

### **Fifth DCA Finds Trial Court Erred in Allowing Rent Control Ordinance to Stay on Ballot**

On October 27, 2022, the Fifth DCA held that Orange County's rent control ordinance (the "Ordinance") should not be allowed on the ballot for vote by the public. The court found that, while the trial court correctly concluded the Association had a substantial likelihood of success on the merits of its challenge to Orange County's rent control ordinance and the corresponding ballot summary, it should not have permitted the matter to stay on the ballot.

In 1977, the Florida Legislature enacted section 125.0103, Florida Statutes, which limits the ability of local governments to pass any measure imposing controls on rent. This law remains in effect today and imposes an extremely high bar for local governments to pass rent control measures. The local government must fulfill the following requirements: (1) find and determine "that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public;" (2) any such measure may not be imposed for longer than one year; and (3) certain properties, like second homes, are exempt from rent controls. After notice of the proposed ordinance is published and a public hearing is held, the local government may adopt the ordinance. The ordinance must then be approved by voters.

In April of 2022, the County Commission discussed enacting a rent control ordinance in response to local housing conditions and prices. Orange County engaged Community Solutions Group of GAI Consultants, Inc. ("GAI") to: (1) evaluate and document local housing conditions to determine whether they rise to the level of a housing emergency; (2) estimate the number of units that could be affected by rent control measures; and (3) comment on the likely effectiveness of those measures if implemented. GAI found that Orange County was facing several pressing challenges relating to housing. However, they did not find a "housing emergency" existed, which is a mandatory finding necessary to impose rent controls. GAI stated that a rent control measure "may impede the objective of speeding overall housing deliveries as well as create a number of unintended consequences," rather than eliminating the housing crisis.

After GAI's presentation, Orange County held three additional meetings to consider the issue and directed the County Attorney to prepare a legal advisory opinion on the issues surrounding rent control ordinances in Florida. Ultimately, Orange County adopted the Ordinance by a 3-2 vote. The evidence provided in the Ordinance supporting the need for such a measure included information regarding the population increase, the housing shortage, and increase of housing costs. It claimed Orange County had been in a housing crisis since before the COVID-19 pandemic, but the pandemic exacerbated the crisis. It included provisions limiting the frequency and amount of rent increases as well as an exception process for landlords to receive a fair and reasonable return on investment, and listed factors for deviations from the limitation on rent increases. It also provided several exemptions, including those required by state law. The Ordinance provided for civil and criminal enforcement pursuant to existing Florida law. The ballot summary included one way in which the County will control rent prices and did not contain any mention of the penalties.

The Florida Association of Realtors (the “Association”) challenged the constitutionality of the Ordinance as well as the ballot summary. The trial court denied the Association’s request for a temporary injunction, which allowed the Ordinance to stay on the ballot, but did determine that the Association had a substantial likelihood of success in its challenges against the Ordinance and ballot summary. The trial court rationalized its decision to leave the Ordinance on the ballot for three reasons: (1) they did not think anyone would suffer any harm if voters rejected the Ordinance; (2) even if the Ordinance passed, landlords could fight its enforcement and appeal any adverse ruling; and (3) the trial court believed a temporary injunction would not serve the public interest because there was value in allowing the public to “exercise their right to express their opinion on this issue, even if that is all it will ever be, an opinion.”

The Fifth DCA found that Orange County failed to provide sufficient evidence that would allow them to meet the high bar imposed by state law. They also found that the ballot summary was misleading because it did not adequately describe to voters how Orange County would effectuate the rent control policy. The court also rebuked the trial court’s belief that a public interest would be served by allowing the public to vote on a misleading ballot measure.

**STEARNS WEAVER MILLER**

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