# FIRST DISTRICT COURT OF APPEAL
# STATE OF FLORIDA

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No. 1D18-284

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JOHN PARSONS, LIBERTY AMBULANCE SERVICE, INC., ROBERT ASSAF, DIAMOND D RANCH, INC., and MICHAEL GRIFFIN,

Appellants,

v.

CITY OF JACKSONVILLE, FLORIDA, a municipal corporation and political subdivision of the State of Florida,

Appellee.

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On appeal from the Circuit Court for Duval County.
Michael R. Weatherby, Judge.

May 1, 2020

KELSEY, J.

We have for review a final order dismissing with prejudice Appellants' amended declaratory judgment suit against the City of Jacksonville. Appellants alleged that 2017 amendments to the City's human rights ordinance (HRO) were "null and void" because their adoption violated state law, the City's Ordinance

Code, and City Council rules. Appellants alleged they were deprived of their right to adequate notice, and that they had suffered or will suffer injuries to their rights of privacy, religious conscience, and business interests under the Code as amended. The City argues that dismissal with prejudice was appropriate because Appellants lacked standing and because Appellants' claims became moot after the City recodified its entire Ordinance Code. For the reasons that follow, and without reaching the substantive merits of Appellants' claims, we reverse.

## I. Facts.

The City amended its HRO in 2017 to add sexual orientation and gender identity to twenty-eight sections and subsections of existing non-discrimination provisions in its Code, and to make related changes. *See* Jacksonville, Fla., Ordinance 2017-15-E (Feb. 14, 2017). The City's public notices listed the Code number of each section and subsection to be amended, but neither the published version of the proposed amendments nor the legal notice of the scheduled public meeting set out in full or in part the titles of the affected provisions, the text of the ordinance provisions to be amended, or the text of the provisions as amended. No published notice specified or set out in full context where and how the amendatory language would be inserted in the various Code provisions. According to the record on appeal, here is what was published on the two main parts:

> Section 2. Amending Sections 60.105, 400.101, 400.301, 402.102, 402.107(g)(1), 402.107(g)(3), 402.201, 402.202, 402.203, 402.204, 402.206, 402.210, 402.211, 406.102, 406.104(g)(1), 406.104(g)(3), 406.201, 408.102, 408.204, 408.401, 408.402, 408.403, 408.404, 408.406, and 408.407, Ordinance Code.
>
> The foregoing sections of the Ordinance Code are hereby amended as follows: wherever protected categories are listed, that sexual orientation and gender identity, as defined in Section 3 below, shall be added to the list.

> Section 3. Amending Sections 402.107, 406.104, and 408.105, Ordinance Code. The foregoing sections of the Ordinance Code are hereby amended as follows:
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> (a) Wherever definitions are provided, the definition of sexual orientation shall be added and shall mean an individual's actual or perceived orientation as heterosexual, homosexual, or bisexual.
>
> (b) Wherever definitions are provided, the definition of gender identity shall be added and shall mean the gender-related identity, appearance, or expression of a person. Gender identity may be demonstrated by a person's consistent and uniform assertion of a particular gender identity, appearance or expression, or by any other evidence that a person's gender identity is sincerely held, provided, however, that gender identity shall not be asserted for any improper, illegal or criminal purpose.

Instead of setting out the full text of the amendments in context, the proposed ordinance stated that the City's office of general counsel would write the amended ordinance later. That had not happened yet when Appellants filed their original or amended complaints. There was no full-text version of each amended provision showing the insertion of new language.

Appellant Parsons filed suit, alleging that the notice was flawed under section 166.041 of the Florida Statutes as well as under the City's own Code and rules, and that this rendered the ordinance void and unenforceable. Very shortly after that lawsuit was filed, and for the first time since 1990, the City enacted a new ordinance to recodify its entire Ordinance Code. The City's stated goal was to "cur[e] any defects in title, single subject defects or other procedural defects" in all previously enacted ordinances, including the one at issue here. *See* Jacksonville, Fla., Ordinance 2017-236-E (Apr. 27, 2017).

The City moved to dismiss Parsons's original complaint for lack of standing, also asserting mootness because of the recodification. The lower tribunal dismissed the original

complaint for lack of allegations demonstrating standing, without prejudice to amend. Parsons and three new plaintiffs (the Appellants here), filed an amended complaint, asserting standing on two grounds: as parties entitled to notice under section 166.041 of the Florida Statutes, and because the amendments would affect them adversely. The amended complaint again alleged that the adoption and publication was incomplete and invalid, making the ordinance void. The lower tribunal again dismissed the pleading, this time with prejudice as to both the sole original plaintiff (Parsons) and the plaintiffs added in the amended complaint. This appeal follows.

## II. Analysis.

### A. Standing.

We agree with Appellants that they had standing to challenge the ordinance. Under Florida law, no special injury is required for actions attacking void ordinances; i.e., ordinances adopted without proper notice or legislative authority, or in excess of police powers. *Renard v. Dade Cty.*, 261 So. 2d 832, 838 (Fla. 1972) (holding "[a]ny affected resident, citizen or property owner of the governmental unit in question has standing to challenge" an ordinance that is void as improperly enacted); *David v. City of Dunedin*, 473 So. 2d 304, 305–06 (Fla. 2d DCA 1985) (no special injury required for general attack on validity of ordinance for failure to comply with section 166.041(3)). The governing statute requires only that a person be "entitled to actual or constructive notice [of the proposed adoption of an ordinance or resolution]" to have standing, and Appellants satisfied that requirement. *See* § 166.041(7), Fla. Stat. (2017); *see also Martin Cty. Conservation All. v. Martin Cty.*, 73 So. 3d 856, 864 (Fla. 1st DCA 2011) (explaining Florida Legislature broadly granted standing pursuant to statute); *Godheim v. City of Tampa*, 426 So. 2d 1084, 1088 (Fla. 2d DCA 1983) (taxpayer included count for Sunshine Law violation, and while agreeing no taxpayer standing on other issues raised, court explained Sunshine Law, "on its face, gives the appellant standing without regard to whether he suffered a special injury").

In addition, Appellants sufficiently alleged that the City's ordinance violated section 166.041(2), which provides that "No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection." § 166.041(2), Fla. Stat. Courts applying the statute have held that its intent is to preclude "enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws." *Lipe v. City of Miami*, 141 So. 2d 738, 742 (Fla. 1962) (quoting *Van Pelt v. Hilliard*, 78 So. 693, 698 (1918)); *see Jackson v. Consol. Gov't of City of Jacksonville*, 225 So. 2d 497, 508 (Fla. 1969) ("[E]nough of the act being amended must be republished to make the meaning of the provision published intelligible from its language and to insure that no unexpected meaning results from the combination of that language and other language in the act."); *Auto Owners Ins. Co. v. Hillsborough Cty. Aviation Auth.*, 153 So. 2d 722, 725 (Fla. 1963) (holding that to fully inform the government and the public about proposed changes, "it is required that when a specific section or subsection is being amended it should be republished with the proposed amendment so that an examination of the Act itself will reflect the changes contemplated, as well as their impact on the amended statute"); *City of Hallandale v. Zachar*, 371 So. 2d 186, 188–89 (Fla. 4th DCA 1979) (quoting *Jackson*, 225 So. 2d at 507–08). As Appellants alleged, and the City does not dispute, the City did not comply with this requirement. This brings Appellants within the scope of standing to challenge a void ordinance. [1]

[1] Our disposition of this issue renders moot Appellants' additional argument that the lower tribunal abused its discretion in dismissing the amended complaint with prejudice even though the newly added plaintiffs had no chance to amend. We would find the argument well taken otherwise. *See Bryant v. State*, 901 So. 2d 810, 818 (Fla. 2005) (reciting general rule that courts should allow litigants at least one chance to amend unless amendment is not possible); *Webb v. Town Council of Hilliard*, 766 So. 2d 1241, 1245 (Fla. 1st DCA 2000) (finding abuse of

Even if Appellants were required to demonstrate special injury, they did so by alleging in their amended complaint, among other things, that the ordinance encumbered their free exercise of speech and religious freedoms individually and in their business activities. Appellants admit they included these allegations solely to support their standing in response to the City's arguments, and not for adjudication of those claims, so we do not pass upon their merits. Nevertheless, Appellants' allegations were legally sufficient to demonstrate standing to assert a pre-enforcement challenge to the *enactment* of what they alleged was an unconstitutionally overbroad regulation of free speech and free exercise of religion. *See J.L.S. v. State*, 947 So. 2d 641, 644 (Fla. 3d DCA 2007) ("'Hypothetical consequences' are considered in the case of allegedly overbroad statutes precisely because this is the only way to give effect to the constitutional right of free speech." (quoting *Schmitt v. State*, 590 So. 2d 404, 411–12 (Fla. 1991))); *see also Wyche v. State*, 619 So. 2d 231, 235 (Fla. 1993) (discussing "chilling effect" and ability to facially challenge ordinance's mere existence without enforcement).

We therefore reject the City's argument that Appellants are required to wait until they are injured by an adverse application of the ordinance before they can challenge its enactment. This argument runs contrary to the broad grant of standing that the statute confers and case law supports. Further, in light of the five-year statute of limitations in section 166.041(7), the City's argument improperly would allow it to wait five years before enforcing the ordinance against Appellants or others in order to eliminate any challenge to enactment. Appellants' pleading was legally sufficient to frame a claim appropriate for declaratory judgment.

B. Recodification.

We also reject the City's argument that recodifying its entire Code mooted Appellants' claims. Recodification cures some defects, such as when the Florida Legislature biennially

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discretion in failing to allow amendment "to allege standing to challenge the council action").

recodifies the Florida Statutes to cure title and single-subject defects. *See Salters v. State*, 758 So. 2d 667, 669–70 (Fla. 2000) (single-subject violation cured); *State v. Rothauser*, 934 So. 2d 17, 19 (Fla. 2d DCA 2006) ("It has long been established in Florida that this legislative act of statutory adoption or codification cures any constitutional defect concerning the title of a law.").

Recodification does not cure all defects, however. The City's recodification did not itself set forth the full text of the Code amendments, and did not cure the original failure to set forth the full text. The Florida Supreme Court held that the failure to "set forth at length" (i.e., provide the full text of) statutory amendments was the kind of defect that could not be cured by "a general reenactment of existing statutes." *Mass. Bonding & Ins. Co. v. Bryant*, 189 So. 2d 614, 616 (Fla. 1966); *see Lipe v. City of Miami*, 141 So. 2d 738, 741 (Fla. 1962). In so holding, the supreme court approved our reasoning in *Massachusetts Bonding & Ins. Co. v. Bryant*, 175 So. 2d 88 (Fla. 1st DCA 1965), calling it "eminently correct." *Mass. Bonding*, 189 So. 2d at 616. Our reasoning, so approved, was as follows:

> While certain defects, such as defects in titles, errors of spelling and punctuation, obvious misprints, and the like, may be remedied by the biennial act revising the Florida Statutes, this type of [recodification] legislation cannot be used as a device by which to create new statutory law, vary the existing law, or cure any unconstitutionality of content as previously determined by the judicial branch of government.

*Mass. Bonding*, 175 So. 2d at 92. We deemed the failure to publish the full text of an amendment to be "unconstitutionality of content" not curable by recodification. *Id.*

We reach the same conclusion here that both we and the Florida Supreme Court did in *Massachusetts Bonding*. In context, the problem we described as "unconstitutionality of content" was not the kind of defect that recodification could cure because the required content was missing, thus failing to provide the fair and accurate notice that due process requires. The requirements apply consistently to state statutes and local ordinances,

beginning with the Florida Constitution's mandate that amendatory bills set forth the full text of each statute to be amended, thus showing the changes in context. Art. III, § 6, Fla. Const. ("No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection.").[2]

Section 166.041(2), Florida Statutes, imposes identical full-text requirements on revision or amendment of municipal ordinances:

> No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.

*See City of Hallandale v. State ex rel. Zachar*, 371 So. 2d 186, 188 (Fla. 4th DCA 1979) (explaining statutory requirement for particular amendatory language in ordinances "actually embodies" a constitutional requirement for particular amendatory language in statutes, and using cases arising under the constitution or statutes to interpret the statutory requirements for ordinances). The City's Code also requires revisions and amendments to be set forth "in full." *See* Jacksonville, Fla., Ordinance Code § 3.105. Likewise, the Jacksonville City Council rules require revisions and amendments to set forth all additions and deletions to prior text. Jacksonville, Fla., City Council R. 3.102(c)(1), (c)(3). Appellants alleged that the City violated the requirements of all three sources.

Setting out the full text of ordinance revisions and amendments, showing their context, is required because that alone provides adequate notice of the legal change being made. Even without a referendum on a proposed revision or

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[2] Substantively the same provision appeared in article III, section 16 when the *Massachusetts Bonding* cases were decided, and required that each act or any part of it being changed be "published at length." 175 So. 2d at 92.

amendment, the public, decision-makers, and everyone seeking to provide input to those decision-makers, have the right and the need to see proposed changes in full text and in context, to inform their opinions and actions. People and businesses subject to an ordinance have a right to adequate notice of precisely how the ordinance governs their conduct. *See Wyche*, 619 So. 2d at 236 (holding county ordinance unconstitutionally vague where it failed to give adequate notice of the prohibited conduct). Further, anyone, including judges, seeking to interpret enacted language must be able to evaluate it in full text and in context. Even adding items to a preexisting list can leave open questions about application and interpretation, depending on context, sequence, grouping, and even punctuation. We look first to the words as enacted and in their entirety to interpret their meaning and effect. *Fla. Dep't of Envt'l Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1265–66 (Fla. 2008) (explaining that reviewing statutes encompasses evaluation of "the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence on the statute" (emphasis omitted)). The placement of terms in a list matters. *See Graham v. Haridopolos*, 108 So. 3d 597, 605 (Fla. 2013) (discussing interpretive maxim *ejusdem generis*: "when a general phrase follows a list of specifics, the general phrase will be interpreted to include only items of the same type as those listed" (quoting *State v. Hearns*, 961 So. 2d 211, 219 (Fla. 2007)); *Ward v. State*, 936 So. 2d 1143, 1146-47 (Fla. 3d DCA 2006) (discussing interpretive effect of the Legislature's specific placement of words in an amendment: "[w]e presume the legislature understands the meaning of the language it uses and the implications of its placement in a statute"; applying the last antecedent rule of construction to the Legislature's choice to insert language "prior to the qualifying prepositional phrase"). It would be difficult, if not impossible, to interpret an amendment to a law or an ordinance without having the entire text in context.

The only way to ensure clear, accurate, understandable, and uniform notice of proposed changes to a law or an ordinance is to put them in writing before enacting or adopting them—in full text, in context, complete as if for immediate enforcement. Without all of that, an amendment is just an idea. Ideas alone are not enforceable, which is why an amendment that fails to

comply with these requirements is void. *See Renard*, 261 So. 2d at 838 (holding ordinances adopted without proper notice are void).

This is why in *Massachusetts Bonding* we did not treat the failure to set forth amendatory language the same as the kinds of more superficial defects that recodification can cure. 175 So. 2d at 92. This failure violates governing principles of notice and due process, and it is what happened here. Recodification cannot cure it, and so Appellants' claims are not moot.

III. Conclusion.

We reverse the judgment and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

ROBERTS, J., concurs; WOLF, J., concurs in result only. [3]

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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[3] Judge Wolf was assigned to the panel after Judge Winsor's appointment to the federal bench, and has watched the oral argument video.