IN THE SUPREME COURT OF FLORIDA

CASE NO. SC20-1284
L.T. Case No. 4D19-1537

CITY OF WEST PALM BEACH, INC.,

Petitioner,

vs.

PETER M. HAVER & GALINA HAVER,

Respondents.

AMICUS CURIAE BRIEF BY CITY OF MIAMI AND THE MIAMI-DADE COUNTY LEAGUE OF CITIES IN SUPPORT OF PETITIONER, CITY OF WEST PALM BEACH, INC.

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IDENTITY AND INTEREST OF AMICI CURIAE

The City of Miami ("City") is one of the largest municipalities in Florida. The Miami-Dade County League of Cities ("League") is an organization comprised of thirty-four municipalities within Miami-Dade County, which advances the interest of those municipalities. The City and the League (collectively "the Miami Amici") have a vested interest in the outcome of this case, because the decision of the Fourth District under review has the potential to upend decades of precedent pertaining to the doctrine of separation of power and sovereign immunity, negatively impacting all Florida municipalities. If the decision in *Haver* on review is approved, municipal residents will be empowered to bring lawsuits to compel their municipalities to prosecute zoning enforcement actions against their neighbors. Under the threat of such litigation, municipalities will be required to allocate additional resources and budget to code enforcement. Additionally, the availability of such judicial review will preclude finality for property owners seeking approvals under a municipal zoning code. Worse yet, if the position of the State of Florida as amicus is to be accepted, *all* discretionary decisions of municipalities would become open to legal challenge. Municipalities will be at the whim of the courts and their residents with regard to countless discretionary decisions, including the amount of budgetary resources that must be allocated to any given project or municipal department, including the police department;

whether code enforcement or police officers must cite a resident or individual for a given violation; or whether to enter into a contract. Applying the decision of the Fourth District below in conjunction with the position of the State, these types of discretionary decisions that are inherent in the process of governing a municipality would be subject to judicial attack. The Miami Amici submit this brief to defend the ability of municipalities to make discretionary decisions in their delegated areas of authority without juridical interference.

SUMMARY OF ARGUMENT

The related doctrines of separation of powers and sovereign immunity bar Plaintiffs' claims. Decades of decisional law in Florida hold that discretionary decisions of a municipality in any area delegated to municipal authority are generally not subject to review by the judicial branch of state government. The decision whether to cite or prosecute an alleged code enforcement violation resides exclusively in the executive discretion of the municipality, regardless of whether the alleged violation resulted from action or inaction by the municipality.

ARGUMENT

I. THE SEPARATION OF POWERS DOCTRINE APPLIES IN THE CIRCUMSTANCES PRESENTED

The Separation of Powers Doctrine

This Court has described the doctrine of separation of powers as "[t]he cornerstone of American democracy." *Bush v. Schiavo,* 885 So. 2d 321, 329 (Fla.

2004). Indeed, this core democratic concept was at the forefront of our founding fathers' minds, as they struggled to draft a Constitution for our young nation. In Federalist Number 47, James Madison declared that:

> The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

Federalist No. 47. Federalist Number 51, picking up on this theme, states:

> In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

Federalist No. 51.

But the question of how this should be accomplished was subject to much debate. One key point of disagreement among the founding fathers on this issue was whether the separation of powers needed to be included in an express constitutional provision, as many, but not all, the state constitutions of the time included. *See* Federalist No. 47 (discussion of the presence or absence of express separation of powers clauses in the then-current state constitutions). Ultimately, the United States Constitution was ratified without any such express provision. Rather, the founders were convinced that separation of powers was accomplished through

> contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.

Federalist No. 51. And that understanding of an *implied* separation of powers resonates through the case law today, where federal courts have opined that:

> [s]eparation of powers is "a doctrine to which the courts must adhere even in the absence of an explicit statutory command," *Canadian Transp. Co. v. United States*, 663 F.2d 1081, 1086 (D.C. Cir. 1980), and "requires that a branch not impair another in the performance of its constitutional duties," *Loving v. United States*, 517 U.S. 748, 757, 116 S.Ct. 1737, 135 L.Ed.2d 36 (1996).

In re World Trade Ctr. Disaster Site Litig., 521 F.3d 169, 192 (2d Cir. 2008).

Florida's Express Constitutional Provision on Separation of Powers

Amicus Curiae the State of Florida has asserted in its brief that the separation of powers doctrine does not apply here, because Florida's express constitutional provision does not apply to municipalities. State Brief at 3-5. The State is mistaken.

Article II, Section 3 of the Florida Constitution provides:

> The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Art. II, § 3, Fla. Const. The State references language from an opinion of this Court that this constitutional provision "was not intended to apply to local governmental

entities and officials, such as those identified in articles VIII and IX and controlled in part by legislative acts." *Locke v. Hawkes*, 595 So. 2d 32, 36 (Fla. 1992). But this singular statement represents dicta—taken from a case that involved a question of whether the judiciary had authority to order the *State legislature* to produce records under the public records act—without any context. The application of the separation of powers doctrine to municipalities was not at issue in that case.

As the Third District has explained in a case actually involving the question of the division executive and legislative powers *within* a municipal charter, "the concept of Constitutional separation of powers simply does not exist at the local government level." *Citizens for Reform v. Citizens for Open Gov't, Inc*., 931 So. 2d 977, 989 (Fla. 3d DCA 2006) (citations omitted). By this, however, the Third District was describing whether a municipal government itself must be structured to maintain a strict separation of powers between the three traditional branches of government—executive, legislative, and judicial. *Id*. (citing *Bd. of County Comm'rs v. Padilla*, 111 N.M. 278, 804 P.2d 1097, 1102 (1990) ("Traditional [separation of powers] doctrine derives from concern about the tyranny that can arise when one branch of government—the executive, legislative, or judicial—assumes the powers of another. (citation omitted). Apparently, because this danger is diminished for a level of government whose powers are subordinated to higher levels of government or otherwise limited, the New Mexico Constitution's

provision on separation of powers . . . does not apply to the distribution of power within local governments."); *LaGuardia v. Smith*, 288 N.Y. 1, 41 N.E.2d 153, 156 (1942) (finding that the "theory of co-ordinate, independent branches of government has been held generally to apply to the national system and to the states, but not to the government of cities") (additional citations omitted)).[1]

Separation of Powers Bars a State Court From Compelling A Municipality to Exercise Its Discretionary Authority to Enforce Its Code

But this case does not involve a question of the separation of powers *within* a municipal government. Rather, the Court is here presented with the question of whether separation of powers prevents a branch of the State government—the judiciary—from compelling a municipality to exercise its delegated discretionary, executive authority. This question can only be answered in the affirmative, based on governing precedent.

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[1] In fact, Florida law confirms that no such separation of powers within municipal governments is required. Under Article VIII, § 2 of the Florida Constitution:

> Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

Art. VIII, § 2, Fla. Const. Neither this constitutional provision nor Chapter 166 of the Florida Statutes requires that the "governing body" of a municipality be divided into distinct legislative, executive, or quasi-judicial branches. §166.021, Fla. Stat.

The State's position—that the separation of powers doctrine evaporates when the judicial branch attempts to direct a discretionary, executive function at the municipal level—ignores the Constitutional and Statutory authority of municipalities and the bedrock precedent set by this Court. The power of the municipality in such context is bestowed in the Florida Constitution. *See* Art. VIII, § 2, Fla. Const. (Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law."); § 166.021(1), Fla. Stat. (same); *see also* § 166.021(2), Fla. Stat. ("'Municipal purpose'" means any activity or power which may be exercised by the state or its political subdivisions."). Indeed, the Florida Legislature through the enactment of Chapter 166, Florida Statutes, has recognized that Municipal power is coextensive with State power. *See* § 166.021(3), Fla. Stat. ("The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act . . . [exceptions omitted]."); § 166.021(4), Fla. Stat. ("The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to

extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.").

Application of the separation of powers doctrine to preclude judicial interference in discretionary executive municipal functions has been long settled by this Court. In the context of a discussion of the discretionary function exception to the waiver of sovereign immunity for tort liability, this Court has stated:

> We ourselves repeatedly have recognized that the discretionary function exception is grounded in the doctrine of separation of powers. That is, it would be an improper infringement of separation of powers for the judiciary, by way of tort law, to intervene in fundamental decision making of the executive and legislative branches of government, *including the agencies and municipal corporations they have created*.

Kaisner v. Kolb, 543 So. 2d 732, 736–37 (Fla. 1989) (citing *Trianon Park Condo. Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 918 (Fla. 1985); *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010, 1022 (Fla. 1979) (emphasis added)). In these cases, this Court properly grouped the "fundamental decision making" of a municipality with those same types of decisions at the state level, in concluding that the judiciary would violate the separation of powers

doctrine by allowing a tort case to proceed with respect any such decision. *Id*. The Miami Amici submit that there is no principled reason to treat executive, discretionary decisions of municipalities differently from those of the state when conducting a separation of powers analysis in any context—whether a claim was brought in tort or equity. *See Trianon*, 468 So. 2d at 918 ("Judicial intervention through private tort suits into the realm of discretionary decisions relating to basic governmental functions would require the judicial branch to second guess the political and police power decisions of the other branches of government and would violate the separation of powers doctrine."); *City of Fort Lauderdale v. Hinton*, 276 So. 3d 319, 325 (Fla. 4th DCA 2019) ("we have not found an equity exemption to sovereign immunity").

In fact, it is arguable that an order from the judicial branch directing a municipality to exercise its discretionary authority in a certain manner—such as might occur in this case if the decision of the Fourth District is approved—is a far more egregious and direct violation of the separation of powers doctrine than authorizing a tort claim under such circumstances. But even if this Court concludes that the express separation of powers clause in the Florida Constitution does not require this result, the implied separation of powers doctrine—inherent in the division of powers between different governmental entities—still does so. *See, e.g., In re World Trade Ctr. Disaster Site Litig*., 521 F.3d at 192 ([s]eparation of powers

is "a doctrine to which the courts must adhere even in the absence of an explicit statutory command").

Municipalities Possess Constitutionally Delegated Authority to Adopt and Enforce Zoning Laws

The zoning power of municipalities derives from a "constitutional delegation of municipal authority." *Hillsborough Ass'n for Retarded Citizens, Inc. v. City of Temple Terrace*, 332 So. 2d 610, 612–13 (Fla. 1976). As this Court has explained, zoning authority is delegated to municipalities by "Article VIII, § 2(b) of the Florida Constitution by way of the Municipal Home Rule Powers Act." *Id.* The Florida Legislature extended this delegation to the area of zoning in Section 163.3167, Florida Statutes, which falls within Florida's "Community Planning Act" ("the Act"). § 163.3167, Fla. Stat. The Act states:

> (1) The several incorporated municipalities and counties shall have power and responsibility:
>
> (a) To plan for their future development and growth.
>
> (b) To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.
>
> (c) To implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof.

> (d) To establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of this act.

§ 163.3167(1), Fla. Stat.

The Act expressly delegates zoning authority to municipalities. *Id*. Under the Act, a municipality "shall maintain a comprehensive plan" and "shall . . . establish a local planning agency." § 163.3167(2)-(3), Fla. Stat.

Section 163.3201, Florida Statutes states:

> It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area.

§ 163.3201, Fla. Stat. The "local regulations" referred to are typically contained in a municipal zoning code. The Act goes on to state that:

> It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

Id. Municipalities are therefore expressly delegated the authority to adopt and *enforce* zoning regulations. *Id*. The power to enforce a law necessarily includes the discretion to choose not to enforce that same law. *Trianon*, 468 So. 2d at 922 ("The

discretionary power to enforce compliance with the building code flows from the police power of the state.")

The Act also expressly grants standing to individuals to sue a municipality under certain conditions stating:

> Any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan adopted under this part. The de novo action must be filed no later than 30 days following rendition of a development order or other written decision, or when all local administrative appeals, if any, are exhausted, whichever occurs later.

§ 163.3215, Fla. Stat. This statutory provision constitutes an express waiver of sovereign immunity, under the circumstances described. Notably, the Act does not authorize an "action for declaratory, injunctive, or other relief against any local government" in situations where that local government exercises its discretion to not enforce its zoning code. *Id*.

The Doctrine of Sovereign Immunity Also Precludes Judicial Interference with the Executive, Discretionary Decisions of the Municipality

As established in this Court's decision in *Trianon*, the doctrine of sovereign immunity also prevents the judiciary from compelling the exercise of municipal executive functions. Waiver of sovereign immunity must be express, either in

statute or by contract. Art. X, § 13, Fla. Const. ("Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating."); *Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp.*, 908 So. 2d 459, 474 (Fla. 2005) ("[M]unicipalities have long possessed both the power to execute contracts and the concomitant liability for their breach."); *City of Fort Lauderdale v. Nichols*, 246 So. 3d 391, 392 (Fla. 4th DCA 2018) ("[A] municipality may waive the protections of sovereign immunity when it enters into an express contract."). Of course, a judicial decision is not general law because it is not a legislative provision. *Am. Home.*, 908 So. 2d at 471 ("Only the Legislature has authority to enact a general law that waives the state's sovereign immunity."). The judicial branch of state government is clearly precluded from exercising any role in waiving sovereign immunity. *Id*. The decision of the Fourth District below, if approved by this Court, would constitute a *judicial* waiver of sovereign immunity not provided by general law, and a fortiori an abrogation of the Florida Constitution. Art. X, § 13, Fla. Const. Such a decision would also upend decades of precedent addressing sovereign immunity and separation of powers.[2]

[2] The Act's waiver of sovereign immunity pertaining to alleged zoning code violations is limited to challenges to a "development order, . . . which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan adopted under this part." § 163.3215, Fla. Stat. "Development order" is defined as "any order granting, denying, or granting with conditions an application for a development permit." 163.3164(15),

Plaintiffs' Action is Barred by The Doctrines of Sovereign Immunity and Separation of Powers

Plaintiffs are barred by sovereign immunity from bringing an action seeking an injunction to direct West Palm Beach to enforce its zoning code. *See Hinton*, 276 So. 3d at 325 ("[W]e have not found an equity exemption to sovereign immunity"). As was explained by the Third District in *Detournay v. City of Coral Gables*, 127 So. 3d 869 (Fla. 3d DCA 2013), although "often called sovereign immunity . . . the reason courts cannot generally supervise the executive when it is deciding when and how to enforce specific laws is not based on the archaic notion that 'the king can do no wrong.' Instead, it is founded on the doctrine of separation of powers." *Id*. at 872–73 (citing *Trianon*, 468 So. 2d at 918). In *Trianon*, this Court explained:

> the enforcement of building codes and ordinances is for the purpose of protecting the health and safety of the public, not the personal or property interests of individual citizens. The discretionary power to enforce compliance with the building code flows from the police power of the state. In that regard, this power is no different from the discretionary power exercised by the police officer on the street in enforcing a criminal statute, the discretionary power exercised by a

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Fla. Stat. A "development permit" includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land." § 163.3164(16), Fla. Stat. A decision of a municipality whether to proceed with a code enforcement action based on an alleged violation of its zoning code clearly does not fall within scope of the Act's limited waiver of sovereign immunity. § 163.3215, Fla. Stat.

> prosecutor in deciding whether to prosecute, or the discretionary power exercised by a judge in making the determination as to whether to incarcerate a defendant or place him on probation. Statutes and regulations enacted under the police power to protect the public and enhance the public safety do not create duties owed by the government to citizens as individuals without the specific legislative intent to do so.

Trianon, 468 So. 2d at 922.

Code enforcement is a police power function, subject to immunity. As the Fourth District explained in affirming the dismissal of a case premised on municipal liability for failing to enforce an animal control ordinance:

> The amount of resources and personnel to be committed to the enforcement of this ordinance was a policy decision of the city. The city has the right to set its priorities in reference to law enforcement.

City of Delray Beach v. St. Juste, 989 So. 2d 655, 656 (Fla. 4th DCA 2008) (quoting *Carter v. City of Stuart*, 468 So. 2d 955 (Fla. 1985)). And this Court explained in *Carter v. City of Stuart*:

> Deciding which laws are proper and should be enacted is a legislative function. How and in what manner those laws are enforced is, in most instances, a judgmental decision of the executive branch. The judicial branch should not trespass into the decisional process of either.

468 So. 2d at 957. The decision whether to prosecute an alleged violation of a municipal zoning code is, therefore, not a decision the courts should interfere with. The same reasoning holds true for the decision of a municipal police officer to

issue a citation or to arrest an individual, based on alleged violations of law. To permit a court to trespass in any of these situations would be, as James Madison explained, the "definition of tyranny." Federalist No. 47.[3]

II. THIS COURT SHOULD LIMIT REVIEW TO THE NARROW FACTUAL CIRCUMSTANCES BELOW—THE CITY'S DISCRETIONARY DECISION NOT TO PROSECUTE A CODE ENFORCEMENT VIOLATION

As the City of West Palm Beach asserts in its Initial Brief, the separation of powers doctrine bars a court from inserting itself into a municipality's executive, discretionary decision whether to prosecute a code enforcement violation. Ini. Br. at 18-32. The Miami Amici respectfully note that the decision presented can and should be resolved solely on these narrow grounds. *PDK Labs. Inc. v. U.S. D.E.A.*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring) ("if it is not necessary to decide more, it is necessary not to decide more"). A broader holding, addressing whether different factual situations call for the application of the separation of powers doctrine, would be dicta. *Gonzalez v. Fed. Nat'l Mortgage Ass'n*, 276 So.

[3] Plaintiffs are not without a remedy, even to directly challenge the decision of the City, which can be brought as an original action if they feel that the decision not to prosecute was arbitrary and capricious, violated due process, or was the result of a unconstitutional selective enforcement by the municipality. *See City of St. Pete Beach v. Sowa*, 4 So. 3d 1245, 1247 (Fla. 2d DCA 2009) ("When an administrative official or agency acts in an executive or legislative capacity, the proper method of attack on the official's or agency's action 'is a suit in circuit court for declaratory or injunctive relief on grounds that the action taken is arbitrary, capricious, confiscatory, or violative of constitutional guarantees.'").

3d 332, 336 n.4 (Fla. 3d DCA 2018). Such dicta could result in unintended consequences and erode the proper application of the doctrines of separation of powers and sovereign immunity.

West Palm Beach distinguishes *Boucher v. Novotny*, 102 So. 2d 132 (Fla. 1958), and *Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972), relied upon by the court below, on the basis that those decisions involved municipal "action," whereas this matter involves a municipal decision not to act. Ini. Br. at 8-15. The Miami Amici here point out that these decisions, both of which predate this Court's decision in *Trianon*, do not address whether the doctrine of separation of powers barred those actions. As such, those cases should not be viewed as precedent on the issue presented here. West Palm Beach correctly argues that whether a party may satisfy standing requirements is a separate question from whether that party's claim is nonetheless barred by the doctrine of separation of powers. Ini. Br. at 7-8.

The distinction between municipal action and inaction suggested by West Palm Beach is a distinction that should have no bearing on the proper application of the doctrines of separation of powers and sovereign immunity. Determining whether to bring enforcement action for an existing zoning code violation is a highly fact-specific exercise, which involves the balancing of various interests and is, at its core, a policy decision. And while West Palm Beach asserts that the City's decision not to prosecute an alleged zoning code enforcement violation is

distinguishable from situations where some "action" on the part of the municipality resulted in the alleged zoning code violation, that distinction is not clear cut.

Take, for example, a structure that is built in violation of a municipal zoning code's setback requirements—the code requires a minimum setback of five feet, and the structure was instead built with only a four feet setback. Assume in one scenario, the municipality erroneously issued a building permit that allowed for the violation—i.e., the plans submitted to the municipality reflected the setback violation, but the plans reviewer did not catch the error. In a second scenario, assume the plans reflected a legal setback, but the building was constructed by the developer contrary to the approved plans. Assume the neighboring property owner complains to the municipality and the municipality decides not to take any type of enforcement action, prompting a suit by the neighboring property owner for injunctive relief against the municipality to enforce its code and require the property in violation to rectify the setback error, including, at a minimum, partial demolition of the completed structure.

Under the distinction drawn by West Palm Beach, the first scenario would not raise separation of powers concerns because, under *Boucher*, the municipality took action by issuing the building permit in error, facilitating the zoning code violation. The neighbor there could seek relief. In the second scenario, the neighbor's lawsuit would be precluded by the separation of powers doctrine,

because the municipality did not act. But further consider the former case. What type of action, and how close in time to the discovery of the violation, would qualify to allow the neighbor to proceed with the hypothetical lawsuit? Does the municipality have to issue a permit in error, like in the first scenario? Would the issuance of a certificate of occupancy upon completion of plans suffice, even if no erroneous permit had been issued, as in the second scenario? What about any number of inspections by the municipal building department that would have missed the setback violation, even if the original permit reflected a legal setback? And does the timing of the alleged actions matter? What if the permit was issued or the inspection took place twenty years ago, as opposed to very recently? There are countless points at which a municipality can arguably have been characterized as having taken "action" that resulted in this hypothetical violation.

Taking all this into consideration, the Miami Amici respectfully suggest that the reason the separation of powers should bar a lawsuit in either of the above hypotheticals is that a court should not interfere in these types of complex, discretionary decisions by the municipality under *any* circumstance. Ultimately, whether characterized as action or inaction, all of these decisions—to prosecute a code enforcement violation, to make a determination not to enforce criteria under the Code and issue a permit, etc.—involve discretionary decisions that should be outside the purview of judicial interference. For a court to compel "enforcement"

in either case would be in derogation of longstanding precedent on the doctrines of sovereign immunity and separation of powers.

For these reasons, the Miami Amici would respectfully suggest that any decision by this Court in the instant matter be expressly limited to a municipality's decision not to prosecute a zoning code violation. However, as indicated above, because there are countless scenarios under which a zoning code violation can exist, the Miami Amici submit in the alternative that this Court should establish that the decision of a municipality not to enforce its code is not subject to judicial review, regardless of any alleged "action" that may have resulted in the violation.

CONCLUSION

Based on the foregoing, this Court should reverse the Opinion of the Fourth District Court of Appeal, affirm the trial court's ruling, and affirm that the doctrine of separation of powers and sovereign immunity operate to bar a suit to force a municipality to enforce its zoning code.

Respectfully submitted,

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