IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

CITY OF BROOKSVILLE,

Petitioner,

vs. Case No.: 5D17-1139

HERNANDO COUNTY,

Respondent.

On Petition for Second-Tier Writ of Certiorari
To the Circuit Court of the Fifth Judicial Circuit
In and for Hernando County, Florida
The Honorable Donald E. Scaglione, Circuit Judge, Presiding

RESPONSE OF HERNANDO COUNTY TO PETITION FOR WRIT OF CERTIORARI

Jon A. Jouben, Esq. (FBN: 149561)
jjouben@co.hernando.fl.us
Garth Coller, Esq. (FBN: 374849)
GarthC@co.hernando.fl.us
Randall B. Griffiths, Esq. (FBN 768091)
Rgriffiths@co.hernando.fl.us
Alt. E-Mails: cao@co.hernando.fl.us
phare@co.hernando.fl.us
20 N. Main Street, Suite 462
Brooksville, FL 34601
352-754-4122 / 352-754-4001 Fax
Attorneys for Respondent

QUESTIONS PRESENTED

1. A district court has jurisdiction to consider a "second-tier" certiorari petition only if the circuit court's error constitutes a violation of a clearly established principle of law that has resulted in a miscarriage of justice. The Circuit Court, in an unpublished, non-precedential order, quashed annexation ordinances. Petitioner can still annex the applicable properties by either having the property owners sign voluntary annexation petitions or by using the involuntary annexation process. Does this Court have second-tier certiorari jurisdiction to review the Circuit Court's order?

2. Fla. Stat. § 171.044 requires that petitions for voluntary annexation must be signed by the "owners" of the to-be-annexed properties. The Legislature enacted a more onerous process for municipality-initiated "involuntary annexations." Petitioner signed five voluntary annexation petitions as the attorney-in-fact for the properties' owners, and then annexed the properties. The Circuit Court quashed the annexation ordinances on the grounds that Petitioner violated Fla. Stat. § 171.044 by executing the voluntary annexation petitions. Petitioner argues that the Circuit Court misinterpreted Fla. Stat. § 171.044. Did the Circuit Court below provide Petitioner with procedural due process or fail to apply the correct law?

3. Unless the Legislature has clearly expressed its intention that a statute creates a jurisdictional bar or a condition precedent, Florida courts must presume that

the statute does not do so. Courts, when ascertaining the Legislature's intent, may not read a subsection of a statute in isolation from the remainder of the statute and the overall statutory scheme. Petitioner moved to dismiss the proceedings below based upon a reading of a single statutory subsection. The Circuit Court held that the subsection that Petitioner cited, when read in *pari materia* with the remainder of the statute and the statutes related thereto, did not permit dismissal or create a condition precedent. Under such circumstances, did the Circuit Court apply the wrong law?

4. Petitioner asks this Court to sanction Respondent's counsel for their conduct during the first-tier certiorari proceedings below. The Circuit Court did not do so. Under such circumstances, does this Court have the ability to impose the sanctions requested by Petitioner?

(The Remainder of this Page Has Been Intentionally Left Blank)

Respondent, HERNANDO COUNTY ("the County"), pursuant to this Court's order of April 21, 2017, responds to the petition for a writ of certiorari ("the Second-Tier Petition") filed by Petitioner, CITY OF BROOKSVILLE, as follows.[1]

STATEMENT OF THE GOVERNING LAW

A. THE ANNEXATION PROCESS PRIOR TO 1974.

Prior to 1974, no private cause of action to challenge municipal annexations existed in Florida. A party could only do so by filing a quo warranto action in the name of the Attorney General.[2]

The drafters of the 1968 Constitution incorporated this state-centric mindset into that document by vesting the exclusive power over municipal annexations in the Legislature.[3] The Legislature was given the ability to share its power, as a matter of legislative grace, by either "general or special law."[4]

---

[1]To create a consecutively paginated record, each page of the Appendix has been numbered in the upper and lower right hand corners in blue. The Appendix, a .pdf file, contains an embedded bookmark for each tab. Accordingly, citations to the record shall be in the form of (App. at Tab #, p. #).

[2]See *City of Tallahassee v. Kovach*, 733 So. 2d 576, 580 (Fla. 1st DCA 1999) citing *Riviera Club v. City of Ormond*, 2 So.2d 721, 722 (Fla. 1941).

[3]Fla. Const. Art. 8, § 2(c). See also *North Ridge Gen. Hosp., Inc. v. City of Oakland Park*, 374 So. 2d 461, 464 (Fla. 1979), appeal dismissed, 444 U.S. 1062 (1980).

[4]*Id.* See also Fla. Stat. § 166.021(3)(a) (excluding from municipal home rule "[t]he subjects of annexation, merger, and exercise of extraterritorial power . . . .").

B. THE ANNEXATION ACT.

By 1974, the Legislature enacted the Municipal Annexation and Contraction Act ("the Annexation Act")[5] in which it set forth "uniform legislative standard[s] throughout the state for the adjustment of municipal boundaries."[6] Municipalities must act "in strict accord" with the Annexation Act,[7] as it expressly preempts municipalities from annexing territory by any other means.[8]

The Annexation Act authorizes two alternative methods by which municipalities can annex territory: (1) standard, "involuntary" annexations, and (2) property owner-initiated "voluntary" annexations.

1. THE INVOLUNTARY ANNEXATION PROCESS.

Fla. Stat. § 171.0413 establishes the default method, known as an "involuntary annexation," by which municipalities may annex contiguous, compact property where the property owner or owners have not petitioned for annexation.

---

[5]Fla. Stat. § 171.011, *et seq*.

[6]Fla. Stat. § 171.021(2).

[7]*Smith v. Ayres*, 174 So. 2d 727, 729 (Fla. 1965). See also *McGeary v. Dade County*, 342 So. 2d 549, 551 (Fla. 3rd DCA 1977); *Town of Mangonia Park v. Homan*, 118 So. 2d 585, 588 (Fla. 2nd DCA 1960).

[8]Compare Fla. Stat. § 171.022 with *City of Ormond Beach v. City of Daytona Beach*, 794 So. 2d 660, 661, n.1 (Fla. 5th DCA 2001) rehearing denied. See also *SCA*, 418 So. 2d at 1150.

First, the city council must prepare a report on the proposed annexation that contains maps showing the present and proposed municipal boundaries; the existing major trunk water mains; the existing sewer interceptors and out-falls; the proposed extensions of such mains and out-falls, if required; and the general land-use pattern in the area to be annexed. Also, the report must include a statement certifying that the area to be annexed is contiguous to the municipality's existing boundaries, that the area is reasonably compact, and that no part of the area lies within another municipality.[9] Finally, the report must detail how the city will provide municipal services to the area to be annexed.[10]

Second, the city council must provide a copy of the report to the board of county commissioners of the county wherein the city is located at least 15 days in advance of the council's first scheduled hearing on the proposed annexation ordinance. The Annexation Act cautions that the failure to timely file the report with the county "may be the basis for a cause of action invalidating the annexation."[11]

---

[9]Compare Fla. Stat. § 171.042(1)(b) with Fla. Stat. § 171.043.

[10]Fla. Stat. § 171.042(1)(c). Please note that the subsection delineates exactly what data the municipality needs to include in the report.

[11]Fla. Stat. § 171.042(2).

Third, "[t]he governing body of the municipality shall, not less than 10 days prior to the date set for the first public hearing [on the proposed annexation ordinance], mail a written notice to each person who resides or owns property within the area proposed to be annexed. The notice must describe the annexation proposal, the time and place for each public hearing to be held regarding the annexation, and the place or places within the municipality where the proposed ordinance may be inspected by the public.[12] Once a municipality satisfies the prerequisites, it can then proceed to consider an annexation ordinance at a duly advertised public meeting."[13]

The annexation ordinance must then be approved by the affected area's voters in referendum held within thirty days. Voter approval is not required, however, if no registered voters live in the territory to be annexed.[14] Also, no referendum is required if non-voters (e.g., residents of other states, corporations, etc.) own more than seventy percent of the total area to be annexed, and the owners of more than fifty percent of the land in the area consent to the annexation, provided that the city council receives the consents before it adopts the annexation ordinance.

---

[12]Fla. Stat. § 171.042(3).

[13]Fla. Stat. § 171.0413.

[14]*Id*.

2. THE VOLUNTARY ANNEXATION PROCESS.

Fla. Stat. § 171.044 allows "[t]he owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality."[15] As a condition precedent, a municipality's governing body must determine that the "petition bears the signatures of all owners of property in the area proposed to be annexed."[16] The Annexation Act does not contain a provision pursuant to which any other person or agent could sign a petition on behalf of a property owner.

3. THE CREATION OF A PRIVATE CAUSE OF ACTION BY CERTIORARI TO CHALLENGE ANNEXATIONS.

In Fla. Stat. § 171.081, the Legislature created a cause of action, certiorari, by which an affected party could challenge a municipal annexation ordinance.

From 1974 until 2006, that statute consisted of a single paragraph: "No later than 30 days following the passage of an annexation or contraction ordinance, any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in

---

[15]Fla. Stat. § 171.044(1).

[16]Fla. Stat. § 171.044(2).

this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. In any action instituted pursuant to this section, the complainant, should he or she prevail, shall be entitled to reasonable costs and attorney's fees."[17]

4. VOLUNTARY ANNEXATION AS A PREREQUISITE FOR EXTRATERRITORIAL UTILITY SERVICES.

Pursuant to Fla. Stat. § 180.19(1), a municipality can condition its provision of extraterritorial water or sewer services upon the owner agreeing to have the municipality annex his or her property.[18]

In practice, municipalities often require the owners of unincorporated properties to sign a "preannexation agreement" as a condition of providing extraterritorial utility services. If a property is contiguous and compact, a municipality can require the owner to submit a petition for voluntary annexation at

---

[17]App. at Tab 14, p. 155. Please note that prior to 2006, reviser's bills had amended the section to remove a reference to the Administrative Procedures Act and to remove gender specific terms. See Chs. 78-95 & 95-147, L.O.F.

[18]See *Allen's Creek Properties, Inc. v. City of Clearwater*, 679 So. 2d 1172, 1176 (Fla. 1996).

the time utility services are requested.[19] A municipality can even combine the agreement to provide utility services and a petition for voluntary annexation into a single document.[20] If the parcel to be served is not yet able to satisfy the compactness and contiguity requirements, a municipality can include in a preannexation agreement a provision requiring the property owner to submit a petition for voluntary annexation at such time that the parcel satisfies the requirements, enforceable by injunction.[21]

The provisions of a preannexation agreement, however, are subordinate to those of the Annexation Act. In other words, the existence of a preannexation agreement between a municipality and a property owner does not permit a municipality to deviate from Fla. Stat. § 171.044's prerequisites to voluntary annexations.[22]

---

[19] *Id.*

[20] See *County of Volusia v. City of Deltona*, 925 So. 2d 340, 345 (Fla. 5th DCA 2006).

[21] Generally Fla. Stat. § 180.19(1) (allowing extraterritorial service upon agreement between municipalities and property owners).

[22] Cf. *County of Volusia*, 925 So. 2d at 344 (holding preannexation agreement contracting away a city's police powers is unenforceable).

B. THE DISPUTE RESOLUTION ACT.

The Legislature enacted the Florida Governmental Dispute Resolution Act ("the Dispute Resolution Act")[23] in 1999 for the express purpose of "provid[ing] an equitable, expeditious, effective, and inexpensive method for resolution of conflicts between and among local and regional governmental entities."[24] The Dispute Resolution Act establishes a series of steps (e.g., conflict resolution meetings, joint meetings, mediation, etc.), that local governments proceed through in an effort to resolve the disputes without litigation. In Fla. Stat. § 164.1051(2), the Legislature expressly stated that the Dispute Resolution Act "shall apply . . . to governmental conflicts arising from . . . [m]unicipal annexation."

In Fla. Stat. § 164.1041(1), the Legislature mandated that "[i]f a governmental entity files suit against another governmental entity, court proceedings on the suit shall be abated, by order of the court, until the procedural options of [the Dispute Resolution Act] have been exhausted. The governing body of a governmental entity initiating conflict resolution procedures pursuant to this act shall, by motion, request the court to issue an order abating the case pursuant to this section."

---

[23]App. at Tab 15, pp.156-161.

[24]Fla. Stat. § 164.102.

C. THE LEGISLATURE'S INCORPORATION OF THE DISPUTE RESOLUTION ACT INTO FLA. STAT. § 171.081 BY REFERENCE.

In 2006, the Legislature amended Fla. Stat. § 171.081 to read as follows (with additions underlined and deletions struck-out): [25]

> (1) ~~No later than 30 days following the passage of an annexation or contraction ordinance,~~ Any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. The action may be initiated at the party's option within 30 days following the passage of the annexation or contraction ordinance or within 30 days following the completion of the dispute resolution process in subsection (2). In any action instituted pursuant to this subsection ~~section~~, the complainant, should he or she prevail, shall be entitled to reasonable costs and attorney's fees.
> (2) If the affected party is a governmental entity, no later than 30 days following the passage of an annexation or contraction ordinance, the governmental entity must initiate and proceed through the conflict resolution procedures established in chapter 164. If there is a failure to resolve the conflict, no later than 30 days following the conclusion of the procedures established in chapter 164, the governmental entity that initiated the conflict resolution procedures may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. In any legal action instituted pursuant to this subsection, the prevailing party is entitled to reasonable costs and attorney's fees.[26]

---

[25] App. at Tab 16, p. 162.

[26] *Id* at § 5.

The Dispute Resolution Act is codified as Fla. Stat. Ch. 164.

STATEMENT OF THE FACTS

The Circuit Court found as follows in its Order Granting Amended Petition for Writ of Certiorari.

"The County seeks review of Ordinance Nos. 854, 855, 857, and 859 that were adopted by the City on December 7, 2015, and Ordinance No. 862 that was adopted by the City on December 21, 2015 ("Annexation Ordinances"). . . . All five of the Annexation Ordinances were based on voluntary annexation petitions relying on powers-of-attorney granted by the respective property owners. The City had entered into separate utility and service agreements with the owners of four of the properties, which granted the City the authority to file a voluntary annexation petition on a property owner's behalf in exchange for the City's provision of water and sewer services. The City relied upon an irrevocable power-of-attorney when filing the Petition for Voluntary Annexation of the Griffin Property. . . . Each Petition for Voluntary Annexation was signed by the City Manager, T. Jennene Norman-Vacha. The signatures of the property owners were not on the Petitions."[27]

[27]App. at Tab 1, pp. 2-3 (Paragraph Break Omitted).

STATEMENT OF THE CASE

A. THE COUNTY CHALLENGES THE ANNEXATION ORDINANCES AND IMMEDIATELY MOVES TO ABATE THE PROCEEDINGS.

On January 6, 2016, the County filed (1) a petition for writ of certiorari challenging the Annexation Ordinances,[28] and (2) a motion to abate the proceedings pursuant to Fla. Stat. § 164.1041(1) petition.[29]

One of the grounds upon which the County argued in the petition was that "[t]he Annexation Ordinances are void *ab initio* as they do not qualify as 'voluntary annexations' as required by § 171.044. For each of the annexation ordinances, the City is the actual petitioner. Thus, the City violated the essential requirements of law by not following the involuntary annexation procedures set forth in §§ 171.0413–.043, Fla. Stat., as they relate to the Annexation Ordinances."[30]

On January 26, 2016, the Hernando County Board of County Commissioners passed a resolution, pursuant to Fla. Stat. § 164.1052(1), inviting Petitioner to participate in the Dispute Resolution Act's procedures.[31]

---

[28]App. at Tab 2, pp. 11-19.

[29]App. at Tab 3, pp. 20-22, at ¶ 3 - ¶ 4.

[30]App. at Tab 2, pp. 17-18.

[31]App. at Tab 4, p. 26, at ¶ 13.

In an Order dated February 8, 2016, the Circuit Court abated the case "[p]ursuant to Fla. Stat. § 164.1041(1) . . . pending the completion of the required alternative dispute resolution proceedings."[32]

B. THE CITY MOVES TO DISMISS THE COUNTY'S PETITION AND AMENDED PETITION.

Petitioner filed a motion to dismiss the County's petition. Petitioner argued that pursuant to Fla. Stat. § 171.081(2), the County was required to have enacted its resolution on or before the 30th day following the Petitioner's enactment of the first four annexation ordinances, January 6, 2016. Since the County enacted its resolution twenty days later, Petitioner argued that the Circuit Court had to dismiss the petition.[33]

With the Circuit Court's permission, the County amended its petition on February 12, 2016. The County once again argued that the annexation ordinances were void because "the City petitioned itself for the annexations as the attorney-in-fact for the property owners."[34]

---

[32]App. at Tab 5, p. 32, at ¶ A.

[33]App. at Tab 4, pp. 23-31, *passim*. The County's response to the motion is included in Appendix at App. at Tab 6, pp. 34-40.

[34]App. at Tab 7, p. 58.

On May 11, 2016, Petitioner filed a motion to dismiss the County's amended petition on the same grounds as it had moved to dismiss the original petition.[35]

C. THE CIRCUIT COURT DENIES THE CITY'S MOTIONS TO DISMISS AND ORDERS THE CITY TO SHOW CAUSE WHY IT SHOULD NOT GRANT THE COUNTY'S AMENDED PETITION.

In separate orders, both dated on June 17, 2016, the Circuit Court denied both of Petitioner's motions to dismiss. The Circuit Court denied Petitioner's motion to dismiss the County's original petition on the grounds the County's filing of an amended petition had rendered it moot.[36] The Circuit Court denied Petitioner's motion to dismiss the County's amended petition on the grounds that the Legislature had incorporated Fla. Stat. § 164.1041(1) into Fla. Stat. § 171.081(2) by reference. The Circuit Court held that the County had complied with Fla. Stat. § 164.1041(1) by filing a motion to abate the action on the same day that the County filed its original petition. "On January 6, 2016, the same day the instant action was initiated, [the County] filed an Ex Parte Motion to Abate and Motion for Enlargement of Time to File Substantive Arguments, . . . which the Court granted on February 8, 2016. Accordingly, [the County] is in compliance with the Act and dismissal is not

---

[35]App. at Tab 8, pp. 80-89, *passim*. The County's response to the motion is included in Appendix at App. at Tab 9, pp. 90-91.

[36]App. at Tab 10, p. 92.

warranted."[37] In the same order, the Circuit Court directed Petitioner to show cause why the County's amended petition should not be granted.[38]

The action remained abated, however, while the parties proceeded through the steps of the Dispute Resolution Act.

D. THE CITY FILES ITS RESPONSE TO THE AMENDED PETITION, THE COUNTY FILES ITS REPLY THERETO, AND THE COURT HEARS THE PARTIES' ORAL ARGUMENTS.

Almost a year after the action had began, Petitioner filed its response to the County's amended petition on December 9, 2016.[39] The County filed its Reply thereto on December 22, 2016.[40] The Circuit Court heard the parties' oral arguments on February 24, 2017.

E. THE CIRCUIT COURT QUASHES THE ANNEXATION ORDINANCES.

In an order dated March 22, 2017, the Circuit Court quashed the annexation ordinances.

---

[37]App. at Tab 11, pp. 94-95.

[38]App. at Tab 11, p. 95.

[39]App. at Tab 12, pp. 96-138.

[40]App. at Tab 13, pp. 139-154.

The Circuit Court began its analysis by noting that the Legislature enacted the Annexation Act in derogation of its exclusive constitutional power over municipal boundaries. Accordingly, municipalities may only annex real property in strict compliance with the procedures set forth by the Legislature in the Annexation Act.[41]

Then the Circuit Court found that voluntary annexations are governed by Fla. Stat. § 171.044 (1) and (2). The Circuit Court highlighted the Legislature's use of the word "owner," to wit:

> (1) ***The owner or owners*** of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality.
>
> (2) Upon determination by the governing body of the municipality that the petition ***bears the signatures of all owners*** of property in the area proposed to be annexed, the governing body may, at any regular meeting, adopt a nonemergency ordinance to annex said property and redefine the boundary lines of the municipality to include said

[41]App. at Tab 1, p. 4.

property.[42]

The Circuit Court began to analyze the subsections' text by noting that it was required to "primarily determine the effect and purpose of statutes and rules of court by first examining the actual words used in the statute or rule and determine the plain meaning of those words."[43] The Circuit Court further noted, "Where there is no textual indication that a statutory phrase carries a specialized meaning, a court should interpret it as the words would be understood in ordinary, everyday discourse, and a dictionary may be utilized as an aid to understanding the ordinary meaning of statutory terms."[44]

The Circuit Court then applied those tools to the text of Fla. Stat. § 171.044(1) and (2). "The [Circuit] Court finds the plain and ordinary meaning of "owner" when construed in light of the statute as a whole, indicates that the signatures of the actual owners of the property are required [on a petition for voluntary annexation]."[45] The

---

[42]App. at Tab 1, p. 4 quoting Fla. Stat. § 171.044 (Emphasis in Original, Ellipses Omitted).

[43]App. at Tab 1, p. 5 quoting *Calabro v. State*, 995 So.2d 307, 314 (Fla. 2008).

[44]App. at Tab 1, p. 5 citing *Macchione v. State*, 123 So.3d 114, 119 & n. 3 (Fla. 5th DCA 2013) and citing *American Heritage Window Fashions, LLC. v. Florida Dep't of Revenue*, 191 So.3d 516, 520 (Fla. 2nd DCA 2016).

[45]App. at Tab 1, p. 7.

Circuit Court supported that finding with the definition of "owner" from Black's Law Dictionary: "Someone who has the right to possess, use, and convey something."[46] The Circuit Court also cited a Florida Attorney General's opinion, AGO 87-54, as providing analogous support for its finding: ""[A] petition to a municipality for voluntary annexation that does not bear the signatures of all owners of units in a condominium would not comply with the procedural requirements of s. 171.044(2) . . . . A petition signed only by an authorized officer or officers of a condominium association or 'appropriate proof that 100% of the condominium's unit owners attending the association board meeting voted to authorize the petition is not, in my opinion, a petition bearing the signatures 'of all owners of property in the area proposed to be annexed."[47]

The Circuit Court found that "the Legislature delineated separate and distinct roles to the petitioning property owner and the municipality. . . Municipality-initiated annexations are governed by section 171.0413; owner-initiated annexations are governed by section 171.044."[48]

---

[46]App. at Tab 1, p. 7 quoting OWNER, Black's Law Dictionary (10th ed. 2014).

[47]App. at Tab 1, pp. 7-8 quoting AGO 87-54 (Ellipses Omitted).

[48]App. at Tab 1, p. 8 comparing Fla. Stat.§ 171.0413 with Fla. Stat. § 171.044(1).

The Circuit Court then held that the City did not comply with the procedural requirements of Fla. Stat. § 171.044 when enacting the annexation ordinances, as "the City essentially petitioned itself to annex properties [that] it did not actually own."[49] Accordingly, the Circuit Court held that "the essential requirements of the law were not observed by the City when enacting the Annexation Ordinances."[50]

The Circuit Court stated that it did not reach the other arguments that the County had made. "At the hearing on this matter, the County asserted that if the Court were to agree with the County's argument on its first issue, the remaining issues would be rendered moot. The City agreed."[51] This proceeding follows.

STATEMENT OF JURISDICTION AND STANDARD OF REVIEW

A district court's second-tier certiorari jurisdiction is discretionary.[52] If a district court decides to exercise that discretion, it may only consider "whether the circuit court afforded procedural due process and whether the circuit court applied the

---

[49]App. at Tab 1, p. 8

[50]App. at Tab 1, p. 8

[51]App. at Tab 1, p. 8, at n. 6. See also App. at Tab 18, p. 165, at Lines 16-25; App. at Tab 18, p. 166, at Lines 1-3.

[52]*Haines City Cmty. Dev. v. Heggs*, 658 So.2d 523, 526, n. 3 (Fla. 1995); *Combs v. State*, 436 So. 2d 93, 95-96 (Fla. 1983).

correct law, or, as otherwise stated, departed from the essential requirements of law."[53]

A departure from the essential requirements of the law requires more than a simple legal error or an erroneous conclusion based on misapplication of the correct law.[54] Instead, second-tier certiorari is intended to correct "an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice."[55] Accordingly, a district court lacks the subject-matter jurisdiction to overturn a ruling of the circuit court unless there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.[56]

---

[53]*Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So. 3d 1086, 1092 (Fla. 2010) (Internal Quotation Marks Omitted).

[54]*Custer Med. Ctr.*, 62 So.3d at 1092.

[55]*Heggs*, 658 So.2d at 527 quoting *Jones v. State*, 477 So.2d 566, 569 (Fla. 1985) (Boyd, C.J., concurring specially).

[56]See *Futch v. Florida Dep't of Highway Safety & Motor Vehicles*, 189 So. 3d 131, 132 (Fla. 2016); *Florida Parole Comm'n v. Taylor*, 132 So. 3d 780, 783 (Fla. 2014); *Nader v. Fla. Dep't of High. Saf. & Motor Veh.*, 87 So.3d 712, 717 (Fla. 2012); *Combs*, 436 So.2d at 96.

LEGAL ARGUMENT

A. THIS COURT LACKS JURISDICTION.

In *Futch v. Florida Department of Highway Safety & Motor Vehicles*, the Florida Supreme Court held that the existence of a district court's second-tier certiorari jurisdiction depends on the existence of a miscarriage of justice.[57] While the Florida Supreme Court has never enumerated all of the errors that can rise to the level of a miscarriage of justice, it is clear that the harm alleged by Petitioner does not qualify as one.

As an initial matter, the Circuit Court did not permanently enjoin Petitioner from ever annexing the properties. Petitioner can cure the defect that the Circuit Court identified in its annexation process by either obtaining the signatures of the property owners on voluntary annexation petitions or by proceeding through the involuntary annexation process.[58]

Similarly, Petitioner's argument of how it and other municipalities will be harmed as a result of the Circuit Court's ruling lacks merit. Petitioner argues, "[I]t has been a customary use by not only the City of Brooksville, but many other Florida

---

[57]*Futch*, 189 So. 3d at 132.

[58]The County conceded this point during oral argument below. App. at Tab 18, p. 167, at Lines 6-17.

municipalities, to use a [utility service agreement] and a power-of-attorney appointing the City to act on behalf of the landowner. The City and Florida municipalities throughout the State will incur great harm if this Circuit Court Order is allowed to stand."[59] The Circuit Court's ruling, however, has no precedential value as an unpublished trial court opinion.

The Florida Constitution grants circuit courts original jurisdiction over certain classes of cases, one of which is petitions for writs of certiorari. In contrast, the Legislature must explicitly grant circuit courts appellate jurisdiction when enacting a general law.[60] To determine whether a circuit court's "first-tier" certiorari ruling has any precedential effect, one must determine whether the court was acting pursuant to its original or appellate jurisdiction.[61]

Circuit courts are presumed to be acting as trial courts pursuant to their original jurisdiction when they rule on certiorari petitions even though certiorari "may be

---

[59]Second Tier Petition at 7.

[60]See Fla. Const. Art. 5, § 5(b).

[61]Compare *Fieselman v. State*, 566 So. 2d 768, 770 (Fla. 1990) (holding decisions of circuit court acting in its appellate capacity bind the county courts within the circuit) with *State v. Bamber*, 592 So.2d 1129, 1132 (Fla. 2nd DCA 1991) approved 630 So.2d 1048 (Fla. 1994) ("Trial courts do not create precedent."). See also *State v. Lopez*, 633 So. 2d 1150, 1150 (Fla. 5th DCA 1994).

invoked to perform functions that are appellate in their nature."[62] When the Legislature has created exceptions to that rule, it has done so explicitly. For example, the Legislature provides in Fla. Stat. § 322.2615(13) that "[a] person **may appeal** any decision of the department sustaining a suspension of his or her driver license **by a petition for writ of certiorari to the circuit court** . . . ."[63] When the Legislature has expressly created such an exception, a circuit court's certiorari ruling will have a precedential effect on lower tribunals.[64]

With regard to proceedings brought pursuant to Fla. Stat. § 171.081, however, no Florida court has ever held that a circuit court's certiorari ruling is precedential. Accordingly, the only parties that will be bound will be Petitioner and the County, and only to the extent that judgment by estoppel bars the relitigation of issues that were actually adjudicated in a prior proceeding.[65]

---

[62] *State ex rel. Associated Utilities Corp. v. Chillingworth*, 181 So. 346, 348 (Fla. 1938). See also *Adams v. Gordon*, 260 So. 2d 246, 248 (Fla. 4th DCA 1972) (holding "certiorari proceedings, although used to perform appellate functions, are original in nature").

[63] (Emphasis Added).

[64] See *Klinker v. Dep't of Highway Safety & Motor Vehicles*, 118 So. 3d 835, 836 (Fla. 5th DCA 2013).

[65] See *Park v. City of W. Melbourne*, 927 So. 2d 5, 9 (Fla. 5th DCA 2006).

That being said, even if the Circuit Court below had been acting pursuant to its appellate jurisdiction, its ruling has no precedential value because it is unpublished.[66]

B. THE CIRCUIT COURT PROVIDED PROCEDURAL DUE PROCESS.

The sum total of Petitioner's due process argument consists of a single sentence in the Second-Tier Petition: "The City contends that the March 22, 2017 Order did not afford the City due process and departed from the essential requirements of the law which resulted in a miscarriage of justice."[67] Petitioner's substantive argument concerning that order, however, does not allege that the Circuit Court deprived it of procedural due process.[68]

Both the United States and Florida Constitutions bar the state from depriving any person "life, liberty or property, without due process of law."[69] Procedural due process requires that a person be given reasonable notice and a meaningful opportunity to be heard prior to a deprivation of a property interest.[70] An appellate

---

[66]See *Gawker Media, LLC v. Bollea*, 170 So. 3d 125, 133 (Fla. 2nd DCA 2015).

[67]Second-Tier Petition at 2.

[68]*Id* at 7-15, *passim*.

[69]Amend. XIV, U. S. Const.; Art. I, § 9, Fla. Const.

[70]*N.C. v. Anderson,* 882 So.2d 990, 993 (Fla. 2004); *Joshua v. City of Gainesville,* 768 So.2d 432, 438 (Fla. 2000).

court provides litigants with due process by providing litigants with "a meaningful opportunity to be heard before an issue is decided."[71] "The requisites of that portion of due process described as 'hearing' are satisfied by providing the parties with the opportunity of affirmatively advancing argument with supporting authority and a like opportunity for response and counter-argument by the adversary."[72] For example, appellate courts have been found to have violated procedural due process by either creating the appearance of a biased tribunal,[73] or by applying harsh or arbitrary procedural rules.[74]

None of those issues, however, are present in the instant case. Instead, the Circuit Court afforded Petitioner the opportunity to fully brief its factual and legal arguments, and to then present oral argument.

---

[71]*Maikotter v. Univ. of W. Va. Bd. of Trs.,* 527 S.E.2d 802, 808-10 (W. Va. 1999) (Davis, J., concurring in part and dissenting in part).

[72]*Groendyke Transport, Inc. v. Davis,* 406 F.2d 1158, 1162 (5th Cir. 1969).

[73]See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 885 (2009); *Aetna Life Ins. Co. v. Lavoie,* 475 U.S. 813, 825 (1986).

[74]See *Affirmative Ins. Co. v. Gomez,* 14 So.3d 1244, 1247 (Fla. 4th DCA 2009).

C. THE CIRCUIT COURT APPLIED THE CORRECT LAW WHEN IT HELD THAT A MUNICIPALITY CANNOT EXECUTE PETITIONS FOR VOLUNTARY ANNEXATION AS THE APPLICABLE PROPERTY OWNERS' ATTORNEY-IN-FACT.

The Circuit Court correctly held that Petitioner violated Fla. Stat. § 171.044 by applying to itself for the subsequently quashed "voluntary" annexations as the property owners' attorney-in-fact.

1. PETITIONER MISSTATES THE CIRCUIT COURT'S HOLDING.

As an initial matter, Petitioner misstates the Circuit Court's holding. Instead of identifying the Circuit Court's application of Fla. Stat. § 171.044, Petitioner writes, "The Circuit Court at the first-tier review level misapplied the law in adopting the argument of the County that the Florida Attorney General Opinion (AGO 87-54) applied to the challenged annexations."[75] Petitioner presumably describes the Circuit Court's holding in that way to weaken it, as " an opinion of the Attorney General is not binding on a court."[76]

The Circuit Court, however, introduced its citation to the AGO 87-54 with the signal "cf." "Cf." is an abbreviation of the Latin word "*confer*," meaning "compare," and informs the reader that the cited authority supports a proposition different from

---

[75] Second-Tier Petition at 7-8.

[76] *State v. Family Bank of Hallandale*, 623 So. 2d 474, 478 (Fla. 1993)

the main proposition, but is sufficiently analogous to lend support. Accordingly, the Circuit Court's use of the signal "cf." denotes that AGO 87-54 provides support by analogy for its conclusion that the actual property owners must sign petitions for voluntary annexation, as opposed to controlling the outcome of the proceedings below.[77]

2. PETITIONER ARGUES THE COURT SHOULD EXCEED ITS JURISDICTION AND USE THIS CASE TO CREATE NEW LAW.

Petitioner tacitly admits in the Second-Tier Petition that it cannot identify a clearly established principle of law that the Circuit Court's ruling violates. For example, Petitioner argues that "[t]here is no Florida case law on point regarding the use of a power-of-attorney appointing someone other than the property owner to petition for annexation,"[78] and chides the Circuit Court for "focus[ing] only on the literal reading of section 171.044(1) & (2), *Florida Statutes*[,] requiring a petition for voluntary annexation '*to be signed*' by the property owner."[79]

Instead, Petitioner urges this Court "to add to the statutory language"[80] of Fla. Stat. § 171.044 by "find[ing] that the use of a power-of-attorney or an appointment

---

[77]Uniform System of Citation, Sixteenth Edition, p. 23.

[78]Second-Tier Petition at 13.

[79]*Id* at 8 (Emphasis in Original).

[80]*Id.*

of an agent to initiate a voluntary annexation is the equivalent to the property owner signing the actual petition for voluntary annexation."[81]

This Court, however, cannot do so. The Florida Supreme Court has held that the departure-from-essential-requirements-of-law test "cannot be used to create new law where the decision below recognizes the correct general law and applies the correct law to a new set of facts to which it has not been previously applied."[82] Presumably, this is because a district court cannot fault a circuit court for violating a legal principle that did not yet exist at the time the circuit court ruled.

3. THE CIRCUIT COURT'S INTERPRETATION OF FLA. STAT. § 171.044 IS NOT ABSURD.

"Courts should exercise great caution before deviating from the plain text of a . . . statute . . . to purportedly avoid reaching what a court considers an 'absurd result.' When inappropriately utilized, the absurdity doctrine allows courts to substitute their judgment of how legislation should read, rather than how it does read, in violation of the separation of powers enshrined in . . . the Florida Constitution. When the language of a statute is unambiguous, courts are bound to follow the text. Courts may only legitimately rely on the 'absurdity doctrine' without running afoul

---

[81] *Id* at 8-9.

[82] *Nader*, 87 So.3d at 723 citing *Ivey*, 774 So.2d at 682–83.

of the separation of powers where applying the plain language would be, in a genuine sense, absurd, i.e., where it is quite impossible that [the legislative body] could have intended the result ... and where the alleged absurdity is so clear as to be obvious to most anyone."[83]

Based upon this standard, the Circuit Court's interpretation of Fla. Stat. § 171.044 is not absurd, as the Legislature may have required property owners to actually sign voluntary annexation petitions to ensure that municipalities provide owners with adequate notice of annexations.

Under Florida law, the owners of to-be-annexed property have a due process right to receive adequate, statutorily-compliant notice from a municipality of its intent to annex. A municipality's failure to comply with a statutory notice requirement is "jurisdictional, a condition precedent to due process, and its omission [is] fatal to the [annexation]."[84] Further, if a municipality does not provide legally adequate notice of its intention to annex, a property owner's right to object to an annexation ordinance

---

[83] *Nassau County v. Willis*, 41 So. 3d 270, 279 (Fla. 1st DCA 2010) (Internal Citations, Quotation Marks, and a Paragraph Break Omitted). See also *Realty Assocs. Fund IX, L.P. v. Town of Cutler Bay*, 208 So. 3d 735, 739 (Fla. 3rd DCA 2016).

[84] *Town of Mangonia Park*, 118 So. 2d at 588.

will not be lost by his or her failure to file a petition within 30 days after the enactment of the ordinance.[85]

Thus, requiring property owners to sign voluntary annexation petitions themselves would serve two of the Legislature's interests. First, the requirement would protect the rights of property owners by ensuring that they have actual notice of annexations. Second, such a requirement promotes judicial efficiency, as property owners who receive actual notice will have no excuse not to have challenged an annexation ordinance outside of the 30-day time limit; no grounds for equitable tolling will exist. Courts would not have to face the prospect of hearing challenges to superannuated annexation ordinances.

Further supporting such an interpretation is the Legislature's requirement that municipalities provide actual notice to property owners as part of the involuntary annexation process.[86]

---

[85] *Id.*

[86] See Fla. Stat. § 171.042(3).

4. PETITIONER IMPROPERLY ADVANCES AN ARGUMENT THAT IT DID NOT RAISE IN THE PROCEEDINGS BELOW.

"For the purpose of second-tier certiorari, the circuit court cannot be said to have departed from a clearly established principle of law when it failed to consider or apply a point not raised in the briefs."[87]

Petitioner, however, raises a new argument for the first time in the Second-Tier Petition, to wit: "The owner of real property in Florida has an absolute right to appoint an agent to act according to a specific grant of power-of-attorney or as [an] agent."[88] In the first-tier proceedings below, however, Petitioner argued that the powers-of-attorney are presumptively valid because they satisfied the definition thereof contained in the Florida Power of Attorney Act ("the FPOAA").[89] Neither argument has any legal merit.

Presumably, Petitioner abandoned the argument that it advanced below because two provisions of the FPOAA directly contradict its argument. On one hand, Fla. Stat. § 709.2103(2) states that the FPOAA "applies to all powers of attorney except: . . . A power created on a form prescribed by a government or governmental

---

[87] *Town of Jupiter v. Byrd Family Trust*, 134 So. 3d 1098, 1102 (Fla. 4th DCA 2014).

[88] Second-Tier Petition at 8.

[89] Fla. Stat. § 709.2101, *et seq*.

subdivision, agency, or instrumentality for a governmental purpose." On the other hand, a municipal corporation does not qualify as an agent under the FPOAA, as Fla. Stat. § 709.2105 states that only natural persons over the age of 18 and financial institutions with trust powers can be agents pursuant to a power-of-attorney.

In the Second-Tier Petition, Petitioner attempts to create a new "fundamental" right out of whole cloth.

Petitioner cites this Court's holding in *Dingle v. Prikhdina*[90] for the proposition that "[t]he owner of real property in Florida has an absolute right to appoint an agent to act according to a specific grant of power-of-attorney or as [sic] agent."[91] Petitioner cites to the case without an introductory signal and includes a spot-cite. According to The Uniform System of Citation, also known as the "Blue Book", which is used by the Florida Courts pursuant to Fla. R. App. P. 9.800(o), Petitioner is indicating to the Court that the authority, on the specific page indicated, will directly state the proposition.[92]

This Court's opinion in *Dingle*, however, does not support that proposition. Instead, the case concerned the scope of a power-of-attorney that Whiteway

---

[90]*Dingle v. Prikhdina*, 59 So.3d 326 (Fla. 5th DCA 2011).

[91]Second-Tier Petition at 8.

[92]Uniform System of Citation, Sixteenth Edition, pp. 22 & 34-35.

Investments, Inc., gave to John Kyreakakis. Mr. Kyreakakis executed a "quit-claim deed of gift" by which he purported to transfer the title to a parcel of land owned by Whiteway Investments to his friends Robert and Janet Dingle. After Mr. Kyreakakis's death, the Dingles sued his widow, Elena Prikhdina, to eject her from the property. The circuit court granted summary judgment in favor of Ms. Prikhdina, which this Court affirmed. This Court held that the power-of-attorney that Whiteway Investments gave to Mr. Kyreakakis "clearly included the power to convey real property, however, it did not specifically authorize its use to make a gift." Accordingly, this Court held that "the deed was void."[93]

At no point in the *Dingle* opinion does this Court discuss whether a property owner has an absolute right to appoint an agent to act according to a specific grant of power-of-attorney, nevertheless hold that such a right exists.

Instead, although the issue normally arises in a principal's defense of criminal or tort liability cases resulting from an agent's actions, Florida law follows the general rule that a principal cannot delegate to an agent the authority to violate a statute.[94]

---

[93] *Dingle*, 59 So. 3d at 328.

[94] Cf. *Boatright v. City of Jacksonville*, 334 So. 2d 339, 344 (Fla. 1st DCA 1976) ("An act which, if done by the principal, would be illegal because in violation of a statute cannot be done for him by an agent.").

All of the other cases cited by Petitioner either do not involve the use of powers-of-attorney in annexation cases or interpret another state's statute.

D. THE CIRCUIT COURT APPLIED THE CORRECT LAW WHEN IT DENIED PETITIONER'S MOTIONS TO DISMISS.

Petitioner contends that Section 171.081(2) enacts either a jurisdictional bar or a condition precedent, the noncompliance with which requires an annexation challenge to be dismissed. Section 171.081(2) states that "[i]f the affected party is a governmental entity, no later than 30 days following the passage of an annexation or contraction ordinance, the governmental entity must initiate and proceed through the conflict resolution procedures established in chapter 164. If there is a failure to resolve the conflict, no later than 30 days following the conclusion of the procedures established in chapter 164, the governmental entity that initiated the conflict resolution procedures may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari."

The Legislature, however, has not enacted so harsh a rule.

1. STATUTES ARE PRESUMPTIVELY NON-JURISDICTIONAL.

A statutory requirement that is jurisdictional imposes special burdens on the courts and the parties. "Characterizing a rule as jurisdictional renders it unique in our adversarial system. Objections to a tribunal's jurisdiction can be raised at any time,

even by a party that once conceded the tribunal's subject-matter jurisdiction over the controversy. Tardy objections can therefore result in a waste of adjudicatory resources and disturbingly disarm litigants."[95]

Because the consequences that attach to the jurisdictional label may be so drastic, Florida courts have held that the Legislature must clearly indicate that a provision be treated as jurisdictional.[96] As this Court held in *Adhin v. First Horizon Home Loans*, "A statute is a 'nonclaim statute' if there is a clearly evidenced legislative intent in the statute to not merely withhold the remedy, but to take away the right of recovery when a claimant fails to present his or her claim as provided in the statute. In other words, the language creating a nonclaim statute must indicate clearly that a failure to comply with its terms bars the claim."[97]

As the United States Supreme Court has held, "[M]ost time bars are nonjurisdictional. Time and again, we have described filing deadlines as

---

[95]*Sebelius v. Auburn Regional Medical Center,* 133 S.Ct. 817, 824 (2013).

[96]Generally, *Hospital Corp. of America v. Lindberg*, 571 So.2d 446, 448 (Fla.1990); *Holding Elec., Inc. v. Roberts*, 530 So.2d 301,303 (Fla. 1988); *Commercial Carrier Corp. v. Indian River County*, 371 So.2d 1010, 1022-23 (Fla.1979); *Rabinowitz v. Municipality of Bay Harbour Islands*, 178 So.2d 9, 13 (Fla. 1965); *Shank v. Havill*, 6 So.3d 631, 633 (Fla. 5th DCA 2009).

[97]*Adhin v. First Horizon Home Loans*, 44 So. 3d 1245, 1253 (Fla. 5th DCA 2010).

quintessential claim-processing rules, which seek to promote the orderly progress of litigation, but do not deprive a court of authority to hear a case. That is so, . . . even when the time limit is important (most are) and even when it is framed in mandatory terms (again, most are); indeed, that is so however emphatically expressed those terms may be."[98]

2. THE LEGISLATURE MUST EXPRESSLY CREATE A CONDITION PRECEDENT IN A STATUTE.

As with jurisdictional bars, the determination of whether or not a statute creates a condition precedent to a cause of action is matter of statutory interpretation that begins with "the language of the statute itself."[99] Accordingly, courts will not create conditions precedent in the absence of an express statutory provision.

The Second DCA explained the rationale behind this rule when considering whether a statute created a condition precedent in *Brindise v. U.S. Bank, N.A.*[100] "First, we examine the statute's text. Section 559.715 has no language making written notice of assignment a condition precedent to suit. The Legislature, of course, knows

---

[98] *United States v. Kwai Fun Wong*, 135 S. Ct. 1625, 1632 (2015) (Internal Quotations, Citations, Quotation Marks, and Alteration Marks Omitted).

[99] *Hallstrom v. Tillamook County*, 493 U.S. 20, 25 (1989).

[100] *Brindise v. U.S. Bank, N.A.*, 183 So. 3d 1215 (Fla. 2nd DCA 2016), review denied, 2016 WL 1122325 (Fla. Mar. 22, 2016).

how to condition the filing of a lawsuit on some prior occurrence. It has done so, for example, for libel and slander actions. Before a victim of alleged medical malpractice can file a negligence suit, the victim must engage in a rigorous presuit investigation and discovery process. In the condominium context, the Legislature has mandated that the parties engage in an alternative dispute resolution process before seeking trial court relief. The Legislature knows how to create a condition precedent. Because the Legislature declined to be more specific when enacting Section 559.715, we will not expand the statute to include language the Legislature did not enact."[101]

3. WHEN ASCERTAINING THE INTENT OF THE LEGISLATURE, COURTS READ RELATED STATUTORY PROVISIONS IN CONTEXT.

The Florida Supreme Court has held that a "[c]ourt's purpose in construing a statutory provision is to give effect to the "polestar" of legislative intent. In attempting to discern legislative intent, this Court looks first to the actual language used in the statute."[102]

---

[101] *Id* at 1219 (Internal Statutory Citations Omitted). See also *Bank of America, N.A. v. Siefker*, 201 So. 3d 811, 818 (Fla. 4th DCA 2016); *Goldin v. Boce Grp., L.C.*, 773 F. Supp. 2d 1376, 1379 (S.D. Fla. 2011) ("The Court declines to read a condition precedent into the statute where Congress did not create one.").

[102] *B.C. v. Dep't of Children and Families*, 887 So.2d 1046, 1051 (Fla. 2004) (Internal Quotations and Citations Omitted).

When ascertaining the Legislature's intent, courts do not read statutory provisions in isolation. "[A] statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts. The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent. Similarly, related statutory provisions must be read together to achieve a consistent whole, and where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another."[103] Further, "when enacted into law simultaneously, subsections of the same statute must be construed *in pari materia.*"[104] As the Florida Supreme Court has held, "[i]f a *part* of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the same statute or

---

[103] *Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008), as revised on denial of reh'g (Jan. 29, 2009) (Internal Quotations, Citations, and Alteration Marks Omitted). See also *Fla. Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So.2d 1260, 1265 (Fla.2008).

[104] *Okeechobee Health Care v. Collins*, 726 So. 2d 775, 776 (Fla. 1st DCA 1998). See also *Jones v. ETS of New Orleans, Inc.*, 793 So.2d 912, 915 (Fla.2001).

others *in pari materia*, the Court will examine the entire act and those *in pari materia* in order to ascertain the overall legislative intent."[105]

Pursuant to this canon, the Florida Supreme Court has held that when the Legislature enacts a statute that refers to a preexisting statute, the referenced statute is treated as though it is incorporated into the adopting statute.[106] The effect is the same as if the provisions adopted were written into the adopting statute.[107] "Incorporation by reference is a form of legislative shorthand; the effect of an incorporation by reference is the same as if the referenced material were set out verbatim in the referencing statute."[108]

4. FLA. STAT. § 171.081(2) DOES NOT ADDRESS THE CONSEQUENCES OF A GOVERNMENT ENTITY'S FAILURE TO SATISFY THE CONDITIONS THAT IT SPECIFIES.

As a matter of statutory construction, the United States Supreme Court recently held that while terms such as "shall" and "must" usually connote a mandatory rule,

---

[105]*Larimore*, 2 So. 3d at 106 quoting *ContractPoint*, 986 So.2d at 1265-66. See also *Zee v. Gary*, 189 So. 34, 36 (Fla. 1939).

[106]*State v. J.R.M*, 388 So. 2d 1227, 1229 (Fla. 1980); *Van Pelt v. Hilliard*, 78 So. 693, 698 (Fla. 1918). See also *State v. Varela*, 636 So.2d 559, 560 (Fla. 5th DCA 1994).

[107]*Hecht v. Shaw,* 151 So. 333, 333 (Fla. 1933).

[108]*Artistic Ent., Inc. v. City of Warner Robins,* 331 F.3d 1196, 1206 (11th Cir. 2003).

those words in and of themselves tell a court "nothing about the remedy for a violation of that rule" and thus, provides no legislative guidance about what, if any, consequence should follow.[109] Instead, where a statute does not specify the consequences of violating a statutory procedure, courts "look to statutory language, to the relevant context, and to what they reveal about the purposes [the provision] is designed to serve."[110]

5. FLA. STAT. § 164.1041(1) SPECIFIES THE ONLY CONSEQUENCES FOR A GOVERNMENT ENTITY'S NONCOMPLIANCE WITH FLA. STAT. § 171.081(2)'S PROCEDURES.

While the Legislature did not enumerate in Fla. Stat. § 171.081(2) what the consequences would be should a governmental entity file a legal challenge to a municipal annexation ordinance without first exhausting the Conflict Resolution Act's alternative dispute resolution procedures, the Legislature provided for that eventuality by incorporating into Fla. Stat. § 171.081(2) the procedures set forth in Fla. Stat. § 164.1041(1). The latter statute states: "If a governmental entity files suit against another governmental entity, court proceedings on the suit shall be abated, by order of the court, until the procedural options of this act have been exhausted. The

---

[109] *State Farm Fire & Cas. Co. v. U.S. ex rel. Rigsby*, 137 S. Ct. 436, 442 (2016).

[110] *Dolan v. United States*, 560 U.S. 605, 610 (2010).

governing body of a governmental entity initiating conflict resolution procedures pursuant to this act shall, by motion, request the court to issue an order abating the case pursuant to this section."

Importantly, this interpretation does not render Fla. Stat. § 171.081(2) meaningless, as the subsection would still prevent government entities from invoking Fla. Stat. § 164.1041(2). The latter subsection states, "If a governmental entity, by a three-fourths vote of its governing body, finds that an immediate danger to the health, safety, or welfare of the public requires immediate action, or that significant legal rights will be compromised if a court proceeding does not take place before the provisions of this act are complied with, no notice or public meeting or other proceeding as provided by this act shall be required before such a court proceeding." In an annexation case, that option would not be available, as Fla. Stat. § 171.082(2) requires that a challenging "government entity must initiate and proceed through the conflict resolution procedures established in chapter 164."

This interpretation would also avoid rendering meaningless the sentence in Fla. Stat. § 171.082(1) that states, "The action may be initiated **at the party's option** within 30 days following the passage of the annexation or contraction ordinance or within 30 days following the completion of the dispute resolution process in

subsection (2)."[111] Either way, the challenging government entity would still have to proceed through the Dispute Resolution Act's procedures before being allowed to litigate any substantive issues before the circuit court.

6. EVEN IF PETITIONER'S INTERPRETATION OF FLA. STAT. § 164.1041(1) IS CORRECT, IT DOES NOT CONSTITUTE A CLEARLY ESTABLISHED PRINCIPLE OF LAW.

Prior to the Circuit Court's ruling below, a 2006 circuit court case between the same parties appears to be the only other time in which a court appears to have considered Fla. Stat. § 171.081(2). In that case, the court also held that since Fla. Stat. § 171.081(2) incorporated the Conflict Resolution Act by reference, Fla. Stat. § 164.1041(1) required the court to abate the case until the parties completed the Conflict Resolution Act's dispute resolution procedures.[112]

E. THIS COURT HAS NO ABILITY TO SANCTION THE COUNTY'S COUNSEL FOR THEIR CONDUCT IN THE CIRCUIT COURT.

Finally, Petitioner's argument that this Court should sanction the County's counsel for their conduct in the Circuit Court below lacks merit. As the Florida

---

[111](Emphasis Added)

[112]App. at Tab 19, pp. 168-170.

Supreme Court held in *Boca Burger, Inc. v. Forum*, "no authority exists for an appellate court's imposition of sanctions for conduct occurring in the trial court."[113]

CONCLUSION/RELIEF REQUESTED

Petitioner has failed to satisfy the standards for second-tier certiorari relief, as the Circuit Court afforded procedural due process and applied the correct law. Accordingly, the County requests that this Court either dismiss or deny the Second-Tier Petition, and grant such other and further relief as this Court deems proper.

(The Remainder of this Page Has Been Intentionally Left Blank)

[113] *Boca Burger, Inc. v. Forum*, 912 So. 2d 561, 569 (Fla. 2005), as revised on denial of reh'g (Sept. 29, 2005)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 17, 2017, a true and correct copy of the foregoing was sent by e-mail to all persons listed on the attached Service List.

/s/ Jon A. Jouben
Jon A. Jouben, Esq. (FBN: 149561)
jjouben@co.hernando.fl.us
Garth Coller, Esq. (FBN: 374849)
GarthC@co.hernando.fl.us
Randall B. Griffiths, Esq. (FBN 768091)
Rgriffiths@co.hernando.fl.us
Alt. E-Mails: cao@co.hernando.fl.us
phare@co.hernando.fl.us
20 N. Main Street, Suite 462
Brooksville, FL 34601
352-754-4122 / 352-754-4001 Fax
Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App . P. 9.100.

/s/ Jon A. Jouben
Jon A. Jouben, Esq. (FBN: 149561)

SERVICE LIST

Clifford A. Taylor, Esq.
Jennifer C. Rey, Esq.
The Hogan Law Firm
20 S. Broad Street
Brooksville, FL 34601
cityattorney.brooksville.fl@hoganlawfirm.com
Jennifer@hoganlawfirm.com
bpreece@hoganlawfirm.com
Counsel for the Petitioner

Thomas A. Cloud, Esq.,
Monterey Campbell, Esq.
thomas.cloud@gray-robinson.com
monterey.campbell@gray-robinson.com
linda.olson@gray-robinson.com
jan.gordon@gray-robinson.com
GrayRobinson, P.A.
P.O. Box 3068
Orlando, FL 32802-3068
Co-Counsel for Proposed Amicus Curie

Harry Morrison, Jr., Esq.,
Rebecca A. O'Hara, Esq.
Cmorrison@flcities.com
ROHara@flcities.com
Florida League of Cities, Inc.
301 S. Bronough St., Ste. 300
Tallahassee, FL 32301
Co-Counsel for Proposed Amicus Curie