Filing # 110868992 E-Filed 07/27/2020 06:40:15 PM

RECEIVED, 07/27/2020 06:40:29 PM, Clerk, First District Court of Appeal

Case No. 1D19-3653

**IN THE DISTRICT COURT OF APPEAL FOR THE FIRST DISTRICT
STATE OF FLORIDA**

FLORIDA DEPARTMENT OF TRANSPORTATION,

Appellant,

v.

MIAMI-DADE COUNTY EXPRESSWAY AUTHORITY and
FLORIDA HOUSE OF REPRESENTATIVES,

Appellees.

INITIAL BRIEF OF FLORIDA DEPARTMENT OF TRANSPORTATION

ON APPEAL OF A PARTIAL FINAL JUDGMENT OF THE
CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
CASE NO. 2019-CA-1051

CLARK N. GATES (FBN 118211)
Assistant General Counsel
WILLIAM E. FOSTER (FBN 95573)
Assistant General Counsel
DEPARTMENT OF TRANSPORTATION
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458
850-414-5265
clark.gates@dot.state.fl.us
william.foster@dot.state.fl.us

DANIEL E. NORDBY (FBN 14588)
JASON GONZALEZ (FBN 146854)
SHUTTS & BOWEN LLP
215 South Monroe Street, Suite 804
Tallahassee, FL 32301
850-241-1717
DNordby@shutts.com
JasonGonzalez@shutts.com

Counsel for Florida Department of Transportation

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ... iii

INTRODUCTION ... 1

STATEMENT OF THE CASE AND FACTS ... 2

SUMMARY OF THE ARGUMENT ... 7

STANDARD OF REVIEW ... 9

ARGUMENT ... 10

I. THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO ADJUDICATE MDX'S CONSTITUTIONAL CLAIMS AGAINST THE DEPARTMENT ... 10

A. The Miami-Dade County Expressway Authority lacks standing and capacity to assert its constitutional claims ... 10

B. The Florida Department of Transportation is an improper defendant and the trial court failed to require joinder of the proper and indispensable party defendant: the Greater Miami Expressway Agency ... 16

II. THE TRIAL COURT ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT TO MDX ... 21

A. The trial court improperly granted summary judgment because MDX did not refute the factual basis of the Department's affirmative defenses ... 21

B. The trial court improperly granted summary judgment because the 2019 Amendment does not violate the Florida Constitution ... 23

i. The 2019 Amendment applies to an agency of the state ... 23

ii. The powers of MDX and the composition of its governing board were always controlled by the Florida Expressway Authority Act, a general law ... 25

iii. The composition and powers of MDX's governing board were preempted to the State under the Florida Expressway Authority Act ... 27

TABLE OF CONTENTS
(continued)

Page

iv. The 2019 Amendment to the Florida Expressway Authority Act does not infringe on the home rule charter of Miami-Dade County 28

1. Under Article VIII, Section 6(e), the 2019 Amendment supersedes any Miami-Dade County Ordinance that is in conflict 29
2. The 2019 Amendment impacts counties other than Miami-Dade County 30
3. The repeal of Part I of the Florida Expressway Authority Act affected all counties 31
4. The authority of GMX extends beyond Miami-Dade County 31

CONCLUSION 33

CERTIFICATE OF COMPLIANCE AND SERVICE 35

TABLE OF AUTHORITIES

Page(s)

Cases

Apthorp v. Detzner,
162 So. 3d 236 (Fla. 1st DCA 2015) 17

State ex rel. Atlantic Coast Line R.R. Co. v. State Bd. of Equalizers,
94 So. 681 (Fla. 1922) 11, 12

Atwater v. City of Weston,
64 So. 3d 701 (Fla. 1st DCA 2011) 16

Estate of Bain v. Bibolini,
711 So. 2d 92 (Fla. 3d DCA 1998)....................22

Bowman v. Barker,
172 So. 3d 1013 (Fla. 1st DCA 2015) 9, 10

City of Cape Coral v. GAC Utilities, Inc.,
281 So. 2d 493 (Fla. 1973) 24

City of Pensacola v. King,
47 So. 2d 317 (Fla. 1950) 10

Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri,
991 So. 2d 793 (Fla. 2008) 12

Dep't of Revenue v. Markham,
396 So. 2d 1120 (Fla. 1981) 12

Electronic Transaction Consultants Corporation v. Miami-Dade Expressway Authority,
Case No 12-46272-CA-44 (Fla. 11th Cir. Ct.) 13

Fla. Dep't of Agric. & Consumer Servs. v. Miami-Dade Cnty.,
790 So. 2d 555 (Fla. 3d DCA 2001)....................10

Fla. Dep't of Rev. v. Cummings,
930 So. 2d 604 (Fla. 2006) 19, 20

Fla. Dep't of Transp. v. Miami-Dade Cnty. Expressway Auth.,
2020 WL 3456675 (Fla. 1st DCA June 25, 2020) 7

Greene v. Lifestyle Builders of Orlando, Inc.,
985 So. 2d 588 (Fla. 5th DCA 2008) 22

Heisler v. Fla. Mortg. Title & Bonding Co.,
142 So. 242 (Fla. 1932) 20

Hertz Corp. v. Piccolo,
453 So. 2d 12 (Fla. 1984) 19

Launders v. Milton,
370 So. 2d 368 (Fla. 1979) 9

Lehew v. Larsen,
124 So. 2d 872 (Fla. 1st DCA 1960) 22

Llano Fin. Grp., LLC v. Yespy,
228 So. 3d 108 (Fla. 4th DCA 2017) 15

Marcus v. State Senate,
115 So. 3d 448 (Fla. 1st DCA 2013) 16, 17

Miami-Dade Cnty. Expressway Auth. v. Elec. Transaction Consultants Corp.,
45 Fla. L. Weekly D44 (Fla. 3d DCA Jan. 2, 2020) 14

Orange Lake Country Club, Inc. v. Levin,
645 So. 2d 60 (Fla. 5th DCA 1994) 22

Rhea v. Dist. Bd. of Trs. of Santa Fe College,
109 So. 3d 851 (Fla. 1st DCA 2013) 17

Robinson v. Dep't of Health,
89 So. 3d 1079 (Fla. 1st DCA 2012) 15

S & J Transp., Inc. v. Gordon,
176 So. 2d 69 (Fla. 1965) 32, 33

Sarasota Alliance for Fair Elections v. Browning,
28 So. 3d 880 (Fla. 2010) 27

School Board of Collier County v. Florida Department of Education,
279 So. 3d 281 (Fla. 1st DCA 2019) 12

School District of Escambia County v. Santa Rosa Dunes Owners Association,
274 So. 3d 492 (Fla. 1st DCA 2019), *rev. denied*, 2020 WL 154086 (Fla. Apr. 1, 2020) 11, 12

Scott v. Francati,
214 So. 3d 742 (Fla. 1st DCA 2017) 16, 18

Scott v. Williams,
107 So. 3d 379 (Fla. 2013) 23

Tamiami Trail Tours v. Lee,
194 So. 305 (Fla. 1940) 23

Tropical Trailer Leasing, LLC, v. Miami-Dade Expressway Authority,
Case No 1:14-cv-24401-UU (S.D. Fla.) 13

State ex rel. Watson v. Kirkman,
27 So. 2d 610 (1946)...11

Wilson v. Hayward,
2 Fla. 27 (Fla. 1848)...19

Statutes

Ch. 348, Part I, Fla. Stat...*passim*

§ 125.011, Fla. Stat. 26

§ 348.0003, Fla. Stat. 12, 25, 26

§ 348.0004, Fla. Stat. 15

§ 348.0306, Fla. Stat. 30

§ 348.0312, Fla. Stat. 30

Other Authorities

Ch. 94-237, Laws of Fla. 26

Ch. 2014-183, Laws of Fla. 26

Ch. 2016-122, Laws of Fla. 26

Ch. 2019-169, Laws of Fla. .... *passim*

Fla. Const. art. VIII, § 6(e)... 6, 29, 30

Fla. Const. art. VIII, § 11 (1885) .... *passim*

Fla. R. Civ. P. 1.510(c) 9

Miami-Dade County Ordinance 94-215 .... 14, 24

Miami-Dade County Ordinance Article XVIII, Section 2-128 13

INTRODUCTION

This case involves a constitutional challenge to the Florida Legislature's authority to abolish a state agency. Prior to its dissolution, the plaintiff below—the former Miami-Dade County Expressway Authority ("MDX")—was a self-acknowledged "agency of the state" under Chapter 348 of the Florida Statutes. On July 3, 2019, the Governor signed legislation abolishing MDX and providing for the transfer of its assets, liability, and governance to a newly created state agency: the "Greater Miami Expressway Agency" ("GMX"). MDX filed suit seeking declaratory relief against the Florida Department of Transportation ("FDOT" or "Department"). Following expedited briefing, the trial court entered a partial final judgment on August 29, 2019, that declared unconstitutional several provisions of the 2019 legislation. MDX's additional constitutional challenges to legislative amendments to its governing statutes adopted in 2018 and 2017 remain pending before the trial court.

As a threshold matter, the trial court lacked subject matter jurisdiction to adjudicate MDX's constitutional claims. The underlying action lacks both a proper plaintiff and a proper defendant and therefore fails to present a justiciable controversy. MDX is a dissolved state agency lacking both standing and the legal capacity to challenge the constitutionality of legislation affecting its duties. The Department is not a proper defendant because it does not implement or enforce the

statutes challenged by MDX. And the trial court denied the Department's timely motion to dismiss MDX's complaint for failure to join GMX as an indispensable party defendant, even though the lawsuit challenged the constitutionality of the statutes creating GMX. For each of these reasons, the trial court erred as a matter of law in denying the Department's motion to dismiss and in entering partial final judgment in favor of MDX.

In addition to these jurisdictional deficiencies warranting dismissal of the complaint with prejudice, the order granting partial summary judgment to MDX should also be reversed on two further grounds. First, the Department identified disputed issues of material fact that should have precluded a grant of summary judgment particularly where, as here, the plaintiff's motion was filed before the Department had even filed its answer to the complaint and after limited discovery. Finally, on the merits, the trial court erred in concluding that the 2019 legislation abolishing one state agency and transferring its assets and governance to another state agency violated any provision of the Florida Constitution.

The partial final judgment should be reversed.

STATEMENT OF THE CASE AND FACTS

On Sunday, May 5, 2019, MDX filed a multi-count Verified Complaint against the Florida Department of Transportation, the Florida Transportation Commission, and Governor DeSantis. R. 11-326. The lawsuit challenged a self-

executing amendment to the Florida Expressway Authority Act, Chapter 348, Florida Statutes (the "2019 Amendment"), which dissolved MDX and transferred its assets and governance to a newly-created Greater Miami Expressway Agency, effective upon the Act becoming law. R. 11-36. MDX alleges that the 2019 Amendment—and related statutory amendments adopted in 2017 and 2018—constitute an unconstitutional infringement on the "home rule" authority of Miami-Dade County and allegedly impair MDX's contracts. *Id.*

Immediately after filing the Complaint—and before the 2019 legislation in question had been presented to the Governor—MDX sought to obtain an emergency ex parte temporary restraining order to prevent the Governor, the Department, and the Commission from "enforcing" the provisions of House Bill 385 (2019) transferring MDX's governance, control, property, assets, rights, and privileges to GMX. R. 327-666. In its emergency motion, MDX acknowledged that "[o]nce divested of all authority and resources, and dissolved, MDX would be foreclosed the opportunity to seek adjudication of the constitutionality of the 2019 Amendment, as well as the [2017 and 2018 legislation]" challenged in its Complaint. R. 329. The trial judge entered an order denying the motion without prejudice to MDX's ability to seek relief with proper notice to all parties. R. 667-668.

MDX next sought to obtain a preliminary injunction against the Defendants to prevent “enforcement” of HB 385. R. 1086-1103. Following a hearing, the trial court entered an order on May 16, 2019, denying MDX’s Motion for Preliminary Injunction on the grounds that the dispute was not ripe for adjudication because the Governor had not yet signed or otherwise acted on the challenged legislation. R. 1346-1347.

On July 3, 2019, HB 385 was signed into law as Chapter 2019-169, Laws of Florida. The Governor made his appointments to the GMX Board the same day. R. 1693. Upon the act becoming a law, MDX was dissolved and its assets, legal rights, governance, and control were transferred to GMX by operation of law. Ch. 2019-169, § 17, Laws of Fla. Notwithstanding its dissolution, MDX thereafter renewed its motion for a preliminary injunction seeking to prevent the transfer of assets and functions to GMX that, as a matter of law, had already occurred. R. 1636-1671.

The Governor, Commission, and Department filed separate motions to dismiss. R. 1285-1289; 1332-1345; 1631-1635. Without objection, Miami-Dade County filed an amicus curiae memorandum in support of MDX. R. 1891-1916. The Florida House of Representatives intervened as a defendant and filed its own motion to dismiss, arguing that MDX had not been created through the exercise of Miami-Dade County’s home-rule powers, but under a statutory grant of authority

from the Florida Legislature. R. 1884-1890. On July 15, 2019, the Department[1] and the Governor filed Amended Motions to Dismiss. R. 1692-1700; 1701-1706. The Department's Motion argued: 1) that MDX lacked standing to assert its constitutional challenges; 2) MDX lacked the legal capacity to maintain its lawsuit following its dissolution; 3) the Department was not a proper party defendant because it was not responsible for implementing the challenged legislation; and 4) GMX was an indispensable party defendant, as the Complaint challenged the constitutionality of GMX's creation and sought to divest GMX of assets and governance that had been transferred to it effective July 3, 2019. R. 1692-1700. The Governor's Motion adopted the Department's arguments as to standing and GMX's status as an indispensable party, and additionally argued that the Governor was not a proper defendant. R. 1701-1706.

Following a hearing on July 25, 2019, the trial court issued an order granting the Governor's Motion to Dismiss and denying the Motions to Dismiss of the Department and the House. R. 1927-1928.

MDX immediately moved for partial summary judgment on Count I of its Complaint. R. 1710-1861. Count I sought a declaration against the Department that the 2019 Amendment is unconstitutional on two separate grounds: 1) the 2019

---

[1] On July 13, 2019, MDX dismissed all claims against the Florida Transportation Commission. R. 1946.

Amendment is allegedly a special local law applicable only to Miami-Dade County; and 2) the 2019 Amendment allegedly violates Miami-Dade County's "home rule" authority and protections found in Article VIII, section 11, Fla. Const. of 1855, as preserved by Article VIII, section 6(e), Fla. Const. of 1968 ("Miami-Dade Home Rule Amendment"). R. 11-326. The summary judgment motion did not seek injunctive relief against the Department. *Id.* The Department and the House filed responses in opposition to summary judgment that: (1) disputed the material issues of fact alleged to be undisputed in the summary judgment motion; and (2) on the merits, argued that the 2019 Amendment did not violate the Florida Constitution on either challenged ground. R. 2153-2236; 2237-2312.

Following a hearing on August 9, 2019, the trial court issued an order on August 29 granting partial summary judgment to MDX on Count I of its Complaint. R. 4600-4619. The order purported to sever Count I and to enter partial final judgment for MDX on the grounds that the remaining counts in MDX's Complaint were not "inextricably intertwined" with Count I. R. 4616-4618. The trial court denied the House's Motion for Rehearing on September 30, 2019. R. 4677. This timely appeal followed. R. 4678.

Concerned that the partial final judgment may not actually represent an appealable final order, the Department separately filed a Petition for Writ of Prohibition with this Court addressing the trial court's lack of subject matter

jurisdiction. *Fla. Dep't of Transp. v. Miami-Dade Cnty. Expressway Auth.*, Case No. 1D19-3265. On June 25, 2020, this Court issued an opinion denying the petition for writ of prohibition without passing on the validity of the Department's jurisdictional arguments. *Fla. Dep't of Transp. v. Miami-Dade Cnty. Expressway Auth.,* 2020 WL 3456675, at *2 (Fla. 1st DCA June 25, 2020). The Court noted that the denial of the Department's defenses related to MDX's standing and the Department's status as a proper defendant could be raised in this appeal. *Id*. In a separate concurring opinion, Judge M.K. Thomas further stated that—should the partial final judgment be determined to be a non-appealable order—the Department could refile its petition for writ of prohibition. *Id*. at *5.

SUMMARY OF THE ARGUMENT

As a threshold matter, the partial final judgment should be reversed because the trial court lacked subject matter jurisdiction. The underlying lawsuit is replete with foundational jurisdictional defects. The plaintiff below, MDX, is a dissolved state agency that lacks both the legal capacity to maintain its lawsuit and the requisite standing to assert its claims that the challenged legislation is unconstitutional. The defendant below, FDOT, has no responsibility for enforcing or implementing the statutes challenged by the plaintiff. And the trial court denied FDOT's motion to dismiss for failure to join GMX as an indispensable party even though MDX's complaint sought a declaration that the statute that had created and

transferred MDX's assets and governance to GMX was unconstitutional—a declaration that MDX ultimately obtained in GMX's absence. With no proper plaintiff and no proper defendant, the underlying lawsuit lacks a justiciable controversy falling within the subject matter jurisdiction of the circuit court. No amendment to the Complaint can cure these fundamental jurisdictional defects, which turn entirely on issues of law and uncontroverted facts. The trial court erred in denying the Department's motion to dismiss and in granting partial final judgment to MDX.

In addition to these jurisdictional defects, the trial court also erred as a matter of law in granting partial summary judgment to MDX on Count I of the Complaint. Disputed issues of material fact identified by the Department should have precluded entry of summary judgment, particularly at such an early stage of the litigation and after limited discovery. The Department filed its Answer the same week MDX filed its Motion for Summary Judgment, and at that time discovery was ongoing. Although the Department's Answer asserted nine affirmative defenses, no affidavits were filed in support of MDX's motion and MDX did not timely file any summary judgment evidence to refute the Department's affirmative defenses. MDX's failure to refute the factual basis of each of the Department's affirmative defenses required the trial court to deny the summary judgment motion.

On the merits, the trial court also erred as a matter of law in granting partial summary judgment finding the 2019 Amendment to be unconstitutional. The 2019 Amendment is constitutional because: (1) it applies to an agency of the state and the transfer of state assets; (2) MDX was created under general law and was lawfully abolished by general law; and (3) the 2019 Amendment does not, as a matter of law, infringe on the home rule authority of Miami-Dade County.

The Order Granting Plaintiff's Motion for Summary Judgment on Count I should be reversed.

STANDARD OF REVIEW

An order granting summary judgment is reviewed de novo. *Bowman v. Barker*, 172 So. 3d 1013, 1014 (Fla. 1st DCA 2015). Entry of summary judgment is proper "if the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c); *Launders v. Milton*, 370 So. 2d 368 (Fla. 1979). As explained by this Court in *Bowman*,

> The movant must demonstrate conclusively that no genuine issue exists as to any material fact, and the court must draw *every possible inference* in favor of the party opposing summary judgment. A summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law. Moreover, all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party; if the *slightest* doubt remains, a summary judgment cannot stand.

172 So. 3d at 1015 (internal quotations and citations omitted).

ARGUMENT

I. THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO ADJUDICATE MDX'S CONSTITUTIONAL CLAIMS AGAINST THE DEPARTMENT.

As a threshold matter, the partial final judgment should be reversed and remanded with directions to dismiss the Complaint for lack of subject matter jurisdiction. As explained below, the trial court erred in proceeding to adjudicate MDX's constitutional challenge to the 2019 Amendment because the underlying case lacked both a proper plaintiff with standing and capacity to sue and a proper defendant with responsibility for enforcing the challenged statutes. The trial court should have granted the Department's motion to dismiss and denied MDX's motion for summary judgment on Count I.

A. The Miami-Dade County Expressway Authority lacks standing and capacity to assert its constitutional claims.

MDX lacked standing to raise its constitutional challenges because, prior to its dissolution, it was a state agency. "In Florida, it is clear that '[s]tate officers and agencies must presume legislation affecting their duties to be valid, and *do not have standing to initiate litigation for the purpose of determining otherwise*.'" *Fla. Dep't of Agric. & Consumer Servs. v. Miami-Dade Cnty.*, 790 So. 2d 555, 558 (Fla. 3d DCA 2001) (alteration in original) (emphasis added) (quoting *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 458 (Fla. 1982)); *see also City of Pensacola v.*

King, 47 So. 2d 317, 319 (Fla.1950); *State ex rel. Watson v. Kirkman*, 27 So. 2d 610, 612 (1946); *State ex rel. Atlantic Coast Line R.R. Co. v. State Bd. of Equalizers*, 94 So. 681, 682 (1922). The trial court erred in failing to dismiss the complaint and in granting summary judgment because MDX lacks standing to assert the constitutional challenges set forth in the underlying Complaint.

In two recent cases, this Court reaffirmed the longstanding public official standing doctrine. First, in *School District of Escambia County v. Santa Rosa Dunes Owners Association*, a school district sought to challenge the constitutionality of a statutory property tax exemption. 274 So. 3d 492, 494 (Fla. 1st DCA 2019), *rev. denied*, 2020 WL 154086 (Fla. Apr. 1, 2020). The trial court, in reliance on the public official standing doctrine, concluded that the district lacked standing. *Id.* On appeal, the First District affirmed the trial court's dismissal of the school district's action. *Id.* at 496. The Court noted that the public official standing doctrine, which is "grounded in the separation of powers, recognizes that public officials are obligated to obey the legislature's duly enacted statute until the judiciary passes on its constitutionality." *Id.* at 494 (citing *State ex rel. Atlantic Coast Line R.R. Co. v. State Bd. of Equalizers*, 94 So. 681, 683 (Fla. 1922)). For that reason, the First District explained that "a public official's '[d]isagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory

judicial opinion.'" *Id.* (quoting *Dep't of Revenue v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981)); *see also Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 802-03 (Fla. 2008) (recognizing that Florida Legislature had not "alter[ed] the common law principle announced in *Atlantic Coast Line* and *Markham* that property appraisers, as public officials, lack standing to challenge the constitutionality of a statute").

Second, even more recently, this Court held that the public official standing doctrine barred constitutional challenges to legislation that had been asserted by various school boards against the Department of Education. In *School Board of Collier County v. Florida Department of Education*, 279 So. 3d 281, 289 (Fla. 1st DCA 2019), this Court reiterated that, as public entities and officials, "the school boards must presume that the provisions at issue are constitutional." Moreover, "[t]he prohibition against public officials attacking the constitutionality of a statute is not limited to those public officials charged with a duty under the challenged law, but also extends to public officials whose duties are affected by the challenged law." *Id.*

Here, as in both of these cases and the longstanding precedent upon which they rely, MDX is a public entity—an "agency of the state, pursuant to the Florida Expressway Authority Act." § 348.0003(1), Fla. Stat. (2018). For decades before the present litigation, MDX represented itself as an "agency of the state" to the

public, bondholders, courts, and the Department. Miami-Dade County Ordinance Article XVIII, Section 2-128, identifies MDX as an agency of the state: "The Authority shall be an agency of the state pursuant to the Florida Expressway Authority Act." R. 1302. The MDX bond indenture likewise confirms that MDX is an agency of the state and exists under the Florida Expressway Authority Act. R. 91-211; *see*, *e.g.*, *id.* at 97 (referring to MDX as "a public instrumentality and an agency of the State of Florida (the "State") existing under the Florida Expressway Authority Act (Part I of Chapter 348, Florida Statutes, as amended)").

On at least two other occasions, MDX has represented to state and federal courts that it is an agency of the state—a position directly contrary to that argued by MDX before the trial court in this case. In *Tropical Trailer Leasing, LLC, v. Miami-Dade Expressway Authority*, Case No 1:14-cv-24401-UU, MDX asserted that it is an agency of the state to avoid liability under a Section 1983 claim. R. 2259-2276. MDX asserted unequivocally in the *Tropical Trailer* case that "MDX is a state agency," even describing the position that it is not a state agency as "disingenuous[]" and "nonsense." R. 2271. The District Court for the Southern District of Florida agreed with MDX's position in *Tropical Trailer*: "For the reasons below, the Court finds that the MDEA is a state agency and therefore, it is entitled to immunity and cannot be sued under Section 1983." R. 2277-2286.

MDX has also previously represented to the courts of the State of Florida that it is an agency of the state. In *Electronic Transaction Consultants Corporation v. Miami-Dade Expressway Authority*, Case No 12-46272-CA-44, MDX represented to the Circuit Court for the Eleventh Judicial Circuit that it was an agency of the state in litigation involving a contract dispute with a toll contractor. R. 2287-2312. The Circuit Court held that MDX was "an agency of the State of Florida which exercises operational and financial control" over the expressway. R. 2288. *See Miami-Dade Cnty. Expressway Auth. v. Elec. Transaction Consultants Corp.*, 45 Fla. L. Weekly D44 (Fla. 3d DCA Jan. 2, 2020) (affirming circuit court judgments against MDX).

The Transfer Agreement attached to MDX's complaint also states that MDX is "an agency of the state, existing under the Florida Expressway Authority Act." R. 38. *See also id*. at R. 43 (representing that MDX "has been duly created and is valid existing as a body politic and corporate, a public instrumentality and an agency of the State existing under the [Expressway Authority] Act"); Miami-Dade County Ordinance 94-215 (forming MDX under power conferred by the Florida Expressway Authority Act). R. 1911, 1915.

Under longstanding and well-settled law, MDX is a state agency and lacks standing under the public official standing doctrine to assert the constitutional claims set forth in its Complaint.

In addition to its lack of standing to assert its constitutional challenges under the public official standing doctrine, MDX also lacks the legal capacity to maintain the underlying lawsuit following its dissolution on July 3, 2019. “Capacity is the absence of a legal disability preventing a party from coming into court.” *Llano Fin. Grp., LLC v. Yespy*, 228 So. 3d 108, 111–12 (Fla. 4th DCA 2017) (citing *Keehn v. Joseph C. Mackey & Co.*, 420 So. 2d 398, 399 n.1 (Fla. 4th DCA 1982)).

MDX was originally formed as an “agency of the state” under the authority of Part I of Chapter 348, the “Florida Expressway Authority Act.” Like all agencies of the State, MDX had during its existence only those powers provided by statute. *See Robinson v. Dep’t of Health*, 89 So. 3d 1079, 1082 (Fla. 1st DCA 2012) (“[A]dministrative agencies have no power except that which is provided by statute.”) (citing *Grove Isle, Ltd. v. State Dep’t of Envtl. Reg.*, 454 So. 2d 571, 573 (Fla. 1st DCA 1984)). Prior to the 2019 Amendment, MDX’s governing statutes granted it the power to “sue and be sued, implead and be impleaded, and complain and defend in all courts.” § 348.0004(2)(a), Fla. Stat. (2018). After the enactment of Chapter 2019-169, Laws of Florida, MDX lacks the power to sue or to maintain the underlying lawsuit because it no longer exists. As a matter of law, and independently of its lack of standing, MDX does not possess the ongoing legal capacity to maintain its lawsuit.

Because MDX lacks both standing to sue and the legal capacity to maintain its lawsuit following its dissolution, the trial court did not have subject matter jurisdiction over the underlying proceeding. For this reason, this Court should reverse the trial court's order of partial final judgment and remand with directions to dismiss the Complaint with prejudice for lack of subject matter jurisdiction.

B. The Florida Department of Transportation is an improper defendant and the trial court failed to require joinder of the proper and indispensable party defendant: the Greater Miami Expressway Agency.

It is well established that an action challenging the constitutionality of a statute must be brought against the state official or agency tasked with enforcing the statute. *Scott v. Francati*, 214 So. 3d 742, 745 (Fla. 1st DCA 2017); *see also Atwater v. City of Weston*, 64 So. 3d 701, 703 (Fla. 1st DCA 2011); *Marcus v. State Senate*, 115 So. 3d 448, 448 (Fla. 1st DCA 2013). A state agency that is not responsible for enforcing the challenged law is not a proper party to the suit. *Atwater*, 64 So. 3d at 703–04; *see also Marcus*, 115 So. 3d at 448. If the state agency is not the enforcing authority, the Court must consider two additional factors: (1) whether the action involves a broad constitutional duty of the state implicating specific responsibilities of the state agency; and (2) whether the state agency has an actual, cognizable interest in the challenged action. *Id.* (citing *Atwater,* 64 So. 3d at 703).

Here, the trial court erred in failing to dismiss the complaint and in entering summary judgment because the Department is not a proper party. The Department is not tasked or charged with enforcing any portion of the 2019 legislation MDX seeks to invalidate in Count I of its lawsuit. The legislation is largely self-executing and—to the extent it requires implementation—that implementation was to be conducted by a non-party: GMX. The Complaint does not even allege that the Department is responsible for enforcing or implementing the provisions of the 2019 Amendments that MDX challenged in its Complaint.

Nor does the Complaint allege that the challenged legislation implicates any "broad constitutional duty of the State implicating specific responsibilities" of the Department, *Marcus*, 115 So. 3d at 448, or that the Department has any cognizable legal interest in the legislation or the outcome of this lawsuit. This is apparent by MDX's failure to allege any bona-fide, actual, and present practical need for any declaration against the Department concerning any dispute over the constitutionality of the 2019 legislation. A complaint for declaratory relief must show some useful purpose will be served by the relief sought against the Department. *Rhea v. Dist. Bd. of Trs. of Santa Fe College*, 109 So. 3d 851, 859 (Fla. 1st DCA 2013).

The absence of any allegations showing a need for a declaration against the Department and what useful purpose it would serve further confirms that MDX

effectively sought (and received) an advisory opinion that the trial court lacked jurisdiction to render. *Apthorp v. Detzner*, 162 So. 3d 236, 240 (Fla. 1st DCA 2015). The absence of any request for injunctive relief against the Department demonstrates the same point: MDX does not seek a court order requiring the Department to take (or refrain from taking) any actions with respect to the challenged legislation because the Department has no role in enforcing the challenged legislation against MDX. The Department is not tasked with implementing the provisions of law challenged by MDX and is not a proper party defendant in the declaratory judgment action below.

The conclusion that the Department is not a proper defendant in the action below is not to say that legislation abolishing MDX, creating GMX, or altering the statutory duties of either board is entirely insulated from judicial review. A private (*i.e.*, non-governmental) plaintiff who can allege a concrete, non-conjectural harm traceable to Chapter 2019-169, Laws of Florida, may have standing to bring a constitutional challenge in a lawsuit against GMX— the state agency that, for more than a year now, has been directly charged by law with management and enforcement of statutory duties regarding the expressway system in question. In such a lawsuit, a trial court would have before it an actual controversy presenting the necessary adversity of interests, and would be in a proper position to decide the constitutional questions that have been improperly presented in the underlying

lawsuit. *Cf. Francati*, 214 So. 3d at 748, n. * ("Dismissal of the action against Governor Scott does not deprive Francati of a means of testing the constitutionality of the statute. She may bring suit against a specific defendant, who she alleges has acted negligently or violated residents' rights. Should that defendant then move to dismiss the suit by invoking the statute, Francati could then argue that the statute is unconstitutional as applied.")

That hypothetical lawsuit, however, is not this lawsuit. Indeed, FDOT vigorously asserted below not only that it was an improper defendant, but that GMX was an indispensable party defendant to the underlying lawsuit asserting a constitutional challenge to the legislation creating GMX. *See, e.g.*, R. 1285-1289 (Department's Motion to Dismiss); 2590-2660 (Transcript of Hearing on Motions to Dismiss). Yet the trial court rejected FDOT's arguments and proceeded to adjudicate the constitutionality of the statutes *creating* GMX and *transferring assets and governance* to GMX without requiring the Plaintiff to join GMX as a defendant.

From the earliest days of Florida's statehood, its courts have recognized "[t]he necessity of all parties in interest being before the Court . . . ." *Wilson v. Hayward,* 2 Fla. 27, 30 (Fla. 1848). More recently, the Florida Supreme Court has characterized an "indispensable party" to a proceeding as "one whose interest in the controversy makes it impossible to completely adjudicate the matter without

affecting either that party's interest or the interests of another party in the action." *Fla. Dep't of Rev. v. Cummings,* 930 So. 2d 604, 607 (Fla. 2006); *see also Hertz Corp. v. Piccolo,* 453 So. 2d 12, 14 n. 3 (Fla. 1984) (describing indispensable parties as ones "so essential to a suit that no final decision can be rendered without their joinder"); *Heisler v. Fla. Mortg. Title & Bonding Co.*,142 So. 242, 247 (1932) ("[A] party whose rights and interests are to be affected by a decree and whose actions with reference to the subject-matter of litigation are to be controlled by the decree is a necessary party to the suit, and a court of chancery will not proceed without them.").

Under this controlling standard, GMX was plainly an indispensable party to the proceeding below. Among other things, Plaintiff MDX challenges the Legislature's authority to create GMX and asks this Court to enter temporary and permanent injunctive relief invalidating the transfer of the "governance, control, property, and assets of MDX to GMX." R. 767-768, 775-776. Given the nature of the relief sought by MDX in its Complaint, it is "impossible to completely adjudicate the matter," *Cummings*, 930 So. 2d at 607, without affecting the interests of a non-party: the Greater Miami Expressway Agency. The trial court erred as a matter of law in finding that GMX was not an indispensable party. R. 4605.

Here, because the Department is not a proper defendant and GMX was an indispensable party defendant, the trial court erred in denying the Department's motion to dismiss. This Court should reverse the trial court's grant of partial summary judgment and remand with instructions to dismiss the case against the Department with prejudice.

* * * * * * *

The trial court lacked subject matter jurisdiction for two independent reasons. First, no plaintiff with standing and legal capacity was before the trial court, and second, no proper defendant has been joined to the action. Both of these elements are necessary for a court to exercise jurisdiction over a justiciable controversy in a declaratory judgment action. The trial court also erred in denying the Department's motion to dismiss for failure to join an indispensable party: GMX. This Court should reverse the trial court's order granting partial summary judgment.

II. THE TRIAL COURT ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT TO MDX.

In addition to its lack of subject matter jurisdiction, the trial court also erred in granting MDX's motion for summary judgment for two independent reasons. First, the Defendants asserted genuine disputes of material fact that precluded the entry of summary judgment. Second, on the merits, the trial court erred in finding

that the 2019 Amendments to Chapter 348 of the Florida Statutes are barred by the Florida Constitution.

A. The trial court improperly granted summary judgment because MDX did not refute the factual basis of the Department's affirmative defenses.

Because it sought summary judgment before the Department's Answer was filed, MDX had the additional burden of proving not only that there was no dispute of material fact, but that the Department could not even plead a genuine issue of material fact. *See, e.g.*, *Lehew v. Larsen*, 124 So. 2d 872, 873 (Fla. 1st DCA 1960) ("When a trial court has for consideration a plaintiff's motion for summary judgment before the defendant has answered, the summary judgment should not be granted unless it is clear that an issue of material fact cannot be presented."); *see also Greene v. Lifestyle Builders of Orlando, Inc.*, 985 So. 2d 588, 589 (Fla. 5th DCA 2008) (explaining that when a motion for summary judgment is filed before an answer to the complaint is due, the plaintiff has an unusually heavy burden to conclusively negate every defense that might be presented in the answer).

MDX did not even acknowledge this higher standard in its motion and did not include any summary judgment evidence to refute the factual basis of the Department's affirmative defenses. Material facts have been alleged in support of the Department's affirmative defenses, including the affirmative defenses of capacity, standing, unclean hands, estoppel, and waiver. R. 1954-57. Because of

MDX's rush to summary judgment below, MDX never attempted to supplement its summary judgment evidence to refute the factual allegations made in the Department's affirmative defenses. And the trial court could not allow the presentation of testimony or other evidence during the summary judgment hearing. *See Estate of Bain v. Bibolini*, 711 So. 2d 92, 93 (Fla. 3d DCA 1998); *Orange Lake Country Club, Inc. v. Levin*, 645 So. 2d 60, 62 (Fla. 5th DCA 1994).

In the Order Granting Plaintiff's Motion for Summary Judgment on Count I, the trial court explained that "it must reject [the] argument [that summary judgment cannot be entered because discovery has not been completed] because the issue before this Court is properly resolved as a purely legal issue not requiring any factual development." R. 4604. The trial court erred in not considering the Department's arguments and factual allegations in opposition to MDX's motion for summary judgment in the light most favorable to the Department. Because MDX failed to refute the factual basis for each of the Department's affirmative defenses, the order granting partial summary judgment should be reversed.

B. The trial court improperly granted summary judgment because the 2019 Amendment does not violate the Florida Constitution.

Even if the trial court had jurisdiction, its partial final judgment should be reversed on the merits because the 2019 Amendment is constitutional.

i. **The 2019 Amendment applies to an agency of the state**.

The Florida Legislature has the inherent and plenary authority to pass laws, including laws that amend statutes modifying agencies of the state and state roads. *Tamiami Trail Tours v. Lee*, 194 So. 305, 306 (Fla. 1940) (explaining that a regulatory statute, like any other statute, can be amended or repealed by the legislature). "Absent a constitutional limitation, the Legislature's 'discretion reasonably exercised is the sole brake on the enactment of legislation.'" *Scott v. Williams*, 107 So. 3d 379, 384 (Fla. 2013) (citing C*rist v. Fla. Ass'n of Criminal Def. Lawyers, Inc.*, 978 So. 2d 134, 139 (Fla.2008)).

The Florida Supreme Court has held the Florida Legislature can modify the powers of an agency of the state. In *City of Cape Coral v. GAC Utilities, Inc*., 281 So. 2d 493 (Fla. 1973), the Supreme Court explained:

> To say that the jurisdiction of [an agency of the state] cannot be altered by the State Legislature is to admit that the government is beyond the control of the people—that an administrative Frankenstein, once created, is beyond the control of its Legislative creator.
> . . .
> Simply stated, the Legislature giveth, and the Legislature taketh away.

Id. at 496 n. 8.

As explained above, MDX was an agency of the state prior to its dissolution and made repeated representations to the public, bondholders, the Department, and various courts that it was an agency of the state. *See supra* at 12-14. MDX was

formed by Miami-Dade County in County Ordinance 94-215 under statutory authority conferred by state law—the Florida Expressway Authority Act:

> Whereas, **this Board wishes to exercise the power conferred by the Florida Expressway Authority Act** (Part I of Chapter 348, Fla. Stats., as amended by Chapter 94-237, Laws of Florida 1997) (the "Act") to form the Dade County Expressway Authority (the "Authority") to carry out the purposes and exercise the powers set forth in and contemplated by the Act, a copy of which is attached hereto and incorporated herein by reference

R. 1911 (emphasis added); *see also id*. at 1915 (providing that "[t]he Authority shall have all the powers provided in the Florida Expressway Authority Act.").

Decades later, in an effort to reverse its dissolution by operation of law, MDX now asserts otherwise. The Court should reject MDX's attempts to constrain the Legislature's ability to amend a statute transferring state assets and modifying the powers of an agency of the state. As a matter of law, the 2019 Amendment transferred state assets and governance responsibilities from one agency of the state to another—a discretionary policy decision within the authority of the elected branches that is not prohibited by the Florida Constitution. The trial court's order granting partial summary judgment should be reversed.

ii. The powers of MDX and the composition of its governing board were always controlled by the Florida Expressway Authority Act, a general law.

The trial court stated that "it is clear that the 2019 Amendment is a local law applicable to only Miami-Dade County and is thus unconstitutional and prohibited

under Miami-Dade County Home Rule Amendment." R. 4615. The trial court's conclusion is erroneous as a matter of law.

Since its inception in 1994, and all times throughout its existence, the governing board of MDX was created and controlled by a general law, the Florida Expressway Authority Act. Prior to the creation of MDX in 1994, section 348.0003, Florida Statutes, was amended to include subsection (d) providing the following:

> Notwithstanding any provision to the contrary in this subsection**, in any county as defined in s. 125.011(1)**, the governing body of an authority shall consist of up to 13 members and the following provisions of this paragraph shall apply specifically to such authority.

Ch. 94-237, § 55, Laws of Fla. (emphasis added).

At all times material to this lawsuit, the statutory definition of "county" in section 125.011(1), Florida Statutes, has applied to Miami-Dade County and at least one other county. The statutory provisions of the Florida Expressway Authority Act therefore constitute general laws, not special laws applicable only to Miami-Dade County.

Over a period of many years, the state has adopted a variety of amendments to the Florida Expressway Authority Act. *See, e.g.*, Ch. 2014-183, §11, Laws of Fla.; Ch. 2016-122, Laws of Fla. The 2014 and 2016 amendments to Chapter 348 did not expressly refer to MDX, but applied "in any county as defined in s. 125.11 (1) . . . ." *Id.* These amendments had the effect of reducing the number of

seats on the MDX governing board, including those appointed by local government, and modifying the responsibilities of MDX's board members. Though these amendments were mandated by the state through general law, MDX complied without claiming any affront to Miami-Dade County's home rule charter. Indeed, a review of the statutory history concerning the Florida Expressway Authority Act shows that MDX has never been an entity of purely local concern, but has functioned as an agency of the state from its inception in 1994 through its dissolution in 2019.

iii. The composition and powers of MDX's governing board were preempted to the State under the Florida Expressway Authority Act.

Where the state promulgates a pervasive legislative scheme concerning a subject area such that a local ordinance presents a danger of conflict, Florida law holds that regulation of that subject area has been preempted to the state. *Sarasota Alliance for Fair Elections v. Browning*, 28 So. 3d 880, 886 (Fla. 2010). The Florida Expressway Authority Act presents such a pervasive legislative scheme and preempts to the state the sole authority to regulate the creation and operation of expressway authorities in Florida.

When considering the provisions of the Florida Expressway Authority Act as a whole, including its object and policy, it is evident that the powers of MDX and the composition of its governing board were always controlled as a matter of

general law, and not a purely local concern of Miami-Dade County. The nature of the power exerted by the Legislature, the object sought to be attained by the statutes at issue, and the character of the obligations imposed on expressway authorities under the Florida Expressway Authority Act are all integral to the conclusion that MDX is not (and never has been) an agency of purely local concern.

iv. The 2019 Amendment to the Florida Expressway Authority Act does not infringe on the home rule charter of Miami-Dade County.

The Miami-Dade home rule charter found in Section 11 of Article VIII of the 1885 Florida Constitution, preserved by Section 6 of Article VIII of the 1968 Florida Constitution, prohibits the legislature from passing a law that impacts only Miami-Dade County. The Miami-Dade home rule charter states that the intent of the legislature and the electors of the State of Florida is to make general laws that impact Miami-Dade and at least one other county the supreme law in Miami-Dade County. *See* Art. VIII, §11(5), (9), Fla. Const. of 1885. Thus, the 2019 Amendment is constitutional as long as it impacts Miami-Dade County and at least one other county. The trial court acknowledged that general laws applicable to Miami-Dade County must apply to Miami-Dade County and at least one other county. R. 4608. But the trial court erred in concluding that the 2019 Amendment apply only to Miami-Dade County. R. 4609.

The 2019 Amendment does not impermissibly infringe on Miami-Dade home rule charter because: (1) the 2019 Amendment supersedes any conflicting Miami-Dade County Ordinance; (2) the 2019 Amendment impacts more than one county by providing all Florida counties express authority and power to enter into agreements with GMX to construct and operate an expressway system in that county; (3) the 2019 Amendment repealed the ability of all counties in Florida to form an expressway authority under the Florida Expressway Authority Act; and (4) the powers of GMX, an agency of the state, are the same in Miami-Dade County and all other counties, which is expressly permitted by Miami-Dade County's home rule charter provisions of the Florida Constitution. *See* Art. VIII, §11(5), (7), (9), Fla. Const. of 1885.

1. Under Article VIII, Section 6(e), the 2019 Amendment supersedes any Miami-Dade County Ordinance that is in conflict.

Article VIII, Section 6(e) expressly limits the home rule charter of Miami-Dade County as follows:

> (6) Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties of the State of Florida . . . **such general laws shall supersede any part of portion of the home rule charter provided for herein in conflict therewith and shall supersede any provision of any ordinance enacted pursuant to said charter and in conflict therewith** . . . .

(emphasis added).

As explained in the section above, the composition of powers of MDX's governing board has been provided by general law since the inception of MDX in 1994. The 2019 Amendment is a continuation of statutory amendments to Florida Expressway Authority Act that have occurred at various times during the more than two decades since MDX was created. Because the 2019 Amendment is an act of general law, pursuant to Article VIII, Section 6(e), it supersedes any conflicting Miami-Dade County ordinance.

2. The 2019 Amendment impacts counties other than Miami-Dade County.

The 2019 Amendment grants specific rights to all counties in Florida to enter into agreements with GMX to construct and operate an expressway system in that county. *See* §348.0312, Fla. Stat. ("Express authority and power is given and granted to any county . . . to enter into contracts, leases, conveyance, or other agreements within the provisions and purposes of this act with the agency."). The 2019 Amendment also makes additional references to GMX's authority to operate in more than one county. *See, e.g.*, § 348.0306(4), Fla. Stat. (providing that "[t]he use or pledge of all or any portion of county gasoline tax funds may not be made without the prior express written consent of the board of county commissioners of *each county located within the geographic boundaries of the agency*" (emphasis added)); § 348.0306(2)(h), Fla. Stat. (granting GMX the power "to borrow money and accept grants from, and to enter into contracts, leases, or other transactions

with, any federal agency, the state, any agency of the state, *any county*, or any other public body of the state" (emphasis added)). Because the 2019 Amendment impacts Miami-Dade County and at least one other county, it does not violate Miami-Dade's home rule charter.

While MDX only operated within Miami-Dade County prior to the 2019 Amendment, the Florida Expressway Authority Act included similar provisions as those listed above, which provided MDX the authority to operate in another county. Contrary to MDX's allegation, there is no defined geographical limitation imposed by statute or ordinance on MDX and GMX to only operate within Miami-Dade County.

3. The repeal of Part I of the Florida Expressway Authority Act affected all counties.

The 2019 Amendment affects all Florida counties by repealing the power of any county to form a Part I, Chapter 348 expressway authority under the Florida Expressway Authority Act. *See* Ch. 2019-169, Laws of Fla at § 13. Prior to the 2019 Amendment, any county in Florida could adopt an ordinance to form an expressway authority under the Florida Expressway Authority Act. The 2019 Amendment does not violate Miami-Dade's home rule charter because it is a general law that relates to Miami-Dade County and at least one other county, and, in fact, relates to all counties. *See* Art. VIII, §11(5),(9), Fla. Const. of 1885.

4. **The authority of GMX extends beyond Miami-Dade County**.

The 2019 Amendment is also proper under the Miami-Dade home rule charter provisions of the 1885 Florida Constitution. Section 11(7) of Article VIII of the 1885 Constitution provides that the legislature can modify the powers of an agency of the state as long as the powers of that agency of the state are the same in all counties. The 2019 Amendment empowers GMX, like MDX before it, to enter into an agreement with any county to construct and operate an expressway system in that county.

Whether a law impacting an agency of the state's operations in only Miami Dade County violated Miami-Dade home rule charter was reviewed by the Florida Supreme Court in *S & J Transp., Inc. v. Gordon*, 176 So. 2d 69, 72 (Fla. 1965). The statute at issue in *S & J Transp.* affected the powers of the Florida Railroad and Public Utilities Commission in Dade County regarding the Dade County Port Authority's ability to contract with taxi companies to provide transportation to and from the Miami International Airport. The statute modified the Commission's powers in only Dade County by requiring the Commission to automatically issue a certificate of public convenience and necessity to the carriers given such a contract by Dade County.

The Supreme Court held that the statute was unconstitutional because the Commission's powers in Dade County were not the same in all Florida counties.

The Supreme Court construed the 1885 Constitution as prohibiting the legislature from passing laws affecting an agency of the state's powers in only Dade County. *Id.* ("Construed with the other pertinent subsections [of Section 11, Article VIII, 1885 Constitution of the State of Florida,] this quoted provision must reasonably be held to mean that such agencies may exercise in Dade only those powers which are exercised in at least one other county"). Justice Ervin concurred specially to emphasize that the outcome in S&J Transportation may have been different if a state road had been involved:

> For example, I do not believe such provision precludes the Legislature from enacting general laws relating to a state road in Dade County, state projects therein such as Interama, the state judiciary located in Dade County, state institution buildings therein, state lands and waters therein, state agency operations therein, and similar state subjects having impact in Dade County.

S & J Transp., Inc., 176 So. 2d at 73.

Unlike the statute at issue in *S & J Transp., Inc.*, the 2019 Amendment does address roads that are part of the State Highway System, and empowers GMX to construct and operate an expressway system in any county by agreement with that county. Thus, the 2019 Amendment does not implicate Miami-Dade County's home rule charter because GMX has the same powers in all Florida counties. As Justice Ervin noted, a contrary ruling would lead to the absurd conclusion that the Legislature lacks the constitutional authority to provide for repairs and maintenance on any specific state roads located exclusively within Miami-Dade

County, or, for that matter, to the Third District Court of Appeal's courthouse located exclusively within Miami-Dade County.

CONCLUSION

The Partial Final Judgment should be reversed and remanded with directions to dismiss the Complaint against the Department with prejudice or, in the alternative, with directions to vacate the order granting Plaintiff's Motion for Summary Judgment on Count I and to enter judgment for the Florida Department of Transportation.

Respectfully submitted,

/s/ Daniel Nordby

CLARK N. GATES (FBN 118211)
Assistant General Counsel
clark.gates@dot.state.fl.us
WILLIAM E. FOSTER (FBN 95573)
Assistant General Counsel
william.foster@dot.state.fl.us
DEPARTMENT OF TRANSPORTATION
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458
850-414-5265

DANIEL E. NORDBY (FBN 14588)
DNordby@shutts.com
JASON GONZALEZ (FBN 146854)
JasonGonzalez@shutts.com
Secondary: MPoppell@shutts.com
SHUTTS & BOWEN LLP
215 South Monroe Street, Suite 804
Tallahassee, FL 32301
850-241-1717

CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that this filing was prepared in Times New Roman, 14-point font, and that a true and correct copy has been filed with the ePortal website and served on July 27, 2020, to the following counsel of record:

Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, FL 33130
Glenn T. Burhans Jr
gburhans@stearnsweaver.com
cabbuhl@stearnsweaver.com
ptassinari@stearnsweaver.com
Bridget K. Smitha
bsmitha@stearnsweaver.com
Eugene E. Stearns
estearns@stearnsweaver.com
jaybar@stearnsweaver.com
Melanie Rose Leitman
mleitman@stearnsweaver.com
mharrell@stearnsweaver.com
Kelly Ann O'Keefe
kokeefe@stearnsweaver.com

Deleon and Deleon, P.A.,
44 West Flagler Street Courthouse
Tower- Suite 2250
Miami, FL 33130
Kirk D Deleon
kdd@deleondeleon.com
jl@deleondeleon.com
sns@deleondeleon.com

Counsel for Miami-Dade County Expressway Authority

Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, FL 3230
Mohammad O. Jazil
mjazil@hgslaw.com
mandyf@hgslaw.com
Brooke E Lewis
blewis@hgslaw.com
JenniferM@hgslaw.com

Counsel for Florida House of Representatives

Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2810
Miami, FL 33128
Oren Rosenthal
orosent@miamidade.gov
dmh@miamidade.gov

Counsel for Miami-Dade County

/s/ Daniel E. Nordby
ATTORNEY