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

CITY OF WESTON, FLORIDA; VILLAGE OF KEY BISCAYNE, FLORIDA; TOWN OF CUTLER BAY, FLORIDA; LEE COUNTY, FLORIDA; CITY OF DEERFIELD BEACH, FLORIDA; CITY OF MIAMI GARDENS, FLORIDA; CITY OF FRUITLAND PARK, FLORIDA, CITY OF PARKLAND, FLORIDA, CITY OF HOMESTEAD, FLORIDA; COOPER CITY, FLORIDA; CITY OF POMPANO BEACH, FLORIDA; CITY OF NORTH MIAMI, FLORIDA; VILLAGE OF PALMETTO BAY, FLORIDA; CITY OF CORAL GABLES, FLORIDA; CITY OF PEMBROKE PINES, FLORIDA; BROWARD COUNTY, FLORIDA; LEVY COUNTY, FLORIDA; ST. LUCIE COUNTY, FLORIDA; ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA; and TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA,

Plaintiffs,

vs.

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

Defendants.

CASE NO. 09-CA-2639

PLAINTIFFS' RESPONSE TO EMERGENCY MOTION TO INTERVENE

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Plaintiffs, City of Weston, Florida; Village of Key Biscayne, Florida; Town of Cutler Bay, Florida; Lee County, Florida; City of Deerfield Beach, Florida; City of Miami Gardens, Florida; City of Fruitland Park, Florida; City of Parkland, Florida; City of Homestead, Florida; Cooper City, Florida; City of Pompano Beach, Florida; City of North Miami, Florida; Village of Palmetto Bay, Florida; City of Coral Gables, Florida; City of Pembroke Pines, Florida; Broward County, Florida; Levy County, Florida; St. Lucie County, Florida; Islamorada, Village of Islands, Florida; and Town of Lauderdale-By-The-Sea, Florida (the "Local Governments"), hereby respond to the "Emergency Motion to Intervene to Seek Rehearing, Amendment, Or Appeal on Issue of Severing Portions of Ch. 2009-096 That Are Not Held to be Unconstitutional as Unfunded Mandate" served by AFFORDABLE HOUSING SOLUTIONS FOR FLORIDA, INC. ("AHSF") on August 30, 2010.

OVERVIEW

After sitting on the sidelines for more than thirteen months, AHSF now, on an emergency basis, seeks to intervene in this case, post-judgment, to assert a new issue in the case. Specifically, AHSF seeks to argue that severance is appropriate in this unfunded mandate case, even though the issue was not previously raised and, in fact, the parties stipulated to the contrary. The motion runs counter to two general rules: first, that intervention is not appropriate post-judgment; and second,

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that an intervenor may not raise new issues. Moreover, AHSF is simply wrong in contending that severance is permissible in an unfunded mandates case.

I. AHSF Should Not Be Permitted to Intervene, Post-Judgment, After Waiting More than Thirteen Months

In general, intervention will not be permitted in Florida after final judgment. *Dickinson v. Segal*, 219 So. 2d 435, 436-37 (Fla. 1969); *De Anza Corp. v. Hollywood Estates Homeowners' Assoc., Inc.*, 443 So. 2d 462, 463-64 (Fla. 4th DCA 1984) (reversing order granting post-judgment motion to intervene). Here, this case was filed on July 9, 2009. For more than 13 months, AHSF sat on the sidelines, choosing not to intervene. Instead, AHSF waited until after a Final Summary Judgment was entered on August 26, 2010 – a judgment it apparently disagrees with – to file its "emergency" motion.[1]

Although a Court does have discretion to avoid the general rule and permit intervention post-judgment, it should do so only in extraordinary circumstances where it is necessary in the "interest of justice." *Lewis v. Turlington*, 499 So. 2d 905, 908 (Fla. 1st DCA 1986) (holding post-judgment intervention is not permitted, "except in the rarest of circumstances"); *see also Litvak v. Scylla Prop., LLC*, 946 So. 2d 1165, 1172 (Fla. 1st DCA 2006); *Schiller v. Schiller*, 625 So. 2d 856, 860 (Fla. 5th DCA 1993). Here, there are no such circumstances. AHSF does not provide any explanation for its tardiness in seeking intervention; neither does it

[1] The dangers of routinely allowing post-judgment intervention are almost self-evident. The finality of judgments would be seriously undermined if individuals and entity with interests affected by the judgments could collaterally attack those judgments whenever they disagreed with them.

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describe any extraordinary circumstances that would justify intervention in the "interest of justice." AHSF simply does not like the decision and apparently is unhappy that defendants stipulated that severance is not proper in an unfunded mandates case.[2]

II. AHSF Should Not Be Permitted to Intervene Because it Seeks to Inject a New Issue in the Case

Rule 1.230, Fla.R.Civ.P., states that "intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion." Thus, an intervenor generally may not inject new issues into a case, and is instead bound by the issues and matters in the record and by the pleadings as they exist at the time of intervention. *See Riviera Club v. Belle Mead Dev. Corp.*, 194 So. 783, 784 (Fla. 1939) (An intervenor is "bound by the record, as it was at the time of its petition for intervention, by the pleadings as they were framed at that time, and by the issues and matters involved therein and sought to be adjudicated thereby. [Intervenor was] required to take the suit as it found it, and could not, by its petition to intervene, inject or raise new or independent matters or issues in its own behalf ...."); *see also Omni Nat'l Bank v.*

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[2] Further underscoring this point is a case relied upon by AHSF: *WAGS Trans. Sys., Inc. v. City of Miami Beach*, 88 So. 2d 751 (Fla. 1956). Although the *WAGS* Court ultimately permitted post-judgment intervention, it did so only because "[n]o new issues can be injected but none were attempted in [that] case." *Id.* at 752 (emphasis added). AHSF, however, is seeking to introduce a new issue into this case and, as a result, is not permitted to intervene post-judgment.

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Ga. Banking Co., 951 So. 2d 1006, 1007 (Fla. 3d DCA 2007); *Dunscombe v. Beach Club Colony*, 264 So. 2d 465, 466 (Fla. 4th DCA 1972).

Here, the issue of severance was not raised by defendants in their defense of the unfunded mandate challenge.[3] In fact, the exact opposite is true – both parties agreed that severance was not appropriate in an unfunded mandates case:

> THE COURT: Before you sit down I'm going give you a chance, I'll let you close. Will you address the issue – if I can get by the single subject somehow and get to unfunded mandate, address the severance issue as it applies to the unfunded mandate issue within this statute. Otherwise, can I find a particular section or not to be an unfunded mandate, not a single subject violation, but an unfunded mandate but that others not to be, the others to be valid to carry out the intent of the legislature under growth management.
>
> MR. GLOGAU [Attorney for Defendants]: Well, Your Honor, I think that would be inconsistent with my position that you have to look at the statute as a whole. Because if you pull one section out and say this is an unfunded mandate, then you're ignoring the fact that somewhere else in the statute the legislature has sort of given them an opportunity to save money to offset that.
>
> The constitution – one of the ways to get over the unfunded mandate provision is that if there is a mandate and the legislature in fact provides a method for raising the money to do that. So if your severance argument will allow you to say, well, this section is an unfunded mandate, this section – but we're not going to look at this section over here that says you can raise the money to cover that. So I don't think severance is appropriate in the unfunded mandate world.

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[3] Defendants did raise severance in connection with the single subject challenge. However, if the Court had found a single subject violation (and found that it was not moot), severance nevertheless would not be appropriate in this case. *See Heggs v. State*, 759 So. 2d 620, 629-30 (Fla. 2000); *see also* Plaintiffs' Reply in Support of Motion for Final Summary Judgment and in Opposition to Defendants' Cross-Motion For Partial Summary Judgment at pp. 11-15.

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> THE COURT: So you're in agreement with I think their position.
>
> MR. GLOGAU [Attorney for Defendants]: I don't think they addressed that with respect to unfunded mandate. I think they were addressing that with respect only to the single subject.
>
> THE COURT: But I think they have the same position – well, I'll let you address it.
>
> MR. COLE [Attorney for Plaintiffs]: We do.
>
> THE COURT: So I'm looking at an all or nothing if I get past the single subject –
>
> MR. GLOGAU [Attorney for Defendants]: Yes.
>
> THE COURT: -- and I determine there is or is not an unfunded mandate, it's all up or all down.
>
> MR. GLOGAU [Attorney for Defendants]: I think that's right, Your Honor.

See June 3, 2010 hearing transcript at p. 73, line 18 – page 75, line 15.

Thus, AHSF should not be permitted to intervene to inject a new issue in the case.

III. AHSF Should Not Be Permitted to Intervene Because the Position that it Seeks to Raise – that Severance is Appropriate in an Unfunded Mandates Case – Is Wrong

As agreed to at the hearing by both sides, severance is not appropriate in an unfunded mandates case. The applicable constitutional provision (Article VII, Section 18(a)) states that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action

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requiring the expenditure of funds ...." It does not refer to any "portion of any general law," nor does it speak to severance.

Moreover, Section 18(d) provides that "laws having insignificant fiscal impact ... are exempt ...." This exemption requires the Court to look at the entirety of the law, not merely one provision, making severance impossible. This was the crux of defendants' defense in this action – that there were offsetting cost savings elsewhere in SB 360 (which, as a factual matter, defendants were unable to establish).

CONCLUSION

Intervention should not be allowed. AHSF has simply waited too long, has not set forth any reason for the Court to ignore the general rule against allowing post-judgment intervention, is improperly attempting to inject a new issue in the case and is simply wrong in its position regarding severance

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent via email and U.S. Mail to **Jonathan A. Glogau, Esq.**, *Attorney for the Governor, Senate President and Speaker*, 400 South Monroe Street, Room PL-01, Tallahassee, Florida 32399-6536; **Lynn C. Hearn, Esq.**, General Counsel, and **Staci A. Bienvenu, Esq.**, Assistant General Counsel, *Attorneys for the Secretary*, Department of State, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, FL 32399-0250; and **M. Stephen Turner, Esq.** and **David K. Miller, Esq.**, *Attorneys for AHSF*, Broad and Cassel, 215 S. Monroe Street, Suite 400, P.O. Drawer 11300, Tallahassee, FL 32302, this 31st day of August, 2010.

EDWARD G. GUEDES

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