SUPREME COURT OF FLORIDA

CASE NO. SC02-2166

CHRISTOPHER J. SCHRADER,

Appellant,

v.

FLORIDA KEYS AQUEDUCT AUTHORITY,

Appellee.

ANSWER BRIEF OF APPELLEE

FLORIDA KEYS AQUEDUCT AUTHORITY
Robert T. Feldman (FBN 0096831)
General Counsel
1100 Kennedy Drive
Key West, Florida 33040
Telephone: (305) 296-2454
Fax: (305) 296-3521

BRYANT, MILLER and OLIVE, P.A.
Grace E. Dunlap (FBN 0601240)
Kenneth A. Guckenberger (FBN 0892947)
Mark G. Lawson (FBN 773141)
101 East Kennedy Boulevard
Suite 2100
Tampa, Florida 33607
Telephone: (813) 273-6677
Fax: (813) 223-2705

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES **Page(s)**

STATE AND FEDERAL LAWS

OTHER AUTHORITIES

INTRODUCTION

The Florida Keys Aqueduct Authority (the "Authority") files this Answer Brief seeking to affirm the decision of the trial court below validating its Sewer Revenue Note (the "Bonds"). The proceeds of the Bonds are intended to finance the cost of wastewater projects within the City of Marathon ("Marathon") in the Florida Keys (the "Keys") to remediate pollution problems resulting from the fact that Marathon has no centralized sewer service and has relied upon septic tanks, package sewage treatment facilities, cess pits, and other less sophisticated forms of wastewater disposal.

At issue on appeal is the Authority's ability to require mandatory connections to its a central sewer system that, when constructed, will alleviate the polluting effects of the current methods of wastewater disposal in the Keys. This Court previously affirmed the Authority's ability to do so in its decisive opinion of *Keys Citizens for Responsible Government v. Florida Keys Aqueduct Authority,* 795 So.2d 940 (Fla. 2001). Like the bonds validated in the *Keys Citizens* case, these Bonds will be repaid through user fees from mandatory connections to a central sewer system. Despite this Court's explicit approval of such charges last year in the *Keys Citizens* case, Appellant now seeks to challenge the ability of local governments in the Keys, acting pursuant to legislation passed by the Florida legislature to impose more stringent sewer

connections standards within an area that has been previously designated as one of "Critical State Concern."

Without validation of the mandatory connection ordinances, the Authority will be unable to carry out its mandate from the State of Florida to finance and construct a wastewater system that will rectify the nearshore pollution plaguing the Keys. If successful in his appeal, the Appellant endangers the ability of the Authority to finance a wastewater system to accomplish the Authority's plan to alleviate the nearshore pollution that exists in the Keys.

The validation judgment of the trial court should be affirmed.

References to the Parties and the Record

The Appellee/Plaintiff, the Florida Keys Aqueduct Authority, will be referred to as the "Authority," and the Appellant/Intervener, 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. 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.

COUNTER-STATEMENT OF THE FACTS

Appellant's Statement of the Facts contains several critical omissions that require the Authority to submit this Counter-Statement of the Facts and Supplemental Appendix to fully develop the record upon which the trial court validated the Bonds.

Background

The Authority was created and exists pursuant to the laws of the State of Florida, including but not limited to, Chapter 76-441, Laws of Florida, as amended and supplemented by Chapters 77-604, 77-605, 80-546, 83-468, 84-483, 84-484, 86-419 and 98-519, Laws of Florida (collectively, the "Special Act"). The primary purpose and function of the Authority has historically been to obtain, supply, and distribute an adequate water supply for the Keys. Faced with numerous studies showing that inadequate wastewater disposal is a major contributor to the degradation of water quality in the Keys (A-Supp.-F-12-15, A-Supp.-G-2-2 to 2-6), the Florida legislature supplemented the Special Act in 1998 to expand the Authority's powers to develop a sewer system. The Authority is empowered under the Special Act to issue bonds (Section 9(8)), provide sewer service (Section 9(9)(a)) and require and ". . . enforce the use of its facilities whenever and wherever they are accessible." (Section 9(9)(e). *See* Ch. 76-441, Ch. 98-519, Laws of Florida)

Environmental Problems Facing the Keys

The Keys are a chain of tropical islands located in Monroe County, Florida, that are home to a complex and dynamic ecosystem that is "one of the 'crown jewels' of our Nation's natural treasure chest." (A-Supp.-F-1) The pollution and water quality problems resulting from the absence of adequate wastewater treatment is a "threat to the environment and the health, safety and welfare of landowners and persons inhabiting the Florida Keys." (A-Supp.-B-2) The survival of the Keys' marine ecosystem is dependent upon clear, low-nutrient waters, because nutrients from wastewater negatively affect water clarity. (A-Supp.-F-2, A-Supp.-A-15) These waters have been degraded and the Keys ecosystem is threatened by elevated levels of nutrients in the surrounding canals and nearshore waters that are the result of antiquated wastewater disposal processes in much of the Keys. (A-Supp.-B-2, A-Supp.-F-12-13) "Restoration of the degraded portions of the Keys' aquatic ecosystem requires the combined effort of the entire community of the Florida Keys, with help from federal and State governments." (A-Supp.-F-3)

In 1979, the Keys were designated as an "Area of Critical State Concern" pursuant to the "Florida Keys Area Protection Act." *See* §380.0552(3), Fla. Stat. (2002); Chapter 79-93, §6, Laws of Florida. The Florida Keys Area of Critical State Concern contains all lands in Monroe County, but excludes the City of Key West,

federal properties, areas included within Everglades National Park and property owned by local, state or federal governments. *See Id.*, Fla. Admin. Code, Ch.28-29.002. Critical State Concern designation included the creation by the Governor of a resource planning and management committee to serve as a liaison between the state and local governments within the Florida Keys Area of Critical State Concern and to develop a comprehensive plan. § 380.0552(6), Florida Statutes (2002). The Department of Community Affairs ("DCA") has oversight of all development within the Florida Keys Area of Critical State Concern. This role is dramatically different than in areas that are not of critical state concern, where DCA's involvement is limited to the review of comprehensive plans under Section 163.3246, Florida Statutes (2002). Additionally, the Governor and the Cabinet, sitting as the Florida Administration Commission, retain oversight and the ability to amend local comprehensive plans and any land development regulations in the Florida Keys Area of Critical State Concern, a level of executive branch regulation that is unique to areas of critical state concern. §380.0552(9), Fla. Stat. (2002).

The importance of the Florida Keys and its nearshore waters have proved to be not just an area of state concern, but one of national import, with the Congressional designation of the nearshore waters as a marine sanctuary in the Florida Keys National Marine Sanctuary Protection Act in 1990. *See* Public Law 101-605.

In Executive Order 98-309 (the "Executive Order"), Florida's Governor charged the relevant state and local agencies and governmental entities to coordinate with Monroe County to execute its Year 2010 Comprehensive Plan, including the planning and implementing of an improved wastewater management system. (A-Supp.-H-3) The Executive Order stated:

> 1. Wastewater and stormwater contribute to water quality problems in the Florida Keys;
>
> 2. Cesspits, failing septic tank systems and other substandard onsite sewage systems in the Florida Keys do not provide an adequate level of wastewater treatment and thereby pose a public health threat and continue to be a major contributor to surface water quality deterioration in the Florida Keys and Florida Bay;
>
> 3. It is critical, in order to assure public health and protect water quality that all cesspits, failing septic tank systems and other substandard onsite sewage systems be timely eliminated; and
>
> 4. To enhance water quality in the Keys, all wastewater discharge shall be treated to advanced wastewater treatment or best available technology.

(A-Supp.-H-3) In May 1998, the Authority and Monroe County entered into a Memorandum of Understanding where the Authority agreed to provide wastewater service to unincorporated areas of Monroe County (A-Supp.-G-Appendix F-2)

In 1999, the Florida legislature then passed Chapter 99-395, Laws of Florida, a bill relating to a number of wastewater and sewage laws. In particular, Section 4 of Chapter 99-395 ("Chapter 99-395, Section 4") stated:

> Section 4. Notwithstanding any provision of chapter 380, part I, to the contrary, a local government within the Florida Keys area of critical state concern may enact an ordinance that:
>
> (1) Requires connection to a central sewerage system within 30 days of notice of availability of services; and
>
> (2) Provides a definition of onsite sewage treatment and disposal systems that does not exclude package sewage treatment facilities if such facilities are in full compliance with all regulatory requirements and treat sewage to advance wastewater treatment standards or utilize effluent reuse as their primary method of effluent disposal.

The effect of Chapter 99-395, Section 4 was two-fold: it enabled the Authority, as the provider of central sewer service within the Florida Keys Area of Critical State Concern, after the passage of local legislation by Monroe County or a municipality therein in the form of ordinances to: (1) require connections within 30 days of service availability and (2) include package sewage treatment facilities permitted for operation by the Florida Department of Environmental Protection within the scope of the mandatory connection ordinance. In reliance on Chapter 99-395, Section 4,[1]

[1] The Authority, in further reliance upon the County Ordinance and upon this Court's ruling in *Keys Citizens*, *supra*, enacted its Rules under Chapter 120, Florida Statutes which contain complementary connection requirements. (T-16) The entire rule-making process and financing of the wastewater system, however, would be

Monroe County enacted Ordinance No. 04-2000 on January 19, 2000 (A-Supp.-C), which was subsequently amended by Ordinance 017-2002 enacted on July 17, 2002 (collectively, the "County Ordinance"). The County Ordinance found that the wastewater disposal practices resulted in "pollution and questionable water quality" and sought to prohibit, prevent and remediate such activity by requiring connection by all property owners of improved parcels of land to the Authority's central sewer system to be made within 30 days of notice of such system's availability. (A-Supp.-D-3-4) The City of Marathon passed a connection ordinance (Ordinance 02-07-12, hereinafter the "Marathon Ordinance"), that also required connection by all property owners of improved parcels to a central sewer system within 30 days of notice of such system's availability. (A-Supp.-E-8-9) Both the County Ordinance and the Marathon Ordinance rely upon Chapter 99-395, Section 4, Laws of Florida to include "package sewage treatment facilities" within the definition of "onsite sewage treatment facilities," thus ensuring that all properties will connect to the Authority's centralized advanced wastewater treatment system when it becomes available.

---

undermined if the relief sought by Appellant here is granted. Specifically, because the environmental remedy designed to solve the wastewater pollution problem in the Keys includes mandatory connection of all landowners (including those with package sewage treatment facilities) to the centralized advanced wastewater treatment system, such a ruling would eviscerate the planned remedy in areas such as Marathon that have a significant number of package sewage treatment facilities.

Financing the Centralized Wastewater System

The Authority proceeded with plans to finance and construct the centralized wastewater system for the Keys (the "System") with a master bond resolution that permits the issuance of various series of bonds. (A-Supp.-A-4) In October 2000, the Authority specifically authorized the issuance of not exceeding $4,500,000 Sewer Revenue Bonds, Series 2000 (the "Series 2000 Bonds") to finance the initial project in the Master Plan: the installation of a central sewer project in the Little Venice community within the Marathon area of the Keys. The Series 2000 Bonds were validated in the trial court. An appeal of the validation order objecting to the mandatory connection aspects of the Authority's financing plan was rejected by this Court in *Keys Citizens, supra*.

In *Keys Citizens* this Court addressed much the same issue brought in this appeal by Appellant: Can the Authority support its financing of sewer bonds with a covenant requiring mandatory connection to cental sewer when available? This Court convincingly said that the Authority could enforce mandatory connections to repay the Bonds, stating:

> [T]here is little doubt that all residents of the Florida Keys can be required to connect to a central sewer system by virtue of the mandatory connection ordinance. See, e.g., *Stern v. Halligan*, 158 F.3d 729, 734 (3d Cir.1998) ("It cannot escape our notice that from the inception of such sanitary programs ... courts have routinely rejected constitutional

> challenges to mandatory connection requirements."). As discussed above, Florida law provides that property owners with existing onsite sewage treatment and disposal systems must connect to a central sewerage system within a specified time of being notified that the central system is available for connection. *See* § 381.00655, Fla. Stat. (2000). As early as 1976, the Legislature gave the Authority power to prohibit the use of septic tanks and other sanitary structures, provided that adequate alternate facilities are available. See ch. 76-441, § (9)(a), at 312, Laws of Fla. In 1998, the Legislature gave the Authority power to require mandatory hookup to specific wastewater treatment plants in order to manage effluent disposal and wastewater matters. See ch. 98-519, § 6, at 298, Laws of Fla. The Governor's Executive Order 98-309 also provides that onsite treatment systems in the Florida Keys will be abandoned when central sewage systems become available and that connection to such systems shall be mandatory. Additionally, in 1999 the Legislature gave local governments within the Florida Keys area the power to enact ordinances requiring connection to a central sewage system within thirty days after notice of the availability of service. See ch. 99-395, § 4, at 4068, Laws of Fla. This is exactly what Monroe County did in County Ordinance 04-2000.

Keys Citizens, 795 So.2d at 947-48 (emphasis supplied). The Court's notation of the long-standing principles of mandatory connection and the Authority's Special Act, statutory and case law authority to enforce mandatory connections make it clear that Chapter 99-395, Section 4 was not the only basis for such connections to be enforced, but that it was part of the overall authority for the financing of the Series 2000 Bonds.[2]

---

[2] Even if Appellant were to prevail on this appeal, the ability of the Authority to enforce mandatory connections to its sewer system pursuant to both the case law and the general and special laws cited by this Court in *Keys Citizens* would remain undisturbed. However, the effect of such a decision would be to exclude some improved properties (i.e. those with package sewage treatment facilities) from

Approval of the Bonds

In July 2002, the Authority prepared for the second financing of a central wastewater project, the "Marathon Central Project" within Marathon to be financed with the Bonds in an amount not exceed $83,000,000. (A-Supp.-B, T-16-17) The Marathon area had been designated as a "hot spot" because of its significant number of onsite treatment systems that include inadequate cesspits, septic systems and package sewage treatment facilities. (T-19) The total number of properties with package sewage treatment facilities is "close to 70 within [the] Marathon Central [Project area]." (T-52) The Authority sought validation of the Bonds in the Circuit Court in and for Monroe County, Florida. Appellant, along with a second Intervenor who is not participating in this appeal, objected to the validation. Appellant's objection was made primarily on the grounds that Section 4, Chapter 99-395 was an improperly enacted "special law" and that owners of "package sewage treatment plants" should not be required to connect to the Authority's System when available. (T-90)

In the Final Judgment validating the Bonds, the trial court rejected Appellant's argument and specifically found:

---

connection, thus severely diluting the impact of the environmental remedy provided by the System.

". . . the [Authority] has the power to require all necessary property owners within its geographic jurisdiction to utilize the [Authority] as the sole provider of sewer services . . ." (A-D-4)

* * *

"The provisions of Section 4, Chapter 99-395, Laws of Florida pertain to matters of statewide concern are applicable in an Area of Critical State Concern (the Florida Keys), and was properly enacted as a general law." (A-D-7)

Appellant/Intervenor's appeal followed.

STANDARD OF REVIEW

This Court's scope of review in bond validation cases is limited to the following issues: (1) determining whether the public body has the authority to issue bonds; (2) whether the purpose of the obligation is legal; and (3) whether the bond issuance of complies with the requirements of the law. *See Keys Citizens, supra*, 795 So.2d at 944; *Murphy v. Lee County*, 763 So.2d 300, 302 (Fla. 2000). The Appellant has the burden of demonstrating that the record and evidence fails to support the trial court's conclusions when it validated the Bonds. *Wohl v. State*, 480 So. 2d 639, 641 (Fla. 1985). Such validation judgment comes with a presumption of correctness that must be overcome by the Appellant. *International Broth. Of Elec. Workers, Local Union No. 177 v. Jacksonville Port Authority*, 424 So.2d 753 (Fla. 1982). This standard of review applies to all issues set forth in this Answer Brief.

STATEMENT OF THE ISSUE

I. DID THE FINAL JUDGMENT PROPERLY VALIDATE THE BONDS AND THE AUTHORITY'S ABILITY TO ENFORCE MANDATORY CONNECTIONS, INCLUDING THE CONSTITUTIONALITY OF CHAPTER 99-395, SECTION 4, LAWS OF FLORIDA?

SUMMARY OF THE ARGUMENT

The Authority will reply to the argument made by the Appellant in its appeal. The Authority will demonstrate that Chapter 99-395, Section 4, was properly enacted as a general law and is not, as Appellant contends, a special law, because it is a law that applies to an area of statewide and national interest -- the Florida Keys and its nearshore waters. Thus, the Florida legislature's passage of Chapter 99-395, Section 4 giving local governments in the Florida Keys Area of Critical State Concern the ability to require central sewer connection for all properties, even those served by package sewage treatment facilities, was constitutional, proper and critical to the restoration of the waters of the Keys through construction of an advanced wastewater treatment system by the Authority funded by the Bonds.

As a result, this Court should affirm the judgment below and validate the Bonds to enable this important environmental remedy and project to continue.

REPLY TO APPELLANT'S ARGUMENT

I. THE FINAL JUDGMENT PROPERLY VALIDATED THE BONDS AND THE AUTHORITY'S ABILITY TO ENFORCE MANDATORY CONNECTIONS, INCLUDING THE CONSTITUTIONALITY OF CHAPTER 99-395, SECTION 4, LAWS OF FLORIDA.

A. Florida's Bond Validation Statute.

Florida provides local governments with the ability to obtain closure on legal challenges associated with bond issues before selling bonds through bond validation proceedings contained in Chapter 75, Florida Statutes. Section 75.01, Florida Statutes, provides that "circuit courts have jurisdiction to determine the validation of bonds and certificates of indebtedness and all matters connected therewith" (emphasis supplied). Section 75.09, Florida Statutes, provides that validation proceedings may "include the validation of . . . any taxes, assessments or revenues affected . . ." by the issuance of the bonds to be validated. If successful, validation prevents the validity of the bonds, the validity of the issuer, the validity of any revenues which are pledged for the payment of the bonds, the proceedings authorizing the issuance thereof, and any remedies provided for their collection from being "called into question in any court by any person." §75.09, Fla. Stat. (2002).

The effect of the validation procedure is clear. "The purpose of a decree of validation and its value to the bond buyer is that defenses to collection are set at rest

in the beginning." *State v. Florida State Turnpike Authority*, 80 So.2d 337, 342 (Fla. 1955). Although Chapter 75 is not mandatory, issuers may voluntarily seek validation of their bonds before issuance to ensure that challenges, such as the one brought by the Appellant in the trial court, may be considered before accessing the capital markets and incurring the expenses related thereto.

B. Chapter 99-395, Section 4, Laws of Florida is not a Special Law because it applies to an area of statewide concern.

Appellant's challenge to Chapter 99-395, Section 4 is wholly unpersuasive when the law affects an area that is one of statewide, not local, concern.

1. Chapter 99-395, Section 4, Laws of Florida was properly enacted in conjunction with other legislation to protect the environment in an Area of Critical State Concern.

Appellant's discussion of the legislation passed in Chapter 99-395 (House Bill No. 1993) ignores the context in which such legislation was passed. Chapter 380, Part I, Florida Statutes, the Florida Environmental Land and Water Management Act (the "Act") governs environmental land and water management. It allows for the designation of "Areas of Critical State Concern" in Section 380.05, Florida Statutes, to fulfill the Act's purpose of protecting the natural resources and environment of the state, including the reversal of the deterioration of water quality. §380.021, Fla.

Stat.(2002). The Florida Keys was designated an "Area of Critical State Concern" in Section 380.0552, Florida Statutes in 1979. *See* Chapter 79-73, Laws of Florida.

Chapter 381, Florida Statutes, governs "Public Health." Of particular relevance to this appeal are Section 381.0065 (onsite sewage treatment and disposal systems) and Section 381.00065 (connection of existing onsite sewage treatment and disposal systems to central sewerage system). In particular, Section 381.00655(1)(a) states: "The owner of a properly functioning onsite sewage treatment and disposal system, excluding an approved onsite graywater system, must connect the system or the building's plumbing to an available publicly owned or investor-owned sewerage system within 365 days after written notification by the owner . . . that the system is available for connection."

Against this framework, the Florida legislature enacted Chapter 99-395, Laws of Florida in June 1999.[3] Chapter 99-395 has 10 sections that either amended Sections 381.0065 and 381.0666 or dealt with sewage treatment in the Florida Keys Area of

---

[3]Section 4 did not specify which area of the Florida Statutes within which it was to be codified. Section 4 was not codified in the Florida Statutes by the Division of Statutory Revision. The editorial decisions and determinations of the Department of Statutory Revision, however, are of no effect as to the underlying question raised by Appellant regarding the constitutionality of Section 4. *See Alvarez v. Department of Professional Regulation*, 546 So.2d 726, 727 (Fla. 1989) (rejecting argument that the placement of a section of a bill in the Florida Statutes was indicative of the intent of the Florida legislature).

Critical State Concern. Section 4 effectuates two changes within the Florida Keys Area of Critical State Concern: (1) It permits the time for mandatory connection to a central sewer system to be shortened from 365 to 30 days after availability, and (2) It allows the definition of onsite sewage treatment and disposal systems to be broadened to include package sewage treatment facilities (i.e. package sewage treatment facilities may be compelled to hook up to centralized sewer within the Florida Keys Area of Critical State Concern).

Appellant contends that such package sewage treatment facilities "are wastewater systems similar in function to those being designed by the FKAA, but operate on a smaller scale." (IB-3) In fact, the unrebutted testimony from the validation below demonstrated that such package sewage treatment facilities are fundamentally different from the centralized system planned by the Authority. The Authority's System will be designed[4] to treat wastewater to an "advanced wastewater treatment" standard that "removes at least 90 percent of the phosphorous and about 90 percent of the nitrogen, which are the nutrients which are degrading the water quality." (T-49) In contrast, package sewage treatment facilities provide "secondary

[4]The System will meet the wastewater treatment standards required by the various state and federal authorities that retain oversight over the Keys. (A-Supp.-G-1-1)

treatment" that "removes very little of the nutrients, so these nutrients are still being discharged into the environment." (T-51) Thus, the legislative rationale behind the passage of Chapter 99-395 (and Section 4 in particular) is, in fact, related to the environmental problems that are particular to the nearshore waters in the Florida Keys and, understandably, require a different scope of wastewater service in proximity to such a resource, which includes the nation's only tropical coral reef. (T-55).

2. The statewide importance of the area affected by Chapter 99-395, Section 4 makes it a general law.

The Florida legislature enacted Chapter 99-395, Laws of Florida as a general law. According to its title, it is a law relating to onsite sewage and disposal systems, amending, amongst other things, portions of Chapter 381, Florida Statutes, pertaining to public health. In particular, Section 4 relates to onsite sewage disposal systems in the Florida Keys Area of Critical State Concern. Section 4 was clearly enacted as a general law and pertains to matters of statewide importance, specifically water quality in the area of critical state concern – the Florida Keys Area of Critical State Concern - and is within the general police powers of the State of Florida. Based upon an evaluation of the un-rebutted facts and evidence introduced at trial, the trial court properly found this to be a permissible and constitutional classification by the Florida legislature and not, as Appellant contends, an unconstitutional local law.

One key to this analysis is the designation of the "Florida Keys Area of Critical State Concern." The name itself evokes that it is a matter of "critical state concern," of statewide importance, and is not a local law posing as a general law. The designation of this area in 1979 as one of critical state concern indicates that subsequent legislation 20 years later to achieve those ends is not merely a local law.[5] A law need not be universal in application to be a general law, so long as it is one of general import affecting directly or indirectly all citizens of the state. *State v. Leavins*, 599 So.2d 1326, 1335 (Fla. 1st DCA 1992) (law applying to Apalachicola Bay Area of Critical State Concern not a special law because of such designation). A law may

---

[5] In fact, the actual designation of the boundaries of the Florida Keys Area of Critical State Concern were the subject of much consternation in the Keys at the time of such designation. Pursuant to the original 1972 version of Chapter 380, the designation of areas of critical state concern were to be recommended by the Division of State Planning to the Governor and cabinet acting as the Administration Commission. *Askew v. Cross Key Waterways*, 372 So.2d 913, 914 (Fla. 1978). After holding several public hearings, the recommendation by the Division of State Planning regarding the boundaries of the Florida Keys Area of Critical State Concern was challenged. *Askew*, 372 So.2d at 917. In *Askew*, this Court held that such a delegation by the Florida legislature to the executive branch was unconstitutional, and required that the Florida legislature (not the executive branch) make the designation by statute of what is an area of critical state concern. *Id.* at 925. The Florida legislature followed suit, adopting a boundary for the area when passing Section 380.05552 as a general law. *See* Chapter 79-73, Laws of Florida, §6. Thus, the Florida legislature's ability to shape policy within this area is not a matter of first impression and the enactment of a general law by the Florida legislature in Chapter 99-395, Section 4 is entirely consistent with this Court's directive to the Florida legislature as to issues involving areas of critical state concern in *Askew*.

make classifications among political subdivisions or other governmental entities that are rationally related to the subject of the law. Fla. Const. Art. III, Sect. 11(b) states:

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

A "general law," is a law that operates uniformly within the state, uniformly upon subjects as they exist within the state or uniformly within a permissible classification. *Leavins,* 599 So.2d at 1335. The trial court found that Chapter 99-395, Section 4 used just such a permissible classification. (T-99, A-D-7)

The mere fact that Chapter 99-395, Section 4 applies solely to the Florida Keys Area of Critical State Concern does not mean that it is a special or local law. General laws may apply to specific geographic areas if their classification is permissibly and reasonably related to the purpose of the statute. *See Department of Legal Affairs v. Sanford-Orlando Kennel Club*, 434 So. 2d 879 (Fla. 1983). In *Leavins*, the Court determined that a statute that limited oyster harvesting in Apalachicola Bay was a general law notwithstanding the fact that it applied only to a particular geographic area -- the Apalachicola Bay Area of Critical State Concern. In holding that the restriction was nonetheless a general, not a special, law, the court recognized that Apalachicola

Bay, like the Florida Keys, is as an area of critical state concern pursuant to Florida Statutes, Section 380.0555. *Leavins* at 1336.

Furthermore, in *Leavins*, the court found that where the legislation concerned oyster harvesting, and the shellfish industry is an important and distinctive industry in Florida, the distinction at issue was merely geographical and not political. *Id.* "The protection of valuable marine resources is a valid, and indeed inescapable, exercise of the State of Florida's police power." *Id.* *See also Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374 (Fla. 1981) (protection of environmentally sensitive areas is a legitimate concern within the police powers of the state).

The similarities between this appeal and *Leavins* are compelling. Chapter 99-395, Section 4 is a general law because it concerns a matter of statewide impact and importance and is a proper subject for the exercise of the state's police power, namely, the protection of public health and water quality in an area of critical state concern. *See Keys Citizens,* 795 So.2d at 947-48. An area of critical state concern is, by definition, "an area containing, or having a significant impact upon environmental or natural resources of regional or statewide importance…". §380.05(2)(a), Fla. Stat. (2002). The purpose of so designating the Florida Keys Area of Critical State Concern was "to establish a land use management system that protects the natural environment of the Florida Keys." §380.0552(2)(a), Fla. Stat. (2002). As noted by

the United States Environmental Protection Agency, the Keys are one of the "crown jewels" of the nation's natural resources. (A-Supp.-F-1)

Appellant's authority for asserting that a law affecting the "Florida Keys Area of Critical State Concern" is a local law is unpersuasive. Instead of directly addressing *Leavins*, Appellant cites cases that are wholly distinguishable from this case. In *Alachua County v. Florida Petroleum Marketers Association*, 553 So.2d 327 (1st DCA 1989) *aff'd* 589 So.2d 240 (Fla. 1991), the First District Court of Appeal, in an opinion adopted by this Court, held that an ordinance allowing Alachua County to establish more stringent local regulation of underground petroleum tanks by effectively "grandfathering" Alachua County in the bill, was unconstitutional on three grounds, including the fact that it was a "special law" because it had no possibility of affecting any other county other than Alachua County. *Alachua County*, however, did not involve an area of critical state concern like this appeal. Moreover, the fact that the law applied solely to a political subdivision (a County) is distinguishable from a law relating to a geographic area like the Apalachicola Bay or Florida Keys areas of critical state concern.

Three years after deciding the *Alachua County* case, the First District addressed a law applicable solely to a geographic area within an area of critical state concern. The court recognized such a distinction in its opinion in *Leavins*, holding that such a law

was not unconstitutional because of the valuable marine resources at stake within the Apalachicola Bay Area of Critical State Concern. "Any classification here is merely geographical, and not political. The challenged aspects of the law apply uniformly . . . The protection of valuable marine resources is a valid, and indeed inescapable, exercise of the state's police power." *Leavins*, 559 So.2d at 1336. Thus, Appellant's citation of *Alachua County* as grounds for reversing the validation below is not persuasive.

Similarly, Appellant's reliance on *Ocala Breeders' Sales Company, Inc. v. Florida Gaming Centers, Inc.*, 731 So.2d 21 (Fla. 1999) is also distinguishable. Again, this Court held the statute regarding the licensing of wagering facilities to be unconstitutional on multiple grounds, including the fact that it was a special law enacted under the guise of a general law. That statute was specifically drafted in such a fashion that one certain pari-mutuel facility applying for the sole intertrack wagering license in Marion County would always prevail. Here, no such legislative shenanigans are at work. The Florida Keys Area of Critical State Concern has been in place for more than 20 years.[6] Chapter 99-395 was enacted at a time when the issues of

[6] To carry Appellant's argument to its logical end, all such designations of areas of critical state concern by the Legislature pursuant to Section 380.05(2) would be unconstitutional because they affect only a specific geographic area, notwithstanding the respective area's impact on the state's ecology or economy.

pollution associated with the lack of coordination in providing a central wastewater disposal system and the resulting lower quality of wastewater treatment in the Keys were being recognized as critical problems. (A-Supp.-G-Chapter 2) Sections 3, 9 and 10 of Chapter 99-395 all deal with related issues regarding pollution and/or water quality, with a particular emphasis on the Florida Keys Area of Critical State Concern.

Because the Florida Keys are designated by Section 380.0552, Florida Statutes, as an area of critical state concern, DCA is charged with oversight of all development that takes place in Monroe County and the Florida Administration Commission may amend local comprehensive plan or land use regulations pursuant to Section 380.0552(9), Florida Statutes (2002). Thus, there is virtually no action that any local government in the Florida Keys Area of Critical State Concern can take related to the use of land without the review and approval of a state agency. Here, the Florida legislature has permitted local governments to broaden the participation in central wastewater disposal to all improved properties and hasten their required connection to central sewage systems on a basis that is not only expedited, but also provides comprehensive environmental protection to achieve its goal of protecting an important state resource (the Florida Keys Area of Critical State Concern) and near shore water quality within the Florida Keys Area of Critical State Concern. Compared against the entire regulatory scheme for wastewater systems generally, and for activity within the

Florida Keys Area of Critical State Concern, in particular, Chapter 99-395, Section 4 is not a special law within the meaning of the Florida Constitution.

C. Mandatory connections are permitted as set forth in *Keys Citizens*.

In 2001, this Court validated a bond issue that also challenged the Authority's ability to enforce mandatory connections to repay its bonds in *Keys Citizens.* At issue in that case, much as in this appeal, was the ability of the Authority to enforce mandatory connections to its central wastewater System when built. Such connections are critical in financing the project because without customers, the Authority will lack the ability to repay the Bonds that are needed to finance the project. This Court found that the Authority's specific authority under the Special Act and its ability under prior case law all defeated the Appellant's claims that the Authority could not establish mandatory connections. "[T]here is little doubt that all residents of the Florida Keys can be required to connect to a central sewer system by virtue of the mandatory connection ordinance." *Keys Citizens*, 795 So.2d at 947. This Court specifically cited Chapter 99-395, Section 4 in holding that mandatory connection was proper, validating the Authority's Bonds. *Id.* at 948. To grant the relief sought by the Appellant would not only defeat the financing of this project, but would put at risk the Series 2000

Bonds previously validated by this Court in *Keys Citizens.*[7] Thus, Appellant's attempt to argue that Chapter 99-395 is unconstitutional should be dismissed on the same rationale that this Court applied in *Keys Citizens*.

D. Local residents received notice of mandatory connection in the enactment of the County Ordinance or the Marathon Ordinance.

The constitutional check on the Florida legislature regarding its enactment of laws of specifically local application without notice is not implicated where, as here, the law in question merely authorizes the local governments to enact implementing ordinances under the provisions of the state law. Chapter 99-395, Section 4 gives general purpose local governments within the Florida Keys Area of Critical State Concern the ability to enact ordinances. The general/special law distinction is a constitutional prohibition against local laws imposed by the Florida legislative branch without proper notice and hearings in the locality affected. *See State ex rel. City of Pompano Beach v. Lewis*, 368 So.2d 1298, 1300-01 (Fla. 1979) (purpose of special

[7]Appellant's attack on the mandatory connection provisions as applied to package sewage treatment facilities is ill timed. It comes after numerous public meetings on the topic, (T-38, A-Supp.-G-1-4, 5), designation of an area of critical state concern, issuance of an executive order, enactment of three local ordinances, validation of previous bonds and adoption of the Authority's Rules in reliance therein. To grant such relief at this point would undermine the entire Keys nearshore waters restoration project and cause disparate results amongst otherwise similarly situated property owners.

law notice is to notify local citizens so those interested may oppose its enactment). Where the law in question merely enables local jurisdictions to enact ordinances with all the procedural safeguards associated therewith (including advertised local hearings), the necessity of the constitutional protection has lessened, if not been eliminated. Those objecting to the local ordinance could come and voice their objections to their local elected officials. Such opportunity was afforded the Intervenor, who apparently chose not to participate. (T-38) Thus, the harm sought to be protected by the local law prohibition in the Florida Constitution does not exist in this appeal where local citizens have always maintained the ability to affect legislation on a local level. Appellant's belated attempt to block this critical project through a challenge to mandatory connections in this appeal should not be permitted by this Court where, as here, local legislative action superceded the actions of the Florida legislature that Appellant deems unconstitutional.

CONCLUSION

For all of the foregoing reasons, the trial court's decision validating the Bonds should be affirmed by this Court.

_____

Grace E. Dunlap (FBN 0601240)
Kenneth A. Guckenberger (FBN 0892947)
Mark G. Lawson (FBN 773141)
Bryant, Miller and Olive, P. A.
101 East Kennedy Boulevard, Suite 2100
Tampa, Florida 33602
Telephone: (813) 273-6677
Fax No: (813) 223-2705

Robert Feldman, Esq. (FBN 0096831)
Florida Keys Aqueduct Authority
General Counsel
1100 Kennedy Drive
Key West, Florida 33040
Telephone: (305) 296-2454
Fax No: (305) 296-3521

Counsel for Appellee

CERTIFICATE OF SERVICE

I DO CERTIFY that a copy of the foregoing Answer Brief of Appellee has been served by U.S. Mail on Russell A. Yagel, Hershoff, Lupino & Mulnick, LLP, 90130 Old Highway, Tavernier, Florida 33070, Attorneys for Appellant and Mark E. Kohl, Esquire, State Attorney for the Sixteenth Judicial Circuit in and for Monroe County, Florida, 530 Whitehead Street, Key West, Florida 33040 on November ____, 2002.

_____

Grace E. Dunlap
Florida Bar Number 0601240
Bryant, Miller and Olive, P. A.
101 East Kennedy Boulevard, Suite 2100
Tampa, Florida 33602
(813) 273-6677

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.

_____

Grace E. Dunlap
Florida Bar Number 0601240
Bryant, Miller and Olive, P. A.
101 East Kennedy Boulevard, Suite 2100
Tampa, Florida 33602

T:\BRIEFS\Briefs - pdf'd\02-2166_ans.wpd