IN THE SUPREME COURT OF FLORIDA
CASE NO. SC11-396

THAD ALTMAN and
ARTHENIA L. JOYNER,

Petitioners,

v.

RICHARD SCOTT, as Governor,
State of Florida, in his official capacity,

Respondent.

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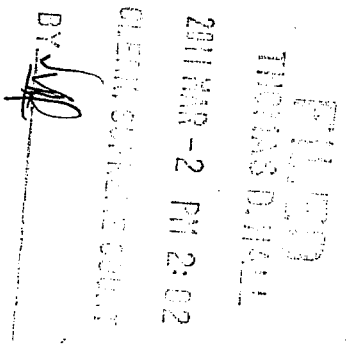

RESPONSE TO EMERGENCY PETITION FOR WRIT OF QUO WARRANTO, OR IN THE ALTERNATIVE, FOR WRIT OF MANDAMUS, OR OTHER EQUITABLE RELIEF

Petitioners—State Senators whose policy preferences have not prevailed in the political process—ask this Court to step into, and take over, the planning, implementation, and operation of a proposed high-speed rail line. The proposed line can only be described as a colossal undertaking: a $2.4 billion, 30-year construction and operations project that would require the ongoing involvement of, and coordination by, the Legislature and numerous Executive agencies under the control of the Governor. Governor Scott believes that he is responsible to the taxpayers of Florida. Governor Scott has announced, repeatedly and in no uncertain terms, his determination that the high-speed rail project is not wise policy and that it will ultimately prove detrimental to the taxpayers of this State. This is a

decision, by virtue of his election and his constitutional authority, that the Governor is entitled to make.

Petitioners style their request as one for an order compelling the satisfaction of "ministerial duties." They ask the Court to "order the Respondent to expeditiously accept the [federal] funds and apply such funds appropriated by Congress and the Florida Legislature for the Florida High Speed Rail Project." Pet. at 23. But there would be nothing "ministerial" about an order requiring the application of $2.4 billion in federal funds to the construction and operation of a high-speed rail project. This point becomes readily apparent upon consideration of two critical facts that Petitioners mischaracterize in their papers.

First, of the $2.4 billion in federal funds at issue, the Legislature has ***not*** enacted an appropriation for $2.27 billion of those funds. Thus, to grant Petitioners their requested relief—the application of all proposed federal funds to a high-speed rail project—this Court would have to (i) order the Legislature to enact specific appropriations for some $2.27 billion, (ii) order the Governor not to veto such legislation, and (iii) order the Legislature, if the Governor does veto the legislation, to override that veto. It goes without saying that such an unprecedented order would render the separation-of-powers doctrine utterly meaningless.

Second, Petitioners ignore that the federal government has declared it will only transmit these funds to Florida if the Governor expresses unequivocal and unqualified support for high-speed rail. This, the Governor has made clear, he will not do. Accordingly, to grant Petitioners the relief they seek, this Court would also have to either (i) order the Secretary of the United States Department of Transportation to change his policy, or (ii) order the Governor to publicly reverse his policy position on the topic of high-speed rail. Again, such relief lies far beyond anything this Court is empowered to do, and in any event, Petitioners have named neither the Legislature nor the United States Secretary of Transportation as parties to this action.

For these reasons, and others more fully developed below, Respondent respectfully submits that the Petition should be dismissed.

STATEMENT OF FACTS

In the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. 111-5, 123 Stat. 115 (2009), Congress appropriated funds "[t]o invest in transportation." ARRA § 3(a)(1)-(5). ARRA required that if a State desired a grant of funds, its governor, within 45 days, had to certify that "the State will request and use funds provided." Former Governor Crist executed such a certification. *See* Pet. App. Exs. A & B.

The Florida Legislature then created the Florida Rail Enterprise (FRE) to "locate, plan, design, finance, construct, maintain, own, operate, administer, and manage the high-speed rail system in the state." § 341.822(1), Fla. Stat. Under the law, the FRE "has full authority ... to plan, construct, maintain, repair, and operate a high-speed rail system." *Id.* § 341.822(2)(a). The FRE "*may* also solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or a consortia thereof, for the building, operation, ownership, or financing of the high-speed rail system." *Id.* § 341.822(3) (emphasis added). The executive director of the FRE serves at the pleasure of the Secretary of Transportation, who in turn serves at the pleasure of the Governor. §§ 20.23(1)(a), (5)(f)(1), Fla. Stat.

The federal government has contemplated granting the State $2.4 billion to construct a high-speed rail system. *See* Pet. App. Exs. E, F. Petitioners characterize this "total award of $2.4 billion as part of the Legislature's Florida Rail Act and its appropriation in the spring of 2010." Pet. at 8. And they claim that "[t]he ... appropriations of the state and federal monies were fully accomplished prior to the election or inauguration" of Governor Scott. *Id.*

This is simply not true. In 2010, the Legislature appropriated $130.8 million for high-speed rail, a small fraction of the current estimates for the project. *See*

2010 General Appropriations Act, Ch. 10-152, § 2094, at 275, Laws of Fla. The Legislature has yet to appropriate the other $2.27 billion.

Upon taking office, Governor Scott began deliberating the wisdom of moving forward with high-speed rail. After careful study, he concluded that such funds would be better invested "in higher yield projects" such as dredging improvements in the ports of Jacksonville and Miami; widening the I-95 Interstate in Martin, St. Lucie, Brevard, and Volusia Counties; widening I-4 in Orange County; improving I-395 in Miami-Dade County; and widening I-275 in Hillsborough County. *See* Pet. App. Ex. H at 1. These projects promise far greater job creation and stronger, more permanent economic yield for the State and the taxpayers. *Id.*

The Governor concluded that the high-speed rail project, on the other hand, will not be economically feasible, will not provide any meaningful job creation beyond the construction phase, and will not result in sustainable economic growth opportunities. *Id.* at 2. Accordingly, Governor Scott informed Secretary LaHood of the United States Department of Transportation (USDOT) that he would not support any measures designed to continue Florida's involvement in this high-speed rail project. *Id.* Thus, as things stand, the Governor will veto any future appropriations for high-speed rail, and has and will direct agencies within his purview to plan accordingly.

For its part, the USDOT has indicated, in both ongoing discussions and formal documents, that the Governor's unequivocal, unqualified support for high-speed rail is a necessary condition of the USDOT's continued guarantee of grants for the rail line. *See* Supp. App. at Ex. 1 (Memorandum from USDOT to Governor Scott, transmitted Feb. 25, 2011). Moreover, to guarantee the funds, USDOT will require agencies under the Governor's purview (1) to oversee "implementation planning, design, location, bid award, construction, maintenance and operation;" (2) "to provide technical assistance and support" to the rail line; and (3) "to process fully and expedite any and all necessary reviews and approvals." *Id.* Again, Governor Scott's considered policy judgment is that it is unwise to make these guarantees. He will not do so.

Although Petitioners knew of Governor Scott's decision by February 16, 2011, they waited two weeks to file their "emergency" petition, serving it on the Governor after 2:00 p.m. on March 1 and requesting a decision on the merits by March 4. The Court has ordered the Governor to respond by noon on March 2, and to "address, at a minimum the following: 1) The Jurisdiction of this Court to hear the matter, 2) The standing of the petitioners to bring this petition, 3) The merits of the petition, and 4) The March 4, 2011, deadline for any decision."

ARGUMENT

I. JURISDICITION AND STANDING

A. This Court Only Has Original Jurisdiction to Hear Petitions for a Writ Quo Warranto or Mandamus.

To the extent Petitioners seek a writ of mandamus or quo warranto, this Court may exercise original jurisdiction to hear the claim. *See* Art. V, §3(b)(8), Fla. Const.; 9.030(a)(3), Fla. R. App. P. But Petitioners have cited to no provision of Florida law—and we are aware of none—that would authorize this Court to exercise original jurisdiction to grant "other equitable relief," Pet. at 1, or a "preliminary injunction," Pet. at 23. The Court has no jurisdiction over these latter claims and should dismiss them.

B. Petitioners Do Not Have Standing to Pursue a Writ of Mandamus.

While Petitioners are Senators, they do not bring this action on behalf of the Legislature. Instead, their claim appears to be that they possess a right to have Governor Scott abide by what they purport is his duty under Florida Statutes. In other words, Petitioners allege that they have a generalized grievance that is shared equally by all Florida citizens. *See* Pet. at 2 ("Petitioners ... are Florida citizens, Florida taxpayers, and Senators..."). For a taxpayer to have standing in a mandamus action, he or she must demonstrate an injury distinct from other taxpayers. *See School Bd. of Volusia County v. Clayton*, 691 So. 2d 1066 (Fla. 1997); *North Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154 (Fla. 1985).

Petitioners have not done so here and, accordingly, do not have standing to pursue this mandamus action.

II. THE MERITS OF THE PETITION.

A. The Court Cannot Grant the Relief Petitioners Request.

Quo warranto is a "method to test ... the exercise of some right or privilege, the peculiar powers of which are derived from the State." *Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989). "Mandamus is an extraordinary writ that can be used to compel public officials to perform nondiscretionary, ministerial duties to which the petitioner has a clear legal right." *Moorman v. Hatfield*, 958 So. 2d 396, 398 (Fla. 2d DCA 2007). "Mandamus is an extremely limited basis for jurisdiction which traditionally has been ... employed sparingly." *Brown v. Firestone*, 382 So. 2d 654, 671 (Fla. 1980). *See also Slaughter v. State ex rel. Harrell*, 245 So. 2d 126, 128 (Fla. 1st DCA 1971) ("Mandamus is a harsh and extraordinary remedy.").

The availability of either writ depends on the relief requested—i.e., the exercise of the right that petitioner is testing or the duty that petitioner is requesting Respondent perform. Here, Petitioners ask this Court to "order the Respondent to expeditiously accept the [federal] funds and apply such funds ... for the Florida High Speed Rail Project." Pet. at 23.

As explained above, Petitioners' entire claim is based on mischaracterizations and omissions of fact. Petitioners repeatedly suggest that the Legislature has already appropriated $2.4 billion for a high-speed rail project. Pet. at 8, 10, 11, 23. The Legislature simply has not enacted such an appropriation. Petitioners also ignore the USDOT's requirement that Governor Scott express unqualified for support for high-speed rail.

Accordingly, to grant Petitioners the relief they seek, this Court would have to craft an expansive order that would command wide-ranging action by the Legislature, the Governor, and a federal agency. To ensure that the Respondent could "expeditiously accept the [federal] funds and apply such funds" to high-speed rail, this Court would have to: (i) order the Legislature to appropriate $2.27 billion to high-speed rail; (ii) order Governor Scott not to veto such an appropriation; (iii) order the Legislature to override any such veto if it occurred; and (iv) either order Secretary LaHood to grant federal funds regardless of Governor Scott's pronouncements, or order Governor Scott not to make any public pronouncements regarding his policy determination on the high-speed rail issue.

Such sweeping relief would violate nearly every separation-of-powers principle known in American jurisprudence. *See* Art. II, § 3, Fla. Const. Such an order would have this Court exercising the Legislature's prerogative to set appropriations, *see Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 265 (Fla.

1991),[1] the Governor's veto prerogative, Art. 3, § 8, Fla. Const., the Legislature's override prerogative, *id.* Art. 3, § 8, and the federal government's prerogative to appropriate federal funds, U.S. Const. Art. I, § 8, cl. 1. *See also Fields v. Kirton*, 961 So. 2d 1127 (Fla. 4th DCA 2007) ("It is not the function of the courts to usurp the constitutional role of the legislature and judicially legislate that which necessarily must originate, if it is to be law, with the legislature."); *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 532 (Fla. 3d DCA 2005) (judiciary may not direct an executive agency to spend its funds in a certain way).

Moreover, even if the Court could order all of these actions, the necessary parties are not before the Court: Petitioners have named neither Secretary LaHood nor the Florida Legislature in this action. These are indispensible parties. "[T]he writ [of mandamus] will never be granted in cases when, if issued, it would prove unavailing, or when compliance with it would be nugatory in its effects, or would

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[1] Paradoxically, Petitioners attempt to rely on *Chiles v. Children* to advance their position. That case involved a former statute, § 216.221, Florida Statutes, which gave the executive branch "broad discretionary authority to reapportion the state budget," and which the Court struck down as an unwarranted delegation of legislative power to the executive branch. *Id.* at 263. That holding has no relation to the present case, where Petitioners demand that this Court order Governor Scott to "accept" an enormous amount of federal funding designated for an ill-advised rail project, even though the Legislature has actually appropriated only a small part of those potential federal funds. This Court itself stated in *Chiles* that "[w]e do not today state that the Governor and Cabinet have no role to play in the budgetary process." *Id.* at 267.

be without beneficial results and fruitless to the relator." *State ex rel. Ostroff v. Pearson,* 61 So. 2d 325, 326 (Fla. 1952). Accordingly, issuance of the writ against Governor Scott would be futile and inappropriate.

With respect to the writ of mandamus, it is also important to bear in mind that relief is only available to compel an official to carry out "nondiscretionary, ministerial duties." *Moorman*, 958 So. 2d at 398. An order compelling the Governor to "accept ... and apply" the federal funds could hardly be characterized as dealing only with such nondiscretionary, ministerial duties. *Solomon v. Sanitarians' Registration Bd.*, 155 So. 2d 353, 356 (Fla. 1963) ("A ministerial duty is one which is positively imposed by law to be performed at a time and in a manner or upon conditions which are specifically designated by the law itself absent any authorization of discretion ...."). Instead, the application of $2.4 billion to "plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the high-speed rail system," § 341.822(2)(b), Fla. Stat., will call for thousands of complex, discretionary executive branch decisions. Likewise, to satisfy USDOT, the Governor must guarantee that FDOT will "have oversight responsibility ... governing the implementation planning, design, location, bid award, construction, maintenance and operation" of the high-speed rail project. Supp. App., Ex. 1. It is

hard to fathom how this Court could fashion an order sufficient to grapple with these tasks. This is not the stuff of mandamus.

Plaintiffs rely heavily on *Edwards v. State of South Carolina*, 678 S.E.2d 412 (S.C. 2009). In *Edwards*, the Governor of South Carolina, Mark Sanford, initially "certified" South Carolina's receipt of "stimulus" funds under §1607(a) of the ARRA. "The South Carolina General Assembly acted on Governor Sanford's § 1607(a) certification" and "*appropriated* the ARRA funds." *Id.* at 415 (emphasis added). Governor Sanford then apparently indicated that he might not accept a portion of the "stimulus" funds (the so-called State Fiscal Stabilization funds), which caused the South Carolina legislature to adopt a concurrent resolution "accepting" the funds under color of ARRA §1607(b) ("If funds provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.").[2] Governor Sanford, for reasons not fully clear from the record, raised as his sole defense to an action to compel him to "accept" the stimulus funds the provisions of ARRA § 14005, which allow a Governor to "submit" an "application" for stimulus funds,

[2] Although the constitutionality of ARRA §1607(b) is not before the Court, Governor Scott respectfully reserves the right to assert that this provision, if applied in this case, would constitute an unconstitutional infringement on the powers of the executive, as well as an infringement on the sovereignty of the State of Florida.

and which Governor Sanford argued gave him sole discretion whether to apply for the funds at issue.

In this case, the issue is not how the Governor may treat a completed and duly enacted appropriation of ARRA funds by the state Legislature. Governor Scott does not rely in any way on ARRA to justify his actions in protecting the taxpayers of Florida from the expensive and protracted effects of the proposed high-speed rail project. To the contrary, he asserts that he has acted consistent with his powers and duties as the chief executive of the State—namely, by indicating that he will veto any future appropriation of ARRA funds for high-speed rail and directing agencies within his purview to plan accordingly. Moreover, the leader of at least one house of the Legislature strongly supports the Governor's view of this project. Supp. App. Ex. 2. Accordingly, the *Edwards* case has no relevance here.

As for the $130.8 million that the Legislature has already appropriated, it is not correct to say that the Governor has improperly failed to implement the appropriation and the statute creating the Florida Rail Enterprise. The FRE statute contemplates an ongoing rail project, with the FRE having discretion to "plan, develop, own, purchase, lease, ... and manage" a high-speed rail system. § 341.822(2)(b), Fla. Stat. To the extent monies from the 2010 appropriation of $130 million remain unspent—and Petitioners have made no showing in this

regard—the FRE is acting within its sound discretion to refrain from squandering that money on a project that is virtually certain not to receive future funding adequate for its completion.[3] Indeed, the FRE statute contemplates that, as the FRE plans and administers monies allocated to it, the Enterprise may have "unexpended funds appropriated or provided" and that such funds would be carried forward. § 341.303(6)(b), Fla. Stat. If Petitioners are correct—if FRE must spend the entirety of the $130.8 million regardless of the facts on the ground—then Petitioners are essentially asking this Court to order the Governor to direct the FRE to build a few miles of railroad for no apparent purpose. The Court will have created the high-speed railroad to nowhere.

Furthermore, the Legislature has defined "appropriation" as "the *authorization* to make expenditures for specific purposes within the amounts authorized by law." § 216.011(1)(b), Fla. Stat. (emphasis added). The Legislature has similarly defined "appropriations act," in relevant part, as "the *authorization* of the Legislature . . . for the expenditure of amounts of money by an agency . . . for stated purposes in the performance of the functions it is authorized by law to perform." § 216.011(1)(c), Fla. Stat. (emphasis added). These provisions

[3] To the extent the FRE acts at the Governor's direction, this is entirely appropriate. The executive director of FRE serves at the pleasure of the Secretary of FDOT, who in turn serves at the pleasure of the Governor. §§ 20.23(1)(a), (5)(f)(1), Fla. Stat. The Governor has the authority to control these subordinate officials. *See Jones v. Chiles*, 638 So. 2d 48, 50 (Fla. 1994).

unambiguously demonstrate that the Governor and the FRE are committed at most to be *authorized* to spend the $130.8 million dollars appropriated in the 2010-2011 General Appropriations Act. Fortunately for the taxpayers of Florida, nothing in Florida law compels the Governor or the FRE to pour millions of dollars into a black hole during the historic fiscal crisis with which the State is presently grappling.[4]

B. The High Speed Rail Act Does Not Create a New, Self-funding, Autonomous Branch of Government.

Petitioners also argue that this Court should grant relief on the grounds that the Governor has no authority to refuse to comply with what Petitioners claim are the "express directives of the High Speed Rail Act." Pet. at 17-24. According to Petitioners, the enactment of the Florida Rail Enterprise Act created a governmental unit, the Florida Rail Enterprise, which is beyond the effective control not only of the Governor, but of the Legislature itself, even though it is an executive branch agency and would be almost completely dependent on taxpayer revenue if it were to build and operate a high-speed rail system. Petitioners' argument proves far too much, and should be rejected by this Court.

[4] Further, mandamus could not possibly lie to compel the expenditure of the current-year appropriation because any duty to spend that money, even assuming *arguendo* there is one, would not be ministerial. This Court has described a ministerial duty as one which must be "performed at a time and in a manner or upon conditions which are specifically designated" by the controlling law. *Solomon*, 155 So. 2d at 356. The appropriation in the 2010-2011 general appropriations act satisfies neither prong of this requirement.

Petitioners set forth the statutory powers of the FRE, citing the provisions of Chapter 341 which authorize the creation and funding of that entity, and then leap to the wholly unwarranted conclusions that (a) the FRE is beyond the effective control of the executive branch, including even the Governor, Pet. at 20, and (b) that the FRE has "no discretion" except to "finance and construct the high speed rail system for the state," regardless of whether the Legislature decides to fund it. Pet. at 21. These assertions defy common sense and are not grounded in law. *See Jones v. Chiles*, 638 So. 2d 48, 50 (Fla. 1994).

Petitioners assert that Section 341.839, Florida Statutes, precludes any "outside interference" with the FRE, including "interference from other executive branch officials." Pet. at 19-20. This, in the view of Petitioners, includes the Governor, who is allegedly "not permitted to interfere with the implementation of high speed rail." *Id.* at 20. However, Petitioners also admit, as they must, that the executive director of the FRE "serves at the pleasure of the Secretary [of Transportation]," *id.*, who of course serves at the pleasure of the Governor. §§ 20.23(1)(a), (5)(f)(1), Fla. Stat.

Petitioners make the unsupported argument that the Governor is an "official" within the meaning of Section 341.839, ignoring the obvious fact that he is the chief executive of the State, as well as its chief administrative officer "responsible for the planning and budgeting of the state." Art. 4, §1, Fla. Const. In any event,

Section 341.839 places limits only on the supervision or control of the "powers" of the FRE, not on the operation or funding of the FRE, or the conduct of its employees, including its executive director.

Petitioners also imply, absurdly, that the FRE is self-financing, a sort of fiscal juggernaut that has the inherent ability to finance a high-speed rail system and which cannot be "interfered" with by the Governor or, apparently, by the Legislature itself, leaving the Enterprise with "no discretion" except to finance and construct the high-speed rail system. Pet. at 21. Yet this dispute would not be before the Court were it not for the fact that, far from being capable of financing itself, the FRE would require billions of federal dollars in order to build and operate a high-speed rail system.

Contrary to Petitioners' claims, the FRE is clearly not beyond the control of the Governor and the Legislature, despite the powers granted to it through the Florida Rail Enterprise Act, and despite the appropriation by a past Legislature of a small portion of the funds that would actually be required to build and operate the high-speed rail system.

Petitioners repeatedly conflate the "financing" of the high speed rail project—a statement by the *federal* government that it is willing to spend federal dollars on the project—with the process of appropriation by the Legislature. As previously stated, the Legislature has appropriated, at most, funds of some $130

million out of a multi-*billion* dollar budget for the construction of the high-speed rail line between Tampa and Orlando (a budget that may well go higher, given recent experience with large federally-funded construction projects).

The process of appropriating funds for high-speed rail, like the construction of the project itself, will take many more years. As Petitioners themselves note, "[t]he construction of large transportation projects may span the administration of many governors." Pet. at 22. The current Legislature and future Legislatures may well see fit to appropriate *no* further funds to the Tampa-to-Orlando project, especially in light of the Governor's lack of support for the project, whether or not the federal government remains willing to provide additional funds. In fact, the President of the Senate has stated that, like the Governor, he also believes that the project is a waste of taxpayer money and not worthy of additional funding. Supp. App. Ex. 2. As the United States Supreme Court has explained, "[s]tates and localities depend upon successor officials, both appointed and elected, to bring new insights and solutions to problems of allocating revenues and resources." *Horne v. Flores*, 129 S. Ct. 2579, 2594 (2009) (quotations marks omitted).

It is axiomatic that a past Legislature cannot bind future Legislatures. *See, e.g., Neu v. Miami Herald Publ'g Co.*, 462 So. 2d 821, 823-24 (Fla. 1985) ("A legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law."). There is no guarantee whatever that the current

Legislature, or any future Legislature, will see fit to provide further funding for the Tampa-to-Orlando high-speed rail project, no matter how many dollars the federal government is willing to dedicate to the project. Petitioners' argument that the ship has sailed, and that nothing can now stop high-speed rail from being built in Florida, is wholly without merit and should be rejected by this Court.

C. Intervention by the Court Would Result In Confusion and Disorder.

The question of whether to move forward with the high-speed rail project is a complex policy judgment that implicates the expertise, discretion, and authority of popularly elected officials. It would be unwise, and unworkable, for this Court to become embroiled in that ongoing policy debate. The extraordinary writs at issue are discretionary, and this Court has traditionally been reluctant to grant them. *See, e.g.*, *Brown*, 382 So. 2d at 671 ("Mandamus is an extremely limited basis for jurisdiction which traditionally has been, and will continue to be, employed sparingly."). Quo warranto should not be issued where "the granting of relief ... will result in confusion and disorder." *State ex rel. Pooser v. Wester*, 170 So. 736 (Fla. 1936). And mandamus should not lie where an order "would result in disorder, confusion, or disturbance." *State ex rel. Haft v. Adams*, 238 So. 2d 843, 844 (Fla. 1970). Here, the Court's intervention would further complicate and confuse a complex policy decision that the political branches are much better equipped to handle.

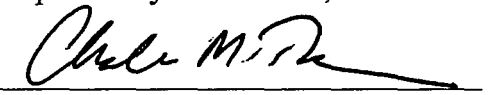
III. The March 4, 2011 Deadline

As noted above, Secretary LaHood has indicated that Governor Scott has until March 4, 2011, to indicate his final decision regarding high-speed rail. The USDOT has once previously set a similar deadline: last week it indicated that Friday, February 25 was the deadline. We are aware of no requirement in law that sets a deadline and, of course, cannot speak for the USDOT or Secretary LaHood with respect to this issue—but we do not contest that March 4 should be considered the relevant deadline for purposes of this matter.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits the petition should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing has been furnished electronically and by U.S. mail delivery this 2nd day of March, 2011:

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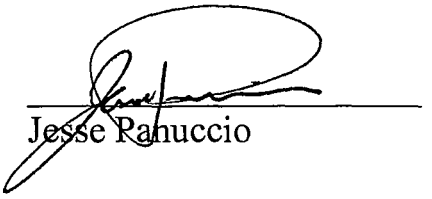

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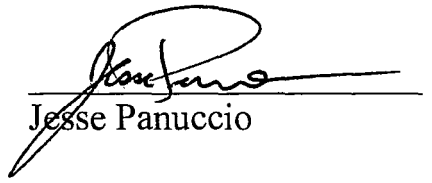
CERTIFICATE OF COMPLIANCE

I certify that this response complies with the font requirements of rule 9.100(l) of the Florida Rules of Appellate Procedure.



Jesse Panuccio

Exhibit "1"

Florida High Speed Rail Project

The structure proposed by the Cities of Lakeland, Miami, Orlando and Tampa (the "Cities") effectively addresses the concerns expressed by the Governor regarding the legal and financial responsibility of the State of Florida for construction and operation of the Tampa-Orlando high speed rail project. The new entity created by those municipalities (the "Interlocal Entity") will bear full financial liability for cost overruns, without recourse to the State of Florida.

To be completed effectively, the project will need clear, unqualified support from the State of Florida. The State's complete dedication of technical and legal resources will be necessary to complete the project. Under the proposal advanced by the Cities, the State would be fully reimbursed for the direct costs of its support, consistent with federal grant law.

Although Florida will not bear financial liability for cost overruns, to create a successful high speed rail program in Florida, the State will need to perform the tasks originally proposed in its grant agreement with USDOT and such other tasks necessary to complete the project, including:

- Florida will have oversight responsibility in the same manner as a typical FDOT project, governing the implementation planning, design, location, bid award, construction, maintenance and operation of the Project and attendant Project Documents. Florida will provide direction as necessary to the Interlocal Entity during the procurement process.

- Florida will have to provide technical assistance and support and will assign to the Interlocal Entity all items and rights as necessary for carrying out the completion of the Project including but not limited to: design documents, research, contracts, permits obtained and applications submitted.

- Florida will have to process fully and expedite any and all necessary reviews and approvals, including but not limited to, any plans, documents, agreements, permits, and any other actions required or convenient for use of rights-of-way, access to rights-of-way, maintenance of traffic, and relocation of utilities.

- Florida will have to assign to the Interlocal Entity, all rights-of-way access and all rights and property necessary to construct in the rights-of-way as may be needed in order to fully complete and operate the Project in the manner contemplated.

- As necessary under Florida law, Florida will have to delegate responsibility for high-speed rail implementation to the Interlocal Entity.

The Department will make the full amount of the grant funds awarded to the State available for all stages of the project. In the event that the initial vendor selected by the Interlocal Entity is unable to complete the project, the USDOT will dedicate the remaining funds to complete the project with a new vendor selected by the Interlocal Entity. The grant agreement will also provide that, in the event that the project cannot be completed, the costs of repairing and remediating any incomplete construction will be eligible for reimbursement through any unexpended portion of the $2.4 billion awarded to Florida by USDOT, consistent with federal grant law.

Exhibit "2"

FOR IMMEDIATE RELEASE | February 18, 2011

SENATE PRESIDENT HARIDOPOLOS REJECTS FEDERAL FUNDS FOR HIGH-SPEED RAIL

TALLAHASSEE – Senate President Mike Haridopolos released the following statement today on the status of high-speed rail funding in Florida:

"The federal government has earmarked $2.4 billion to finance part of the cost of construction of the proposed Florida high-speed rail project. But to do so, Washington would borrow 100% of that money, which would be financed in large part by foreign, non-democratic governments."

"There is no more important issue today for the long-term well being of our nation than to reign in deficit spending. Washington's reckless spending addiction has set our nation on a critically dangerous path. For the good of the nation, it's time to change course."

"From the beginning, I have made it clear that Florida will cut $3.62 billion in spending this year and balance its state budget without raising taxes. We will not finance our future. We have also said that under no circumstances would we use state dollars, needed to support priorities like education, to pay for high-speed rail. For Floridians, that would be unforgivable."

"Florida is leading by example in keeping its fiscal house in order. We must demand the same from Washington. To President Obama and all members of Congress, I say we are far better off reducing the $1.5 trillion in proposed deficit spending by this $2.4 billion than we are to build a rail project that has a questionable, at-best, economic viability."

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STATEMENT BY SENATE PRESIDENT MIKE HARIDOPOLOS ON FEDERAL GOVERNMENT HIGH SPEED RAIL FUNDING EXTENSION

TALLAHASSEE – Senate President Mike Haridopolos made the following statement after U.S. Transportation Secretary Ray LaHood extended the high speed rail funding decision another week:

"Adding another week to the deadline for Florida to take $2.4 billion to build high speed rail won't change my mind. No means no. Why is Washington working so hard to spend money it doesn't have? Instead of letting that money burn a hole in his pocket, Secretary LaHood should send it back to the federal treasury. As our state and country continue to recover from a serious economic downturn, those who were elected to represent its citizens should make a serious commitment to reduce spending and have the ability to decide between our wants and our needs."

"Again, I say no thank you to the federal government's offer."

http://www.flsenate.gov/Media/PressRelease/Show/Senators/2010-2012/District26/PressRelease/PressRelease20110225164244923

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Statement by Senate President Mike Haridopolos on lawsuit challenging decision not to fund high speed rail project

"While Senators Altman and Joyner are free to file their petition with the Florida Supreme Court, I do not support their efforts. The Florida Senate will not join in their lawsuit. For reasons I've previously explained, funding of the high rail project is not something we as a state and a country can afford. It is my intention to ensure that there is no money in the upcoming 2011-12 state budget to fund high speed rail. Florida is facing a $3.6 billion shortfall and that money can be put to better use. During these tough economic times, state government should focus on its needs not its wants."

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Statement from Florida House Speaker Dean Cannon (R-Winter Park) regarding Governor Scott's decision to reject federal funding for the Tampa to Orlando high-speed rail project:

"I have not spoken to the Governor regarding today's announcement, but I watched the Governor's press conference. I'm encouraged that he is focusing on the practical realities of government programs, and their long-term impacts. As the Constitutional officer charged with carrying out transportation policy, the Governor seems to have determined that at this time he cannot feasibly implement high-speed rail in Florida. I have confidence that he will bring the same level of scrutiny to other issues."

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