

IN THE SUPREME COURT OF FLORIDA

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CASE NO. SC04-

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**CITY OF MIAMI,**

PETITIONER,

VS.

**SIDNEY S. WELLMAN, ET AL.,**

RESPONDENTS.

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BRIEF ON JURISDICTION OF CITY OF MIAMI

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ON DISCRETIONARY REVIEW  
FROM THE THIRD DISTRICT COURT OF APPEAL

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**TABLE OF AUTHORITIES**

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*Mulligan v. City of Hollywood*,  
871 So. 2d 249 (Fla. 4th DCA 2004) \_\_\_\_\_ *passim*

**Other authorities cited**

Fla. Stat. § 932.704(1) \_\_\_\_\_ 3-4

## **STATEMENT OF THE CASE AND FACTS**

This case involves a City of Miami vehicle impoundment ordinance. The Third District Court of Appeal held that the ordinance was unconstitutional, as the area was expressly preempted by state law, and the local ordinance conflicted with state law. *City of Miami v. Wellman*, 29 Fla. L. Weekly D328 (Fla. 3d DCA Feb. 4, 2004).

The Third District expressly relied on a recent decision of the Fourth District, which had struck down a similar ordinance on the same grounds. *Mulligan v. City of Hollywood*, 871 So. 2d 249 (Fla. 4th DCA 2004). The Third District stated that “[w]e take the same approach as the Fourth District.”

The Fourth District certified the question as being of great public importance, and that case is currently before this court. Case no. SC04-990.

## **SUMMARY OF THE ARGUMENT**

The court has jurisdiction over this case. The district court relied on a decision of the Fourth District. This Court has jurisdiction over the case from the Fourth District, since the Fourth District certified the question as being of great public importance. The present case is thus a “piggyback” case, over which the Court has jurisdiction.

The Court also has jurisdiction based on an express and direct conflict with the decision of another district court of appeal on the standard for express preemption.

## **ARGUMENT**

### **I. THE COURT HAS JURISDICTION BECAUSE THE DECISION OF THE DISTRICT COURT RELIED ON A DECISION PENDING BEFORE THIS COURT**

This Court has jurisdiction over this case, because the decision of the Third District was expressly based on another case over which this indisputedly has jurisdiction.

In this case, the Third District relied on the Fourth District's decision in *Mulligan v. City of Hollywood*, 871 So. 2d 249 (Fla. 4th DCA 2004). This Court has jurisdiction over *Mulligan*, based on a question certified to be of great public importance. The present case is thus a piggyback case, and this Court has jurisdiction over this case. *See Jollie v. State*, 405 So. 2d 418 (Fla. 1981); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987).

This is a case in which the Court should exercise its discretion in favor of jurisdiction. As the Fourth District concluded, the case presents an issue of great public importance. The case is importance for its legal holding on the division of powers between state and local government. The case also has an important practical effect: if the decisions of the district courts are upheld, the municipalities will lose a useful tool, and be forced to pay many millions of dollars. For all these reasons, the Court should exercise its discretionary jurisdiction.

### **II. THE COURT HAS JURISDICTION BECAUSE THE DECISION OF THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURTS OF APPEAL**

Because the decision of the district court relies upon a case pending in the Court on a certified question, there is discretionary jurisdiction. We also note—in the event anything were to result in the dismissal of the case here on a certified question—that there is there is also jurisdiction based on conflict with an opinion of another district courts of appeal.

The district court concluded that the Legislature had preempted the area, based on the following words of the state forfeiture statute:

It is the policy of this state that law enforcement agencies shall utilize the provisions of the Florida Contraband Forfeiture Act to deter and prevent the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lienholders. . . .

§ 932.704(1), Fla. Stat.

The Third District’s finding of preemptions based on this language conflicts with *Edwards v. State*, 422 So. 2d 84 (Fla. 2d DCA 1982). In *Edwards*, the statute stated certain findings of fact: that “uniformity between the Laws of Florida and the Laws of the United States is necessary and desirable for effective drug abuse prevention and control, and . . . it is desirable that the State of Florida exercise more authority over manufacture and distribution of dangerous drugs, and . . . the inconsistencies in penalty provisions of current law demand amendment.” The district court acknowledged that these findings of fact lent some support to the express preemption argument, but nevertheless found that it was not clear enough to establish preemption. The municipality was therefore permitted

to legislate on the subject.

The decision in this case expressly and directly conflicts with *Edwards v. State*, and is an alternate basis for conflict jurisdiction.

### CONCLUSION

Based for the reasons stated, the Court should grant review of this case.

Respectfully submitted,

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### CERTIFICATE OF SERVICE AND COMPLIANCE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed

this 16th day of July, 2004, to Ronald S. Guralnick, Esq., 550 Brickell Avenue, PH1,  
Miami, FL 33131.

We hereby certify that this brief is in Times Roman 14 point, and in compliance  
with the type requirements of the Florida Rules of Appellate Procedure.

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