IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

CITY OF WESTON, FLORIDA, *et al.*,

Plaintiffs,

v.

THE HONORABLE CHARLIE CRIST, Governor of the State of Florida; HONORABLE KURT S. BROWNING, Secretary of State, State of Florida; THE HONORABLE JEFF ATWATER, President of the Senate, State of Florida; THE HONORABLE LARRY CRETUL, Speaker of the House, State of Florida,

Defendants.

CASE NO. 09-CA-2639

PLAINTIFFS' RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY RE SB 1752

Plaintiffs, City of Weston, Florida, *et al.* (collectively, the "Local Governments"), hereby respond to defendants' purported notice of supplemental authority regarding Chapter 2010-147, Laws of Florida (also known as SB 1752).

INTRODUCTION

While it is unusual for the Local Governments to "respond" to a notice of supplemental authority and argue its lack of merit, it is even more unusual – in fact, it is *improper* – for defendants to assert an entirely new argument long after the briefing schedule has been concluded and oral argument has taken place. For the first time, defendants are suggesting that the enactment of SB 1752 – which purports to retroactively ratify certain permit extensions

granted under SB 360 – is somehow relevant to the Court's analysis of the unfunded mandate challenge asserted by the Local Governments.[1] It is not.

ARGUMENT

I. THE UNFUNDED MANDATE CHALLENGE IS PREMISED ON MORE THAN THE TWO-YEAR EXTENSION OF PERMITS UNDER SB 360.

Defendants' reliance on SB 1752 relates to a provision in that act that purports to retroactively ratify certain two-year permit extensions that may have been granted pursuant to SB 360. No other provision of SB 1752 is referenced in the notice. The Local Governments' unfunded mandate challenge, however, has little – if anything – to do with the two-year permit extensions. Instead, the unfunded mandate challenge is based on expenditures mandated by SB 360 relating to the enactment of comprehensive plan amendments, funding of mobility fee studies, and development and enactment of land development regulations to implement the new comprehensive plan amendments.

Regardless of whether the Legislature has attempted to retroactively validate permit extensions granted under SB 360, SB 1752 says nothing about the extensive costs the Local Governments will incur in order to comply with SB 360. As such, the enactment of SB 1752 is irrelevant to the Court's unfunded mandate analysis.

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[1] While the Local Governments briefly referenced SB 1752 in a footnote to their response to defendants' suggestion of mootness of the single subject challenge, *defendants never argued to the Court* that SB 1752 was relevant to the Court's unfunded mandate analysis.

II. EVEN IF SB 1752 *WERE* SOMEHOW RELEVANT, THE SUPREME COURT'S DECISION IN *MARTINEZ* WOULD REQUIRE THIS COURT TO RESOLVE THE UNFUNDED MANDATE CHALLENGE.

While it is not entirely clear from defendants' notice what effect the enactment of SB 1752 is supposed to have on this Court's unfunded mandate analysis, one can only surmise that defendants are bringing SB 1752 to the Court's attention in the mistaken belief that it somehow pretermits the Court's consideration and resolution of the Local Governments' challenge. Such a conclusion would be contrary to established Florida Supreme Court precedent.

Even though defendants assert that SB 1752 is beyond challenge under Art. VII, Sec. 18(a) of the Florida Constitution, serious questions exist as to the validity of SB 1752 under the single subject rule and the ability of the Legislature to grant retroactive relief. As the Local Governments have previously indicated, though, those issues are not presently before the Court. Consequently, just as the Supreme Court did in *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991), this Court should proceed to decide the constitutionality of the enactment of SB 360 in the event a subsequent invalidation of SB 1752 might leave unresolved certain questions about the legal effect of SB 360. *Id.* at 1173 ("[A]lthough it might seem to be an exercise of judicial futility to render an opinion on the constitutionality of a statute which no longer exists, [citations omitted], the ... action in this case, concerning the validity of chapter 90-201, is of sufficient importance to require it. *The [corrective] 1991 act is not properly before this Court, and we are unable to make a binding ruling on its effect.* Nevertheless, *if a court were to find that the 1991 act could not be constitutionally applied because of the reenacted provisions, the question of the constitutionality of chapter 90-201 would still remain.* We wish to avoid such possible duplication of effort to the extent possible.") (emphasis added).

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Whatever effect defendants may believe the enactment of SB 1752 has on the Local Governments' unfunded mandate challenge, it is clear that the legal validity of SB 1752 is not before this Court. As such, the Court should proceed to decide the unfunded mandate challenge *without regard for SB 1752*. The effect of SB 1752 on the continuing efficacy of SB 360, if any, is an issue for resolution in another action at a later date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via e-mail and U.S. Mail upon the following counsel of record this 18th day of June, 2010:

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