

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC01-1562

THE CITY OF MIAMI,
a municipal corporation,

Third DCA Case No. 3D00-2754
Lower Tribunal Case No. 99-21456

Appellant,

vs.

PATRICK McGRATH III,
individually and on behalf of
all others similarly situated;
MIAMI-DADE COUNTY, a
political subdivision of the State of
Florida; and LAUREEN VARGA,

Appellees.

BRIEF OF INTERVENORS/APPELLEES
MIAMI-DADE COUNTY AND LAUREEN VARGA

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STATEMENT OF THE CASE AND FACTS

In 1999, the Florida Legislature enacted subsection (5) to Section 218.503, Florida Statutes (hereinafter referred to as “the Parking Surcharge Statute” or “the Statute”). The Parking Surcharge Statute provided “any municipality *with a resident population of 300,000 or more on April 1, 1999*, and which has been declared in a state of financial emergency pursuant to this section within the previous 2 fiscal years” with the authority to impose a parking surcharge of up to 20 percent. *See* § 218.503(5), Fla. Stat. (2000).¹

¹ In full, Section 218.503(5)(a) provides as follows:

218.503 Determination of financial emergency.—

(5)(a) The governing authority of any municipality with a resident population of 300,000 or more on April 1, 1999, and which has been declared in a state of financial emergency pursuant to this section within the previous 2 fiscal years may impose a discretionary per-vehicle surcharge of up to 20 percent on the gross revenues of the sale, lease, or rental of space at parking facilities within the municipality that are open for use to the general public.

(b) A municipal governing authority that imposes the surcharge authorized by this subsection may use the proceeds of such surcharge for the following purposes only:

1. No less than 60 percent and no more than 80 percent of the surcharge proceeds shall be used by the governing authority to reduce its ad valorem tax

On or about July 13, 1999, the City of Miami (hereinafter “the City”) passed and adopted Ordinance No. 11813 pursuant to the Parking Surcharge Statute. Ordinance No. 11813 was effective September 1, 1999. On September 13, 1999, Patrick McGrath III filed a complaint challenging the constitutionality of the Parking Surcharge Statute. Miami-Dade County (hereinafter “the County”) and one of its employees, Laureen Varga, challenged the constitutionality of the Statute in another case and intervened as plaintiffs in this case. The City and McGrath filed cross-motions for summary judgment, and the County and Varga joined in support of McGrath’s motion. The trial

millage rate or to reduce or eliminate non-ad valorem assessments.

2. A portion of the balance of the surcharge proceeds shall be used by the governing authority to increase its budget reserves; however, the governing authority shall not reduce the amount it allocates for budget reserves from other sources below the amount allocated for reserves in the fiscal year prior to the year in which the surcharge is initially imposed. When a 15 percent budget reserve is achieved, based on the average gross revenue for the most recent 3 prior fiscal years, the remaining proceeds from this subparagraph shall be used for the payment of annual debt service related to outstanding obligations backed or secured by a covenant to budget and appropriate from non-ad valorem revenues.

(c) This subsection is repealed on June 30, 2006.

court granted the City’s summary judgment motion. In a per curiam opinion, the Third District reversed the trial court, holding that the Parking Surcharge Statute was an unconstitutional special law because it “is no different than if it had identified by name the three particular cities to which it relates.”

ISSUE ON APPEAL

Whether the Third District Court of Appeals erred in holding that the Parking Surcharge Statute, which contains a population classification, “300,000 or more,” anchored to a specific date, “on April 1, 1999,” relates to three particular cities and is therefore an unconstitutional special law.

SUMMARY OF ARGUMENT

The Third District Court of Appeal did not err in holding that the Parking Surcharge Statute is an unconstitutional special law because it applies to three particular cities, Miami, Jacksonville, and Tampa, and can never apply, now or in the future, to any other city.

Under the Florida Constitution, a municipality may not impose any non-ad valorem tax, such as the parking surcharge at issue here, *except as authorized by general law*. Art. VII, §§ (1)(a) and (9)(a), Fla. Const. (emphasis added). As such, in order to be constitutional, the Parking Surcharge Statute must be a general law as opposed to a special law. *See City of Tampa v. Birdsong*, 261 So. 2d 1, 3 (Fla. 1972). A general law operates uniformly among a class of entities, while a special law relates to particular entities. *See Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155, 1158-59 (Fla. 1989).

The Parking Surcharge Statute contains a population classification, “300,000 or more,” tied to a specific date, “on April 1, 1999.” The issue therefore is whether such a population classification anchored to a specific date operates *uniformly among a class* and is therefore a constitutional general law or whether it relates to *particular entities* and is therefore an unconstitutional special law.

This issue is not a new one. The Florida Supreme Court already has considered it and concluded that a population classification anchored to a specific date is a special law because it relates to particular entities as if the particular entities were expressly named in the statute. *See, e.g., Fort v. Dekle*, 190 So. 542 (1939). In fact, the issue presented in *Fort v. Dekle* is legally indistinguishable from the issue presented in the present case. In *Fort v. Dekle*, the Florida Supreme Court struck down as unconstitutional a population classification of counties having a population of 150,000 or over *on a specific date*, which was, in *Fort v. Dekle*, the 1935 census. The Supreme Court found that the act was just as much a special law “as if the counties of Hillsborough, Duval, and Dade had been named in the act because those are the only three counties in the State to which the Act could ever be applicable, as no other counties in the state had a population of more than 150,000 according to the State census of 1935.” *Id.* at 543.

The Parking Surcharge Statute involves a 300,000 population threshold tied to the specific date of April 1, 1999. Only two cities--Miami and Jacksonville (the City contends Tampa also qualified)--had such a population on that specific date. As such, those three cities are the only cities to which the

Parking Surcharge Statute can *ever* apply, now or in the future. For this reason, the Parking Surcharge Statute is as much a special law as if the cities of Miami, Jacksonville and Tampa had been specifically identified by name in the act because those are the only three cities to which the act could ever be applicable, as no other cities in the state had a population of more than 300,000 as of the specific date set forth in the Statute: April 1, 1999. *See Fort v. Dekle*, 190 So. at 543. The Third District so held in its opinion.

By anchoring the 300,000 population classification to the specific date of April 1, 1999, the Parking Surcharge Statute does not operate uniformly among all cities that reach the 300,000 population threshold as is required of a general law. Cities that reach the population threshold after April 1, 1999 are foreclosed from the class. A population classification tied to a specific date is not a legitimate classification but merely a “descriptive technique” designed to disguise the fact that the Statute is a special law that confers a benefit on three *particular* cities. *See Classic Mile*, 541 So.2d at 1159.

The Florida Supreme Court has consistently applied the principles announced in *Fort v. Dekle* over the six decades since it was decided up to its most recent decision in this area in 1989. *See Classic Mile*, 541 So.2d at

1158-59. Stare decisis dictates that, in the present case, this Court should apply these principles again.

ARGUMENT

I. THE FLORIDA SUPREME COURT DECISION OF *FORT v. DEKLE* IS CONTROLLING PRECEDENT OVER THE PRESENT CASE BASED ON STARE DECISIS.

A Florida Supreme Court case, *Fort v. Dekle*, 190 So. 542 (1939), is controlling precedent in the present case. The Florida Supreme Court in *Fort v. Dekle* struck down a closed population classification that is legally indistinguishable from the population classification at issue in the present case. *Id.* at 543. The population class in *Fort v. Dekle* applied to all counties with a population of 150,000 or more as of a specific date: the 1935 census. *Id.* at 542. The only three counties that could have ever met the 150,000 population requirement anchored to the 1935 census were Dade, Duval, and Hillsborough. *Id.* at 543. The Supreme Court struck down the population classification, finding as follows:

It is contended that because the Act is applicable to three counties in the State it is not a special or local Act. The Act is just as much a special and local act as if the Counties of Hillsborough, Duval and Dade had been named in the Act because

those are the only three counties in the State to which the Act could ever be applicable, as no other counties in the State had a population of more than 150,000 according to the State census of 1935.

Id. (emphasis added).

The present case is indistinguishable from *Fort v. Dekle*. Just as the population classification in *Fort v. Dekle* was forever anchored to a specific date--the 1935 census--so too the population classification in the present case is forever anchored to a specific date: April 1, 1999. Just as the three counties that met the 150,000 population threshold as of the 1935 census in *Fort v. Dekle* were the only three counties to which the statute could *ever* be applicable, so too the three cities that met the 300,000 population threshold as of April 1, 1999 in the present case, Miami, Jacksonville and Tampa, are the only three cities to which Section 218.503(5)(a) can *ever* be applicable.² Moreover, in *Fort v. Dekle*, the

² According to the official state census, Tampa had a population of 297,505 on April 1, 1999, which would place it below the 300,000 threshold required for inclusion in the Parking Surcharge Statute. See *Florida Estimates of Population, University of Florida, Bureau of Economic and Business Research*, A.5 Exhibit A at 11. Nevertheless, in the present case, the City contends that Tampa had a population of 300,000 or more on April 1, 1999, so as to be included within the 300,000 population classification of the Parking Surcharge Statute, along with Miami and Jacksonville. Because the caselaw is clear that it makes no difference whether a statute applies to one, two or three

counties of Hillsborough, Duval and Dade could never *leave* the population class, just as the cities of Miami, Tampa, and Jacksonville can never leave the population class in the present case even if their population dropped below the population threshold.

The Florida Supreme Court's words in *Fort v. Dekle* that "[t]he Act is just as much a special and local act as if the Counties of Hillsborough, Duval and Dade had been named in the Act" apply with equal force to the present case: By anchoring the 300,000 population classification to the specific date of April 1, 1999, the Parking Surcharge Statute operates in precisely the same manner as if the three cities of Miami, Jacksonville, and Tampa had been expressly named in the Parking Surcharge Statute. As such, the Parking Surcharge Statute is an unconstitutional special law.

The issue before the Court in the present case is the same issue that was presented in *Fort v. Dekle*. Although *Fort v. Dekle* was decided some six decades ago, this Court has never receded from or otherwise criticized the opinion, and there has been no indication whatsoever that the case is no longer viable. Quite to the contrary, the Florida Supreme Court several times as

cities if all other cities are forever frozen out of the population classification, the City's contention that 297,505 is more than 300,000 is accepted for the sake of this argument.

recently as 1989 has restated the continuing viability of the constitutional principle announced in *Fort v. Dekle*. See, e.g., *Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155, 1158 n. 4 (Fla. 1989) (“[A] statutory classification scheme incapable of generic application to members of a class, and fixed so as to preclude additional entities from satisfying the requirements for inclusion within the statutory classification at some future point in time, indicates an arbitrary classification scheme[]” that cannot be upheld as a general law); *West Flagler Kennel Club, Inc. v. Florida State Racing Commission*, 153 So.2d 5 (Fla. 1963) (“Obviously, then, the effort is not to make the act applicable to a permit or permits of like kind, differing from others in some material respect, but instead the descriptive technique is employed merely for identification rather than classification.”); *Walker v. Pendarvis*, 132 So.2d 186, 195 (Fla. 1961) (“[T]he acts become tied down to certain specific counties as surely as though the names of the counties were spelled out.”) (citing *Fort v. Dekle*); *In re Advisory Opinion to the Governor*, 132 So. 2d 163, 168 (Fla. 1961) (“We have for many years held that any legislative effort to classify by population in a fashion which in effect closes the class on the basis of a particularly designated census is unconstitutional unless passed in accord with the requirements governing local laws); see also 10 Fla. Jur. 2d, *Constitutional*

Law § 380 (“[A] statute is invalid under the uniform operation of laws provisions if the descriptive technique is employed merely for identification rather than classification.”). The First District Court of Appeal again restated it in 1999. *See Ocala Breeders’ Sales Company v. Florida Gaming Centers, Inc.*, 731 So.2d 21, 25 (Fla. 1st DCA 1999) (“Whether a law is special or general depends in part on whether the class it creates is open. If it is possible in the future for others to meet the criteria set forth in the statute, then it is a general law and not a special law.”).

For the foregoing reasons, the court’s analysis need not go any further than the Florida Supreme Court decision of *Fort v. Dekle* and the other population act cases cited herein as controlling precedent in the present case under the principle of *stare decisis*.

II.

III. THE PARKING SURCHARGE STATUTE IS AN UNCONSTITUTIONAL SPECIAL LAW BECAUSE IT USES A POPULATION CLASSIFICATION ANCHORED TO A SPECIFIC DATE AS A “DESCRIPTIVE TECHNIQUE” TO CONFER A PRIVILEGE ON PARTICULAR CITIES NOT A CLASS OF CITIES.

Even if the court undertakes an independent analysis of the issue in light of *Fort v. Dekle*, the Parking Surcharge Statute must be struck down as unconstitutional. Under the Florida Constitution, a municipality may not impose any non-ad valorem tax, such as the parking surcharge at issue here, *except as authorized by general law*. Art. VII, § (1)(a) and (9)(a), Fla. Const. (emphasis added). As such, in order to be constitutional, the Parking Surcharge Statute must be a general law as opposed to a special law. This case, therefore, turns on the issue of whether the Parking Surcharge Statute is a valid general law and therefore constitutional, or whether it is a special law and therefore unconstitutional.³ See *City of Tampa v. Birdsong Motors, Inc.*, 261 So. 2d 1, 3 (Fla. 1972).

³ The constitution defines a special law as either a special or local law. Art. X, § 12(g), Fla. Const.

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In 1989, the Florida Supreme Court in *Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155, 1157 (Fla. 1989), analyzed the distinction between a general law and a special law, concluding that a general law is a law that operates

- (i) *Universally* throughout the state,
- (ii) *Uniformly* upon subjects as they may exist throughout the state, or
- (iii) *Uniformly* within a permissible classification.

Id., 541 So.2d at 1157 (emphasis added).

A special law, by contrast, “is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal[.]” *Id.* (emphasis added).

The Florida Supreme Court in *Classic Mile* went on to explain that, to constitute a valid general law, “a statutory classification scheme must bear a reasonable relationship to the purpose of the statute[.]” *Id.* In determining if a reasonable relationship exists, “***the fact that matters is that the classification is potentially open to other parties.***” *Id.* at 1159 (quoting *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879, 882 (Fla. 1983)). “[A] statutory classification scheme incapable of generic application to members

of a class, and *fixed so as to preclude additional entities from satisfying the requirements for inclusion within the statutory classification at some future point in time*, indicates an arbitrary classification scheme[.]” *Classic Mile*, 542 So.2d at 1158 n. 4. “Statutes that employ arbitrary classification schemes are not valid as general laws.” *Id.* at 1157. A statute is invalid if the “descriptive technique” is employed merely for identification rather than classification. *Id.* at 1159.

The Parking Surcharge Statute fails each and every part of this analysis the Florida Supreme Court set forth in *Classic Mile* for determining whether a law is a valid general law. Instead, the Parking Surcharge Statute fits squarely within the standard the court set for a special law.

First, the Parking Surcharge Statute does not operate uniformly among similarly-situated cities. It does not uniformly apply to all cities that have a population of 300,000 or more because any city that surpasses the population threshold of 300,000 after April 1, 1999 is excluded from the class. As such, the Parking Surcharge Statute does not confer a privilege on all cities with a population of 300,000 or more, but only on three *particular* cities, Miami, Tampa and Jacksonville, that had a population of 300,000 or more *on April 1, 1999*. By anchoring the population classification to this specific date, no city

other than the particular three cities can *ever grow into* the population classification because no other city had a population of 300,000 or more on April 1, 1999. Moreover, Miami, Tampa and Jacksonville can *never leave* the population classification, even if their populations fall in the future to below 300,000. Under these circumstances, uniformity is lacking.

Second, the Parking Surcharge Statute is not reasonably related to its purpose. By limiting application of the Statute to cities with populations of 300,000 or more *on April 1, 1999*, the Parking Surcharge Statute lacks a reasonable relationship to any purported purpose of providing cities with populations of 300,000 or more the authority to impose a parking tax if any such cities have been declared in a state of financial emergency within the previous two fiscal years, because no city *other than* the selected three that reaches a population of 300,000 can ever grow into the population classification set forth in the Parking Surcharge Statute. As the Florida Supreme Court stated in *Classic Mile*, “[i]n determining if a reasonable relationship exists, *the fact that matters is that the classification is potentially open to other entities.*” *Id.* at 1159 (emphasis added). The Parking Surcharge Statute fails to satisfy “the fact that matters” because the classification is *not* potentially open to *any other city*

than the three particular cities that met the 300,000 population classification on April 1, 1999.

Third, the Parking Surcharge Statute employs an “arbitrary classification scheme,” because it contains “a statutory classification scheme incapable of generic application to members of a class, and fixed so as to preclude additional entities from satisfying the requirements for inclusion within the statutory classification at some future point in time[.]” *See Classic Mile*, 541 So.2d at 1158 n.4. The Parking Surcharge Statute is incapable of generic application to all cities that have a population of 300,000 or more, because cities that reach this population threshold after April 1, 1999 are not eligible for inclusion in the class. By fixing the population threshold to April 1, 1999, the Parking Surcharge Statute operates so as to preclude any other city from ever satisfying the requirements for inclusion within its population classification. In doing so, the Parking Surcharge Statute is arbitrary and therefore cannot be a general law. *Id.* at 1157.

Finally, the population classification in the Parking Surcharge Statute is not a legitimate classification, but is instead a “descriptive technique” used merely to identify three particular cities to which the Statute applies. *See Classic Mile*, 541 So.2d 1159. Limiting the Statute to only those cities with populations of more

than 300,000 on April 1, 1999 is a disguised way of limiting the statute to those particular cities that had such a population on that

particular date. *See id.*; *see also Fort v Dekle*, 190 So. at 542-43 (“The Act is just as much a special and local act as if the Counties of Hillsborough, Duval and Dade had been named in the Act because those are the only three counties in the State to which the Act could ever be applicable[.]”).

For all of these reasons, as set forth by the Florida Supreme Court in *Classic Mile*, the Parking Surcharge Statute cannot be considered a valid general law, but fits squarely within the standard for a special law.

The following example highlights the patent defect of anchoring the population classification to a specific date that makes the Parking Surcharge Statute an unconstitutional special law. As of April 1, 1999, the date for determining whether a city meets the population classification under the Parking Surcharge Statute, the populations of the five largest cities in Florida were as follows:

1.	Jacksonville	719,072
2.	Miami	365,204
3.	Tampa	297,505
4.	St. Petersburg	242,690
5.	Hialeah	211,201

Because only those cities with populations of 300,000 or more on April 1, 1999 meet the population requirement for the Parking Surcharge Statute, only the largest two (or, if one were to improperly include Tampa as the City attempts to

do, the largest three) of these five cities can ever meet the population classification under the Parking Surcharge Statute.⁴ If the populations of the fourth and fifth largest cities, Hialeah and St. Petersburg, were to grow significantly,⁵ so that these cities have populations of 300,000 or more, these cities nevertheless could *never enter* the population class in the Parking Surcharge Statute, because they did not meet the 300,000 population threshold on April 1, 1999.

Moreover, if the populations of the cities of Miami and Tampa were to decline somewhat, so that at some future census they would fall below 300,000, these cities nevertheless would *never leave* the population class under the Parking Surcharge Statute because, regardless of their then-present populations, they had populations of 300,000 or more on April 1, 1999. The following possible population rankings are certainly conceivable:

1.	Jacksonville	800,000
2.	Hialeah	330,000
3.	St. Petersburg	310,000
4.	Tampa	297,505
5.	Miami	296,000

⁴ For the sake of argument, this analysis accepts the City's contention that Tampa's population of 297,505 was 300,000 or more.

⁵ For example, growth can occur not only from an influx of residents, but also by annexation.

Under such a scenario, the three largest cities still would have populations of more than 300,000, just as they did on April 1, 1999.⁶ But only the single largest of these three cities would meet the population classification under the Parking Surcharge Statute because only it had a population of more than 300,000 on April 1, 1999. The second and third largest cities could *not* impose the surcharge, because though they would have then-current populations of more than 300,000, neither of these cities had a population of more than 300,000 on April 1, 1999. But the fourth and fifth largest cities would meet the population threshold in the Parking Surcharge Statute because though they would have then-current populations of less than 300,000, they had populations of more than 300,000 on April 1, 1999.

A population classification that could result in a scenario in which a privilege is granted to the first, fourth and fifth largest cities, but denied to the second and third largest cities can only be described as an “arbitrary classification scheme.” *See Classic Mile*, 541 So.2d at 1157, 1158 n.4.⁷ Miami,

⁶ The example above assumes that Tampa’s population remains at its April 1, 1999 level of 297,505.

⁷ Had the Parking Surcharge Statute been an open population class, such that the 300,000 population threshold was not anchored to a specific date, but was instead based on the most recent census, then the unreasonable and arbitrary result realized in the above example could not occur. In such a case, all cities with a population of more than 300,000, i.e., the three largest cities in the above example, regardless of which *particular* cities those happen to be, would be

Tampa and Jacksonville would receive the privilege conferred in the Statute regardless of their size, while no other cities in the state would receive such a privilege even if one would surpass Miami, Tampa and Jacksonville in size so as to become the largest city in the state. *See State ex. Rel. Coleman v. York*, 190 So. 599 (Fla. 1939) (striking down a population threshold anchored to a particular date and stating that the affected county “would forever be affected though it increased in population until it became the most densely populated county in the State.”).⁸

Because the Parking Surcharge Statute does not operate uniformly within a class of cities, but only on three *particular* cities, it is an unconstitutional special law and not a valid general law.

eligible to impose the surcharge, while those cities with less than 300,000, regardless of which particular cities those happened to be would not.

⁸ While it may at first glance seem unlikely that a city could surpass Miami, Tampa and Jacksonville, to become the largest city, upon further consideration, it may not be so unlikely. Within the last several years, the Miami-Dade Board of County Commissioners has considered a proposal to incorporate the entire presently-unincorporated area of Miami-Dade County into a single city. See minutes of December 2, 1997, February 19, 1998, and March 31, 1998, Miami-Dade County Board of County Commissioners’ meetings. Such a city would have a population of more than one million people and upon its creation immediately would jump ahead of Miami, Tampa and Jacksonville to become the largest city in the state. Despite being the largest city in the state, however, such a city would not be eligible for the benefit conferred in the Parking Surcharge Statute because it did not have a population of 300,000 or more on April 1, 1999.

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IV. CLASSIC MILE AND FORT v. DEKLE ARE TWO IN A LONG LINE OF CASES STRIKING DOWN POPULATION CLASSIFICATIONS ANCHORED TO SPECIFIC DATES EMPLOYED AS “DESCRIPTIVE TECHNIQUES” TO CONFER PRIVILEGES ON PARTICULAR ENTITIES.

Classic Mile and *Fort v. Dekle* are two in a long line of cases in which the Florida Supreme Court has struck down closed population classifications employed as “descriptive technique” merely to identify particular entities. In contrast, population classifications that are not tied to a specific date, that operate uniformly within a class, and that are potentially open to other entities that meet the classification are consistently upheld as constitutional. The population classification in the Parking Surcharge Statute, forever anchored to the specific date of April 1, 1999, clearly falls within that line of cases consistently struck down as unconstitutional.

- a. *Open and legitimate population classes are upheld as constitutional.*

Population classifications that are reasonably related to the act and that are potentially open to other entities by being subject to population changes based on future census counts are consistently upheld as constitutional because all entities that come within the parameters of the population classification receive the same rights and obligations. See e.g., State v. City of Miami Beach, 234 So.2d 103, 105 (Fla. 1970) (Population threshold “between 330,000 and 340,000 and above 900,000” “not limited to a particularly designated census” upheld as open class) (emphasis added); Yoo Kun Wha v. Kelly, 154 So.2d 161, 164 (Fla. 1963) (Population threshold of “not less than 225,000 or more than 349,999, and not less than 385,001 inhabitants, according to the latest official decennial census” upheld as valid general law) (emphasis added); Mayer v. Dade County, 82 So.2d 513, (Fla. 1955) (Population threshold “in excess of 180,000 according to the last preceding state census” upheld as open class) (emphasis added) (“The act is, therefore, general in its nature and is applicable to counties reasonably classified on a population basis.”); Greene v. Gray, 87 So.2d 504 (Fla. 1956) (Population threshold “of more

than 300,000 according to latest Federal census” upheld as open class) (“[I]t is shown that other circuits may reasonably be expected to grow into the classification within a reasonably short time.”) (*emphasis added*); *Clein v. State*, 52 So.2d 117, 121 (Fla. 1951) (Population threshold of “315,000 or more according to last state or federal census” upheld as general act because “potentially applicable to many other Florida counties”) (*emphasis added*); *State v. Dade County*, 39 So.2d 807, 809 (Fla. 1949) (Population threshold “of over 275,000 according to the last or any future official federal or state census” upheld as open class, even though only one county at time qualified, others could grow into it) (*emphasis added*); see also *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879, 882 (Fla. 1983) (“The controlling point is that even though this class did in fact apply to only one track, it is open and has the potential of applying to other tracks.”).

The Florida Supreme Court decision in State v. City of Miami Beach, 234 So.2d 103, 105 (Fla. 1970), well illustrates this first category of cases. There, the Court upheld a population threshold of “between 330,000 and 340,000 and above 900,000.” Because these population classifications

were “not limited to a particularly-designated census,” *id.* at 105 (emphasis added) (citing *Walker v. Pendarvis*, 132 So.2d 186 (Fla. 1961)), “other counties are potentially within the population brackets of said act.” *Id.* at 104; see also *Classic Mile*, 541 So.2d at 1159 (“[T]he fact that matters is that the classification is potentially open to other parties.”).

- b. *Closed population classes anchored to a specific date and used as “descriptive techniques” to confer privileges on particular entities are struck down as unconstitutional.*

*The other category of cases consists of cases in which the population classifications are forever anchored to a specific date or particular census. The population classifications in these cases are forever closed, so that entities included within the population classification as of the specific date are forever included therein while all other entities are forever excluded, regardless of any changes in population that may occur. The population classifications in these cases are not used to confer a privilege not on a class of entities, but on particular entities themselves. The population classification anchored to a specific date is merely an effort to disguise the illegal operation of the statute. Statutes falling within this category are consistently struck down as unconstitutional because the statutes are special laws disguised as general laws and because similarly-situated entities potentially are not treated the same. See, e.g., *Fort v. Dekle*, 190 So. 542 (Fla. 1939) (150,000 population threshold tied to specific date, 1935 census, struck down); *Walker v. Pendarvis*, 132 So.2d 186 (Fla. 1961) (300,000 population threshold tied to specific date, date of enactment of statute, struck*

down) (holding that the use of the word “now” in the acts “can refer only to the date of the enactment, and the acts become tied down to certain specific counties as surely as though the names of the counties were spelled out.”); In re Advisory Opinion to the Governor, 132 So.2d 163, 168 (Fla. 1961) (“We have for many years held that any legislative effort to classify by population in a fashion which in effect closes the class on the basis of a particularly designated census is unconstitutional unless passed in accord with the requirements governing local laws.”); State ex. Rel. Coleman v. York, 190 So. 599 (Fla. 1939) (Population more than 4,115 but less than 4,130 tied to a specific date, 1930 census, struck down) (“There is no possibility of any other county falling in the classification because it is anchored to one particular census. Any county with fewer than 4,115 persons would not receive the benefit of the leniency and [the affected county] would forever be affected though it increased in population until it became the most densely populated county in the State.”); State ex rel. Crim v. Juvenal, 121 Fla. 69, 72 (Fla. 1935) (Population “in all counties of the state having a population of not less than 19,000 nor more than 22,000, according to the 1930 federal census” held “patently defective” because

“Broward County is the only county that possibly could ever have not less than 19,000 nor more than 22,000 population according to the federal census for the specified and limited year 1930.”); see also *Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155, 1159 (Fla. 1989) (“[T]he statutory classification scheme . . . is nothing more than a descriptive technique used to identify Marion County. The classification scheme fails to distinguish among the counties of Florida in any meaningful way with respect to the subject of the statute and establishes a class open only to Marion County, now and in the future.”) (emphasis added); *West Flagler Kennel Club, Inc. v. Florida State Racing Commission*, 153 So.2d 5, (Fla. 1963) (“[T]he effort is not to make the act applicable to a permit or permits of like kind, differing from others in some material respect, but instead the descriptive technique is employed merely for identification rather than classification.”); *Ocala Breeders’ Sales Company v. Florida Gaming Centers, Inc.*, 731 So.2d 21, 25 (Fla. 1st DCA 1999).⁹

⁹ The constitutional problems associated with acts containing population classifications led the Florida Legislature in 1971 to repeal most (over 2,000) population acts then in effect. See Ch. 71-29, Laws of Fla. Section 1 of the act made the legislative finding that population acts “present significant problems to local government because of the questionable constitutionality of such

c. The Parking Surcharge Statute falls squarely within the unconstitutional group.

The Parking Surcharge Statute at issue in the present case does not fall within the first category of cases that involve open classifications that operate uniformly among a class. Instead the Parking Surcharge Statute falls squarely within the latter category of cases in which closed population classifications are struck down as unconstitutional because they are special laws disguised as general laws. The Parking Surcharge Statute, by anchoring the population classification, “resident population of 300,000 or more,” to a specific date, “on April 1, 1999,” forecloses any city other than the three particular cities that (according to the City) had populations of 300,000 or more on April 1, 1999 from accessing the Statute. In fact, as analyzed in section I above, the present case is legally indistinguishable from the binding Florida Supreme Court precedent of *Fort v. Dekle*. Based on *Fort v. Dekle* and the long line of cases

legislation, as frequently reflected in court decisions on this subject.” 1971 Laws of Fla. at 97. It further found that “[i]t is therefore declared to be the legislative intent to eliminate such legislation and thereby remove from the laws of this state any legislation which cannot stand the test of constitutionality.” *Id.*

Presently, the Florida House of Representatives' guide to drafting local legislation strongly discourages the use of population acts, indicating that “common usage of population as a basis for general laws of local application is now a thing of the past.” *Drafting Local Legislation in Florida*, Florida House of Representatives (1995) at 38.

striking down closed population classifications, the Parking Surcharge Statute must be struck down as an unconstitutional special law.

I.

II. NEITHER OF THE CASES PRINCIPALLY RELIED ON BY THE CITY APPLIES HERE.

Of the many cases cited in the preceding section that fall squarely into two categories, one in which population classifications anchored to a specific date are consistently struck down and the other in which population classifications not so anchored are consistently upheld, the City relies primarily on only two cases, *Golden Nugget Group v. Metropolitan Dade County*, 464 So.2d 535 (1985), and *State v. City of Miami Beach*, 234 So.2d 103, 105 (Fla. 1970), and asserts that, because of them, the Third District's opinion is "inaccurate." City's brief at 9. The City's reliance on both of these cases is misplaced.

The issue before this Court in *Golden Nugget* was not the same as the issue that is before the court in the present case. The statute in *Golden Nugget* created a classification based on a county's status as a constitutional home rule charter county and, unlike the Parking Surcharge Statute, does not even involve a population classification. 464 So.2d at 536. As such, the issue in the present case, whether a statute with a closed population class is an unconstitutional special law, was not at issue in *Golden Nugget* because the statute at issue there did not

contain a population classification, but instead classified counties based on status as a constitutional home rule charter county. *Id.*

The City reliance on *City of Miami Beach* is equally misplaced. A careful reading of *City of Miami Beach* indicates that the issue there was not whether a statute with a population classification anchored to a specific date is an unconstitutional special law, as the City asserts. Instead, the issue in *City of Miami Beach* was whether the particular statute at issue there, which contained population classifications and an opt-in provision, was in fact open or closed: the majority read it to be open and therefore constitutional, 234 So.2d at 106 (“[S]aid act is not limited to a particularly-designated census as was the act which was invalidated in *Walker v. Pendarvis.*”), while the dissent read it to closed and therefore unconstitutional. 234 So.2d at 107 (“The Legislature has effectively limited and closed the class of cities and towns that may enact a Municipal Resort Tax by setting a cut-off date of January 1, 1968, which is coupled directly to a particular decennial census, therefore violating the prohibition of closing the class on the basis of a particularly designated census.”). Both the majority and the dissent in *City of Miami*

Beach agreed, however, that a statute with a closed population classification is an unconstitutional special law. *Id.* at 106, 107. In the present case, in contrast to *City of Miami Beach*, there is simply no dispute that the Parking Surcharge Statute is a closed population classification because it is a population classification (300,000 or more) anchored to a specific date (April 1, 1999). As such, the City's reliance on *City of Miami Beach* is entirely misplaced.

Neither *Golden Nugget* nor *City of Miami Beach* supports the City's position that a closed population classification is constitutional, or that this Court has receded from its prior decisions. Indeed, *Classic Mile*, which holds that a statute is invalid if a "descriptive technique is employed merely for identification rather than classification," 541 So.2d at 1159, was decided by this Court after *Golden Nugget* and *City of Miami Beach*. This Court has long and consistently held that a law, such as the Parking Surcharge Statute, based on a closed population classification that confers benefits on particular entities rather than a class of entities is an unconstitutional special law.

CONCLUSION

WHEREFORE, Intervenors/Appellees Miami-Dade County and Laureen Varga respectfully request that the Court affirm the Third District and declare the Parking Surcharge Statute unconstitutional based on the long line of Florida Supreme Court precedents striking down statutes with population classifications anchored to specific dates as unconstitutional special laws.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: *Joseph H. Serota, Esq. and Christopher F. Kurtz, Esq., Weiss Serota Helfman Pastoriza & Guedes, P.A., Suite 420, 2665 South Bayshore Drive, Miami, Florida 33133; Alejandro Vilarello, City Attorney, Maria J. Chiaro, Assistant City Attorney, City of Miami, 444 S.W. 2nd Avenue, Suite 945, Miami, Florida 33130-1910; Thomas J. Korge, Esq., Korge & Korge, 230 Palermo Avenue, Coral Gables, Florida 33134; and Mark J. Heise, Esq., Heise Markarian Foreman, 1950 Miami Center, 201 South Biscayne Blvd., Miami, Florida 33131, and this 27th day of August, 2001.*

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210(a)(2).

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