IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1798

THE CITY OF CORAL GABLES, FLORIDA, a Florida municipality,

L.T. Case No. 3D17-0562

Petitioner,

v.

FLORIDA RETAIL FEDERATION, INC., a Florida not-for-profit corporation and SUPER PROGRESO INC., a Florida for-profit corporation,

Respondents.
_____/

PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

PETITIONER'S APPENDIX

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TABLE OF CONTENTS

Third District Court of Appeal

State of Florida

Opinion filed August 14, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-0562
Lower Tribunal No. 16-18370

Florida Retail Federation, Inc., et al.,
Appellants,

vs.

The City of Coral Gables, Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jorge E. Cueto, Judge.

Ashley Moody, Attorney General, and Amit Agarwal (Tallahassee), Solicitor General; Lehtinen Schultz Riedi Catalano De la Fuente, PLLC, and Dexter W. Lehtinen, and Claudio Riedi, for appellants.

Craig E. Leen, City Attorney, and Miriam S. Ramos, Deputy City Attorney; Kozyak Tropin & Throckmorton LLP, and Corali Lopez-Castro, Rachel Sullivan and Mindy Y. Kubs, for appellee.

Erin Deady (West Palm Beach); Derek Howard; Roget V. Bryan, for City of West Palm Beach, Monroe County, and Islamorada, Village of Islands, as amici curiae.

Raul J. Aguila, City Attorney, and Nicholas Kallergis, Assistant City Attorney; Jean K. Olin, for City of Miami Beach, as amicus curiae.

Earthjustice and Bonnie A. Malloy (Tallahassee), for Surfrider Foundation, Campaign to Defend Local Solutions, League of Women Voters of Florida, Legal Scholars, 1000 Friends of Florida, ReThink Energy Florida, Florida Wildlife Federation, Save the Manatee Club, and Center for Biological Diversity, as amici curiae.

Before FERNANDEZ, LINDSEY, and HENDON, JJ.[1]

LINDSEY, J.

I. INTRODUCTION

In 2016, the City of Coral Gables (the "City") passed an Ordinance prohibiting food service providers and stores from selling or using expanded polystyrene (i.e. Styrofoam) containers. The Florida Retail Federation and Super Progreso[2] (collectively "FRF") filed the underlying complaint seeking a declaration that the City's Polystyrene Ordinance was preempted by three separate Florida Statutes: sections 403.708(9), 403.7033, and 500.90. Because the trial court erred in finding the three statutes unconstitutional and concluding that the City's Polystyrene Ordinance was not preempted, we reverse.

II. BACKGROUND

[1] Judge Hendon did not participate in oral argument.

[2] Super Progreso is a Florida Retail Federation member.

This appeal concerns the validity and preemptory effect of the following three state statutes, which the trial court concluded were unconstitutional:

- Section 403.708(9) (enacted in 1974[3]) provides that "[t]he packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance . . . ."
- Section 403.7033 (enacted in 2008) prohibits local governments from enacting "any rule regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of . . . auxiliary containers, wrappings, or disposable plastic bags."
- Section 500.90 (effective July 1, 2016) preempts the "regulation of the use or sale of polystyrene products" by local ordinances enacted after January 1, 2016.

The City enacted Ordinance 2016-08 on February 9, 2016.[4] The Ordinance generally prohibits "[f]ood service providers and stores" from selling, using, offering for sale, or "provid[ing] food or beverages in expanded polystyrene

[3] Originally 403.708(2), Florida Statutes (1975).

[4] Aware of the impending passage of section 500.90, which explicitly preempts local ordinances regulating polystyrene enacted after January 1, 2016, the City enacted an emergency ordinance giving its Polystyrene Ordinance a retroactive effective date of December 8, 2015.

containers." City of Coral Gables, Fla., Code of Ordinances § 34-264(a) (2019).[5] On April 26, 2016, the City passed Ordinance 2016-28, "exercise[ing] its Home Rule powers under article VIII, section 6 of the Florida Constitution of 1968 to conflict with, modify, and nullify the polystyrene pre-emption and grandfathering provisions of Chapter 2016-61, Laws of Florida (F.S. § 500.90) . . . ." Id. at § 34-267.

In July 2016, FRF filed a complaint seeking a declaration that sections 403.708(9), 403.7033, and 500.90, Florida Statutes,[6] preempt the City's Polystyrene Ordinance. The complaint also sought an injunction against enforcement of the Ordinance. The City, in turn, filed a counterclaim seeking a declaration that the same three statutes are unconstitutional. Both sides filed competing motions for summary judgment. Following a hearing, the trial court granted the City's motion. The trial court entered final judgment in favor of the City, finding all three statutes unconstitutional and the City's ordinance valid and enforceable. FRF and the State appeal.

III. JURISDICTION

[5] Before recodification in July 2017, Ordinance 2016-08 was codified in §§ 34-187 to -190.

[6] The trial court granted the State of Florida's motion to intervene "for the limited purpose of advocating the proper interpretation and defending the constitutionality of any statutes challenged" in the action.

We have jurisdiction to review the trial court's entry of final summary judgment in favor of the City pursuant to Florida Rule of Appellate Procedure 9.030(b)(1)(A).

IV. STANDARDS OF REVIEW

We review questions of statutory interpretation and the trial court's grant of summary judgment de novo. See, e.g., Save Calusa Tr. v. St. Andrews Holdings, Ltd., 193 So. 3d 910, 914 (Fla. 3d DCA 2016). We also "review questions of preemption and the validity of an ordinance de novo." D'Agastino v. City of Miami, 220 So. 3d 410, 421 (Fla. 2017) (citing City of Hollywood v. Mulligan, 934 So. 2d 1238, 1241 (Fla. 2006)). Likewise, the "constitutionality of a statute is a pure question of law that is subject to de novo review." Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State, 209 So. 3d 1181, 1188 (Fla. 2017) (citing City of Miami v. McGrath, 824 So. 2d 143, 146 (Fla. 2002)).

V. ANALYSIS

Because this case concerns the validity of state statutes and local ordinances, we are bound by certain presumptions. The trial court, in finding three state statutes unconstitutional, relied exclusively on the presumption that ordinances are valid, but failed to consider the strong, competing presumption that "statutes come clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome." Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc.,

978 So. 2d 134, 139 (Fla. 2008); see also Lowe v. Broward Cty., 766 So. 2d 1199, 1203 (Fla. 4th DCA 2000) ("A regularly enacted ordinance will be presumed to be valid until the contrary is shown, and a party who seeks to overthrow such an ordinance has the burden of establishing its invalidity." (quoting State ex rel. Office Realty Co. v. Ehinger, 46 So. 2d 601, 602 (Fla. 1950))). Moreover, although Florida municipalities are given broad authority to enact ordinances, "municipal ordinances must yield to state statutes." Masone v. City of Aventura, 147 So. 3d 492, 495 (Fla. 2014).

With these principles in mind, we first consider whether the trial court erred in finding sections 403.708(9), 403.7033, and 500.90 unconstitutional. Because we conclude all three statutes are constitutional, we next evaluate whether the City's Polystyrene Ordinance is preempted. For the reasons that follow, we hold that it is.

A. Sections 403.708(9), 403.7033, and 500.90 Are Constitutional

The trial court's analysis focused almost entirely on the most recent of the three statutes, section 500.90. The court concluded that section 500.90 was unconstitutional because (1) it violates the Miami-Dade County Home Rule Amendment; (2) it is unconstitutionally vague in violation of the nondelegation doctrine; and (3) the statute's classification schemes make it impermissibly arbitrary and capricious. As to sections 403.708(9) and 403.7033, the trial court found that

both statutes were also unconstitutionally vague in violation of the nondelegation doctrine.

The trial court first determined that section 500.90 violated the Home Rule Amendment, which prohibits the Legislature from adopting any act directed solely at Miami-Dade County or its municipalities. See Art. VIII, § 6(e), Fla. Const. Section 500.90 explicitly preempts local ordinances regulating polystyrene enacted after January 1, 2016. The court reasoned that because the City was the only municipality that enacted a Polystyrene Ordinance after January 1, 2016, but before section 500.90's July 1, 2016 effective date, section 500.90 was an impermissible special law aimed only at the City.

We disagree with such an expansive interpretation of the Home Rule Amendment. It is well-established that the Home Rule Amendment must be strictly construed to maintain the supremacy of general laws. Metro. Dade Cty. v. Chase Fed. Hous. Corp., 737 So. 2d 494, 504 (Fla. 1999). Section 500.90 plainly preempts *all* municipalities statewide[7] from enacting local polystyrene regulations after January 1, 2016.[8] Although the City may have been the first municipality to regulate

[7] Indeed, we note that the City of West Palm Beach, Monroe County, and Islamorada jointly filed an amici curiae brief in which they recognize that section 500.90 would apply to them if the statute were not an "unconstitutional delegation of authority."

[8] Preemption statutes ordinarily apply to previously enacted ordinances. See Chase Fed. Hous. Corp., 737 So. 2d at 504 ("Whenever the legislature acts to supersede a local government's authority to enforce its ordinances, the effect is immediate and

polystyrene after January 1, 2016, section 500.90 does not impermissibly single out the City or Miami-Dade County. See City of Miami Beach v. Frankel, 363 So. 2d 555, 558 (Fla. 1978) ("A general law of local application is a law that uses a classification scheme based on population or some other criterion so that its application is restricted to particular localities. It is clear on the face of this statute that it is a general law applicable statewide.").[9]

Next, we consider the trial court's conclusion that section 500.90 violates the nondelegation doctrine.[10] More specifically, the court held that the statute "is

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applies to both future and pending proceedings and present and past offenses."). Moreover, the Legislature is empowered to set the start date for legislation so long as it acts within constitutionally accepted parameters. Id. at 503.

[9] The trial court relied on several cases where the "Florida Legislature has run afoul of the prohibition in enacting laws directed to Miami-Dade County or its municipalities . . . ." But unlike here, the statutes in those cases all contained a classification scheme that made them impermissibly applicable to Miami-Dade County. See State ex rel. Worthington v. Cannon, 181 So. 2d 346, 347 (Fla. 1965) (finding two statutes unconstitutional because they applied to counties having a population of 750,000 or more); S & J Transp., Inc. v. Gordon, 176 So. 2d 69, 70 (Fla. 1965) (invalidating a statute that applied to counties operating an airport and having more than 900,000 residents); Homestead Hosp., Inc. v. Miami-Dade Cty., 829 So. 2d 259, 262 (Fla. 3d DCA 2002) (invalidating a statute that "as written, is applicable only to Miami-Dade County").

[10] The Florida Supreme Court has explained the nondelegation doctrine as follows:

> [U]nder article II, section 3 of the constitution the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law." Sims v. State, 754 So.2d 657, 668 (Fla.2000). This prohibition, known as the nondelegation doctrine, requires that "fundamental and primary policy decisions ... be made by members of the legislature who are elected to perform

unconstitutionally vague because the Legislature delegated preemption authority to the Department of Agriculture . . . without defining guidelines or standards for the exercise of the Department's discretion in implementing the statute."

However, section 500.90 does not, on its face, delegate legislative authority to the Department of Agriculture. The plain text of the statute simply provides that "[t]he regulation of the use or sale of polystyrene products by entities regulated under this chapter is preempted to the department." The statute is silent as to delegation of any authority because the Department's rulemaking authority stems from the separate "Rulemaking" section found in the same Chapter (Chapter 500, the Florida Food and Safety Act). See § 500.09, Fla. Stat. (2018) ("Rulemaking; analytical work.—" not to be confused with *§ 500.90*, the statute at issue here). In contrast to the language in Chapter 500's preemption provision, the rulemaking provision provides, in part, that "[t]he department may adopt rules necessary for the

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> those tasks, and [that the] administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program." Askew v. Cross Key Waterways, 372 So.2d 913, 925 (Fla.1978); see also Avatar Dev. Corp. v. State, 723 So.2d 199, 202 (Fla.1998) (citing Askew with approval). In other words, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated.["]

Bush v. Schiavo, 885 So. 2d 321, 332 (Fla. 2004).

efficient enforcement of this chapter." § 500.09(4), Fla. Stat. The City does not challenge the delegation of authority in the separate "Rulemaking" section of Chapter 500.

The trial court also concluded that sections 403.708(9) and 403.7033 violate the nondelegation doctrine because they "lack the necessary standards and guidelines for implementation, rendering them unconstitutionally vague . . . ." This conclusion forms the sole basis for the trial court's determination that sections 403.708(9) and 403.7033—statutes enacted in 1974 and 2008, respectively—are unconstitutional. Here again, neither statute delegates any legislative authority. The statutes simply prohibit local governments from regulating "[t]he packaging of products manufactured or sold in the state[,]" section 403.708(9), and "auxiliary containers, wrappings, or disposable plastic bags[,]" section 403.7033. Because the statutes delegate no authority, they cannot be unconstitutional pursuant to the nondelegation doctrine.

Finally, we consider the trial court's conclusion that section 500.90 "creates at least two classification schemes that are not reasonably related to the purpose of legislation, rendering the statute arbitrary and capricious." Article III, section 11(b) of the Florida Constitution provides that "[i]n the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law." The trial court reasoned that

the legislature, in enacting section 500.90, violated the Florida Constitution by "choosing an exemption date of January 1, 2016" and by intending to "liberalize the purportedly strict prohibitions on local polystyrene regulation . . . for certain 'beach towns' that sought to regulate polystyrene use."

As an initial matter, we find no mention of beach towns in the text of section 500.90. Consequently, there was no basis for concluding that a non-existent beach town classification was arbitrary and capricious. More importantly, we do not read anything in section 500.90 to be a classification of "political subdivisions or other government entities" as set forth in article III, section 11(b) of the Florida Constitution. An "exemption date" of January 1, 2016, simply sets the date after which local ordinances regulating polystyrene will be preempted. In other words, the only classification scheme found in section 500.90 applies to ordinances—those enacted before and those enacted after January 1, 2016—there is no classification of any governmental entities.

Having determined that sections 403.708(9), 403.7033, and 500.90 are constitutional, we now turn to the issue of whether the statutes preempt the City's Polystyrene Ordinance.

B. State Law Expressly Preempts the City's Polystyrene Ordinance

The preemption analysis is a matter of statutory interpretation. "Statutory interpretation in any case 'begin[s] with the actual language used in the statute

because legislative intent is determined first and foremost from the statute's text.'" Williams v. State, 186 So. 3d 989, 991 (Fla. 2016) (quoting Raymond James Fin. Servs., Inc. v. Phillips, 126 So. 3d 186, 190 (Fla. 2013)). Moreover, "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." Id. (quoting Bennett v. St. Vincent's Med. Ctr., Inc., 71 So. 3d 828, 837–38 (Fla. 2011)).

The trial court concluded that sections 403.708(9) and 403.7033 do not preempt the local regulation of polystyrene.[11] In so doing, the court's reliance on "principles of legislative interpretation" was in error. According to the trial court, the enactment of section 500.90 "evidences the legislature's understanding that sections 403.708(9) and 403.7033 did not already [preempt the regulation of polystyrene.]" In other words, the court relied on a recent statute to determine the legislative intent behind two older statutes.

There is no need to resort to rules of statutory construction because the statutory text is clear. See State Farm Mut. Auto. Ins. Co. v. Laforet, 658 So. 2d 55, 62 (Fla. 1995) ("It would be absurd, however, to consider legislation enacted more than ten years after the original act as a clarification of original intent . . . ."); Fla.

[11] The trial court did not address preemption in the context of section 500.90 because it concluded the statute was unconstitutional.

Dept. of Revenue v. Fla. Mun. Power Agency, 789 So. 2d 320, 323 (Fla. 2001) ("Legislative intent must be derived primarily from the words expressed in the statute. If the language of the statute is clear and unambiguous, courts enforce the law according to its terms and there is no need to resort to rules of statutory construction.").

Here, the statutes at issue are unambiguous; they expressly preempt[12] the City's Polystyrene Ordinance. Section 403.708(9) preempts regulatory control over "[t]he packaging of products manufactured or sold in the state . . . ." The plain text encompasses all types of packaging, including polystyrene. Similarly, section 403.7033 prohibits local governments from regulating "auxiliary containers." Again, the "polystyrene containers" regulated by the City's Ordinance are a type of "auxiliary container." Finally, section 500.90 specifically preempts the regulation of "polystyrene products." In all three instances, we find the language clear and unambiguous.

VI. CONCLUSION

Because sections 403.708(9), 403.7033, and 500.90 are constitutional and by their plain language preempt the City's Ordinance regulating "polystyrene

[12] "Preemption of local ordinances by state law may, of course, be accomplished by express preemption—that is, by a statutory provision stating that a particular subject is preempted by state law or that local ordinances on a particular subject are precluded." Masone, 147 So. 3d at 495.

containers," we reverse the trial court's final judgment in favor of the City and remand for entry of final judgment in favor of FRF.

Reversed and remanded.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 28th day of October, 2019, by electronic mail to:

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