IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO. SC 02-2166
LOWER TRIBUNAL CASE NO. CAK-02-826

CHRISTOPHER J. SCHRADER,

Appellant,

vs.

FLORIDA KEYS AQUEDUCT AUTHORITY,
an Independent Special District,

Appellee.

BRIEF OF AMICUS CURIAE CITY OF MARATHON, FLORIDA

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SUPPLEMENTAL STATEMENT OF FACTS

The City of Marathon, Florida ("City") adopts the counter-statement of facts submitted by appellee, the Florida Keys Aqueduct Authority ("Authority"), and submits the following supplemental facts for the Court's consideration.

The City is a municipality of approximately 10,500 people, the population of which at least doubles during the winter tourist season. [T. 39-40][1] At present, the City does not have a central wastewater treatment system. [T. 39] To that end, the City has been working with the Authority to develop a central wastewater treatment system for all of the City's residents, regardless of their current method of wastewater treatment. The development of this system constitutes a major part of the City's efforts to formalize its comprehensive development master plan, as required by Chapter 163, Florida Statutes. [T. 37] In the City's negotiations with the State of Florida regarding the adoption of a comprehensive development master plan, the State has impressed upon the City the need for the City to make progress in addressing its wastewater treatment problems.[2] [T. 37] Currently, the City's

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[1] / References to the transcript of the evidentiary proceedings below, which was submitted by the appellant, appear as "T. ____."

[2] / In addition, the State of Florida has imposed a 2010 deadline for upgrading wastewater treatment facilities throughout the Florida Keys. [T. 38]

residents (including commercial residents) employ a variety of secondary treatment systems that do not adequately remove offending nutrients from the wastewater before it is discharged into the environment. [T. 51]

As part of its efforts to address wastewater treatment issues and in reliance upon the Florida Legislature's adoption of Section 4 of Chapter 99-395 Laws of Florida, the City adopted Ordinance 02-07-12 ("Ordinance"), requiring all its residents (including those who currently use package plants to treat wastewater) to hook up to the anticipated central system being developed within 30 days of notification that the system is available. [T. 38-39, Exh. 6] In the Ordinance, the City's legislative body made a series of factual findings relating to wastewater treatment:

> (A) The Florida Legislature has identified the Florida Keys as an area of critical state concern; pollution and questionable water quality resulting from the absence of adequate wastewater treatment throughout the Florida Keys is a threat to the environment and the health, safety and welfare of landowners and persons inhabiting the Florida Keys;
>
> (B) The Florida Legislature has charged the Authority with the responsibility to plan and provide for water and sewer systems within the Florida Keys

and to enforce the use of its wastewater facilities whenever and wherever they are accessible;

(C) The Florida Legislature has empowered the Authority to both prohibit the use of and mandate the use of wastewater facilities within the Florida Keys;

(D) The Florida Legislature has authorized the City to enact local legislation that: (1) requires connection to a central sewage system within specified time periods; and (2) provides a definition of on-site sewage treatment and disposal systems that does not exclude package sewage treatment even if those facilities are in full compliance with all regulatory requirements…;

(E) The Authority has embarked upon the creation of a wastewater system to equitably, ecologically and economically manage wastewater and improve water quality in the Florida Keys. The presence of the Authority's wastewater facilities will enhance and benefit the environment and the health, safety and general welfare of landowners and persons inhabiting the City of Marathon and the Florida Keys;

(F) Mandatory connection to the Authority's wastewater facilities is fundamental to the successful financing, creation and operation of the Authority's wastewater systems. Mandatory connection to a governmental utility system and the subsequent charges flowing therefrom have long been held to be a proper exercise of the

> governmental power to regulate and protect the welfare of the public.

[T. 38, Exh. 6]

In the process of adopting the Ordinance, the City held two public hearings to consider input from the public regarding the issue of expedited, mandatory connection to a central wastewater treatment system. [T. 37] Only one individual appeared at the public hearings to speak about the adoption of the Ordinance, and he did not speak negatively about the proposal. [T. 37-38].

SUMMARY OF ARGUMENT

Section 4 of Chapter 99-395 Laws of Florida ("Section 4") was properly enacted as a general law rather than a special law insofar as it merely authorizes local governmental entities within the Florida Keys Area of Critical State Concern ("FKACSC") to adopt legislation requiring expedited mandatory connection to a central wastewater treatment system.[3] The City's local legislative process, like that of all other governmental entities within the FKACSC, affords residents affected by the potential enactment the opportunity to be heard by their elected officials prior to enactment. As such, the fundamental distinction between the enactment of general and special laws – namely, that public notice to affected local residents is required for special laws – does not come into play. Section 4 cannot be construed as a special law that affects individuals within a particular geographic area without their having been given an opportunity to be heard.

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[3] / The City concurs with the arguments presented by the Authority in its answer brief. The quality of the nearshore waters of the Florida Keys is a matter of statewide and national concern, as is evidenced by the State Legislature's designation of the Florida Keys as an area of critical state concern and Congress' designation of a significant portion of the nearshore waters as a national marine sanctuary. However much Section 4 may relate to a particular geographic area of the state, it cannot reasonably be said that the environmental issues addressed by Section 4 are merely local in nature.

ARGUMENT

SINCE THE LOCAL LEGISLATION AUTHORIZED BY SECTION 4 AFFORDS LOCAL RESIDENTS THE OPPORTUNITY TO BE HEARD PRIOR TO ENACTMENT, SECTION 4 CANNOT BE DEEMED A SPECIAL LAW.

Section 4 is not a special law, but rather was properly enacted as a general law. A special law is

> one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the State, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal.

City of Miami v. McGrath, 824 So.2d 143, 148 (Fla. 2002) (emphasis omitted), quoting from *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla. 1934); *see also* Art. X, § 12(g), Fla. Const. In providing for the enactment of what would be a special law, the Florida Constitution requires as follows:

> No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for

> referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Art. III, § 10, Fla. Const.

This Court on more than one occasion has expressed the rationale underlying the notice requirement for special legislation:

> The purpose of requiring a notice of intention to be published in special legislation is to apprise the people in the locality to be particularly affected of such proposal so that those interested may take steps to oppose its enactment.

State ex rel. City of Pompano Beach v. Lewis, 368 So.2d 1298, 1300-01 (Fla. 1979), quoting from *Dickinson v. Bradley*, 298 So.2d 352, 354 (Fla. 1974).

In this particular instance, Section 4 does not impose any obligations on the local governmental entities or residents located in the FKACSC. Instead, it merely *authorizes* local governmental entities, at their discretion, to adopt legislation requiring expedited mandatory connection to central wastewater systems. It is in the local legislative process, itself, that residents of the particular locality are afforded an opportunity to "oppose the enactment" of local legislation that would impose upon them obligations relating to wastewater treatment. *Cf. Dickinson*, 298 So.2d at 354 (Court concluded publication protections of special law not

implicated because state legislative enactment did not appropriate funds of the affected locality) and *State ex rel. City of Pompano Beach*, 368 So.2d at 1301 (state legislation deemed a special law because it appropriated funds due a municipality).

CONCLUSION

Analysis relating to the invalid enactment of special laws in the guise of general laws is invariably tied to a concern to prohibit the State Legislature's imposition of obligations on residents of a particular locality without affording those residents an opportunity to oppose the enactment. Where State legislation does not independently impose such an obligation and the mechanism for local residents to be heard regarding the enactment of authorized local legislation is preserved, such State legislation should not be deemed a special law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail this _____ day of November, 2002 to Russell A. Yagel, Esquire, Attorney for Appellant, Hershoff, Lupino & Mulick, LLP, 90130 Old Highway, Tavernier, Florida 33070; Grace E. Dunlop, Esquire, Bryant, Miller and Olive, P.A., 101 East Kennedy Boulevard, Suite 2100, Tampa, Florida 33602; Robert Feldman, Esquire, Feldman Koenig & Highsmith, P.A., 3158 Northside Drive, Offices at Northside, Key West, Florida 33040 and J. Jefferson Overby, Esquire, 530 Whitehead Street, Key West, Florida 33040.

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EDWARD G. GUEDES

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this amicus curiae brief has been prepared in accordance with the Florida Rules of Appellate Procedure and that the font herein is Times New Roman 14-point.

_____

EDWARD G. GUEDES