Case No. 6D24-0548

IN THE DISTRICT COURT OF APPEAL
FOR THE SIXTH DISTRICT, STATE OF FLORIDA

FLORIDA ASSOCIATION OF REALTORS, D/B/A FLORIDA REALTORS, AND FLORIDA APARTMENT ASSOCIATION, INC.,

Appellants,

v.

ORANGE COUNTY, FLORIDA AND BILL COWLES, IN HIS OFFICIAL CAPACITY AS ORANGE COUNTY SUPERVISOR OF ELECTIONS,

Appellees.

INITIAL BRIEF

ON APPEAL FROM A FINAL ORDER OF THE CIRCUIT COURT
FOR THE NINTH JUDICIAL CIRCUIT, ORANGE COUNTY
CASE NO. 2022-CA-007552-O

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INTRODUCTION

Appellants Florida Association of Realtors d/b/a Florida Realtors and Florida Apartment Association, Inc., sued Orange County in August 2022 seeking to enjoin the implementation of a rent control ordinance on the grounds that the ordinance was inconsistent with general law and was therefore preempted under the Florida Constitution. The trial court initially denied Appellants' motion for temporary injunction, but the Fifth District reversed. *See Fla. Ass'n of Realtors v. Orange Cnty.*, 350 So. 3d 115 (Fla. 5th DCA 2022) (reversing and remanding to trial court for "immediate issuance" of temporary injunction).

The Florida Legislature subsequently amended the statute preempting local governments from adopting rent control measures by eliminating the narrow exception from preemption on which Orange County had purportedly relied. Ch. 2023-17, § 2, Laws of Fla. Following this statutory change, the trial court dismissed the underlying action as moot.

Appellants now seek review of the order dismissing their action as moot without adjudicating their claim for mandatory prevailing party attorney's fees under section 57.112, Florida Statutes.

STATEMENT OF JURISDICTION

This appeal concerns an "Amended Order Suggestion of Mootness." R.299-300. This Court has jurisdiction under Florida Rule of Appellate Procedure 9.030(b)(1)(A), as the order on appeal is a final order dismissing the action that is not directly reviewable by the Florida Supreme Court.

STATEMENT OF THE CASE AND OF THE FACTS

I. STATEMENT OF FACTS

A. The Parties

Florida Realtors and Florida Apartment Association are trade associations headquartered in Orlando that engage in education and advocacy on issues affecting the real estate community, property owners, and the Florida multifamily housing industry. R.9-10.

Orange County is a political subdivision of the State of Florida and is a charter county governed by a seven-member board of county commissioners. R.10. The Supervisor of Elections for Orange County, in his official capacity, is responsible for preparation and administration of ballots during elections.[1] R. 10-11.

B. Orange County enacts Rent Control Ordinance.

In August 2022, the County adopted Ordinance 2022-29 (the "Rent Control Ordinance"). R.99-112. The Rent Control Ordinance purported to impose regulations on residential rental properties in

[1] After the 2022 general election had passed, the trial court excused the Supervisor from further participation in the case. R.314-15. Appellants do not seek any relief on appeal against the Supervisor of Elections, who was included as a defendant below solely to effectuate the relief sought on the underlying merits claims regarding the 2022 referendum election.

Orange County, including a "rent stabilization" scheme limiting rent increases in both frequency and amount. R.12-13, 16, 99-112.

Because then-current Florida law generally prohibited local governments from adopting rent control measures, *see* section 125.0103, Florida Statutes (2022), the Rent Control Ordinance included a series of "legislative findings" purporting to determine that rent control was "necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public." R.17-19, 99-103. The Rent Control Ordinance also included a ballot title and summary for a referendum election on the Rent Control Ordinance to be held at the November 2022 general election. R.16-17; 111.

II. STATEMENT OF CASE

A. Florida Realtors and Florida Apartment Association challenge Rent Control Ordinance.

Less than one week after the County adopted the Rent Control Ordinance, Appellants sued to challenge its adoption and to enjoin its enforcement. R.8-112. Because Florida law restricts the authority of local governments to adopt ordinances that would impose rent control, *see* R.11-12, the Complaint sought a declaration that the

Rent Control Ordinance was facially invalid under section 125.0103, Florida Statutes, and Article VIII, section 1(g) of the Florida Constitution. R.23. The Complaint further alleged that Orange County lacked the authority to enact the Rent Control Ordinance because it was inconsistent with general law. R.27. In light of these defects, Appellants ultimately sought declaratory and injunctive relief and a writ of quo warranto to prevent enforcement of the Rent Control Ordinance. R.23-29. The Complaint also requested that the trial court "[g]rant such other or further relief the Court deems appropriate, including but not limited to an award of attorney's fees under section 57.112, Florida Statutes, and costs." R.29.

B. Fifth District orders "immediate issuance" of temporary injunction prohibiting enforcement of Rent Control Ordinance.

The trial court denied Appellants' motion for a temporary injunction prohibiting the County from implementing the Rent Control Ordinance and prohibiting the Supervisor of Elections from certifying the results of the referendum election, but the Fifth District reversed and remanded for "immediate issuance" of a temporary

injunction. R. 123-65; *Fla. Ass'n of Realtors*, 350 So. 3d at 132.[2] The Fifth District also provisionally granted Appellants' motion for appellate attorney's fees, explaining that should the Appellants "ultimately be determined to be the prevailing party below. . . the lower court shall determine and assess reasonable attorney's fees for this appellate court proceeding." Order, *Florida Ass'n of Realtors v. Orange Cnty.*, Case No. 5D22-2277 (Fla. 5th DCA Oct. 27, 2022). On remand, Appellants also moved to tax appellate costs. R.117-121.

In its order entering the temporary injunction on remand, the trial court explained that "[f]or the specific reasons expressed in the Fifth District's decision dated October 27, 2022, which is hereby incorporated by reference, the undersigned finds that the Plaintiffs have demonstrated an entitlement to temporary injunctive relief as to Counts 1 through 4 of their Complaint." R.115-16. Orange County was enjoined from implementing or enforcing any provision of the Rent Control Ordinance. R.116. The Supervisor of Elections was

[2] The County petitioned to invoke the discretionary jurisdiction of the Florida Supreme Court, but the Supreme Court denied the petition. *Orange Cnty. v. Cowles*, 2023 WL 2968082 (Fla. April 17, 2023).

enjoined from certifying any tabulation of votes cast in the referendum election held under the Rent Control Ordinance. *Id.*

C. Legislature amends statute; Trial court dismisses case as moot.

After entry of the temporary injunction, the Florida Legislature revised section 125.0103, Florida Statutes. Ch. 2023-17, § 2, Laws of Fla. The statute, as amended, retains a broad preemption provision prohibiting local governments from adopting or maintaining in effect "any law, ordinance, rule, or other measure that would have the effect of imposing controls on rents." § 125.0103(2), Fla. Stat. (2023). But the 2023 amendments eliminated the narrow exception to preemption upon which the County purported to rely in adopting the Rent Control Ordinance. Ch. 2023-17, § 2, Laws of Fla.

The County responded to the statutory amendment by filing a suggestion of mootness. R.176-80. In that filing, the County acknowledged that it was "entirely preempted from adopting or maintaining any rent control measures going forward." R.178. The County argued that Appellants' case should be dismissed as moot because a judicial determination "would have no effect on the

outcome of the case and is moot." *Id*. And "[g]enerally, a case that has been rendered moot will be dismissed." *Id*.

Appellants responded to the County's suggestion of mootness by pointing to Florida Supreme Court precedent providing that "an otherwise moot case will not be dismissed if collateral legal consequences that affect the rights of a party flow from the issue to be determined." R.245 (citing *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992)). Appellants' response identified their pending claim for mandatory prevailing party attorney's fees in the trial court under section 57.112, Florida Statutes, and the Fifth District's order provisionally granting attorney's fees in Appellants' interlocutory appeal, as grounds to apply the "collateral legal consequences" exception to mootness. R.244-52.

The County then filed a "supplemental memorandum" in support of its suggestion of mootness. R.253-64. In that filing, the County acknowledged that section 57.112 provides for an award of prevailing party attorney's fees in civil actions challenging an ordinance on the grounds that it is expressly preempted. R.260. The County contended, however, that section 125.0103, Florida Statutes (2022) did not expressly preempt local governments from adopting an

ordinance imposing controls on rents. R.261-63. Appellants responded to the County's supplemental memorandum to clarify the difference between "express preemption" and "complete preemption" under Florida precedent. R.273-80.

Following a telephonic hearing (R.308-46), the trial court entered an order granting the County's "motion to dismiss" on the basis of mootness and adopting the County's position that section 125.0103 (2022) did not expressly preempt local governments from imposing rent controls. R.283-84. Appellants moved for reconsideration and reiterated their argument that their Complaint involved a challenge to the Rent Control Ordinance based on the preemptive effect of section 125.0103 (2022). R.285-96. The trial court then entered an "amended order suggestion of mootness" and dismissed the action as moot. R.299-300.

This appeal follows. R.301-03.

SUMMARY OF ARGUMENT

The trial court erred in dismissing Appellants' challenge to Orange County's Rent Control Ordinance on the basis of mootness. Although the parties agree that an intervening statutory amendment has made it unnecessary for the trial court to adjudicate the legality of the Rent Control Ordinance, Appellants' pending claim for mandatory prevailing party attorney's fees is a collateral legal consequence that should have precluded dismissal under a well-recognized exception to the doctrine of mootness.

Section 57.112 provides for a mandatory award of attorney's fees to the prevailing party in a challenge to a local government's adoption of an ordinance on the grounds that the ordinance is expressly preempted by the Florida Constitution or state law. An award of prevailing party attorney's fees under section 57.112 is neither contingent nor speculative. The trial court's order dismissing the underlying action as moot without resolving Appellants' claim for attorney's fees under section 57.112 has collateral legal consequences on Appellants. Dismissal on the basis of mootness was therefore improper.

Appellants' Complaint contained allegations sufficient to establish a claim for prevailing party attorney's fees under section 57.112. The Complaint contended that Orange County's Rent Control Ordinance was invalid because it was inconsistent with a state statute generally prohibiting local governments from adopting rent control measures, and because the Rent Control Ordinance did not fall within any statutory exception to the general rule of preemption. Contrary to the trial court's interpretation, section 125.0103 (2022) was an express preemption statute. No "magic words" are necessary for the Legislature to expressly preempt regulation by local governments in any subject area. And an express preemption statute can contain exceptions for circumstances falling outside the scope of preemption; "express preemption" need not be *complete* or *total* preemption.

This Court should reverse.

STATEMENT OF PRESERVATION

The issue of whether an exception to dismissal based on mootness, specifically the collateral legal consequence exception, applies to Appellants' entitlement to attorney's fees under section 57.112, was raised in Appellants' response to the County's suggestion of mootness (R.244-51), Appellants' supplemental memorandum of law in response to the County's supplemental memorandum of law (R.273-80), and Appellants' motion for reconsideration (R.285-96); was argued at the telephonic hearing on the County's notice of suggestion of mootness (R. 315-33); and was ruled upon by the trial court in the "Amended Order Suggestion of Mootness" on appeal (R.299-300).

STANDARD OF REVIEW

Questions of preemption and the validity of ordinances are issues of law and, therefore, the applicable standard of review is *de novo*. *D'Agastino v. City of Miami,* 220 So. 3d 410, 421 (Fla. 2017). "The de novo standard of review is applied when considering an order granting a motion to dismiss." *Mazer v. Orange Cnty.*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002).

ARGUMENT

I. APPELLANTS' CLAIM FOR MANDATORY PREVAILING PARTY ATTORNEY'S FEES IS A COLLATERAL LEGAL CONSEQUENCE PRECLUDING DISMISSAL OF THE UNDERLYING CASE ON THE BASIS OF MOOTNESS.

Nearly two years ago, in an earlier appeal from a non-final order in this case, the Fifth District prohibited Orange County from implementing a Rent Control Ordinance that Appellants contended was inconsistent with the Florida Constitution and section 125.0103, Florida Statutes (2022). *See Fla. Ass'n of Realtors*, 350 So. 3d at 119 (holding that trial court erred by allowing the people of Orange County to vote on "an unconstitutional ordinance described by a misleading ballot summary" and remanding for "immediate entry" of a temporary injunction). A subsequent statutory amendment confirmed that Orange County cannot enforce its Rent Control Ordinance prospectively. *See* Ch. 2023-17, § 2, Laws of Fla.; R.178 (County acknowledging that, as of July 1, 2023, it is "entirely preempted from adopting or maintaining any rent control measures going forward").

In light of the temporary injunction and the 2023 amendment to section 125.0103, the parties appear to agree that further

proceedings in the trial court regarding the legality of the Rent Control Ordinance are unnecessary. *See generally Baldwin v. Baldwin*, 204 So. 3d 565, 567 (Fla. 5th DCA 2016) ("An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect.").

Notwithstanding the prospective mootness of the underlying merits issue, the trial court's dismissal of the action was premature. Florida courts have long recognized an exception to the mootness doctrine under which "an otherwise moot case will not be dismissed if collateral legal consequences that affect the rights of a party flow from the issue to be determined." *Godwin*, 593 So. 2d at 212. Appellants' claim for mandatory prevailing party attorney's fees under section 57.112, Florida Statutes, falls within the "collateral legal consequences" exception to the mootness doctrine. Section 57.112 provides for a mandatory award of prevailing party fees in an action challenging the adoption of a local ordinance on the grounds that the ordinance is expressly preempted by state law. Appellants' Complaint challenges the validity of the County's Rent Control Ordinance on the grounds that it is inconsistent with—and is therefore preempted by—section 125.0103, Florida Statutes. *See*

R.8-9 (identifying Florida statute generally prohibiting local governments from adopting rent control and alleging that Rent Control Ordinance violates Florida Constitution and state statute); *Fla. Ass'n of Realtors*, 350 So. 3d at 124 (noting that Florida's constitutional structure empowers the County to legislate in areas in which the Florida Legislature has not "preempted" its authority).

The trial court erred in dismissing the underlying action. This Court should reverse.

A. Section 57.112, Florida Statutes, provides for a mandatory award of prevailing party attorney's fees in a civil action against a local government to challenge the adoption of a local ordinance on the grounds that the ordinance is expressly preempted by state law.

Appellants' Complaint challenging the validity of the County's Rent Control Ordinance included a claim for attorney's fees under section 57.112, Florida Statutes. R.29. That statute provides, in relevant part, that a court "shall assess and award reasonable attorney fees and costs and damages to the prevailing party" in a civil action "filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is expressly preempted by the State Constitution or by state law." § 57.112(2), Fla. Stat. The statute broadly defines "attorney fees and costs" as "the

reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding." § 57.112(1), Fla. Stat.

Because section 57.112 provides for a *mandatory* award of attorney's fees to the prevailing party, the trial court's dismissal of the underlying proceeding on the grounds of mootness has a collateral legal consequence on Appellants' right to recover on their pending claim for attorney's fees. *See Mazer*, 811 So. 2d at 857 (reversing trial court order dismissing action as moot and applying collateral legal consequences exception to claim for attorney's fees under Public Records Act); *Soud v. Kendale, Inc.*, 788 So. 2d 1051, 1053 (Fla. 1st DCA 2001) (Polston, J.) (applying collateral legal consequences exception to claim for attorney's fees under Sunshine Law). The trial court therefore erred in dismissing the action as moot.

Florida courts have distinguished between *mandatory* and *discretionary* attorney's fee statutes when evaluating the collateral legal consequences exception. *See*, *e.g.*, *Kendall Healthcare Grp., Ltd. v. Pub. Health Tr. of Miami-Dade Cnty.*, 296 So. 3d 533, 535-36 (Fla. 1st DCA 2020) (contrasting statutes under which a court "may" award attorney's fees from statutes under which a court "shall"

award attorney's fees and stating that "[a] mere possibility that one *might* receive fees if successful is insufficient to be deemed a 'consequence' flowing from a claim"). Here, the County has not disputed that section 57.112, Florida Statutes, provides for a mandatory award of reasonable attorney's fees to the prevailing party. The trial court also acknowledged that a prevailing party is entitled to fees under section 57.112 where it pleads and proves a challenge to an ordinance based on express preemption. R.304. The trial court's principal error—discussed in section I(B) below—was its conclusion that section 125.0103 does not expressly preempt local governments from adopting rent control ordinances. R.304-05.

Appellants' right to mandatory prevailing party attorney's fees under section 57.112 is a collateral legal consequence falling within a well-recognized exception to the mootness doctrine. The trial court disregarded these principles when it dismissed the underlying action as moot. This Court should reverse.

B. Appellants' Complaint challenged Orange County's adoption of a Rent Control Ordinance on the grounds that the ordinance was expressly preempted by state law.

In its opinion reversing the trial court's earlier denial of temporary injunctive relief, the Fifth District recognized Appellants' claim that the Rent Control Ordinance was inconsistent with general law as a preemption claim. *See Fla. Ass'n of Realtors*, 350 So. 3d at 120 (stating that local governments "cannot pass an ordinance that is inconsistent with general and special laws enacted by the Florida Legislature"); *id.* at 124 (discussing Appellants' claim that Rent Control Ordinance was inconsistent with section 125.0103 and article VIII, section 1(g) and stating "[i]n other words, the County may legislate in areas in which the Florida Legislature has not 'preempted' its authority").

Notwithstanding the Complaint's allegations, however, the trial court concluded that "the [complaint] is devoid of any allegations of express preemption." R.304-05. The trial court further concluded that, even if Appellants had included "the language" in the Complaint, section 125.0103 did not contain "a specific legislative statement of preemption justifying fees under 57.112." R.305.

Each of these conclusions warrants reversal.

1. *The Complaint sufficiently alleges a challenge to the County's Rent Control Ordinance based on express preemption.*

In their Complaint, Appellants alleged: 1) section 125.0103, Florida Statutes (2022), generally prohibited local governments from adopting ordinances that would have the effect of imposing rent control; and 2) the County's Rent Control Ordinance was facially invalid under section 125.0103 and article VIII, section 1(g), of the Florida Constitution, which authorizes counties to adopt ordinances "not inconsistent with general law." R.8-9, 23-28. Appellants asserted claims for declaratory, injunctive, and quo warranto relief based on these challenges. R.23-28. The Complaint's allegations therefore alleged a challenge to the Rent Control Ordinance on the grounds that its adoption by the County was expressly preempted by state law—section 125.0103, Florida Statutes.

Rather than examining the nature or substance of the Complaint's allegations, the trial court appears to have applied a "magic words" test to determine whether Appellants had asserted a challenge based on express preemption. *See* R.298 (trial court order relying on "word search" of complaint for the terms "preemption" or

"express"); R.325-28 (trial court questions regarding location of "the term or the phrase" "expressly preempt" or "expressed preemption language" in the complaint). As Appellants explained below, the nature of their challenge to the Rent Control Ordinance was that it was invalid "because a state law prohibited the adoption of an ordinance like this. That's the definition of preemption." R.328; *see also Masone v. City of Aventura*, 147 So. 3d 492, 496-98 (Fla. 2014) (finding express preemption in the statutory language "no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized").

Finally, as discussed above, Appellants' claim for attorneys' fees is grounded in section 57.112(2), Florida Statutes, which mandates an award of prevailing party attorney's fees and costs "if a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is *expressly preempted* by the State Constitution or by state law." (emphasis added). *See* R.29 (requesting award of attorney's fees under section 57.112, Florida Statutes). "[A] claim for attorney's fees, whether based on statute or contract, must be pled" but, "the fundamental concern of the pleading requirement is notice." *Stockman v. Downs,*

573 So. 2d 835, 837 (Fla. 1991). "By pleading a claim to attorney's fees, a party notifies the opposing party and prevents unfair surprise." *Caufield v. Cantele,* 837 So. 2d 371, 377 (Fla. 2002). The Complaint's allegations, including its specific reference to section 57.112, placed the County on reasonable notice that Appellants were asserting a claim based on express preemption of the Rent Control Ordinance by state law.

2. *Section 125.0103 (2022) expressly preempts local governments from adopting rent control ordinances.*

The trial court also concluded that "[n]othing in the version of 125.0103 Florida Statute in effect at the time the ordinance was enacted contained a specific legislative statement of preemption justifying fees under 57.112." R.300. Because section 125.0103 clearly expressed the Florida Legislature's intent to preempt local governments from adopting rent control measures outside of a narrow exception, the trial court erred in its conclusion that Appellants' challenge to the Ordinance was not premised on an express preemption by section 125.0103.

"Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and

reserves that topic for regulation exclusively by the legislature." *Phantom of Clearwater, Inc. v. Pinellas Cnty.*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005). Florida law recognizes both "express preemption" and "implied preemption." *D'Agastino*, 220 So. 3d at 421. Implied preemption occurs when "the state legislative scheme is pervasive and the local legislation would present a danger of conflict with that pervasive scheme." *Id.* Express preemption, by contrast, "requires a specific legislative statement—it cannot be implied or inferred—and the preemption of a field is accomplished by clear language." *Id.*; *see Phantom of Clearwater*, 894 So. 2d at 1018 ("Express preemption . . . must be accomplished by clear language stating that intent."); *Edwards v. State*, 422 So. 2d 84, 85 (Fla. 2d DCA 1982) ("An 'express' reference is one which is distinctly stated and not left to inference."). Express preemption therefore requires a clear statement (although not in any particular statutory language) of the Legislature's intent to prohibit local government regulation of the field in question, while implied preemption preempts a field by adopting a pervasive scheme of legislation which leaves no room for local regulation.

"The preemption analysis is a matter of statutory interpretation." *Fla. Retail Fed'n, Inc. v. City of Coral Gables*, 282 So.

3d 889, 895 (Fla. 3d DCA 2019). "The Florida Constitution expressly grants the Legislature plenary authority over the state's local governments, which have only those 'powers of local self-government not inconsistent with general law.' " *Fried v. State*, 355 So. 3d 899, 910 (Fla. 2023); art. VIII, § 1(g), Fla. Const. Accordingly, "local governments cannot pass an ordinance that is inconsistent with general and special laws enacted by the Florida Legislature" as the ordinance would be unconstitutional. *Fla. Ass'n of Realtors*, 350 So. 3d at 120. "The Legislature is likewise authorized to enact general laws preempting all regulation in an area of the law." *Fried*, 355 So. 3d at 910.

From 1977 until it was amended in 2023, section 125.0103 preempted local controls on rents as follows:

> No law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained in effect except as provided herein and unless it is found and determined, as hereinafter provided, that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.

§125.0103(2), Fla. Stat. (2022).

Contrary to the trial court's suggestion, Florida law does not mandate that a statute contain the words "express" or "preempt" in

order to expressly preempt regulation of a particular area. For example, the Florida Supreme Court confronted substantively identical statutory language in *Masone* and found that statute to expressly preempt municipal ordinances imposing penalties for red light violations detected by cameras. 147 So. 3d at 495-97 (holding that statute providing "no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized" was sufficient to convey express preemption). Like section 125.0103, the statute at issue in *Masone* did not contain the words "express" or "preemption" and acknowledged the possibility of exceptions to its general preemptive effect. The Supreme Court explained that "[p]reemption of local ordinances by state law may, of course, be accomplished by express preemption—that is, by a statutory provision stating that a particular subject is preempted by state law or that local ordinances on a particular subject are precluded." *Id.* at 495. Because section 125.0103 contained a clear statement that local ordinances on the topic of rent control were preempted except as provided under that statute's narrow exception, it is properly classified as an "express preemption" statute.

Other Florida courts have also held that explicit language declaring occupation of a field of regulation is not required for express preemption. The Third District analyzed three statutes in response to a challenge to an ordinance purporting to prohibit food service providers and stores from selling or using Styrofoam containers. *Fla. Retail Fed'n, Inc.*, 282 So. 3d at 891-96. Although only one of the three statutes used the term "preemption," the Third District determined that all three statutes "expressly preempt the City's [Styrofoam] Ordinance" in clear and unambiguous language. *Id.* at 896.

Finally, and as noted above, the Fifth District's prior opinion reversing the trial court's denial of a temporary injunction in this case is consistent with a construction of section 125.0103 conveying an express preemption of local rent control ordinances. *Fla. Ass'n of Realtors*, 350 So. 3d at 124. When discussing Appellants' likelihood of success on their claim that the Rent Control Ordinance was invalid under section 125.0103, Florida Statutes, and article VIII, section 1(g), of the Florida Constitution, the Fifth District noted that the County lacked the constitutional authority to enact ordinances "inconsistent with general law"—that is, "the County may legislate in

areas in which the Florida Legislature has not 'preempted' its authority." *Id.*

Section 125.0103, Florida Statutes (2022) expressly preempted local governments from adopting rent control ordinances. The trial court erred in concluding otherwise.

3. *The narrow statutory exception to section 125.0103's preemption of local rent control ordinances does not preclude its classification as an express preemption statute.*

As amended in 2023, section 125.0103 *expressly and completely* preempts local governments from adopting or maintaining in effect any rent control measure. Before the 2023 amendment, section 125.0103 *expressly* preempted local governments from enacting most rent control measures, but did not preempt local rent control measures satisfying an extremely narrow exception. Appellants' Complaint challenged the County's Rent Control Ordinance on the grounds that it failed to satisfy the statute's narrow exception and was therefore expressly preempted as inconsistent with section 125.0103's general express preemption of local rent control measures. R.8-29.

It is axiomatic that article VIII of the Florida Constitution grants the Legislature plenary authority over the state's local governments. In *Fried*, the Florida Supreme Court confronted a challenge to a statute that authorized the imposition of civil penalties against any local government official who knowingly and willfully adopted, or attempted to enforce, a local law or regulation pertaining to firearms or ammunition. 355 So. 3d at 902-03. The statute at issue was also subject to limited statutory exceptions. *Id.* In evaluating the law, the Supreme Court explained that "[b]y expressly preempting the field of firearms and ammunition regulation, the Legislature has deprived local governments and officials of any authority or discretion to contravene, exceed, or evade the Legislature's regulation of this field (subject to the limited exceptions set forth in section 790.33(4))." *Id.* at 908. Therefore, for local governments to avoid violating the statute, they simply had to operate within "the narrow and expressly identified exceptions." *Id.*

Like the statute examined in *Fried*, section 125.0103, Florida Statutes (2022), deprived local governments of any authority or discretion to contravene, exceed, or evade, the Legislature's general prohibition on rent control measures. And similarly, to avoid violating

the express preemption outlined in that statute, a local government had to operate within the narrowly defined exception authorizing rent control measures in specific, narrowly defined circumstances. § 125.0103(2), Fla. Stat. (2022). The County's Rent Control Ordinance here was inconsistent with general law and was therefore preempted.

Finally, the Third District's conclusion of express preemption in *Florida Retail*, discussed above, was not undermined by the list of exceptions allowing local governments to adopt local ordinances restricting the sale or use of Styrofoam containers found in section 500.90, Florida Statutes. *Fla. Retail Federation, Inc.*, 282 So. 3d at 896. The existence of a narrow exception does not preclude the statute from being considered an "express preemption" statute. *See City of Palm Bay v. Wells Fargo Bank, N.A.,* 114 So. 3d 924, 929 (Fla. 2013) ("[w]e categorically reject the City's argument that the legislative enactment of exceptions to a statutory scheme provides justification for municipalities to enact exceptions to the statutory scheme.").

The trial court erred in concluding that section 125.0103 (2022) was not a statute expressly preempting rent controls sufficient to justify prevailing party attorney's fees under section 57.112.

CONCLUSION

This Court should reverse the trial court's order and remand for further proceedings to determine Appellants' entitlement to and amount of attorney's fees, costs, and damages under section 57.112, Florida Statutes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this brief has been filed with the Florida Courts E-Filing Portal on July 19, 2024, and electronically served to:

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I certify that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.210(a)(2) because it was prepared using Bookman Old Style 14-point font and because the word count from the word-processing system used to prepare this document is 4,925.

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