SUPREME COURT OF FLORIDA

CASE NO. SC01-411

LOWER CASE NO. K-00-1525

KEYS CITIZENS FOR RESPONSIBLE GOVERNMENT, INC.,

Appellant,
v.

FLORIDA KEYS AQUEDUCT AUTHORITY,
an Independent Special District,

Appellee.

APPELLANT'S CORRECTED REPLY BRIEF

KENDALL COFFEY
Florida Bar No. 259861
KENDALL COFFEY, P.A.
Counsel for Appellant
Grand Bay Plaza, PH-2B
2665 So. Bayshore Drive
Miami, FL 33133
Telephone: 305-857-9797
Telecopier: 305-859-9919

CHARLES P. TITTLE
Florida Bar No. 0149536
TITTLE & TITTLE, Chartered
Co-counsel for Appellant
P.O. Box 535 (91760 Overseas Highway)
Tavernier, FL 33070
Telephone: 1-305-852-3206
Telecopier: 1-305-852-3242

TABLE OF CONTENTS

Table of Authorities ii

LEGAL ARGUMENT 1

Appellees's Broad Recitation of the Issues Assertedly Adjudicated Below Confirms That The Trial Court Exceeded The Proper Scope of Bond Validation 1

The Trial Court Improperly Adjudicated Collateral Issues Beyond The Scope of Statutory Bond Validation 3

The Authority's Attempt to Impose *Res Judicata* and Collateral Estoppel upon the Citizens and Residents of the Florida Keys Is Legally Untenable 7

The Apparent Determination That All Of The People Of Monroe County Are Judicially Bound By The Mandatory Connection Requirement Violates Due Process 9

CONCLUSION 15

CERTIFICATE OF COMPLIANCE 16

CERTIFICATE OF SERVICE 17

TABLE OF AUTHORITIES

Cases:

Bigler v. Greenwood, 123 Utah 60, 254 P.2d 843 (1953) 8,13

City of Gainesville v. State, 366 So.2d 1164 (Fla. 1979) 5

City of Midway v. Midway Nursing & Convalescent Center, Inc., 230 Ga. 77, 195 S.E. 2d 452 (Ga. 1973) 8

City of Mountain Home v. Ray, 223 Ark. 553, 267 S.W. 2d 503 (1954) 7-8

City of New York v. New York, N.H. & H.R. Co., 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1953) 13

City of Sunrise v. Town of Davie, 472 So.2d 458 (Fla. 1985) 4

County of Pasco v. Riehl, 620 So.2d 229 (Fla. 2nd DCA 1993) 13

Florida Bar v. Clement, 662 So.2d 690 (Fla. 1995) 9

Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983 (1971) 11,12

Hadley v. Dep't of Admin., 411 So.2d 184 (Fla. 1982) 13

Hennig v. Hennig, 162 So.2d 288 (Fla. 3rd DCA 1964) 14-15

In re Harbor Tank Storage Co., 385 F.2d 111 (3d Cir. 1967) 13

In re Intaco Puerto Rico, Inc., 494 F.2d 94 (1st Cir. 1974) 13

In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088 (5th Cir. 1977) 10-11

Johnson v. Gen. Motors Corp., 598 F.2d 432 (5th Cir. 1979) 10

Joint Antifascist Refugee Community v. McGraff,
341 U.S. 123 (1951) (Frankfurter, J., concurring) 12

Lindley v. Cisneros, 74 F.3d 1076 (11th Cir. 1996) 9

McCoy Restaurants, Inc. v. City or Orlando,
392 So.2d 252 (Fla. 1980) 5-6,6,7

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306 (1950) 5,6-7,11,13

Murphy v. City of Port St. Lucie, 666 So.2d 879 (Fla. 1995) 3-4

Murphy v. Lee County, 763 So.2d 300 (Fla. 2000) 2

Nethery v. Nethery, 212 So.2d 10 (Fla. 4th DCA 1968) 14-15

Noble v. Martin County Health Facilities Auth., Florida,
682 So.2d 1089 (Fla. 1996) 3-4

Schroeder v. City of New York,
371 U.S. 208, 83 S.Ct. 279, 9 L.Ed. 255 (1962) 13

State v. Brevard County, 539 So.2d 461 (Fla. 1989) 3-4

State v. City of Daytona Beach, 160 Fla. 204, 34 So.2d 209 (1948) 4

State v. City of Miami, 157 Fla. 726, 27 So.2d 118 (1946) 4

State v. City of Miami, 103 So.2d 185 (Fla. 1958) 5,6-7

State v. Osceola County, 752 So.2d 530 (Fla. 1999) 3-4

State v. Sunrise Lakes Phase II Recreation Dist.,
383 So.2d 631 (Fla. 1980) 5

Stern v. Halligan, 158 F.3d 729 (3d Cir. 1998) 7,8

Twigg v. Sears, Roebuck & Co.,
153 F.3d 1222 (11th Cir. 1998) 10

Warner Cable Communications, Inc. v. City of Niceville,
520 So.2d 245 (Fla. 1988) 4

Washington Shores Homeowners' Ass'n,
602 So.2d 1300 (Fla. 1992) 3-4

Zedeck v. Indian Trace Community Dev. Dist.,
428 So.2d 647 (Fla. 1983) 6

Other Authorities:

Chapter 75, Florida Statutes 1,10

Fla. Const. Art. 1, §21, Access to Courts 12,14

Monroe County Ordinance No.: 04-2000 1

U. S. Const. 14th Am., Due Process Clause 14

LEGAL ARGUMENT

Appellee's Broad Recitation of the Issues Assertedly Adjudicated Below Confirms That The Trial Court Exceeded The Proper Scope of Bond Validation

Few things could speak more compellingly to the misuse of Chapter 75 bond validation below than appellee's own extensive recitation of the plethora of issues that it contends were adjudicated in the minimal procedures below. In considerable length, the answer brief describes the myriad legal determinations that purportedly bind every landowner and resident of Monroe County, including the effect of various Florida statutes, the Authority's own Memorandum of Understanding with Monroe County, and the Monroe County Ordinance No.: 04-2000 enacted last year.

Similarly, the appellee presents a torrent of factual contentions, based largely upon consultant's reports, all of which are assertedly superimposed upon every resident of Monroe County with binding collateral estoppel effects. Such allegedly preclusive findings include, among many other things, generalized assertions that all 23,000 private on-site systems and 246 private waste-water treatment plants are inadequate. The inadequacy of each such system, according to appellee, has now been conclusively adjudicated even though the landowners supposedly bound by such findings were never informed that their private facilities were being judged and effectively discarded. The Authority further insists that this extensive array of legal

and factual findings envelops not just the $4,500,000 sewer revenues bonds treated below but also the many phases yet to come of additional construction that will total hundreds of millions of dollars in the future. This dazzling menu of policy determinations, factual findings, legal rulings is far afield of the narrow scope of bond validation:

> The scope of this Court's inquiry in bond validation hearings is limited to the following considerations: (1) determining whether the public body has the authority to issue the bonds; (2) determining whether the purpose of the obligation is legal; and (3) ensuring that the bond issuance complies with the requirements of law.

Murphy v. Lee County, 763 So.2d 300, 302 (Fla. 2000).

To bind irrevocably so many to so much, the appellee necessarily insists that the drastically abbreviated processes below were really not "summary procedures," but instead, should presumably be equated to the full safeguard of a trial in our courts for each of the thousands being affected. Answer Brief at 15. That contention is surprising, even galling, in view of the undisputed facts below. Those circumstances demonstrate that notice was given only constructively, through two newspaper notices, which did not describe the mandatory connection issue and contained the wrong case number. (App. 7) (T.7). The remaining procedures amounted to a one-sided hearing in the morning and several hours thereafter to prepare and file a trial brief before the court entered the Authority's proposed order. (T. 137). Predicating judicial preclusion for many thousands upon such stark minimalism is clearly at odds with

basic notions of due process. As a result, the appellee understandably dwells upon why new sewage treatment facilities are needed, even though appellant does not, in the present legal context, even debate that issue.

Instead, the issue before this Court is not the merits of mandatory connection nor even whether the Authority could ultimately justify discarding existing sewage treatment facilities without compensating the property owner. Irrespective of whether the appellee can, through a fully developed judicial process, support the legality of the mandatory connection requirement, this appeal challenges the fundamentally improper procedures utilized below. Based on three compelling and interrelated doctrines, the appellant respectfully urges that no one should be stripped of the right to contest governmental divestiture of their property without a fair opportunity to be heard.

The Trial Court Improperly Adjudicated Collateral Issues Beyond The Scope Of Statutory Bond Validation

Appellee is wrong in its unabashed insistence that the cursory proceedings below created a final judicial directive that all landowners in Monroe County must comply with the mandatory connection requirement. That position fundamentally misconceives the role of bond validation which is intended to verify the obligations of governmental authorities, not impose new judicial restraints upon the citizenry.

Modern Florida cases respect tenets of due process by adhering to the narrow scope of bond validation proceedings and refusing to tolerate the injection of collateral

issues. *State v. Osceola County*, 752 So.2d 530 (Fla. 1999); *Noble v. Martin County Health Facilities Auth., Florida*, 682 So.2d 1089 (Fla. 1996); *Murphy v. City of Port St. Lucie*, 666 So.2d 879 (Fla. 1995); *Washington Shores Homeowners' Ass'n*, 602 So.2d 1300 (Fla. 1992); *State v. Brevard County*, 539 So.2d 461 (Fla. 1989); *Warner Cable Communications, Inc. v. City of Niceville*, 520 So.2d 245 (Fla. 1988); *City of Sunrise v. Town of Davie*, 472 So.2d 458 (Fla. 1985).

To overcome the flood-tide of authority that analyzes and rejects attempts to inject collateral issues, the appellee relies on two older decisions in which the collateral issues doctrine is not mentioned. *State v. City of Daytona Beach*, 160 Fla. 204, 34 So.2d 209 (1948), *citing, State v. City of Miami*, 157 Fla. 726, 27 So.2d 118 (1946). Because these cases do not speak to the issue before this Court – whether sweeping adjudications of the constitutional rights of thousands is collateral to bond validations - they provide no meaningful guidance here. Moreover, the 1946 decisions focus upon the propriety of the bond issues themselves rather than purport to decree that landowners must obey strictures that they have had no opportunity to dispute. As is discussed later, a principal vice of the decision below was the attempt to impose *res judicata* and collateral estoppel upon people with no actual notice, no representation and no meaningful opportunity to be heard.

Not only did the 1946 cases not actually address the "collateral issue" doctrine, they preceded the evolving modern case law that overwhelms the Authority's thesis.

Even if the 1946 decisions had purported to preclude judicially the constitutional rights of the individuals through a bond validation, and they did not, no such rulings would have survived the Supreme Court decision four years later. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), the U.S. Supreme Court established that due process imposes the requirement of meaningful notice and a chance to be heard for every individual whose rights are to be affected by judicial process. As a result of that landmark decision, profoundly greater protective principles governing due process and notice to the individual were enunciated.

Consistently with that constitutional watershed, Florida further articulated its own limiting doctrine concerning collateral issues in the leading case of *State v. City of Miami*, 103 So.2d 185 (Fla. 1958):

> It was never intend that proceedings instituted under the authority of this chapter to validate governmental securities would be used for the purpose of deciding collateral issues or those other issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereto.

Id. at 188. *See also State v. Sunrise Lakes Phase II Recreation Dist.*, 383 So.2d 631 (Fla. 1980); *City of Gainesville v. State*, 366 So.2d 1164 (Fla. 1979). Applying the 1958 *City of Miami* case, as well as subsequent decisions, this Court in *McCoy Restaurants, Inc. v. City of Orlando*, 392 So.2d 252 (Fla. 1980) held that the validity of the airline-aviation authority lease agreements, even though necessary to repayment

of the bonds, was a collateral issue to the validation proceeding.[1]

Cases such as *McCoy Restaurants* unmistakably dispel appellee's contention that any existing obligations that may affect bond repayment are part of bond validation. Only obligations to be created in the future, according to the appellee, comprise "collateral" issues. That attempted distinction, however, ignores not only the judicial philosophy underlying the collateral issues doctrine, it disregards this Court's decisions. Clearly, the airline-authority leases at issue were already in existence in *McCoy Restaurants*, and yet were held to be collateral. Similarly, the authority to impose tolls on existing toll-free bridges – also a necessary means for repaying the applicable revenue bond – was found to be collateral by this Court in *Taylor v. Lee County*, 498 So.2d 424 (Fla. 1986). As this Court observed:

> As the county points out, collateral issues will not be resolved in bond validation proceedings. *Zedeck v. Indian Trace Community Development District*, 428 So.2d 647 (Fla. 1983). Although the generation of revenue to fund the bond issue depends on the county's authority to impose tolls, placing a toll on an existing toll-free bridge is collateral to this bond validation. Taylor's first claim, therefore, is outside the scope of this case.

498 So.2d at 425.

As a result, it is plain that the evolving doctrine that paralleled the landmark 1950 decision in *Mullane* was sharply crystallized in *State v. City of Miami*, 103 So.2d 185

---

[1]Although not explicitly articulated as a dimension of due process, cases such as *McCoy Restaurants* often note that affected parties are not directly before the Court. 392 So.2d at 254.

(Fla. 1958), and controls the present appeal. As further demonstrated in cases such as *McCoy Restaurants* and *Taylor*, that doctrine properly forbids the determination of other obligations – even ones that affect repayment – because those matters are deemed collateral. Clearly, the trial court should be reversed on this issue.

The Authority's Attempt To Impose *Res Judicata* And Collateral Estoppel Upon The Citizens And Residents Of The Florida Keys Is Legally Untenable

As described in the initial brief, the abbreviated periods following the first advertisement on November 30th, and the second notice on December 7th, (the anniversary of Pearl Harbor), were hardly the sort of advance notifications sufficient to bind judicially the entire population of the Florida Keys. Moreover, the trial court refused any continuance, apparently finding that eight days actual notice for the intervenor to address, without discovery, appellee's extensive array of legal and factual allegations.

Ironically, the cases cited by the Authority as validating mandatory connection laws reflect the need for full due process after pleadings are personally served, discovery is obtained, and true adversarial proceedings take place. See authorities collected at Appellee's Brief at 29-30. *Compare Stern v. Halligan*, 158 F.3d 729 (3d Cir. 1998) (challenge to mandatory connection presented in a §1983 claim adjudicated through federal rules of civil procedure). Just as strikingly, several of the cases cited by appellee rejected the mandatory connection requirement. *City of Mountain Home*

v. Ray, 223 Ark. 553, 267 S.W. 2d 503 (1954). In fact, in *Bigler v. Greenwood,* 123 Utah 60, 254 P.2d 843 (1953), cited by the appellee, the state supreme court found that the mandatory connection requirement was unconstitutional:

> If this plan which was obviously designed for the purpose and actually had the effect of imposing liens on the property could be followed and yet remain classified as a purely voluntary 'revenue bond' financing program, then the constitutional guarantees of due process of law and debt limits could be circumvented while effectively creating charges upon property. The district should not be permitted to accomplish by artifice, subterfuge or indirection what the law will not permit it to do openly and directly.

254 P.2d at 846-847. *See also City of Midway v. Midway Nursing & Convalescent Center, Inc.*, 230 Ga. 77, 195 S.E. 2d 452 (Ga. 1973) (rejecting mandatory connection requirements).

While there are other cases that support mandatory connection requirements, they are distinguishable from present facts because those decisions encompass actual notice and participation by the affected parties and full procedural rights. Moreover, in critical respects, those cases are factually distinguishable. In general, appellee's citations merely addressed whether well water can be supplanted in favor of the requirement that sewage be treated and disposed of safely. In the present case, the issue is not whether government can insist upon adequate treatment of sewage as opposed to returning untreated effluents into wells. *Stern*, 158 F.3d at 731-732. Rather, this case presents whether the Authority could simply discard, in the guise of

bond validation, all existing private treatment plants, including those that could adequately address water quality as well as those that could be upgraded to meet legal requirements at relatively minimal cost. According to the Authority, based on the ruling below, landowners have no right to demonstrate the sufficiency of their facilities and must simply abandon them. As a result hundreds of already existing private treatment facilities are being effectively condemned and forfeited without compensation. That markedly more complex issue is not addressed in the cases cited by the appellee.

Thus, this appeal is fundamentally about fair procedure and due process whether the owners of existing private treatment facilities, like thousands of other Keys residents, deserve a meaningful right to be heard before a portion of their property is immobilized and rendered valueless. The proceedings below, operating below the radar of public awareness, should not bind citizens whose legal exposure in the judicial proceeding was effectively made invisible. *Cf. Florida Bar v. Clement*, 662 So.2d 690, 697 (Fla. 1995) (denying collateral estoppel because Florida Bar and former client did not encompass identity of parties and identity of issues in their respective actions against transgressing attorney); *Lindley v. Cisneros,* 74 F.3d 1076, 1077 (11th Cir. 1996) (*res judicata* requires identity of parties).

The Apparent Determination That All Of The People Of Monroe County Are Judicially Bound By The Mandatory Connection Requirement Violates Due Process

As has been previously urged, Chapter 75 was improperly applied below because bond validation is not conceived in Florida to determine individual constitutional rights through skeletal proceedings conducted without actual notice to the affected citizenry. Should this Court determine, however, that Florida law does give such limited procedural rights to the people of Monroe County, then any attempt to impose collateral estoppel and *res judicata* effects would plainly violate the due process clause of the United States Constitution.

In the analogous context of class actions, the courts invariably hold that before the bar of claim preclusion may be applied to the claim of an absent class member, it must be demonstrated that invocation of the bar is consistent with due process. *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1226 (11th Cir. 1998), citing *Johnson v. Gen. Motors Corp.*, 598 F.2d 432, 435, 437 (5th Cir. 1979).[2] In light of its agenda to create a binding determination concerning far more than just the legal sufficiency of bond documents, the Authority had a duty to pursue notice in the best fashion reasonably calculated to provide meaningful opportunity to be heard to every one whose rights would be conclusively adjudicated.

The essence of due process is that 'deprivation of life, liberty or property

---

[2]While the appellee discusses public hearings and previous actions of governmental bodies, the issues of *res judicata* and collateral estoppel are dependent upon the adequacy of the judicial proceedings. Therefore, it is what takes place in court processes, not in the political forum, that determines whether the judicial doctrines of *res judicata* and collateral estoppel would apply. In the present case, it is understandable why the appellee would prefer to discuss the political processes of Monroe County rather than the paltry proceedings in the trial court.

by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1103 (5th Cir. 1977), *citing Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. at 313, 70 S.Ct. at 656-57.

This principle is only satisfied when the notice reaches the parties affected and conveys the required information. *Id.* The best notice practicable under the circumstances must contain an adequate description of the proceedings written in objective, neutral terms that may be understood by the individual whose rights are affected. *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d at 1103-05. Instead, the Authority opted for no actual notice and an implausible theory of constructive notice that is offensive to fair notions of due process. There was no actual notice because the Authority chose not to provide mailings or otherwise disclose that the lawsuit would determine the mandatory connection issues - the most controverted issue affecting the rights of citizens and taxpayers. Its constructive notice was no better. The two ads in a Key West paper omitted any mention of the real controversy concerning mandatory connection, and informed no one that they would become judicially ordered to follow the Authority's edicts regarding usage without any further right to judicial or administrative remedy. (App. 7) (T. 7). This deprecation of fundamental due process was egregious. "It is equally fundamental that the right to notice and an opportunity to be heard must be granted in a meaningful time and in a meaningful manner." *Fuentes v. Shevin*, 407 U.S. 67, 79, 92 S.Ct. 1983 (1971). If

political bodies are allowed to pursue stealth strategies to secure judicial elimination of meaningful rights without the citizenry being heard, due process is forsaken. Especially in a state that cherishes governmental openness and full access to the judicial forum, Fla. Const., Art. 1, §21, no such licenses should be awarded to political bodies. Their contention that they know what is best and are implementing a needed system does not revise the due process equation. Whatever may be the ultimate merits, our liberties require that the process be fundamentally fair:

> The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when asked to deprive a person of his possession. The purpose of this requirement is not only to ensure abstract fair play to the individual ... So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitution political history that we place on a person's right to enjoy what is his, free of governmental interference.

Fuentes v. Shevin, 407 U.S. 79. Therefore, because the issue is due process, it is not a fair answer for the Authority to parade its various rationales for the water treatment system. In the ultimate determination of the mandatory connection issue, the Authority may be right or, as we believe, the Authority may be wrong. But what is undeniable is that there must be a fair opportunity for the legal and factual soundness of its actions to be tested. "No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to be heard." *Joint Antifascist Refugee Community v. McGraff,* 341 U.S. 123, 171-172 (1951) (Frankfurter, J., concurring). Misleading newspaper ads and a drastically

abbreviated procedure cannot fairly measure such substantive rights. *Bigler v. Greenwood,* 254 P.2d at 847.

Florida courts have long respected the principles of due process. *Hadley v. Dep't of Admin.*, 411 So.2d 184 (Fla. 1982); *County of Pasco v. Riehl*, 620 So.2d 229, 230 (Fla. 2nd DCA 1993) ("Procedural due process requires that there be an opportunity to be heard at a meaningful time and in a meaningful manner.") Because actual notice should be provided before an individual's constitutional rights are judged, constructive service should not have been permitted to determine such issues. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Especially because the Authority contends that the proceedings below are final and binding individually upon the residents of the Keys concerning the mandatory connection issue, the failure to make reasonable efforts to provide actual notice of these issues contravenes basic maxims of due process. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. at 314 (1950). Since the vast majority of the identities and residences of the Monroe population were ascertainable, they should have, at the least, received actual notice of the pending divestiture of their rights by mail. *Schroeder v. City of New York,* 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.255 (1962); *City of New York v. New York, N.H. & H.R. Co.*, 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1953); *In re Harbor Tank Storage Co.*, 385 F.2d 111 (3d Cir. 1967); and *In re Intaco Puerto Rico, Inc.*, 494 F.2d 94 (1st Cir. 1974). After all, governmental authorities mail critical

information, such as tax bills, assessments and other demands for payment, to all of their residents and taxpayers at regular intervals when they choose to do so. This may seem bothersome to the Authority, but respecting the due process rights of others is frequently inconvenient. The fact that actual notice may not be generally provided in bond validation hearings in this state, does not mean that the U.S. Constitution has been altered. To the contrary, it signals that, as argued earlier, bond validation is simply no place to adjudicate the rights of tens of thousands of people concerning mandatory issues such as sewer connections. In any event, even if Florida law were to be construed to support such a remarkable result, the Constitutions of Florida and the U.S. would squarely condemn that misuse and require reversal of the attempt to impose collateral estoppel and *res judicata* effects on the people of Monroe County. *See* U.S. Const. 14th Am., Due Process Clause; Fla. Const. Art. 1, §21, Access to Courts.

Further, even if the validity of the mandatory connection requirement could be irretrievably imposed on all the inhabitants of Monroe County through constructive service of process, such a procedure violated due process as applied here because that notice did not fairly disclose the subject of the case. In the case below, the real issue was the mandatory connection to the Authority's future sewer system. And yet, remarkably, that subject was not even mentioned in the limited newspaper advertising. Such glaring omissions have been consistently held to invalidate constructive service

of process:

> There, as in this case, the notice of publication failed to describe the defendant/husband's property in a divorce action, and the court held such failure to constitute defective notice insofar the court's power to divest the husband of his interest in the property was concerned.

Nethery v. Nethery, 212 So.2d 10 (Fla. 4th DCA 1968), *citing*, *Hennig v. Hennig*, 162 So.2d 288 (Fla. 3rd DCA); cert denied, 166 So.2d 754 (Fla. 1964). Manifestly, due process requires reversal and the striking of the offending portions of the lower court's judgment.

CONCLUSION

For the reasons set forth in the initial and reply briefs, the appellant urges the Court to direct that paragraphs eight, nine, and ten of the Final Judgment be deleted. Alternatively, appellant urges the Court to direct that, upon remand, the Final Judgment be clarified to confirm that those provisions have no preclusive effect upon the rights of citizens, residents, taxpayers, and landowners of Monroe County.

CHARLES P. TITTLE
Florida Bar No. 0149536
TITTLE & TITTLE, Chartered
Co-counsel for Appellant
P.O. Box 535 (91760 Overseas Highway)
Tavernier, FL 33070
Telephone: 1-305-852-3206
Telecopier: 1-305-852-3242

KENDALL COFFEY
Florida Bar No. 259861
KENDALL COFFEY, P.A.
Co-counsel for Appellant
Grand Bay Plaza, PH-2B
Miami, FL 33133
Telephone: 305-857-9797
Telecopier: 305-859-9919

By: _____
KENDALL COFFEY

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type size set forth in this Court's rules. The type is New Times Roman, 14 point.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April, 2001, a true and correct copy of the foregoing Corrected Reply Brief of Appellant was sent via U.S. Mail, to: **Robert Feldman, Esq.**, General Counsel to Florida Keys Aqueduct Authority, Feldman, Koenig & Highsmith, P.A., 3158 Northside Drive, Key West, Florida 33040; **Office of the State Attorney**, Sixteenth Judicial Circuit, Monroe County, Florida, 302 Fleming Street, P. O. Box 1086, Key West, Florida 33041; **Grace E. Dunlap, Esq.**, Bryant, Miller & Olive, P.A., counsel for the Florida Keys Aqueduct Authority, 101 E. Kennedy Boulevard, Suite 2100, Tampa, Florida 33602 and **Charles P. Tittle, Esq.,** Tittle & Tittle, Chartered, P. O. Box 535 (91760 Overseas Highway), Tavernier, Florida 33070.

By: _____
KENDALL COFFEY