

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

CITY OF WESTON, FLORIDA;
VILLAGE OF KEY BISCAYNE,
FLORIDA; TOWN OF CUTLER BAY,
FLORIDA; LEE COUNTY, FLORIDA;
CITY OF DEERFIELD BEACH,
FLORIDA; CITY OF MIAMI
GARDENS, FLORIDA; CITY OF
FRUITLAND PARK, FLORIDA, CITY
OF PARKLAND, FLORIDA, CITY OF
HOMESTEAD, FLORIDA; COOPER
CITY, FLORIDA; CITY OF
POMPANO BEACH, FLORIDA; CITY
OF NORTH MIAMI, FLORIDA;
VILLAGE OF PALMETTO BAY,
FLORIDA; CITY OF CORAL
GABLES, FLORIDA; CITY OF
PEMBROKE PINES, FLORIDA;
BROWARD COUNTY, FLORIDA;
LEVY COUNTY, FLORIDA; AND ST.
LUCIE COUNTY, FLORIDA,

Plaintiffs,

vs.

THE HONORABLE CHARLIE CRIST,
Governor of the State of Florida;
HONORABLE KURT S. BROWNING,
Secretary of State, State of Florida; THE
HONORABLE JEFF ATWATER,
President of the Senate, State of Florida;
THE HONORABLE LARRY CRETUL,
Speaker of the House, State of Florida,

Defendants.

CASE NO. 09-CA-2639

**LOCAL GOVERNMENTS'
MEMORANDUM OF LAW
REGARDING RIPENESS OF
DECLARATORY JUDGMENT
ACTION**

**LOCAL GOVERNMENTS' MEMORANDUM OF LAW REGARDING
RIPENESS OF DECLARATORY JUDGMENT ACTION**

Plaintiffs, City of Weston, Florida; Village of Key Biscayne, Florida; Town of Cutler Bay, Florida; Lee County, Florida; City of Deerfield Beach, Florida; City of Miami Gardens, Florida; City of Fruitland Park, Florida, and City of Parkland, Florida, City of Homestead, Florida; Cooper City, Florida; City of Pompano Beach, Florida; City of North Miami, Florida; Village of Palmetto Bay, Florida; City of Coral Gables, Florida; City of Pembroke Pines, Florida; Broward County, Florida; Levy County, Florida; and St. Lucie County, Florida (collectively, the "Local Governments"), hereby files this memorandum of law regarding certain ripeness inquiries made by the Court during the September 21, 2009 hearing on defendants' motion to dismiss.

I. Background.

1. On September 21, 2009, the Court heard argument on defendants' motion to dismiss themselves as improper defendants in this action. At the conclusion of the hearing, the Court expressed its concerns regarding the possible lack of ripeness of the declaratory judgment action. While the issue of ripeness had not been raised by the defendants as a basis for dismissal, the Court candidly expressed its concerns going forward.

II. The Present Effects of Senate Bill 360.

2. The Local Governments expressed their view, in brief, that the legislation in question (Senate Bill 360) was already in effect and that they were having to comply with different provisions of the statute. By way of example, the

Local Governments indicated that they were having to process applications for *automatic* two-year extensions of permits (including those already expired) because permit holders and former permit holders were contending they were entitled to such relief under SB 360.

3. If the Local Governments deny the permit extension requests, based on their belief that SB 360 is unconstitutional (for the reasons articulated in their complaint in this action), they would unquestionably expose themselves to expensive litigation brought by those very same permit holders and former permit holders. If they were to grant the requests, then the Local Governments would risk creating rights in the permit holders that would subsequently be enforceable against the Local Governments, notwithstanding a subsequent determination of the unconstitutionality of SB 360. This is the spot between the proverbial rock and the hard place; local governance of growth management should not proceed either in the dark or in a vacuum. The Local Governments have filed this declaratory judgment action, at least in part, so as not to proceed “at their peril” and to avoid the expense and other burdens associated with such inevitable litigation.¹

4. In addition to the permit extension requests, SB 360 arguably imposes a series of other obligations on the Local Governments, compliance with which

¹ Since the Local Governments’ constitutional challenges to SB 360 are premised upon violations of the single-subject rule and the unfunded mandates provision of the Florida Constitution, rather than on a dispute as to a possible future interpretation of the legislation, the challenges would not be resolved by allowing SB 360 to be construed through implementation.

must commence now. For example, SB 360 allows pending developments that qualify as Developments of Regional Impacts (DRI) to no longer be subject to DRI review within Dense Urban Land Areas (“DULA”). The removal of the DRI process for these developments eliminates a valuable forum in which local governments can require development conditions necessary to mitigate the impacts of development. Plaintiff, City of Weston, for example, has over the last 6 years attended numerous public meetings and hearings to express its opposition to a pending DRI in an adjacent community. SB 360 has allowed this pending DRI to now be exempt from the DRI process. Section 12, Chapter 2009-096, Laws of Florida.

5. By way of other examples, DULA’s are immediately mandated by Senate Bill 360 to amend their comprehensive plans in order to provide strategies to support and fund mobility, which requires these Local Governments to incur thousands of dollars in expenses. Section 4, Chapter 2009-096, Laws of Florida. Also, all local Governments are prohibited from adopting or maintaining security camera regulations for businesses. Plaintiff Town of Cutler Bay, for example, is prohibited from enforcing its existing security camera legislation. Section 6, Chapter 2009-096, Laws of Florida. All Local Governments are required by law to be parties to Public School Facilities Interlocal Agreements. SB 360 amends provisions relating to portables, which may require several Local Governments to amend these agreements. Section 4, Chapter 2009-096, Laws of Florida.

III. Applicable Law Regarding Ripeness in Declaratory Judgment Actions.

6. The Declaratory Judgment Act, sections 86.011, *et seq.*, Florida Statutes, specifically contemplates that affected parties may obtain declaratory relief to resolve uncertainty as to their rights under enacted laws. Section 86.021, Florida Statutes, states, in pertinent part, as follows:

Any person claiming to be interested...or whose rights, status, or other equitable or legal relations are affected by a statute...may have determined *any question of construction or validity arising under such statute*, regulation, municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing, or any part thereof, and *obtain a declaration of rights, status, or other equitable or legal relations thereunder.*

§ 86.021, Fla. Stat. (emphasis added). In this case, the Local Governments are clearly seeking to have resolved a “question of...validity arising under” SB 360 and are entitled to a “declaration of rights [and] status...thereunder.”

7. The fundamental premise of declaratory relief is “that there must be a bona fide need for such a declaration based on the present, ascertainable facts or [the] court lacks jurisdiction to render declaratory relief.” *Martinez v. Scanlon*, 582 So. 2d 1167, 1170 (Fla. 1991) (finding court had jurisdiction to grant declaratory relief against Governor in single-subject challenge to statute). Such relief is particularly appropriate “when the cause involve[s] the public interest in the settlement of controversies in the operation of essential governmental functions...” *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 263 (Fla. 1991) (citing *Overman v. State Bd. of Control*, 62 So. 2d 696 (Fla. 1952)).

8. Florida courts have repeatedly held that declaratory judgment actions may be instituted precisely for the reasons articulated by the Local Governments. Thus, the Florida Supreme Court in *Olive v. Maas*, 811 So. 2d 644 (Fla. 2002) held:

[W]e have noted in the past that the purpose of a declaratory judgment is to afford parties *relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations*. [citation omitted]. Given the repeated adherence by Florida courts to the notion that the declaratory judgment statute should be liberally construed, we conclude that [the party] had standing to seek, and *the trial court jurisdiction to enter, declaratory relief....*

Id. at 648 (emphasis added, internal quotation marks omitted).

9. In reaching its conclusion in *Olive*, the Supreme Court quoted approvingly from the Second District’s decision in *X Corp. v. Y Person*, 622 So. 2d 1098 (Fla. 2d DCA 1993):

The goals of the Declaratory Judgment Act are to relieve litigants of the common law rule that a declaration of rights cannot be adjudicated unless a right has been violated and to render practical help in ending controversies which have not reached the stage where other legal relief is immediately available. *To operate within this sphere of anticipatory and preventive justice, the Declaratory Judgment Act should be liberally construed.*

Id. at 1100 (emphasis added and citation omitted).

10. Other appellate courts have naturally followed the Supreme Court’s lead on this issue. *See, e.g., National Rifle Ass’n of America, Inc. v. City of South Miami*, 812 So. 2d 504, 505 (Fla. 3d 2002) (reversing trial court’s determination that controversy was not “ripe” for review in case challenging validity of

municipal gun regulation ordinance even though actual enforcement had not taken place). “[A] party is entitled to a declaration of rights where the ripening seeds of controversy make litigation in the immediate future inevitable.” *Orange County v. Expedia, Inc.*, 985 So. 2d 622, 625 (Fla. 5th DCA 2008); *South Riverwalk Investments, LLC v. City of Fort Lauderdale*, 934 So. 2d 620, 623 (Fla. 4th DCA 2006) (reversing trial court’s determination that controversy was not ripe for declaratory adjudication). *Compare State of Fla. V. Florida Consumer Action Network*, 830 So. 2d 148, 151-52 (Fla. 1st DCA 2002), *rev. denied*, 852 So. 2d 861 (Fla. 2003) (recognizing “ripening seeds of controversy” doctrine, but finding citizens groups’ claims of “general, speculative fear of harm that may possibly occur at some time in the indefinite future” insufficient to support claim).

11. The Local Governments have articulated a well-founded concern that they are being called upon to implement and enforce an unconstitutional statute, with the inevitable results being that possible development rights are unnecessarily created or the Local Governments must subject themselves to repeated litigation to defend their denials on grounds of statutory unconstitutionality, the very issue to be resolved here.

IV. Conclusion.

For the reasons articulated above and those set forth in their response to defendants’ motion to dismiss, the Local Governments respectfully request that the Court enter an order denying the motion to dismiss and affording such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent via U.S. Mail to **Jonathan A. Glogau, Esq.**, 400 South Monroe Street, Room PL-01, Tallahassee, Florida 32399-6536, this 27th day of September, 2009.

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