IN THE SUPREME COURT OF FLORIDA

CASE NO. **SC14-1639**
L.T. Case No. 3D13-2437

FRATERNAL ORDER OF POLICE,
MIAMI LODGE 20,

Petitioner,

vs.

CITY OF MIAMI
and STATE OF FLORIDA,

Respondents.

ON APPEAL FROM THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL

ANSWER BRIEF OF RESPONDENT, CITY OF MIAMI

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INTRODUCTION

This case involves only a pure question of law: Whether Section 447.4095, Florida Statutes, is facially constitutional.

The City of Miami (the "City") and the Fraternal Order of Police, Miami Lodge 20 ("FOP" or the "Union") are parties to a collective bargaining agreement ("CBA").

On July 28, 2010, due to the City's financial crisis requiring modification of the CBA, the City invoked the statutory requirement that the FOP negotiate the impact of the financial urgency pursuant to Section 447.4095, Florida Statutes (2010) (the "Financial Urgency Statute").

Section 447.4095 provides:

> In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency. If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, an impasse shall be deemed to have occurred, and one of the parties shall so declare in writing to the other party and the commission. The parties shall then proceed pursuant to the provisions of s.447.403. An unfair labor practice charge shall not be filed during the 14 days during which negotiations are occurring pursuant to this section.

Under Section 447.4095, in the event of a financial urgency requiring modification of a labor contract, the union and employer engage in abbreviated impact bargaining for 14 days. If an impasse occurs, the parties proceed under Section 447.403(3), which provides for a hearing before a special magistrate assigned by the Public Employees Relations Commission ("PERC"), who renders a recommended decision. If either or both of the parties reject the recommended decision, the legislative body must conduct a public hearing and "take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impact issues." § 447.403(4). An unfair labor practice charge may be filed with PERC after the expiration of the 14-day impact bargaining period.

The FOP challenges the facial constitutionality of Section 447.4095 by claiming *inter alia* that the statute is void for vagueness; deprives the Union of due process; and that the statute denies equal protection.[1]

The trial court granted the City's motion for summary judgment on all issues and entered final declaratory judgment for the City. The Third District

[1] The other challenges raised below have not been raised in this appeal and are thus abandoned.

Court of Appeal affirmed.

The FOP sought review and this Court stayed the proceedings pending a decision in *Headley v. City of Miami*, Case No. SC13-1882 (appeal from Final Order of Public Employees Relations Commission dismissing Unfair Labor Practice Charge regarding City's 2010 declaration of financial urgency pursuant to section 447.4095). Thereafter, this Court rendered its decision in *Headley v. City of Miami*, 215 So. 3d 1 (Fla. March 2, 2017). In doing so, this Court interpreted the financial urgency statute and remanded to PERC for further proceedings.

After the decision in *Headley*, this Court accepted jurisdiction over this case to determine whether the statute interpreted in *Headley* is facially constitutional. As explained herein, section 447.4095 is facially constitutional. However, in the event that this Court finds otherwise, then the remaining provisions of section 447.4095 are not enforceable against the City of Miami and the City actions in the past and the future should be judged solely under the standard set forth in *Chiles v. United Faculty of Florida,* 615 So. 2d 671 (Fla. 1993).

SUMMARY OF THE ARGUMENT

The trial court and the Third District Court of Appeal correctly determined that section 447.4095, Florida Statutes, is facially constitutional. To invalidate a statute as unconstitutional on its face, the challenged statute must be unconstitutional in all of its applications. For a determination that a statute is facially unconstitutional the challenger must prove that no set of circumstances exists under which the statute would be valid. The Union failed to prove that no set of circumstances exists under which the statute would be valid, nor could it establish that the Financial Urgency Statute was unconstitutional in any or all of its applications. This Court's decision in *Headley v. City of Miami*, by delineating the standard to follow in applying section 447.4095, proves the point- that there are in fact circumstances under which the statute would be valid. By interpreting section 447.4095 and delineating its process, this Court's decision in *Headley* supports the finding by the Third District that section 447.4095 is facially constitutional. Further, the statute does not deprive the Union or its members of substantive due process or equal protection under the law. Hence, the Financial Urgency Statute is facially constitutional and the declaratory judgment in favor of the City of Miami should be affirmed. If however this Court finds that the statute is unconstitutional, then the remaining provisions are unenforceable against the City of Miami.

ARGUMENT

I.
THE DECISION OF THIS COURT IN *HEADLEY* INTERPRETING THE FINANCIAL URGENCY STATUTE DEMONSTRATES THAT SECTION 447.4095 IS FACIALLY CONSTITUTIONAL

The decision of this Court in *Headley v. City of Miami*, 215 So. 3d 1 (Fla. 2017), and the decisions of the district courts of appeal, demonstrate that section 447.4095 is constitutional on its face.[2]

In *Headley*, the FOP appealed from PERC's dismissal of its unfair labor practice charge challenging the same 2010 declaration of financial urgency as in this case. The Union argued that the statute was unconstitutional as applied – i.e. that the standard for "financial urgency" adopted by PERC and the First District was improper and should follow the standard set forth by this Court in *Chiles v. United Faculty of Florida*, 615 So. 2d 671 (Fla. 1993). In resolving the conflict between the First District decision in *Headley* and the Fourth District in *Hollywood*

[2] The Miami Association of Fire Fighters challenged the facial constitutionality of section 447.4095 in 2010. The trial court entered a Final Judgment declaring the statute to be constitutional and denying declaratory and injunctive relief. The case was per curiam affirmed by the Third District without a written opinion. *See Miami Association of Firefighters v. City of Miami,* 49 So. 3d 1278 (Fla. 3d DCA 2010). The pertinent pleadings and briefs were filed below.

Fire Fighters v. City of Hollywood, 133 So. 3d 1042 (Fla. 4th DCA 2014), this Court adopted the standard from *Chiles* for the determination of financial urgency and remanded the case for proceedings consistent with this Court's decision.

Notwithstanding this Court's decision in *Headley*, the Union continues to attack the ability of the City to present its devastating financial condition before PERC then and in the future to avoid financial emergency/state oversight under section 218.503 or bankruptcy. However, this Court put to rest any contention that the Financial Urgency Statute is unconstitutional by interpreting it and sending it back for further proceedings.

Even before *Headley*, the district courts of appeal were uniform in their holding that whether a financial situation constituted a "financial urgency" was a decision for case-by-case determination by PERC in the first instance. In *Manatee Education Association v. School District of Manatee County,* 62 So. 3d 1176 (Fla. 1st DCA 2011), the First District Court of Appeal held that the public employer does not have to obtain a ruling that a financial urgency exists before it proceeds under section 447.4095. The Court stated that the purpose of Section 447.4095 is to "provide public employees and bargaining agents an opportunity to engage in abbreviated impact bargaining when faced with a financial urgency requiring modification of an agreement." *Id.* at 1181. Once the bargaining period has run, "the union is free to file an unfair labor practice charge disputing the employee's claim of

a 'financial urgency'". *Id.* at 1178. When faced with such a charge, "it is incumbent upon PERC to decide whether a 'financial urgency' within the meaning of the Statute - construed in keeping with the Florida Constitution - actually existed. *Id.* The First District Court of Appeal declined to decide what constitutes a financial urgency, or to make the initial factual determination regarding whether the public employer was faced with a financial urgency; on this question, the Court of Appeal deferred to PERC. *Id.* at 1183.

Further, in *Miami Association of Firefighters Local 587 v. City of Miami,* 87 So. 3d 93 (Fla. 3d DCA 2012), the Firefighters Union challenged the City's declaration of a financial urgency in 2010 by claiming that the City violated their collective bargaining rights guaranteed by the Florida Constitution by not following the procedures of Sections 447.403, 447.4095, Florida Statutes, and by conducting a shade meeting in violation of Section 286.011, Florida Statutes. The trial court dismissed the case, ruling that PERC preempted the circuit court from hearing the issues raised. *Id.* at 94-95. On appeal, the Third District affirmed, stating that "PERC has jurisdiction in the first instance to adjudicate the allegations of constitutional rights and statutory provision as complained of here." *Id.* at 96. *See also City of Miami v. FOP,* 98 So. 3d 1236, 1238-39 (Fla. 3d DCA 2012) (regarding a challenge brought by the union under section 447.4095, stating that the dispute itself "would be under the preemptive administrative jurisdiction of PERC rather

than the initial jurisdiction of the circuit court[.]" and reasoning that the "public interest is served by permitting the City and the FOP to bargain expeditiously and to follow the statutory process recognized by Chapter 447 and thus by the CBA itself.").

The foregoing decisions demonstrate that a standard has been set for the application of section 447.4095. Based on these precedents alone, this Court should find that the statute is constitutional. Yet the Union persists in asserting that the statute is unconstitutional on its face. The FOP's position is premised on its claim that the statute encourages governments to avoid contractual obligations and serves no purpose other than to eviscerate constitutional rights. This view is myopic. There is no evidence to support the Union's position, particularly given the infrequency of its invocation, the severity of the City's financial condition, and the purpose of the statute. The law serves a compelling interest and is narrowly tailored to serve that interest. The statute's purpose is to enable governments facing a financial crisis short of a financial emergency to be able to satisfy its obligations to provide for the health, safety and welfare of its citizens while at the same time avoiding the failure to pay wages which would lead to state oversight and/or bankruptcy. As explained herein, the Union's position that the statute is now unconstitutional on its face is untenable and should be rejected and the decision of the trial court and the Third District affirmed.

II.
THE FINANCIAL URGENCY STATUTE IS NOT VOID FOR VAGUENESS AND DOES NOT DEPRIVE THE UNION OF SUBSTANTIVE DUE PROCESS OR VIOLATE THE EQUAL PROTECTION CLAUSE.

Independent of this Court's analysis in *Headley,* which should carry the day with regard to the validity of section 447.4095, the Union cannot establish that the Financial Urgency Statute is vague, deprives the FOP of substantive due process, or violates the Equal Protection Clause. Thus, the declaratory judgment and the decision of the Third District should be approved.

A. Applicable Legal Standards.

1. Facial Constitutionality of Statutes.

A party challenging the facial constitutionality of a law faces an onerous burden. With regard to facial challenges, this Court has recently stated:

> In a facial challenge, we consider only the text of the statute, not its specific application to a particular set of circumstances. For a statute to be held facially unconstitutional, the challenger must demonstrate that no set of circumstances exists in which the statute can be constitutionally applied. *See Fla. Dep't of Revenue v. City of Gainesville,* 918 So.2d 250, 256 (Fla.2005); *see also Cashatt v. State,* 873 So.2d 430, 434 (Fla. 1st DCA 2004) ("A facial challenge to a statute is more difficult than an 'as applied' challenge, because the challenger must establish that no set of circumstances exists under which the statute would be valid."). As a result, the Act will not

> be invalidated as facially unconstitutional simply because it could operate unconstitutionally under some hypothetical circumstances.

Abdool v. Bondi, 141 So. 3d 529, 538 (Fla. 2014).

For a determination that a statute is facially unconstitutional the challenger must prove that no set of circumstances exists under which the statute would be valid. *See State v. Hasty,* 944 So. 2d 255, 263 (Fla. 2006); *Fla. Dept. of Revenue v. City of Gainesville,* 918 So. 2d 250 (Fla. 2005).

"Facial challenges run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Wash. State Grange v. Wash. State Republican Party,* 552 U.S. 442, 450-451 (2008). Facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution, as a ruling of unconstitutionality frustrates the intent of the elected representatives of the people. *See Ayotte v. Planned Parenthood of Northern New Eng.,* 546 U.S. 320, 329 (2006).

"It is a general principal that the courts are law interpreting and not law-making bodies and have no power to do so[.]" *Ervin v. Collins,* 85 So. 2d 852, 855 (Fla. 1956). "Deciding which laws are proper and should be enacted is a legislative

function." *Carter v. Stuart,* 468 So. 2d 955, 957 (Fla. 1985). The judiciary has an obligation, pursuant to the separation of powers contained in article II, section 3 of the Florida Constitution, to construe statutory pronouncements in strict accord with the legislative will, so long as the statute does not violate organic principles of constitutional law. *See Sebring Airport Auth. v. McIntyre,* 783 So. 2d 238, 244-245 (Fla. 2001).[3]

2. Presumption of Constitutionality.

Statutes are presumed constitutional. As stated in *Scott v. Williams,* 107 So. 3d 379, 384-385 (Fla. 2013):

> We are ever mindful that "[w]hile we review decisions striking state statutes de novo, we are obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever possible." *Fla. Dep't of Revenue v. Howard,* 916 So. 2d 640, 642 (Fla. 2005). Statutes come

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[3] In the proceedings below, and on appeal, the Union has proffered facts relative to the declaration of financial urgency. However, specific situational facts, "while perhaps relevant to a contention that the law was unconstitutional *as applied,* [are] unnecessary to a determination of facial constitutionality", and should thus be excluded. *Dep't of Revenue v. Fla. Home Builders Ass'n,* 564 So.2d 173, 175 (Fla. 1st DCA 1990); *see also State v. Bales,* 343 So. 2d 9, 11 (Fla. 1977); *Crist v. Ervin,* 56 So. 3d 745, 747 (Fla. 2010); *Sims v. State,* 510 So. 2d 1045 (Fla. 1st DCA 1987); *Wash. State Grange v. Wash. State Republican Party,* 552 U.S. 442 (U.S. 2008). To the extent that the FOP is attempting to inject facts into this dispute to show the statute was unconstitutional, this case would be preempted to the administrative jurisdiction of the Public Employees Relations Commission. *See, e.g., Miami Association of Firefighters Local 587 v. City of Miami,* 87 So. 3d 93 (Fla. 3d DCA 2012); *City of Miami v. FOP,* 98 So. 3d 1236 (Fla. 3d DCA 2012).

> to the Court "clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome." *Crist v. Fla. Ass'n of Criminal Def Lawyers, Inc.*, 978 So. 2d 134, 139 (Fla. 2008). "Absent a constitutional limitation, the Legislature's 'discretion reasonably exercised is the sole brake on the enactment of legislation.'" *Id. at 141* (quoting *Bush v. Holmes,* 919 So. 2d 392, 406 (Fla. 2006) (quoting *State v. Bd. of Pub. Instruction for Dade County,* 126 Fla. 142, 170 So. 602, 606 (1936)). "[E]very reasonable doubt should be resolved in favor of a law's constitutionality." *Franklin v. State,* 887 So. 2d 1063, 1080 (Fla. 2004).

See also Trushin v. State, 475 So. 2d 1290 (Fla. 3d DCA 1985) (citing *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.,* 434 So. 2d 879 (Fla. 1983)); *Belk-James, Inc. v. Nuzman,* 358 So. 2d 174 (Fla. 1978). When an interpretation upholding the constitutionality of a statute is available, the court must adopt that construction. *See Department of Ins. v. Southeast Volusia Hosp. Dist.,* 438 So. 2d 815 (Fla. 1983). This Court has long held that, when enrolled, signed, and filed, acts of the legislature are prima facie valid. *See State ex rel. Buford v. Carley,* 89 Fla. 361, 104 So. 577 (1925); *Amos v. Gunn,* 84 Fla. 285, 94 So. 615 (1922); *State ex rel. Turner v. Hocker,* 36 Fla. 358, 18 So. 767 (1895).[4]

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[4] The Plaintiff cites *North Florida Women's Health & Counseling Services, Inc. v. State,* 866 So. 2d 612, 635 (Fla. 2003), for a contrary legal presumption. However, that case was limited to the right of privacy and does not contravene the separation of powers requirement that courts construe a statute as constitutional whenever possible. *Cf. Berman v. Dillard's & Esis,* 91 So. 3d 875, 877 (Fla. 1st DCA 2012) (rejecting claimant's argument that *North Florida Women's Health & Counseling Services, Inc.* requires application of strict scrutiny to claimant's access to courts

B. Section 447.4095 is not Void for Vagueness.

The Legislature's failure to define a term does not render the term unconstitutionally vague. *See L.B. v. State,* 700 So. 2d 370 (Fla. 1997); *see also State v. Hagan,* 387 So. 2d 943 (Fla. 1980) (holding that where a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense). A statute is not unconstitutional simply because it may be subject to differing interpretations. *See Department of Ins. v. Southeast Volusia Hosp. Dist.,* 438 So. 2d 815 (Fla. 1983).

"It is well established that vagueness challenges to statutes which do not involve First Amendment freedoms must be examined in light of the facts at hand." *United States v. Mazurie,* 419 U.S. 544, 550 (1975). "To succeed, however, the complainant must demonstrate that the law is impermissibly vague *in all of its applications." Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 497 (1981) (emphasis added). To succeed in such a challenge, a plaintiff "must do more than simply establish that the statute, as preliminarily evaluated within the context of the [challenger]'s conduct before the court, is vague only in the

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claim); *See also Univ. Of Miami v. Echarte,* 618 So. 2d 189 (Fla. 1993) (legislative determination of public purpose and facts are presumed correct and entitled to deference unless clearly erroneous); *Westerheide v. State,* 831 So. 2d 93, 101 (Fla. 2002) (same); *Moore v. Thompson,* 126 So. 2d 543, 549 (Fla. 1960) (same).

sense that it requires a person to conform his or her actions to an imprecise but comprehensible course of conduct." *State v. De La Lana,* 693 So. 2d 1075, 1079-80 (Fla. 2d DCA 1995) (citing *Flipside, Hoffman Estates, Inc.,* 455 U.S. at 495 n. 7).

Instead, a challenger must shoulder the "heavy burden" of proving that the statute is facially unconstitutional in that there exist no set of circumstances in which it can be constitutionally applied. *See State v. Barnes,* 686 So. 2d 633, 637 (Fla. 2d DCA 1996). Thus, a party who only establishes that the statute "might operate unconstitutionally under some conceivable set of circumstances" fails to demonstrate that the statute is wholly invalid. *Id.* As stated by the United States Supreme Court in *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489 (1981):

> The degree of vagueness that the Constitution tolerates-as well as the relative importance of fair notice and fair enforcement-depends in part on the nature of the enactment. Thus, *economic regulation is subject to a less strict vagueness test* because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action. Indeed, *the regulated enterprise may have the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process.* The Court has also expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe.

Id. at 498 (footnotes omitted; emphasis added).

The Financial Urgency Statute is not unconstitutionally vague as it can and

must be construed in its plain and ordinary sense. The Union has not met its burden of establishing that Section 447.4095 is vague *in all of its applications.* Certainly, there are many applications-such as the City's financial condition at the time the Statute was invoked-that would *indisputably* constitute a "financial urgency." Indeed, this Court has already determined in *Headley* that the *Chiles* test applies to the determination of what constitutes a "financial urgency" which demonstrates that there are situations that would satisfy the standard. Thus, the Union's vagueness claim fails. *See Kuvin* v. *City of Coral Gables,* 45 So. 3d 836 (Fla. 3d DCA 2010) (holding that a plaintiff lacked standing to challenge a municipal ordinance "on the premise that ordinances may conceivably be applied unconstitutionally to others"); *Jones* v. *Williams Pawn & Gun, Inc.,* 800 So. 2d 267 (Fla. 4th DCA 2001) (same).

Moreover, if the Union contests the declaration of financial urgency, it may file an unfair labor practice charge before PERC. The criteria for whether a financial urgency exists is determined by PERC on a case-by-case basis-in keeping with constitutional standards. *See Manatee Ed. Ass'n* v. *School Dist. of Manatee County,* 62 So. 3d 1176 (Fla. 1st DCA 2011); *see also Metropolitan Dade County* v. *P.J. Birds, Inc.,* 654 So. 2d 170, 176 (Fla. 3d DCA 1995) (upholding a County Ordinance which failed to define the term "exceptional importance" in the context of historic preservation; the circuit court "overlooked the administrative law cases which allow reference to generally recognized professional standards in interpreting the

meaning of a statutory term."). The Statute does not afford the public employer a unilateral privilege-the declaration of financial urgency can be contested and is subject to judicial review. *See* § 447.4095; *City of Miami v. Fraternal Order of Police,* 98 So. 3d 1236 (Fla. 3d DCA 2012). The existence of this mechanism precludes the Union's vagueness attack on the Financial Urgency Statute. *See Department of Ins. v. Southeast Volusia Hosp. Dist.,* 438 So. 2d 815 (Fla. 1983) (holding that the administrative construction of a statute by the agency charged with its administration is entitled to great weight).

The Union relies heavily on the Florida Senate Staff Analysis and Economic Impact Statement for SB 888 to claim that the phrase financial urgency is "unreasonable vague." Notably, the analysis indicates that the interpretation of the term "financial urgency" will be left to practice and interpretation. That is exactly the framework of section 447.4095-to give public employers the ability to address serious financial conditions and for PERC to decide what constitutes a financial urgency on a case-by-case basis.

The Union further attempts to demonstrate vagueness by comparison to the financial emergency statute, section 218.503. Importantly, State oversight and control under that section is triggered *inter alia* where the government has already failed to pay wages or pension benefits. To be released from State oversight and control, the government being overseen must prepare a plan that makes the payment

of wages and benefits a priority. The threshold required for State oversight demonstrates why local governments should be able to declare a financial urgency – a condition short of financial emergency under section 218.503 – to avoid a financial crisis which may lead to the inability to make payroll and ultimately bankruptcy. Section 447.4095 enables local governments to declare a financial urgency depending on the particular circumstances and have PERC resolve any challenges on a case-by-case basis.[5]

Moreover, the fact that the term "financial urgency" is not defined in the statute itself does not establish that the City has been granted "unfettered discretion" to unilaterally alter the CBA. "[T]he Legislature may "enact a law, complete in itself, designed to accomplish a general public purpose, and may expressly authorize designated officials within definite valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose." *Sims* v. *State,* 754 So. 2d 657, 668 (Fla. 2000) (quoting *State* v. *Atlantic Coast Line RR,* 47 So. 969, 976 (Fla. 1908); *see also Diaz v. State,* 945 So.2d 1136 (Fla. 2006) (holding that the undefined term "lethal injection" did not give unfettered discretion to Department of Corrections).

[5] The Union's reliance on bankruptcy cases is misplaced. The City has not filed for bankruptcy and the standard in those cases is inapplicable.

This Court further limited the scope of this doctrine as such: The specificity with which the legislature must set out statutory standards and guidelines may depend upon the subject matter dealt with and the degree of difficulty involved in articulating finite standards. The same conditions that may operate to make direct legislative control impractical or ineffective may also, for the same reasons, make the drafting of detailed or specific legislation for the guidance of administrative agencies impractical or undesirable. *See State, Department of Citrus v. Griffin,* 239 So. 2d 577 (Fla. 1970); *Burgess v. Florida Department of Commerce,* 436 So. 2d 356 (Fla. 1st DCA 1983), *review denied,* 447 So. 2d 885 (Fla. 1984)." *In re Advisory Opinion to the Governor,* 509 So. 2d 292, 311 (Fla. 1987); *accord Clark v. State,* 395 So. 2d 525, 527-28 (Fla. 1981).

Consistent with the above precedent, this Court rejected a claim of "unfettered discretion" where a County Ordinance failed to define the term "exceptional importance" in the context of historic preservation. *See Metropolitan Dade County v. P.J Birds, Inc.,* 654 So. 2d 170 (Fla. 3d DCA 1995). In doing so, this Court held that the circuit court "overlooked the administrative law cases which allow reference to generally recognized professional standards in interpreting the meaning of a statutory term." *Id.* at 176.

Based upon the foregoing, section 447.4095 does not suffer from a delegation

of "unfettered discretion." The law enacted was complete in itself and designed to accomplish a general public purpose. *See Sims,* 754 So. 2d 657. Professional accounting and financial standards would be applicable to determine whether a public employer was in a state of "financial urgency" under the statute. *See P.J. Birds, Inc.,* 654 So. 2d 170. To the extent that FOP disputes the existence of a "financial urgency," the statute has a built-in recourse: file a charge of unfair labor practice before PERC, which has the ability to determine if there is a "financial urgency" under section 447.4095. *See Manatee Ed. Ass'n v. School Dist. of Manatee County,* 35 Fla. Pub. Employee Rep. 46 (Feb. 27, 2009). Therefore, the FOP has failed to demonstrate that section 447.4095 is unconstitutional for granting "unfettered discretion" to the City.

Section 447.4095 does not unconstitutionally impair the right to collective bargaining. The statute does not allow a public employer to unilaterally declare a collective bargaining agreement invalid or vitiated. The employer's declaration of a financial urgency does not conclusively or unilaterally determine the implications to the contract. *See Manatee Ed. Ass'n v. School Dist. of Manatee County,* 62 So. 3d 1176, 1178 (Fla. 1st DCA 2011) (explaining that a "public employer may declare a 'financial urgency' pursuant to section 447.4095, and proceed accordingly. But the employer's mere declaration cannot conclusively resolve the question. Absent some compelling state interest-determined to be such in a neutral forum, ultimately

subject to judicial review-a public employer cannot unilaterally abrogate a collective bargaining agreement, consistently with public employees' constitutional right to bargain collectively. Once the fourteen-day period specified in section 447.4095 has run, the union is free to file an unfair labor practice charge disputing the employer's claim of 'financial urgency.'"); *City of Miami v. Fraternal Order of Police,* 98 So.3d 1236, 1238 (Fla. 3d DCA 2012) ("After the fourteen-day statutory period has run, F.O.P. "is free to file an unfair labor practice charge disputing the employer's claim of 'financial urgency,'" a charge which is to be heard and decided by PERC.... After exhausting its administrative remedies, F.O.P. may then obtain judicial review of PERC's final order.") (citations omitted).

The Financial Urgency Statute affords the union and public employer an opportunity to engage in abbreviated impact bargaining in the event of a financial urgency requiring modification of a labor contract. If at the conclusion of the impact bargaining the union challenges the existence of a financial urgency, the union may file an unfair labor practice charge. Then, it is incumbent upon PERC to decide whether a financial urgency within the meaning of the statute-construed in keeping with the Florida Constitution-actually existed. *See Manatee Ed. Ass'n,* 62 So.3d 1176 (declining to decide what constitutes a financial urgency, or to make the initial factual determination regarding whether

the public employer was faced with a financial urgency; deferring to PERC). The Statute provides a neutral forum for the determination of whether there is a financial urgency sufficient to modify the collective bargaining agreement, which is subject to judicial review.

The right to collectively bargain is not absolute. *See State v. Florida Police Benevolent Ass'n,* 613 So. 2d 415, 418 (Fla. 1992) (stating that a public employee's constitutional right to bargain collectively is not and cannot be coextensive with an employee's right to so bargain in the private sector because certain limitations on a public employee's constitutional right to bargain collectively are necessarily involved; "a wage agreement with a public employer is obviously subject to the necessary public funding which, in turn, necessarily involves the powers, duties and discretion vested in those public officials responsible for the budgetary and fiscal processes inherent in government.").[6] This claim is a challenge to the facial constitutionality of the Statute. The Union cannot demonstrate that no set of circumstances exist under which the Statute would be valid.

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[6] Even *Chiles v. United Faculty of Florida,* 615 So. 2d 671 (Fla. 1993), which predated the enactment of the Financial Urgency Statute, recognized limits to the right to collectively bargain in the public sector. Before the enactment of the statute, that case held that a collective bargaining agreement could be changed in the face of a compelling state interest.

Section 447.4095 does not unconstitutionally impair the obligation of contract. The FOP cannot establish that there are no circumstances under which the Statute would be valid. A statute that predates a contract cannot trigger an unconstitutional impairment of the contract. *See, e.g., United States Trust Co. v. New Jersey,* 431 U.S. 1, 18 (1977) ("[S]tatutes governing the interpretation and enforcement of contracts may be regarded as forming part of the obligation of contracts made under their aegis."); *Gulfside Dist., Inc. v. Beco, Ltd.,* 985 F.2d 513 (11th Cir. 1993); *Kinney v. Connecticut Judicial Dep't,* 974 F.2d 313 (2d Cir. 1992); *Abele v. Hernando County,* 161 Fed. Appx. 809 (11th Cir. 2005); *see also City of Miami v. Fraternal Order of Police,* 98 So. 3d 1236, 1239 ("In this instance, the public interest is served by permitting the City and the F.O.P. to bargain expeditiously and to follow the statutory process recognized by Chapter 447 *and thus by the CEA itself.")* (emphasis added).

The Financial Urgency Statute has been in effect since 1995. Section 447.309(5) prohibits the existence of a contract with a duration of more than 3 years. The City declared financial urgency fifteen years after the enactment of section 447.4095. Hence, the union is precluded from claiming that the Statute constituted an unconstitutional impairment of the collective bargaining agreement.

The constitutional protection against impairment of contracts is also not absolute. *See Scott v. Williams,* 107 So. 3d 379 (Fla. 2013) ("As with laws impairing

the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose.") (quoting *U.S. Trust Co. of New York v. New Jersey,* 431 U.S. 1, 25-26 (1977)); *State v. Florida Police Benevolent Ass'n,* 613 So. 2d 415 (Fla. 1992). The Statute here is undoubtedly reasonable and necessary to serve an important public purpose to protect the financial integrity of governmental entities and safeguard against bankruptcy. As noted above, the government's claim of financial urgency is judged in a neutral forum consistent with constitutional standards. *See Manatee Ed. Ass'n,* 62 So.3d 1176. Thus, the Union cannot demonstrate that no set of circumstances exist under which the Statute would be valid.

C. Section 447.4095 does not Deprive the Union of Substantive Due Process.

The union cannot demonstrate a violation of substantive due process. Under substantive due process, a statute must not be unreasonable, arbitrary or capricious, and must have a reasonable and substantial relation to a legitimate government objective. *See State v. Robinson,* 873 So. 2d 1205, 1214 (Fla. 2004). The rational relationship test used to analyze a substantive due process claim is synonymous with the reasonableness analysis of an equal protection claim. *Id.* When a statute encroaches on fundamental constitutional rights, the statute must also be narrowly tailored to achieve the state's purpose. *Id.*

As stated throughout this brief, the financial urgency statute bears a reasonable relationship to a legitimate legislative objective and is not discriminatory, arbitrary or oppressive, and the statute is narrowly tailored to meet its objective. Indeed, the test imposed by this Court in *Headley* codified the *Chiles* standard which was meant to satisfy strict scrutiny. Hence, the Union cannot be successful in claiming a deprivation of substantive due process.

The cases cited by the Union also do not support its claim of a substantive due process violation. The FOP cites to *Chicago Title Insurance Co. v. Butler,* 770 So. 2d 1210 (Fla. 2000), and *Department of Insurance v. Dade County Consumer Advocate's Office,* 492 So. 2d 1032 (Fla. 1986), for support. However, those cases dealt with statutes unnecessarily curtailing the economic power of the consuming public in negotiating services from providers. This Court held that the laws involved in those cases infringed upon a citizen's property rights and unconstitutionally restricted a citizen's right to bargain for services, and that the Legislature's purpose was not furthered in enacting the statute.

This case does not concern the economic power of the consuming public. Here, the goals of section 447.4095 bear a reasonable relationship to valid government objectives and the statute is not discriminatory, arbitrary or oppressive, and is narrowly tailored to meet its objectives. Therefore, the FOP cannot demonstrate that the statute violates substantive due process.

D. Section 447.4095 does not Unconstitutionally Deny Equal Protection Under the Law.

Equal Protection requires the government to treat similarly situated persons in a similar manner. *See Gary v. City of Warner Robins,* 311 F. 3d 1334 (11th Cir. 2002). Equal Protection is not violated merely because some persons are treated differently than other persons. *See Fredman v. Fredman,* 960 So. 2d 52 (Fla. 2d DCA 2007). It only requires that persons similarly situated be treated similarly. *See Department of Ins. v. Southeast Volusia Hospital Dist.,* 438 So. 2d 815 (Fla. 1983); *see also Insurance Co. of Texas v. Rainey,* 86 So. 2d 447 (Fla. 1956) (stating that Equal Protection demands only that the rights of all persons must rest upon the same rule under similar circumstances; so long as the law applies to all alike, the requirements of equal protection are met).

The Union's Equal Protection challenge is unavailing. Public employee bargaining is not the same as other bargaining, as limitations on the right to collective bargaining are necessarily involved. *See State v. Florida Police Benevolent Ass'n,* 613 So. 2d 415 (Fla. 1992). As public employees bargain over public money, the control of which is a legislative function, there is a legitimate government purpose in treating collective bargaining agreements of public employees differently than those of other employees. *Id.* Where public employees bargain, the enforcement of the monetary terms of the agreement is subject to the appropriations power of

the legislature. *Id.; see also United Faculty of Florida v. Board of Regents,* 365 So. 2d 1073 (Fla. 1st DCA 1979) (the Legislature is not required to fund public employees' collective bargaining agreements). Therefore, there is no violation of Equal Protection because a collective bargaining agreement is not similarly situated with other contracts.

Even if Equal Protection were properly invoked, the FOP cannot establish a violation of Equal Protection on the face of the Financial Urgency Statute. "When legislation classifies persons in such a way that they receive different treatment under the law, the degree of scrutiny the court applies depends upon the basis for the classification." *Avera v. Airline Pilots Ass'n Int'l,* 436 Fed. Appx. 969,975 (11th Cir. 2011). If a law treats individuals differently on the basis of suspect classification, or if the law impinges on a fundamental right, it is subject to strict scrutiny. *See Eide v. Sarasota County,* 908 F.2d 716, 722 (11th Cir. 1990). To withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest. *See State v. J.P.,* 907 So. 2d 1101 (Fla. 2004) (further holding that for an ordinance to be narrowly tailored to advance a compelling governmental interest, there must be a sufficient nexus between the stated governmental interest and the classification created by the ordinance). Otherwise, the law need

only have a rational basis, meaning it only needs to be rationally related to a legitimate government purpose. *See Eide v. Sarasota County,* 908 F.2d at 722.

The Financial Urgency Statute easily passes rational basis and strict scrutiny. The test imposed by this Court in *Headley* was aimed to satisfy strict scrutiny. Nonetheless, there is a compelling state interest in creating a mechanism for the modification of labor contracts in the face of a financial urgency. "Protecting the fiscal integrity of government programs, and of the [g]overnment as a whole, is a legitimate concern of the State." *Bowen v. Owens,* 476 U.S. 340, 345 (1986). The cost of labor encompasses a significant part of governmental budgets. The Financial Urgency Statute provides local governments with the ability to address serious financial problems and avoid bankruptcy or falling into a state of financial emergency. *See* Fla. Stat. §§ 218.050, et seq. The Financial Urgency Statute therefore preserves the ability of local government to avoid fiscal collapse for the health safety and welfare of the public which depends on the entities like the City for essential services.

Moreover, the Financial Urgency Statute is narrowly tailored to meet that compelling governmental interest. The Statute requires that the parties engage in abbreviated impact bargaining in the event of a financial urgency requiring modification of the labor contract. If the Union contests the existence of the

financial urgency, it has the right to file an unfair labor practice charge after the impact bargaining period. PERC provides a neutral forum for the determination of whether there is a compelling state interest- consistent with the requirements of the Constitution - to modify the collective bargaining agreement, which is then subject to judicial review in the District Court of Appeal.

The constitutional right to be rewarded for industry is not absolute. *See Fraternal order of Police, Metropolitan Dade County v. Department of State,* 392 So. 2d 1296, 1301 (Fla. 1980) ("The right to earn a livelihood by engaging in a lawful occupation or business is subject to the police power of the state to enact laws which advance the public health, safety, morals or general welfare."). Unlike *Shevin v. International Inventors, Inc.,* 353 So. 2d 89 (Fla. 1977), relied on by the Union, the statute at issue in this case does not impose regulations that substantially diminish the ability to engage in a particular business in the State of Florida.

Based on the language of the Statute, the FOP cannot establish that Section 447.4095 on its face unconstitutionally denies the right to equal protection. Accordingly, the Financial Urgency Statute is constitutionally valid under any level of scrutiny, as there is a compelling state interest in protecting public funds and the Statute protects these interests in the least intrusive manner.

III.
IF THE FINANCIAL URGENCY STATUTE IS FACIALLY UNCONSTITUTIONAL, THE REMAINING STATUTORY PROVISIONS OF SECTION 447.4095 ARE UNENFORCEABLE AGAINST THE CITY OF MIAMI.

If this Court finds that the Financial Urgency Statute is unconstitutional, then this Court should find that all of the provisions are unenforceable because the remaining provisions of the statute cannot be severed under the test set forth in *Cramp v. Board of Public Instruction*, 137 So. 2d 828 (Fla. 1962).

When part of an act is declared unconstitutional, the remainder of the act will be permitted to stand only if (1) the unconstitutional provisions can be separated from the remaining valid provisions; (2) the legislative purpose of the valid provisions can be accomplished independently of those which are void; (3) the good and bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other; an act complete in itself remains after the invalid provisions are stricken. *See Cramp; Lawnwood Med. Cntr., Inc. v. Seeger*, 990 So. 2d 503 (Fla. 2008).

This Court summarized the rule regarding severability in *Presbyterian Homes of Synod v. Wood*, 297 So. 2d 556, 559 (Fla. 1974):

> An unconstitutional portion of a general law may be deleted and the remainder allowed to stand if the unconstitutional provision can be logically separated

> from the remaining provisions, that is, if the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void; and the good and bad features are not inseparable and the Legislature would have passed one without the other; and an act complete in itself remains after the invalid provisions are stricken.

If this Court finds that section 447.4095 is unconstitutional based on vagueness, substantive due process, or equal protection, then the law on addressing financial exigencies will revert back to *Chiles* which set the standard for when it is constitutionally permissible to modify a collective bargaining agreement prior to the enactment of the Financial Urgency Statute. Hence, if a labor contract is modified due to a financial exigency, as in *Chiles*, the remedy for a union would be to bring a constitutional challenge to the modification in circuit court, not in PERC.

If this Court finds section 447.4095 unconstitutional, then that entire section would be unenforceable. Under the rules of severability, the entire section must be rendered invalid because they cannot logically be separated. The entire statute, contained in one paragraph, succinctly created an administrative process whereby governments facing a financial crisis could declare a financial urgency and Unions who challenged the declaration would be entitled to expedited bargaining, the impasse process, and the ability to file an unfair labor practice charge before PERC. A finding that part of that section was unconstitutional would destroy the administrative process created by the Legislature. A finding that the term financial

urgency is invalid would necessarily divest PERC of the jurisdiction of determining union challenges to "financial urgency" on a case-by-case basis and confer on the circuit courts jurisdiction to hear constitutional challenges to modifications of labor contracts based on financial exigencies. The provisions of section 447.4095 are interdependent and the legislative purpose of the entire Financial Urgency Statute would be defeated if one part of the section were found to be invalid. Thus, if this Court finds a part of section 447.4095 unconstitutional – i.e. the term "financial urgency" – then the entire section is unenforceable against the City of Miami, including the requirements of expedited bargaining, impasse, and the exposure to an unfair labor practice charge before PERC. The Union's only remedy would be to bring a constitutional challenge to the modification in circuit court, not in PERC.

CONCLUSION

Accordingly, based on the foregoing arguments and authorities, section 447.4095 is facially constitutional. Therefore, the City of Miami respectfully requests that this Court affirm the Final Declaratory Judgment and the decision of the Third District Court of Appeal. If this Court finds otherwise, then the remaining provisions of section 447.4095 are not enforceable against the City of Miami and the City actions in the past and the future should be judged solely under the standard set forth in *Chiles v. United Faculty of Florida,* 615 So. 2d 671 (Fla. 1993).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief has been furnished to the following by U.S. mail this 14th day of November, 2017:

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CERTIFICATE OF COMPLIANCE

I **CERTIFY** that this Initial Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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