., and Heather Bond Vargas, Esq., Attorneys for Plaintiff, 150 Magnolia Avenue, P.O. Box 2491, Daytona Beach, FL 32115-2491, Lawrence P. Zolot, Esq., 3864 Sheridan Street, Hollywood, FL 33021 and Christopher A. Mohr, Esq., Meyer & Klipper, PLLC, 923 12<sup>th</sup> Street, N.W., Washington, D.C. 2005, *Attorney for Amici LexisNexis, et al.*, Robert M. Dees, Esq., Milam & Howard, P.A., 50 North Laura Street, Suite 2900, Jacksonville, FL 32202, *Attorneys for Amici The First Amendment Foundation and The Florida Society of Newspaper Editors*, and Lonnie L. Simpson, Esq. and Christian C. Burden, Esq., Piper Rudnick, L.L.P., 101 East Kennedy Boulevard, Suite 2000, Tampa, FL 33602, *Attorneys for Amici Real Estate Information Professionals Association, et al.*,

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