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

CITY OF GAINESVILLE, FLORIDA, a body corporate and politic and a Municipality of the State of Florida

Plaintiff,

v.

Case No.: 2023 CA 1928

THE STATE OF FLORIDA, by and through its Attorney General, ASHLEY MOODY, Governor RON DESANTIS, and the Secretary of State CORD BYRD, in their official capacities,

Defendants.

_____/

OMNIBUS ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER came before the Court on Defendant, Attorney General Ashley Moody's Motion for Summary Judgment, Governor Ron DeSantis' Motion for Summary Judgment, and Secretary of State Cord Byrd's Motion for Summary Judgment with oral argument held on September 22, 2023. The Court having considered the record, the parties' briefings, and arguments of counsel, and relevant caselaw, finds:

BACKGROUND

On June 28, 2023, House Bill 1645 (Challenged Law) was signed into law. The Challenged Law created the Gainesville Regional Utilities Authority (Authority), for the express purpose of "managing, operating, [and] controlling" the

utilities owned by the City of Gainesville. Chapter 2023-348, Art. VII, § 7.01, Laws of Florida. The Authority consists of five members to be appointed by the Governor for terms beginning on October 1, 2023. Id. at Art. VII, §§ 7.04, 7.05. On July 21, 2023, Plaintiff, the City of Gainesville, Florida filed a lawsuit against Governor Ron DeSantis, Secretary of State Cord Byrd, and Attorney General Ashley Moody (Defendants), challenging the constitutionality of the Challenged Law. Plaintiff moved for summary judgment on August 18, 2023. Each defendant separately moved for summary judgment on September 15, 2023. All Defendants moved for summary judgment on the basis that: 1) they are not proper parties to this action; (2) Plaintiff lacks standing; and (3) Plaintiff's statutory claims are barred by sovereign immunity. The Attorney General and Governor DeSantis additionally moved for summary judgment on the basis that Plaintiff failed to state a legally sufficient claim. Defendants are entitled to judgment as a matter of law on each point.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment must be rendered "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.150(a). The Florida Supreme Court has now adopted the federal standard, under which "'[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part' of rules aimed at 'the just, speedy and inexpensive determination of every action.'" In re Amends. to Fla. R. Civ. P. 1.510, 317 So. 3d 72, 75 (Fla. 2021) (quoting Celotex

Corp. v. Catrett, 477 U.S. 317, 327 (1986)).

"[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986) (emphasis in original). A fact is material if it "might affect the outcome of the suit under the governing law." Id. at 248. When "opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 380 (2007).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Each Defendant is an Improper Party

"The determination of whether a state official is a proper defendant in a declaratory action challenging the constitutionality of a statute is governed by three factors." Scott v. Francati, 214 So. 3d 742, 745 (Fla. 1st DCA 2017). The first is whether the named state official or entity is charged with enforcing the statute. If the named official is not the enforcing authority, the court then considers two additional factors: (1) whether the action involves a broad constitutional duty of the state implicating specific responsibilities of the state official; and (2) whether the state official or entity has an actual, cognizable interest in the challenged action. Id. These same factors apply equally to injunctive actions challenging a law's

constitutionality. See Marcus v. State Senate, 115 So. 3d 448 (Fla. 1st DCA 2013).

Plaintiff does not allege, much less demonstrate, that the Defendants meet any of the Francati elements. This failure alone requires summary judgment for Defendants. See Francati, 214 So. 3d at 747 ("Where it is clear, as here, that the plaintiff cannot allege any proper basis for naming the Governor as a party defendant, the court should decline to assert jurisdiction.").

Further, Plaintiff alleges the Challenged Law violates the Florida Constitution and Florida Statutes. "The proper defendant in a lawsuit challenging a statute's constitutionality is the state official designated to enforce the statute." Atwater v. City of Weston, 64 So. 3d 701, 703 (Fla. 1st DCA 2011). Neither the Attorney General, the Governor, nor the Secretary enforce the Challenged Law. Rather, the Authority does. The Challenged Law provides that the Authority shall "manage, operate, and control the utilities, and to do all things necessary to effectuate an orderly transition of the management, operation, and control of the utilities from the City to the Authority, consistent with this article." Ch. 2023-348, Art. VII, §7.03(1)(a). Thus, none are proper parties to this action.[1]

[1] During the September 22, 2023, hearing on the Parties' Motions for Summary Judgment, Plaintiff alleged that the Authority cannot be the enforcing authority – and by implication, that one of the Defendants must be – because that would mean this constitutional challenge would be brought ***by*** the City, ***against*** the City. Plaintiff's concern is unfounded because, as demonstrated in section II(c) below, the City does not have standing to bring this action under the Public Official Standing Doctrine.

a. Attorney General

The Attorney General does not have any specific enforcement authority under the Challenged Law and Plaintiff has not alleged nor shown that the Challenged Law implicates any specific responsibilities of the Attorney General or that the Attorney General has an actual, cognizable interest in the Challenged Law.

The Attorney General is not a proper party pursuant to Fla. Stat. §16.01(4), (5) or Fla. Stat. § 86.091. As the chief state legal officer, the Attorney General may appear in and attend to all suits or actions in which the State may be "in anywise interested." Fla. Stat. § 16.01(4). However, this authority is discretionary. See Mallory v. Harkness, 923 F. Supp 1546, 1553 (S.D. Fla. 1996) (the Attorney General "is not affirmatively required to intervene every time an entity challenges the constitutionality of statute."). The Declaratory Judgment Act further provides that plaintiffs challenging the constitutionality of a statute or charter "serve a copy of the complaint" on the Attorney General. Fla. Stat. § 86.091. The statute does not require the Attorney General to be named as a party to the lawsuit.

The Attorney General's discretionary authority to intervene is a general executive power and does not constitute a sufficient connection to make her a proper defendant. See Women's Emergency Network v. Bush, 323 F.3d 937, 949-50 (11th Cir. 2003) (Governor's general executive power was insufficient to confer jurisdiction in suit challenging the constitutionality of a statute); see also Francati, 214 So. 2d at 747 ("It is absurd to conclude that the Governor's general executive

power under the Florida Constitution is sufficient to make him a proper defendant whenever a party seeks a declaration regarding the constitutionality of state law.").

b. Governor DeSantis

The Complaint does not allege that the Governor enforces the Act. Rather, Plaintiff alleges that the Governor is a proper party because he appoints the five members of the Authority, "and thereafter manag[es] and re-appoint[s] them." Compl. ¶ 4. In addition, Plaintiff claims that the Governor's appointment power makes him the "manager or supervisor of this 'municipal unit.'" Id. Neither is true.

The Governor's appointment authority does not make him a proper defendant. See County of Volusia v. DeSantis, 302 So. 3d 1001, 1007 (Fla. 1st DCA 2020) (reversing circuit court's determination that the Governor's authority to sign the commissions for each county's constitutional officers made him a proper defendant to constitutional challenge to a constitutional amendment because "the Governor's duty to sign commissions falls far short of any duty to enforce the constitutional amendment governing the County's powers and obligations"); Cf Thompson v. DeSantis, 301 So. 3d 180, 190 (Fla. 2020) (Polston, J., concurring) (noting that "a commission… [is] the official act of appointment"); accord Osterback v. Scott, 782 Fed. App'x. 856, 859-60 (11th Cir. 2019) (holding Governor's power to appoint the director of Florida's administrative hearing tribunal did not mean that he enforces a statute restricting prisoners' ability to challenge agency action in that tribunal); Equal. Florida v. Fla. State Bd. of Educ., No. 4:22-cv-134, 2022 WL 19263602, at

*8 & n.8 (N.D. Fla. Sept. 29, 2022) (plaintiffs cannot sue state official in federal court based solely on official's appointment power).

In addition, Plaintiff does not cite a single authority for its claim that the Governor "manages" or supervises the Authority. Rather, the Act says just the opposite. Section 7.09(1) provides that "[a] chief executive officer/general manager (CEO/GM) *shall direct and administer all utility functions*, subject to the rules and resolutions of the Authority," and that "[t]he CEO/GM *shall serve at the pleasure of the Authority.*" *Id.* § 7.09(1) (emphasis added).

Accordingly, the Governor is plainly not the "enforcing authority." Marcus, 115 So. 3d at 448 (holding that state legislators were not proper parties to an action challenging a statute preempting county and municipal regulation of firearms and ammunition because the legislators were not designated as the enforcement authority); Haridopolos v. Alachua County, 65 So. 3d 577, 578 (Fla. 1st DCA 2011) (concluding Senate President and Speaker of the House were not proper defendants to suit challenging constitutionality of statute because they were not charged with enforcing the statute); Atwater, 64 So. 3d at 704 (determining Governor is not proper party to lawsuit challenging a statute's constitutionality).

The Challenged Law also does not implicate the Governor's constitutional duties. The Governor does not regulate or oversee municipal utilities. Plaintiffs repeatedly acknowledge this point. E.g., Compl. ¶ 63 ("The Florida Constitution, while granting broad authority to the State over Municipalities, does not provide any

authority for the State to have the Governor run a City Department."); see 1000 Friends of Fla., Inc. v. Eagle, 330 So. 3d 986, 988-89 (Fla. 1st DCA 2021) (holding Director of Department of Economic Opportunity was not a proper defendant in action challenging constitutionality of prevailing party fee statute because "DEO would play no role in awarding prevailing party attorneys' fees in a development order challenge litigated in the courts").

Nor does his general executive power make him a proper defendant to this – or any – statutory challenge. See Francati, 214 So. 2d at 747. Otherwise, "any state statute could be challenged simply by naming the governor as a defendant." Women's Emergency Network, 323 F.3d at 949.

Finally, the Governor does not have "an actual, cognizable interest in the challenged action." Francati, 214 So. 3d at 746. State officials have "an actual, cognizable interest" in an action when they have an adverse interest in the outcome, or when there "exist[s] some justiciable controversy *between adverse parties* that needs to be resolved for a court to exercise its jurisdiction." 1000 Friends of Fla., 330 So. 3d at 988 (quoting Atwater, 64 So. 3d at 704-05 (emphasis in original)).

Plaintiff does not allege or demonstrate either. Indeed, the Governor does not have an adverse interest in the outcome of this case because, as demonstrated above, he does not enforce the Act. Nor does Plaintiff allege a case or controversy because a "public official's "[d]isagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or

provide an occasion to give an advisory judicial opinion." Dep't of Revenue v. Markham, 396 So. 2d 1120, 1121 (Fla. 1981).

c. Secretary Byrd

Plaintiff has made the Secretary of State a party solely to expunge the challenged law from the state's records if this Court declares it invalid. Plaintiff does not address the Francati factors, except to concede that the Secretary is not an enforcement authority. Instead, Plaintiff relies on sections 20.01 and 15.01, Florida Statutes, and Martinez v. Fla. Legislature, 542 So. 2d 358 (Fla. 1989), to support the proposition that the Secretary is proper. The provisions and case do not support that proposition. To the contrary, the Secretary has been dismissed from actions challenging statutes and laws he does not enforce because the statutes Plaintiff relies upon and any authority to "expunge" is insufficient to create jurisdiction or make him a proper party to actions like this. Atwater v. City of Weston, 64 So. 3d 701 (Fla. 1st DCA 2011); Apthorp v. Detzner, 162 So. 3d 236 (Fla. 1st DCA 2015); Florida League of Cities, Inc. v. Lee, No.: 2019 CA 1948 (Fla. 2d Jud. Cir. March 11, 2020); 1000 Friends of Florida v. Lee, No.: 2019 CA 2215 (Fla. 2d Jud. Cir. June 18, 2020).

Moreover, there is no "broad constitutional duty of the state" at issue in this action. Scott v. Francati, 214 So. 3d 742, 746 (Fla. 1st DCA 2017). The broad constitutional duties of the state that are sufficient are those like adequately funding the public education system, Coal. for Adequacy & Fairness in Sch. Funding, Inc. v.

Chiles, 680 So. 2d 400 (Fla. 1996), or redistricting the state after each decennial census, Brown v. Butterworth, 831 So. 2d 683, 689–90 (Fla. 4th DCA 2002). Nor does the Secretary have any antagonistic interest in what happens with any city's administration of utilities. Further, the Secretary's "specific responsibility" to expunge is not implicated by this action. Francati, 214 So. 3d at 746.

To be sure, the Secretary's authority to expunge provisions of law seems limited to the context of General Appropriations Acts, like in the case cited by Plaintiff—Martinez—where he was ordered to expunge certain vetoes to provisions in the 1988-89 GAA. Brown v. Firestone, 382 So. 2d 654, 662 (Fla. 1980) (ordering Secretary to expunge certain provisos and vetoes in the 1979 GAA); Dickinson v. Stone, 251 So. 2d 268 (Fla. 1971) (ordering Secretary to expunge certain proviso in the 1971 GAA); Div. of Bond Finance v. Smathers, 337 So.2d 805 (Fla. 1976) (ordering Secretary to expunge certain proviso in the 1976-77 GAA); Martinez v. Fla. Legislature, 542 So.2d 358 (Fla. 1989) (ordering Secretary to expunge certain vetoes in the 1988-89 GAA); Fla. House of Rep. v. Martinez, 555 So.2d 839 (Fla. 1990) (ordering Secretary to expunge certain vetoes in the 1989-90 GAA); Murray v. Lewis, 576 So. 2d 264 (Fla. 1990) (ordering Secretary to expunge certain proviso in the 1990-91 GAA); Moreau, 648 So. 2d 124 (ordering Secretary to expunge certain provision in the 1994-95 GAA); Chiles v. Milligan, 659 So.2d 1055 (Fla. 1995) (ordering Secretary to expunge certain proviso in the 1995-96 GAA); Chiles v. Milligan, 682 So.2d 74 (Fla. 1996) (ordering Secretary to expunge certain

provisos in the 1996-97 GAA); and Florida Senate v. Harris, 750 So.2d 626 (Fla. 1999) (ordering Secretary to expunge certain veto of a proviso in the 1999-2000 GAA). Plaintiff concedes that all of these cases involve appropriations acts, but argues that limiting the Secretary's role to that context is nowhere within a holding or even dicta in those cases. But Plaintiff has not cited any case *outside* of the context of an appropriations act where a Secretary of State has been ordered to expunge something, let alone an entire special law. This Court is not willing to take an unsupported step and expand what the Supreme Court has found appropriate.

II. Plaintiff Lacks Standing as to Each Defendant

A plaintiff "must demonstrate standing for each claim he seeks to press" and "for each form of relief that is sought." Davis v. Fed. Elec. Comm'n, 554 U.S. 724, 734 (2008). To challenge the constitutionality of a statute in Florida's courts, a plaintiff must show that his constitutional rights have been infringed by the challenged statute. See Hillsborough Inv. Co. v. Wilcox, 13 So. 2d 448 (Fla. 1943); Alterra Healthcare Corp. v. Estate of Francis Shelley, 827 So. 2d 936, 941 (Fla. 2002) ("[A] litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.").

Courts consider three elements when determining a plaintiff's standing:

> First, a plaintiff must demonstrate an 'injury in fact,' which is 'concrete,' 'distinct and palpable,' and 'actual or imminent.' Whitmore v. Arkansas, 495 U.S. 149, 155 (1990). Second, a plaintiff must establish 'a causal connection between the injury and the conduct complained

> of.' Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). Third, a plaintiff must show 'a "substantial likelihood" that the requested relief will remedy the alleged injury in fact.' [Vermont Agency of Natural Res. v. Stevens, 529 U.S. 765, 771 (2000).]

DeSantis v. Fla. Educ. Ass'n, 306 So.3d 1202, 1213–14 (Fla. 1st DCA 2020) (quoting State v. J.P., 907 So. 2d 1101, 1113 n.4 (Fla. 2004)).

As a municipality, Plaintiff must also show its claims are not barred by the Public Official Standing Doctrine. See Fla. Dep't of Agric. & Consumer Servs. v. Miami-Dade Cnty., 790 So. 2d 555, 557-58 (Fla. 3d DCA 2001); Dep't of Transportation v. Miami-Dade Cnty. Expressway Auth., 316 So. 3d 388, 390 (Fla. 1st DCA 2021).

a. Injury

Although the Law took effect on July 1, 2023, the challenged transfer of power from Plaintiff to the Authority has not happened because the Authority's members have not yet been appointed. Once appointed, "[a]ll City ordinances, policies, rates, fees, assessments, charges, rules, regulations, and budgets related to operation of the utilities shall remain in effect until such time as the Authority… modifies any such item." Ch. 2023-348 at § 7.10(2). Any "existing contractual arrangements" are "not interfere[d] with." Id. The "sitting general manager of GRU shall serve" "[u]ntil such time as the Authority appoints a CEO/GM," id. at 7.09(1), and "all officers and employees of the City" who administer its utilities "shall continue without any loss of rights or benefits as employees…, id. at (3). As a matter

of law, nothing has changed, and nothing can or will change unless and until the Authority, once established, makes a change. See Ch. 2023-348, at Art. VII, §§ 7.01, 7.05; 7.09(1), (3); 7.10(2). There can be no injury sufficient to confer standing against anyone at this point.

Moreover, the only case Plaintiff cites as "mak[ing] clear that the Secretary of State, Attorney General, and Governor are proper State of Florida defendants" makes clear that they are not proper and exemplifies what a justiciable controversy will look like and between whom. See Plaintiff's MSJ at 17 (citing Kirkland v. Phillips, 106 So. 2d 909 (Fla. 1958)). Kirkland concerned the constitutionality of special laws transferring local power over a port authority governed by the Board of County Commissioners to a gubernatorially appointed board. Id. at 911-12. Same here, but as to a utility governed by the Board of City Commissioners. However neither the Secretary, Attorney General, nor the Governor were parties in Kirkland. The controversy was between the old board and the new board. Id. at 911 (the Board of County Commissioners sought a declaration "delineating their powers and duties as well as the powers and duties of the members of the new Port Authority"). Further, there was no controversy until some adverse action had been taken and the new board was appointed. Id. at 911-12 (explaining that just days before the law transferring power to the appointed board went into effect, the original Board "transferred $25,000 from the Port Authority fund" to itself). The same should hold true here.

b. Traceability and Redressability

Plaintiff states that the controversy (once it arises) will be about "the legal relationship between the Plaintiff and the members" appointed to the Authority. Compl. ¶ 7. Indeed, Plaintiff does not allege that the Defendants have violated due process (Count I), impaired Plaintiff's contracts (Count II), failed to give proper notice (Count IV), or improperly transferred or infringed upon Plaintiff's municipal powers (Counts III, V-IX). Plaintiff insists that the legislature "go back to the drawing board" because it does not like the Challenged Law. However, Defendants have nothing to do with the structure of municipal government or utilities generally. Plaintiff does not allege otherwise. Nor can the Governor, Attorney General, or Secretary redress these alleged failures, and the Plaintiff's Complaint does not ask them to. In fact, there is nothing that expunging the Challenged Law will do that a declaration of invalidity from this Court and injunction against the enforcing authority won't do. Plaintiff, again, does not allege otherwise.

c. Public Official Standing Doctrine

Plaintiff's constitutional claims are also barred by the Public Official Standing Doctrine as to each Defendant. The doctrine provides that public officials may not challenge the constitutionality of statutes affecting their official duties. See Miami-Dade Cnty. Expressway Auth., 316 So. 3d at 390. This prohibition covers both officials charged with a duty under the challenged law and those "whose duties are 'affected' by the challenged law." Id. at 391; see also Sch. Dist. of Escambia Cnty.

v. Santa Rosa Dunes Owners Ass'n, Inc., 274 So. 3d 492, 494 (Fla. 1st DCA 2019) ("The prohibition extends to the public officials whose duties are "affected" by the challenged law."). And the doctrine applies to municipalities. See, e.g., Fla. Dep't of Agric. & Consumer Servs., 790 So. 2d at 557-58 (finding that the City of Miami did not have standing to challenge the constitutionality of a statute); Cf Branca v. City of Miramar, 634 So. 2d 604, 606 (Fla. 1994) (applying doctrine to city commission but finding that public funds exception applied on its facts).

Here, Plaintiff challenges the constitutionality of the Challenged Law on the basis that the law affects its duties. See, e.g., Compl. ¶ 75 ("HB 1645 purports to grant all powers of Gainesville to issue bonds to this gubernatorially-appointed Board. (HB 1645, §7.03(e))."); Compl. ¶ 147 ("HB 1645 affects the extraterritorial powers of the City."). Thus, the Public Official Standing Doctrine plainly applies.

The Court also finds that the public funds exception to the Public Official Standing Doctrine does not apply.[2] This exception is "narrow," Crossings At Fleming Island Cmty. Dev. Dist. v. Echeverri, 991 So. 2d 793, 797 (Fla. 2008), and applies only where "the law requires an expenditure of public funds," Branca, 634 So. 2d at 606 (citing Kaulakis v. Boyd, 138 So. 2d 505 (Fla. 1962)). The Challenged

[2] The "personal injury exception" also does not apply because Plaintiff cannot "show injury to [it]s person, property, or other material right by the statute in question." Sch. Dist. of Escambia Cnty., 274 So. 3d at 496. To the extent it does, Plaintiff would allege an injury that is not "personal," but instead "stems entirely from its official position." See Id. ("Here, the alleged injuries to the District arise exclusively from the District's official responsibilities to levy ad valorem taxes. See Art. VII, § 9, Fla. Const.; § 1011.71(1), Fla. Stat. (2016). The alleged injuries are thus not personal to the District.").

Law does not require Plaintiff to expend funds. But even if some expenditures occur due to the Challenged Law, they are simply "the ordinary costs…of doing business" or the "costs of governance," which do not fit within the public funds exception. Santa Rosa Cnty. v. Admin. Comm'n, Div. of Admin. Hearings, 642 So. 2d 618, 623 (Fla. 1st DCA 1994), *approved in part, disapproved in part*, 661 So. 2d 1190 (Fla. 1995) (finding that even if a statute required the county to spend money on land use plans, experts, and holding public hearings, such costs were merely the cost of governance and were not sufficient to meet the public fund exception).

Accordingly, Defendants are entitled to summary judgment on Counts I, II, IV, V, and VI, and VIII[3] because Plaintiff lacks standing.[4]

III. The Statutory Claims are Barred by Sovereign Immunity

Sovereign immunity is both an immunity from liability and an immunity from suit. Fla. Highway Patrol v. Jackson, 288 So. 3d 1179, 1185 (Fla. 2020). In Florida, sovereign immunity is the rule rather than the exception. Wildlife Conservation Comm'n v. Daws, 256 So. 3d 907, 912 (Fla. 1st DCA 2018). However, there are two exceptions to sovereign immunity: (1) sovereign immunity does not bar claims based on violations of the state or federal constitutions and (2) it does not bar claims

[3] Plaintiff also lacks standing for Count VIII for the same reasons, but Plaintiff withdrew the claim in its Motion for Summary Judgment. See Plaintiff's Motion for Summary Judgment, at 2.
[4] Count IV alleges that the Act violates both the Florida Constitution and Florida Statutes. The portion of Count IV challenging the constitutionality of the Challenged Law is dismissed under the Public Official Standing Doctrine. The Court addresses the remainder of Count IV in the next section, infra.

where immunity has been waived as a matter of law. Id. Any waiver of sovereign immunity must be clear and unequivocal and must be strictly construed by the court. Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp., 908 So. 2d 459, 472 (Fla. 2005).

Plaintiff's claims alleging that the Challenged Law violates sections of the Florida Statutes implicate the Defendants' sovereign immunity but do not fit within the two limited exceptions. They do not challenge the constitutionality of the Challenged Law and the Florida Legislature has not waived sovereign immunity for them. See § 768.28, Fla. Stat. (2007).

Accordingly, Plaintiff's statutory claims are barred by sovereign immunity. Indeed, Plaintiff has not refuted this argument. But even if it had, this Court would still be required to dismiss Plaintiff's complaint because it did not plead facts demonstrating a waiver or exception. That failure alone ends these claims. See City of Gainesville v. State, Dep't of Transp., 778 So. 2d 519, 530 (Fla. 1st DCA 2001) ("Our supreme court has held that facts on which a waiver of sovereign immunity depends must be pleaded in the complaint."). Accordingly, Defendants are entitled to judgment as a matter of law on Counts III, IV, VII, and IX based on Defendants' sovereign immunity.

IV. Plaintiff Failed to State a Claim as to Each Count

Plaintiff's complaint contains eight counts, each of which alleges a constitutional or statutory violation as follows.

a. Count 1

Plaintiff alleges that the Challenged Law is unconstitutionally vague in three respects: (1) the term "municipal unit" is vague and ambiguous; (2) that it "conflicts" with Chapter 180, Florida Statutes; and (3) that it is vague as to who runs the utility system pending appointment of the Chief Executive Officer/General Manager (CEO/GM) of the utility. Compl. at ¶¶ 97-109.

The standard for testing vagueness under Florida law is whether the statute gives a person of ordinary intelligence fair notice of what constitutes forbidden conduct. State v. Crumbley, 247 So. 3d 666, 669 (Fla. 2d DCA 2018). A facial challenge for vagueness will be upheld only if the enactment is impermissibly vague in all of its applications. Fulmore v. Charlotte County, 928 So. 2d 1281 (Fla. 2d DCA 2006). "[A] determination that a statute is facially unconstitutional means that no set of circumstances exists under which the statute would be valid." Pub. Defender, Eleventh Jud. Cir. v. State, 115 So.3d 261, 280 (Fla. 2013). The Florida Supreme Court "has consistently followed the established precept that, if reasonably possible and consistent with constitutional rights, it should interpret statutes in such a manner as to uphold their constitutionality." State v. Mitro, 700 So. 2d 643, 645 (Fla. 1997). Plaintiff has failed to meet Florida's standard for vagueness.

First, use of the term "municipal unit" does not make the Challenged Law vague as the term is not used in the law. Second, any conflict between the language in the Challenged Law and Chapter 180, Florida Statutes does not render the

Challenged Law unconstitutionally vague. When there is a conflict between a general law and a special charter provision, "it is well settled that the special charter provisions will prevail." City of Orlando v. Evans, 182 So. 264, 267 (1938). Third, the Challenged Law expressly provides that the former Charter Officer would be the interim general manager of the GRU until the new Authority meets and selects the GM/CEO. See Ch. 2023-348, Art. VII, § 7.09(1) ("Until such time as the Authority appoints a CEO/GM, the sitting general manager of GRU shall serve as the CEO/GM.") Id. at § 7.09(2) ("All officers and employees of the City who serve under the supervision and direction of the sitting general manager of GRU shall serve under the CEO/GM.").

b. Count II

Plaintiff alleges that the Challenged Law impairs the contract for the sale of the Trunk Radio System ("TRS") to Alachua County and contracts related to the bond, specifically the Bond Resolution. "In order for a statute to offend the constitutional prohibition against enactment of laws impairing the obligation of contracts, the statute must have the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts." Manning v. Travelers Ins. Co., 250 So. 2d 872, 874 (Fla. 1971).

The Challenged Law does not impair the contract for sale of the TRS because no such contract exists. See Compl. at ¶ 138 (stating "[t]he contract for the transfer is in the process of being finalized."). The Challenged Law also does not impair the

Interlocal Agreement. The Agreement was entered into on June 28, 2023, the same day that the Challenged Law was signed into law but the Agreement was not effective until it was filed with the Alachua County Clerk of Circuit Court on June 30, 2023, after the Challenged Law was passed. Therefore, the contract was subject to the Challenged Law. See Bd. of Pub. Instruction of Dade Cnty. v. Town of Bay Harbor Islands, 81 So. 2d 637, 643 (Fla. 1955) (Florida laws are "part of every contract").

The Challenged Law also does not impair the Bond Resolution. Section 716 of the Bond Resolution, titled "Government Reorganization" states in pertinent part:

> [T]his Resolution shall not prevent any lawful reorganization of the government structure of the City including…the transfer of a public function of the City to another public body, provided that any reorganization which affects the System shall provide that the System shall be continued as a single enterprise and that any public body which succeeds to be the ownership and operation of the System shall also assume all rights, powers, obligations, duties and liabilities of the City under this Resolution pertaining to all Bonds….This Resolution may be amended to revise the definitions of the City and Commission to reflect such governmental reorganization and this Resolution may be amended in any other respect as determined by the City will not adversely affect the rights of the Holders of the Bonds in order to effectuate each reorganization. The governmental reorganization hereby expressly includes amendments if necessary and to the extent that a referendum held pursuant to in accordance with House Bill No. 759 or such other actions of the City, approves amending the City's Charter, to effectuate a reorganization of the management and operation of the City.

Def AG's App. at 129. HB 759, which was enacted by the Legislature in June 2017, and codified at 2017-200, Laws of Florida, provided for a special referendum election for voters to determine whether Plaintiff's Charter should be amended to create an independent board consisting of 5 members appointed by the City Commission. Like the Challenged Law, HB 759 provided that the independent board would be free from the direction and control of the City Commission. Its enumerated powers and duties are nearly identical to those in the Challenged Law.

In light of this provision, it is evident that the Challenged Law did not rewrite the Bond Resolution or impair any substantive rights thereunder. The Challenged Law, in fact, complies with the provision in the Bond Resolution in that it states that the "utility system shall continue to be operated as a single enterprise" and that [a]ll rights, responsibilities, claims, and actions involving GRU as of the transfer to the Authority shall continue." Ch. 2023-348, at Art. VII, § 7.01(3).

Section 716 of the Bond Resolution further provides for amendment if needed "in order to effectuate" the reorganization. Id. Such amendment includes amending the definition of "City" or "Commission," to account for any reorganization. Having included in the Bond Resolution a provision that accounts for a potential change in governance in the utilities system that is substantially similar to the Challenged Law, Plaintiff cannot demonstrate an impairment of that contract. See Kosow v. Condo. Ass'n of Lakeside Vill., Inc., 512 So. 2d 349, 350 (Fla. 4th DCA 1987) (finding that amendments to the Condominium Act did not impair any right of contract where the

contract provided the parties would be bound by any amendments to the contract).

Plaintiff also alleges the following in support of their impairment of contracts claim: (1) that the Bond Resolution requires the City to set rates sufficient "to realize 1.25 times the annual debt"; (2) that the Challenged Law "does not place any constraint" on the setting of rates and the borrowing of money; and (3) that "general statements that debt should be paid are clearly insufficient to address the multiple detailed bond requirements within the Bond documents." Compl. at ¶ 123; Pltf's MSJ at 34. These allegations do not show that the Challenged Law rewrote the terms of the bond documents.

c. Count III

Count III alleges that the Challenged Law violates Fla. Stat. §166.021(4). Subsection (4) provides that "changes in a special law or municipal charter which affect the exercise of extraterritorial powers" or "any rights of municipal employees" require approval "by referendum of the electors as provided in s. 166.031." Fla. Stat. § 166.021(4). However, Fla. Stat. § 166.021, titled "Powers" enumerates the powers of a municipality – not the power of the Legislature. It requires a municipality seeking to amend the charter to engage in the referendum process, not the Legislature. The undisputed summary judgment evidence confirms Plaintiff's officials are aware that a referendum was not required. For example, at a March 9, 2023, Utility Advisory Board Meeting, a City Commissioner stated "the Legislature has the authority" to pass the bill and there is "not a requirement at all" for the bill

to through a referendum.[5] Also, when asked at the Alachua County Legislative Delegation public hearing on March 17, 2023, whether the amendment to the City's Charter needed to be done by referendum, the Mayor of Gainesville stated "the Constitution makes the City of Gainesville as a charter a creature of the State so you can by statute make changes to our Charter in ways that we would have to put on a ballot."[6]

d. Count IV

Count IV alleges that the Challenged Law violates the notice provisions in Article III, Section 10, of Florida's Constitution and Fla. Stat. § 11.02. Article III, Section 10 of the Florida Constitution states: "No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected." Fla. Const. Art III, § 10. Fla. Stat. § 11.02 further provides that:

> The notice required to obtain special or local legislation . . . shall be by publishing the identical notice as provided in chapter 50 or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature. . . . Notice

[5] March 9, 2023 City of Gainesville Utility Advisory Board Meeting, available at https://pub-cityofgainesville.escribemeetings.com/Players/ISIStandAlonePlayer.aspx?Id=08c51cb5-ce7e-4da4-865c-22d9745062a0 at 10:34 to 10:47.

[6] March 17, 223 Alachua County Legislative Delegation, available at https://thefloridachannel.org/videos/3-17-23-alachua-county-legislative-delegation/ at 59:41 to 1:00:34.

> of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution.

The Florida Supreme Court held "[t]he function of . . . the notice of intention to seek enactment . . . is to provide reasonable notice to a person whose interests may be directly affected by the proposed legislation, so that he may inquire further into the details thereof and, if he so desires, seek to prevent its enactment or to persuade the legislature to change its substance." N. Ridge Gen. Hosp., Inc. v. City of Oakland Park, 374 So. 2d 461, 463–64 (Fla. 1979). Notice is only required as to the subject of the legislation, meaning "the matter to which an act relates." Id. "[T]he terms of both the notice of intention to seek enactment and the title of an act must be broad enough to include all matters contained in the body of the proposed legislation, but the specific contents of the act need not be listed in detail in either form of notice." Id. The contents of the notice need not provide any specific detail, because the "detailed contents of the bill to be enacted are subject to legislative discretion" and therefore could change throughout the legislative process. State ex rel. Landis v. Reardon, 114 Fla. 755, 757, 154 So. 868, 869 (1934).

The published notice stated as follows:

NOTICE OF SEEKING APPROVAL OF THE ALACHUA COUNTY LEGISLATIVE DELEGATION OF A LOCAL BILL RELATED TO THE CITY OF GAINESVILLE'S GOVERNANCE OF GAINESVILLE REGIONAL UTILITIES:

TO WHOM IT MAY CONCERN:
Notice is hereby given of the intent of the 2023 Alachua County Legislative Delegation to consider the filing and passage during the 2023 Legislative Session of a local bill whose subject concerns the Gainesville City Commission's governance of Gainesville Regional Utilities. The Delegation will conduct a hearing on the matter, Friday, March 17th, 2023, 11:00AM to 2:00PM in Room 12 of the House Office Building, Florida Capitol, 402 South Monroe Street, Tallahassee Florida, 32399-1300.
8554009 3/9, 3/14, 3/16/2023

As an initial matter, Plaintiff has not demonstrated standing as to this claim because it cannot demonstrate an injury. The undisputed summary judgment evidence shows that the city officials had the ability to "inquire further into the details" of the bill and had an opportunity to "prevent its enactment or to persuade the legislature to change its substance." N. Ridge Gen. Hosp., Inc., 374 So. 2d at 463–64. For example, on March 9, 2023, city officials discussed the local bill at a Utility Advisory Board meeting including the fact that it created a 5-member board to be appointed by the Governor.[7] The Mayor of Gainesville also attended the Alachua County Legislative Delegation hearing on March 17, 2023, and spoke at

[7] March 9, 2023 City of Gainesville Utility Advisory Board Meeting, available at https://pub-cityofgainesville.escribemeetings.com/Players/ISIStandAlonePlayer.aspx?Id=08c51cb5-ce7e-4da4-865c-22d9745062a0 at 10:34 to 10:47.

length regarding the bill including fielding inquiries by members of the delegation.[8] On March 17, 2023, Plaintiff made an announcement on its website regarding the Challenged Law and encouraged Florida residents to contact the bill's sponsor and other legislators to oppose the bill. The Mayor of Gainesville also attended the House Affairs State Affairs Committee Meeting on April 19, 2023, and spoke in opposition to the bill.[9] Given these facts, Plaintiff cannot demonstrate the requisite injury needed to have standing to bring this claim.

Even if Plaintiff could demonstrate standing, the notice does not suffer from a constitutional defect. The Notice provides the bill "concerns Gainesville City Commission's governance of Gainesville Regional Utilities." Governance means "the act or process of governing or overseeing the control and direction of something (such as a country or an organization)"[10] The subject of the Challenged Law relates to the "governance" of GRU. No additional detail is needed in order to pass constitutional muster.

e. Count V

Count V alleges that the Challenged Law violates Article IV, § 1, of Florida's Constitution by providing the Governor with authority to appoint the members of

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[8] March 17, 223 Alachua County Legislative Delegation, available at https://thefloridachannel.org/videos/3-17-23-alachua-county-legislative-delegation/ at 28:10.
[9] April 19, 2023 House State Affairs Committee Meeting, available at https://thefloridachannel.org/videos/4-19-23-house-state-affairs-committee/, at 4:30:10 to 4:31:03.
[10] https://www.merriam-webster.com/dictionary/governance

the Authority. Plaintiff argues that because the power is not expressly granted to the Governor in the Constitution, the Legislature may not confer that power. But the Constitution is a limitation on power, not a grant of power and "unless legislation duly passed be clearly contrary to some express or implied prohibition contained therein, the courts have no authority to pronounce it invalid." Taylor v. Dorsey, 19 So. 2d 876, 881 (1944); see also Bd. of Pub. Instruction for Sumter Cnty. for & on Behalf of Special Tax Sch. Dist. No. 12 v. Wright, 76 So. 2d 863, 864 (Fla. 1955); Cobo, 116 So.2d 233, 235-36 (rejecting the contention that the constitutional provision providing the Legislature with plenary authority over municipalities is a limitation on power with a residuum of authority resting with the local community). In State ex. Rel Gibb v. Couch, the Florida Supreme Court found that a constitutional provision stating "[t]he Legislature shall provide for the election by the people or appointment by the Governor of all State and county officers not otherwise provided for by the Constitution" did not preclude the Legislature from giving the Governor the authority to appoint municipal officers. 190 So. 723, 731 (1939). Here, Plaintiff has not cited any constitutional provision that expressly or impliedly states that the Governor cannot appoint the members of the Authority.

To the contrary, the Florida Supreme Court has found that the Legislature has the power to grant such authority. The "Legislature has plenary power over municipalities except as restrained by the Constitution." Evans, 182 So. at 267. That includes the discretion to create an independent body to govern a municipally owned

utility and to decide who shall appoint its members. See Id. (Law creating the Orlando Utilities Commission (OUC) and giving the commission full control of electric light and waterworks plants of the city was constitutional); Cobo v. O'Bryant, 116 So.2d at 237 (Fla.1959) (Law establishing an independent utility board to manage the City of Key West's utility system and granting the Mayor and City Council with authority to select members of the utility board was within the authority of the Legislature); See Lederer v. Orlando Utilities Comm'n, 981 So. 2d 521, 524 (Fla. 5th DCA 2008) (Legislature granted the City Council authority to select the members of the OUC). The Court notes that similar to the Challenged Law, the Legislature created the OUC by special act and made the Commisssion "part of the City of Orlando." At the same time, the OUC acted "independently and beyond the control of the City with respect to powers it has under the special act." Id. OUC has the ability to set rates, borrow money, incur debt, and issue notes and revenue bonds. Id. Because the OUC was "purely a creation of Florida Legislature" and was "endowed with substantial autonomy to operate independently from the city government[,]" it was considered a "distinct legal entity" even though it was designated as part of the City's government. Id. at 524-225. It is clear that the Legislature has the authority to create this type of independent governing body.

f. Count VI

The Challenged Law does not violate Article VIII, § 2(b) or § 4 of Florida's Constitution. Article VIII, § 2(b) of Florida's Constitution provides that "[e]ach

municipal legislative body shall be elective." The Challenged Law does not create a legislative body, so this provision is not applicable. Article VIII, § 4 titled "Transfer of Powers" provides instruction as to how municipalities may transfer powers, not the Legislature. The Legislature has plenary power over municipalities including the power to create an independent authority or commission to govern a municipal utility. See e.g., Evans, 182 So. 264, 266-267 (1938) (describing the power of the Legislature to create the Orlando Utility Commission by special law); Cobo v. O'Bryant, 116 So.2d at 237 (describing the power of the Legislature to create the Key West Utility Board by special law).

g. Counts VII and IX

The Challenged Law does not violate Chapter 180, Florida Statutes or Chapter 166, Florida Statutes. Plaintiffs allege that the Challenged Law conflicts with various sections in Chapter 180 and Chapter 166, Florida Statutes. To the extent that any conflicts exist, the provisions of the Challenged Law are controlling. See Evans, 182 So. at 267.

For all of these reasons, Defendants' Motions for Summary Judgment are **GRANTED**, and Plaintiff's Motion for Summary Judgment is DENIED.

DONE AND ORDERED in Leon County, Florida on September 29, 2023.

Angela C. Dempsey
Circuit Judge

Copies to all counsel of record.