IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CASE NO. 1D10-5094

HON. JEFF ATWATER, *et al.*,

Appellants,

v.

CITY OF WESTON, *et al.*,

Appellees.
_____/

APPELLANTS' RESPONSE TO APPELLEES'
RULE 9.125 SUGGESTION

Appellants respond in opposition to Appellees' Suggestion that this court certify this case for immediate resolution by the Supreme Court pursuant to rule 9.125, Fla. R. App. P., and state as follows.

This case involves a challenge to ch. 2009-96, Laws of Florida (commonly known as SB 360) under Art. VII, § 18 (unfunded mandate) and Art III, § 6 (single subject) of the Florida Constitution. The trial court held that the single subject challenge was moot due to the annual recodification of Florida Statutes and that one section of the chapter law violated the single subject provision. As to this one section of the law, the trial court held that there was no genuine issue of material fact and granted summary judgment. As to other sections of the law challenged by

Appellees below, the trial court found the existence of genuine issues of material fact preventing the granting of summary judgment as to them. This court should decline to certify this case because it does not "require immediate resolution by the supreme court because the issues pending in the district court are [neither] of great public importance [nor will they] have a great effect on the proper administration of justice throughout the state." Rule 9.125(a), Fla. R. App. P.

THIS CASE IS NOT ONE OF GREAT PUBLIC IMPORTANCE

Appellees' arguments for the certification of this case have no merit because the same can be said for most cases in which statutes have been declared unconstitutional. The fact that local governments must comply with the law unless and until it is finally determined to be unconstitutional is nothing more than the result of the law imposing a presumption of constitutionality on acts of the legislature. *Haddock v. Carmody*, 1 So.3d 1133, 1135 (Fla. 1st DCA 2009)("[I]t is a "well-established principle that a legislative enactment is presumed to be constitutional." *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So.2d 503, 508 (Fla.2008).")

Immediate supreme court review of this case is also unnecessary because there is no conflicting ruling from any other district court, making the result from

this court applicable statewide. *Pardo v. State*, 596 So.2d 665, 666 (Fla.1992). There is no more uncertainty here than in any other case.[1]

In this case, the trial court granted Appellees' motion for summary judgment over the argument by Appellants that there was a genuine issue of material fact preventing the grant of the motion. It is, therefore, possible that the constitutional issues will be avoided by this court holding that summary judgment was inappropriate resulting in a remand for trial on all issues related to the unfunded mandate provision. Such a ruling would avoid the constitutional issues and therefore the need for resolution by the supreme court.

Also in this case, Appellants argued below that Plaintiffs/Appellees sued the wrong Defendants. The Governor, the Senate President, and the Speaker of the House do not enforce the subject law and are clothed with absolute legislative immunity. Furthermore, the Secretary of State has no role whatsoever in the enforcement of this law. The order requiring her to expunge this law from the statutes is a nullity since it is not within her power to remove laws from the books. It is up to the Legislature to add or remove laws in the codification process. Determination that no proper Defendant was present in this suit would also obviate the need for supreme court review.

---

[1] For the same reason, this case will not "have a great effect on the proper administration of justice throughout the state." Whatever this court holds will be the law statewide.

Finally, Appellees are just wrong about the need for immediate resolution of this case by the supreme court. The Department of Community Affairs has determined that no change to the concurrency requirements of local governments is mandated by the law.[2] As to the requirement for a mobility plan, comprehensive planning is an ongoing process. Much of the data and analysis needed to support a mobility plan amendment is already done by local governments to support their current plans. Even if the need for a mobility plan is obviated by an eventual finding that this law is unconstitutional, the information and plans developed in the process of writing such a plan amendment can be valuable tools in the overall transportation planning already required by statute and rule.

THIS CASE WILL NOT HAVE A GREAT EFFECT ON THE PROPER ADMINISTRATION OF JUSTICE THROUGHOUT THE STATE

Appellees' argument regarding the single subject challenge is also without merit. The decision of the trial court is based on clear and longstanding precedent. Recodification of the Florida Statutes cures any alleged single subject violation *Loxahatchee River Environmental Control Dist. v. School Bd. of Palm Beach County,* 515 So.2d 217, 219 (Fla. 1987).

[2] http://www.dca.state.fl.us/fdcp/dcp/legislation/2009/Notice.cfm

CONCLUSION

Appellees' suggestion that this court certify this case under rule 9.125 should be denied. This case should proceed in the normal course of business.

Respectfully submitted this 25th Day of October, 2010.

BILL McCOLLUM
ATTORNEY GENERAL

s/Jonathan A. Glogau
Jonathan A. Glogau
Chief, Complex Litigation
Fla. Bar No. 371823
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3300, ext. 4817
850-414-9650 (fax)
jon.glogau@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served by U.S. mail and e-mail this 25th Day of October, 2010, on:

Jamie A. Cole
Susan L. Trevarthen
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
200 East Broward Blvd., Suite 1900
Ft. Lauderdale, FL 33301

Edward G. Guedes
John J. Quick
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134

Stephen Turner
David Miller
Broad and Cassel
215 South Monroe St., Suite 400
Tallahassee, FL 32302

s/ Jonathan A. Glogau
Attorney