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

CASE NO. 09-CA-2639

CITY OF WESTON, FLORIDA, et al.,

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.

NOTICE OF APPEAL

NOTICE IS GIVEN that the Honorable Jeff Atwater, President of the Senate, State of Florida, and the Honorable Larry Cretul, Speaker of the House, State of Florida, Defendants, appeal to the First District Court of Appeal the order of this court dated September 8, 2010. A conformed copy of the order is attached. The nature of the order is a corrected final summary judgment. Defendants' Motion for Rehearing was denied by order rendered September 21, 2010.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served by U.S. mail and e-mail this 24th day of September, 2010, on:

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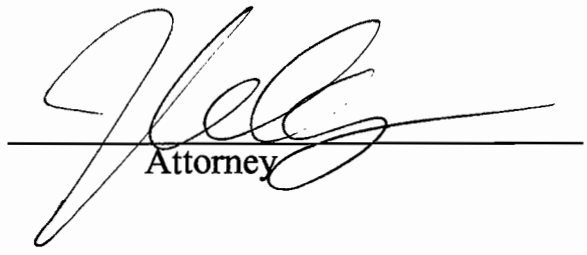

Attorney

20100060646 ELECTRONICALLY RECORDED IN THE PUBLIC RECORDS OF LEON COUNTY, FL
BK: 4160 PG: 385 09/08/2010 at 10:40 AM BOB INZER, CLERK OF COURTS

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Defendants.
_____/

CASE NO. 2009 CA 2639

CORRECTED FINAL SUMMARY JUDGMENT

THIS CAUSE was heard on Plaintiffs' Motion for Summary Judgment and Defendants' Motion For Partial Summary Judgment. The Court has considered the pleadings and arguments of counsel, the summary judgment evidence in support and in opposition, and the memoranda of counsel, the Court finds and rules as follows:

PROCEDURAL BACKGROUND

The 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; City of Parkland, Florida, all local government entities, filed a Complaint for Declaratory and Injunctive Relief ("Complaint") on July 9, 2009. On various dates between August 12, 2009, and November 18, 2009, the remaining Plaintiffs, City of Homestead, Florida; Cooper City, Florida; City of Pompano Beach, Florida; City of North Miami, Florida;

IN COMPUTER R.B.

Village of Palmetto Bay, Florida; City of Coral Gables, Florida; City of Pembroke Pines, Florida; Broward County, Florida; Levy County, Florida; St. Lucie County, Florida; and Islamorada, Village of Islands, Florida, filed unopposed motions to intervene which were granted.

Plaintiffs are seeking a declaration against the Defendants, The Honorable Charlie Crist, Governor of the State of Florida; The Honorable Kurt S. Browning, Secretary of State, State of Florida; The Honorable Jeff Atwater, President of the Senate, State of Florida; and The Honorable Larry Cretul, Speaker of the House, State of Florida, in their official capacities only, declaring that Senate Bill 360, entitled "An Act Relating to Growth Management" and cited as "The Community Renewal Act" ("SB 360") (now codified at Ch. 2009-096, Laws of Fla.):

> (a) violates Article III, Section 6 of the Florida Constitution, also known as the single subject provision, because it is alleged to address multiple subjects unrelated to its stated single subject of "growth management"; and
>
> (b) violates Article VII, Section 18 (a) of the Florida Constitution, also known as the unfunded mandate provision, because it is alleged to require all counties and municipalities, including Plaintiffs, "to spend funds or take an action requiring the expenditure of funds" without providing funding for those expenditures and or falling within the limited exceptions to the provision.

The Plaintiffs further request that the Court direct Defendant Secretary of State to strike SB 360 from the recorded laws of Florida.

Defendants thereafter filed a motion to dismiss on the grounds that they were not proper parties to the lawsuit, and that they were immune from suit in connection with the enactment of SB 360. The Court, after hearing, entered an order on November 23, 2009, denying Defendants' motion to dismiss. The Defendants Governor, Speaker of the House and President of the Senate then filed a collective answer ("Answer") basically denying that Plaintiffs were entitled to the requested relief and raising the affirmative defenses of failure to state a cause of action and immunity. Defendant

Secretary of State filed an answer (the "Secretary's Answer"), in which he contends that he is not a proper party to the action, but then stating that he does not take a position on the merits of the Complaint, and averring that he will comply with the Court's order.

Subsequent to the filing of answers and the motions for summary judgments herein, the Defendants Governor, Speaker of the House and President of the Senate filed on May 18, 2010, a Suggestion of Mootness due to legislation enacted during the 2010 Regular Session of the Florida Legislature.

JURISDICTION, VENUE AND PARTIES

The Court has jurisdiction to grant declaratory and injunctive relief (See §86.011, Fla. Stat.; *Martinez v. Scanlan*, 582 So.2d 1167, 1170 (Fla. 1991). Venue is proper in Leon County, Florida. Jurisdiction and venue are not challenged by Defendants. This proceeding is ripe for determination. *May v. Holley*, 59 So.2d 636, 639 (Fla. 1952).

COUNT I - SINGLE SUBJECT CHALLENGE

Plaintiffs and Defendants have moved for summary judgment as to the single subject challenge set forth in Count I of the Complaint.

Plaintiffs contend that SB 360 violates Article 11, Section 6 of the Florida Constitution because it addresses multiple subjects unrelated to its stated single subject of "growth management." In fact, Plaintiffs allege that it addresses "three separate and distinct subjects: (a) growth management; (b) security cameras; and (c) tax exemptions and valuation methodologies relating to affordable housing." Plaintiffs' Motion for Summary Judgment 3.

SB 360 was passed by the Senate and the House on May 1, 2009. It was approved by the Governor on June 1, 2009, and filed in the Office of the Secretary of State on the same date and codified as Chapter 2009-96, Laws of Fla.

Defendants contend that it is not necessary to proceed to a detailed single subject analysis on the grounds that the issue is moot. During the 2010 regular session of the Florida Legislature, §11.2421, Fla. Stat., was amended to adopt the previously enacted laws and statutes "as the official statute law of the state under the title "Florida Statutes 2010." SB 1780 was approved by the Governor on March 30, 2010, and filed in the Office of the Secretary of State on the same date, and codified as Chapter 2010-3, Laws of Fla. Section 5 of Chapter 2010-3 provided that the "act shall take effect on the 60th day after adjournment sine die of the session of the Legislature in which enacted." The regular legislative session ended on April 30, 2009, and Chapter 2010-3 became effective on June 29, 2010.

Plaintiffs counter that Chapter 2010-3 was not effective as of the date of the hearing in this matter on June 3, 2010, and therefore the Court should address the single subject challenge. Additionally, Plaintiffs state that to the extent provisions of SB 360 (Ch. 2009-96) were re-enacted by SB 1760 (Ch. 2010-3), this Court should still proceed to determine the constitutionality of the provisions which may have retroactive application.

If it were not for the suggestion of mootness, this Court would engage in the detailed analysis under the test clarified in *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2004). However, this Court is of the opinion that the Defendants' argument has merit and any single subject challenge to SB 360 (Ch. 2009-96) is now moot. See: *State v. Johnson*, 616 So.2d 1 (Fla. 1993); *Martinez v. Scanlan*,

582 So.2d 1167 (Fla. 1991); *Diaz v. State*, 752 So.2d 105 (Fla. 3rd DCA 2000); *Ellis v. Hunter*, 3 So. 3d 373 (Fla. 5th DCA 2009.) The facts underlying this determination of mootness are not in dispute, and Defendants are entitled to judgment as a matter of law as to Count I of the Complaint. See *Volusia County v. Aberdeen At Ormond Beach, L.P.*, 760 So.2d 126 (Fla. 2000); *Lomack v. Mowery*, 14 So.3d 1090 (Fla. 1st DCA 2009).

COUNT II - UNFUNDED MANDATE CHALLENGE

Plaintiffs allege in Count II of the Complaint that SB 360 violates Article VII, Section 18 (a) of the Florida Constitution, also known as the unfunded mandate provision. Plaintiffs have moved for summary judgment on this count, alleging the "matters to be determined in this action are purely legal issues, dependent upon undisputed facts and the language of the Florida Constitution and SB 360." Plaintiffs' Motion for Summary Judgment 4. It should be noted that Defendants have not moved for summary judgment as to Count II, and argue that there are genuine issues of material fact that prevent the entry of summary judgment.

Plaintiffs allege that SB 360 requires Plaintiffs and other local governments to "spend funds or to take an action requiring the expenditure of funds" certain growth management actions that might be summarized as follows:

a. Mandated adoption of comprehensive plan amendments and transportation strategies "to support and fund mobility."

b. Litigation expenses and increased cost of road improvements as a result of the elimination of state mandated transportation concurrency.

c. Litigation expenses and administrative costs associated with the two-year permit extension provisions of the law.

d. Expenses in connection with mandated formal mediation to resolve inter-governmental coordination disputes.

e. The elimination of the Developments of Regional Impact (DRI) process will result in the cost of mitigating such impacts onto local governments.

f. The requirement of giving 90-day notice of increase in impact fees will result in increased cost to local governments for annual publication and notice of notices, drafting of resolutions and hearings.

g. The prohibition against local government adopting security camera regulations to enhance local police services that require local businesses to expend money, which result in the transfer of costs from business owners to local taxpayers will also cause the local governments to expend funds.

Defendants' in their Answer deny the general allegation that SB 360 violates Article VII, Section 18 (a), Fla. Const. Other than the general denial, the Affirmative Defenses set forth in the Answer are failure to state a cause of action and immunity. Defendants, in their Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, defend on two basic points. The first is that many of the costs alleged by Plaintiffs are not "mandates." Secondly, Defendants argue disputed issues of material fact exist as to whether any actually mandated activities emanate from a "law [] having insignificant fiscal impact" citing Article VII, Section 18 (d), Fla. Const.

Article VII, Section 18 (a) and (d) provide as follows:

> a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the

> legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.
>
> (d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

Defendants, in their response to Plaintiff's Motion for Summary Judgment do not deny that SB 360 requires counties and municipalities to "spend funds or to take an action requiring the expenditure of funds," but simply argue that "many of the costs alleged by the Plaintiffs are not "mandates" at all." Def. Memorandum in Opposition at 12. Specifically, Defendants argue that concerns about litigation, possible increased costs of roads, and mitigation costs related to DRI developments are not mandates. *Id.* at 11. Although Plaintiffs do not concede these items are not mandates, they do concede the costs of these items are not quantifiable at this time. Motion Hearing Transcript, June 4, 2010 ("T") at 44. The Court is certain that there are genuine issues of material fact that would preclude the granting of summary judgment as to items (b) through (g) described above, and those items will not be further addressed by the Court. However, the same cannot be said as to the category of items described in (a) concerning the comprehensive plan amendments and transportation strategies mandated by the amendments to Section 163.3180, Florida Statutes contained in SB 360, §4.

The Court finds that there is no dispute of fact that counties and municipalities designated as Transportation Concurrency Exception Areas ("TCEAs") by virtue of their being defined as Dense Urban Land Areas ("DULAs") are required to comply with the mandates to adopt comprehensive plan and transportation strategies and to file the comprehensive plan amendments within two years of being designated a TCEA. There are 246 counties and municipalities which have been so designated. Plaintiffs' Appendix (App.) 13. The affidavits of Shelley Eichner (App.16), Patricia A. Bates (App.17) and Ericka Gonzalez-Santamaria (App. 18) establish the unrefuted fact that the minimum cost to a local government to comply with the mandated comprehensive plan amendment is a low of $41,264 and the high end of the range of costs is $104,170, thereby requiring the minimum mandated expenditures required to comply statewide by the 246 local governments designated as TCEAs would be from $10,150,944 to $25,625,820.

Defendants concede that "there are some provisions this year that are going to cost them (local governments) some money" (T 67), but they are and will be "insignificant," and therefore not unconstitutional. Defendants' only defense as to the unfunded mandate involved with the required comprehensive plan amendments and transportation studies is as follows:

> Using these definitions, concerns about litigation, possible increased costs of roads, and mitigation costs related to DRI developments are not "Mandates" covered by the amendment. As to the other alleged costs to local governments, Plaintiffs fail to show that they are not "insignificant" as that term is defined by the Legislature in the analysis under Art. VII, §18.
>
> After passage of Art. VII, §18, the Legislature provided guidance to its staff on how to analyze proposed legislation that might be a mandate under the new constitutional provision. "Insignificant" means:
>
> > An amount not greater than the average statewide population for the applicable fiscal year times ten cents.

> Florida Senate Interim Project Report 2000-24 [Appendix A at 5]; see also, 2008 Intergovernmental Impact Report [Appendix B at 4]. Plaintiffs' motion for summary judgment on the mandate issue must be denied because they have failed to establish that the alleged mandates will cost more than an insignificant amount **as defined by the legislature.** The Legislature's definition is reasonable and must be accepted[2] because it is impossible for it to analyze proposed laws for each local government jurisdiction. **Such analysis can only be accomplished on a statewide basis.**
>
> [2] This court must give deference to the Legislature's interpretation of this provision which it has the responsibility to implement. *School District of Martin County v. Public Employees Relations Com'n*, 15 So.3rd 42, 44-45 (Fla. 4th DCA 2009) (recognizing the usual recognition of deference to an agency's interpretation of a statute it is charged to administer).

Defendants Memorandum in Opposition 11. (emphases supplied)

Plaintiffs, for the purpose of their summary judgment motion did not disagree with the measure of "insignificant" being put forth on behalf of the Defendants. They argued that under any interpretation of the summary judgment evidence, Plaintiffs carried their burden to show that there is no genuine issue of any material fact. Fla. R. Civ. P 1.510. The Court agrees and finds, and the summary judgment evidence demonstrates, that the costs to fund the mandates required in connection with the filing of the comprehensive plan amendments would be in excess of "an amount not greater than the average statewide population for the applicable fiscal year times ten cents," or an amount greater than $1,860,000 assuming Florida's population to be at a little less than 18.6 million people as argued and conceded by the parties. Accepting all that is said within the Taylor Affidavit as true, the Court finds that at the very least, the local governments would be required to expend not less than $3,690,000 for the 246 local governments to simply process the mandated comprehensive plan amendments at $15,000 per local government. Eichner Aff. 3. The Court finds this amount is not "fiscally insignificant."

Defendants filed the affidavit of Darrin Taylor in support of their opposition to the Motion for Summary Judgment contending that the matters set forth in the affidavit show the existence of

genuine issues of material fact. The Court agrees that there are genuine issues of material fact raised, but not as to the mandated costs to local governments in connection with the comprehensive plan amendments. Nowhere in the Taylor Affidavit is there any factual denial of the real and estimated costs set forth in the affidavits filed by Plaintiffs. In fact, Mr. Taylor confirms what the local governments have pled to the effect that "These provisions require all local governments amend their comprehensive plans to address mobility planning including the funding of strategies identified." (Taylor Aff. 2). The Taylor affidavit is replete with legal argument and opinion as to existing and new obligations imposed on local government, but there is simply a total lack of any factual basis set forth to refute the costs of the obligations associated with the comprehensive plan amendments, which alone exceeds the formula for "insignificant" funding mandates prohibited by Article VII, §18 (a) of the Florida Constitution. It should be noted that although Plaintiffs objected to the sufficiency of the Taylor Affidavit as not being upon personal knowledge, the Court gave the substance of the affidavit full review and considered the statements made therein.

Defendants, to support their argument that the expenditures required by SB 360 are "insignificant" within the meaning of Article VII, 18 (d), Fla. Const., contend that the local governments may realize a cost savings from some of the provisions of SB 360, but the same cannot be quantified at this time, and therefore there is a genuine issue of material fact preventing the granting of Plaintiffs' motion. It appears that Defendants are claiming an exemption to the unfunded mandate provision resulting from non-quantifiable potential savings measured against quantified current and existing costs mandated by SB 360 in connection with comprehensive plan amendments that must be filed in early July 2011. SB 360, §4. This exemption is not set forth in the plain language of Article VII, §18 (d), nor do Defendants cite any authority for this Court to read an

additional exemption into a clearly worded constitutional exemption in this manner. *Fla. League of Cities v. Smith*, 607 So.2d 397, 400 (Fla. 1992).

The Court finds that the Legislature did meet the requirement of Art. VII, §18 (a), Fla. Const. by its finding that SB 360 "fulfills an important state interest." SB 360, §34. However, the Court also finds that the enactment of SB 360 does not meet any of the other requirements set forth in Art. VII, §18 (a), Fla. Const., nor any exemption set forth in Art. VII, §18 (d), Fla. Const. The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/CS/SB 360 dated March 19, 2009, contained in its summary the statement that "The bill will have a negative fiscal impact on local governments that are designated TCEAs by requiring updated comprehensive plans." App. 14.

In accordance with the findings and conclusions set forth herein, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiffs' "single subject" challenge to SB 360 (Ch. 2009-96) pursuant to Art. III, §6, Fla. Const. contained in Count I of the Complaint is moot by virtue of the enactment of SB 1780 (Ch. 2010-3), and Count I of the Complaint is dismissed as moot.

2. Plaintiffs have carried their burden of proof to demonstrate that there is no genuine issue of material fact as to the unfunded mandate challenge pursuant to Art. VII, §18 (a), Fla. Const. as set forth in Count II of the Complaint for Declaratory Relief, and Plaintiffs are entitled to the entry of a Final Summary Judgment as a matter of law. Fla. R. Civ. P. 1.510. Plaintiffs Motion for Summary Judgment as to Count II is hereby granted.

3. SB 360 (Ch. 2009- 96) is declared unconstitutional as a violation of Article VII, §18(a), Florida Constitution, and The Secretary of State is ordered to expunge said law from the official records of this State.

DONE and ORDERED in Tallahassee, Leon County, Florida, this 8th day of September, 2010, nunc pro tunc August 27, 2010.

Charles A. Francis

CHARLES A. FRANCIS
Chief Judge

Copies furnished to:

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Signed SEP 8 2010
Original to Clerk SEP 8 2010
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_____/

FILED
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ORDER DENYING MOTION FOR REHEARING

THIS CAUSE having been considered upon Defendants', Atwater and Cretul only, Motion for Rehearing, and this Court having considered the motion, Plaintiffs' response and being otherwise fully advised in the premises, it is therefore

ORDERED and **ADJUDGED** that Defendants' motion is **DENIED.**

DONE and ORDERED in Tallahassee, Leon County, Florida, this 21st day of September, 2010.

Charles A. Francis

CHARLES A. FRANCIS
Chief Judge

Signed SEP 21 2010
Original to Clerk SEP 21 2010
Copies sent SEP 21 2010

IN COMPUTER

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