Case No. 3D24-0747
L.T. Case No. 21-024025-CA-01

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

GREATER MIAMI EXPRESSWAY AGENCY, MARILI CANCIO, RICHARD BLANCO, STACY MILLER, RODOLFO PAGES, AND FATIMA PEREZ,
Petitioners,
v.
MIAMI-DADE EXPRESSWAY AUTHORITY AND MIAMI-DADE COUNTY,
Respondents.

JOINT RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Although this Petition for Certiorari purports to seek review of the trial court's denial of a discovery motion, what is really before the Court is an interlocutory review of the denial of a motion to dismiss. This improper appeal is disguised as a petition for the issuance of a writ of certiorari, which the Greater Miami Expressway Authority and its board members and executive director, ("GMX") filed to "protect" themselves from discovery that had not yet been served and which, once served, sought the production of public records and responses to questions discernible from public records. Denials of motions to dismiss are not generally subject to interlocutory review and this case—despite how GMX has framed it—presents no exception or compelling reason for the Court to depart from its well-worn precedent, delve into the substantive dispositive issues raised in the operative complaint, and overrule the authority of the trial court with respect to a very ordinary discovery order.

Despite how GMX has framed its Petition, the legal merits of legislation creating GMX and the subsequently adopted County legislation dissolving it—including whether "feasibility" trumps jurisdictional trickery—is not properly before this Court and must be

litigated at a later point in these proceedings. That date will arrive after the trial court enters a properly appealable final judgment. But right now, GMX's right to the certiorari relief sought in the Petition is non-existent.

The essence of the litigation below is whether an act of the legislature enacting Section 348.03031(4), Florida Statutes (2023) (the "2023 Amendment") is a constitutionally prohibited special act, applicable only in Miami-Dade County. After the 2023 Amendment was enacted, the Miami-Dade Board of County Commissioners adopted an ordinance under the unique home rule powers afforded to it under the Florida Constitution that nullified the 2023 Amendment as an unconstitutional violation of the County's home rule. The ordinance abolished GMX—an action within the County's constitutional authority—and reinstated the agency it had created, MDX. In the litigation below, both the County and MDX seek to defend the validity of the County's ordinance.

GMX's response is that the 2023 Amendment is not a special act of the legislature and does not impact Miami-Dade County's home rule authority because GMX has now been given jurisdiction in both Miami-Dade County and Monroe County. In fact, however, the only

"jurisdiction" that GMX has in Monroe County is a single parcel of federally owned and environmentally sensitive land in the Big Cypress National Preserve that will never be the subject of any development or an expressway system. The inclusion of the Monroe County parcel in the 2023 Amendment is a sham, intended to evade the home rule power given to Miami-Dade County under the Florida Constitution by creating a false image that the 2023 Amendment involves more than one County when, in both truth and in fact, it does not.

GMX asked the trial court to preclude the marshaling of evidence supporting the conclusion that the Monroe County parcel was included as a sham to mask a special act of the legislature as a law of general application. The trial court rejected that argument while making it clear that discovery could not be overly burdensome. This Court should not indulge GMX in its effort to obtain an extraordinary writ to overrule the perfectly rational trial court decision.

The infeasibility of building any expressway in a federally protected parcel of Monroe County exposes the 2023 Amendment as an unlawful special law. To say the least, the discovery Respondents

seek is relevant, and gathering it will cause no harm to Petitioners. What the evidence should ultimately establish is a clean record for the resolution of this case at both the trial and appellate levels, a feat that will not be possible if Petitioners succeed in their chicanery.

In denying Petitioners' Motion in Limine and for Protective Order (the "Order") and in denying the Petitioners' Motion to Dismiss, the trial court expressly held that "certain [factual] findings must first be made" in order to resolve this matter. Resp. Appx. 755. Indeed, the motion to constrain discovery and exclude evidence was made and resolved before any discovery requests had been propounded.

This Court lacks jurisdiction to grant a writ of certiorari where Petitioners cannot demonstrate any harm, much less a material injury, from the denial of their motion. This Petition must be denied.

STATEMENT OF THE CASE AND OF THE FACTS

The Creation of MDX.

In 1994, the Miami-Dade County Board of County Commissioners ("Miami-Dade County") enacted Section 2-128 of Article XVII in Chapter 2 of the Miami-Dade County Code creating MDX. At the time of MDX's creation, the Florida Department of Transportation ("FDOT") owned and operated an expressway system (the "System") then consisting of four expressways operating exclusively within the boundaries of Miami-Dade County. Resp. Appx. 54-55. After its creation, MDX entered into an agreement with FDOT (the "Transfer Agreement") that provided MDX, in perpetuity and in exchange for payment, "full jurisdiction and control over the operation, maintenance and finances" of the expressway system located within the County. Resp. Appx. 750. Since execution of the Transfer Agreement, MDX significantly expanded the System with additional right of way acquisitions and improvement. Resp. Appx. 56.

Beginning in 2017 and continuing to 2023, the Legislature enacted a series of laws aimed first to erode the power of and then to completely dissolve MDX. Resp. Appx. 57. Two trial courts found the

attempt by the Legislature to abolish the County-created agency unconstitutional. Resp. Appx. 9-28, 37-45. The first, in Leon County, was reversed on procedural grounds that avoided the merits. *Dept. of Transp. v. Miami-Dade Cnty. Expressway Auth.*, 316 So. 3d 388, 391-392 (Fla. 1st DCA 2021). The First District Court of Appeal, based on an application of the public official standing doctrine, found that MDX lacked standing to complain about the unconstitutional nature of the act affecting its dissolution. *Id.*

In response to the First District's decision on MDXs standing, Miami-Dade County adopted Miami-Dade County Ordinance 21-35 on May 4, 2021, which superseded and nullified the sections of the 2019 Amendment relating to MDX and GMX, and reinstated MDX as the entity with jurisdiction and control over the System. Resp. Appx. 29-36.

Because GMX persisted in attempting to seize control and governance of MDX notwithstanding the Ordinance, MDX filed the original underlying action on October 28, 2021, which Miami-Dade County joined as a necessary third-party defendant aligned with MDX. Resp. Appx. 38. The trial court granted summary judgment finding the attempt by the legislature to create GMX and abolish MDX

an unconstitutional infringement on the County's home rule powers. GMX appealed the final judgment that followed to this Court. Resp. Appx. 37-45.

While that original proceeding was pending before this Court, the Legislature adopted the 2023 Amendment in response to the trial court's decision. This Court then set aside the trial court's finding in favor of MDX on procedural grounds without addressing the underlying constitutional issues and taking no position on the 2023 Amendment. *See Greater Miami Expressway Agency v. Miami-Dade Cnty. Expressway Auth.*, No. 3D22-1316, 2023 WL 7006355, at *3 (Fla. 3d DCA Oct. 25, 2023) ("Based on our disposition of the above issue, we do not need to address the remaining arguments raised by the Defendants. Further, we take no position as to those arguments."). Specifically, this Court construed the final judgment as impairing FDOT's rights under the Transfer Agreement and accordingly, concluded that FDOT was a necessary indispensable party to the litigation as then presented. This Court remanded the case for further proceedings. *Id.* at *3.

As this Court was adjudicating that appeal, Miami-Dade County adopted a second ordinance, Ordinance 23-93, on October 17, 2023,

which superseded and nullified the 2023 Amendment, again reaffirmed MDX's status as the rightful entity to control the System, and again abolished GMX.

On remand, and armed with newly-enacted Ordinance 23-93, MDX filed an amended pleading on November 20, 2023, in which MDX abandoned the quiet title aspect of its action[1] to pursue declaratory relief and a permanent injunction. Resp. Appx. 46-253. The County joined this action when GMX responded to the newly filed complaint by filing a motion to dismiss challenging the validity of Ordinance 23-93. GMX's motion to dismiss was ultimately denied by the trial court.

Following the denial of Petitioners' motion to dismiss, Resp. Appx. 254-748, Petitioners filed a Motion in Limine and for Protective Order to preclude discovery concerning the legitimacy of including

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[1] This Court's finding that GMX was an indispensable party was based on MDX's quiet title count in the original underlying complaint, which sought to quiet title to real property interests (not full title) which had been conveyed to MDX by virtue of the Transfer Agreement. *Greater Miami Expressway Auth.,* 2023 WL 7006355. By omitting the quiet title count, FDOT's real property interests are not at issue in the instant litigation and their inclusion was not necessary for adjudication of the interests in personal property not owned by FDOT. Resp. Appx. 657-660.

the Monroe County parcel in the 2023 Amendment (the "Motion"). Resp. Appx. 760-772. In doing so, Petitioners sought to exclude from discovery and trial any evidence of "feasibility of GMX acquiring, constructing, or operating expressways and other facilities in Monroe County," and the "Florida Legislature's reasons for including Monroe County as Party of GMX's jurisdiction." Resp. Appx. 760-772. Notwithstanding that feasibility of constructing an expressway was pled as an issue in the Amended Complaint, and notwithstanding that the issue is central to a determination of whether the 2023 Amendment is a prohibited special act of the legislature, Petitioners contended that feasibility and related issues are not relevant or useful to the trial court in its disposition of MDX's claims. Resp. Appx. 760-772. Petitioners argued that the dispute before the trial court is purely a matter of law, with no matters of fact that need to be resolved. Resp. Appx. 760-772.

The trial court denied the motion, stating at the hearing that it would not issue a blanket order, but that "if discovery goes overboard . . . and causes undue expense or becomes burdensome," Petitioners are entitled to raise the issue to the court's attention. Resp. Appx. 820. Petitioners thereafter filed the instant Petition, seeking a writ of

certiorari before the Respondents had even served discovery. Miami-Dade County ultimately served discovery on GMX in the form of Requests for Production, Requests for Admissions, and Interrogatories, and GMX did not respond, but instead raised an objection to each request and withheld information and production accordingly. Resp. Appx. 858-885.

SUMMARY OF THE ARGUMENT

Petitioners seek a writ of certiorari overruling the trial court's denial of their Motion in Limine and for a Protective Order. The trial court correctly denied that motion, explaining that it would not impose a "blanket protective order," and that if discovery goes "overboard . . . and causes undue expense or becomes burdensome," then Petitioner could bring it back to the court's attention. Resp. Appx. 820. Before the Respondents could even serve discovery, and far in advance of trial, Petitioners filed the instant Petition.

"[C]ommon law certiorari is an extraordinary remedy and should not be used to circumvent the interlocutory appeal rule which authorizes appeal from only a few types of non-final orders." *Martin–Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1098 (Fla. 1987). Petitioners are not entitled to an extraordinary writ of certiorari, because denial of the Motion will not cause them any harm, much less material injury.

"A non-final, non-appealable order may be reviewed by petition for a writ of certiorari where the Petitioners show: (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on

post-judgment appeal." *Katz v. Riemer*, 305 So. 3d 663, 666 (Fla. 3d DCA 2020) (cleaned up). A material injury may be caused by an order that entitles a party to *carte blanche* discovery of irrelevant material or release of "cat out of the bag" information, such as private financial information, medical information, or trade secrets.

Denial of the Motion here—which sought a blanket protective order prohibiting discovery of information relating to the feasibility of developing and operating an expressway in Monroe County—would not harm Petitioners at all, much less establish material harm.

As an initial matter, the paper discovery that Miami-Dade County ultimately sought through its Requests for Production have simply requested the production of public records. As a state agency, GMX is already required to provide that information under both the Florida Constitution and applicable Florida Statutes. *See* art. I, § 24(a), Fla. Const.; Fla. Stat. § 119.01(1) ("It is the policy of this state that all state . . . records are open for personal inspection and copying by any person. *Providing access to public records is a duty of each agency*.") (emphasis supplied). GMX cannot possibly demonstrate material harm from having to produce records through a Request for Production that it would have to produce anyway

through a public records request. And the information sought through the other modes of discovery is all discernible from public records and carries no risk of disclosing "cat out of the bag" information.

Further, the information Petitioners seek to exclude from discovery is clearly relevant to the claims raised by the pleadings. The Amended Complaint asserts that the inclusion of the Monroe County parcel in the 2023 Amendment was solely to skirt the constitutional prohibitions against special laws that impact only Miami-Dade County. It alleges that the Monroe County parcel is federally-owned swamp land in a national preserve subject to layers of environmental restrictions and a considerable distance from any urban development sufficiently populous to support an expressway. It alleges that the development of an expressway on that parcel is infeasible. If proven, these facts support a conclusion that the inclusion of the Monroe County parcel was a sham, demonstrating that the 2023 Amendment is an unconstitutional special law that, in truth and in fact, only impacts Miami-Dade County.

The law is quite clear that when analyzing a law to determine its nature, special or general, courts do not rely exclusively on the

language of the statute but instead analyze the actual effect of the law, including the feasibility of actually having a multi-jurisdictional effect.

What makes this Petition particularly frivolous is that the Motion below was made before any discovery requests were served. Here, the trial court simply refused to enter a blanket protective order and can hardly be accused of having ordered *carte blanche* discovery. Indeed, Petitioner's own responses to later-served discovery—objections to each and every request—underscore that the trial court's discovery order poses no harm to Petitioners.

Petitioner's motion and Petition are premature—far ahead of trial and before discovery had even been served—to dispose improperly of Respondents' claims through a back door. Petitioners have not borne their burden of demonstrating they will be materially injured by the denial of their Motion in Limine and for a Protective Order. As such, the Court lacks jurisdiction to grant the Petition.

STANDARD OF REVIEW

"The Florida Constitution provides the district courts of appeal with the discretionary jurisdiction to issue, inter alia, writs of certiorari . . . A non-final order for which no appeal is provided by rule 9.130 may be reviewable by petition for a writ of certiorari, but only in very limited circumstances." *Bd. of Trustees of Internal Improvement Tr. Fund v. Am. Educ. Enterprises, LLC*, 99 So. 3d 450, 454 (Fla. 2012) (citing art. V, § 4(b)(3), Fla. Const.; Fla. R. App. P. 9.130(a)(4)). "[C]ommon law certiorari is an **extraordinary** remedy and **should not** be used to circumvent the interlocutory appeal rule which authorizes appeal from only a few types of non-final orders." *Martin–Johnson, Inc.*, 509 So. 2d at 1098 (emphasis added). Appellate courts must limit grants of certiorari to matters of extraordinary circumstances, because "piecemeal review of nonfinal trial court orders will impede the orderly administration of justice and serve only to delay and harass." *Jaye v. Royal Saxon, Inc.*, 720 So. 2d 214, 215 (Fla. 1998).

A finding that the petitioning party has "suffered an irreparable harm that cannot be remedied on direct appeal" is a "condition precedent to invoking a district court's certiorari jurisdiction." *Katz*,

305 So. 3d at 666. "A non-final, non-appealable order may be reviewed by petition for a writ of certiorari where the Petitioners show: (1) a departure from the essential requirements of the law, (2) resulting in material injury[2] for the remainder of the case, (3) that cannot be corrected on post-judgment appeal." *Id.* (cleaned up).

The standard that courts apply when reviewing certiorari petitions is whether the challenged action departs from the essential requirements of the law. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995). This is a very demanding standard, it "means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. **The writ of certiorari properly issues to correct essential illegality but not legal error**." *Id.* (emphasis added).

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[2] The term "material injury" seems to be used in conjunction with and even in place of "irreparable harm" in the certiorari jurisprudence. *See, e.g.*, *Am. Educ. Enterprises, LLC*, 99 So. 3d at 455.

ARGUMENT

I. CERTIORARI JURISDICTION FAILS BECAUSE PETITIONERS CANNOT ESTABLISH MATERIAL INJURY.

The harm about which Petitioners complain is not cost, burden, or revelation of matters required to be confidential. It is that the evidence sought will reveal that the inclusion of the Monroe County parcel in GMX's jurisdiction was a sham to allow GMX to label the 2023 Amendment as an act of general application when it is, in fact, a special act applicable only to Miami-Dade County. This goes to the very heart of MDX and Miami-Dade County's theory of the case. Therefore, Miami-Dade County and MDX contend that the ability to obtain discovery and present any relevant evidence on this matter is critical to resolving the merits of the constitutional question presented in this case.

"Certiorari jurisdiction does not lie to review every erroneous discovery order." *Am. Educ. Enterprises, LLC*, 99 So. 3d at 456 (quoting *Katzman v. Rediron Fabrication, Inc.*, 76 So. 3d 1060, 1062 (Fla. 4th DCA 2011). Petitioners argue that they are irreparably harmed by the Order, but the basis for their Motion for a Protective Order and Motion in Limine was to prevent what they called

"irrelevant discovery" and "irrelevant evidence" relating to the "feasibility of GMX acquiring, constructing, or operating expressways" in Monroe County, an issue explicitly pled in the operative complaint. Resp. Appx. 760-772.

But, even if the trial court was incorrect to allow discovery based on a finding that this information is relevant to the issue at hand, the remedy sought here would still be improper. Only where a trial court permits "*carte blanche* discovery" of irrelevant information or disclosure of sensitive confidential information is a writ of certiorari appropriate. *Publix Super Markets, Inc. v. Blanco*, 373 So. 3d 1178, 1181 (Fla. 3d DCA 2023). Irrelevant discovery alone is not enough to demonstrate irreparable harm that cannot be remedied on direct appeal. *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94–95 (Fla. 1995) ("[I]rrelevant discovery alone is not a basis for granting certiorari."). "It is [also] well-established that an overbroad discovery order is not a sufficient basis for certiorari relief." *Blanco*, 373 So. 3d at 1181.

Here, the trial court refused to grant a blanket motion for protective order. This is not synonymous with requiring *carte blanche* production—the trial court has not ordered GMX to produce anything, it has merely held that MDX and Miami-Dade County are

not prohibited from asking for discovery that they believe will be relevant to the presentation of their case.[3] Indeed the trial court left the door open for Petitioners to return should discovery go "overboard . . . and cause[] undue expense or become[] burdensome." Resp. Appx. 820. Rather than accept the tailored and measured approach to discovery that the trial court has offered by taking issue with any specific discovery requests served after entry of the trial court's order,[4] Petitioners filed the instant Petition for a Writ of Certiorari.

"Litigation of a non-issue will always be inconvenient and entail considerable expense of time and money for all parties in the case. The authorities are clear that this type of harm is not sufficient to permit certiorari review." *Martin-Johnson, Inc.*, 509 So. 2d at 1100 (denying petition for certiorari to review motion to dismiss). The

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[3] This distinction is underscored by GMX's responses to Miami-Dade County's discovery requests in that GMX responded to such requests with a blanket objection to everything. The fact that GMX was entitled to raise objections to what it perceives to be improper discovery and those objections are being resolved through the ordinary discovery dispute process shows that there is no material harm here. In fact, since Petitioners have yet to produce anything in response to the County's discovery, where is the material injury?

[4] Although this Petition was filed on April 25, 2024, after Miami Dade County served its discovery request on April 22, 2024, the Petition does not mention or address the discovery that was served.

hassle of litigation is common, but certiorari is reserved only for extraordinary circumstances. *Id.*; *Am. Educ. Enterprises, LLC*, 99 So. 3d at 457 (holding over breadth alone is not a proper basis for certiorari review of discovery orders) (citing *Martin–Johnson*, 509 So. 2d at 1099).

What the Petitioners seek here is a piecemeal interlocutory review of the trial court's non-final discovery order, which is contrary to the purpose of certiorari because this type of piecemeal review "impede[s] the orderly administration of justice and serve[s] only to delay and harass." *Jaye*, 720 So. 2d at 215. The Petition must be denied accordingly.

A. Relevance is not a proper basis for certiorari jurisdiction and issues framed in pleadings are relevant for the purposes of discovery.

The Petition must be dismissed because on its face Petitioners cannot demonstrate that relevance is a proper basis for this Petition and, even if it was, the discovery they wish to foreclose is relevant to the claims raised here.

As an initial matter, an order allowing irrelevant discovery, without more, is not enough to justify a grant of a petitioner for certiorari because it does not cause material injury. *Langston*, 655

So. 2d at 94 ("But we do not believe that discovery of irrelevant materials necessarily causes irreparable harm."). "Absent more, the production of possibly irrelevant information fails to satisfy the requirements for certiorari relief." *Sahmoud v. Marwan*, 338 So. 3d 29, 31 (Fla. 3d DCA 2022) (denying petition where discovery of petitioner's passport may be irrelevant, but was protected by confidentiality order). And finally, "an order allowing discovery that potentially could lack relevancy is not subject to certiorari relief." *Windhaven Ins. Co. v. Mesquita*, 278 So. 3d 212, 214 (Fla. 3d DCA 2019) (denying petition where deposition of insurance agent not relevant, but otherwise caused no harm).

But, even if relevance could serve as a basis for this Petition, the evidence sought by Miami-Dade County and MDX is relevant to this case. In their Petition, Petitioners argue that evidence as to the feasibility of operating an expressway within the area of Monroe County described in the 2023 Amendment (i.e. whether GMX will ever actually exercise jurisdiction outside of Miami-Dade County) is irrelevant because, in short, it is not relevant to any of ***their*** arguments. That, however, is an incredibly selfish view of relevance. The fact that Petitioners' arguments will not change based on the

evidence described says nothing, however, about whether that evidence may be relevant to this matter.

Generally, courts look to the pleadings to help determine what is and is not relevant—if an issue is framed in the pleadings, then it is a relevant and discoverable topic. *Foster v. Bank of Am., N.A.,* 215 So. 3d 158, 159 (Fla. 3d DCA 2017) (finding a request to produce certain bank records related to an allegedly stolen check relevant as framed by the pleadings); *Kauffman v. Duran*, 165 So. 3d 805, 806 (Fla. 3d DCA 2015) (holding that the plaintiff was entitled to depose a non-party witness who was, as framed by pleading, a material witness); *Hett v. Barron-Lunde*, 290 So. 3d 565, 571 (Fla. 2d DCA 2020) ("Petitioner's personal financial information, which includes her tax returns and bank records are relevant to the issues of civil theft, conversion, breach of fiduciary duty, unjust enrichment, and the request for the imposition of a constructive trust.");[5] *Rousso v.*

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[5] For more cases where courts found that discovery sought was relevant because it was framed by the pleadings, *see also Elsner v. E-Commerce Coffee Club*, 126 So. 3d 1261, 1262-64 (Fla. 4th DCA 2013) (Where the complaint alleged defendants had misappropriated funds and breached fiduciary duties, financial information requested was relevant to the issues as framed by the pleadings.); *Am. Home Assurance Co., Inc. v. Sebo*, 324 So. 3d 977, 979 (Fla. 2d DCA 2021) (In a first-party bad faith action against insurer for damages arising

Hannon, 146 So. 3d 66, 67 (Fla. 3d DCA 2014); ("Discovery is limited to those matters relevant to the litigation as framed by the parties' pleadings"); *contra Pusateri v. Fernandez*, 707 So. 2d 892 (Fla 2d DCA 1998) ("Discovery should be denied when it has been established that the information requested is neither relevant to any pending claim or defense nor will it lead to the discovery of admissible evidence."); *MYI Int'l, LLC v. Blue Ocean Miami, Inc.*, 359 So. 3d 1259, 1260 (Fla. 3d DCA 2023) ("Because MYI was neither afforded adequate notice nor an opportunity to be heard, and the compelled discovery is vast in breadth and irrelevant to the issues framed in the pleadings and discovery, we grant the petition and quash the order under review").[6]

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from wrongful denial of benefits owed under the homeowner's insurance policy, a request for production that sought documents relating to the denial of the claim was relevant as framed by the pleadings.).

[6] Additionally, while trial courts certainly have broad discretion to manage discovery, the Florida Supreme Court and others have made it clear that this discretion is not to be used to unduly prejudice one party's ability to engage in discovery to develop the claims, allegations, or defenses raised in the pleadings. *See Giacalone v. Helen Ellis Mem'l Hosp. Found., Inc.*, 8 So. 3d 1232, 1234 (Fla. 2d DCA 2009) (stating an order denying discovery which is relevant and reasonably calculated to lead to the discovery of admissible evidence "effectively eviscerates a party's claim, defense, or counterclaim" warranting certiorari relief); *Alterra Healthcare v. Estate of Shelley*, 827 So. 2d 936, 945 (Fla. 2002); *Rojas v. Ryder Truck Rental*, 625 So. 2d 106, 107 (Fla. 3d DCA 1993).

Whether the 2023 Amendment is a special law is central to this dispute and it is framed as such in the Amended Complaint. Despite Petitioners' assertion that the discovery has no nexus with the subject matter of this action, including the asserted causes of action and defenses, the operative complaint makes clear that the feasibility of developing or operating an expressway in a remote portion of Monroe County is central to this case, as detailed in paragraphs 41 through 49 of the Amended Complaint. Resp. Appx. 58-61.

If, as pled in the operative Complaint, Respondents can prove that an expressway authority purporting to exist in Miami-Dade County and a sliver of Monroe would only ever actually operate or exercise jurisdiction exclusively in Miami-Dade County, then they can prove that the 2023 Amendment is in fact an unlawful special law and Miami-Dade County, therefore, had authority to enact Ordinance 23-93. Constraining MDX and Miami-Dade County from engaging in discovery which is directly tailored to support this chief factual issue raised in the Amended Complaint would "effectively eviscerate[] [their] claim" and consequently the Petition should be rejected. *Giacalone*, 8 So. 3d at 1234.

B. Petitioners have failed to demonstrate that the discovery order they challenge is *carte blanche*.

In addition to failing to demonstrate irrelevance, Petitioners also fail to demonstrate that the challenged order permits *carte blanche* discovery. While reviewing courts are correct to constrain "an order that entitles a party to *carte blanche* discovery of irrelevant material demonstrates the type of irreparable harm that may be remedied by a petition for certiorari[,]" they should not do so if the order is not, in fact, *carte blanche*. *American Educ. Enters., LLC*, 99 So. 3d at 457 (reversing a decision quashing a discovery order, finding the material to be relevant, not overbroad, and causing no irreparable harm through its disclosure); *Windhaven Ins. Co.*, 278 So. 3d at 214 (denying petition where deposition of insurance agent not relevant but not "*carte blanche*"); *Nucci v. Target Corp.*, 162 So. 3d 146, 155 (Fla. 4th DCA 2015) (finding that the discovery order under review in a petition for certiorari was "narrower in scope [than *carte blanche*] and . . . calculated to lead to evidence that is admissible in court.").

A *carte blanche* order is not before this Court. Petitioners are instead asking this Court to review the trial court's refusal to enter a pre-discovery blanket protective order, which is not tantamount to a

license to engage in *carte blanche* discovery. The trial court denied GMX's request because blanket protective orders are impermissible and improper. *Hepco Data, LLC v. Hepco Med., LLC*, 301 So. 3d 406, 413 (Fla. 2d DCA 2020); *Giacalone*, 8 So. 3d at 1234.

It is the objecting party who bears the burden to show that responding to a specific discovery request would subject him to "annoyance, embarrassment, oppression, or undue burden or expense." Fla. R. Civ. P. 1.280(c). Where, as here, the blanket discovery order was pursued before there were any specific discovery requests to scrutinize, such a showing is impossible to make nor was it made to the trial court. *Kyker v. Lopez*, 718 So. 2d 957, 959 (Fla. 5th DCA 1998).

Instead, Petitioners' "*carte blanche*" argument here rests wholly on repeated insistence that the trial court has violated that principle without any evidence or law to support such a position. Petitioners have failed to articulate how the denial of its request for a blanket order barring any discovery and evidence relating to feasibility is "*carte blanche*," nor could it, considering that no discovery had been served at the time the underlying motion was filed. The trial court even explained at the hearing on the Motion that it would leave the

door open to Petitioners to return to the court following service of discovery should it go "overboard . . . and cause[] undue expense or become[] burdensome."[7] Resp. Appx. 820.

The cases that Petitioners offer in support of their argument only serve to diminish it, as they are all distinguishable and inapposite.

First, Petitioners cite *Kobi Karp Architecture & Interior Design, Inc. v. Charms 63 Nobe, LLC*, for the proposition that "voluminous, patently irrelevant information" is likely to cause material injury. 166 So. 3d 916, 920 (Fla. 3d DCA 2015). In that case, a contract dispute,

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[7] This Court, in "considering a petition for writ of certiorari," should only "consider[] the record as it existed at the time the complained of discovery order was entered." *Krypton Broad. of Jacksonville, Inc. v. MGM-Pathe Communications Co.*, 629 So. 2d 852, 854 (Fla. 1st DCA 1993) (quoting *Jerry's South, Inc. v. Morran*, 582 So. 2d 803, 804 (Fla. 1st DCA 1991)). Notwithstanding, it is worth noting that Miami Dade County served discovery on Petitioners after entry of the discovery order subject to this Petition but before the Petition was filed. That discovery, included in the Respondents' Appendix at 858-885, is not overbroad, not burdensome, and is reasonably tailored to the issues framed in the operative complaint. GMX has undertaken no effort to have the trial court review that discovery, as the trial judge invited them to do. Instead of pursuing the proper course for addressing discovery disputes, Petitioners have filed a jurisdictionally-defective Petition here. And then, as if proving Respondents' arguments here of no harm true, Petitioners objected to each and every discovery request and provided no information or documents in response. Resp. Appx. 858-885.

Charms 63 had noticed an intent to serve non-party subpoenas on six of Kobi Karp's clients, who were not related to the dispute, to obtain:

> (i) all contracts between the clients and Kobi Karp;
> (ii) all drafts of all contracts or proposed contracts between the clients and Kobi Karp; and
> (iii) all pre-contract communications between the clients and Kobi Karp concerning any contract or proposed contract under which Kobi Karp performed, agreed to perform, or contemplated the performance of any services to be rendered by Kobi Karp."

Id. at 918.

While the trial court denied Kobi Karp's motion for protective order, this Court on certiorari review found the information to be irrelevant because although "the requested information may shed light on the industry's custom and usage, it is well settled that custom and usage evidence is inadmissible to vary express terms of a contract" and quashed the order. *Id.* at 921. Because of its effect, the denial of a protective order intended to prevent the service of non-party subpoenas was treated the same as an order compelling production. *Id.* at 919. Moreover, the information sought by Charms 63—financial documents of a private company—would not be obtainable but for the litigation in that case. The discovery at issue

here, on the other hand, relates exclusively to public records and the actions of government entities.

Another case Petitioners cite, *Root v. Balfour Beatty Const. LLC*, also has language about *carte blanche* discovery, but it is likewise inapplicable. 132 So. 3d 867, 870 (Fla. 2d DCA 2014). In *Root*, a negligence case in which a mother sued the City for damages her son suffered when he was struck by a vehicle, the trial court entered an order requiring the plaintiff to respond to certain discovery requests seeking:

> (i.) Any counseling or psychological care obtained by Tonia Root before or after the accident;
> ….
> (o.) Any and all postings, statuses, photos, "likes" or videos related to Tonia Root's
> i. Relationships with Gage or her other children, both prior to, and following, the accident;
> ii. Relationships with other family members, boyfriends, husbands, and/or significant others, both prior to, and following the accident;
> iii. Mental health, stress complaints, alcohol use or other substance use, both prior to and after, the accident;
> ….
> v. Facebook account postings relating to any lawsuit filed after the accident by Tonia Root or others[.]

Id. Not only did this request broadly probe into the plaintiff's personal life, but it was also entirely irrelevant to the claims for negligence. *Id.* The appellate court quashed this order and explained that none of

the objected-to discovery pertained to the accident itself or Defendants' affirmative defenses. *Id.*

Petitioners also cite to *Harborside Healthcare,* a wrongful death case, in which the trial court entered an order compelling a nursing home to produce:

> [D]irected to the electronic communications of the "Administrator, Director of Nursing, Business Office Manager, Clinical Reimbursement Director/Supervisor, Director of Rehabilitation, Admissions/Marketing Director, Regional Director of Operations, Regional Admissions/Marketing Director, Regional Nurse Consultant, Regional Vice President, any and all members of any Board of Directors, any officers or managers of [Harborside], President, CEO, COO, and/or CFO." It sought electronic communications containing any one of thirty identified words or terms, including: Jacobson, staffing, labor, budget, census, Medicare, Medicaid, infection, return to hospital, and discharge.

Harborside Healthcare, LLC v. Jacobson, 222 So. 3d 612, 614 n.2 (Fla. 2d DCA 2017). The appellate court, on certiorari review, quashed the discovery order and explained that the request was patently overbroad, risked the disclosure of medial information of non-parties, and that the trial court had not specifically addressed whether claimed statutory privileges applied. *See id.*

In another case offered by Petitioners, *Publix Super Markets, Inc. v. Blanco*, "a discovery order requiring Publix to produce slip and

fall incident reports from all Publix stores within the State of Florida amounted to impermissible carte blanche discovery of irrelevant information." 373 So. 3d at 1181. On certiorari review, this Court quashed the order, finding that the request was not only broad, but it was also "affirmatively established," that the discovery was irrelevant, where the plaintiff was required to "prove that the particular 'business establishment' where the injury occurred had actual or constructive knowledge of the dangerous condition [thus] discovery should be restricted to information on the particular establishment." *Id.* (quoting *Publix Supermarkets, Inc., v. Santos*, 118 So. 3d 317, 319 (Fla. 3d DCA 2013)).

Finally, an additional case Petitioners cite, *Shir Law Group, P.A., v. Carnevale,* involves a malpractice dispute alleging violations of fiduciary obligations against former attorneys who practiced condominium law in which the trial court ordered a forensic review of defendant's electronic data. 271 So. 3d 152, 154 (Fla. 3d DCA 2019). This Court found that the trial court's order compelling production of e-discovery governed by overbroad search terms which were not "appropriately crafted to protect against the disclosure of

privileged or irrelevant information[.]" *Id.* at 155. This Court quashed the trial court's order. *Id.*

Juxtapose those cases with the facts here and it is apparent that Petitioners have not offered any precedent useful to their argument. None of these cases are procedurally or substantively analogous. First, the parties subject to the discovery in the cases offered by Petitioners sought relief only after the opposing party had served discovery and after the trial court had either compelled production or declined to constrain service of third party subpoenas that were outside of the scope of the pleadings and/or over-invasive (i.e., they satisfied the jurisdictional requirements for certiorari review). Next, each discovery request in the cases cited by Petitioners was so broad it necessarily swept into its purview information that was not even remotely reasonably calculated to result in the production of admissible evidence, and issues not raised in the pleadings. And third, they involved records that were outside of scope of Chapter 119. *See infra* at Part I.C. Thus, each is inapposite here, where the Petition is based on an order which does not compel production, and which was entered before any discovery request had been served.

Petitioners simply have not borne their burden to establish that the discovery order is *carte blanche*—instead of substantively advancing their argument with analogous cases, they simply repeat the legal standard and buzz words. The Petition must fail.

C. GMX and its board members are subject to Chapter 119, Florida Statutes, so they cannot speculatively establish that information sought would be confidential, sensitive, or that its disclosure could cause material injury.

Finally, there are no privacy or confidentiality concerns here which would warrant a discovery order or certiorari intervention. The kind of discovery that would justify certiorari includes "'cat out of the bag' material that could be used to injure another person or party outside the context of the litigation, and material protected by privilege, trade secrets, work product, or involving a confidential informant may cause such injury if disclosed." *American Educ. Enters., LLC,* 99 So. 3d at 457. *See also Saints 120, LLC v. Moore*, 292 So. 3d 1209, 1212 (Fla. 1st DCA 2020) (prohibiting discovery of medical information of non-party nursing home residents); *ESJ JI Leasehold, LLC v. PJGWI, Inc.*, 337 So. 3d 115, 117 (Fla. 3d DCA 2021) (prohibiting discovery of irrelevant financial information);

Mana v. Cho, 147 So. 3d 1098, 1100 (Fla. 3d DCA 2014) (prohibiting discovery of irrelevant financial information).

In a state that strongly favors open government and availability of public records, the information Petitioners seek to protect is just that—public records pursuant to Chapter 119, Florida Statutes. "Under Florida law, the public is assured broad access to public records." *Smith v. State*, 335 So. 3d 795, 799 (Fla. 2d DCA 2022); art. I, § 24(a), Fla. Const. ("Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution."); § 119.01(1) ("It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.").

Because information created or maintained by GMX, a state agency, is otherwise publicly attainable, discovery of the requested information is not the "cat-out-of-the-bag" type of disclosure that could cause irreparable harm. *Nat'l Youth Advocate Program v. K.G.*,

47 Fla. L. Weekly D2234 (Fla. 1st DCA Nov. 2, 2022) (discovery of public records under Chapter 119, Florida Statutes, would not constitute irreparable harm).

In light of the foregoing, it is clear that Petitioners' claim is insufficient to invoke certiorari jurisdiction here. This Petition should be summarily denied.

II. THE DISCOVERY ORDER WAS PROPER UNDER ANY SCOPE OF REVIEW

If this Court does find that it has jurisdiction to engage in certiorari review, this Court should still deny the Petition because the discovery that Petitioners seek to constrain is objectively relevant to the case at hand. Petitioners' Motion is further improper because discovery and evidentiary motions are not to be used as an "unnoticed motion for summary judgment," *Fouts v. Bowling*, 596 So. 2d 95, 95 (Fla. 3d DCA 1992), or "to summarily dismiss a portion of [the opposing party's] case." *Dailey v. Multicon Dev., Inc.*, 417 So. 2d 1106, 1107 (Fla. 4th DCA 1982). That is precisely what the Petitioners sought to do below, and the trial judge properly rejected their effort.

A. Denial of the Motion was proper because the information sought is relevant for the purposes of discovery and disposition.

Petitioners seek to exclude an overbroad swath of relevant information from discovery, even that which is reasonably calculated to lead to admissible evidence. *Castellano v. Halpern,* 380 So. 3d 486, 490 (Fla. 2d DCA 2023). As it pertains to the Motion for a Protective Order, the "concept of relevancy has a much wider application in the discovery context than in the context of admissible evidence at trial." *Am. Educ. Enterprises, LLC*, 99 So. 3d at 458 (citing *Amente v. Newman*, 653 So. 2d 1030, 1032 (Fla. 1995)) (explaining that financial information may be relevant, and therefore discoverable, even if there is no financial issue pending). Relevancy is broad during discovery, and whether information discovered "may be ultimately admitted into evidence need not be resolved" at this stage in litigation. *Id.*

Discovery regarding the feasibility of constructing an expressway is relevant because the Florida Supreme Court has repeatedly held that the **actual effect** of the law is what the Court should scrutinize when determining whether a law is a special or general law **regardless** of what the statute's language purports to

proclaim about its effect. *See, e.g.*, *Anderson v. Bd. of Pub. Instruction for Hillsborough Cnty.*, 136 So. 334, 337 (Fla. 1931); *License Acquisitions, LLC v. Debary Real Estate Holdings, LLC,* 155 So. 3d 1137, 1143 (Fla. 2014).

Petitioners nevertheless argue that a court "need only look at the face of the 2023 Statute to determine whether GMX's jurisdiction is 'wholly within Dade County.'" Petition at 24. But that approach would require this Court to accept a reading of the Florida Constitution that not only defies decades of binding precedent but it would also obliterate Miami-Dade County's home rule protections and allow the Legislature to ignore the limits that the Florida Constitution places on its ability to target Miami-Dade County with special or local legislation. For example, the Florida Supreme Court has not allowed the Florida Legislature to get away with avoiding the constitutional prohibition on special laws by "treating it and passing it as a general law." *License Acquisitions, LLC,* 155 So. 3d at 1143. And, in order to have reached that conclusion, the Florida Supreme Court necessarily had to go beyond the mere words of the statute in *License Acquisitions, LLC.*

Here, MDX and Miami-Dade County contend that the State Legislature has simply attempted a different brand of legislative camouflage through the 2023 Amendment by referencing a remote area of Monroe County in legislation dealing exclusively with a Miami-Dade expressway system to try to get around Miami-Dade's unique home rule protections. But the Legislature cannot now take legislation that only impacts expressways in Miami-Dade County and treat it as if it reasonably relates to more than one county.

By its own terms, the 2023 Amendment applies to the expressway system within Miami-Dade County and an area circumscribed within one road in northeast Monroe County that has no expressways. *See* Fla. Stat. § 348.03031(4). In other words, the law does not operate universally on expressway authorities throughout the state; rather, the law applies only to a single expressway system located entirely within Miami-Dade County and "there is no possibility that it will apply to any other county" or expressway system. *Dep't of Bus. Regul. v. Classic Mile, Inc.*, 541 So. 2d 1155, 1158 (Fla. 1989). *See also City of Miami v. McGrath*, 824 So. 2d 143, 154 (Fla. 2002) ("This Court has consistently held that this

type of closed class restriction will constitute an invalid special law passed in violation of the Florida Constitution.").

Furthermore, the Florida Legislature was quite aware that an expressway authority with the power to "acquire, hold, construct, improve, maintain, and own an expressway system," Fla. Stat. § 348.0306(1)(a), in Miami-Dade County and a sliver of Monroe County that is comprised of sensitive environmental lands within a federal park—Big Cypress National Preserve—would only ever exercise jurisdiction in Miami-Dade County. And Petitioners makes no effort to sidestep this reality, arguing in their Petition that the 2023 Ordinance conflates "jurisdiction" with "feasibility." *See, e.g.*, Petition at 30.

In Florida, however, courts are required to look past this artifice, and instead consider whether there is a "reasonable possibility" that a class established in a statute "will include others." *Fla. Dep't of Bus. & Prof'l Reg. v. Gulfstream Park Racing Ass'n*, 912 So. 2d 616, 622 (Fla. 1st DCA 2005), *aff'd*, 967 So. 2d 802 (Fla. 2007); *see also Classic Mile*, 541 So. 2d at 1157 ("Statutes that employ arbitrary classification schemes are not valid as general laws."); *Carter v. Norman*, 38 So. 2d 30, 32 (Fla. 1948) ("The arbitrary classification of

counties by population for the purpose of avoiding the organic requirement of publication of notice of intention to apply to the legislature for the passage of a proposed local or special law, however, is not permitted or sanctioned by the Constitution."); *Anderson*, 136 So. at 337 ("But even though a bill is introduced and treated by the Legislature as a general law, if the bill in truth and in fact is clearly operative as a local or special act and the court can so determine from its obvious purpose or legal effect as gathered from its language or its context, this court will so regard it and deal with it as a local or special act in passing on its validity, ***regardless of the guise in which it may have been framed*** . . . .") (emphasis supplied). Indeed, a "court is under a ***duty*** to treat" a statute as a special or local law, "regardless of the guise in which it may have been framed" if the statute's "obvious purpose or legal effect as gathered from its language" is that of a special or local law. *Carter*, 38 So. 2d at 32 (emphasis supplied).

Indeed, the need for Courts to look beyond the mere words of a statute is of arguably even greater importance when the statute concerns the home rule protections provided to Miami-Dade County under the Florida Constitution. Although amici's argument that the

"lawmaking power is exclusive to the Legislature," *see* Amicus Br. at 1-2, is generally true in Florida, it is not true in Miami-Dade County. *See, e.g., Chase v. Cowart*, 102 So. 2d 147, 150 (Fla. 1958) (holding that "when the electors of Dade County adopted the home rule charter on May 21, 1957, *the authority of the Legislature in affairs of local government in Dade County ceased to exist*," except "through the passage of general acts applicable to Dade County and any other one or more counties . . . .") (emphasis supplied). Numerous other cases have held the same. *See e.g., Barry v. Garcia*, 573 So. 2d 932, 935 (Fla. 1991) ("The stated objective of the home rule legislation was to transfer the power the legislature had in passing local bills and special laws applicable only to Dade County, from the state to the Dade County Board of County Commissioners . . . ."); *Dickinson v. Bd. of Pub. Instruction of Dade Cnty.*, 217 So. 2d 553, 555 (Fla. 1968) ("a reasonable construction of the constitutional scheme formulated for the government of Dade County alone suggests that the Legislature 'no longer has authority to enact laws which relate only' to the affairs of Dade County") (quoting *S&J Transp., Inc. v. Gordon*, 176 So. 2d 69 (Fla. 1965)).

Consequently, the Florida Constitution further protects Miami-Dade County's home rule by giving courts guidance as to how that home rule authority should be construed. *See* art. VIII, § 11(9), Fla. Const. (emphasis supplied) ("[I]t is the intent of the Legislature and the electors of the State of Florida to provide by this section home rule of the people of Dade County in local affairs *and this section shall be liberally construed to carry out such purpose*."). Thus, allowing home rule in Miami-Dade County to be erased through the passage of laws that could incorporate, as GMX agreed at a recent hearing, as little as "a square inch" of another county defies that constitutional directive and serves as little more than a transparent attempt to avoid the Florida Legislature's limited local authority in Miami-Dade County.

Amici also incorrectly argue that a strict rule of construction applies. *See* Amicus Br. at 4. The strict rule of construction (in derogation of home rule), however, applies only to general laws.[8] *See*

[8] For that reason, Amici's reliance on *Florida Retail Federation, Inc. v. City of Coral Gables*, 282 So. 3d 889, 893 (Fla. 3d DCA 2019) is misplaced. That case concerned the assertion of home rule as to a general law—a statewide preemption on local regulation of polystyrene containers. *Id.* at 893 ("Section 500.90 plainly preempts *all* municipalities statewide from enacting local polystyrene

art. VIII, § 11(9), Fla. Const. The 2023 Amendment is clearly not a general law, as it does not "operate[ ] universally throughout the state or uniformly within a permissible classification." *Gulfstream Park Racing Ass'n*, 912 So. 2d at 621.[9] Instead, the 2023 Amendment is a special law (and an improperly enacted one at that), to which the liberal rule of construction applies (in favor of the County's home rule), because it "regulates a class of persons or things when classification is not permissible" or "applies only in a particular geographic location when there is no valid basis to distinguish that location from others." *Id.*

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regulations after January 1, 2016. Although the City may have been the first municipality to regulate polystyrene after January 1, 2016, section 500.90 does not impermissibly single out the City or Miami-Dade County.") (emphasis in original).

[9] GMX argues that the 2023 Amendment is a general law because it "relates to a statewide system of transportation." Pet. at 31. The use of "transportation" as a justification to evade the limitations placed on the Florida Legislature by the Home Rule Amendment has already been rejected by the Florida Supreme Court. *See S&J Transportation*, 176 So. 2d at 70-71 (invalidating a law regulating limousines in Miami-Dade County because the law "violates the limitation that the Legislature shall not lawfully bass any act which relates only to Dade County" and noting that the "fact that that the act in question relates to public transportation does not change this restriction on the legislative power").

The trial court cited several of these cases in its Order Denying GMX's Motion to Dismiss, and also rejected GMX's argument that feasibility is not part of the inquiry in evaluating whether a law is special or general. Resp. Appx. 749-759 (citing *Anderson*, 136 So. at 337, and *License Acquisitions, LLC*, 155 So. 3d 1143).

Under these authorities and the rule of liberal construction mandated by the Florida Constitution, GMX's narrow focus on a single word—"jurisdiction"—devoid of both intent and actual effect cannot be supported. When a rule of liberal construction is mandated, "a reasonable construction should be applied giving full measure to every effort to effectuate the legislative intent." *City of Miami Beach v. Berns*, 245 So. 2d 38, 40 (Fla. 1971). If the Florida Legislature were permitted to adopt statutes that create governmental entities with jurisdiction over Miami-Dade County and "one square inch" of another County (or a part of another County in which such agency could not possibly exercise its authority), formalism would interfere with the constitutional mandate to liberally construe and therefore give "full measure" to the constitutional provision. This justifies a peeling back of the curtain to determine the "reasonable probability" that jurisdiction could be

exercised, as Florida courts do with adjacent provisions of the Florida Constitution regulating the adoption of special or local laws.

Additionally, the fact that the 2023 Amendment is a conferral of jurisdiction rather than another type of arbitrary classification does not change the analysis—courts still look to the actual effect of the law to determine whether a special law is enacted under the guise of a general law. *Martin Memorial Medical Center, Inc. v. Tenet Healthsystem Hospitals, Inc.*, 875 So. 2d 797 (Fla. 1st DCA 2004) (holding that a statute which authorized AHCA to issue hospitals in five counties exemptions from certificate of need review to be an impermissible special law).

In this case, an inquiry into the feasibility of constructing an expressway on the fifteen-mile stretch of federally-owned gravel road inside of Big Cypress National Preserve is not only legally permitted, but goes straight to the heart of this case—whether the 2023 Amendment impacts both Monroe and Miami-Dade Counties (general law) or solely Miami-Dade County (special law) and thus whether the 2023 Ordinance controls or is preempted by the 2023 Amendment. Accordingly, the discovery Respondents seek is relevant to the matter.

B. The motion in limine was properly denied because the request was premature and improperly postured.

Finally, to shoehorn a dispositive ruling into a Motion in Limine, Petitioners posit its denial as resulting in irreparable harm. The basis for this "harm" is the refusal of the trial court to enter a blanket order prohibiting the use of evidence of the feasibility of GMX developing or operating expressways in that remote and federally-protected area of Monroe County at a trial date which was five months away—before discovery had even been served. A motion in limine is premature when at this stage in the litigation, as a "party generally should file a motion in limine only when a trial is imminent." *Whidden v. Roberts*, 334 F.R.D. 321, 323 (N.D. Fla. 2020). The Motion or any order in limine would be improper at this stage because there was no ruling on relevance. In fact, it expressly stated that before resolving the dispute between the parties, "certain findings must first be made." Resp. Appx. 755. The trial court appropriately refused to enter a premature prohibition of yet-to-be-discovered evidence. The trial court did, however, express at the hearing that the denial was without prejudice for these issues to be raised again after the case is more fully developed. Resp. Appx. 820. Trial is not imminent, and the

court is willing to revisit the issues—this type of ruling is not worth this Court's time and resources to review under a petition for writ of certiorari. *See, e.g.*, *Am. Educ. Enterprises, LLC*, 99 So. 3d at 456.

The Motion was also properly denied where Petitioners used it as a vehicle for making dispositive argument as to Respondent's claims. A motion in limine is improper when "used as unwritten and unnoticed motions for partial summary judgment or motions to dismiss." *Rice v. Kelly*, 483 So. 2d 559, 560 (Fla. 4th DCA 1986) (citing *Dailey*, 417 So. 2d at 1106-07 (condemning the use of motions in limine to summarily dismiss a portion of a claim)). Petitioners argue that in deciding whether the 2023 Amendment employs an arbitrary classification scheme, the language of the statute is the only thing the Court should inspect. But rather than pursue their dispositive arguments through appropriate measures—at summary judgment or trial—Petitioners attempted to resolve the matter through a motion in limine. "The purpose of a motion in limine is generally to prevent the introduction of improper evidence, the mere mention of which at trial would be prejudicial." *Dailey*, 417 So. 2d at 1107 (reversing judgment following motion in limine to exclude evidence of damages central to action). A motion in limine is *not*

meant to summarily dismiss a portion of appellant's case while circumventing the notice provisions and other requirements of Florida Rule of Civil Procedure 1.510. *Id.* Accordingly, denial of the premature Motion in Limine was proper, and the Petition must be denied.

CONCLUSION

Petitioners seek an extraordinary writ to overturn a very ordinary discovery order. The evidence sought is highly relevant to the issues raised by the pleadings. Well-established case law supports the relevance of such evidence in determining whether an act of the legislature is a special act disguised as an act of general application. Petitioners are not entitled to a blanket protective order, and they are not entitled to turn to this Court to resolve each and every discovery dispute, nor are they entitled to use this vehicle—certiorari—to have this Court rule on material and dispositive legal arguments. Lacking anything extraordinary about it, the petition is nothing more than an improper interlocutory appeal of a non-appealable non-final order. This Court has no jurisdiction where the Order will not cause Petitioners material injury and where it is improperly brought. As such, the Petition must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 7, 2024, undersigned electronically filed this Appellant Initial Brief with the Third District Court of Appeal using the e-DCA system. Pursuant to Fla. R. Adm. 2.516(b), the foregoing documents have been furnished upon the following counsel:

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.045(b) and Fla. R. App. P. 9.210(a)(2)(B). This brief contains **9,723** words as counted by Word, excluding the parts of the brief exempted by Fla. R. App. P. 9.210(a)(2)(E).

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