IN THE SUPREME COURT
OF FLORIDA

Case No: SC09-713
Lower Tribunal No: 5D06-1116

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT,

Petitioner,

vs.

COY A. KOONTZ, ETC.,

Respondent.

On Appeal From The Fifth District Court Of Appeals
Daytona Beach, Florida

PETITIONER/APPELLANT'S REPLY BRIEF ON THE MERITS

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PREFACE

The following abbreviations and designations are used in this brief:

- "Fifth District" refers to Florida's Fifth District Court of Appeal.
- "Koontz" refers to Coy A. Koontz, deceased, the landowner in the decision below, who is represented in this matter by Respondent Coy A. Koontz, Jr., as Personal Representative of the Estate of Coy A. Koontz.
- "St. Johns" refers to Petitioner St. Johns River Water Management District, an agency subject to chapter 120 of the Florida statutes.
- "FDR" refers to the Fifth District's Record on Appeal Index.

References to the record on appeal will cite to "R," followed by the appropriate volume, then appropriate page number, or "FDR" followed by the appropriate page number. References to trial transcript will cite to "T," then the appropriate page number.

ARGUMENT

Before directly responding to Koontz's arguments, St. Johns must correct two of the most significant factual inaccuracies in the answer brief.

First, Koontz incorrectly states, "this matter involves . . . [a] determination requiring Koontz to upgrade [public] infrastructure as a condition of development." (AB at 27). Essentially the same "fact" is referenced in Koontz's statement of supplemental facts (AB at 2).[1] The purported fact is inaccurate because, as stipulated by Koontz pretrial, the Governing Board's final order allowed additional mitigation to be on any property within the Econ basin. (R4: 619, ¶L4; R9: 1628, ¶18). Thus, Koontz was not forced to upgrade public infrastructure to get a permit.

Second, Koontz wrongly implies that the trial court was referring to the same mitigation option when it found that mitigation "could cost between $90,000 and $150,000, but there is evidence that it could cost as little as $10,000." (AB at 32). That finding does not reflect an evidentiary dispute as to the cost of a single mitigation option. The quote reflects the cost of two different mitigation options, one costing $10,000 and the other costing $90,000 to $150,000.[2]

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[1] Koontz quotes from *Koontz I* regarding a statement supposedly made by a staff person during the process leading up to the Governing Board's final order. (AB at 2). Because *Koontz I* was an appeal of the trial court's dismissal of Koontz's Complaint, *Koontz I* was merely restating the unproven *allegations* in the complaint (R 367, ¶10), which the Court had to accept as true for that appeal.

[2] Uncontradicted evidence shows a location where 50 acres of wetlands could be

I. THE FIFTH DISTRICT ERRONEOUSLY APPLIED *NOLLAN/DOLAN*.

A. The Requirement That Koontz Provide Additional Mitigation For Permit Issuance Did Not Exact "Property" From Koontz.

Notably, Koontz cites no authority supporting the Fifth District's novel exaction theory that a *per se* taking occurs where the unjustified regulatory condition does not exact the real property found to have been taken. Koontz makes no attempt to reconcile the doctrine of unconstitutional conditions, the bedrock of *Nollan/Dolan*, with the Fifth District's decision, which separated the unreasonable regulatory condition (additional mitigation) from what was found to be *per se* taken—14.2 acres of real property. Instead, Koontz cites cases not only factually remote to this case, but which are actually adverse to the Fifth District's theory.

The linchpin of Koontz's argument is that *Nollan/Dolan* should be extended to any regulatory requirement that would result, if implemented, in the expenditure of funds. The conspicuous flaw in the argument is that this case does not involve a claim that money was taken.[3] Koontz did not plead, and the Fifth District did not

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enhanced by removing one culvert and installing one culvert (T 252) at a total cost of approximately $10,000. (T 142-43; R9: 1696). A separate off-site alternative to *any* onsite mitigation (R9: 1627, ¶13) could be accomplished "by the replacement of approximately fifteen inoperative or abandoned culverts" (R9: 1627, ¶14). Testimony from the same witness showed the cost of replacing those 15 culverts to be between approximately $90,000 and $150,000. (T 148-49; *see also* T 299).

[3] The $10,000 that he would have expended to accomplish additional mitigation was never spent by Koontz and never claimed by him to be the property that was exacted. *See* Complaint (R2: 375-77) and pretrial stipulation (R4: 614-29). Nor did the trial court's judgment find that money was the property claimed to have

hold, that St. Johns' permit denial condemned the money the off-site mitigation option would have cost Koontz had he implemented that mitigation. Rather, Koontz pled, and the Fifth District held, St. Johns' permit denial temporarily condemned Koontz's real property. Because of this, the cases of *Ehrlich v. City of Culver City*, 911 P.2d 429 (Cal. 1996) and *Town of Flower Mound v. Stafford Estates Ltd. Partnership*, 135 S.W.3d 620 (Tex. 2004) are inapposite.

Unlike this case, the taking claim in each of those cases was to recover the money encumbered or paid to government. In *Ehrlich*, which predated *Lingle*, the court found that the city's recreational fee was a presumptively unconstitutional exaction.[4] The court did not hold, as under the Fifth District's theory, that because of the unjustified recreational fee, the city *per se* condemned the landowner's 2.4-acre tennis club. Similarly, in *Flower Mound*, the landowner's actual expenditure of funds to rebuild a road abutting the landowner's subdivision was an unjustified exaction. The court did not hold, as under the Fifth District's theory, that the Town had *per se* condemned the landowner's 90-acre subdivision because of the unjustified monetary exaction. In both cases, it was money that was taken. It is the obvious disconnect in the Fifth District's decision between the regulatory

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been taken, or that money was, in fact, taken. However, the majority opinion below suggests in dicta that the expenditure of money to perform mitigation could support an exaction claim for the money spent. *Koontz*, 5 So. 3d at 12.

[4] In *Ehrlich*, the landowner "agreed to pay the $280,000 recreation fee under protest" in exchange for the permit. *Ehrlich* 911 P. 2d at 435.

condition (additional mitigation) and the property the court found taken (Koontz's 14.2 acres) that distinguishes it not only from *Ehrlich* and *Flower Mound*, but from every existing exaction taking case.[5]

Even if the taking of money had been placed at issue in this case and Koontz had encumbered or paid the cost of mitigation, Koontz's argument that *Nollan/Dolan* should be extended to any regulatory requirement that would cause a landowner to spend money is contrary to U.S. Supreme Court precedent. A generalized obligation to pay money does not trigger takings liability. *U.S. v. Sperry Corp*., 493 U.S. 52 (1989); *Eastern Enter. v. Apfel*, 524 U.S. 498 (1998). In contrast, government's appropriation of a discrete fund can constitute a taking. *Brown v. Legal Found. of Washington*, 538 U.S. 216 (2003). The state of the law relating to money as the object of a taking claim was summarized by the Federal Circuit, sitting en banc, as follows: "In short, while a taking may occur when a specific fund of money is involved, the mere imposition of an obligation to pay money, as here, does not give rise to a claim under the Takings Clause of the Fifth Amendment." *Commonwealth Edison Co. v. U.S.* (en banc), 271 F.3d 1327, 1340 (Fed. Cir. 2001). *See also McClung v. City of Sumner*, 548 F.3d 1219 (9th Cir. 2008), *cert. denied*, 129 S. Ct. 2765 (2009). *See* D. Siegel, *Exactions After Lingle:*

[5] Post-*Lingle*, the only courts citing and following *Flower Mound* are the *Koontz* decision below and lower Texas courts, which are required to follow the Texas Supreme Court's binding *Flower Mound* precedent.

How Basing Nollan and Dolan On The Unconstitutional Conditions Doctrine Limits Their Scope, 28 Stan. Envtl. L. J., 577, 581 (2009).

Koontz suggests that the U.S. Supreme Court's *Ehrlich* remand, 512 U.S. 1231 (1994), which was issued only three days after the issuance of the *Dolan* opinion, evidences the Court's extension of *Nollan/Dolan* to monetary exactions. But *Koontz* ignores the fact that the *Ehrlich* remand reversed the appellate court's decision applying *Nollan* to a monetary fee. It is a wishful stretch to posit that the U.S. Supreme Court would expand exaction takings precedent, precedent that previously had been applied only to land dedications, through a summary remand order without written opinion. The more logical reading is the remand was to allow the state court to consider the newly created *Dolan* test. This reading is compelling because, four years after *Ehrlich*, the Supreme Court unanimously confirmed that *Dolan's* rough proportionality test applies only to "land-use decisions conditioning approval of development on the dedication of property to public use," *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 702 (1999), a point later reconfirmed in *Lingle*, 544 U.S. at 547.

The ramifications would be immense if this Court were to accept Koontz's argument that *Nollan/Dolan* should be extended to all regulatory requirements that, if implemented, would cause a landowner to spend money. Because virtually every regulatory requirement necessitates the expenditure of funds, virtually every

state and local regulatory decision could be challenged in circuit court as a taking of the underlying property, even though no money was spent implementing the requirement and there was no economic burden on the underlying property. If a trial court were to find the landowner's experts more persuasive, as here, *per se* takings liability for the underlying property would result, simply because government made a decision the trial court later found unreasonable. The Fifth District's takings test, were it applied to all regulatory decisions that would cost money if implemented effectively reinstates the discredited *Agins* "substantially advances" test for virtually all regulatory decisions. That "substantially advances" test was rejected by *Lingle* as unrelated to the purpose of the takings clause.

Koontz and the aligned amici argue that exaction takings avenues should be expanded as a broad check on potential governmental leveraging of the police power. However, the legislature has already safeguarded landowners against such leveraging by state agencies and by local governments through the Chapter 120 administrative process, including judicial review under section 120.68. Additionally, circuit court certiorari review is available for local government decisions. Both of these protective processes ensure that a challenged decision is supported by competent substantial evidence. Accordingly, there is no need to expand *Nollan/Dolan* beyond those instances where government is attempting to leverage the conveyance of real property without compensation, through a

condition for approval of a development permit that government could otherwise legitimately deny.

B. *Nollan*/*Dolan* Takings Are Limited To Exactions Of Land For Public Use.

The primary cases and all but one of the law review articles cited by Koontz predate *Lingle*. Koontz asserts that *Lingle's* discussion of *Nollan/Dolan* is dicta (AB at 24), and, as support, relies on a law review article that actually concludes the *Nollan/Dolan* discussion is not dicta. M. Fenster, *Regulating Land Use in a Constitutional Shadow: The Institutional Contexts of Exactions*, 58 Hastings L. J. 729, 757 (2007) ("*Lingle's* discussion of the exactions decisions is therefore best understood as a necessary step along the decisional path to its outcome and part of its holding, rather than as dicta"). Also, there are a number of cases that do not view *Lingle's* discussion of *Nollan* and *Dolan* as dicta,[6] and Koontz cites no case stating that it is. Even if considered dicta, it has considerable persuasive value. *Lee v. State*, 217 So.2d 861, 864 (Fla. 4th DCA 1969).

C. Section 373.617 And Takings.

Koontz acknowledges, as he must, the procedural nature of section 373.617:

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[6] *McClung v. City of Sumner*, 548 F.3d 1219, 1227 (9th Cir. 2008), *cert. denied*, 129 S.Ct. 2765 (2009); *Ramsey Winch Inc. v. Henry*, 555 F.3d 1199, 1209 (10th Cir. 2009); *Brace v. U.S.*, 72 Fed.Cl. 337, 366 n.46 (Fed.Cl. 2006), *aff'd*, 250 Fed. Appx. 359 (Fed.Cir. 2007); *Kamaole Pointe Development LP v. County of Maui*, 573 F. Supp. 2d 1354, 1365 (D. Hawaii 2008); *Consumers Union of U.S., Inc. v. State*, 840 N.E.2d 68, 83 (N.Y. 2005); *Wisconsin Builders Ass'n v. Wisconsin Dep't of Transp.*, 702 N.W.2d 433, 502-03 (Wis. App. 2005).

> section 373.617 did not attempt to set forth the substantive tests for takings (leaving that to the judicial constitution interpretation), but rather provides a procedural mechanism for judicial consideration of takings claims . . . [S]ection 373.617 evinces that it is an implementing statute for *any* cognizable takings claim.

(AB at 42-43, original emphasis). The substantive takings tests found cognizable by "judicial constitutional interpretation" are the four identified in *Lingle* (*see* St. Johns' initial brief at 15, n.8) and by Florida precedent predating the decision below.[7] The only judicially cognizable theories argued in the answer brief are a *Nollan/Dolan* exaction and a *Penn Central* taking.

Throughout the answer brief, Koontz refers to an "unreasonable exercise of the police power" claim, but such a claim does not fall within the four recognized categories of takings claims. An "unreasonable exercise of the police power" is a due process claim, not an inverse condemnation claim: "The due process clauses involve what is commonly referred to as the State's 'police power,' while the compensation clauses concern the State's power of eminent domain." *Haire v. Fla. Dept. of Agric. and Consumer Serv.*, 870 So.2d 774, 781 (Fla. 2004). This Court has previously rejected a takings theory based on due process grounds, *Tampa-Hillsborough County Expressway Auth. v. A.G.W.S. Corp.*, 640 So.2d 54 (Fla.

[7] The four categories of cognizable takings claims are: (1) A permanent physical taking, *Storer Cable T.V.of Fla., Inc. v. Summerwinds Apartments Associates, Ltd*., 493 So.2d 417 (Fla. 1986); (2) a total regulatory taking, *Keshbro, Inc. v. City of Miami*, 801 So.2d 864 (Fla. 2001); (3) a *Penn Central* regulatory taking, *A.G.W.S., supra*; and (4) a *Nollan/Dolan* land-use exaction taking, *Paradyne Corp . v. State, Dept. of Transp*., 528 So.2d 921(Fla. 1st DCA 1988).

1994), as has *Lingle* (*see* St. Johns' initial brief at 30-31).[8]

The partial legislative history at tabs B and C of the answer brief appendix contain only policy and bill language actually rejected and excluded from the enactment of section 373.617. Thus, these documents are immaterial to the appeal.

Tab B includes a purported 1975 Governor's Commission report which in itself has no bearing on the language contained in the later enactment of Chapter 78-85 (section 373.617). Indeed, the Report's principal recommendation was "[a] system should be provided whereby compensation is paid for any regulation that unduly diminishes the value of property, even though it does not constitute an unconstitutional taking without compensation." (*See* AB appendix, tab B at 6, 12). Section 373.617 rejected this diminution concept by instead establishing a procedure for just compensation for a constitutional taking under Article X, section 6 of the Florida Constitution.[9] However, the Commission's diminution concept was later embraced in 1995 as the Bert J. Harris, Jr., Private Property Rights Protection Act, section 70.001, Florida Statutes. That Act created a statutory claim

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[8] The inapt statutory term "unreasonable exercise of police powers" in section 373.617 is a relic of that time when there was confusion between a police power taking of property without due process and a taking of property without just compensation. *See A.G.W.S,* 640 So.2d at 57; *Lingle*, 544 U.S. at 541-42.

[9] *See* K. Wetherell, *Private Property Rights Legislation: The "Midnight Version" And Beyond*, 22 Fla. St. U. L. Rev. 525, 556 (Fall 1994) (the intent of section 373.617 is for the circuit court to determine if the agency action results in a taking under Article X, section 6 of the Florida Constitution).

for decisions that "inordinately burden" property, for those burdens that do not rise to the level of a constitutional taking. §70.001(1), Fla. Stat.

Tellingly, not one of the bills Koontz provides in tab C contains the language or analysis of section 373.617(2), whose last sentence mandates that the circuit court is *not* to determine the validity or correctness of final agency action. Indeed, Koontz's purported legislative history fails to contain the legislative journals that show the critical language in section 373.617(2) was inserted on the floor, to insure the circuit court would not attempt to reevaluate the correctness of the agency action. *Fla. S. Jour*. 398 (Reg. Sess. 1978); *Fla. H. Jour*. 528 (Reg. Sess. 1978) (both in the appendix to this brief); R. Rhodes, *Compensating Police Power Takings: Chapter 78-85, Laws of Fla.*, 52 Fla. B. J. 741, 743 (Nov. 1978) (§373.617(2) was included to insure the circuit court would not review the correctness of the agency action). Instead, the majority of the bills and analyses Koontz provides in tab C involved the concepts of challenging the validity of the agency action and of damages for diminution in value by an "inordinate burden." The legislature rejected both concepts and adopted neither in section 373.617. In their place, section 373.617(2) explicitly prohibits a claim challenging the validity of the agency action, and limits consideration of takings claims solely to whether the valid and correct agency action results in a constitutional taking. Since the proposed bills and analyses in tab C only show what was *rejected* by the legislature

and are relevant only to illuminate the legislature's rejection of the concepts.

II. THE LAST SENTENCE IN SECTION 373.617(2) PRECLUDES KOONTZ'S CIRCUIT COURT TAKINGS CLAIM CHALLENGING THE CORRECTNESS OF THE MITIGATION DECISION.

The last sentence of section 373.617(2) explicitly precludes circuit court subject matter jurisdiction over a takings claim that rests on a challenge to the legal or factual propriety of final agency action. The answer brief (and amici) concede this point by making no attempt to contest the plain meaning of the sentence; trying instead to tiptoe past the guard dog, declining to address it in their briefs.

Koontz notes that some principles in *Key Haven Associated Enter. v. Bd. of Trustees of the Internal Improvement Trust Fund,* 427 So. 2d 153 (Fla. 1982) were superseded by section 253.763 (and therefore the identical section 373.617), but Koontz does not identify the superseded principles. As explained in St. Johns' initial brief at 46-48, what was *not* superseded was the necessity of "accepting the agency action as completely correct" before bringing a circuit court takings claim. The continuing vitality of that *Key Haven* principle is unquestionable. *See, e.g.*, *Lee County v. Zemel*, 675 So.2d 1378, 1381-82 (Fla. 2nd DCA 1996); *Verdi v. Metropolitan Dade County*, 684 So.2d 870, 874-75 (Fla. 3rd DCA 1996); *Golf Club of Plantation, Inc. v. City of Plantation,* 717 So.2d 166, 171 (Fla. 4th DCA 1998).

Koontz makes no actual attempt to distinguish *Bowen v. Fla. Dep't of Envtl. Regulation*, 448 So.2d 566 (Fla. 2d DCA 1984), *approved and adopted*, 472 So.2d

460 (Fla. 1985). Instead, Koontz notes that *Bowen* agreed with *Griffin v. St. Johns River Water Mgmt. Dist.*, 409 So.2d 208 (Fla. 5th DCA 1982), and then argues implicitly (and mistakenly) that *Griffin* allows a circuit court takings plaintiff to base a takings claim on the correctness of the final agency action. (AB at 38-39). Contrary to Koontz's argument, *Griffin* directly supports St. Johns' position: "If the aggrieved party wants to appeal issues dealing with whether the agency followed the statutes or rules or acted on competent substantial evidence, it must perfect its appeal in accordance with section 120.68." *Id.* at 210. In other words, *Griffin* sees section 373.617(2) as upholding the linear Chapter 120 process, where only a district court of appeal may review the correctness of "final agency action."

St. Johns' argument does not preclude a judicial forum for an exaction taking—that forum is the district court of appeal, through section 120.68, as mandated by the last sentence of section 373.617(2). Koontz fails to reconcile his position that section 373.617 allows a landowner to present evidence challenging the factual basis of the agency permitting decision with the statutory bar prohibiting a circuit court from re-evaluating the factual basis of a permitting decision. In this case, the circuit court exceeded its jurisdiction by doing exactly what the statute prohibits: determining whether St. Johns' mitigation decision was correct.

III. THERE WAS NO TAKING UNDER *PENN CENTRAL*.

This Court should reject Koontz's "tipsy coachman" argument that inverse

condemnation occurred under *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), for two reasons. First, in the pretrial stipulation Koontz conceded he was not proceeding under a *Penn Central* takings theory.[10] A party should not be able to expressly eliminate a takings theory before trial, and then reinstitute the expressly abandoned theory on appeal through the tipsy coachman rule.

In addition, the trial court factually determined "Koontz has not proven that all or substantially all economically viable use of his property has been denied by the District." (R6: 1024). As a matter of law, if a landowner does not prove that regulation so severely burdens the economic use of the property as to equate to an appropriation of the property, there simply is no regulatory taking under *Penn Central*. *Lingle*, 544 U.S. at 538 ("economic impact" is the primary factor); *Tampa-Hillsborough County Expressway Auth. v. A.G.W.S. Corp.*, 640 So.2d 54, 58 (Fla. 1994) ("[a] taking occurs where regulation denies substantially all economically beneficial or productive use of land"); *Dep't of Transp. v. Weisenfeld*, 617 So.2d 1071, 1073 (Fla. 5th DCA 1993), *approved*, 640 So.2d 73 (Fla. 1994) (without evidence whatsoever of a substantial deprivation of economic use then there is no proof of a temporary taking).

Koontz proffers the novel argument that *Penn Central's* "character of the

[10] The pretrial stipulation stipulated: "With respect to the Regulatory Takings claims set forth in Count III . . . Plaintiff is not proceeding upon a theory that the two District final orders deprived Koontz of all or substantially all economically beneficial or productive use of the subject property." (R4: 619 ¶S).

government action" factor, standing alone, can trigger takings liability. (AB at 45). This theory flies in the face of *Lingle's* requirement that a regulatory taking be "functionally equivalent" to a direct appropriation of property. *Lingle*, 544 U.S. at 539. Moreover, Koontz cites no case (nor can he) supporting that argument.

IV. ST. JOHNS DID NOT WAIVE THE RIGHT TO APPEAL.

Koontz resurrects a waiver argument twice rejected by the Fifth District. First, Koontz moved to dismiss St. Johns' appeal solely based on that argument, an argument the Fifth District summarily denied. (FDR (Fifth District Record) 16, 349). Koontz then raised the argument as the primary issue in his answer brief and again the Fifth District rejected the argument by ignoring it in the decision below.

Nonetheless, the argument is wrong. Not one of the remittitur cases cited by Koontz involves an appeal by the party that lost at trial. In fact, by its very nature, remittitur requires that the party choosing remittitur over a new trial be the party who prevailed on both the liability and damages issues at trial. Here, the findings of liability for a temporary taking and the damages for that temporary taking were both completely adverse to St. Johns. Because St. Johns is not appealing a judgment in its favor, the remittitur cases are inapplicable.

In addition, none of the cited remittitur case law involves a statutory mandate. Section 373.617(3) mandates that St. Johns "shall" either agree to (1) issue the permit; (2) agree to pay damages; or (3) agree to modify the permit to

avoid a permanent taking. Those are the only options. Section 373.617(4) is not another "option," but a sanction that "may" be imposed by the trial court for non-compliance with the mandate of section 373.617(3). Also, the liability judgment ordered St. Johns to comply with section 373.617(3): "the District shall submit a statement of its agreed upon actions . . . ." (R6: 1027). Section 373.617(3) and the liability judgment removed any "voluntary" choice by St. Johns and a voluntary choice is necessary to activate the remittitur waiver principle. Thus, in addition to being legally unsupported, Koontz's argument is illogical—because St. Johns complied with the law in section 373.617(3) and with the liability judgment, St. Johns waived its appellate rights; but to preserve its appellate rights, St. Johns should have intentionally violated the statutory mandate and the liability judgment.

Finally, because the trial court never had subject matter jurisdiction over the takings theory pursued in this case, no act of St. Johns could have waived the right to appeal a judgment that was null and void *ab initio*. *Marion Correctional Inst. v. Kriegel*, 522 So.2d 45 (Fla. 5th 1988).

St. Johns addressed the waiver issue below in its response to Koontz's motion to dismiss the appeal (FDR 48-61) and in its reply brief (FDR at C, Issue I).

Respectfully submitted,

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William H. Congdon

CERTIFICATE OF COMPLIANCE

I CERTIFY that this answer brief complies with rule 9.210 of the Florida Rules of Appellate Procedure and is in Times New Roman 14-point font.

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William H. Congdon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been sent via U.S. Regular Mail and/or facsimile to: **Christopher V. Carlyle, Esquire** and **Shannon McLin Carlyle, Esquire**, The Carlyle Building, 1950 Laurel Manor Drive, Suite 130, The Villages, Florida 32162, **Michael D. Jones, Esquire**, Post Office Box 196310, Winter Springs, Florida 32719-6130 (Counsel for Respondent, Coy A. Koontz, Jr., Etc.); **Harry Morrison, Jr., Esquire** and **Kraig A. Conn, Esquire**, 301 South Bronough Street, Suite 300, Tallahassee, Florida 32301, **Virginia Saunders DeLegal, Esquire**, 100 South Monroe Street, Tallahassee, Florida 32301 (Counsel for Amici Curiae, Florida League of Cities and Florida Association of Counties, Inc.); **John Escheverria, Esquire**, Professor of Law – Vermont Law School, Post Office Box 96, South Royalton, Vermont 05068 and **Mark A. Fenster, Esquire**, Professor of Law – University of Florida Levin College of Law, 376 Spessard Holland Hall, Gainesville, Florida 32611-7625 (Special Counsel for Amici Curiae – Florida League of Cities/Counties);

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