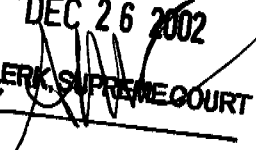


ORIGINAL

SUPREME COURT OF FLORIDA

CASE NO. SC02-2166

FILED
THOMAS D. HALL
DEC 26 2002
CLERK SUPREME COURT
BY 

CHRISTOPHER J. SCHRADER

Appellant,

v.

FLORIDA KEYS AQUEDUCT AUTHORITY,

Appellee.

AMICUS CURIAE BRIEF OF MONROE COUNTY, FLORIDA

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	i
INTRODUCTION.....	3
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	4
THIS APPEAL THREATENS THE ABILITY OF MONROE COUNTY AND THE FLORIDA KEYS AQUEDUCT AUTHORITY TO RESOLVE THE ONGOING ENVIRONMENTAL DEGRADATION OF THE KEYS	4
CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	9
CERTIFICATION.....	9

TABLE OF AUTHORITIES

CASES	Page(s)
<i>State v. City of Miami</i> , 27 So.2d 118 (Fla. 1946)	6
<i>State v. City of Daytona Beach</i> , 34 So.2d 309 (Fla. 1948).....	6
STATE LAWS	
Ch. 99-395, Laws of Florida	6,7
OTHER AUTHORITIES	
Executive Order 98-309	5
Monroe County, Florida Ordinance No. 04-2000	5,6,7
Monroe County, Florida Ordinance No. 017-2002	5,6,7

INTRODUCTION

The Appellee/Plaintiff, the Florida Keys Aqueduct Authority, will be referred to as the "Authority," and the Appellant/Intervenor, Christopher J. Schrader, will be referred to as the "Appellant." References to the Initial Brief will be cited by the symbol "IB," followed by the page number. References to the Appendix supplied by the Appellant will be cited by the symbol "A," followed by the tab number, followed by the page number or special law. References to the Supplemental Appendix supplied by the Authority will be cited by the symbol "A-Supp," followed by the tab number, followed by the page number. References to the Transcript attached to the Appellant's Appendix will be cited by the symbol "T," followed by the page number.

SUMMARY OF ARGUMENT

Monroe County (the "County") files this amicus curiae brief in opposition to the appeal brought by Christopher J. Schrader (the "Appellant") because of the issue of great public importance involved in this case: the ability to finance a wastewater system through the mandatory connection of all properties to a planned central sewer system in the Keys. If the relief sought by the Appellant is granted, the pollution of the nearshore waters from individually-operated, onsite sewage disposal

methods will continue without the ability for the Authority or the County to effectuate an effective remedy.

ARGUMENT

THIS APPEAL THREATENS THE ABILITY OF MONROE COUNTY AND THE FLORIDA KEYS AQUEDUCT AUTHORITY TO RESOLVE THE ONGOING ENVIRONMENTAL DEGRADATION OF THE KEYS.

The Appellant seeks to use this validation process as a last-gasp attempt to achieve through the judiciary what he has failed to achieve through the state and local legislative process. Specifically, Appellant seeks to block the ability of the County, the City of Marathon and the Authority to implement the plan for central sewer service, so that individual landowners with onsite package sewage treatment facilities may be spared the cost of mandatory sewer connections. In this case of such critical environmental importance, the interests of the entire region outweigh those of the individual landowner, and this Appeal should be denied.

It is hard to underestimate the fragility of the Keys ecosystem, a complex and dynamic ecosystem whose environment is threatened by elevated levels of nutrients in Florida Keys canals and nearshore waters, resulting from antiquated onsite wastewater disposal processes in much of the Keys. (A-Supp.-F-12) These onsite systems provide only minimal nutrient removal in the wastewater treatment. (T-51) The County has a substantial interest in resolving the wastewater disposal problems

in the Keys. To counter these significant environmental problems, the County's Year 2010 Comprehensive Plan calls for the development of a countywide Sanitary Wastewater Master Plan (the "Master Plan"). Executive Order 98-309 of the Governor charges the relevant agencies and entities to coordinate with the County to execute the Year 2010 Comprehensive Plan, including the planning and implementing of an improved wastewater management system. The timing of this implementation is driven by Executive Order 98-309, the Year 2010 Comprehensive Plan, and various state and federal agreements which require immediate commencement of construction of wastewater projects to maintain compliance under the agreements. (T-38)

To assist in implementing the Master Plan, the County entered into a Memorandum of Understanding with the Authority in May 1998 (as amended, the "MOU") whereby the Authority would finance and operate the wastewater system throughout the Keys in a manner similar to how the Authority has operated its water supply system throughout the Keys for many decades. (A-Supp.-G-Appendix F-2) The County enacted Ordinance No. 04-2000 on January 19, 2000 which was subsequently amended by Ordinance No. 017-2002 enacted on July, 2002 (collectively, the "County Ordinance") requiring mandatory connections to central sewer systems 30 days after they are available for use (A-Supp-C, D). The County

Ordinance's requirement of connection to a central sewer system within 30 days of notice of such system's availability is permitted by Chapter 99-0395, §4, Laws of Florida. Pursuant to Section 4 of Ch. 99-395, the County Ordinance further included "package sewage treatment facilities" within the group of facilities that must connect to the Authority's system when it is available. This definition is the crux of this appeal, because exclusion of such package sewage treatment facilities (as urged by the Appellant in its attack on the constitutionality of Chapter 99-395, Section 4) would cripple the ability to finance such a system¹, thereby thwarting the exact environmental remedy (removal of nearshore water pollution caused by onsite sewage treatment facilities) to be achieved through the System.

The ability of a local government to achieve such mandatory connection to a central sewer system is well-settled under Florida law. *See State v. City of Miami*, 27 So.2d 118 (Fla. 1946) (approving mandatory connection provision of sewer ordinance), *State v. City of Daytona Beach*, 34 So.2d 309 (Fla. 1948) (same). In this matter, the legislature and the executive branch of the State of Florida have participated in the creation of a remedy to the sewage problems associated with pollution of Keys nearshore waters, mandating that the County and local

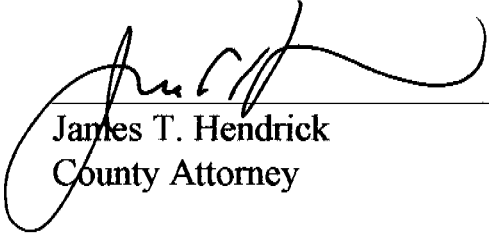
¹The Marathon Central Project alone contains 70 such package sewage treatment facilities. (T-52)

government resolve the problem expeditiously. The Florida legislature passed Chapter 99-395, Laws of Florida in 1999 to permit local governments within the Florida Keys Area of Critical State Concern, including the County, to pass more stringent environmental regulations regarding onsite sewage treatment. The County Ordinance that Appellant seeks to render void in this Appeal is merely implementing this process for the betterment of the citizens and the environment of the County. *See* A-Supp.D-1-3. This local legislative process should not be overturned by Appellant, whose appeal merely seeks to benefit those owners of package sewage treatment facilities at the expense of the larger goals of the County, the State of Florida and the United States, i.e., protection of the Florida Keys Marine Sanctuary and the nearshore waters of the Keys. The pollution of Keys waters by these facilities will be stopped only if this Court does not overturn the trial court's final judgment herein.

CONCLUSION

For the foregoing reasons, and the reasons articulated more fully by Appellant in its Answer Brief, Monroe County urges this Court to deny Appellant's attempt to avoid connecting to the Authority's central sewer system when available.

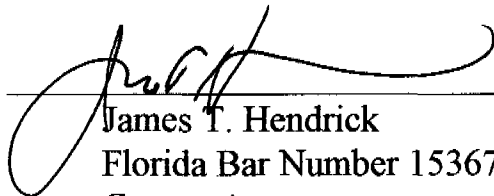
Respectfully submitted,



James T. Hendrick
County Attorney

CERTIFICATE OF SERVICE

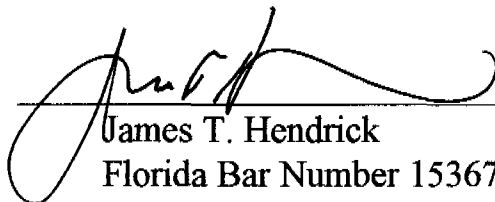
I DO CERTIFY that a copy of the foregoing Amicus Curiae Brief of Monroe County has been served by U.S. Mail on Mark E. Kohl, State Attorney for the Sixteenth Judicial Circuit in and for Monroe County, Florida, 530 Whitehead Street, Key West, Florida 33040; Russell A. Yagel, Hershoff, Lupino and Mulnick, LLP, 90130 Old Highway, Tavernier, Florida 33071, Grace E. Dunlap, Esq. and Kenneth A. Guckenberger, Esq., Bryant, Miller and Olive, P.A., 101 East Kennedy Boulevard, Suite 2100, Tampa, Florida 33602 and Robert T. Feldman, Esq., Feldman & Koenig, P.A., 1315 Whitehead Street, Key West, Florida 33040 on December 24, 2002.



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CERTIFICATION

The undersigned does hereby certify that this Brief used 14 point Times New Roman type and does hereby comply with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.



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