

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 11-33223 CA 25

SILVIO MEMBRENO and
FLORIDA ASSOCIATION OF
VENDORS, INC.,

Plaintiffs,

v.

THE CITY OF HIALEAH, FLORIDA,

Defendants.

**DEFENDANT CITY OF HIALEAH'S RESPONSE TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Defendant City of Hialeah (the "City" or "Defendant"), by and through its undersigned counsel and pursuant to Fla. R. Civ. P. 1.510, hereby files its response in opposition to Plaintiffs' Motion for Summary Judgment. In support thereof, the City states as follows:

On May 23, 2014, Plaintiffs Silvio Membreno and the Florida Association of Vendors, Inc. ("Plaintiffs") filed their Motion for Summary Judgment, seeking to have this Court declare sections 18-302 and 18-304 of the City's vending ordinance ("Ordinance") unconstitutional and to have this Court enjoin the City's enforcement of Fla. Stat. § 337.406. The City adopts the arguments and law set forth in its Motion for Summary Judgment and Memorandum in Support as well as its Supplemental Memorandum in Support.

In addition, Plaintiffs' Motion for Summary Judgment should be denied because Plaintiffs have altogether failed to meet their burden of establishing that the vending provisions do not bear a reasonable relationship to a legitimate state interest.

Plaintiffs do not identify a fundamental right that they claim the Ordinance infringes upon and therefore rely on the rational basis test. The City agrees that the rational basis test applies in this case. Under this test, legislation is valid if it “bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare and is not discriminatory, arbitrary, or oppressive.” Chicago Title Ins. Co. v. Butler, 770 So. 2d 1210 (Fla. 2000). Although the correct standard is undisputed, Plaintiffs’ application of the rational basis test is flawed and improperly shifts the burden to the City.

The law is clear that “statutes come clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome.” See, e.g., City of Fort Lauderdale v. Gonzalez, 134 So. 3d 1119 (Fla. 4th DCA 2014). It is Plaintiffs’ burden to overcome this presumption. They have not. Plaintiffs argue that the City has not articulated a legitimate basis for the Ordinance. Even if that were accurate, which it is not, the law does not require the City to articulate a basis to support its Ordinance. Courts have consistently held that under the rational basis test, the legislature need not articulate the purpose or rationale for its ordinances. Gonzalez, 134 So. 2d at 1122. The burden is squarely on the party challenging the legislation to “negate every conceivable basis which might support it.” Id.; Haire v. Florida Dep’t of Agri. and Consumer Servs., 870 So. 2d 774 (Fla. 2004); Eastern Airlines, Inc. v. Dep’t of Revenue, 455 So. 2d 311 (Fla. 1984). Under this first prong of the rational basis test, the Court need determine only whether *any* rational basis exists, not whether the basis is actually considered by the legislative body. WCI Communities, Inc. v. City of Coral Springs, 885 So. 2d 912 (Fla. 4th DCA 2004). The question is whether there is any legitimate purpose the government *could have been* pursuing. Id.

Under the second prong of the rational basis test, courts ask “whether a rational basis exists for the enacting government body to believe that the legislation would further the hypothesized purpose.” Id. The standard is highly deferential. The rational basis test recognizes that governments deal with practical problems that may justify, if they do not require, solutions even where the means employed are illogical and unscientific. The legislation may not be perfect, but perfection is not the standard. The rational basis test requires only that means chosen to fulfill the legislation’s objectives are constitutional. Dep’t of Corrections v. Florida Nurses Assoc., 508 So. 2d 317 (Fla. 1987). “In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” Id. at 1121, citing F.C.C. v. Beach Commc’ns, Inc., 508 U.S. 301 (1993); Schweiker v. Wilson, 450 U.S. 221 (1981); Dep’t of Corrections v. Florida Nurses Assoc., 508 So. 2d 317 (Fla. 1987) (citing Hamilton v. State, 366 So. 2d 8 (Fla. 1979), “The Legislature has a great deal of discretion in determining what measures are necessary for the public’s protection, and this Court will not, and may not, substitute its judgment for that of the Legislature insofar as the wisdom or policy of the act is concerned.”); Sasso v. Ram Property Management, 431 So. 2d 204 (Fla. 1st DCA 1983) (As long as the legislation “rationally advances a legitimate governmental objective, courts will disregard the methods used in achieving the objective, and the challenged enactment will be upheld.”). In D.P. v. State, 705 So. 2d 593 (Fla. 3d DCA 1998), the Third District affirmed the trial court’s finding of constitutionality where the trial court reasoned that:

The rational basis test does not turn on whether this Court agrees or disagrees with the legislation at issue, and this Court will not attempt to impose on a duly-elected legislative body his reservations about the wisdom of the subject ordinance. Instead, the rational basis test focuses narrowly on *whether a legislative*

body could rationally believe that the legislation could achieve a legitimate government end. (emphasis added).

There is no question that a rational basis exists for this Ordinance. The rationale has been identified throughout the course of this case, notwithstanding the burden is not on the City to articulate such basis. Based on the language of the Ordinance itself, deposition testimony and the complete record, it is evident that the basis of the Ordinance is to protect public safety (vehicular and pedestrian) on the roads and public right of ways, free flow of traffic and to equally enforce the provisions of the City's zoning code. The record is similarly replete with evidence as to the rational relationship between the intended objectives and the means chosen. Although Plaintiffs may not agree with all aspects of the Ordinance and may find provisions cumbersome, that is not the basis for striking down legislation as unconstitutional.

WHEREFORE, the City respectfully requests that the Court enter an order denying Plaintiffs' motion for summary judgment in its entirety and entering judgment in favor of the City. The City also respectfully requests that the Court grant it such other and further relief it deems just and proper.

Respectfully submitted,

AKERMAN LLP

Attorneys for Defendant CITY OF HIALEAH
One Southeast Third Avenue
25th Floor
Miami, FL 33131-1704
Phone: (305) 374-5600
Fax: (305) 374-5095
Email: michael.fertig@akerman.com
Email: jennifer.glasser@akerman.com

By: s/Jennifer C. Glasser
Michael Fertig, Esq.
Florida Bar No. 358754
Jennifer Glasser, Esq.
Florida Bar No.: 123145

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served electronically this **11th** day of June, 2014 upon: **Claudia Murray Edenfield, Esq.**, Institute for Justice, Florida Chapter, 999 Brickell Avenue, Suite 720, Miami, FL 33131.

/s/Jennifer Glasser