IN THE DISTRICT COURT OF APPEAL
FOR THE THIRD DISTRICT, STATE OF FLORIDA

GREATER MIAMI EXPRESSWAY AGENCY, ET AL.,

Appellants,

Case No. 3D22-1316
L.T. Case No. 21-24025

v.

MIAMI-DADE EXPRESSWAY AUTHORITY, ET AL.,

Appellees.
_____/

GOVERNOR RON DESANTIS, THE FLORIDA SENATE, AND THE FLORIDA HOUSE OF REPRESENTATIVES' MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE IN SUPPORT OF APPELLANTS

Pursuant to Florida Rule of Appellate Procedure 9.370, Governor Ron DeSantis, The Florida Senate, and The Florida House of Representatives move for leave to appear as amici curiae in support of the Appellants. As grounds for this motion, Governor DeSantis, the Florida Senate, and the Florida House of Representatives (collectively, "the amici") state:

Interests of Amici & How Amici Can Assist the Court

Governor Ron DeSantis (the "Governor") is the elected head of Florida's executive branch. As the supreme executive officer of the State, he is charged with the duty to "take care that the laws be

faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government." Art. IV, § 1(a), Fla. Const.

Florida's Constitution vests the power to create the laws in the Legislature. Art. III, § 1, Fla. Const. This lawmaking power is exclusive to the Legislature, which is comprised of the Senate and the House of Representatives. Art. II, § 3, Fla. Const.

The Legislature's interest in guarding its exclusive lawmaking authority against unlawful intrusion is implicated when a county invokes home-rule authority and purports to overrule a duly enacted statute and to resurrect a duly repealed statute, as Miami-Dade County ("the County") has done here. And the Governor has a constitutional interest in administering the laws generally, as well as an interest in the specific legislation that the County purported to nullify. For example, that legislation authorizes the Governor to appoint some of the voting members of the Greater Miami Expressway Agency, which the County purported to abolish. As explained in the proposed amicus brief, Miami-Dade Expressway Authority's ("MDX") claims depend on the constitutional validity of the County's actions.

Accordingly, the amici seek leave to file the attached proposed amicus brief to address the interplay between the legislative power and county home-rule authority as well as the proper application of the public official standing doctrine. This will assist the Court in the disposition of this appeal by enabling this Court to decide the appeal with the benefit of their perspective, and by highlighting the ramifications of the trial court's erroneous judgment.

Issues the Amici Will Address

The amici will address two issues in their brief: (1) the purpose and proper application of the public official standing doctrine and its importance in preserving the separation of powers between the respective branches of government; and (2) limitations on the scope of the home-rule authority that the County invoked in purporting to nullify the repeal and enactment of general statutory law.

WHEREFORE, Governor DeSantis, The Florida Senate, and The Florida House of Representatives respectfully request that the Court grant this motion, allow Governor DeSantis, The Florida Senate, and The Florida House of Representatives to appear as amici curiae, and deem the attached proposed brief to be filed on the date that leave is

granted (or alternatively, allow the proposed amici to re-file their brief within two days after leave is granted).

Respectfully submitted,

Attorneys for Amicus Curiae

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CERTIFICATE OF CONSULTATION.

The undersigned has contacted counsel for all of the parties and is authorized to represent that the Appellant and one of the Appellees (Miami-Dade County) have no objection to this motion. Counsel for Miami-Dade Expressway Authority has indicated that it opposes the filing of the amicus brief.

/s/ Meredith L. Pardo

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of December, 2022, a true and correct copy of the foregoing was furnished by e-mail to all parties listed below.

/s/ Meredith L. Pardo

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IN THE DISTRICT COURT OF APPEAL
FOR THE THIRD DISTRICT, STATE OF FLORIDA

GREATER MIAMI EXPRESSWAY AGENCY, ET AL.,

Appellants,

v.

MIAMI-DADE COUNTY EXPRESSWAY AUTHORITY, ET AL.,

Appellees.

AMICUS CURIAE BRIEF OF GOVERNOR RON DESANTIS, THE FLORIDA SENATE, and THE FLORIDA HOUSE OF REPRESENTATIVES IN SUPPORT OF APPELLANTS

On Appeal from a Final Judgment of the Circuit Court
of the Eleventh Judicial Circuit, Miami-Dade County
Case No. 21-24025

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STATEMENT OF IDENTITY AND INTERESTS OF AMICI CURIAE

Governor Ron DeSantis (the "Governor") is the elected head of Florida's executive branch. As the supreme executive power in the state, he "shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government." Art. IV, § 1(a), Fla. Const.

The Governor submits this amicus curiae brief in support of Appellant Greater Miami Expressway Agency ("GMX") to address why this Court should reverse the Eleventh Judicial Circuit's final judgment, which found that Miami-Dade County Ordinance 21-35 (the "Ordinance") is valid, that the Transfer Agreement between the Florida Department of Transportation and the Miami-Dade County Expressway Authority ("MDX") conveyed to MDX permanent interests in the real and personal property interests of the expressway system, and that GMX's assertion of its existence and any actions taken under color of law have created a cloud on title and ownership of the assets.

The Governor is directly affected by a county's assertion of home-rule authority in a manner that inhibits the administration of

duly enacted legislation. Thus, the Governor can offer a unique perspective on how judicial decisions inconsistent with the requirements of the Florida Constitution violate the separation of powers doctrine and inhibit the Governor's ability to faithfully execute the laws of the state.

Florida's Constitution vests the legislative power—the power to create the laws of this State—in the Legislature of the State of Florida, which is comprised of two legislative bodies: the Senate and the House of Representatives. Art. III, § 1, Fla. Const. This lawmaking power is exclusive to the Legislature. Art. II, § 3, Fla. Const. The Legislature's interest in guarding its exclusive lawmaking authority against unlawful intrusion is implicated when a county purports to exercise its home-rule authority to override a duly enacted statute and to resurrect a duly repealed statute, as Miami-Dade County ("the County") did in this case.

Accordingly, the Legislature submits this amicus brief in support of GMX to address the interplay between the legislative power and county home-rule authority (and the constraints on the latter), as well as the public official standing doctrine. This will assist the Court in the disposition of this appeal by enabling this Court to

decide the appeal with the benefit of the Legislature's perspective, and by highlighting the potential ramifications of the trial court's erroneous judgment.[1]

SUMMARY OF THE ARGUMENT

The judgment on appeal marks a significant departure from the public official standing doctrine. MDX's claims are premised entirely on the constitutional validity of Chapter 2019-169, Laws of Florida (the "Legislation"), and the judgment necessarily is premised on the circuit court's erroneous conclusion that the Legislation is an unconstitutional infringement of the County's home-rule authority. As the government entity whose duties are affected by the Legislation, MDX lacks standing to assert these claims. The circuit court's decision to exercise jurisdiction anyway was legal error and also erodes the separation of powers on which the public official standing doctrine is premised.

[1] As amici whose primary role is to assist this Court in the disposition of this appeal, the amici do not address every issue that the parties have raised or will raise. Nonetheless, the amici support GMX in all of the arguments in its opening brief, and the selection of specific issues for briefing herein should not be construed to suggest otherwise.

Moreover, by affirming the validity of the Ordinance in toto, the circuit court apparently concluded that the County can go as far as to resurrect a repealed general law. The implications are staggering, and the text of the County's constitutional home-rule authority demonstrates that the County lacks the authority to "nullify" the Legislation at all—let alone to effectively re-enact a general law that the Legislature has repealed.

ARGUMENT

I. RECOGNIZING MDX AS A PROPER PLAINTIFF VIOLATES THE PUBLIC OFFICIAL STANDING DOCTRINE AND THEREBY ERODES THE CONSTITUTIONAL SEPARATION OF POWERS.

It is well settled that public officials may not oppose the laws they are charged with carrying out. *See, e.g.*, *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 458 (Fla. 1982) ("State 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.") (emphasis added); *Sch. Bd. of Collier Cnty. v. Fla. Dep't of Educ.*, 279 So. 3d 281, 289 (Fla. 1st DCA 2019) ("The 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.") The Florida Supreme Court has recognized this doctrine for at least 100 years. *See State ex rel. Atl. Coast Line Ry. Co. v. State Bd. of Equalizers*, 94 So. 681, 685 (Fla. 1922). And the First District Court of Appeal recently reaffirmed and applied the doctrine *in this very dispute*. *See Dep't of Transp. v. Miami-Dade Cnty. Expressway Auth.*, 316 So. 3d 388, 391-92 (Fla. 1st DCA 2021).

In that earlier iteration of this case, the First District Court of Appeal held that "the Miami-Dade Expressway Authority lacks standing under the public official standing doctrine because it is a state agency attacking the constitutionality of the 2019 Amendment." *Id.* at 391. Apparently dissatisfied with that outcome, MDX took a second bite at the apple by instituting this litigation. Although it conspicuously avoided requesting an explicit declaration of unconstitutionality this time around, MDX's purported "quiet title" action and related claim for declaratory judgment rest entirely on the thinly veiled premise that the Legislation is unconstitutional and

therefore invalid.[2] But the doctrine's application is not so easily circumvented.

As the Florida Supreme Court has recognized, the doctrine is not limited to a plaintiff's cause of action. Thus, a public official or entity lacks standing even to raise an affirmative defense that challenges the constitutionality of a statute. *Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 794 (Fla. 2008). Put differently, a public official or entity cannot attack the constitutionality of a statute indirectly, as MDX attempts to do here.

At bottom, this is a constitutional litigation regardless of how MDX curated its causes of action after being turned away by the First District Court of Appeal. The circuit court could have quieted title in MDX's favor only after concluding (as it did) that the Legislation was

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[2] *See, e.g.*, Complaint at ¶¶ 24-27 (citing the County's home-rule authority and alleging that "[t]he Legislature is prohibited from enacting bills that apply solely to Miami-Dade County and to the extent that it does, the County can take action to declare the constitutionally-infirm bill to be unconstitutional and invalid"); *id.* at ¶¶ 73, 82 (alleging that "GMX and the State of Florida" "purport[ed] to act under color of law" and that the County's constitutional home-rule authority allowed the county to nullify the Legislation); *id.* at ¶¶ 73, 95 (alleging that GMX's claimed interest in the property "is without any basis because the State of Florida did not have the right to take or transfer MDX's property" in light of the County's home-rule authority).

an unconstitutional encroachment on the County's home-rule authority. The public official standing doctrine therefore precludes MDX's claims. The doctrine is rooted in the separation of powers, one of the most fundamental principles in the Florida Constitution. *See Atlantic Coast Line Railway*, 94 So. at 683; *Sch. Dist. of Escambia Cnty. v. Santa Rosa Dunes Owners Ass'n, Inc.*, 274 So. 3d 492, 494 (Fla. 1st DCA 2019) (recognizing that "[t]he [public official standing] doctrine" is "grounded in the separation of powers," and that a public official's disagreement with a statutory duty "does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion") (citations and internal quotations omitted). It follows that curtailment of the public official standing doctrine is a curtailment of the separation of powers itself.

If this Court were to affirm the judgment on appeal, it would necessarily have to conclude that the public official standing doctrine does not bar MDX's claims. If a government entity such as MDX can challenge the constitutionality of legislation that affects its own duties or jurisdiction (or even its existence), that would not only mark a sea change in the law of public official standing but also would invite the sort of "chaos and confusion" that the Florida Supreme

Court warned of long ago. *See Barr v. Watts*, 70 So. 2d 347, 351 (Fla. 1953) (en banc) (applying the doctrine to prohibit the State Board of Law Examiners from asserting as a defense that a statute was an unconstitutional special law). As the Court so aptly recognized then, "The state's business cannot come to a stand-still while the validity of any particular statute is contested by the very board or agency charged with the responsibility of administering it and to whom the people must look for such administration." *Id.*

II. THE COUNTY'S HOME-RULE AUTHORITY DOES NOT AUTHORIZE IT TO NULLIFY THE REPEAL OF A GENERAL LAW.

Perhaps the most startling example of the County's overreach lies in its purported resurrection of a repealed general law. Specifically, the County purported to "supersede[] and nullif[y]" Section 13 of the Legislation. *See* Ordinance, § 3. Section 13 of the Legislation simply repealed Part I of Chapter 348, Florida Statutes. Part I of Chapter 348, in turn, was titled (until its repeal) the "Florida Expressway Authority Act." *See* § 348.0001, Fla. Stat. (2018) (hereafter, "the FEAA"). The County itself concedes that the FEAA was a general law of general application. *See* Ordinance at 2 ("WHEREAS, the Florida Expressway Authority Act is a general law

which allowed some Florida home rule *counties* to form agencies of the state . . . .") (emphasis added).

Stated simply, the County's purported nullification of Section 13 of the Legislation would constitute the nullification of a legislative *repeal* of a general law. Presumably, MDX and the County believe that the County can thereby resurrect or effectively re-enact a general law that the Legislature has repealed. At the risk of belaboring the obvious, this is problematic for multiple reasons.

First, nothing in the text of the Florida Constitution's home-rule provisions authorizes the County to nullify the *repeal* of any statute (let alone of a general law). The Florida Constitution provides, in pertinent part, that the County "may . . . abolish . . . governmental units" under certain circumstances, but that plainly is not tantamount to an authorization to nullify a legislative repeal of a general law. Art. VIII, § 11(1)(c), Fla. Const. (1885); *see also* Art. VIII, § 6(e), Fla. Const. (1968) (incorporating Article VIII, Section 11 of the 1885 Constitution).

Indeed, the only reference to "nullification" in the constitutional home-rule provisions pertains to *municipal* charters rather than the County's home-rule charter. Specifically, the pertinent

constitutional provision distinguishes between the County's "home rule charter" and "the charter of any municipality in Dade County" and then refers to nullification only in relation to "*such* charter"—i.e., the latter type of charter. *See* Art. VIII, § 11(5), Fla. Const. (1885) (emphasis added).[3]

In addition to the absence of textual support for the County's purported "nullification" authority, the Ordinance betrays the County's (and MDX's) untenable conclusion that the legislative *repeal* of an admittedly *general law* somehow constitutes a *special law* that the County can nullify. The amici are aware of no authority for that proposition. Instead, if the FEAA is a general law—as the County concedes—then its legislative repeal also must be a general law.

Notwithstanding that nothing in the Florida Constitution authorizes the County to "nullify" the repeal of such a law (or any legislation, for that matter), the Circuit Court concluded in its

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[3] The Ordinance suggests that even the County believes its purported nullification authority stems from its own charter rather than the Constitution. *See* Ordinance at 2 (quoting nullification language in County charter). But the County's charter plainly cannot confer authority that the Constitution itself does not confer. *See* Art. VIII, § 6(e), Fla. Const. (1968) (amendments to the County's charter are valid "*provided that*" they "are authorized under said Article VIII, Section 11, of the Constitution of 1885") (emphasis added).

judgment that the Ordinance "was a valid exercise of Miami-Dade County's Home Rule Authority." Final Judgment at 2. This conclusion is erroneous: No county—not even Miami-Dade County—has authority to nullify a legislative repeal of a statute (let alone of a general law of general application). To be sure, the purported home-rule authority to resurrect a *repealed* general law is a far cry from home-rule authority to issue an ordinance that merely *conflicts* with (i.e., carves out a local exemption from) an *existing* general law.

Moreover, if a home-rule county can resurrect a repealed statute under the guise of its home-rule authority, then it can usurp the Legislature's and the Governor's exclusive constitutional roles in statutory lawmaking. Those familiar roles are established in the Florida Constitution—the Legislature originates and passes bills and then presents the bills to the Governor for approval. Art III, §§ 7–8, Fla. Const. Counties play no role in this process. Unsurprisingly, then, nothing in the text of the Florida Constitution authorizes the County to effectively re-enact a repealed statute. Indeed, if it could do so, it is hard to see why it could not also resurrect some other statute that was repealed 20 years ago upon declaring that the repealed statute was "[c]onsistent with the common interest of the

people of Miami-Dade County." *See* Ordinance, § 2.

Ultimately, MDX was formed as "an agency of the state pursuant to the [FEAA]," and the County acknowledged that MDX would have only "the powers provided in the [FEAA]."[4] Miami-Dade County Ordinance 94-215, §§ 1, 5 (Dec. 13, 1995), codified as Art. XVIII, §§ 2-128, 2-132, Code of Ordinances of Miami-Dade County, Florida. Thus, the ordinance through which MDX was created recognized that MDX was subject to the FEAA. The County created a *state* entity that was expressly subject to a general law of the state, and that had no powers independent of that general law of the state.

Neither the text of the Constitution nor the ensuing judicial construction of that text constrains the Legislature's authority to repeal that general law. Any ramifications for MDX are attributable to the County's election to create a state agency that was governed by a general law of the state—the repeal of which is not subject to a local veto. The FEAA—a general law that was the sole source of MDX's "powers"—is now repealed.

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[4] With the repeal of the FEAA, MDX apparently believes it can carry on its operations as a rogue arm of the County notwithstanding its creation as an entity of the state whose powers derived from the state's now-repealed general law.

CONCLUSION

For the reasons explained herein and in Appellants' opening brief, the Governor and the Legislature urge this Court to reverse the judgment on appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed with the ePortal website and served on December 29, 2022, to all counsel of record.

/s/ Meredith L. Pardo
ATTORNEY

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.210(a)(2) because it was prepared using Bookman Old Style 14-point font and it complies with the word count requirements.

/s/ Meredith L. Pardo
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