IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

CASE NO.: 1D10-5094
Lower Case No.: 09-CA-2639

THE HONORABLE JEFF ATWATER,
President of the Senate, State of Florida, *et al.*,

Appellants/Cross-Appellees,

v.

CITY OF WESTON, *et al.*,

Appellees/Cross-Appellants.

_____/

SUGGESTION THAT DISTRICT COURT CERTIFY JUDGMENT FOR DIRECT REVIEW BY FLORIDA SUPREME COURT

Appellees/Cross-Appellants, City of Weston, Florida, and the other 19 appellee/cross-appellant local counties and municipalities (the "Local Governments"), pursuant to Rule 9.125, Fla. R. App. P., respectfully file this suggestion that the Corrected Final Summary Judgment under review ("Final Judgment") be certified by this Court as requiring immediate resolution by the Florida Supreme Court.

OVERVIEW

This appeal concerns a challenge by the Local Governments to Senate Bill 360, entitled "An Act Relating to Growth Management" ("SB 360") (now Chap. 2009-96, Laws of Fla.) enacted in May of 2009 by the Florida Legislature. The Honorable Charles A. Francis declared that SB 360 violated the Florida Constitution's prohibition against unfunded mandates (Art. VII, Sec. 18, Fla. Const.). He also held that the alleged constitutional violation of Art. III, Sec. 6, Fla. Const. (the Florida Constitution's single-subject rule) was rendered moot by the Legislature's later enactment of SB 1780 (Ch. 2010-3, Fla. Laws), which

codified all previously enacted laws into statutes. *See* Final Judgment attached as an appendix hereto. Senate President Atwater and Speaker Cretul (but not Governor Crist and Secretary Browning) filed a notice of appeal as to the first issue, and the Local Governments filed a notice of cross-appeal as to the second issue on October 15, 2010.

The Local Governments appreciate that the use of Rule 9.125 to bypass consideration by a District Court of Appeal is discretionary, and that, under ordinary circumstances, direct review is not appropriate. However, due to the importance of the issues at stake and the great need for a very prompt resolution of the issues raised on appeal, certification by this Court is both proper and consistent with prior precedent. *See Harris v. Coalition to Reduce Class Size*, 824 So. 2d 245 (Fla. 1st DCA 2002), *rev. granted*, 823 So. 2d 123 (Fla. 2002) (certifying order to Supreme Court).

A. This Appeal Requires Immediate Resolution By The Supreme Court

This case undoubtedly requires immediate resolution. The primary "unfunded mandate" found by the trial court was the requirement under SB 360 that, **prior to July 8, 2011**[1], local governments throughout the State amend their comprehensive plans and adopt transportation strategies "to support and fund mobility." SB 360, § 4. The trial court found that this would result in a cost state-wide of "not less than $3,390,000." *See* Final Judgment at p. 9. The amendment

[1] The deadline for enacting amendments to the comprehensive plans is two years after designation as a dense urban land area ("DULA"). The initial designations of DULAs was made on July 8, 2009.

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process requires that consultants be retained, studies commissioned, legislation drafted, plan amendments printed, and two public hearings advertised and conducted. *Id.* As a result, because of the July 8, 2011 deadline, if this matter is not certified under Rule 9.125 and promptly determined by the Supreme Court, the Local Governments will be forced to expend significant funds, notwithstanding the trial court's order to the contrary (even if it is ultimately upheld by the Supreme Court).

Moreover, since SB 360 became effective on June 1, 2009, local governments throughout the State, including the Local Governments, as well as the Department of Community Affairs, have struggled to interpret and administer SB 360. This, coupled with the trial court's Final Judgment, has resulted in great continuing uncertainty throughout the development community.

Accordingly, much like in *Harris*, the Final Judgment should be certified pursuant to Rule 9.125 because "precious little time would remain for review in the supreme court." *Id.* at 248; *see also Florida Dep't of Agric. & Consumer Servs. v. Haire*, 832 So. 2d 778, 780-82 (Fla. 4th DCA 2002) (certifying to Florida Supreme Court, pursuant to Rule 9.125, trial court ruling enjoining enforcement of a statute because the District Court's "word is most unlikely to be the final one").

B. <u>The Final Judgment Is Of Great Public Importance</u>

This Court should certify the Final Judgment to the Supreme Court because of the "great public interest in the determination of the question involved." *Light*

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v. Meginniss, 22 So. 2d 455, 455 (Fla. 1945). Laws and policies regarding growth management undoubtedly are of great public importance and interest. For example, there is currently substantial debate Statewide related to proposed Constitutional Amendment 4, which would require referenda prior to adoption of any comprehensive plan amendments.

Acknowledging the "great public interest" and importance of this issue, the Florida Legislature in enacting SB 360 declared that it "fulfills an important state interest," SB 360, § 34, which determination was later approved by Governor Crist when he signed SB 360 into law. Ch. 2009-96, Laws of Fla. at p. 45, § 34. Moreover, the trial court determined that the Legislature met a part of its requirement under Art. VII, § 18(a), Fla. Const. by finding that SB 360 "fulfills an important state interest." *See* Final Judgment at p. 11. As a result, all three branches of the State government have already recognized the "great public interest" involved here. *See Harris*, 824 So. 2d at 246-48.

C. <u>The Final Judgment Will Also Have a Great Effect on the Proper Administration of Justice Throughout the State</u>

In ruling that the Local Governments' single-subject challenge was moot, the trial court relied upon prior precedents that held that the Legislature's recodification into Florida Statutes of the previously enacted Laws rendered this challenge moot. *See* Final Judgment at pp. 4-5. These decisions were made during a time when the recodification process took place every two years. During that two-year period, the public could discover unlawful logrolling in legislation and

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either abide by it or demand corrective action, and constitutional challenges to single subject violations could be meaningfully prosecuted.

However, in 2003, the Legislature unilaterally decided to shorten the "curative" time frame from two years to one year, and now codify previously enacted laws into statutes every year. *See* Ch. 2003-25, Laws of Fla. Given the length of time needed to complete a legal challenge in court (which, through final decisions by appellate courts, will certainly take more than one year), the single subject rule is effectively rendered meaningless. The Local Governments do not stand alone in their concern as to this apparent usurpation of constitutional authority. *See, e.g., State v. Rothauser*, 934 So. 2d 17, 19-20 (Fla. 2d DCA 2006). Only the Florida Supreme Court can address this evolving problem that will inexorably lead to the complete evisceration of the single-subject rule in the Florida Constitution. *Id.*

RULE 9.125 CERTIFICATION

I express a belief, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the Supreme Court and is of great public importance and will have a great effect on the administration of justice throughout the state.

WHEREFORE, the Local Governments pray that the Court, pursuant to Rule 9.125, certify that the Final Judgment, requires immediate resolution by the Supreme Court and for such other relief as the Court deems appropriate.

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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; and **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, this 15th day of October, 2010.

Respectfully submitted,

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