IN THE SUPREME COURT OF FLORIDA

Case No.

THAD ALTMAN and
ARTHENIA L. JOYNER,

Petitioners,

v.

HON. RICHARD SCOTT, GOVERNOR,

Respondent.

_____/

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

This petition for a writ of quo warranto, or in the alternative, for a writ of mandamus, or other equitable relief, is brought under Article V, Section 3(b)(8) of the Constitution of the State of Florida, Florida Rules of Appellate Procedure 9.030(a)(3) and 9.100, and other relevant authorities to enforce a specific provision of the Constitution of the State of Florida, consistent with the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. 111-5, 123 Stat. 115 (2009), and Ch. 2009-271 (herein referred to as the "Florida Rail Act").

1. Parties. The Petitioners, Thad Altman and Arthenia Joyner, are Florida citizens, Florida taxpayers, and Senators for the State of Florida for Districts 24 and 18, respectively. The Respondent, the Honorable Richard Scott, is the Governor of the State of Florida.

2. Jurisdiction. This Court has original jurisdiction pursuant to Article V, Section 3(b)(8), Constitution of the State of Florida, and Florida Rule of Civil Procedure 9.030(a)(3).

3. Facts on which Petitioners Rely.

This petition is an emergency petition because Raymond H. LaHood, the United States Secretary of Transportation, has granted the State of Florida until Friday, March 4, 2011, by which to accept the $2.4 billion dollars appropriated for the construction of the high speed rail project from Tampa to Orlando that are the subject of this petition. The American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. 111-5, 123 Stat. 115 (2009), was enacted by Congress in 2009 "[t]o preserve and create jobs and promote economic recovery; assist those most impacted by the recession; [t]o provide investments needed to increase economic efficiency by spurring technological advances in science and health; [t]o invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and [t]o establish state and local government budgets in order to minimize and avoid reductions in essential services and

counterproductive state and local tax increases." ARRA § 3(a)(1)-(5); *see also Edwards v. State*, 678 S.E.2d 412, 415 (S.C. 2009). In the ARRA, as is typical in federal funding legislation, Congress specifies how the federal funds are to be allocated and spent by the respective states.

Section 1607(a) of the ARRA requires that the Governor, within forty-five (45) days of the enactment of the ARRA, certify that: (1) the State will request and use funds provided by the ARRA; and (2) the funds will be used to create jobs and promote economic development. ARRA § 1607.

On or about March 17, 2009, former Governor Charles Crist made the requisite § 1607(a) certification to President Obama. A copy of the certification is attached hereto and incorporated by reference as Exhibit "A."[1] Two (2) days later, on March 19, 2009, former Governor Crist made a second certification to Secretary Raymond L. LaHood, in which he certified that Florida would maintain its effort with regard to state funding for "covered programs" under the ARRA. The high speed rail project was included among such covered programs. A copy of the

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[1] All of the documents referred to in this Petition are public documents and may be viewed online at various Websites of the United States Department of Transportation, Florida High Speed Rail, and the Florida Department of Transportation. Unfortunately, some of the Florida High Speed Rail Web site documents have very recently been removed by the High Speed Rail Enterprise. Petitioners request that this Court take judicial notice of any such documents as are necessary or proper to resolve this matter. See, Section 90.202 – 90.203, Fla. Stat.

March 19, 2009, certification is attached hereto and incorporated by reference as Exhibit "B." In September 2009, former Governor Crist and the cabinet unanimously approved a resolution in support of Florida seeking $2.6 billion for the Tampa-Orlando high speed rail corridor.

Further, the Florida Legislature in Special Session in December 2009 enacted §§ 341.8201-341.842, *Florida Statutes*, to implement this High Speed Rail Project in Florida. Section 341.822, *Florida Statutes*, in particular, creates the Florida Rail Enterprise as a single budget entity and sets forth the specific method for implementing high speed rail, stating that:

> (1) The enterprise **shall** locate, plan, design, **finance,** construct, maintain, own, operate, administer, and manage the high-speed rail system in the state.
>
> (2)(a) In addition to the powers granted to the department, the enterprise has full authority to exercise all powers granted to it under this chapter. Powers shall include, but are not limited to, the ability to plan, construct, maintain, repair, and operate a high-speed rail system, to acquire corridors, and to coordinate the development and operation of publicly funded passenger rail systems in the state.
>
> (b) It is the express intention of ss. 341.8201-341.842 that the enterprise be authorized to plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the high-speed rail system; to expend funds to publicize, advertise, and promote the advantages of using the high-speed rail system and its facilities; and to cooperate, coordinate, partner, and contract with other entities, public and private, to accomplish these purposes.

(3) The enterprise shall have the authority to employ procurement methods available to the department under chapters 255, 287, 334, and 337, or otherwise in accordance with law. The enterprise 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 consortia thereof, for the building, operation, ownership, or financing of the high-speed rail system.

(4) The executive director of the enterprise shall appoint staff, who shall be exempt from part II of chapter 110.

(5) The powers conferred upon the enterprise under ss. 341.8201-341.842 shall be in addition and supplemental to the existing powers of the department, and these powers shall not be construed as repealing any provision of any other law, general or local, but shall supersede such other laws that are inconsistent with the exercise of the powers provided under ss. 341.8201-341.842 and provide a complete method for the exercise of such powers granted.

(6) Any proposed rail enterprise project or improvement shall be developed in accordance with the Florida Transportation Plan and the work program under s. 339.135.

(Emphasis added.)

Section 341.303(6)(a), *Florida Statutes*, specifically requires that the Florida Rail Enterprise shall be a single budget entity and shall develop a budget in accordance with Chapter 216. § 341.303(6)(a), Fla. Stat. Further, "[t]he enterprise's budget shall be submitted to the Legislature along with the department's budget." As such, the Enterprise's funding is controlled by the Legislature, not the Governor.

Importantly, the Florida Rail Act specifically creates a dedicated funding source of $60 million per year to the Florida Rail Enterprise beginning in 2014 from documentary stamp tax revenues allocated to the State Transportation Trust Fund. Section 201.15(1)(c), Fla. Stat. The Governor's actions in aborting high speed rail in Florida has effectively, by executive conduct, repealed this appropriation of funds from this designated source.

On January 28, 2010, the U.S. Department of Transportation awarded $1.25 billion to the State of Florida for high speed rail. A copy of the letter of award is attached to and incorporated by reference to this Petition as Exhibit "C." The Legislature acted on Governor Crist's prior certifications and the Florida Rail Act, and, through the 2010 General Appropriation Act, the Legislature appropriated $130.8 million of the ARRA funds in the 2010 Budget. *See* 2010 General Appropriations Act, 2010 Fla. Laws Ch. 2010-152, § 1963. As discussed below, by the Governor's conduct in rejecting high speed rail in Florida on February 16, 2011, he has (almost 9 months after the appropriation) sought to belatedly veto this specific appropriation.

On May 7, 2010, the U.S. Department of Transportation, Federal Railway Administration, issued a Record of Decision that effectively gave the State of Florida the "green light" to proceed with the design, engineering, right of way acquisition, and construction of the high speed rail project. Specifically, the

Federal Railway Administration found that the requirements of the National Environmental Policy Act, 40 CFR Part 1505.2, had been satisfied for the Florida High Speed Rail Project from Tampa to Orlando. The Record of Decision and Appendices B and C are attached hereto and incorporated by reference as Exhibit "D."

On May 19, 2010, the Federal Railroad Administration and the Florida Rail Enterprise entered into Grant/Cooperative Agreement by which the U.S. Department of Transportation agreed to distribute $66.6 million of the $130.8 million appropriated by the Florida Legislature in the spring of 2010. A copy of the Grant/Cooperative Agreement is attached to and incorporated by reference into this Petition as Exhibit "E."

On June 28, 2010, the U.S. Department of Transportation (USDOT) awarded the State of Florida an additional $342 million. As a result of these two awards ($1.25 billion and $342 million), in October 2010, the Florida Rail Enterprise fully negotiated and completed a Grant Amendment with the USDOT that provides that the USDOT would fund an additional $1,525,660,128 for a total at that point of $1.592 billion. A copy of the Grant Amendment is attached to and incorporated by reference as Exhibit "F." In late 2010, the USDOT further awarded an additional $800 million to the Florida Rail Enterprise, resulting in a

total award of $2.4 billion as part of the Legislature's Florida Rail Act and its appropriation in the spring of 2010.

Importantly, both the applications for and award of these monies occurred and were completed under a prior Legislature and a prior Governor. The legislation implementing high speed rail and the appropriations of the state and federal monies were fully accomplished prior to the election or inauguration of the Respondent. Copies of cover letters for the State's applications are attached as Composite Exhibit "G," which is attached hereto and incorporated by reference.

The Respondent was elected in November 2010 and inaugurated in January 2011. Once elected, Governor Scott has refused to permit the Grant Amendment to be executed by the Florida Rail Enterprise, even though the terms of these documents have been fully negotiated and were submitted to the Florida Rail Enterprise by the USDOT for signature.

In a letter dated February 16, 2011, Respondent took the unilateral action of attempting to reject the funds that had been appropriated by the Legislature and to be funded by the U.S. Department of Transportation (USDOT), even though the Legislature had passed the Florida Rail Act specifically directing the Florida Rail Enterprise to finance and construct a high speed rail system and had appropriated $130.8 million to implement the awards from the USDOT; the Florida Rail Enterprise had fulfilled its obligation to obtain financing of the high speed rail

system by obtaining from the U.S. Department of Transportation three awards totaling $2.54 billion to build such system; the Florida Rail Enterprise had entered into a $66.6 million Grant Agreement with the USDOT to begin the system; in order to implement the award and the Legislature's appropriations the Florida Rail Enterprise had negotiated and was waiting to sign the Amendment to the Grant in the amount of $1.5 billion; and various Statements of Work had been negotiated and completed regarding such Grant, as amended. A copy of such letter is attached hereto and incorporated by reference as Exhibit "H."

Instead of completing the ministerial act of accepting the funds for the high speed rail project as he was required to do, Respondent instead requested that the monies be used for other Florida infrastructure projects.[2] Such a claim of authority and the attempt to (1) reject the monies appropriated by the Florida Legislature; (2) reject financing specifically mandated by the Florida Rail Act; and (3) refuse to comply with the express directions of the High Speed Rail Act, all exceed Respondent's constitutional authority.

Specifically, based upon such legislation and appropriation, which were not vetoed by Florida's prior governor, Respondent is without authority to now, many

[2] It is clear that Respondent is not philosophically opposed to taking the ARRA monies. He wants the $2. 4 billion for Florida. He just refuses to apply it to high speed rail. Under federal law, the monies simply cannot be used for other projects.

months later, to effectively veto such legislation and reduce such completed appropriations retroactively.

4. Nature of Relief Sought. Petitioners seek a writ of quo warranto, mandamus, or such other equitable relief as the Court finds proper, including a temporary and permanent injunction, requiring that the Respondent accept the ARRA funds and apply the funds to the Florida High Speed Rail Project as appropriated by the Legislature of the State of Florida.

5. Argument.

I. THIS COURT HAS THE ORIGINAL JURISDICTION, AUTHORITY, AND DUTY TO ACT UPON THIS PETITION FOR A WRIT OF QUO WARRANTO OR, IN THE ALTERNATIVE, A WRIT OF MANDAMUS OR OTHER EQUITABLE RELIEF.

Article V, Section 3(b)(8) of the Constitution of the State of Florida authorizes this Court to issue writs of quo warranto, mandamus, and other equitable relief. Art. V, § 3(b)(8), Fla. Const. This Court has original jurisdiction to issue such writs, including the authority to issue writs of quo warranto and mandamus to "state officers and state agencies." Art. V, § 3(b)(8), Fla. Const.; Fla. R. App. P. 9.030(a)(3). As the Governor is a state officer, he is subject to this Court's jurisdiction under Article V, Section 3(b)(8). *See, e.g., Fla. House of Reps. v. Crist*, 999 So. 2d 601, 607 (Fla. 2008).

"Quo warranto is the proper 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) (quoting *Winter v. Mack*, 194 So. 225, 228 (Fla. 1940)). Further, this Court has stated that quo warranto is "the proper vehicle to challenge the 'power and authority' of a constitutional officer, such as the Governor." *Crist v. Fla. Ass'n. of Crim. Def. Lawyers, Inc.*, 978 So. 2d 134, 139 n. 3 (Fla. 2008) (citing *Austin v. State ex re. Christian*, 310 So. 2d 289, 290 (Fla. 1975)). In the alternative, mandamus "is a common law remedy used to enforce an 'established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.'" *Smith v. State*, 696 So.2d 814, 815 (Fla. 2d DCA 1997) (citing *Puckett v. Gentry*, 577 So.2d 965, 967 (Fla. 5th DCA 1991)). Petitioners are entitled to mandamus to compel the Respondent to comply the appropriations and the requirements of the Florida Rail Act – specifically the Act's express prohibition of the Governor from interfering with the operations of the Florida Rail Enterprise; and is also entitled to a writ of quo warranto stating that Respondent does not have the authority to take the action that he has taken.

II. THE GOVERNOR HAS NO AUTHORITY TO (A) REJECT THE SPECIFIC APPROPRIATIONS BY THE FLORIDA LEGISLATURE, OR (B) REJECT THE EXPRESS DIRECTIVES OF THE HIGH SPEED RAIL ACT.

A. <u>The Governor May Not Reject The Specific Appropriations By The Florida Legislature</u>.

The principal functions of Florida's government are divided into three coordinate branches, none of which is superior to the others. Specifically, Article II, section 3 of the Florida Constitution states that the "powers of the state government shall be divided into legislative, executive and judicial branches" and that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Art II, § 3, Fla. Const. "Separation of powers is a potent doctrine that is central to our constitutional form of state government." *Kalway v. Singletary*, 708 So. 2d 267, 269 (Fla. 1998).[3]

In Florida's tripartite system of government, the Legislature has the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the conditions under which the appropriated monies shall be spent. Art. III, § 19, Fla. Const.; *see also Chiles*, 589 So. 2d at 265 (recognizing that the power to appropriate funds falls within the

[3] The natural tension created by the separation of powers doctrine embodied in Article II, Section 3 of Florida's Constitution was intended to prevent overreaching by any one branch, and saves the people from autocracy. *See Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 263 (Fla. 1991) ("The fundamental concern of keeping the individual branches separate is that the fusion of the powers of any two branches into the same department would ultimately result in the destruction of liberty."); *In re. Advisory Opinion to the Governor*, 276 So. 2d 25, 30 (Fla. 1973) ("The preservation of the inherent powers of the three branches of government, free of encroachment or infringement by one upon the other, is essential to the effective operation of our constitutional system of government."

province of the Legislature). This necessarily includes the duty to appropriate and authorize the use of all federal funds available to the State.[4]

Simply put, money can be drawn from the treasury only pursuant to appropriations made by law. Art. IV, §1(c), Fla. Const. ("No money shall be drawn from the treasury except in pursuance of appropriation made by law."). That is to say, "[u]nder the Florida Constitution, exclusive control over public funds rest solely with the legislature." *State v. Fla. Police Benev. Ass'n, Inc.*, 613 So. 2d 415, 418 (Fla. 1992); *see also State ex rel. Kurz v. Lee*, 163 So. 859, 868 (Fla. 1935) (requiring legislative appropriation prevents expenditure of public money "without the consent of the public given by their representatives in formal legislative Acts . . . [and secures to the legislature] the exclusive power of deciding how, when, and for what purpose the public funds shall be applied in carrying on the government.").

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[4] Section 216.212(3), Florida Statutes, states that "Federal money appropriated by Congress or received from court settlements to be used for state purposes, whether by itself or in conjunction with moneys appropriated by the Legislature, **may not be expended unless appropriated by the Legislature**." § 216.212(3), Fla. Stat. (emphasis added). Further, the statute states that "the Executive Office of the Governor or the Chief Justice of the Supreme Court **may, after consultation with the legislative appropriations committees,** approve the receipt and expenditure of funds from federal sources by state agencies or by the judicial branch." *Id.* (emphasis added).

As this Florida Supreme Court ruled in *Chiles v. Children A, B, C, D, E, and F, et al.*, 589 So. 2d 260 (Fla. 1991), "this Court has long held that the power to appropriate state funds is legislative and is to be exercised only through duly enacted statutes." .... "*Such a provision secures to the Legislative (except where the Constitution controls to the contrary) the exclusive power of deciding how, when, and for what purpose the public funds shall be applied in carrying on the government....* "Furthermore, the power to *reduce* appropriations, like any other lawmaking, is a legislative function." (Emphases in original). As such, the right, authority, and the power **to fund** the aforesaid appropriations, and the decision to reduce such funding, whether by state or federal funds, for the implementation of the Florida Rail Act lie exclusively with the Florida Legislature – not with the Governor. Simply stated, whether such funds derive from the state or from federal funds granted to the state, the appropriation of such funds constitutionally lies exclusively with the Florida Legislature.

In addressing a remarkably similar issue, the Supreme Court of South Carolina recently held that the executive branch was obligated to both apply for and accept the receipt of federal funds under the ARRA. *Edwards v. State*, 678 S.E. 2d 412 (S.C. 2009). In *Edwards*, the Governor of South Carolina made the requisite certification under § 1607(a) on April 3, 2009. *Id.* at 415. The legislative body of South Carolina, on May 13, 2009, then acted on the Governor's

certification and appropriated the ARRA funds in the state budget. *Id.* After certifying that the State of South Carolina would request and use the funds provided by the ARRA and after the state legislature had acted upon this certification and appropriated funds into the budget, the South Carolina Governor then refused to apply formally for the funds. *Id.* at 416.

On a petition for writ of mandamus, the court held that under South Carolina law, the Governor was obligated to apply for and accept the receipt of federal funds specified for South Carolina under the ARRA and that mandamus was warranted to compel the Governor to do so. Specifically, the Court held that "[a] writ of mandamus may issue against a Governor for the performance of a purely ministerial act" and that "[t]he duty to execute the Budget, as properly enacted by the [Legislature], is a ministerial duty of the Governor [i.e.-] [h]e has no discretion concerning the appropriation of funds." *Id.* at 419-20 (citations omitted). The fact that the South Carolina General Assembly is the sole entity with the power to appropriate funds under South Carolina law was critical to the Court's analysis. *Id.* at 417.

Indeed, the constitutional provisions regarding the appropriation of public funds at issue in *Edwards* are similar to the provisions contained in the Florida Constitution. Here, in its appropriation of the funds in the Budget, including any ARRA funds, the Florida Legislature has acted on Governor Crist's § 1607(a)

certification and appropriated the ARRA funds in the 2010 Budget, clearly expressing the people of Florida's desire and intention to receive the federal funding available under the ARRA.

Equally, the Florida Constitution and Florida law grants the Legislature with the sole authority to appropriate funds. It is the constitutional duty of the Legislature to appropriate funds, as well as to reduce appropriations available to the State of Florida. *Chiles*, 589 So. 2d at 265. Now, a newly-elected Governor attempts to reject the federal money that has been previously appropriated by the Legislature in an attempted post-hoc veto of an appropriation, simply because he does not agree with the federal directives on how this money is to be spent. The Governor, by his actions of refusing to accept funds coming to the State of Florida from the federal government, is unconstitutionally exercising legislative authority by effectively reducing the appropriations of the State of Florida, a unilateral power which the Governor has not been granted under the State's Constitution.

In sum, under the Florida Constitution and Florida law, the Legislature is the sole entity with the power to appropriate funds, and this power necessarily includes the appropriation of federal funds. By rejecting receipt of previously appropriated federal funding, the Governor impermissibly treads on the legislature's authority and exceeds the constitutional authority granted to the executive branch. The power to appropriate funds of the State of Florida resides in the legislature under

Article III of the Florida Constitution, and the Governor cannot usurp this power short of a constitutional amendment.

B. The Governor Has No Authority To Refuse To Comply with the Express Directives of the High Speed Rail Act.

The planning and implementation of large transportation projects require long time frames due to the complex procedures involved with the planning, financing, assessing environmental impacts, acquiring property, constructing, and complying with all other regulatory requirements imposed on such projects. Accordingly, Florida has developed a comprehensive scheme of planning and legislation to address the transportation needs of the state. As part of its Growth Management legislation in 1985, a State Comprehensive Plan was enacted to guide the orderly social, economic, and physical growth of the State of Florida. *See* Ch. 187, Fla. Stat.

Section 19 of the Comprehensive Plan stated as a matter of policy that the State was to establish a high-speed rail system linking the Tampa Bay area, Orlando, and Miami. While there have been amendments and changes to the State Comprehensive Plan since 1985, the high speed rail policy has retained its vitality and continues to be an integral part of the transportation element of the State Comprehensive Plan.

In order to focus the planning and construction of transportation projects in the State of Florida, the Legislature in § 339.155, *Florida Statutes*, requires the

Department of Transportation to develop and annually update the Florida Transportation Plan which is to establish and define the state's long range transportation goals and objectives that are to be accomplished over a period of at least 20 years within the context of the State Comprehensive Plan. § 339.155, Fla. Stat. In addition, § 339.135((4)(b)(2), *Florida Statutes*, mandates that the Department of Transportation adopt a 5-year work program for transportation projects in the State of Florida in accordance with Florida Transportation Plan. Each part of the planning and implementation process for a transportation project is to be guided by the State Comprehensive Plan until the project reaches fruition.

The revision of the State Comprehensive Plan is a continuing process, and the Executive Office of the Governor is to review and analyze the plan biennially. § 186.007(8) Fla. Stat. If the Governor determines changes to the State Comprehensive Plan are necessary, the Governor is to submit recommended changes to the Legislature for its approval. § 186.007(8) Fla. Stat.

On December 8, 2009, meeting in special session, the Florida Legislature created the framework for addressing Florida's current and future rail system with the adoption of the High Speed Rail Act. The High Speed Rail Act, §§ 342.8201-341.842, *Florida Statutes*, prescribes an agency designated as the Florida Rail Enterprise, much like the Florida Turnpike Enterprise which operates the Florida

Turnpike. *See generally*, the Florida Turnpike Enterprises Law at Secs. 338.22-338.241, Fla. Stat. 2010.

The Florida Rail Enterprise is organized within the Florida Department of Transportation, but is "headed by an executive director." § 20.23(5)(a), Fla. Stat. (2010). The executive director is responsible for the implementation of the lawfully delegated duties of the Florida Rail Enterprise, including the appointment of staff. § 341.822(4), Fla. Stat. (2010).

The Florida Rail Enterprise has the sole power and authority to plan, finance, construct, and operate high-speed rail system in Florida (the "HSR System"). "The powers conferred upon the [Florida Rail E]nterprise under [the High Speed Rail Act] shall be in addition and supplemental to the existing powers of the [Florida Department of Transportation], and these powers shall not be construed as repealing any provision of any other law, general or local, but shall supersede such other laws that are inconsistent with the exercise of the powers provided under [the High Speed Rail Act] and provide a complete method for the exercise of such powers granted." § 341.822(5), Fla. Stat. (2010).

The Florida Legislature intended that, once appropriations were made and authorized by the Legislature, the Florida Rail Enterprise shall have the full authority to comply with its legislative mandate, free from outside interference. The Florida Rail Enterprise is granted full controlover the financing and operation

of the HSR System. For example, the Florida Rail Act provides that all "[f]ares, rates, rents, fees, and charges established, revised, charged, and collected by the [Florida Rail E]nterprise pursuant to this section shall not be subject to supervision or regulation by any other department, commission, board, body, bureau, or agency of this state other than the [Florida Rail E]nterprise." § 341.836(2), Fla. Stat. (2010). Further, § 20.23, Fla. Stat., directs the Secretary of Transportation to delegate responsibility for developing and operating high speed rail to the executive director of the enterprise, who serves at the pleasure of the Secretary. § 20.23(4)(f)(1), Fla. Stat. The Florida Rail Enterprise is exempt from the Department of Transportation's policies, procedures, and standards. § 20.23(4)(f)(2), Fla. Stat.

Additionally, and importantly, the Legislature crafted the legislation so that the Florida Rail Enterprise function without interference from other executive branch officials. "Except as otherwise expressly provided [by the Florida Act], none of the powers granted to the [Florida Rail E]nterprise under [the Florida Rail Act] are subject to the supervision or require the approval or consent of any municipality or political subdivision or any commission, board, body, bureau, or **official**." § 341.839, Fla. Stat. (2010). (Emphasis added). The Governor is an official within the meaning of the Act, and is not permitted to interfere with the implementation of high speed rail.

The delegation of the power and independence to the Florida Rail Enterprise was an intentional element of the Legislature's policy because the evaluation and selection criteria for the award of ARRA funds to the Florida Rail Enterprise included a requirement that the Florida Rail Enterprise "affirmatively demonstrate that it has or will have the legal...capacity to carry out [high-speed rail.]" *See* High-Speed Intercity Passenger Rail "Notice of Funding Availability," Fed. Reg. Vol. 74, No. 119 at 29921 (June 23, 2009).

Had the Legislature intended for the Governor to exercise significant control of the HSR System, it would have simply delegated authority over the system to the Secretary of the Florida Department of Transportation, the Governor, or the Executive Office of the Governor. Instead, except for the power to hire and fire the Department's secretary and the secretary's authority to fire the Florida Rail Authority's executive director, the Legislature specifically removed such authority and power from the Governor. In any event, in the present case, the financing has been accomplished and cannot now be unilaterally rejected by the Governor.

The High Speed Rail Act **requires** the Florida Rail Enterprise to finance and construct the high speed rail system for the state. There is no discretion. As such, the authority to, **and the requirement to**, implement and execute upon the financing of high speed rail is **imposed upon** the Florida Rail Enterprise. Both explicitly and implicitly, the Legislature has set forth a specific methodology for

implementing high speed rail. The Florida Rail Enterprise's executive director has no discretion to reject such financing as determined by the Legislature.

The State Comprehensive Plan is a direction setting document and its policies are implemented only to the extent that financial resources are provided pursuant to legislative appropriation or grants or appropriations of any other public or private entities. § 187.104, Fla. Stat. The appropriations and the funds which are the subject of this Petition represent the appropriations to implement the high speed rail elements in the State Comprehensive Plan and the High Speed Rail Act.

The Governor has no authority to refuse to implement the directives of the state law, especially funding that has already been applied for and awarded to the State of Florida when state law mandates the High Speed Rail Enterprise "... shall locate, plan design, finance, construct, maintain, own, operate, administer, and manage the high-speed rail system in Florida." § 341.822(1) Fla. Stat.

The construction of large transportation projects may span the administration of many governors. The State of Florida has adopted by law a state policy to build this transportation project. The legislature has appropriated the funds for this project. The Governor has unilaterally decided the State of Florida will not move forward with this transportation project.

If every newly elected governor decided to stop the major infrastructure project which were underway when he was elected, after the State of Florida has

adopted by state law a policy to build the major infrastructure project; the Legislature has appropriated the funds for the project and directed the construction of the project, Florida will not be able to plan, finance, and construct the major infrastructure projects it requires for its people and its future.

III. CONCLUSION

The Petitioners respectfully submit that the foregoing authority provide a clear duty for the Respondent to accept the ARRA funds and apply the funds appropriated by Congress and the Florida Legislature for the Florida High Speed Rail Project. As such, Petitioners respectfully request that this Court grant this Petition and order the Respondent to expeditiously accept the funds and apply such funds appropriated by Congress and the Florida Legislature for the Florida High Speed Rail Project.

Further, if it deems it necessary or appropriate, Petitioners respectfully request that this Court enter a preliminary injunction while the Court fully considers these matters. In that regard, there is a probability of success on the merits, there is no adequate remedy at law, an injunction will benefit the people and public policy in Florida, and irreparable injury to Petitioners and the entire state of Florida will occur if a preliminary, and ultimately a permanent, injunction are not issued in this case.

Respectfully submitted,

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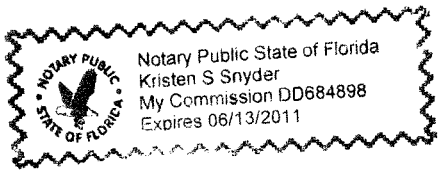
CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Petition complies with Rule 9.100(1), *Florida Rules of Appellate Procedure.*

CLIFTON A. McCLELLAND, JR.
Florida Bar No. 119792

STATE OF FLORIDA
COUNTY OF BREVARD

Before me, the undersigned authority, personally appeared THAD ALTMAN who was sworn and says the facts in the foregoing Petition are true and correct to the best of his information and belief.



THAD ALTMAN

Sworn to and subscribed before me this 28th Day of February, 2011, by THAD ALTMAN who is personally known to me.

Kristen S Snyder
Notary Republic