IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

CASE NO. 1D10-5094
L.T. CASE NO. 2009-CA-2639

THE HONORABLE JEFF ATWATER, etc., et al.,

Appellants,

v.

CITY OF WESTON, et al.,

Appellees.
_____/

MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE

Florida League of Cities, Inc. (the "League"), pursuant to Florida Rule of Appellate Procedure 9.370, moves for an order permitting it to appear as amicus curiae. The League requests permission to file a brief that does not support either party but rather addresses the limited issue raised by Appellants, as to the proper remedy to be applied when a trial court finds that a general law is an unconstitutional unfunded mandate. The League's brief is attached as an exhibit to this motion.

1. The League is a voluntary organization whose membership consists of municipalities and other units of local government rendering municipal services in

the State of Florida. Under its charter, its purpose is to work for the general improvement of municipal government and its efficient administration, and to represent its members before various legislative, executive, and judicial branches of government on issues pertaining to the their general and fiscal welfare.

2. One of the central issues in this case – the appropriate remedy for a violation of Article VII, section 18(a) of the Florida Constitution – is of great interest to all of the League's members. Though several of its members are parties to this action, all of the League's members have a significant interest in the construction of the constitutional provision. Indeed, this issue – which is of first impression – undoubtedly will affect all municipalities and charter counties in Florida and their ability to preserve home rule authority by enforcing their constitutional protections from unfunded mandates. As such, the League seeks to file an amicus brief to ensure that the precedent set in this case will protect the interests of all of its members when future laws are analyzed under the Unfunded Mandates provision.

3. The League believes that by virtue of its experience and broad membership, it has perspectives and information regarding this issue which should serve as a useful supplement to the interests represented by the parties and to the Court in deciding this issue.

4. In accordance with Rule 9.370, the undersigned counsel has contacted counsel for Appellants, Jon Glogau, Esq., and for Appellees, Jamie Cole, Esq., and is authorized to represent that neither party has an objection to this request for leave by the League to appear as amicus curiae.

WHEREFORE, the League respectfully requests that the Court grant this Motion and permit the League to appear as amicus curiae.

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EXHIBIT A

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

CASE NO. 1D10-5094
L.T. CASE NO. 2009-CA-2639

THE HONORABLE JEFF ATWATER, etc., et al.,

Appellants,

v.

CITY OF WESTON, et al.,

Appellees. /

AMICUS CURIAE BRIEF OF FLORIDA LEAGUE OF CITIES, INC. IN SUPPORT OF NEITHER PARTY

On Appeal from a Final Order of the Second Judicial Circuit,
In and For Leon County, Florida

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STATEMENT OF IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

Amicus curiae Florida League of Cities, Inc. (the "League") is a voluntary organization whose membership consists of municipalities and other units of local government rendering municipal services in Florida. Under its charter, its purpose is to work for the general improvement and efficient administration of municipal governments, and to represent its members before the legislative, executive, and judicial branches on issues pertaining to their general and fiscal welfare.

One of the central issues in this case – the appropriate remedy for a violation of Article VII, section 18(a) of the Florida Constitution – is of great interest to all of the League's members. Though several members are parties to this case, all of the League's members have a significant interest in the remedy to be applied when a general law contains an unfunded mandate. Indeed, this issue – which is of first impression – undoubtedly will affect all municipalities and charter counties in this state and their ability to preserve home rule authority through their constitutional protection from unfunded mandates. The League believes its specialized experience in this area will aid the Court in resolving the remedial issue and will protect the interests of all its members when future laws are subjected to an unfunded mandate analysis.

SUMMARY OF THE ARGUMENT

Article VII, section 18(a) of the Florida Constitution states that "[n]o county

or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds," unless the law fulfills an important state interest and unless the Legislature has appropriated funds for the expenditure or has authorized a source for obtaining funds for the expenditure. (Emphasis added.) This language, on its face, prevents the Legislature from forcing local governments to comply with general laws containing unfunded mandates, and that plain language should be enforced as written. Giving Article VII, section 18(a), its plain meaning is consistent with the provision's underlying intent, which is to preserve home rule authority by discouraging the use of unfunded mandates. This plain meaning is also consistent with the ballot summary upon which voters approved the provision and the legislative history prepared when the Legislature proposed the constitutional amendment. Excusing compliance with the law is also consistent with how courts in other jurisdictions have treated similar constitutional provisions.

Accordingly, when a local government is excused from complying with an unfunded mandate, compliance with the entire law is excused. Article VII, section 18(a) makes clear that local governments are not bound by "any general law." A "law" is a bill that has been properly enacted and approved by the governor. A law is "general" when it universally applies throughout the state. As such, the "general law" contemplated here is the entire bill, which has universal application and was

properly approved. Thus, compliance with the entire law as adopted is excused, not simply the particular section of the law that contains an unfunded mandate. Indeed, the provision could have, but does not, include language limiting the remedy to excusal from complying only with the unfunded mandate provision.

Allowing local governments to choose whether to opt out of the entire law, or vice versa, preserves home rule authority by allowing them discretion to decide whether to comply with the law's provisions. It also significantly deters the Legislature's use of unfunded mandates because the entire chapter law would become optional for local governments. Singling out only the unfunded mandate provision as optional offers little disincentive to including such a provision and lessens – rather than preserves – local government discretion in this area. For these reasons, the appropriate remedy for a violation of Article VII, section 18(a) is to excuse compliance with the entire general law, providing local governments the option to follow the general law notwithstanding the mandate or opt out of the law completely.

STANDARD OF REVIEW

"Whether a state statute is constitutional is a pure issue of law, subject to de novo review." Fla. Fish and Wildlife Conservation Comm'n v. Conservation Corp., 789 So. 2d 1053, 1054 (Fla. 1st DCA 2001); accord Benjamin v. Tandem Healthcare, Inc., 998 So. 2d 566, 570 (Fla. 2008).

ARGUMENT

I. DETERMINING THE APPROPRIATE REMEDY UNDER ARTICLE VII, SECTION 18(A), OF THE FLORIDA CONSTITUTION, IS AN ISSUE OF FIRST IMPRESSION.

Article VII, section 18(a), of the Florida Constitution (the "Unfunded Mandate provision"), has been discussed in only one prior case, Lewis v. Leon County, 15 So. 3d 777 (Fla. 1st DCA 2009), rev. granted SC09-1698 (Fla. June 10, 2010) (oral argument held). That case, however, did not address the remedy to be applied where a general law violates the Unfunded Mandate provision. As such, this issue is one of first impression.

In Lewis, several counties filed a declaratory judgment action challenging the constitutionality of section 19, chapter 2007-62, Laws of Florida, which required the counties to provide office space and other administrative functions for the Offices of Criminal Conflict and Civil Regional Counsel. Lewis, 15 So. 3d at 778-79. The counties challenged that particular section of the law as violating both Article V, section 14, Florida Constitution (defining public defenders), and the Unfunded Mandate provision. Lewis,15 So. 3d at 778-79. The trial court held the particular section unconstitutional under both provisions and, in accordance with the severability clause in the law, severed that section. Leon County v. Lewis, No. 2008-CA-2475, slip op. at 16-17 (Fla. 2d Jud. Cir. Dec. 18, 2008) (available in Official Records of Leon County, Florida, Book 3932, Pages 998-99). On appeal,

this Court affirmed the circuit judgment in its entirety. Lewis, 15 So. 3d at 778, 781-82.

Though Lewis involved the Unfunded Mandate provision, this Court did not consider the issue of remedy. The parties raised no challenge as to whether striking the provision was appropriate, so this Court did not undertake an analysis of the issue. Lewis is therefore inapplicable here and, as such, the appropriate remedy under the Unfunded Mandate provision is an issue of first impression.

II. THE PROPER REMEDY UNDER ARTICLE VII, SECTION 18(A) IS TO EXCUSE COMPLIANCE WITH THE GENERAL LAW, NOT STRIKE IT FROM THE OFFICIAL RECORDS.

It is well-settled that the "fundamental object to be sought in construing a constitutional provision is to ascertain the intent of the framers" and construe the provision to "fulfill the intent of the people." Zingale v. Powell, 885 So. 2d 277, 282 (Fla. 2004) (quoting Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n, 838 So. 2d 492, 501 (Fla. 2003)) (emphases in original); accord Benjamin, 998 So. 2d at 570. That intent is first and foremost derived from the actual language of the provision and, if clear and unambiguous, "it must be enforced as written." Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc., 978 So. 2d 134, 140 (Fla. 2008); accord Lawnwood Med. Ctr., Inc. v. Seeger, 990 So. 2d 503, 510 (Fla. 2008). Further, courts must give effect to every provision and construe related provisions in harmony with one another, always endeavoring

to reach an interpretation consistent "with the intent of the framers and the voters." Crist, 978 So. 2d at 140 (quoting Zingale, 885 So. 2d at 282).

A. The Plain Language Establishes That Local Governments Are Excused From Complying With The General Law.

This Court need not go beyond the first clause of the Unfunded Mandate provision to reach the proper construction in this case. The provision provides as follows:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature [meets certain requirements] . . . .

Art. VII, §18(a), Fla. Const. (Emphasis added.)

A plain reading of the operative phrase – "[n]o county or municipality shall be bound by any general law" – evinces clear intent to excuse compliance with the general law if the remaining requirements are not met. Although the term "bound" is not defined, this Court should "assume that the word . . . was used according to its ordinary dictionary definition." Southwest Fla. Water Mmgt. Dist. v. Save the Manatee Club, Inc., 773 So. 2d 594, 599 (Fla. 1st DCA 2000); accord Essex Ins. Co. v. Zota, 985 So. 2d 1036, 1050 (Fla. 2008). The definition of "bound" is the act of being "[c]onstrained by a contractual or other obligation." *Black's Law Dictionary* 210 (9th ed. 2009). Likewise, "bind" means "[t]o impose one or more legal duties on (a person or institution) <the contract binds the parties> <courts are bound by

precedent>." Id. at 190. Thus, the plain meaning of "no county or municipality shall be bound" is that no local government shall have a legal duty to follow a general law that contains an unfunded mandate. Id. at 190, 210; accord Zota, 985 So. 2d at 1050 (construing "bind" to mean "legally obligating the insurer to provide coverage").

The use of the terms "general law" also is determinative, particularly when considered in the context of the Unfunded Mandate provision. The term "law" has been construed to mean a legislative bill, which has been signed by the requisite legislative officers and approved and signed by the Governor within the time fixed by the constitution. State ex rel. Schwartz v. Bledsoe, 31 So. 2d 457, 460 (Fla. 1947); accord Art. III, §8(a), Fla. Const. ("Every bill passed by the legislature shall be presented to the governor for approval and shall become a law if the governor approves and signs it . . . ."). A law is considered "general" when it relates to "subjects or to persons or things as a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class." Seeger, 990 So. 2d at 509 (quoting State ex rel. Gray v. Stoutamire, 179 So. 730, 733 (Fla. 1938)); accord Dep't of Bus. & Prof'l Regulation v. Gulfstream Park Racing Ass'n, 912 So. 2d 616, 621 (Fla. 1st DCA 2005)) ("[A] general law operates universally throughout the state or uniformly within a permissible classification.").

Accordingly, "general law" as used in the provision is the final version of a bill that has been approved by the Legislature and the Governor, which operates

universally throughout the state. Art. III, §8(a) Fla. Const.; Bledsoe, 31 So. 2d at 460; Gulfstream Park, 912 So. 2d at 621. It is the complete bill as passed that is intended, not a particular section thereof. Id. Indeed, had the Legislature intended to excuse local governments from complying with a *specific provision* of the general law that contains the unfunded mandate, it certainly could have used those terms. See State v. Mark Marks, P.A., 698 So. 2d 533, 541 (Fla. 1997). Its failure to do so is instructive.

Further, the context of the entire Unfunded Mandate provision, which enumerates the requirements for ensuring an unfunded mandate is not passed, confirms that a review of the entire chapter law was intended. For instance, the Legislature must determine that the "law" meets an important state interest. See Art. VII, §18(a) Fla. Const. Nowhere does it require that the Legislature make this finding in the individual section mandating the expenditure. Id. The Legislature also meets the test if "funds have been appropriated" or if it "authorizes or has authorized a county or municipality to enact a funding source . . . that can be used to generate the amount of funds estimated to be sufficient . . . ." Id. Again, the explicit language does not require that these additional findings or authorizations be found within the particular section requiring the expenditure.

Because the "general law" must be viewed in its entirety to determine whether an unfunded mandate exists, it equally should be considered in its entirety

when excusing compliance. In fact, when a court reviews the constitutionality of a "general law," as in this case, it generally looks to the entire *chapter law* as enacted by the Legislature. See Schrader v. Fla. Keys Aqueduct Auth., 840 So. 2d 1050, 1056-57 (Fla. 2003) (reviewing entire chapter law to determine if particular section was an unconstitutional special law); Moreau v. Lewis, 648 So. 2d 124, 128 (Fla. 1995) (reviewing constitutionality of entire chapter law to determine whether it violated single subject prohibition); St. Johns River Water Mmgt. Dist. v. Deseret Ranches of Fla., Inc., 421 So. 2d 1067, 1068-69 (Fla. 1982) (reviewing constitutionality of entire chapter law to determine if law is improper special law).

Construing the provision in this fashion is consistent with the plain language and, to hold otherwise, would be to "add language . . . that is not there." State v. J.M., 824 So. 2d 105, 111 (Fla. 2002); accord Coastal Fla. Police Benevolent Ass'n v. Williams, 838 So. 2d 543, 548 (Fla. 2003) ("Any inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language. If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written." (Internal quotations omitted)). Indeed, "[t]o do so would be an abrogation of legislative power." Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co., 18 So. 3d 1079, 1087 (Fla. 2d DCA 2009).

Here, chapter 2009-96 is a "general law." Indeed, there is no dispute that SB

360 was approved by the Legislature and the Governor, and operates universally throughout the state. Accordingly, chapter 2009-96 in its entirety is the "general law" as that term is used in the constitution and local governments should be excused from complying with it.

This interpretation is even more evident when compared to the related subsections of Article VII, section 18. See Zingale, 885 So. 2d at 283 (construing related constitutional provisions *in pari materia*); Citizens for Term Limits & Accountability, Inc. v. Lyons, 995 So. 2d 1051, 1057 (Fla. 1st DCA 2008) (same). In sharp contrast to subsection (a), which merely excuses local governments from being bound by the general law, subsections (b) and (c) unambiguously prohibit the Legislature from enacting general laws without meeting the constitutional requirements. See Art. VII, §18(b) (stating "the legislature may not enact, amend, or repeal any general law" if such a law reduces local government authority to raise revenues) (emphasis added), and (c) (stating "the legislature may not enact, amend, or repeal any general law" if such a law would reduce the percentage of a state tax shared with local government) (emphasis added), Fla. Const.

There is a marked difference between precluding the Legislature from *enacting* a general law and excusing local governments from being *bound* by a general law containing an unfunded mandate. Laws that are not authorized to be enacted in the first place, like those at issue in subsections (b) and (c), are void *ab*

initio and should be invalidated. E.g., McCormick v. Bounetheau, 190 So. 882, 883 (Fla. 1939) ("The enactment is void ab initio if it violates a command or prohibition express or implied of the Constitution . . . ."); see also Martinez v. Scanlan, 582 So. 2d 1167, 1174 (Fla. 1991) (same).

The same cannot be said for laws that are merely precluded from being enforced under subsection (a). By using distinct language in the related subsections, the Legislature – and the voters who approved the amendment – must have intended different meanings. See Mark Marks, P.A., 698 So. 2d at 541. Indeed, if the Legislature intended to forbid the *enactment* of general laws under subsection (a), it knew "how to express itself." Board of County Comm'rs v. Colby, 976 So. 2d 31, 36 (Fla. 2d DCA 2008) (quoting Rollins v. Pizzarelli, 761 So. 2d 294, 298 (Fla. 2000)); accord Olmstead v. F.T.C., 44 So. 3d 76, 82 (Fla. 2010).

In short, the constitutional language is clear. A plain reading leads to but one conclusion – local governments are excused from complying with any general law if such a law is found to contain an unlawful mandate. This Court need not go any further than to enforce the clear and unambiguous language of the provision. See Seeger, 990 So. 2d at 510.

B. Excusing Compliance Is Consistent With The Unfunded Mandate Provision's Intent To Protect Home Rule Authority And With Its Legislative History.

Excusing compliance with an entire general law when it contains an

unfunded mandate is not just supported by the Unfunded Mandate provision's plain language; it is also supported by the intent behind that provision.

Prior to 1968, local governments had limited authority and could exercise powers only if expressly granted by the Legislature, necessarily or fairly implied in or incident to the powers expressly granted, or essential to the declared purposes of the corporation. See Clearwater v. Caldwell, 75 So. 2d 765, 766 (Fla. 1954); Haines City v. Certain Lands Upon Which Taxes & Special Assessments Are Delinquent, 178 So. 143, 145 (Fla. 1938). In 1968, Florida's Constitution was significantly amended to grant local governments home rule authority over local affairs. See Art. VIII, §§1-2, Fla. Const. The Florida Supreme Court explained home rule as follows:

> Article VIII, Section 2, Florida Constitution, expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services. The only limitation on that power is that it must be exercised for a valid 'municipal purpose.' It would follow that municipalities are not dependent upon the Legislature for further authorization. Legislative statutes are relevant only to determine limitations of authority.

State v. Sunrise, 354 So. 2d 1206, 1209 (Fla. 1978).

Though home rule greatly expanded local government authority, the Legislature maintained ultimate authority over municipalities. See Lake Worth Utils. Auth. v. Lake Worth, 468 So. 2d 215, 217 (Fla. 1985) ("The legislature's retained power is now one of limitation rather than one of grace, but it remains an

all-pervasive power, nonetheless."). The Legislature increasingly began to require local governments to expand their responsibilities – not only to oversee various mandated projects but also to fund those projects. See Committee on Community Affairs, CS/CS/CS/CS/HJR's 139 & 40, Final Staff Analysis & Economic Impact Statement 2 (June 2, 1989) (on file with State Archives, series 19, carton 1857) (hereinafter HJR Final Staff Analysis).

It was the mounting number of mandates being placed on local governments that precipitated the Legislature's adoption of HJR 139 & 40, which sent the Unfunded Mandate provision to the ballot. See id. (recognizing that 288 mandates had been enacted since 1981); see also Florida Advisory Council on Intergovernmental Relations, 1988 Catalogue of State Mandates xiii (Oct. 1988) (on file with State Archives, series 19, carton 1857) (recognizing that 342 mandates were enacted between 1978 and 1987). The increase in mandates meant a decrease in home rule authority and control. As such, the "intent of th[e] proposed constitutional provision [wa]s to give local governments greater bargaining power on the subject of unfunded mandates . . . ." HJR Final Staff Analysis at 9.

This historical background confirms that the Unfunded Mandate provision's objective was to protect home rule authority and to do so by discouraging the Legislature's practice of placing unfunded mandates on local governments.

Excusing local governments from being forced to comply with a general law that contains an unfunded mandate is consistent with that intent. Zingale, 885 So. 2d at 282.

Indeed, that remedy will preserve home rule authority by giving local governments the power to evaluate the balance of the general law, weighing the mandates and the potential benefits, and decide whether to comply with the entire law or not. By ensuring local governments have that choice, home rule authority is most adequately protected. Allowing local governments to opt out of the entire general law also significantly deters the Legislature from continuing to enact unfunded mandates, as local governments – rather than the Legislature – would have the ultimate choice as to whether to opt out of the entire general law. By comparison, both complete invalidation of the general law and selective invalidation of only the section containing the unfunded mandate limit home rule authority by precluding local governments from evaluating the entire law and choosing whether to comply notwithstanding the mandate.

In sum, allowing local governments to choose whether to opt into the entire law, accepting both the benefits and mandates, or completely opt out, is most consistent with the actual language of the constitution and its underlying intent. Thus, the proper remedy when a court concludes that an unfunded mandate has been enacted is to excuse local governments from complying with the entire

general law.

The legislative history of the provision also supports the plain language interpretation discussed above. In summarizing the effect of the Unfunded Mandate provision, the staff analyses uniformly state that subsection (a) "excuses" local governments from "complying" with laws that do not meet the provision's requirements. See HJR Final Staff Analysis at 1; Committee on Governmental Operations, CS/CS/CS/HJR 139 & 40, Staff Analysis & Economic Impact Statement 1, 3 (May 22, 1989) (on file with State Archives, series 19, carton 1810) (hereinafter "Operations Staff Analysis"). The analyses also provide that the provision does not "bind" or "require[]" local governments to "comply" unless the constitutional requirements are met. HJR Final Staff Analysis at 3, 5; Operations Staff Analysis at 3. These references are clearly terms of option.

Moreover, in line with the distinct language used in subsection (a) and subsections (b) and (c), the analyses confirm that the framers intended different meanings. See Mark Marks, P.A., 698 So. 2d at 541. Indeed, the analyses consistently note that the Legislature is "prohibit[ed]" from "enacting" or "passing" laws that do not meet the requirements of subsections (b) and (c), which, as discussed in detail above, is patently different than merely excusing compliance. HJR Final Staff Analysis at 1, 3; Operations Staff Analysis at 1, 3.

The Legislature's approval of implementing legislation in 1991 also

confirms that the intent behind the Unfunded Mandate provision is to excuse compliance. See SB 2000, reprinted in 4 Fla. S. Jour. 132 (Reg. Sess. Mar. 14, 1991) (hereinafter SB 2000), vetoed by Governor Chiles on May 28, 1991, as reflected in 1 Fla. S. Jour. 10 (Spec. Sess. C June 6, 1991). The bill expressly provided procedures for how local governments could *opt out* of a general law if they believed the law contained an unfunded mandate. See SB 2000 at 132. Though the Governor vetoed the bill because it placed an undue burden on local governments, its approval by the Legislature demonstrated that the Legislature construed the Unfunded Mandate provision as excusing compliance with an entire general law when it violates that provision.

In sum, the provision's legislative history confirms what the provision's language actually says—a local government cannot be forced to comply with a general law that includes an unfunded mandate. The appropriate remedy, therefore, is to excuse a local government from complying with the general law.

C. The Unfunded Mandate Provision's Ballot Summary Further Confirms That The Intent Was To Excuse Local Government Compliance.

The Unfunded Mandate provision's ballot summary further confirms that the proper remedy for a general law violating the provision is to make local government compliance with the entire general law optional. The ballot summary, upon which the Unfunded Mandate provision was approved, establishes that the

voters intended to provide local governments with an option. See Florida Hosp. Waterman, Inc. v. Buster, 984 So. 2d 478, 489 (Fla. 2008) (reviewing actual language of amendment and ballot summary to determine intent of constitutional provision); see also Benjamin, 998 So. 2d at 570 n.3 (recognizing ballot summaries as source of ascertaining voter intent). The summary provided:

> Excuses counties and municipalities from complying with general laws requiring them to spend funds unless: the law fulfills an important state interest; and it is enacted by two-thirds vote, or funding or funding sources are provided, or certain other conditions are met. Prohibits general laws that have certain negative fiscal consequences for counties and municipalities unless enacted by two-thirds vote. Exempts certain categories of laws from these requirements.

CS/CS/CS/CS HJR's 139 & 40, 3-4 (1989) (on file with State Archives, series 19, carton 1857) (hereinafter "Ballot Summary") (emphases added).

Consistent with the actual language of subsection (a), the ballot summary explicitly and unambiguously provides that local governments are *excused* from *complying* with general laws that improperly require them to spend funds. Id. That alone is determinative. However, when juxtaposed against the remainder of the ballot summary, which is consistent with subsections (b) and (c) in explicitly providing that certain general laws are *prohibited*, the meaning of subsection (a) is even clearer. Id. As explained above, the Legislature must have intended a distinction when it used different terms and, *a fortiori*, the voters must have understood a distinction when they approved the amendment. Cf. Mark Marks,

P.A., 698 So. 2d at 541.

D. Courts In Other Jurisdictions Have Concluded That Rendering An Unconstitutional Law Optional Is Proper.

Courts in other jurisdictions have also concluded that excusing compliance with a law containing an unfunded mandate is the proper remedy for violation of that provision. For instance, the Missouri Constitution contains a provision similar to Florida's, providing:

> A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Art. X, § 21, Mo. Const. Based on that language, the Missouri Supreme Court held that counties could not be forced to comply with a law that violated the mandates provision. See Brooks v. State, 128 S.W.3d 844, 850 (Mo. 2004).

Further, the United States Supreme Court has construed the Tenth Amendment in a way that renders compliance with a federal law optional when it violates that amendment. See, e.g., Printz v. U.S., 521 U.S. 898 (1997). In Printz, several state law enforcement officials challenged provisions of the Brady Act that required them to enforce and execute a federally enacted gun control scheme. Id. at 904. The Court concluded that several provisions of the Act were unconstitutional because Congress cannot commandeer the states and force them either to enact a federal legislative scheme or to compel state officials to enforce

one. Id. at 926, 933. However, the Court did not strike and invalidate the provisions; rather, it held that the states could choose, but could not be compelled, to enact the federal program. Id. at 933-35.

The same principles apply here. Construing chapter 2009-96 in a way that makes compliance with the general law optional is consistent with the actual language of the provision and the intent of the framers and voters.

CONCLUSION

This Court should conclude that the proper remedy for a violation of Article VII, section 18(a), is to excuse local government compliance with a general law that is found to contain an unfunded mandate and preserve their right to opt out of the law completely until the Legislature resolves the constitutional impediments.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210 by using Times New Roman 14-point font.

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