IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

CITY OF WESTON, FLORIDA, et al.,

Plaintiffs,

v. Case No. 09-CA-2639

THE HONORABLE CHARLIE CRIST, Governor of the State of Florida; HONORABLE KURT S. BROWNING, Secretary of State, State of Florida; THE HONORABLE JEFF ATWATER, President of the Senate, State of Florida; and THE HONORABLE LARRY CRETUL, Speaker of the House, State of Florida,

Defendants.
_____/

DEFENDANTS' MOTION FOR REHEARING

Defendants, Atwater and Cretul only, respectfully move for rehearing and state:

In its Order granting summary judgment, this court found that there were no genuine issues of material fact regarding the allegation that §4 of Ch. 2009-96, Laws of Florida, violated the provisions of Art. VII, §18(a), Fla. Const. Without any findings as to any other section of the Law, this court then declared that Ch. 2009-96, Laws of Florida, was unconstitutional in its entirety.

REMEDY

After declaring the entire chapter law unconstitutional, this court ordered the Secretary of State to expunge the law from the Laws of Florida. Defendants respectfully request the court to grant rehearing to reconsider the remedy of declaring the entire law unconstitutional.

Art. VII, § 18(a) states:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds . . . .

Rather than requiring a declaration that the entire chapter law is unconstitutional on its face, the plain language of the constitution provides another remedy -- that no local government is bound by a provision that imposes an unfunded mandate in violation of the constitution. "If the constitutional language is clear, unambiguous, and addresses the matter at issue, it must be enforced as written." *Ford v. Browning*, 992 So.2d 132, 136 (Fla. 2008)

That this is the proper remedy is also evidenced by the difference in language between subsection (a) as quoted, and subsections (b) and (c) which both state: "Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal . . . ." The difference between "No county or municipality shall be bound" and "the legislature may not

enact" must be recognized. When different language is used then it must be presumed that different meanings attach. *Beshore v. Department of Financial Services,* 928 So.2d 411, 413 (Fla. 1st DCA 2006) (The legislature's use of different terms in different sections of the same statute is strong evidence that different meanings were intended. *Maddox v. State*, 923 So.2d 442, 446 (Fla.2006).) When reviewing constitutional provisions, the supreme court follows principles parallel to those of statutory interpretation. *Browning,* 992 So.2d at 136.

If the Court declares that no county or municipality is bound by a statute that imposes an unconstitutional mandate, rather than declaring that the entire chapter law is unconstitutional, local governments would be free to comply or not at their discretion – an outcome contemplated in the plain language of subsection (a). And, the Legislature would have the option of appropriating money in a future year to make compliance mandatory.

This court's remedy of striking the entire chapter law may have been influenced by a colloquy between the Court and Defendants during the hearing on summary judgment. In their response to the motion to intervene, Plaintiffs reproduce this colloquy. Plaintiffs' consistent characterization of it as a stipulation by Defendants that there is no severability overstates the import of the conversation. It is clear that any agreement that severability is inappropriate was based on the

earlier argument that the court had to look at the chapter law as a whole to determine if there were setoffs to the funds the law requires the Plaintiffs to expend. The court however rejected that position stating:

> It appears that Defendants are claiming an exemption to the unfunded mandate provision resulting from non-quantifiable potential savings measured against quantified current and existing costs mandated by SB 360 in connection with comprehensive plan amendments that must be filed in early July, 2011. SB 360 §4. This exemption is not set forth in the plain language of art. VII, § 18(d), nor do Defendants cite any authority for this Court to read an additional exemption into a clearly worded constitutional exemption in this manner.

Since the Court rejected Defendants' argument that the reason to treat the chapter law as a whole is to allow for offsets, then any agreement on severability based on that argument is void and the remedy set forth above should have been applied to the individual sections found to be violations of the constitution.

There is only one reported case under Art. VII, § 18(a) - *Lewis v. Leon County,* 15 So.3d 777, 779 (Fla. 1st DCA 2009). That case involved a challenge to the provisions of Chapter 2007-62, Laws of Florida, which required counties to pay certain costs of the newly established Office of Criminal Conflict and Civil Regional Counsel ("Regional Conflict Counsel"). § 27.511, Fla. Stat. (2007). The court found that only the payment provision violated Art. VII, § 18(a), Fla. Const. The Regional Conflict Counsel offices survived. So too in this case should all

sections of the statute survive except those found to be "unfunded mandates."

This court should grant rehearing to address the remedy imposed due to the finding that § 4 constitutes an unfunded mandate. The proper remedy is for the court to declare that no local government is bound by the requirements of § 4. Given that result, only partial summary judgment can be granted with respect to § 4 because the court held that genuine issues of material fact exist with respect to the other claims.

ALL COSTS ARE NOT MANDATES

In the Summary Judgment order, this court identified seven types of costs that Plaintiffs alleged were unfunded mandates. Defendants asserted that "concerns about litigation, possible increased costs of roads, and mitigation costs related to DRI developments are not mandates." This court combined these items with the other items in paragraphs b-g referenced earlier in the order and found there were genuine issues of material fact as to them. The question of whether these three alleged costs are mandates is one of law. Defendants assert that such costs, whatever they may be, simply are not "required" by the law. These are all optional costs within the discretion of the local governments. The law does not mandate any of them. Defendants are entitled to summary judgment as to them. This court overlooked or misapprehended the argument and should address it on rehearing.

WHEREFORE, Defendants respectfully request that this court grant rehearing and issue a new order finding that to the extent that § 4 of Ch 2009-96, Laws of Florida, violates Art. VII, § 18, that no local government is bound by it and only it; and that Defendants are entitled to summary judgment on "concerns about litigation, possible increased costs of roads, and mitigation costs related to DRI developments" because, as a matter of law, they are not mandates.

Respectfully submitted this 7th Day of September, 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served by U.S. mail and e-mail this 7th Day of September, 2010, on:

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