

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC23-95

GUSTAVO BOJORQUEZ d/b/a
G & Y TRANSPORTATION, et al.

Petitioners,

v.

L.T. Nos. 2D20-3432;
19-CA-6391

STATE OF FLORIDA, et al.

Respondents.

_____/

**ON DISCRETIONARY REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL**

PETITIONERS' JURISDICTIONAL BRIEF

CLARK & MARTINO, P.A.

J. Daniel Clark
Florida Bar No. 106471
dclark@clarmartino.com
3407 W Kennedy Blvd
Tampa, FL 33609

**WAGNER McLAUGHLIN &
WHITTEMORE, P.A.**

**Jason K.
Whittemore**
Florida Bar No. 37256
jason@wagnerlaw.com
601 Bayshore Blvd.,
STE. 910
Tampa, FL 33606

CREED & GOWDY, P.A.

Bryan S. Gowdy
Florida Bar No.
176631
bgowdy@appellate-
firm.com
Dimitrios A. Peteves
Florida Bar No. 123903
dpeteves@appellate-
firm.com
865 May Street
Jacksonville, FL 32204

Attorneys for Petitioners

RECEIVED, 02/17/2023 05:27:21 PM, Clerk, Supreme Court

TABLE OF CONTENTS

Table of contents.....	i
Table of citations.....	ii
Statement of the issue	1
Statement of the case and facts	2
a. Background	2
b. Proceedings in the lower courts	5
Argument.....	7
I. This Court has jurisdiction because the decision below expressly construed the Takings Clause.	7
II. This case’s importance warrants this Court exercising its jurisdiction.	10
A. This Court should decide whether the legislature may create a property interest protected by the Takings Clause.....	10
B. This Court should accept jurisdiction to ensure that ordinary citizens can rely on what the laws say.	11
Conclusion	13
Certificate of service	14
Certificate of compliance	16

TABLE OF CITATIONS

Cases

<i>Carmazi v. Board of County Commissioners</i> , 104 So. 2d 727 (Fla. 1958)	8, 9
<i>Fitzgerald v. Advanced Spine Fixation Sys., Inc.</i> , 996 S.W.2d 864 (Tex. 1999)	11, 12
<i>Robinson v. City of Detroit</i> , 613 N.W.2d 307 (Mich. 2000)	12

Constitutional provisions

Art. V, § 3(b)(3), Fla. Const	7
Art. V, § 4(b), Fla. Const. (1957)	9
Art. X, § 6(a), Fla. Const	1, 6, 12

Statute

§ 125.01(1)(n), Fla. Stat. (2017)	4
---	---

Session laws

Ch. 6673, § 17, Laws of Fla. (1913)	2
Ch. 9925, § 1, Laws of Fla. (1923)	2
Ch. 76-383, § 2(1), Laws of Fla	2
Ch. 83-423, §§ 1, 14, Laws of Fla.	2
Ch. 2001-299, Laws of Fla	3
Ch. 2012-247, § 1(2), Laws of Fla	3
Ch. 2012-247, § 1(3), Laws of Fla.	3
Ch. 2012-247, § 1(2)–(3), Laws of Fla	1, 12
Ch. 2017-198, §§ 2, 3, Laws of Fla	1, 4

Other Authorities

Fla. H.R. Comm. on Cmty & Mil. Affs., CS/HB 891 (2012), Final Bill Analysis (May 9, 2012)	2
Montesquieu, <i>The Spirit of Laws (vol.I)</i> (1748)	13
Philip J. Padovano, <i>Florida Appellate Practice</i> (2022 ed.)	7

STATEMENT OF THE ISSUE

Florida's Takings Clause permits the government to take "private property" only if it pays compensation. Art. X, § 6(a), Fla. Const. In 2012, the legislature declared certain taxicab medallions to be "private property" that could be "transfer[red] to another person" either "by pledge, sale, assignment, sublease, devise, or other means." Ch. 2012-247, § 1(2)–(3), Laws of Fla. Five years later, the legislature repealed that law and dissolved the commission that had issued the medallions. Ch. 2017-198, §§ 2, 3, Laws of Fla. The successor regulator did not recognize the medallions. A12. The Second District held—over a 22-page dissent (A42–64)—that the medallion owners "did not have a property interest for purposes of the Takings Clause." A8.

The issue invoking jurisdiction is:

Is a taxi medallion "private property" under the Takings Clause when the legislature expressly declares the medallion is "private property" that "may [be] transfer[red] ... by pledge, sale, assignment, sublease, devise, or other means"?

Independent of the jurisdictional issue, Petitioners intend to ask this Court to decide whether their medallions were "taken."

STATEMENT OF THE CASE AND FACTS

a. Background

Laws limiting licenses for hired conveyances date back four centuries. A50 n.8 (Lucas, J., dissenting). Florida has regulated taxicabs for over a century. *See, e.g.*, Ch. 6673, § 17, Laws of Fla. (1913) (granting a town the power “to license and regulate and prescribe the rates to be charged by hackney carriages, taxi-cabs, drays, and other vehicles”); Ch. 9925, § 1, Laws of Fla. (1923) (authorizing the City of Tampa to “regulate the use of and prescribe maximum rates of fare for taxicabs”).

Before 1976, three municipalities in Hillsborough County (Tampa, Plant City, and Temple Terrace) “had separate taxicab ordinances, resulting in duplication and jurisdictional problems.” Fla. H.R. Comm. on Cmty & Mil. Affs., CS/HB 891 (2012), Final Bill Analysis 2 (May 9, 2012). To solve this problem, the legislature in 1976 created a commission to “regulate the operation of taxicabs upon the public highways of Hillsborough County and each municipality.” *See* Ch. 76-383, § 2(1) Laws of Fla; A8. In 1983, the legislature created a successor commission (the Commission). *See* Ch. 83-423, §§ 1, 14, Laws of Fla; A8. In 2001, the legislature passed

another act governing the Commission. See Ch. 2001-299, Laws of Fla; A9. Neither the 1983 act nor the 2001 act substantially changed the powers originally granted to the 1976 commission. A8–9.

In 2012, the legislature enacted a special act: “Any certificate of public convenience and necessity for taxicabs or any taxicab permit previously or hereafter issued by the [Commission] ... is the private property of the holder of such certificate or permit.” Ch. 2012-247, § 1(2), Laws of Fla.; see A9. Further, the act provided that the holders of the certificates or permits—also known as medallions—“may transfer the certificate or permit by pledge, sale, assignment, sublease, devise, or other means of transfer to another person.” Ch. 2012-247, § 1(3). The Commission, “by rule,” could “specify the procedure by which the transfer may occur,” and it had to approve “in advance” any transfer “[e]xcept for a transfer by devise or intestate succession.” *Id.* The proposed transferee had to “qualify ... under [the] [C]ommission[’s] rules.” *Id.*

As the Second District majority recognized, the 2012 act “granted medallion holders property rights in their medallions so that they could transfer their medallions to otherwise qualifying individuals who wanted to compete in the closed market.” A11. This

“grant of property rights resulted in a secondary market in which medallion holders could transfer their medallions for value to other persons approved by the [Commission].” A11.

In 2017, the legislature repealed the 2012 act and dissolved the Commission. Ch. 2017-198, §§ 2, 3, Laws of Fla.; A11. Taxicab regulation was transferred to Hillsborough County’s governing body (the County). See § 125.01(1)(n), Fla. Stat. (2017); A12. The 2017 act neither “direct[ed] the County to adopt any specific regulatory scheme” nor “address[ed] whether the County must compensate medallion holders for any loss of property rights.” A11–12. The County enacted an ordinance that “did not recognize or grandfather” medallions issued by the Commission. A12.

Petitioners—taxicab operators in Hillsborough County—held medallions issued by the Commission. A12. After the 2017 act and ordinance, the medallions no longer permitted a person to operate a taxicab. A13. Petitioners therefore deemed their medallions “worthless,” and they brought an “inverse condemnation action, claiming that the State and the County had taken their medallions without compensation.” A13.

b. Proceedings in the lower courts

In the same order, the trial court granted summary judgment for the County and denied the State’s motion to dismiss. A15. The court reasoned that the medallions had “vanished” because the legislature abolished the Commission and repealed the 2012 act. A15. Further, the court reasoned, the County “had no power to do anything as to th[e] medallions and, in fact, did nothing.” A15 (brackets altered). Instead, the court explained, “the State had been acting within its power when it caused the demise of the [Commission] and, thus, its medallions.” A15.

In separate appeals, Petitioners appealed the judgment in favor of the County, and the State appealed the order denying its motion to dismiss. A7–8. The Second District consolidated the appeals. A7 n.1.

All three judges on the panel agreed that the Second District had jurisdiction to review the order denying the State’s motion to dismiss, and they agreed that the trial court’s judgment for the County should be affirmed. A16, 41, 42, 64. In this Court, Petitioners will not contest these unanimous determinations.

The panel divided, however, on whether the medallions constituted “private property” under the Takings Clause. *See* Art. X, § 6(a), Fla. Const. The majority decided that Petitioners “have no property interest in the medallions cognizable under the Takings Clause,” and it therefore reversed the order denying the State’s motion to dismiss. A41.

By contrast, the dissent “believe[d] the[] taxicab medallions, which for more than a quarter of a century have been treated as private property, were what the legislature decreed them to be: private property.” A42 (Lucas, J., dissenting). Thus, the dissent was “of the view that the State’s abrogation of this property was potentially a taking for which [Petitioners] could be entitled to full compensation under [the Takings Clause].” A42. The dissent would have affirmed the trial court’s order denying the State’s motion to dismiss. A64.

Before this Court, Petitioners will argue the dissent was right and the majority was wrong.

ARGUMENT

I. This Court has jurisdiction because the decision below expressly construed the Takings Clause.

This Court “[m]ay review any decision of a district court ... that expressly construes a provision of the state or federal constitution.” Art. V, § 3(b)(3), Fla. Const. But a decision is not reviewable “merely because it has the effect of construing a [constitutional] provision” or “turns on the application of constitutional principles to the facts of the case.” Philip J. Padovano, *Florida Appellate Practice* § 3:8 nn.3–4 (2022 ed.). The decision below did not *merely* apply the Takings Clause to facts or *merely* have the effect of construing that clause.

Rather, as the majority below recognized, its decision expressly construed the Takings Clause: “To resolve this case, we must determine whether [Petitioners] property interest [in the medallions] ... is the type of property interest protected by the Takings Clause, an endeavor that *requires us to construe the word ‘property’ as it is used in that clause*” A30 (emphasis altered).

Indeed, the majority correctly framed “[t]he pivotal question” as “what the *constitution* means when *it* uses the term ‘property.’” A29. The majority extensively compared the meaning of “property” as used

in the Due Process Clauses to the meaning of “property” as used in the Takings Clauses. See A36–40. The majority reasoned: “‘Property’ as used in the [federal Takings] Clause is *defined much more narrowly* than in the due process clauses. Thus, while certain property interests may not be taken without due process, they may be taken without paying just compensation.”¹ A29 (emphasis added).

The majority also expressly construed the Takings Clause when it rejected how the dissent was “construing” that clause:

The dissent is *necessarily construing the term “property” in the constitution* by concluding that the Takings Clause requires compensation for the elimination of any right or privilege to which the legislature affixes the label “private property.” That is an *expansive understanding* of the word “property” for purposes of the Takings Clause that is neither supported by case law nor compelled by the language of the constitution.

A30 (emphasis added).

Finally, *Carmazi v. Board of County Commissioners*, 104 So. 2d 727 (Fla. 1958), is distinguishable and does not preclude review here. The takings claim there allegedly arose when a newly built government dam prevented the appellants from traveling by boat

¹ Florida courts have interpreted the federal and state Takings Clauses “as operating coextensively.” A16–17.

from their property to Biscayne Bay. *Id.* at 728. The jurisdictional provision in *Carmazi* allowed appeals from a chancellor’s final decree “construing a controlling [constitutional] provision.” Art. V, § 4(b), Fla. Const. (1957). This Court declined jurisdiction, concluding the chancellor’s decree “did not undertake to ‘construe’ any controlling [constitutional] provision.” *Carmazi*, 104 So. 2d at 729.

The *Carmazi* chancellor merely had determined the appellants “were not *vested* with a property right that would require payment of damages by the [government].” *Id.* at 728 (emphasis added). In other words, the chancellor applied legal principles to the facts to determine that no property rights “vested.” But, unlike the Second District here, the chancellor did not discern the meaning of (i.e., construe) the words “private property” in the Takings Clause.

In sum, because the Second District’s decision expressly construed the words “private property” in the Takings Clause, this Court may exercise jurisdiction.

II. This case’s importance warrants this Court exercising its jurisdiction.

This case’s importance transcends Petitioners’ property rights and the taxi industry. It concerns the legislature’s power to create property rights. It is also about ordinary citizens being able to rely on what the laws say.

A. This Court should decide whether the legislature may create a property interest protected by the Takings Clause.

May the legislature enact a law to establish a license as a property right constitutionally protected from a government taking? The dissent answered “yes.” See A48–49 n.7, 56 n.10 (Lucas, J., dissenting) (discussing the role of “positive law” in creating property and other licenses protected by the Takings Clauses).

By contrast, the majority categorically answered “no”—even when the legislature expressly declares the license to be property. See A19 (“[P]ermits and licenses to operate taxicabs are privileges created by the government.”); A20 (“The fact that the legislature declared [the] medallions to be transferrable personal property does not transform that which is a license or a privilege into a property interest cognizable under the Takings Clause.”).

The majority and the dissent disagreed about the legislature's proper role in creating compensable property rights. Cf. A48–49 n.7 (Lucas, J. dissenting) (“[A]scribing the proper role of positive law [i.e., legislation] to the right of property may be what the majority and I find ourselves in disagreement over.”). Although the dissent recognized that “property transcends positive law altogether as a natural right,” it opined “that positive law, such as legislation, has a role to play in discerning this natural right.” A48–49 n.7. The majority disagreed; it opined that “the ‘private property’ *label* given to the medallions [by the legislature] did not transform the license...into a compensable property interest.” A20.

This disagreement over the legislature's constitutional power to establish compensable property is no ordinary disagreement. This Court—not a single, divided three-judge panel—should decide the legislature's proper role in creating property interests protected by the Takings Clause.

B. This Court should accept jurisdiction to ensure that ordinary citizens can rely on what the laws say.

“[O]rdinary citizens should be able to rely on [a law's] plain language ... to mean what it says.” *Fitzgerald v. Advanced Spine*

Fixation Sys., Inc., 996 S.W.2d 864, 866 (Tex. 1999). “This is the essence of the rule of law: to know in advance what the rules of society are.” *Robinson v. City of Detroit*, 613 N.W.2d 307, 321 (Mich. 2000). A citizen “should be able to expect ... that [a law’s words] will be carried out by all in society, including the courts.” *Id.*

Imagine you want to start a taxicab business. You read a special law that says a medallion is “private property” that the holder “may transfer ... by pledge, sale, assignment, sublease, devise, or other means.” Ch. 2012-247, § 1(2)–(3), Laws of Fla. You then read the constitution: “No private property shall be taken except ... with full compensation ... paid to each owner,” Art. X, § 6(a), Fla. Const.

Relying on what you read, you purchase a medallion and start a taxicab business. You expect your medallion is compensable, private property. A50–51 (Lucas, J., dissenting) (the special act “could [not] be any plainer ... to acknowledge a cognizable property right without hitting the reader on the nose”).

Five years later, you learn that your medallion “vanished” when the legislature repealed the special law. A15. You think, surely, based on what you read, that your “private property” has been “taken” and that you are entitled to “full compensation.”

Another five years passes, and you learn that two judges (the trial judge and the dissent) read the laws just like you did. But you also learn that two other judges (the majority) decided that your medallion—the one you purchased—was never “private property.”

You are dumbfounded. The 100 or so words that you read seemed plain. You learn for the first time—from the majority’s 38-page opinion—that you were not entitled to rely on the special law’s private-property “label” or to expect the courts to carry out what the laws say. A20, 25, 30.

This is not what the Framers envisioned. “In republics, the very nature of the constitution requires the judges to follow the letter of the law; otherwise the law might be explained to the prejudice of every citizen, in cases where their honor, property, or life is concerned.” Montesquieu, *The Spirit of Laws* (vol. I) 75 (1748) (English trans.). Here, to the prejudice of ordinary citizens who rely on what the laws say, the majority explained away the special law’s plain language as a mere “label.” This Court should not allow the majority’s disregard of the laws to be the final word.

CONCLUSION

This Court should accept jurisdiction.

CREED & GOWDY, P.A.

/s/ Bryan S. Gowdy

Bryan S. Gowdy

Florida Bar No. 176631

bgowdy@appellate-firm.com

filings@appellate-firm.com

Dimitrios A. Peteves

Florida Bar No. 123903

dpeteves@appellate-firm.com

865 May Street

Jacksonville, Florida 32204

Telephone: (904) 350-0075

Facsimile: (904) 503-0441

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court on February 17, 2023, via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to all counsel of record:

Blaine H. Winship

OFFICE OF THE ATTORNEY GENERAL

400 S Monroe Street

Suite P1-01

Tallahassee, Florida 32399

Telephone: (850) 414-3300

blaine.winship@myfloridalegal.com

Counsel for the State of Florida

Robert E. Brazel

HILLSBOROUGH COUNTY

ATTORNEY'S OFFICE

601 E Kennedy Blvd., Floor 27

Tampa, Florida 33602-4932

Telephone: (813) 272-5670

Brazelr@hillsboroughcounty.org

MatthewsL@hillsboroughcounty.org

JohnsonNi@hillsboroughcounty.org

Counsel for Hillsborough County

Henry C. Whitaker.

Solicitor General

Daniel W. Bell

Chief Deputy Solicitor General

David M. Costello

Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL

PL01, The Capitol

Tallahassee, Florida 32399

Telephone: (850) 414-3300

henry.whitaker@myfloridalegal.com

daniel.bell@myfloridalegal.com

david.costello@myfloridalegal.com

jenna.hodges@myfloridalegal.com

Counsel for the State of Florida

J. Daniel Clark

CLARK & MARTINO, P.A.

3407 W. Kennedy Blvd.

Tampa, FL 33609

Telephone: (813) 879-0700

dclark@clarkmartino.com

jliza@clarkmartino.com

Counsel for Petitioners

Jason K. Whittemore

WAGNER MCLAUGHLIN &

WHITTEMORE, P.A.

601 Bayshore Blvd., Suite 910

Tampa, Florida 33606

Telephone: (813) 225-4000

Jason@wagnerlaw.com

Arelys@wagnerlaw.com

Counsel for Petitioners

**Gulf Coast Transportation,
Inc., d/b/a United Cab, d/b/a
United Taxi, d/b/a Tampa Bay
Cab**

Justin Morgaman

jdmorgaman@gmail.com

**Bay & Beach Transportation,
LLC; Bay & Beach Cab, LLC
d/b/a Executive Cab; and
ABC Taxi, LLC;**

Nancy Castellano

castellano@mosesgroupllc.com

/s/ Bryan S. Gowdy

Attorney

CERTIFICATE OF COMPLIANCE

I CERTIFY that this brief complies with the word-count limit of Florida Rule of Appellate Procedure 9.210(a)(2)(A) because it contains 2,427 words (not including portions excluded under rule 9.210(a)(2)(E)), according to the word-processing system used to prepare this brief. This brief also complies with the line-spacing, type-size, and typeface requirements of Florida Rule of Appellate Procedure 9.045.

/s/ Bryan S. Gowdy
Attorney