SC19-1798

In the Supreme Court of Florida

THE CITY OF CORAL GABLES, FLORIDA,

Petitioner,

v.

FLORIDA RETAIL FEDERATION, INC., ET AL.,

Respondents.

RESPONDENT STATE OF FLORIDA'S JURISDICTIONAL BRIEF

ON PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE THIRD DISTRICT COURT OF APPEAL
Case No. 3D17-562

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

STATEMENT OF THE FACTS AND CASE

Petitioners challenged three statutes—sections 403.7033, 403.708(9), and 500.90, Florida Statutes—which, by their plain terms, preempt local regulations of polystyrene containers. That includes Coral Gables' Ordinance 2016-08, which generally prohibits "[f]ood service providers and stores" from selling, using, offering for sale, or "provid[ing] food or beverages in expanded polystyrene containers." City of Coral Gables, Fla., Code of Ordinances § 34-264(a) (2019) (the "Ordinance"). The trial court held that all three statutes were unconstitutional and that the Ordinance was valid and enforceable, but the Third District reversed, holding that all three statutes "are constitutional and by their plain language preempt the Ordinance regulating 'polystyrene containers.'" *Fla. Retail Fed'n, Inc. v. City of Coral Gables*, No. 3D17-0562, 2019 WL 3807999, at *5 (Fla. 3d DCA Aug. 14, 2019).

The Third District first considered whether section 500.90 violated the Home Rule Amendment, Article VIII, § 6(e), of the Florida Constitution. The trial court had concluded 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." *Fla. Retail Fed'n*, 2019 WL 3807999, at *2. The Third District rejected this reasoning, explaining that "Section 500.90 plainly preempts *all* municipalities

statewide from enacting local polystyrene regulations after January 1, 2016," so it did not "impermissibly single out the City or Miami-Dade County." *Id.* at *3.

Next, the Third District held that section 500.90 did not violate the nondelegation doctrine because it "does not, on its face, delegate legislative authority to the Department of Agriculture." *Id.* at *4. Similarly, the court concluded that neither section 403.708(9) nor section 403.7033 violated the nondelegation doctrine because, like section 500.90, "neither statute delegates any legislative authority." *Id.*

Finally, the Third District held that section 500.90 did not violate Article III, section 11(b) of the Florida Constitution, because it did not classify any "political subdivisio[n] or other government entit[y]," Art. III, § 11(b); instead, "the only classification scheme found in section 500.90 applies to ordinances," such that "there is no classification of any governmental entities." *Id.*

After concluding that all three statutes were constitutional, the Third District held that the three statutes "are unambiguous; they expressly preempt the City's Polystyrene Ordinance." *Id.* at *5. Because "the statutory text was clear," moreover, the court did not need to resort to rules of statutory construction: section 403.708(9)'s "plain text encompasses all types of packaging, including polystyrene"; section 403.7033 "prohibits local governments from regulating 'auxiliary containers,'" including the polystyrene containers regulated by the City's

Ordinance; and section 500.90 "specifically preempts the regulation of 'polystyrene products.'" *Id.* The preemptive "language" of all three statutes, the court explained, was "clear and unambiguous." *Id.*

Petitioners now seek this Court's discretionary review on the sole basis that the Third District expressly declared all three statutes valid.

SUMMARY OF ARGUMENT

This Court should not exercise its discretionary jurisdiction to review the Third District's decision. Although the Third District expressly declared the challenged statutes valid, it did so by relying on nothing more than the plain text of those statutes and the well-settled bounds of the purportedly violated constitutional provisions. The court's straightforward decision is thus not worthy of this Court's review: The plain text of the challenged statutes reveals that Petitioners' constitutional arguments are meritless. Likewise, the Third District correctly concluded that the challenged statutes on their face preempt the City's Ordinance. And as this case breaks no new ground regarding the nature of the Legislature's power to preempt local ordinances, there is no need for this Court to exercise its discretionary review.

ARGUMENT

I. THE DECISION BELOW IS CORRECT AND DOES NOT WARRANT THIS COURT'S DISCRETIONARY REVIEW.

Relying on the "plain text" of sections 500.90, 403.708(9), and 403.7033, the Third District upheld those statutes as constitutional, and concluded that "by their plain text," they "preempt the City's Ordinance regulating 'polystyrene containers.'" *Fla. Retail Fed'n*, 2019 WL 3807999, at *5. Indeed, as to "all three" statutes, the court concluded that the relevant language was "clear and unambiguous." *Id.* One need only read the challenged statutes to conclude that section 500.90 does not impermissibly single out any municipality; none of the three statutes delegates any legislative authority; section 500.90 does not classify any political subdivision or governmental entity; and the statutes unambiguously and expressly preempt the City's Ordinance. So although the Third District did expressly declare all three statutes to be valid, its straightforward conclusions are unworthy of this Court's review.

Even in cases where discretionary jurisdiction exists, this Court has no duty to grant review. *See* Harry Lee Anstead et al., The Operation & Jurisdiction of the Supreme Court of Florida, 29 NOVA L. REV. 431, 502 (2005) (recognizing that "the Court, in every instance, can decline to hear a [discretionary review] case"). For example, the Court's discretionary jurisdiction over decisions construing

constitutional provisions exists to "remove existing doubts as to the proper construction of a constitutional provision." *See Rojas v. State*, 288 So. 2d 234, 238 (Fla. 1973). Here, no such doubts exist—the Third District relied on the plain, unambiguous text of the three challenged statutes, and the well-settled bounds of the constitutional provisions at issue, in concluding that the three statutes are constitutional. Moreover, no split of authority as to any of the court's (unanimous) conclusions exists.

Petitioners also contend that the Third District's decision "authorized the Legislature to preempt entire fields to state agencies which have neither the intent to take action nor any guidelines for rulemaking." Pet. Juris. Br. 10. But as the court explained, none of the three challenged statutes delegates any legislative authority. Instead, the court simply recognized the long-settled proposition that "municipal ordinances must yield to state statutes." *Masone v. City of Aventura*, 147 So. 3d 492, 494-95 (Fla. 2014).

The Court should also decline to exercise discretionary review because the Legislature is currently considering whether to allow local governments to promulgate ordinances, like the City's Ordinance, that regulate polystyrene. *See* Fla. SB 182: *Preemption of Recyclable & Polystyrene Materials* (filed Aug. 23, 2019); Fla. HB 6043: *Preemption of Recyclable & Polystyrene Materials* (filed Nov. 5, 2019). Both pending bills, if passed, would repeal the preemptive effect of the three

statutes at issue here. Because the preempting statutes are constitutional, and in light of these legislative efforts, the Court should defer to the political process regarding whether regulation of polystyrene should be a statewide or local matter.

CONCLUSION

For all these reasons, the Court should decline to review the Third District's decision.

Respectfully submitted.

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CERTIFICATE OF SERVICE

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I certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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