IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CITY OF MIAMI BEACH,
Appellant/Defendant,

v.

FLORIDA RETAIL FEDERATION, *et al.*,
Respondents.

Case No.: 3D17-0705

L.T. No.: 16-31886

BRIEF OF *AMICUS CURIAE* THE CITY OF CORAL GABLES IN SUPPORT OF THE CITY OF MIAMI BEACH

Corali Lopez-Castro
Florida Bar No. 863830
KOZYAK TROPIN & THROCKMORTON LLP
2525 Ponce de Leon Blvd.
9th Floor
Coral Gables, Florida 33134
clc@kttlaw.com

Craig E. Leen
City Attorney, City of Coral Gables
Board Certified by The Florida Bar in City, County, and Local Government Law
Florida Bar No. 701696
CITY OF CORAL GABLES
405 Biltmore Way
Coral Gables, Florida 33134
cleen@coralgables.com

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SUMMARY OF ARGUMENT

The question underlying this appeal—whether the Florida Statutes and Constitution authorize or prohibit the City of Miami Beach ("Miami Beach") from setting a minimum wage higher than that established statewide by the Florida Legislature—touches upon the doctrine of home rule, which empowers municipalities to enact local ordinances for valid municipal purposes absent clear preemption. A ruling in Appellees' favor invalidating Miami Beach's minimum wage ordinance in favor of state legislation would undermine the doctrine of home rule, which has developed in Florida over the past sixty-plus years, and mark a step back towards state control of municipal legislation. The Court should avoid taking this step and adhere to the enduring presumption in favor of home rule, as well as the high threshold established by Florida courts for a showing of legislative preemptive intent sufficiently clear to warrant invalidating a municipal ordinance.

Home rule was born of necessity after World War II—until that time, under the Florida Constitution of 1885, Florida courts followed Dillon's Rule, which forbade municipalities from enacting any local ordinance without an express grant of authority from the state legislature. As the population boomed in the post-war era, enforcement of Dillon's Rule became impractical and municipal home rule took its place, first by amendments to Florida Constitution in 1956 and 1968, and later with the enactment of chapter 166, Florida Statutes, which extended to

municipalities the "broad exercise of home rule powers" and afforded them the same authority as the Florida Legislature absent an express prohibition by the constitution, valid general or special law, or county charter. Florida courts have enforced home rule consistently since 1974, upholding a presumption in its favor and invalidating municipal ordinances only where clear legislative intent supported preemption. The Florida Supreme Court recently echoed these principles in *D'Agastino v. City of Miami*, No. SC16-645, 2017 WL 2687694 (Fla. June 22, 2017), reaffirming that courts should find clear legislative intent before holding a municipal ordinance unconstitutional, recognizing the broad grant of constitutional authority and longstanding presumption in favor of home rule, and emphasizing the extremely narrow circumstances under which the Legislature may preempt a municipal ordinance.

Appellees here have not met the very high threshold required for a finding of clear legislative intent to preempt the Miami Beach Minimum Wage Ordinance, because no such intent can be found in section 218.077, Florida Statutes. Accordingly, a ruling invalidating Miami Beach's minimum wage ordinance in favor of the statute would betray decades of Florida legislative action and jurisprudence supporting municipal home rule.

The Court should uphold the presumption in favor of Miami Beach's broad grant of constitutional home rule and reverse the opinion below.

INTEREST OF AMICUS CURIAE

The City of Coral Gables (the "City") is a chartered municipality in Miami-Dade County, Florida protected by the Miami-Dade Home Rule Amendment and Charter, the 1968 Home Rule Amendment, and chapter 166, Florida Statutes. This case involves the question of whether a provision of the Florida Statutes preempts a Miami Beach municipal ordinance that sets a higher minimum wage for Miami Beach than that provided for by the Florida Statutes. The City takes no position on whether Miami Beach should have a minimum wage higher than that established by state law, but this Court's determination on the issue of state preemption of municipal wage ordinances will impact the City's ability, and that of other municipalities, to enforce and implement policy through home rule powers. The doctrine of home rule has been codified by constitutional amendment and empowers local governments to set local policy and implement planning-level government decisions. The City's interest in this appeal and home rule is based on its status as a highly planned community with some of the strictest zoning regulations in the state. *See Kuvin v. City of Coral Gables*, 45 So. 3d 836 (Fla. 3d DCA 2010), *withdrawing and superseding opinion on reh'g en banc*, 62 So. 3d 625 (Fla. 3d DCA 2010). Thus, a decision on the issue before the court—state preemption statutes and a municipality's home rule powers—if applied broadly and in derogation of home

rule, will impact the City's ability to govern and function using its home rule powers to govern, legislate, and implement its regulations and ordinances.

The City has requested two minutes to present its position in this appeal at oral argument because the City is uniquely situated as an amicus in this appeal—this Court's decision will bind the City and has the potential to restrict its exercise of home rule powers moving forward. In the event that the Court does not rule in favor of the City of Miami Beach, and with this in mind, the City would ask that the Court limit its holding to the wage statutes and amendment at issue, in keeping with the doctrine of home rule and the Florida Supreme Court's holding in *D'Agastino*.

ARGUMENT

The doctrine of home rule has guided municipal governance in Florida since the 1950s, and has developed to the point where there is no question that the law grants a municipality authority to enact local ordinances toward valid municipal ends unless the Legislature has (1) expressly preempted municipal action or (2) adopted pervasive regulations preempting the field in which a municipality seeks to act and there is a public interest in finding preemption. *See D'Agastino v. City of Miami*, No. SC16-645, 2017 WL 2687694, at *7, *14 (Fla. June 22, 2017). Following these principles, Florida courts have routinely held those seeking an exception to home rule to the highest standards, maintaining not only that home rule is guaranteed by the Florida Constitution and to be broadly construed, but also that preemption is

disfavored and will be found only where a litigant surpasses the high threshold set for its satisfaction. The courts have also established that any ambiguity as to whether the Legislature has preempted a municipal ordinance should be resolved in favor of municipal home rule. These rules of construction remain the law in this State, as recently confirmed by the Florida Supreme Court in *D'Agastino*, and should guide the Court here to rule in favor of Miami Beach, as Appellees have not met the high threshold to establish that the Legislature intended to preempt either Miami Beach's ordinance providing for a higher minimum wage or the 2004 Minimum Wage Amendment that authorizes the enactment of higher local minimum wage ordinances. Any holding to the contrary would mark a step back towards Dillon's Rule and break with clear Florida jurisprudence on the doctrine of home rule.

Under the Florida Constitution of 1885, municipal powers of self-governance were entirely dependent upon specific delegations of authority from the Florida Legislature. Article VIII, section 8 of the 1885 Constitution gave the Legislature "power to establish, and to abolish, municipalities to provide for their government, to prescribe their jurisdiction and power, and to alter or amend the same at any time." Municipalities could not act without express grants of authority by the State, and powers not granted to municipalities were deemed reserved for the Legislature. *City of Boca Raton v. State*, 595 So. 2d 25, 27 (Fla. 1992). This reservation of authority reflected the nineteenth-century judicial doctrine known as "Dillon's Rule," which

was set forth in John F. Dillon, THE LAW OF MUNICIPAL CORPORATIONS § 55 (1st ed. 1872). *Id.* Dillon himself articulated the Rule as follows:

> It is a general and undisputed proposition of law that a municipal; corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third; those essential to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable.

J. Dillon, THE LAW OF MUNICIPAL CORPORATIONS § 237 (5th ed. 1911).

Dillon's Rule reflected a nineteenth-century skepticism of the competence of local governments, and suggested limitations on local power in favor of state rule. Note, *Dillon's Rule: The Case for Reform*, 68 VA. L. REV. 693, 694 (1981). The powers that states granted local governments, Dillon believed, "ought to be more carefully defined and limited, and should embrace such objects only as are necessary for the health, welfare, safety, and convenience of the inhabitants." *Id.* This resulted in a presumption against municipal power, with Dillon counseling courts to resolve doubts regarding the existence of local power against its validity. *See id.*

Florida courts consistently followed Dillon's Rule until after World War II, when, with Florida's population growing exponentially, municipalities flooded the Legislature with local bills and special acts seeking authority to address local problems themselves. *See City of Boca Raton*, 595 So. 2d at 27. As a result, the Florida Legislature found its time consumed by local matters, at the expense of

statewide matters. *See id.* Municipalities, in turn, were unable to act efficiently on local issues, as their authority to do so depended on the Legislature. *See id.* In response, voters amended the Florida Constitution in 1956, authorizing the citizens of Miami-Dade County to adopt a home rule charter. Art. VIII, § 11, Florida Const. of 1885 (1956), *retained in*, Art. VIII, § 6, n.3, Florida Const. of 1968 (the "Home Rule Amendment"). The "metropolitan government of Miami-Dade County is unique in this state due to its constitutional home rule amendment." *Metropolitan Dade County v. City of Miami*, 396 So. 2d 144, 146 (Fla. 1980).

The Home Rule Amendment granted Dade County authority to adopt a Home Rule Charter, which, among other things, would:

> [G]rant full power and authority to the Board of County Commissioners of Dade County to pass ordinances relating to the affairs, property and government of Dade County and provide suitable penalties for the violation thereof; to ley and collect such taxes as may be authorized by general law and no other taxes, and do everything necessary to carry on central a metropolitan government in Dade County.

Home Rule Amendment § (1)(b).[1]

[1] The Home Rule Charter is notable in that it grants home rule authority to both the County and its municipalities and, pursuant to Section 6.02, empowers municipalities to "provide for higher standards of zoning, service, and regulation than those provided by the Board of County Commissioners in order that its individual character and standards may be preserved for its citizens." The authority granted municipalities is independent of that afforded the County; the County does not have authority to preempt municipal action with which it does not agree. *See Miami-Dade County v. Village of Pinecrest*, 994 So. 2d 456, 459-60 (Fla. 3d DCA 2008).

The Home Rule Amendment further allowed for the adoption of municipal charters within Dade County, provided that the charters and any ordinances enacted pursuant thereto did not conflict with applicable general laws enacted by the state or the Florida Constitution. *See id.* §§ (5), (6). The Home Rule Amendment concludes:

> It is declared to be the intent of the Legislature and of the electors of the State of Florida to provide by this section home rule for the people of Dade County in local affairs and this section shall be liberally construed to carry out such purpose, and it is further declared to be the intent of the Legislature and of the electors of the State of Florida that the provisions of this Constitution and general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Dade County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution.

Id. § (9).

Home rule powers were extended to other municipalities in Florida by amendment to the Florida Constitution in 1968, which, under Article VIII, Section 2(b), granted municipalities the power to act for any valid municipal purpose except as prohibited by law. That section provides:

> SECTION 2. Municipalities.—
>
> ***
>
> (b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as

> otherwise provided by law. Each municipal legislative body shall be elective.

As between the 1968 Amendment and the 1885 Constitution:

> The apparent difference [wa]s that under the new [1968] language, all municipalities ha[d] governmental, corporate, and proprietary powers unless provided otherwise by law, whereas under the 1885 Constitution, municipalities had only those powers expressly granted by law.

City of Boca Raton, 595 So. 2d at 27 (quoting 26A Fla. Stat. Ann. § 292 (1970) (commentary by Talbot "Sandy" D'Alemberte)).

The Legislature bolstered these powers by enacting the Home Rule Powers Act (the "Act") in 1973, in response to the Florida Supreme Court's decision in *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801 (Fla. 1972), in which, despite the 1968 Amendment, the Court refused the City of Miami Beach the power to enact a rent-control ordinance without a legislative grant of power. The Act granted Florida municipalities "the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law[,]" § 166.021(1), Fla. Stat., and "secure[d] for municipalities the broad exercise of home rule powers granted by the constitution." § 166.021(4), Fla. Stat. The Legislature further recognized that the 1968 Constitution conferred on municipalities "the power to enact legislation concerning any subject matter upon which the state Legislature may act" except "(a)

annexation, merger, and the exercise of extraterritorial power; (b) any subject expressly prohibited by the constitution; and (c) any subject expressly preempted to state or county government by the constitution or by general law." § 166.021(3), Fla. Stat.

The Florida Supreme Court upheld a Miami Beach rent control ordinance and the constitutionality of the Act the following year, *see City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974), and years later reaffirmed the broad power of home rule granted municipalities by Florida's Constitution and Legislature:

> Article VIII, Section 2, Florida Constitution, expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services. The only limitation on that power is that it must be exercised for a valid "municipal purpose." It would follow that municipalities are not dependent upon the Legislature for further authorization. *Legislative statutes are relevant only to determine limitations of authority*.

State v. City of Sunrise, 354 So. 2d 1206, 1209 (Fla. 1978) (emphasis added).

Thereafter, when an exercise of municipal power was challenged, "a two-tiered question [w]ould be asked. Was the action undertaken for a municipal purpose? If so, was that action *expressly* prohibited by the constitution, general or special law, or county charter?" *City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1280 (Fla. 1983) (emphasis in original) (citing *City of Sunrise, supra*).

The 1956 and 1968 amendments to the Florida Constitution, Miami-Dade's Home Rule Charter, and the Act all remain good law, and courts routinely uphold

the broad powers granted by statute and constitutional amendment. *See, e.g., City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (recounting history of home rule and stating "a municipality may now exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and a municipality may legislate on any subject matter on which the legislature may act," with limited exceptions); *Miami-Dade Cty. ex rel. Walthour v. Malibu Lodging Invs., LLC*, 64 So. 3d 716, 721 (Fla. 3d DCA 2011) (citations omitted) ("[T]he enactment of the Ordinances for their stated purposes of preventing signage that could endanger public safety, or damage or impair the County's aesthetic qualities, tourism, or the general welfare of its public, are all legitimate governmental concerns supporting their validity under the County's broad home rule and police powers."); *City of Kissimmee v. Florida Retail Fed'n, Inc.*, 915 So. 2d 205, 209 (Fla. 5th DCA 2005) (finding no preemption and noting, "[w]here there is no direct conflict between [a local ordinance and a Florida Statute], appellate courts should indulge every reasonable presumption in favor of an ordinance's constitutionality.") (citations omitted); *City of Temple Terrace v. Tozier*, 903 So. 2d 970, 972 (Fla. 2d DCA 2005) (rejecting trial court's conclusion that city lacked authority to place conditions subsequent on abutting private landowners in return for the vacation of a right-of-way, and finding authority in article VIII, section 2(b), of the Florida Constitution and chapter 166, Florida Statutes).

The Florida Supreme Court most recently reaffirmed its commitment to broad home rule powers in *D'Agastino v. City of Miami*, No. SC16-645, 2017 WL 2687694 (Fla. June 22, 2017), despite its finding of narrow preemption of a city ordinance by a provision of the Florida Statutes. In *D'Agastino*, a Miami police officer and the Fraternal Order of Police challenged the constitutionality of City of Miami ordinances empowering the City of Miami Civilian Investigative Panel ("CIP"), an independent panel empowered by ordinance to review alleged incidents of police misconduct and make recommendations to the city manager and law enforcement, to investigate police officers. *See* 2017 WL 2687694, at *1, *4. The police officer and union argued that the CIP's investigative authority conflicted with Florida's Police Officers' Bill of Rights, §§ 112.531, *et seq.*, Fla. Stat. (the "PBR"), and the officer also asked the court to quash a subpoena ordering him to testify before the CIP on the same ground. *See id.*

The Court discussed home rule and preemption, noting that "a local government enactment may be inconsistent with state law where the Legislature has preempted a particular subject area." *Id.* at *7 (citations omitted). The Court observed that Florida courts recognize both express and implied preemption, but cautioned that courts must be "careful and mindful in attempting to impute intent to the Legislature to preclude a local elected governing body from exercising its home rule powers." *Id.* at *8 (citing *Tallahassee Mem'l Reg'l Med. Ctr. v. Tallahassee*

Med. Ctr., Inc., 681 So. 2d 826, 831 (Fla. 1st DCA 1996)). Thus, in reviewing the PBR, the court emphasized "that a finding of express preemption—that the Legislature has specifically expressed its intent to preempt a subject through an explicit statement—is a very high threshold to meet." *Id.* (citations omitted). The PBR did not meet that standard in *D'Agastino* with regard to preempting the CIP because its plain language did "not convey preemption with the specific explicit language and clarity of intent that courts have traditionally founds necessary to be 'express preemption' statutes in past cases." *Id.* at *8-9.

Addressing implied preemption, the Court first asserted that findings of implied preemption of a municipality's home rule powers are generally disfavored, and require a court "to carefully consider the intent of the Legislature with regard to preemptive operation, even though it may not be expressly stated." *Id.* at *9. The Court ultimately found implied preemption by the PBR, but with a much narrower field than had been argued by the police officer challenging the CIP—the Court held that the CIP's subpoena power was preempted by the PBR, which explicitly addressed the regulation of interrogations of police officers and provided police officers certain protections in that context, but found that the CIP retained its authority otherwise granted by the ordinances in question. *See id.* at *11-12, *13. The Court stressed "the limited nature of [its] holding," and in a concurring opinion,

Justice Pariente encouraged reliance on clear and express preemptive language in overruling home rule:

> I continue to urge courts to take an extremely narrow approach before concluding that a municipal ordinance is unconstitutional based on implied legislative preemption, by giving due consideration to the broad grant of authority to municipalities set forth in article VIII, section 2(b), of the Florida Constitution and the extremely narrow exception to Home Rule Powers Act set forth by statute. The best solution would be for the Legislature to include an express statement of preemption when it, in fact, intends to preempt municipal action.

Id. at *15.

Appellees here cannot satisfy the high standards set forth by the Florida Supreme Court in *D'Agastino*, and a holding to the contrary would undermine the home rule principles set forth in *D'Agastino* and the opinions preceding. The Legislature did not include an express statement of preemption in section 218.077, Florida Statutes, nor can clear legislative intent to preempt the field be discerned from its language. Accordingly, Appellees' challenge to the Miami Beach minimum wage ordinance does not fall within the extremely narrow exception to municipal home rule, and the Court should reverse the opinion below.

CONCLUSION

D'Agastino confirms that the 1956 and 1968 amendments to the Florida Constitution, the Miami-Dade Home Rule Charter, chapter 166, Florida Statutes, and the body of case law that followed supporting and strengthening home rule remain good law and still bind this Court. The Court should adhere to the principles

established by these laws, uphold Miami Beach's minimum wage ordinance, and reverse the opinion below. Should the Court decline to uphold the Miami Beach ordinance, it should limit its holding to the facts presented in keeping with the broad grant of home rule powers historically afforded Florida municipalities and the Florida Supreme Court's recent holding in *D'Agastino v. City of Miami*, No. SC16-645, 2017 WL 2687694 (Fla. June 22, 2017).

Respectfully submitted,

By: /s/ Corali Lopez-Castro
Corali Lopez-Castro
clc@kttlaw.com
Florida Bar No. 863830
KOZYAK TROPIN & THROCKMORTON LLP
2525 Ponce de Leon Blvd., 9th Floor
Coral Gables, Florida 33134

/s/ Craig E. Leen
Craig E. Leen
City Attorney, City of Coral Gables
Board Certified by The Florida Bar in City, County, and Local Government Law
cleen@coralgables.com
Florida Bar No. 701696
CITY OF CORAL GABLES
405 Biltmore Way
Coral Gables, Florida 33134

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court through the Third District Court eDCA on this 13th day of July, 2017, and will be served on all counsel of record listed below by electronic mail.

By: /s/ Corali Lopez-Castro

SERVICE LIST

Raul J. Aguila, City Attorney
Donald M. Papy
Robert F. Rosenwald, Jr.
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139
Telephone: (305) 673-7470
Facsimile: (305) 673-7002

Jonathan L. Williams
Office of the Attorney General
State of Florida
The Capitol, PL-01
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3818
Facsimile: (850) 410-2672

Richard F. Della Fera
Entin & Della Fera
633 S. Andrews Avenue, Suite 500
Ft. Lauderdale, Florida 33301
Telephone: (954) 761-7201
Facsimile: (954) 764-2443

Lauri Waldman Ross
Ross & Girten
Two Datran Center, Suite 1612
9130 South Dadeland Boulevard
Miami, Florida 33156
Telephone: (305) 670-8010
Facsimile: (305) 670-2305

Chares S. Caulkins
James C. Polkinghorn
Candice C. Pinares-Baez
Fisher Phillips LLP
450 East Las Olas Blvd., Suite 800
Fort Lauderdale, Florida 33301
Telephone: (954) 525-4800
Facsimile (954) 525-8739

CERTIFICATE OF TYPE SIZE AND FONT

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

By: /s/ Corali Lopez-Castro