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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIKE LAUDICINA and DON DEMARIA, etc,

Petitioners,

Case No. 15-1233

vs.

FLORIDA KEYS AQUEDUCT
AUTHORITY and DEPARTMENT OF
ENVIRONMENTAL PROTECTION.

Respondents,

and

MONROE COUNTY,

Intervenor.

Individual Petitioners' Motion for Leave to File Reply Brief

Individual Petitioners respectfully request this Court for leave to file a Reply Brief to the Response filed by Florida Keys Aqueduct Authority ("FKAA") to this Court's Order to Show Cause, and state:

1. The pyramid of factually unsupported inferences in FKAA's Response is enormous; the mis-statements of fact numerous; the attempts to defame where there is no opportunity to set the record straight obvious; and the conspiracy theories abundant. These are hardly the bases upon which to subpoena the names of non-parties who have contributed monies to this public interest lawsuit.
2. The law is clear that the proposed subpoenas violate non-parties' First Amendment rights to privacy and association and of their right to contribute monies to a public interest law suit without

that fact becoming a matter of public record.¹ It would have a chilling effect on future citizen donations to public interest efforts to protect the environment, as well as other civic causes. Nat'l Ass'n for the Advancement of Colored People v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958), Matthews v. City of Maitland, 923 So.2d 591 (5DCA, 2006).

3. *Evarts v. Planning Board of the City of Somerville*, 14 Mass. L.Rptr. 342, 2002 WL 532682 (Mass.Super.2002), on similar facts, points out that where a litigant seeks to invade the constitutionally protected rights of privacy of non-parties, a showing of need, not just relevance, is required.

4. FKAA has shown neither need nor relevance. FKAA's pyramid of unsupported inferences rests on a completely unstable foundation.²

FKAA has shown no legal basis for the fishing expedition

5. FKAA's excuse for violating the constitutionally protected rights of non-parties is based on an unfounded and irrational legal theory: that it is somehow necessary to determine who the real parties in interest are in an administrative challenge to wastewater permits. FKAA provides no legal basis for this contention that anyone besides the named parties in this litigation can be the real party in interest. Financial support of a lawsuit does not make anyone a real party in interest. The public policy implications of FKAA's conspiracy based theory are disconcerting, to say the least.

¹ The non-parties whose constitutional rights are at stake are afforded no opportunity to object under the procedure adopted by FKAA.

² It is also based on a mis statement of the law relevant to point of entry but, unlike FKAA, Individual Petitioners will not use this discovery motion as an attempt to pre-brief the Court on this issue.

FKAA has shown no factual basis for the fishing expedition, even if a legal foundation existed

6. According to FKAA's conspiracy theory, and in complete contradiction of the evidence in this case, the Petitioners were supposedly "roped into" the litigation, have no real interest in it, and are merely "putative" Petitioners being manipulated by "shadowy" figures "swirling" in the background.

a. This assertion is completely belied by the Individual Petitioners' verified allegations in the original Petition, and by their deposition testimony, that both commercial fishermen have been long time advocates for water quality in the Keys, both serving as volunteers on the Citizen's Advisory Council for the Florida Keys National Marine Sanctuary for several years, as well as in other organizations working to protect the environment; both educated in parks and land management; and both earning their livings fishing the waters around Cudjoe Key where the shallow injection wells are located. The Association Petitioners are longstanding non-profit organizations formed years before the original Petition was filed, active in the community's environmental interests, and in no way are "putative" Petitioners, as FKAA contends.

b. Ignoring the evidence, FKAA names the persons it claims to be the real parties in interest, and provides a slew of information which it contends proves they are the real parties in interest. Assuming there is a legal basis to determine anything about real parties in interest, assuming there is a factual basis to invade constitutional rights to do so, FKAA has thus demonstrated clearly that it has no need to violate the constitutional rights of an entire group of non-parties who have donated their \$5, \$25, or thousand dollar contributions to this public interest lawsuit. If, as FKAA contends, it wants to prove that the people it has named are real parties in interest, it should attempt to violate their constitutional rights to privacy, freedoms

of speech and association, not the constitutional rights of non-party financial donors. These persons who allegedly are manipulating the lawsuit and who supposedly “roped” unwilling Petitioners into “standing in for them” are all local citizens who easily could have been subpoenaed or deposed under oath concerning their activities. Had FKAA done this, it would have learned that the StopShallowSewageWellsintheFloridaKeys campaign which supports the litigation through EcoEd and PayPal was not even formed until after the lawsuit had been pending for many months, so the names of those donors is even more irrelevant.

d. FKAA has no need to fish in constitutionally protected waters of financial donors, even if there were a legal reason to do so.

7. FKAA’s Response demonstrates that there is no proper, legal or fact based grounds for its proposed subpoenas. FKAA says it wants to learn the names of the people financially supporting the litigation. Then it wants to depose them to determine what they knew about the lawsuit and when they had notice of the 2009 permits. Yet, in addition to the fact that FKAA has already named the persons it claims are real parties in interest, whatever that is, it is apparent that FKAA has no intention of doing what it says: there simply is not enough time. The proposed subpoenas direct the non-parties to produce the documentation on September 22. The non-parties, once served, have the right to object to the subpoenas, and undoubtedly will object, since they have various responsibilities to protect the confidentiality of their donors or clients as the case may be. The hearing is scheduled for September 30th. Even if the Court were to grant Individual Petitioners’ Motion for Continuance, there would still be no time for FKAA to do what it supposedly wants to do. That assertion is nothing more than an excuse to harass and attempt to embarrass people who oppose FKAA’s activities.

8. Since the facts are clear that the Petitioners are in fact the Petitioners, there is no reality-based rationale for examining the names and donation amounts of non-parties in order to determine whether anyone who is supporting the lawsuit is the “real” Petitioner. That would have no relevance at all to the case, and is certainly not a basis for violating the constitutional rights of non-parties.

9. FKAA’s overreach is astounding and its mis-statements of the law and the facts disturbing. FKAA has provided no facts or law to support the issuance of subpoenas which would violate non-parties’ constitutional rights to privacy, and their constitutional rights to anonymously contribute to civic interests of their choice without that information becoming public record.

Wherefore, Individual Petitioners’ respectfully request this Court to quash the subpoenas to Eco-Ed and PayPal, or alternatively, to allow Individual Petitioners the opportunity to reply to FKAA’s unsupported and inaccurate representations.

RESPECTFULLY SUBMITTED on this 16th day of September, 2015.

/s/ Christopher T. Byrd

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Electronic Transmission on September 16, 2015 to the following individuals:

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