IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC01-1562
(L.T. CASE NO. 3D00-3132)

THE CITY OF MIAMI, a municipal corporation,

Appellant,

vs.
PATRICK MCGRATH III, MIAMI-DADE COUNTY, a political subdivision of the State of Florida and LAUREEN VARGA,

Appellees,

CITY'S INITIAL BRIEF

ON APPEAL FROM
A DECISION OF THE THIRD DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE

A. Proceedings Below

This is an appeal from a decision of the Court of Appeal, Third District, *Patrick McGrath III et al. v. City of Miami,* 26 Fla.L.Weekly D1682C (Fla. 3d DCA July 11, 2001) ("Decision"), reversing the Final Declaratory Judgment in favor of the City of Miami ("City") and granting summary judgment in favor of the appellant, Patrick McGrath III, et al. ("McGrath"). The Decision holds that Florida Statute Section 218.503(5)(a) ("Statute") is unconstitutional.

The plaintiff below, Patrick McGrath, III, individually, and "on behalf of all others similarly situated" ("McGrath"),[1] sued the City challenging the constitutionality of the Statute upon which the City based Ordinance No. 11813 ("Ordinance"). The Ordinance imposes a surcharge on non-residential parking spaces in the City ("Surcharge"). McGrath, as well as Miami-Dade County ("County"),[2] claim that the Statute is not a valid general law since it creates a closed class of cities to which the Surcharge can apply. The City moved for summary judgment on the grounds that the Statute and the classification created by the Statute are both reasonable and constitutional. The trial court ruled that the Statute is a validly enacted general law, and thus constitutional, and that the Ordinance was validly enacted. (R. 127-132)

The Third District held that the Statute is an unconstitutional special law

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[1] / McGrath has not sought to certify his class. The case is proceeding at this time on behalf of McGrath only.

[2] / The County intervened as a plaintiff in this case and was an additional appellant before the Third District.

because it does not apply to all cities that reach the 300,000 population threshold and that by anchoring the population requirement to a specific date, the Statute "is no different than if it had identified by name the three particular cities to which it relates." *McGrath* at 1683.

The City will reference the record on appeal, as prepared by the clerk of the circuit court, as ("R. ___)," and supplemented twice. The City will refer to the supplemented record as "(S.R. __)." The City will refer to the second supplemented record as "(2d S.R. ___)."

B. <u>Statement Of The Facts</u>

During the 1999 legislative session, the Florida Legislature approved the Statute, which states as follows:

> The governing authority of any municipality with a resident population of 300,000 or more on April 1, 1999, and which has been declared in a state of financial emergency pursuant to this section within the previous 2 fiscal years may impose a discretionary per-vehicle surcharge of up to 20 percent on the gross revenues of the sale, lease, or rental of space at parking facilities within the municipality that are open for use to the general public.[3]

On or about July 13, 1999, the City Commission passed and adopted the Ordinance which implemented the Statute. (R. 79-84).

The Statute supplements the existing law, Chapter 218, Part V, known as the Local Government Financial Emergencies Act ("Act"). The Act states that its

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[3] / The Statute is repealed (sunsets) on June 30, 2006.

purposes are as follows:

> (1) To preserve and protect the fiscal solvency of local governmental entities.
>
> (2) To assist local governmental entities in providing essential services without interruption and in meeting their financial obligations.
>
> (3) To assist local governmental entities through the improvement of local financial management procedures.

Fla.Stat. §218.501.

In the Complaint, McGrath admits that the population of the City and the City of Jacksonville ("Jacksonville") exceeded 300,000 on April 1, 1999 (Complaint, ¶ 26). (R. 19-28) The City submitted an affidavit prior to the hearing on the motions for summary judgment stating that the population of the City of Tampa ("Tampa"), within reasonable statistical certainty, was in excess of 300,000 on April 1, 1999. (R. 52-54) McGrath advised the trial court that there were no issues of fact to be determined. (S.R. 4-5)

After substantial argument, the trial court entered a Final Declaratory Judgment upholding the constitutionality of the Statute, the Ordinance and the Surcharge. (R. 127-132)

An appeal to the Court of Appeal, Third District, was filed by McGrath and the County. On July 11, 2001, the Third District issued the Decision finding the Statute unconstitutional, reversing the Final Declaratory Judgment and entering summary judgment in favor of McGrath and the County. A timely notice of appeal was filed

by the City to this Court.

SUMMARY OF ARGUMENT

The Statute is a valid general law because the classification, which includes the State's three largest cities, bears a reasonable relationship to the subject matter of the Statute. Cases decided by this Court, *State of Florida v. City of Miami Beach,* 234 So.2d 103, 106 (Fla. 1970) and *Golden Nugget Group v. Metropolitan Dade County*, 464 So.2d 535, 536 (Fla. 1985), uphold comparable statutes by finding that there is a reasonable relationship between the classification created by the Legislature and the purpose of the law. This is consistent with the Florida Constitution, which provides that classifications of possible users of general law must be "reasonably related" to the subject of the law. The Decision neither cites to nor distinguishes either of these cases.

The Statute supplements Chapter 218, Florida Statutes, which seeks to preserve and protect the financial solvency of local governments. As part of a comprehensive strategy to address financial emergencies, the Statute allows the three largest cities in the State to impose a parking surcharge for a limited period of time, if the cities have been found to be in a state of financial emergency for the two years prior to seeking the imposition of the Surcharge.

A reasonable and substantial relationship exists between the purpose of the Statute and the classification utilized. Through the Statute, the Legislature has provided the State's largest municipalities with an effective tool to help them emerge from a financial emergency. It is also logical that only the State's most populous cities are likely to have the requisite level of business activity to generate parking

demand necessary to create substantial surcharge revenue. There is nothing in the least arbitrary or irrational about legislation implementing a fiscal tool designed to assist local governments to cope with a fiscal crisis, or in defining the group entitled to access that vehicle. This does not make the Statute a special law.

According to the Florida Constitution, Art. III, Section 11(b), and an unbroken line of Florida Supreme Court cases since 1970, the "reasonable relationship test" instead of a "closed-class open-class" analysis has prevailed. The limitation of potential users of the Statute does not render it unconstitutional.

The case law provides that the Legislature will be given great deference where it finds a valid public consideration for the classification, even if the application of a law is extremely limited. In *City of Miami Beach*, only two cities would ever be able to apply the resort tax, yet the Florida Supreme Court held the tax to be constitutional. In *Golden Nugget*, only three counties could ever utilize the bed tax, but that statute was also held to be constitutional. In both of these cases, the Florida Supreme Court relied upon the fact that there were strong public considerations for the statutes at issue. The Decision does not mention or attempt to distinguish either of these cases.

Golden Nugget recognizes that a strong presumption exists in favor of the constitutionality of a classification. If any state of facts can reasonably be conceived that will sustain the classification attempted by the Legislature, the courts will presume the existence of that state of facts at the time the law was enacted. In this case, there is clearly a state of facts which sustains the classification. As a result, the classification must be upheld.

The general presumption favoring the constitutionality of statutes is not overcome based upon the arguments of the County and McGrath. Because there is a direct and reasonable relationship between the purpose of the Statute (assisting cities to emerge from a financial emergency) and the classification utilized (three largest cities in the State), the Final Declaratory Judgment upholding the Statute must be affirmed and the Decision reversed.

ARGUMENT

I. THE DECISION IS DIRECTLY CONTRARY TO DECISIONS OF THIS COURT WHICH HOLD THAT STATUTES CREATING COMPARABLE CLASSFICATIONS ARE VALID GENERAL LAWS.

A. Introduction To Argument

The Decision concludes that the Statute constitutes a special law because it applies only to three cities and any other cities that reach the population threshold of 300,000 residents after April 1, 1999 "are forever excluded from the class."[4] *McGrath,* Fla.L.Weekly at D1682. The Decision reasons that "the statute is no different than if it had identified by name the three particular cities to which it relates." *Id,* citing *Fort v. Dekle*, 197 So.2d 542 (Fla. 1939);*Walker v. Pendarvis*, 132 So.2d 186 (Fla. 1961); and *Ocala Breeders Sales Company, Inc. v. Florida Gaming Centers, Inc.*, 731 So.2d 21 (Fla. 1st DCA 1999).

Yet, in two decisions of this Court, decided well after *Dekle* and *Pendarvis*, a similar claim could be made, but this Court found the statutes under review to be

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[4] / The Legislature has the power to impose laws which apply generally throughout the State. Local laws are created by local governments. A "special" law or "general law of local application" can only be implemented if there is notice to the local citizens affected and a referendum. *See Golden Nugget* at 537. According to Art. III, § 11(b) of the Florida Constitution, general laws may be validly enacted as long as the political subdivision or other governmental entity affected are classified "on a basis reasonably related to the subject of the law." As this brief will demonstrate, the Statute is a validly enacted general law because it is, as required by the Florida Constitution, reasonably related to the subject of the law.

constitutional. *See City of Miami Beach* and *Golden Nugget*, *supra*. The Decision does not explore these critical precedents, which render inaccurate the determination made that the Statute is defective because it can only be applied only by three identifiable government entities.

B. City of Miami Beach

In *City of Miami Beach*, this Court approved a statutory classification based upon population, which was "closed." No other governments could ever utilize this tax after a certain identified point in time. *City of Miami Beach* is directly contrary to the reasoning in the Decision, which holds that the Statute is unconstitutional because it anchors a population classification to a specific date. It is interesting to note that both the *dissent* in *City of Miami Beach* and the Decision rely upon the same case; *Pendarvis*. The *dissent* in *City of Miami Beach* also makes the same observation that the Decision makes, that a statute is unconstitutional because it "closes the class" and does not allow any other cities or counties to ever utilize the tax. *Miami Beach,* 234 So.2d at 108. Yet, this constrained view of legislative authority to enact general laws has not been applied in more recent, governing precedents of this Court.

The population classification in *City of Miami Beach* is far more restrictive than the one used in the Statute, and it is directly tied to a "specific date," yet this Court found that the classification is "reasonably related to the purposes to be effected," and held it to be constitutional. In the instant case, the Statute provides that cities which have a population in excess of 300,000 on April 1, 1999 are eligible to use the surcharge if they have been previously declared to be in a state of financial

emergency. In *City of Miami Beach,* the statute provides as follows:

> Section 1. All cities and towns in counties of the state having a population of not less than three hundred thirty thousand (330,000) and not more than three hundred forty thousand (340,000) and in counties having a population of more than nine hundred thousand (900,000), according to the latest official decennial census, whose charter specifically provides now or whose charter is so amended prior to January 1, 1968, for the levy of the exact tax as herein set forth, are hereby given the right, power and authority by ordinance to impose, levy and collect a tax within their corporate limits, to be known as a municipal resort tax. . . .

Miami Beach, 234 So.2d at 104. Not only were the population restrictions in *City of Miami Beach* very limited, but the requirement that the Charter must be amended prior to January 1, 1968, specifically limited the application of the statute to those cities and counties which complied with these criteria on a date certain. After that date, no other city or county could ever levy this tax. The Decision, however, would have rendered the tax statute in *City of Miami Beach* unconstitutional because the population classification is tied to a date certain. That is the same reasoning urged in the dissent but *rejected* by the majority opinion of this Court in *City of Miami Beach*.

This Court upheld the statute in *City of Miami Beach* based upon the same reasoning it later used in *Golden Nugget;* a statute is valid if the classification created is reasonably related to the purposes to be effected. *Id.*; *Golden Nugget* 464 So.2d at 537. Surely, if tourism is deemed an important public purpose warranting great deference by this Court, as in *City of Miami Beach* and *Golden Nugget*, aiding the State's largest municipalities to emerge from a financial emergency is at least as

important and significant a public consideration likewise justifying the classification. This Court held the statute constitutional in *City of Miami Beach* even though it noted that only the City of Miami Beach and Bal Harbour Village amended their charters in conformity with the statute and, as a result, are the only two eligible cities. *Miami Beach,* 234 So.2d at 106.

As with *Golden Nugget,* the Decision fails to discuss and distinguish the key *City of Miami Beach* precedent. Based on *Golden Nugget* and *City of Miami Beach*, the Decision should be reversed.

C. Golden Nugget

This Court held in *Golden Nugget* that a statute, which authorizes only three specific counties to levy a tax, is constitutional. In *Golden Nugget,* the only three counties potentially eligible to levy the tax were those which operated "under a Home Rule Charter . . ." *Id.* at 536. This Court noted that "Dade, Hillsborough and Monroe Counties potentially meet this definition, but only Dade County has adopted a Home Rule Charter." *Id.* According to the Decision, the statute in *Golden Nugget* would be unconstitutional because Home Rule Charter counties are a limited class identified by name in the Constitution.

However, this Court held that the statute in *Golden Nugget* "satisfies the criteria for a general law enunciated by this Court in *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879 (Fla. 1983)," despite the fact that only three specific counties were potentially eligible to implement the tax. *Golden Nugget,* 464

So.2d at 537.[5] Clearly, the comment of the Third District in the Decision that "as worded, the statute is no different than if it had identified by name the three particular cities to which it relates" could be applied equally to the class created by the statute considered in *Golden Nugget.* Since the Constitution names the only Home Rule Charter counties, the statute under review in *Golden Nugget* could be challenged by stating that the statute creating the class could just as well have named the particular counties eligible to levy the tax. That is, it was a defined and closed class. Nonetheless, this Court upheld the statute, choosing to focus on the legal presumption favoring a classification's reasonableness. The Court concluded that the class created bore a substantial relationship to the statute's purpose. *Id.*

The purpose of the Statute is to assist governments to emerge from a financial emergency. Creating a class consisting of the State's three largest cities to use a parking surcharge to accomplish this goal certainly bears a direct and reasonable relationship to the purpose of the Statute, just as this Court found in *Golden Nugget.* Approving the opinion of the district court, this Court held in *Golden Nugget* as follows:

> The district court pointed out that the three counties potentially eligible to implement the tax have substantial tourist-oriented economies, and they have concentrated on developing facilities that will attract convention tourists in order to improve their tourist industry.
>
> . . .
>
> The district court concluded that the classification

[5] / This Court also affirmed the district court's determination that the statute was not a special law implemented without notice or referendum. *Id.*

> utilized in the statute is reasonable and that it bears a substantial relationship to the statute's purpose – to promote tourism by facilitating the improvement and construction of convention centers.
>
> We fully approve the decision of the district court. The issues asserted by petitioners with respect to the constitutionality of the statute have been previously resolved by this Court. *See Sanford Orlando Kennel Club*-in its brief and in oral argument. Instead of considering the reasonable relationship between the classification and the purpose of the Statute, the Decision looks only to the existence of a closed class. Indeed, the Decision fails to apply the strong presumption in favor of the classification's reasonableness, the criticality of which this Court specifically noted in *Golden Nugget*.

II. THE DECISION FAILS TO APPLY THE PROPER STANDARD OF REVIEW AND FAILS TO APPLY THE PROPER TEST FOR THE CONSTITUTIONALITY OF A CLASSIFICATION.

A. Standard of Review - Legal Presumptions Favor Constitutionality

Although the Statute is constitutional on its face and as applied, basic principles of constitutional and statutory construction create presumptions that favor the constitutionality and enforcement of the law. The Decision fails to apply such presumptions. The Statute comes before this Court clothed with a presumption of constitutionality. *Sanford-Orlando Kennel Club, supra.* One of the cardinal rules of statutory construction provides that an act of the Legislature is presumed valid and will not be declared unconstitutional unless it is *patently invalid*. *Florida Jai Alai, Inc. v. Lake Howell Water and Reclamation District*, 274 So.2d 522, 524 (Fla. 1973). Courts should not and must not annul, as contrary to the Constitution, a statute passed by the Legislature, unless it can be said that the statute is *positively* and *certainly* opposed to the constitution. (emphasis added) *Id*.

Courts should, whenever possible, construe a statute so as not to conflict with the Constitution. *State v. Gale Distributors*, 349 So.2d 150, 153 (Fla. 1977). They should resolve all doubts as to the validity of a statute in favor of its constitutionality, provided that the court can give the statute a fair construction that is consistent with the Florida and federal constitutions and with the legislative intent. *State v. Stalder*, 630 So.2d 1022, 1076 (Fla. 1994). This follows the general rule that the Legislature does not intend "to enact purposeless and therefore useless legislation." *Sharer v. Hotel Corp. of America*, 144 So.2d 813, 817 (Fla. 1962).

When the constitutionality of a statute is assailed, if the statute is reasonably susceptible to two interpretations, one which would be constitutional, and the other which would render it unconstitutional, it is the duty of the court to adopt that construction which would save the statute from constitutional infirmity. *Leeman v. State*, 357 So.2d 703, 705 (Fla. 1978).

Where a statute classifies a local governmental entity according to population, such a classification is enforceable as long as the classification used is just and reasonable. The classification scheme must not be arbitrary and must bear some reasonable relationship to the subject matter of the statute. *Carter v. Norman*, 38 So.2d 30, 32 (Fla. 1948).

If *any state of facts can reasonably be conceived* that will sustain the classification attempted by the Legislature, the existence of that state of facts at the time the law was enacted will be presumed by the courts. *Golden Nugget, supra*. If the court cannot state on its judicial knowledge that the Legislature could not have had

any reasonable ground for believing that there were public considerations justifying the potential classification, the legislative judgment will control. *Id.*

It does not appear that these presumptions were applied by the Third District.

B. The Classification Is Reasonable And Bears A Substantial Relationship To The Purpose Of The Statute.

1. Background

The Statute is part of the Act. Through the Act, the Governor has appointed a financial emergency board to serve as the financial guardian of the City and control its financial decisions. The purpose of the Act is to "preserve and protect the fiscal solvency" of cities and to "assist local governmental entities in providing essential services without interruption and in meeting their financial obligations." The Statute provides a specific targeted tool to assist the largest local governments in the State to meet their financial obligations by use of a 20% surcharge on the gross revenues of parking facilities within the municipality that are open for use to the general public.

2. Test to be applied

The test consistently applied by this Court with regard to the constitutionality of a classification was never applied by the Third District in the Decision. *See City of Miami Beach, Golden Nugget; Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155, 1157 (Fla. 1989), et. al. The test for a valid general law applied by the Florida Constitution, Art. III, §11(b), and this Court requires that a classification be reasonably related to the subject of the Statute. *Classic Mile,* 541 So.2d at 1159, footnote 5.

[6] Where the relationship is reasonable, the statute is upheld. *See Golden Nugget* and *City of Miami Beach, supra.* Where the relationship is not reasonable, i.e., arbitrary, the statute is held unconstitutional. *Classic Mile, supra.* The Decision contains no such analysis.

The classification created by the Statute permits the three largest cities in the State of Florida to emerge from a financial emergency by imposing a parking surcharge for a limited period of time. The population classification of 300,000 as of April 1, 1999 permits the largest city in the north, Jacksonville; the largest city in central Florida, Tampa; and the largest city in the southern part of the State, Miami, to take advantage of this opportunity. The purpose of the Statute is "to preserve and protect the fiscal solvency of local governmental entities." There can be no question that the classification used here bears a substantial relationship to the Statute's purpose.

It should also be noted that only large municipalities can effectively use a parking surcharge. It is unlikely that smaller cities have enough public garages and paid-parking facilities to make a parking surcharge a viable tool for generating revenue. Cities of a substantial size are most likely to have the requisite level of

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[6] / Article III, § 11(b) of the Florida Constitution states as follows:

> In the enactment of general law . . ., political subdivisions or other government entities may be classified only on a basis reasonably related to the subject of the law.

It should be noted that this definition was first placed in the Constitution in 1968, subsequent to *Dekle* and *Pendarvis*, and prior to *City of Miami Beach* and *Golden Nugget*.

business activity which generates parking demand and the resulting revenue needed to accomplish the purpose of the Statute.

A classification is presumed valid and must be upheld if the court finds "any state of facts which can sustain it." This Court in *Golden Nugget* cites to the prior decision of *Lewis v. Mathis*, 345 So.2d 1066, 1068 (Fla. 1977) stating:

> [I]f any state of facts can reasonably be conceived that will sustain the classification attempted by the Legislature, the existence of that state of facts at the time the law was enacted will be presumed by the courts. The deference due to the legislative judgment in the matter will be observed in all cases where the court cannot say on its judicial knowledge that the Legislature could not have had any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made.

Since the purpose of the Statute is to protect the fiscal solvency of local governments, permitting the three largest cities in Florida a specific mechanism to accomplish this goal certainly creates a "state of facts" demonstrating public considerations and legislative judgment justifying the classification.

This Court has given great deference to the Legislature and has supported statutes where there is a valid public consideration for the classification, even though the application of the law was extremely limited. In *City of Miami Beach*, the court took "judicial notice of the fact that the tourist industry of Florida . . . is one of its greatest assets." The Court in that case went on to hold:

> In light of the purpose of Ch. 67-930 and this State's interest in the promotion and further development of the tourist industry, we hold that the population classifications are reasonable and Ch. 67-930 is a valid general law.

Miami Beach, 234 So.2d at 105-106. Likewise, in *Golden Nugget*, the Court also found a substantial relationship to the statute's purpose: ". . . to promote tourism by facilitating the improvement and construction of convention centers." *Golden Nugget,* 464 So.2d at 537. Aiding the State's largest municipalities to emerge from a financial emergency is also a significant public consideration justifying the classification.

The County and McGrath both concede that the "reasonable relationship test" applies, but claim that the "closed" nature of the class of the cities fails to satisfy the test. The County, in its brief before the Third District, states as follows:

> By limiting application of the Statute to cities with population of 300,000 or more, the purpose is to provide Florida's cities, i.e. cities with population of 300,000 or more, the authority to impose a parking tax if such cities have been declared in a state of financial emergency with the previous two fiscal years.

(County brief, Third District, p. 15) By so describing the reasonable relationship between the classification and the purpose of the Statute, the County concedes the constitutionality of the classification and the Statute. The sole basis for the County's objection, that the class is closed, does not affect the "reasonable relationship test." McGrath makes the same claim that a "reasonable relationship" between the purpose of the Statute and the classification does not exist due solely to the "closed class" of cities. (McGrath brief, Third District, p. 12)

The Decision also states that the Statute "does not operate uniformly among all cities that reach the 300,000 population threshold as is required of a general law." *McGrath,* 26 Fla.L.Weekly at D1682. It is true that a law must operate uniformly

among the members of the class it creates, but there is no requirement that the class must potentially include *all* cities or counties. The legislation at issue in *Golden Nugget* operates uniformly within the class of three potential class members, just as the Statute operates among the three potential class members in the instant case.

Analyzed in this manner, precedent of this Court is amenable to a logical construction. Population may serve as the basis for classifying counties as a valid general law "if there is a reasonable relationship between the use of population to delineate the class and the purpose of the statute." *Classic Mile*, 541 So. 2d at 1158; *City of Miami Beach*; *Golden Nugget, supra*. According to this persuasive precedent, there is nothing in the least irrational or arbitrary about such legislative line drawing when conceived to serve a critical public purpose, such as the fiscal solvency of the largest cities in the State.

However, where legislation does not rest upon a population class which is reasonably related to a critical public purpose, it is not deemed to be a valid general law. In *Ocala Breeders,* relied upon by the Decision, the First District found that the Legislature created distinctions designed to limit legal rights to one exclusive license holder in the pari-mutuel wagering industry. *Ocala Breeders,* 731 So. 2d at 25. Moreover, the requirements of the statute were not deemed rationally related to its objects, certainly the single most critical and overriding feature for the Court's determination that the law under review was unconstitutional. *Id.* at 26.

In sum, the Decision's reliance on *Ocala Breeders* is misplaced and inapplicable to the Statute and strong public purpose present in the instant case. The

reasoning of the Decision is further weakened by its failure to address the relevant, and more recent, precedents of *Golden Nugget* and *City of Miami Beach*.

CONCLUSION

The Statute is a constitutional general law based upon the analysis utilized by this Court and the language of the Florida Constitution. The Decision fails to apply this analysis. The classification, consisting of the three largest cities in the State, is reasonable and bears a direct and substantial relationship to the purpose of the Statute, which is to assist cities experiencing financial emergencies by allowing the imposition of a surcharge on the revenue generated by public parking facilities. The Statute operates uniformly within this classification and two other cities are "potentially eligible to implement the tax" if they are declared in a financial emergency. *See Golden Nugget,* 464 So.2d at 537.

The Decision is at odds with *Golden Nugget, City of Miami Beach,* and the other cases from this Court, as well as the Florida Constitution, which apply the "reasonable relationship" test to statutory classification.

Based on the foregoing law, undisputed facts and argument, the City respectfully requests a decision from this Court reversing the Decision and affirming the Final Declaratory Judgment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand delivered this **6th** day of **August**, **2001**, to MARK J. HEISE, ESQ., Heise Markarian Foreman, Co-Counsel for Appellees, 1950 Miami Center, 201 South Biscayne Blvd., Miami, FL 33131; THOMAS J. KORGE, ESQ. Korge & Korge, Co-Counsel for Plaintiff, 230 Palermo Avenue, Coral Gables, Florida, 33134; and to JESS M. MCCARTY, ESQ.; Robert A. Ginsburg, Miami-Dade County Attorney, Counsel for Intervenors, Stephen P. Clark Center, Suite 2810, 111 N.W. First Street, Miami, Florida 33128.

_____
Joseph H. Serota

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the font used in this brief is Times New Roman, 14 point, which complies with Rule 9.210(a)(2).

_____

Joseph H. Serota