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# FOCUS

## President's Message

**Aline V. Drucker**

They say clichés become known as such because they contain universally acknowledged truths. One oldie-but-a-goodie cliché tells us that the days are long but the years are short. This is certainly the case with my tenure as the President of ACC South Florida. My two year term has flown right by, measured by long days filled with program planning, engaging with sponsors, conducting Board business, and addressing member concerns. Yet the last two years most definitely felt rather short because they were and continue to be, so rich and fulfilling. It has been a real thrill and a privilege of a lifetime to lead this stellar organization, full of energetic, interesting, wickedly smart and kind people, who are all committed to the common goal of enhancing and improving the in-house legal experience for a myriad of in-house attorneys, from those just starting out to seasoned and battle-tested general counsel.

I am grateful and appreciative that this organization is better off at the end of my term today, with a record number of registrants and participants at our Annual CLE Conference, and a thriving and engaged membership roster, bolstered by a fantastic combination of sponsors, both brand new ones and those who have been returning to sponsor our Chapter year after year.

Enormous credit and my personal gratitude goes to each member of our Board of Directors, and to Jessica Rivera,

my immediate predecessor, who led the ACC South Florida as its President during the tumultuous years of the 2020 pandemic and had set up a wonderful platform that allowed me to steer the ship since 2021. Likewise, I have the utmost confidence in our next President, Justin Carlson, who I know will do great things to advance the interests of our Chapter and who has consistently dedicated much of his time and energy to our Board and membership for many years. Both Jessica and Justin have my complete support, as well as my personal friendship. That is one of the best things that this organization offers - along with the CLE programming, networking, educational offerings, and personal development opportunities – the personal, human connections made that blossom into friendships and a true support system, far beyond professional formalities. I am so glad and thankful to have made the connections and friendships with our Board Directors, and many of our sponsors and members.

Lest you worry, I am not going far. As I conclude my formal term as President, I will remain on the Board for the foreseeable future as your Immediate Past President and Board Director. I will continue to actively participate on our Board and attend ACC events. I encourage each of you to do the same, take the plunge, go to that event after work, show up at happy hour, listen to that CLE, leave the house even if traffic looms, the rewards on the other side are tangible and worthwhile, take my word for it.

With respect to the Chapter's remaining events for this year, as we make costumes for Halloween, stock up on turkey for Thanksgiving, plan our end of year schedules, and drink a glass of champagne at midnight to welcome in 2024 (!!), the ACC will have some joyous events to round out 2023. ACC South Florida will celebrate this festive time with two holiday parties, one in Miami Dade and another in Palm Beach County. Please check our ACC Chapter website for more details and look out for invites to these events in your inbox. We are very excited for all the stellar and interesting programming that is in store for our members in 2024. As I bid you all adieu for now as your President, let me take this time to wish each of you a very Happy and Healthy Holiday Season - Merry Christmas, Happy Hanukkah, and no matter what your holiday traditions are, may all of us be filled with peace and gratitude now and in the New Year ahead.



# Uncertainty Looms in Florida as Restrictions on Foreign Ownership of Real Property Remain in Effect

By Joe Hernandez, Kevin Koushel, Mamie Joeveer, Bilzin Sumberg

On August 17, 2023, Judge Allen Winsor of the U.S. District Court of the Northern District of Florida denied the Plaintiffs' motion for temporary injunction in *Shen v. Simpson*, Case No. 4:23-cv-208-AW-MAF, the pending challenge to SB 264 (Chapter No. 2023-33, Laws of Florida). SB 264 is the new Florida law that restricts certain individuals and entities associated with China, Russia, Iran, North Korea, Cuba, Venezuela, and Syria from owning certain real property in Florida.

In his 51-page Order, Judge Winsor held that the Plaintiffs did not show a substantial likelihood of prevailing on the merits and disagreed that the law violates the U.S. Constitution and the Fair Housing Act. When brushing aside the Plaintiffs' Equal Protection argument, Judge Winsor cited to a series of 100-year old U.S. Supreme Court cases that held states could deny aliens ownership interests in land within their respective borders absent an arbitrary or unreasonable basis. *Terrace v. Thompson*, 263 U.S. 197, 216-22 (1923); *Porterfield v. Webb*, 263 U.S. 225, 232-33 (1923); *Webb v. O'Brien*, 263 U.S. 313, 324-26 (1923); *Frick v. Webb*, 263 U.S. 326, 332-34 (1923). Despite the Plaintiffs' argument that intervening case law impliedly superseded the foregoing precedent, Judge Winsor said he was bound because the older cases were not expressly overruled.

## The Fight Continues

On August 21, 2023, the Plaintiffs appealed Judge Winsor's decision to the U.S. Court of Appeals for the Eleventh Circuit, Case No. 23-12737, and they subsequently moved the Eleventh Circuit to not only enjoin portions of SB 264 pending the appeal,<sup>1</sup> but also to expedite the appeal.

The Plaintiffs continue to argue that the law violates the Equal Protection Clause and the Fair Housing Act; it intrudes on the federal government's foreign affairs

and powers; and it is unconstitutionally vague. They insisted, "[SB 264] discriminates on the basis of protected characteristics—national origin, alienage, race, and ethnicity—and it fails strict scrutiny, which requires the state to show that the legislation is narrowly tailored to serve a compelling state interest." The State disagreed and commended Judge Winsor's "thoroughly reasoned order."

Because the Plaintiffs are now only seeking to enjoin the portions of the law that directly affect them, there is a good chance that the rest of SB 264, if not all it, will remain in place while the parties litigate the issues on the merits.

## Other Ambiguities in the Law

Aside from the arguments in *Shen v. Simpson*, practitioners raised other concerns with SB 264 because necessary State resources were not available when the law went into effect on July 1, 2023. For example, the Department of Commerce ("DOC") (formerly known as the Department of Economic Opportunity) and the Department of Agriculture and Consumer Services did not establish the mandatory property registration systems. Additionally, the Florida Real Estate Commission failed to prepare the required form buyer's affidavit.

Despite the foregoing dilemmas, the DOC and the Department of Business and Professional Regulation ("DBPR") have officially started the rulemaking process. The DOC published proposed rules on September 20, 2023, relating to the purchase of real property on or around military installations or critical infrastructure facilities.<sup>2</sup> The Plaintiffs in *Shen v. Simpson* challenged the terms "military installation" and "critical infrastructure facility" as unconstitutionally vague, but Judge Winsor held that the law "gives fair notice of the specific facility types that qualify" and is sufficiently detailed enough to understand what facilities will be included. Either way,

proposed Rule 73C-60.003(1), F.A.C., intends to "provide a means [online] for individuals to determine the proximity of real property to a military installation or a critical infrastructure facility in Florida." Only time will tell if the final product is sufficient enough to prevent unnecessary litigation, as early maps depicting these facilities illustrate the difficult task ahead.<sup>3</sup>

Similarly, the DPBR has scheduled public workshops for preparing the form buyer's affidavit relating to the ownership restrictions in SB 264. In the interim, practitioners have begun drafting their own affidavits in an attempt to avoid liability, as well as updating their form agreements to add representation and warranty language tracking both federal and State requirements.

## The Unintended Impact on Business

Another area of concern not addressed in *Shen v. Simpson* is the impact SB 264 will have on institutional buyers and investors. The new law contains a narrow exemption allowing foreign principals to own a "de minimus indirect interest" in restricted properties, but there is no consensus on how to interpret the pertinent language. The proposed rules to Section 692.203, Florida Statutes, offer additional insight, but there is still no indication of how the State is going to enforce the law, especially for properties held in entities that are not publicly traded or managed by a registered investment advisor.

Prominent business leaders have also questioned the law and its potential to stifle investment in the state by institutional investors and private equity funds. Associated Industries of Florida's Brewster Bevis noted that the law is much broader in scope than the publicly stated intent.<sup>4</sup> Citadel's Ken Griffin also questioned the law and provided that his company supported "the freedom of individuals who are lawfully working in the US to

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purchase homes and we will continue to advocate for those rights.”<sup>5</sup> While the law remains entangled in litigation, the next few months will be pivotal for all real estate professionals with clients doing business in Florida.

### Authors:

#### Joe Hernandez

Joseph Hernandez represents real estate developers, financial institutions, private equity firms, family offices and public entities in negotiating and structuring complex commercial real estate transactions, with deals across the United States, Latin America and the Caribbean. He handles acquisitions, development, financing,



leasing, joint ventures, and advises clients on raising capital for real estate projects. He also represents developers and investors in the area of condominium redevelopment, which oftentimes involves the bulk-acquisition of condominium units and the complex process of terminating an existing condominium.

#### Kevin Koushel

Bringing with him a breadth of sector experience in the construction, maintenance, and operation of real property, Kevin focuses his practice on real estate acquisitions, dispositions, and financing. He also possesses a deep understanding of condominium and community association law, frequently advising real estate developers on deals involving condominiums or projects that include a condominium component.



Kevin earned his J.D., magna cum laude, from Nova Southeastern University and his B.S., high honors, from The Georgia Institute of Technology.

#### Mamie Joeveer

Mamie Joeveer, Of Counsel in Bilzin Sumberg's Real Estate Group, handles real estate acquisitions, dispositions, and development. She possesses extensive experience in franchise litigation in both state and federal court in all stages of the franchise relationship, advising on commercial contracts, corporate governance, contract compliance in connection with commercial real estate financing, and leasing and joint venture agreements.



<sup>1</sup>Specifically, the Plaintiffs are seeking to enjoin the provisions in SB 264 applying to individuals “domiciled” in China under Sections 692.201(4)(d)-(e) and 692.204(1)(a)(4)-(5), Florida Statutes. Additionally, they are seeking to enjoin any provisions under Sections 692.201 and 692.203-204 that would apply to residential real estate.

<sup>2</sup>The Department of Commerce's initial set of proposed rules only apply to Section 692.203, Florida Statutes; however, the Department should issue another rulemaking notice per Section 692.204(10), Florida Statutes, for the restrictions relating to foreign principals associated with China.

<sup>3</sup>See, e.g., Joseph M. Hernandez, Kevin M. Koushel, and Mamie C. Joeveer, *Enter the Fray: Florida Restricts Certain Foreign Ownership of Real Property*, BILZIN SUMBERG, July 17, 2023, available at <https://www.bilzin.com/we-think-big/insights/publications/2023/07/fl-restricts-foreign-ownership-of-real-property>.

<sup>4</sup>See, e.g., Joseph M. Hernandez, Kevin M. Koushel, and Mamie C. Joeveer, *Enter the Fray: Florida Restricts Certain Foreign Ownership of Real Property*, BILZIN SUMBERG, July 17, 2023, available at <https://www.bilzin.com/we-think-big/insights/publications/2023/07/fl-restricts-foreign-ownership-of-real-property>.

<sup>5</sup>Anna Jean Kaiser, Michael Smith, and Felipe Marques, *Ken Griffin Reshaped Law Banning Chinese Real Estate Purchases*, Bloomberg, Aug. 16, 2023, available at <https://www.bloomberg.com/news/articles/2023-08-17/ken-griffin-reshaped-law-banning-chinese-real-estate-purchases#xj4y7vzkg>.

## Welcome New Members!

### William Diaz-Rousselot

Murgado Automotive Group, Inc.

### Lee Finney

CSL Behring LLC

### Candice Pinares-Baez

Hard Rock International

### Minia Gussman

Jabil Inc.

### Jose Martinez

Asurion

### Timothy Rolland

Techtronic Industries North America, Inc.

### Joshua Marcus

LendingOne

### Emily Morrell

MasTec, Inc.

### Michael Lundberg

Coinbase, Inc.

### Robert Sheres

Cheney Brothers, Inc.

### Sonia Zeledon

The Hershey Company

### Dana Weinstein

MDVIP

### Mallory Hess

Omega Healthcare Management Services

### Gregory Warren

Ten Oaks Group

### Rafael Valdes

Vantiva Supply Chain Solutions

### Sloane Levy

Cinch Home Services, Inc.

### Robert Siegel

NCCI Holdings, Inc.

### Danielle Anders

DHL Global Business Services



# EVENT PHOTOS

## Cooking Class – Presented by Gunster



## Women’s Event in Partnership with the South Florida Women’s In-House Group – Presented by Fisher Phillips





**GC/CLO Dinner** – Presented by Armstrong Teasdale



**New Member Happy Hour in Palm Beach**



**13<sup>th</sup> Annual CLE Conference**





# Wisdom of the Crowd: ACC Thought Leaders on AI and Governance

By Michael Greene, Legal Resources Manager

In a recent facilitated discussion, ACC members talked about how they use AI, what they are worried about, and how they are moving forward. The dialogue was conducted under the Chatham House Rule so no speakers nor organizations are identified.

## Lots of potential, for good and ill

The conversation underscored the enormous opportunities artificial intelligence presents for businesses. AI capabilities are increasing at a staggering pace; large language models will get 100 times better than the current offering. But as a society, we need to align superintelligent AI and human needs.

The last thing we need is AI “going rogue,” as the [ChatGPT’s creator recently said](#).

Check out ACC’s curated library of relevant AI resources here.

There is no roadmap available. This is trial and error and seeing what works for your business.

## Create a task force with the IT and compliance teams

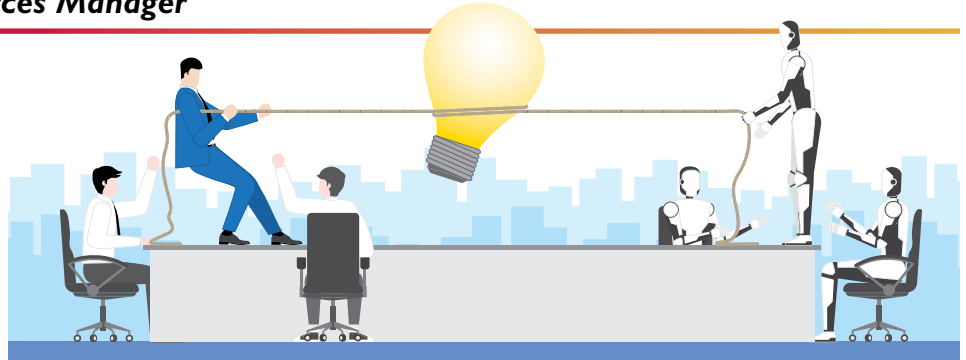
ACC members discussed aligning the legal department with the IT and compliance teams in their organizations to create an internal playbook for the contract review process for any outside vendor utilizing AI. This team also published guidelines for the organization for the data use process for AI technologies.

## Implicit bias

ACC members discussed concerns about implicit bias, particularly in the use of generative AI. They also shared concerns about any customer facing products utilizing AI, including chatbots.

## AI use for creative projects

An ACC member discussed the discovery of AI generated content having been unknowingly utilized in creative intellectual property development. They also



Artwork by kora\_sun / Shutterstock.com

discussed the potential trademark and copyright issues involved.

## Use cases

ACC members said they use AI to expedite contract review. By training it to only process contracts that meet certain requirements, AI flags those that contain substantial deviations.

Another successful use of AI involved a company that had multiple contracts across different jurisdictions and when it was appropriate to change jurisdiction.

Another member asked if AI has the ability to make comments into a contract, as this member often used the same comments to redline contracts again and again. While no one knew if this was possible, they suggested asking an AI vendor to look into the capability.

## Negotiating with AI technology vendors

When looking to contract with an AI vendor, understand the functionalities you want in a solution. The more customization, the more expensive the solution will be, generally speaking.

One of the challenges is negotiating indemnity provisions, because this area is so new. Get prior right of approval of unilateral changes of terms by technology vendors.

One of the challenges is negotiating indemnity provisions because this area is so new.

[Zoom was recently in the news](#) because its terms of service update appeared to provide access to users’ data for AI training. It clarified its service terms in a [blog post](#) after the backlash. The episode underscores the importance of knowing if the vendor will use your data to train its AI. It may be worthwhile to check your Master Services Agreement to see if any vendors use your company’s data to train their AI.

OpenAI now allows internet users to [block its web crawler](#) from scraping data to train GPT models.

For vendors that are deemed data processors, make sure they sign a [Data Processing Agreement](#), which places restrictions on what they can do with Personally Identifiable Information.

## Formal company policies are on the way

Several members said they are working on formal company policies to address AI. Some mentioned looking at independent contractor agreement and amending it to specify that they cannot use AI to create content. Others noted to have humans review any code created by AI.

## Takeaways

- Approach this responsibly and remind people of their ethical obligations to their company and to themselves.
- Be mindful when negotiating with an AI vendor and understand your risk appetite, and their process for changing their T&Cs.

## ACC News

### ACC365 App Now Available to Download

Your work goes beyond your desktop and now so does the ACC member experience. The brand-new ACC365 app is now available to [download](#). Stay connected and get the ACC experience in the palm of your hand. With one tap, you are plugged into the people, resources, and knowledge that accelerate your career. Download the ACC365 App today!

### Artificial Intelligence Insights for In-House Counsel

AI is changing legal departments and businesses. ACC has curated this selection of tools and insights to support you navigate regulatory trends, find sample corporate policies, and gain insights on risks and opportunities. [Learn more about regulations, policies, IP, HR, cybersecurity, and other AI issues in the ACC Artificial Intelligence Resource Collection.](#)

## ACC South Florida Upcoming Events

### OCTOBER

#### OCTOBER 20

##### Mini MBA

presented by Foley & Lardner

#### OCTOBER 22-25

##### ACC National Conference

San Antonio, TX

### NOVEMBER

#### NOVEMBER 14

##### Palm Beach Progressive Dinner

presented by FTI Consulting,  
Gunster, Carlton Fields

#### NOVEMBER 30

##### Miami-Dade Holiday Party

presented by Cozen O'Connor

### DECEMBER

#### DECEMBER 7

##### Palm Beach Holiday Party

presented by Barnes & Thornburg

Be on the lookout for  
calendar updates!

## Sponsors for 2023

### Platinum

Bilzin Sumberg

### Gold

Fisher Phillips

Gunster

Nelson Mullins

### Silver

Barnes & Thornburg

FordHarrison LLP

Jackson Lewis

King & Spalding

Littler

Saul Ewing Arnstein & Lehr LLP

Shook, Hardy and Bacon LLP

Squire Patton Boggs

TCDI

Winston & Strawn

### Bronze

Akerman

Armstrong Teasdale

Exterro

FTI Consulting

Latitude

Omni Bridgeway

Robert Half Legal

### Miami-Dade Progressive Dinner

Shook, Hardy and Bacon LLP  
(Premier)

Hamilton, Miller & Birthisel LLP  
(Dinner)

RumbergerKirk (Dessert)

### Palm Beach Progressive Dinner

Gunster (Premier)

FTI Consulting (Dinner)

Carlton Fields (Dessert)

### GC/CLO Dinner

Saul Ewing Arnstein & Lehr LLP

### CLO Legal Roundtable

Armstrong Teasdale

### Mini MBA

Foley & Lardner

### Holiday Party

Barnes & Thornburg (Palm Beach)

Cozen O'Connor (Miami)

### Newsletter Article

Barnes & Thornburg

## Chapter Leadership

### President

#### Aline Drucker

General Counsel, Invicta Watch Group

### Immediate Past President/CLE Conference Co-Chair/Secretary

#### Jessica Rivera

Executive Vice President, People & Performance / Chief Legal Officer / Chief Operating Officer

### President-Elect

#### Justin Carlson

CLO / General Counsel, Velocity Solutions, LLC

### Treasurer

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General Counsel, Niido

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United States Sugar Corporation

#### Christopher Aird

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#### Sharaine Sibblies

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Southeast Toyota Distributors, LLC

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#### Nikki Setnor

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### CLE Conference Co-Chair

#### Carlos Cardelle

Senior Counsel, ADP Total Source Inc

### Membership Chair

#### Matthew Cowan

General Counsel, Coastal Waste & Recycling, Inc.

#### Maritza Gomez

Senior Counsel, Employment, Gap, Inc.

### Executive Director

#### Christina Kim

Christina Kim  
Executive Director

## Executive Director Note

### Dear Members,

I'm sure many of you can relate – as soon as the kids start going back to school, it feels like a mad dash to the finish line between now and the end of the year. There is hardly time to come up for a breath and when you do, you realize Christmas decorations are on sale at Costco... since AUGUST. But in the midst of all Halloween candy, Thanksgiving turduckens, and holiday shopping, I hope you will join us for some amazing events we have coming up!



Christina + Family

Thank you to many of you who came to join us at our 13th Annual CLE Conference – it was great to see both familiar and new faces networking and listening to the latest updates in the legal world from our sponsors. Upcoming, we have our Mini MBA being hosted by Foley & Lardner on October 20 and on November 14, we will have one of our signature events, the Palm Beach Progressive Dinner, which I know many of you look forward to.

Lastly, we will celebrate the end of the year with our holiday parties – one in Miami-Dade hosted by Cozen O'Connor and the other in Palm Beach hosted by Barnes & Thornburg LLP. I look forward to closing out 2023 and toasting to 2024 with many of you!

Sincerely,

**Christina Y. Kim**

Executive Director, ACC South Florida