FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

301 South Bronough Street, Suite 300 (32301) ● P.O. Box 1757
Tallahassee, Florida 32302-1757 ● (850) 222-9684

July - September 2008

Editor's Note: The following case law summaries were reported from July 1, 2008, through September 30, 2008.

Section 1. Recent Decisions of the Florida Supreme Court

Taxation – Special Districts – Property Appraiser Acting in His or Her Official Capacity Does Not Have Standing to Raise the Constitutionality of a Statute as a Defense in an Action Filed by a Taxpayer

The Crossings at Fleming Island is a community development district (District) in Clay County, Fla. The District is a residential community that owns and operates several public recreational facilities, including a golf course, a swim and tennis center, a second swim center and four playgrounds. Beginning in December 2000, the District filed three complaints in the Fourth Judicial Circuit Court in and for Clay County for declaratory and injunctive relief against Wayne Weeks, the Clay County property appraiser; Jimmy Weeks, the Clay County tax collector and Jim Zingale, the executive director of the Florida Department of Revenue (DOR). The District asserted that pursuant to section 189.403(1), Florida Statutes, a community development district is to be treated as a municipality for ad valorem tax purposes, and thus the appraiser wrongfully denied exemptions for the above mentioned properties. The appraiser raised the affirmative defense that section 189.403(1) was unconstitutional and argued that the properties were not entitled to exempt status. The District filed motions to strike the affirmative defense in each case, arguing that the appraiser lacked standing to challenge the constitutionality of a statute. The trial court granted the motion to strike and found that the appraiser lacked standing to challenge the constitutionality of a statute. The appraiser appealed to the First District, which reversed the trial court's ruling that the appraiser lacked standing and stated that the appraiser could defensively raise the constitutionality of a statute in a lawsuit filed by a taxpayer. The District then filed a motion to certify conflict with the Second District's decision in *Sun 'N Lake*, where the Second District held that a property appraiser did not have standing to challenge the constitutionality of section 189.403(1) in a tax suit filed by an independent special district. The Supreme Court found that although property appraisers have a superior perspective regarding taxing statutes and are uniquely situated to protect taxpayers from unconstitutional exemptions, the policy interest against selective enforcement of the law is more compelling. The Supreme Court stated that although their review revealed that the Legislature acted to empower property appraisers throughout the 1970s and 1980s to seek judicial review of tax assessments and DOR regulations and directives, the Legislature did not alter the common law principle that property appraisers, as public officials, lack standing to challenge the constitutionality of a statute. Therefore, property appraisers lack standing to raise the constitutionality of section 189.403(1) as a defense. *The Crossings at Fleming Island Community Development District vs. Lisa Reinhardt Echeverri*, 33 Fla. L. Weekly S445 (Fla. July 3, 2008).

Elections – Constitutional Amendment – Taxation and Budget Reform Commission's Proposed Amendment Eliminating State-Required School Property Tax and Replacing with Equivalent State Revenues to Fund Education – Trial Court Correctly Determined Ballot Title and Summary for Proposed Amendment Were Misleading and, Therefore, Fatally Defective

The Florida Department of State appealed the decision of the circuit court to remove Amendment 5 from the November 2008 ballot after it was challenged by Beverly Slough. Slough contended that the ballot title and summary were misleading. The trial court held that the ballot title and summary implied that the revenues eliminated by the proposed amendment would be replaced annually by the Legislature. The court found that the amendment only provided mandatory replacement revenue for the 2010-2011 fiscal year. The Supreme Court affirmed that the ballot title and summary were misleading because they did not clearly point out that the replacement revenue provision was only temporary. The trial court also held that the ballot title and summary were misleading because they implied that only school property taxes would be affected by the proposed amendment. However, this amendment would have reduced the amount of all levies other than school district levies from 10 to 5 percent. The court affirmed

that the proposed amendment summary was misleading because it impacted more than just school property taxes. *Florida Department of State v. Slough*, 33 Fla. L. Weekly S641 (Fla. September 15, 2008).

Bond Validation – Tax Increment Financing Bonds – Circuit Court Properly Validated Proposed Bond Issue for Tax Increment Financed Bonds to Fund Trust Fund, Which Will Be Used to Finance Infrastructure Improvements in the County's Improvement District

Dr. Gregory Strand filed a challenge to Escambia County's authority to issue tax increment financing bonds without a referendum. The circuit court found that the county had authority to issue the bonds without referendum because there was no pledge of the county's full faith and credit or taxing power. Strand argued that the bonds should not be validated on the basis that the county did not comply with the requirements of Chapter 163 nor did the bond issue comply with the referendum requirements of the Florida Constitution. The county asserted that it did not rely on Chapter 163 for authority but instead relied upon authority in Chapter 125. The Supreme Court agreed with the county. The court stated that the issue was controlled by *Penn*, a case in which the court approved a similar bond issue. Strand asked the court to recede from its prior position in *Miami Beach* that there is no need for a referendum on a bond issuance if the local government does not pledge its full faith and credit or its taxing power. The court refused. The court found that there was no evidence that *Miami Beach* had become unworkable, that receding from *Miami Beach* would cause serious disruption to governmental entities that have relied on the precedent, and there have been no changes since *Miami Beach* that would have affected that position. *Strand v. Escambia County*, 33 Fla. L. Weekly S680 (Fla. September 18, 2008).

Bond Validation – Tax Increment Financed Bonds Proposed for Issuance by City Pursuant to Community Redevelopment Act – Circuit Court Erred in Concluding that City Could Not Issue the Proposed Bonds Because It Did Not Levy Ad Valorem Taxes

The City of Parker appealed a decision by the circuit court to invalidate tax increment financed bonds. Bay County filed a claim seeking to invalidate Parker's finding of blight, finding of conformity, and challenging the constitutionality of tax increment financing. The circuit court consolidated the bond validation proceeding and Bay County's challenges. The circuit court found no merit in Bay County's claims. Bay County cross-appealed the findings of the circuit court. The circuit court concluded that Parker could not issue tax increment financed bonds because Parker does not levy ad valorem taxes. In a bond validation proceeding, a circuit court must make three findings: 1) whether the public body has the authority to issue the bonds; 2) whether the purpose of the obligation is legal; 3) whether the authorization of the obligation complies with the requirements of law. The circuit court relied on section 163.387, Florida Statutes, which calls for millage parity between taxing authorities and the governing body that set up the trust fund. However, the parties agreed that Parker acted before the statute would have precluded such financing and did not apply to this case. Further, the Supreme Court found that section 163.358 is clear and unambiguous and does not require a municipality to levy ad valorem taxes in order to take advantage of tax increment financing. The Supreme Court affirmed the circuit court's finding that Bay County's challenge to Parker's finding of blight and conformity to the comprehensive plan was without merit. The Supreme Court found that Parker met statutory criteria and relied on competent evidence. The Supreme Court also found that Parker's bond issue conformed to the tax increment financing mechanism approved in *Miami Beach*. *Parker v. State*, 33 Fla. L. Weekly S 671 (Fla. September, 18 2008).

Elections – Initiative Petition – Constitutional Amendment – Financial Impact Statement – Proposed Amendment to Require Local Governments to Submit a New Comprehensive Land Use Plan, to Vote by Referendum Prior to Adoption

The attorney general requested an opinion of the court as to whether a revised financial impact statement complies with the requirements of section 100.371, Florida Statutes. The group, Hometown Democracy, submitted a ballot initiative to the court that would have required local governments to submit new comprehensive plan amendments to a referendum. Section 100.371 requires that the Financial Impact Estimating Conference produce a fiscal impact statement to be placed on the ballot for the purpose of informing voters. The fiscal impact statement must be clear and unambiguous, consist of no more than 75 words, and be limited to addressing the estimated increase or decrease in any revenue or costs to state or local governments. The Supreme Court held that the revised fiscal impact statement would mislead voters into believing that implementation of the amendment would have required the expenditure of millions of dollars. *Advisory Opinion to the Attorney General Re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans*, 33 Fla. L. Weekly S692(Fla. September 25, 2008).

Section 2. Recent Decisions of the Florida District Courts of Appeal

Government-in-the-Sunshine-Trial Court Properly Found that Plaintiff Who Prevailed in Action for Wrongful Termination Under Sunshine Act Was Not Entitled to Monetary Damages in Form of Back Pay

Lee Ellen Dascott appealed a final summary judgment in which the trial court found that a party who prevails in an action for wrongful termination under section 286.011, Florida Statutes (2002, The "Sunshine Act"), is not entitled to monetary damages in the form of back pay. In a previous decision, the district court determined Ms. Dascott's termination violated sections 286.011(2) and (4) of the Sunshine Act. The district court reversed the summary judgment entered by trial court and remanded the case back to trial court to conduct further proceedings including the determination of remedies available to Ms. Dascott. The county argued the Sunshine Act did not specifically provide for any monetary remedies beyond attorney's fees for the prevailing party in an action to enforce the provisions of the Sunshine Act. The trial court agreed with the county and ruled that Ms. Dascott was not entitled to an award of monetary damages even though she prevailed in her action to enforce the Sunshine Act. On appeal, Ms. Dascott asserted that she was entitled to equitable relief in the form of back pay. The district court ruled that the Sunshine Act does not expressly mention or imply by its terms that monetary damages are available as a remedy. The only remedies available pursuant to the Sunshine Act are a declaration of the wrongful action as void and reasonable attorney's fees. *Lee Ellen Dascott v. Palm Beach County, Florida*, 33 Fla. Weekly D1723 (July 9, 2008).

Defamation – Sovereign Immunity – Sheriff's Act of Issuing a Press Release on Sheriff's Web Site that Labeled Plaintiff and Others as "Deadbeat Parents" for Failing to Pay Court-Ordered Child Support Was within the Scope of the Duties of the Office of the Sheriff and Sheriff Was Immune from Lawsuit

Robert Barbati sued the sheriff of Martin County for defamation for a press release issued on the sheriff's Internet Web site that labeled Barbati and others as "deadbeat parents" for failing to pay court-ordered child support. The press release described the sheriff's annual "Grinch Roundup" which involved the sheriff's efforts to bring parents up-to-date on child support obligations. The press release also indicated a grace period for parents to pay back their child support before deputies began to execute the warrants. The sheriff moved to dismiss the complaint, alleging immunity from the suit. The circuit court denied the motion leading to the district court review. The district court held that the rule in Florida is that words spoken or written by public servants in judicial, legislative and executive activities are protected by absolute privilege from liability for defamation. The purpose of the release was to induce delinquent parents to pay their child support, a proper governmental function. Therefore, the district court quashed the ordered denying the motion to dismiss and the case was remanded back to the circuit court for proceedings consistent with their finding. *Robert Crowder v. Robert Barbati*, 33 Fla. L. Weekly D1787 (Fla. 4th DCA July 16, 2008).

Municipal Corporations – Dangerous Dogs – The Circuit Court Departed from Essential Requirements of Law When It Concluded that Section 767.13 Required that Dog Owner Be Criminally Prosecuted and Found Guilty as Condition Precedent to Dangerous Dog's Confiscation and Destruction

Elaine Green is the owner of Max, a male boxer, that had previously been declared a dangerous dog in a separate administrative hearing before the Marion County Code Enforcement Board in 2005. In November 2006, Max attacked another dog without provocation. As a result, the City of Ocala informed Ms. Green that its animal control officer had seized Max and that he would be humanely destroyed after 10 business days unless a hearing was requested. After a hearing, the board upheld the destruction order. Ms. Green sought relief in circuit court and the circuit court concluded that the proceeding against Ms. Green and Max was procedurally flawed because Ms. Green was not prosecuted and convicted criminally for violating Florida's dog bite law, section 767.13, Florida Statutes. The city sought review of the circuit court's order. The district court concluded that the statute contained no requirement that the owner must first be guilty of violating the misdemeanor dangerous dog statute before the dog is subject to being confiscated and euthanized. The language of the statute was clear and unambiguous and must be given its plain and obvious meaning. *City of Ocala v. Elaine Green*, 33 Fla. L. Weekly D1849 (Fla. 5th DCA July 25, 2008).

Public Employees – Retirement – Forfeiture of Benefits – Criminal Conviction – Public Officer or Employee May Have Pension Benefits Forfeited if Acts Underlying Federal Crime of Which He Was Convicted or Admitted to During Guilty Plea Would Support Florida Conviction for Chapter 838 Felony or Other Felony Described in Section 112.3173

Thomas Simcox appealed a decision by the Board of Trustees of the City of Hollywood Police Officers' Retirement System forfeiting his retirement benefits. His retirement benefits were forfeited because of his guilty plea to a federal charge of conspiracy to possess with intent to distribute a controlled substance. Simcox challenged the board's finding that he committed a "specified offence" forfeiting his retirement benefits under section 112.3173(2)(e)(4). The board's findings were based on the fact that the acts underlying his federal conviction would have supported a Florida conviction under Chapter 838. Simcox argues that his actions in the furtherance of drug trafficking were unrelated to his position as a police officer, that he did not use his "powers, rights privileges, duties or position" as a police officer when participating in a scheme, and that his role in the scheme was merely that of an unlawful citizen. The court affirmed the board's finding that Simcox

obtained his monetary advantage through the use or attempted use of his privileges, expertise and duties, which were all a part of his position as a police officer. Simcox also contended that even if the board properly found that he used his "powers, rights, privileges, duties or position" as a police officer, section 112.3173 is inapplicable because he participated in the Deferred Retirement Option Plan ("DROP") and was therefore "retired" prior to committing the criminal offence. The court found that "retirement" for the purposes of DROP is different and separate from "retirement" as used in section 112.3173. Under those facts Simcox was not retired when he committed the felony and he forfeited his pension. *Simcox v. The City of Hollywood Police Officer's Retirement System*, 33 Fla. L. Weekly D2057 (Fla. 4th DCA August 27, 2008).

Eminent Domain – Inverse Condemnation – Temporary Taking – Action against County by Plaintiffs Who Were Denied Permits to Build Homes on Their Vacation Lots because the Level of Service on U.S. Highway 1 Remained Below the Minimum Required by County Land Development Regulations

The plaintiffs are property owners in Monroe County and appeal a summary judgment in favor of the defendant, Monroe County. The plaintiffs claimed that they were entitled to compensation for the temporary taking of their properties because their building permits were denied for a number of years. In 1996, the plaintiffs received all necessary building approvals and allocations from Monroe County. However, the county refused to issue building permits because the level of service on U.S. 1 did not meet the necessary criteria. The level of service in the area for U.S. 1 was established by county land development regulations as "C" and the road was operating at level "D" or worse. The level of service on the road remained below "C" for many years. In 2002, the county planning director and county commission referred the plaintiff's properties, along with other properties, to a special magistrate for a beneficial use determination under Monroe County Code. Under the beneficial use ordinance, "an applicant for beneficial use must demonstrate that the comprehensive plan… in effect at the time of the beneficial use application deprive the applicant of all reasonable economic use of the property." The magistrate found that the plaintiffs qualified under the beneficial use ordinance and recommended that permits be issued to the plaintiffs. In June 2002, the County Commission approved the recommendations of the magistrate. After the issuance of the permits the plaintiffs filed their action on the theory that the six-year delay in the issuance of the permit constituted a temporary taking. The court rejected their claim because the plaintiffs had an available remedy under the beneficial use ordinance but they failed to apply for relief. *Bauknight, et.al. v. Monroe County*, 33 Fla. L. Weekly D2213 (Fla. 3rd DCA September 17, 2008).

Administrative Law – Municipal Corporations – Comprehensive Development Plan – Property Owner's Challenge to Proposed Comprehensive Development Plan, Abrogates Owner's Private Property Rights

The plaintiff, CNL, sought review of a non-final order by an ALJ dismissing claims from its petition challenging the City of Doral's comprehensive development plan. The Department of Community Affairs (DCA) filed a petition with the Department of Administrative Hearings challenging the plan's compliance with local zoning and planning criteria. CNL intervened. After DCA and the city settled, CNL filed a second petition. The second petition alleged: 1) the plan was inconsistent because it abrogated CNL's private property rights while benefiting surrounding land owners, 2) the plan exacerbated urban sprawl, 3) the plan was internally inconsistent because it purported to protect private property rights and discourage urban sprawl while it did neither. The ALJ granted the city's motion to dismiss counts 1 and 3 on the grounds that they were claims of a constitutional taking and the ALJ had no jurisdiction. CNL appealed the order of the ALJ. CNL asserted its claims should not have been dismissed because they were not constitutional takings claims. In fact, CNL asserted that consideration of private property rights is part of reviewing a comprehensive plan for compliance with applicable zoning and planning criteria. The appeals court found that the ALJ erred in linking counts 1 and 3 to a takings claim. In a takings claim a property owner asserts that governmental regulation constitutes a taking of his or her property without just compensation. CNL made no such claim. CNL claimed that the city's plan was not in compliance because it abrogated CNL's private property rights without relevant consideration by the city. Florida's zoning and planning laws require cities to adopt comprehensive plans that coordinate with the state's comprehensive plan. The state comprehensive plan provides that private property rights should be protected. Since private property rights are part of the goals and policies of a comprehensive development plan, the ALJ improperly dismissed CNL's claim. *CNL v. City of Doral*, 33 Fla. L. Weekly D2265 (Fla. 3rd DCA September 28, 2008)

Elections – Candidates – Resign to Run Law – Candidate Failed to Meet Requirements of Resign to Run Law – Elector Who Was Not Registered as a Republican Had Standing to Bring Action Challenging Candidacy in Republican Primary

Thomas Chalifoux appealed a trial court's temporary injunction disqualifying him as a candidate for the Florida House of Representatives. Chalifoux failed to meet the requirements of Florida's resign to run law. He was disqualified prior to the Republican Primary. Chalifoux challenges the standing of Neri Sanchez to bring the action to disqualify him because Sanchez is not registered as a

Republican voter. Chalifoux contended that since Sanchez is not eligible to vote in the primary election, he was not an elector under section 99.012. Section 99.012 places the responsibility of enforcing the resign to run law on an elector or the Department of State. The law makes no requirement as to party affiliation. Therefore, Sanchez had standing to enforce the resign to run law. *Chalifoux v. Sanchez*, Fla. L. Weekly D2299 (Fla. 1st DCA September 26, 2008).

Declaratory Judgments – Elections – Municipal Corporations – Mayor – Resign to Run Law – Trial Court Erroneously Ruled that Candidate Was Not Required to Resign from Position as Captain in Municipal Police Department in Order to Run for Office of Mayor against Incumbent Who, under Provisions of City Charter, Exercised Control and Supervision of the Police Department and Direct Control and Supervision Over All Departments

Lewis, a Tampa Police Department captain, decided to run for mayor of Tampa in 2006. Based upon information concerning chain of command provided by Lewis, the Florida Department of State opined that it was not necessary for Lewis to resign to run. The Tampa city attorney then issued a formal written opinion that Lewis would need to resign under the provisions of section 99.012 because of the incumbent mayor's supervisory position to Lewis, and that he would be deemed to have resigned upon taking the Oath of Candidacy. In January 2007, the city ousted Lewis from his position and sought a declaratory judgment that Lewis was required to resign and that he was deemed to have resigned upon taking the Oath of Candidacy. It was clear from Tampa ordinances that the mayor was in a supervisory role as the office related to Lewis. Due to this supervisory relationship Lewis indeed was bound by the resign to run law. *Tampa v. Lewis*, 33 Fla. L. Weekly (2nd DCA September 26, 2008).

Section 3. Recent Decisions of the United States Supreme Court

None reported.

Section 4. Recent Decisions of the United States Court of Appeals, Eleventh Circuit

Municipal Corporations – Ordinances – Zoning – Challenge to Constitutionality of Zoning Ordinance, which Prohibits Formula Restaurants and Restricts Formula Retail Establishments to Limited Street-Level Frontage and Total Square Footage, on Grounds that Formula Retail Restrictions Violate Dormant Commerce Clause

City of Islamorada appealed a decision to invalidate a local ordinance by the U.S. District Court. The court found the ordinance violated the Dormant Commerce Clause of the U.S. Constitution. The plaintiff brought an action in the U.S. District Court seeking damages, injunctive relief and a writ of mandamus on the grounds that the ordinance's retail provisions violated its rights to due process, commercial speech, equal protection, privileges and immunities, the Commerce Clause, and the terms of the Florida Constitution. The plaintiff was a property owner who sought to develop an existing retail facility into a Walgreens pharmacy. The local ordinance in question prohibited "formula restaurants" and severely restricted facilities that contained "formula retail" establishments. The Dormant Commerce Clause prohibits "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. In order to determine if the Dormant Commerce Clause is violated, one of two analyses must be applied. If a regulation "directly regulates or discriminates against interstate commerce" or has the effect of favoring "in-state economic interests," the regulation must be shown to "advance a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." If a regulation has "only indirect effects on interstate commerce," the court must "examine whether the state's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits." The district court appropriately determined that the ordinance was facially neutral. The parties stipulated that the "ordinance effectively prevents the establishment of new formula retail stores." The elimination of all new interstate retail chains had "the practical effect of discriminating against" interstate commerce. The district court correctly determined that the discrimination against formula retail stores while allowing other large, non-unique structures does not preserve small-town character. Therefore, the district court correctly found that the ordinance failed to provide a legitimate local purpose to justify the ordinance's discriminatory effects, and therefore it was not necessary to determine whether a non-discriminatory alternative existed. *Island Silver and Spice, et. al. v. Islamorada*, 21 Fla. L. Weekly (11th Cir September 8, 2008).

Municipal Corporations – Ordinances – Zoning – Challenge to Constitutionality of Zoning Ordinances, which Prohibit Formula Restaurants and Limits Size of Formula Retail Establishments, on Grounds that Formula Restaurant Provisions Violate Dormant Commerce Clause

The plaintiff, Cachia, appealed an order of the U.S. District Court for the Southern District of Florida granting dismissal in favor of the defendant, Islamorada. The plaintiff challenged a local zoning ordinance that prohibited "formula restaurants" in Islamorada. The plaintiff entered into a contract to sell a piece of property to Starbucks for development in to a retail restaurant. Upon being noticed by the defendant that a "formula restaurant" was an

impermissible use for the property, Starbucks withdrew from the contract with the plaintiff. The plaintiff then filed an action for monetary damages and injunctive relief against the City of Islamorada under, among other theories, violation of the Dormant Commerce Clause. The district court dismissed in favor of the defendants holding that the ordinance had only an indirect effect on interstate commerce, was supported by a legitimate state interest, and the burden on interstate commerce didn't exceed the benefits to the community. The Dormant Commerce Clause prohibits "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." In order to determine if the Dormant Commerce Clause is violated, one of two analyses must be applied. If a regulation "directly regulates or discriminates against interstate commerce" or has the effect of favoring "in-state economic interests," the regulation must be shown to "advance a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." If a regulation has "only indirect effects on interstate commerce," the court must "examine whether the state's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits." The district court appropriately found that the "formula restaurant" provision was facially neutral as it is applied to interstate commerce. The appeals court found that the district court failed to recognize that the ordinance's complete prohibition of "formula restaurants" serves to exclude national chain restaurants from the local market and the ordinance disproportionately targeted restaurants operating in interstate commerce. The district court did not fully consider (1) whether the ordinance's stated interests constitute a legitimate local purpose; 2) whether the prohibition of "formula restaurants" adequately serves such purpose; or 3) whether Islamorada could demonstrate the unavailability of nondiscriminatory alternatives. The case was reversed and remanded for further proceedings. *Joseph Cachia v. Islamorada*, 21 Fla. L. Weekly Fed. C1073 (11th Cir. September 8, 2008).

Section 5. Recent Decisions of the United States District Courts for Florida

Civil Rights – Speech – Counties – Challenge to Constitutionality of County's Permit Ordinance and Loitering Ordinance –District Court Held that County's Parade Permit Ordinance Was Overbroad, Regardless of Content-Neutral Nature of the Ordinance, Due to the Unrestricted Discretion of County Official Charged with Issuing the Permits –District Court also Held that County's Loitering Ordinance Was Vague because It Lacked Virtually any Objective Standards Regarding Application

Miami for Peace, South Florida Peace & Justice Network and Haiti Solidarity (collectively, the "plaintiffs") are not-for-profit organizations in the City of Miami. The plaintiffs challenged the constitutionality of the Miami-Dade County parade permit ordinance and the county's loitering ordinance seeking declaratory and injunctive relief. The plaintiffs were denied a parade permit due to "congestion" and "serious security and public safety problems," even though the ordinance itself made no mention of the stated criteria. The plaintiffs asserted the county's parade permit ordinance was constitutionally overbroad due to the lack of specific standards for the granting of parade permits, and thereby provided the county official in charge of administration unfettered discretion. The court held that "even a facially content-neutral time, place and manner regulation may not vest public officials with unbridled discretion over permitting decisions." A content-neutral ordinance must still "contain adequate standards to guide the official's decision and render it subject to effective judicial review." Accordingly, the ordinance was declared constitutionally overbroad regardless of whether or not it is deemed to be content-neutral. After denial of the parade permit the plaintiffs intended to continue with the planned protest on public sidewalks and green spaces. However, the plaintiffs feared their activities at the planned protest and future protests could subject them to arrest under the county's loitering ordinance. The plaintiffs challenged the loitering ordinance on the grounds that it was constitutionally vague. In part, the ordinance stated that the offense of loitering is committed when persons in a public place "hinder or impede the passage of pedestrians or vehicles." "[T]he void for vagueness doctrine requires that a penal statute define a criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." The court held that the plain text of the ordinance, particularly the use of the phrase "hinder or impede" criminalizes an extremely broad variety of activities on public rights of way. The court also held that the lack of objective standards raised the likelihood of arbitrary or discriminatory enforcement. The district court granted the plaintiffs permanent injunctive relief. *Miami for Peace, et al v. Miami Dade County*, 21 Fla. L. Weekly Fed. D297 (U.S. District Court, Southern District of Florida June 4, 2008).

Section 6. Announcements

Mark Your Calendar

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