THE SUPREME COURT OF FLORIDA

CASE NO. SC20-1284
DCA CASE NO: 4D19-1537

CITY OF WEST PALM BEACH, INC.,

Petitioner,

v.

PETER M HAVER & GALINA HAVER,

Respondents.

AMICUS CURIAE BRIEF BY CITY OF CORAL GABLES IN SUPPORT OF PETITIONER, CITY OF WEST PALM BEACH, INC.

Frances Guasch De La Guardia
Suzanne M. Aldahan
HOLLAND & KNIGHT LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
Tel: (305) 374-8500
Fax: (305) 789-7799

Miriam Soler Ramos,
City Attorney
City of Coral Gables,
405 Biltmore Way
Coral Gables, Florida 33134

Attorneys for Amicus Curiae City of Coral Gables

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES **Page**

TABLE OF AUTHORITIES

CASES **Page**

TABLE OF AUTHORITIES

CASES **Page**

CONSTITUTION

STATUTES

IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus Curiae, the City of Coral Gables (the "City") submits its brief in support of the Petitioner, City of West Palm Beach, Inc., to inform the Court of the potential impact and consequences of its decision, which, for the City (and for other municipalities across the State of Florida), include: erosion of the separation of powers doctrine; erosion of the discretionary doctrine; and the ability and power of the City to enforce its codes, effectively engage in policing activities, and exercise is discretionary executive functions, without interference from a judicial branch.

This case involves an issue of great public importance regarding the separation of powers doctrine and the possibility for the judicial branch to interfere in a local government's exercise of its police and executive powers. Such encroachment on the separation of powers doctrine would obliterate a municipality's ability to effectively run its day-to-day operations in an effective and efficient manner. It would permit third party homeowners to initiate litigation and compel governments, like the City, to exercise its discretionary police power and prosecute governing laws. Municipalities would no longer have *discretion* to apply their own police power or governing laws, which discretion is vital because making such decisions involves attention to complex governmental considerations—including allocation of limited resources and funding—to which the judicial branch (who would be making the final decision for said municipality) is neither privy to nor ultimately left to suffer the consequences.

The City's interest in this appeal is due to the effect the Florida Supreme

Court's decision will have on the City's autonomy under the separation of powers doctrine and, potentially, on its financial resources. Additionally, the City predicts future cases might be affected by a decision in this case. Should the Court affirm the Fourth District Court of Appeal, it will eradicate the separation of powers doctrine and the discretionary doctrine[1] for the City and other municipalities. Consequently, this Court will increase the City's exposure to litigation (which was once prohibited) and this Court will create precedent directly impacting the City's ability to effectively govern, legislate, and police within its boundaries thereby affecting its ability to effectively and efficiently run its municipal government.

SUMMARY OF ARGUMENT

The trial court correctly held that Respondents had no cause of action against the City of West Palm Beach because of the separation of powers doctrine. Additionally, it is well settled that certain discretionary functions of government are inherent in the act of governing and are immune from suit. The grant of sovereign immunity does not change merely because the legal remedy sought against the sovereign is in equity rather than for damages. The principle remains the same: that certain judgmental decisions—such as when to enforce a code, when to issue a citation, when to patrol a neighborhood, how to inspect a pool, when to grant a permit or license, how to inspect a building, when to create a local board, when to settle or prosecute a matter to name a few—are functions that are inherent in the act

[1] *See, e.g., Everton v. Willard*, 468 So. 2d 936, 939 (Fla. 1985); *Kaisner v. Kolb*, 543 So. 2d 732, 737 (Fla. 1989).

of governing and are immune from suit regardless if the remedy sought is in equity. The Fourth District improperly overruled the trial court's decision and judicially enacted the express waiver of the sovereign immunity bestowed on municipalities. In so doing, the court eroded the separation of powers doctrine, granted by Article 2, Section 3, of the United States Constitution, and by Article II, Section 3, of the Florida Constitution, and failed to recognize the importance of a municipality's discretionary powers with regard to creation, execution, and enforcement of its laws and powers. This Court should overturn the Fourth District's improper decision and uphold the constitutional separation of powers doctrine, discretionary doctrine, and the sovereign immunity granted to municipalities when municipalities are exercising certain discretionary actions.

If the Fourth District's decision is upheld, an exception to the separation of powers doctrine will be created which will, essentially, eradicate the constitutional doctrine for all municipalities in Florida and will provide courts with an avenue to apply different law across the State. Affirmance of the Fourth District's decision will also lead to complete chaos with regard to how a municipality creates law; creates local boards; settles cases; prosecutes cases; polices its cities; inspects structures; and enforces laws, plans, budgets, and policies, which would interfere with a local government's discretion on its police powers.[2] If the Court affirms, at any given time, a municipality will be subject to litigation by a property owner who could challenge a municipality's enforcement of its own zoning code or ordinance, which

[2] *See, e.g., Everton*, 468 So. 2d at 939; *Kaisner*, 543 So. 2d at 737.

would not only affect the discretionary power to enforce same but also the allocation of City resources; to name one example. Moreover, it gives the judiciary more power than was it was intended to have and for good reason. The judiciary has no background information with regard to why a municipality chose to make or enforce a particular law and will not face the consequences of an action.

The decision also runs afoul of the Legislature's power to enact laws, in particular, it interferes with the legislative pronouncement in Florida Statute § 162.03, which grants local municipalities the power, at their discretion, to make policy and enforce their local laws, ordinances, and regulations. To save the separation of powers doctrine, a municipality's discretionary powers, and sovereign immunity, the Florida Supreme Court should quash the Fourth District's opinion.

ARGUMENT

A. The Florida Supreme Court Should Uphold the Separation of Powers Doctrine Uniformly Across the State of Florida.

The Florida Supreme Court should uphold the separation of powers doctrine uniformly across the State of Florida. "Separation of powers is a constitutional doctrine that extends across all procedure vehicles that might be used to challenge executive action." *Detournay v. City of Coral Gables*, 127 So. 3d 869, 874 (Fla. 3d DCA 2013); Art. II, § 3, Fla. Const. The separation of powers doctrine is one of the "structural pillars upon which American freedoms rest: 'under the constitutional doctrine of separation of powers, the judicial branch must not interfere with the discretionary functions of the legislative or executive branches of government absent a violation of constitutional or statutory rights.'" *Detournay*, 127 So. 3d at 873;

Trianon Park Condo. Assoc., Inc. v. City of Hialeah, 468 So. 2d 912, 918 (Fla. 1985) (observing that "certain discretionary functions of government are inherent in the act of governing and are immune from suit.").[3] This Court in *Trianon* upheld the constitutional doctrine of separation of powers and rejected the argument that a municipality owes a "general duty to enforce" its own law; stating: "[w]e reject this contention that there was any such legislative intent to establish [an] individual right for property owners and the assertion that the judiciary should interfere with how another branch of government choose to enforce the law." *Trianon Park Condo. Assoc., Inc.*, 468 So. 2d at 921–22. This Court concluded that "such a holding would represent an unconstitutional intrusion by the judiciary into the discretionary judgment functions of both the legislative and executive branches." *Id.* at 923. The same reasoning and logic applies here.

The separation of powers doctrine allows a municipality to create and enforce laws without judicial intervention; and has been used to uphold a municipality's discretion in enforcing its codes and engaging in other policing activities. *See City*

[3] It is well settled law that "governmental immunity, as the Florida Supreme Court has repeatedly confirmed, 'derives entirely from the doctrine of separation of powers,' making it improper for the judiciary to intervene in fundamental decision making of the executive and legislative branches of the government." *Kaisner*, 543 So. 2d at 736–37 (Fla. 1989); *Trianon Park Condo. Assoc.*, 468 So. 2d at 918. Moreover, the separation of powers doctrine application at the local government level is a functionality issue which applies when a government is exercising an executive function, i.e. police powers. To hold otherwise, as suggested by the Attorney General of Florida ("AG"), appearing as amici, would relegate the courts to implementing and directing the police power functions. Due to page limitations the City will not fully address the AG's arguments here, however it adopts and joins Amici the Florida League of Cities' arguments regarding the AG's argument.

of Miami Beach v. Weiss, 217 So. 2d 836, 837 (Fla. 1969); *see also Detournay*, 127 So. 3d at 874. This Court previously upheld the separation of powers doctrine in *Weiss* and should do so again here. Notably, *Weiss* and *Trianon* both post-date this Court's opinion *Boucher v. Novotny*, 102 So. 2d 132 (Fla. 1958).[4] The conflict in *Weiss* arose from a trial court's final decree affirmed per curiam without opinion by the appellate court, which said, in part, "the Defendant, City of Miami Beach, is hereby directed to rezone the subject property…from 'RD' (single family) to 'RE' (multiple-family)." *Weiss*, 217 So. 2d at 837. Upon further review, this Court quashed the appellate court's decision with instructions to remand. Specifically, this Court recognized the

> portion of the final decree and the judgment of affirmance directly collides with the decisions of this Court holding that the ultimate classification of lands under zoning ordinances involves the exercise of the legislative power, preventing the courts under the doctrine of separation of powers from the invasion of this field.

Weiss, 217 So. 2d at 837. Even further, this Court recognized the importance of a prohibiting the judicial branch from *directing* the legislative body of the municipality to take affirmative action of zoning lands because, for example and as recognized by this Court:

> Zoning involves much more than mere classification. Among other things it involves the consideration of future growth and development, *adequacy of drainage and storm sewers, public streets, pedestrian walkways, density of population and many other factors* which are

[4] This Court's opinion in *Boucher* did not analyze the separation of powers doctrine in as much depth as this Court did in *Weiss*. Should this Court uphold its decision in *Boucher*, it should do so with respect merely to individuals or entities and not to legislatures, who should be protected under the separation of powers doctrine.

peculiarly within the legislative competence.

Weiss, 217 So. 2d at 837-38 (emphasis added). As pointed out by this Court, there is so much more that goes into what a municipality's consideration when making laws, rules, code, ordinances, etc., and the judicial branch should not interfere when it has no involvement in the process. Many of Florida's appellate courts upheld this Court's law until this instant case—even extending the doctrine's application because of its extreme importance. *See, e.g., Detournay*, 127 So. 3d at 874 (applying the separation of powers doctrine to the zoning arena because "It would be a hollow idea if it [the doctrine] applied only to some procedures and not others."); *Chapman v. Redington Beach*, 282 So 3d 979, 981 (Fla. 2d DCA 2019) (affirming summary judgment in favor of the Town because "a court decree compelling the Town to enforce its zoning ordinances would violate the doctrine of separation of powers.").

This Court should recognize its prior decision in *Weiss* and uphold the separation of powers doctrine across the State of Florida. It is imperative for municipalities—the entities (unlike the judiciary) entrenched in all factors that go into legislating and governing—to be able to make laws that there are necessary in their jurisdictions and to apply them after weighing all the factors relevant to that municipality's particular set of circumstances. To hold to the contrary, would not only eradicate the separation of powers doctrine, but would also create significant issues for municipalities for at least two reasons.

First, the municipality would no longer have ultimate control and discretion (barring constitutional or statutory violations) to make and enforce laws. The

Fourth's decision, if upheld, would create a "common law duty for . . . a private person to . . . enforce the law for the benefit of any individual or specific group of individuals," which is clearly contrary to established principles of sovereign immunity and constitutional law. *Trianon Park Condo. Assoc., Inc.*, 468 So. 2d at 918. If this judicially created waiver of immunity is upheld, a private citizen would not only be able to control how a municipality enforces code regulations, but the control would also extend to other discretionary decisions of a municipality including: if and how it creates its quasi-judicial and advisory boards, the authority and scope provided to each boards, and even the board's composition. For the City of Coral Gables that would extend to and include ***over 33 boards created***,[5] pursuant to the Legislature's mandate under Florida Statute § 162.03.[6] Providing citizens

[5] These 33 boards include: Anti-Crime Committee, Arts Advisory Panel, Board of Adjustment, Board of Architects, Budget/Audit Advisory Board, City of Coral Gables/University of Miami Community Relations Committee, Code Enforcement Board, Communications Committee, Construction Regulation Board, Coral Gables Advisory Board on Disability Affairs, Coral Gables Merrick House Governing Board, Coral Gables Retirement Board – Fire Pension Trust Board of Trustees, Coral Gables Retirement Board – General Employees, Coral Gables Retirement Board – Police Officers Retirement Trust Fund, Cultural Development Board, Economic Development Board, Emergency Management Division, Historic Preservation Board, Insurance Advisory Committee, International Affairs Coordinating Council, Landscape Beautification Advisory Board, Library Advisory Board, Parking Advisory Board, Parks and Recreation Advisory Board, Parks and Recreation Youth Advisory Board, Pinewood Cemetery Advisory Board, Planning and Zoning Board, Property Advisory Board, School and Community Relations Committee, Senior Citizens Advisory Board, Sustainability Advisory Board, Transportation Advisory Board, and the Waterway Advisory Board.

[6] The Legislative branch, pursuant to its legislative power, conferred upon municipalities the discretion to create local boards to enforce its ordinances and

with the right to use lawsuits to compel municipalities to do what a specific citizen wants and providing citizens with the right to use the judicial branch to control a municipality—including with regard to any of the aforementioned legal review board and code enforcement— could result in a multitude of lawsuits.[7]

---

regulations. The Fourth District decision effectively invades the legislatives' power by permitting the discretion it legislatively bestowed upon municipalities to be invaded by a private citizen. Section 162.03 provides:

> (1) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein.
> (2) A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter. References in this chapter to an enforcement board, except in s. 162.05, shall include a special magistrate if the context permits.

Fla. Stat. § 162.03 (2020).

[7] In addition to the disruption and overreach that will occur to local government's review boards, there could be a multitude of lawsuits that could arise from the decisions made by these boards on a ***daily basis***. In fact, the mandate would open the flood gates of litigation in manners never seen before. For instance, if each of the 33 City of Coral Gables local review boards makes one decision per day, that would be 33 decisions each day made by the City's local review boards. Meaning about 990 decisions are made *per month* by the City's local review boards. If each and every decision was subject to even just one private citizen's scrutiny (not to mention multiple private citizens with differing views wanting different results) and this private citizen could use the courts as a means to control the municipality's decision, that could mean the City is at risk of defending 990 separate lawsuits each month. This would be disastrous because a municipality may never actually have finality in a decision, the municipality would have to allocate extreme amounts of

Second, eradicating the separation of powers doctrine would expose the municipalities to lawsuits from persons attempting to force a municipality to exercise its "discretionary" power and prosecute its laws. Meaning, the ability for a municipality to factor all of those considerations identified by this Court in *Weiss*, plus more, before taking action would be disrupted by litigants and the courts. Again, this would likely affect how a municipality is forced to spend its dollars, which would be improper.[8] Therefore, this Court should uphold the separation of powers doctrine so that it applies evenly across the State of Florida.

Lastly, permitting the courts to compel a City to act by way of an injunction and/or issuing a fine would not only undermine the whole approval and review process of cities, such as the City of Coral Gables that has a complex land use process granting litigants multiple public hearings, it would also place in jeopardy the due process of the party being accused of the violation, who would not be granted the rights accorded to the person under a city's review process to challenge the court's finding and to ultimately seek review of the decision as a court will have already

---

money towards its legal budget, and the municipality would essentially have no point in existence.

[8] "When a court interferes with an executive agency's discretion in spending its appropriated funds, it is encroaching on the powers of the agency." *Fla. Dept. of Children & Families v. J.B.*, 154 So. 3d 479, 481 (Fla. 3d DCA 2015) (finding that it is a violation of the doctrine of separation of powers for a court to direct an executive department on how to expend funds appropriated to the department); *see also Carter v. City of Stuart*, 468 So. 2d 955, 957 (Fla. 1985) ("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.").

adjudicated the code enforcement decision.

B. The Trial Court Properly Dismissed Respondents' Complaint against the City of West Palm Beach.

The City asserts that the trial court properly dismissed Respondents' Complaint as to the City of West Palm Beach because of its reliance on *Detournay* and the separation of powers doctrine. This Court should similarly uphold both. In *Detournay*, the Third District concluded that

> Under the doctrine of separation of powers, the City's discretion to file, prosecute, abate, settle, or voluntarily dismiss a building and zoning enforcement action is a purely executive function that cannot be supervised by the courts, absent the violation of a specific constitutional provision or law.

Detournay, 127 So. 3d at 870-71. In fact, the Third District affirmatively differed from the trial court's reasoning in affirming the dismissal; and rather than dismissing on standing grounds, like the trial court, the Third District based its affirmative of the dismissal on the separation of powers doctrine. Like this Court in *Weiss*, the Third District recognized that there is importance in a municipality having discretionary power and confirmed that courts should

> defer to the City's right to exercise its discretion to seek a settlement that might accommodate the concerns of all parties. In this situation, **the courts have no role in advising or directing a government when, if, and how to maintain an administrative enforcement action: the role of the courts is limited to adjudicating any such action when it is properly at issue before them**.

Detournay, 127 So. 3d at 874 (emphasis added). Similarly, here, the trial court properly dismissed the Respondents' complaint against the City of West Palm Beach because, barring a constitutional or statutory violation—which was not alleged

below—there exists no circumstance where a court should be able to dictate how a municipality, like the City of West Palm Beach, enforces its codes.

C. Respondents' and the Fourth District's Arguments Render the Separation of Powers Doctrine and Sovereign Immunity Meaningless.

Should this Court uphold the Fourth District's opinion below, it would render the separation of power doctrine and sovereign immunity meaningless. While *Boucher* focuses on a litigant's ability to allege "special damages," such allegation, as decided by the Fourth District, essentially creates an exception to the separation of powers doctrine that should not exist.[9] Moreover, allowing a possible exception to exist will disrupt the law across the State of Florida because trial courts will differently assess a litigant's allegations and circumstances and may each differently decide when a litigant has merely alleged "special damages." Thus, upholding the Fourth District's opinion and Respondents' arguments will obliterate the separation of powers doctrine, sovereign immunity, and the municipality's ability to rely on its discretionary authority.

Moreover, the Fourth District's opinion should be quashed because of this Court's later focus on maintaining the separation of powers doctrine in *Trianon* and *Weiss*—which both post-date *Boucher*. It would be a regression of the law to rely only on *Boucher* when this Court later explained the importance of the constitutional

[9] Additionally such logic conflates the issue of standing with justiciability, which is independent of whether a party has special damages to confer standing as noted and argued extensively in Petitioner's brief

separation of powers doctrine in *Trianon* and *Weiss*. Specifically, *Weiss*—an opinion the Fourth District completely overlooked—very clearly laid out the necessity for a municipality to have discretion in enforcing its laws. *See Weiss*, 217 So. 2d at 837-38. While the Fourth District may not have needed to rely on *Detournay*, it was required to consider and rely on this Court's opinion in *Weiss*.[10] It failed to do so; and this Court should correct the Fourth District's error and uphold the separation of powers doctrine.

The Florida Legislature's enactment of the waiver immunity statute, § 768.28(1), did not create universal liability on the part of governmental entities; rather it only provided for certain claims involving negligence or wrongful actions. It is a settled principal of law that any waiver of sovereign immunity "must be clear and unequivocal" and that a waiver of sovereign immunity "should be strictly construed in favor of the state, and against the claimant." *Manatee Cnty. v. Town of Longboat Key*, 365 So. 2d 143, 147 (Fla. 1978); *Windham v. Fla. Dept. of Transp.*, 476 So. 2d 735, 739 (Fla. 1st DCA 1985); *accord Grande v. Hillsborough Cnty.*, 623 So. 2d 1254 (Fla. 2d DCA 1993) (per curiam).

It is clear that the Legislature's limited sovereign immunity waiver provided for in § 768.28(1) does not contemplate (expressly or impliedly) a waiver for a claim in equity. Because the statute does not contain this express language indicates that

[10] While not as relevant before this Court, the Fourth District also failed to consider its prior decision in *Carroll v. City of West Palm Beach*, 276 So. 2d 491, 493 (Fla. 4th DCA 1973) where the Fourth District cited *Boucher* and still found that the complainant had not basis for relief against the City of West Palm Beach.

sovereign immunity exists, unless expressly waived by the municipality. *City of Fort Lauderdale v. Hinton*, 276 So. 3d 319, 325 (Fla. 4th DCA 2019) (noting that "we have not found an equity exemption to sovereign immunity."); *see also Provident Mgmt. Corp. v. City of Treasure Island*, 796 So. 2d 481, 486 (Fla. 2001) (stating that "we adopt Justice Wells' reasoning from *Provident I* and hold that '[w]hen the governmental body invokes a court's equitable jurisdiction, it necessarily casts aside its cloak of immunity and is like any other litigant.'");[11] *see also State v. Bradenton Grp., Inc*., 26 So. 3d 636, 637 (Fla. 5th DCA 2010) (holding that "[s]overeign immunity is a 'shield' and not a 'sword that may be used by the state when it invokes a court's equitable jurisdiction to enjoin a party' and the injunction later turns out to be erroneous and causes damages to be incurred.").

Generally, there is no sovereign immunity waiver for equity claims, particularly where the claim is non-statutory, which, by definition, cannot contain an express waiver. Florida is not alone in bestowing such immunity. The federal courts have expressly found that injunctive relief, such as what was held to be waived herein, against the government is *not waived* unless expressly waived by the sovereign. *U.S. v. Murdock Mach. & Eng'g Co. of Utah*, 81 F.3d 922, 929–30 (10th

[11] Confirming that municipalities have sovereign immunity for equitable claims and such immunity is only set aside when expressly waived by government by seeking affirmative relief in equity action. *See Provident Mgmt. Corp.*, 718 So. 2d at 741, *but see,* J. Overton, dissenting, (disagreeing that waiver can ever occur stating that "there has never been a holding by any court of this state that sovereign immunity has been waived when a government entity seeks to enforce a validly adopted ordinance by an injunction.").

Cir. 1996); *U.S. v. Patterson*, 206 F.2d 345, 348 (5th Cir. 1953) ("[I]t is beyond dispute that unless expressly permitted by an Act of Congress, no injunction can be granted against the United States."); *Hatahley v. U.S.*, 351 U.S. 173, 176, 182 (1956) (district court had no power to enjoin United States or its agents from destroying horses owned by Navaho Indians); *Naganab v. Hitchcock*, 202 U.S. 473, 475–76 (1906) (Chippewa Indians could not require Secretary of Interior to administer certain lands for their benefit); *Hill v. U.S.*, 50 U.S. 386, 388–90 (1850) (judgment debtor barred from enjoining United States from enforcing judgment). In *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949) (superseded in part by 5 U.S.C. § 702), for example, the Supreme Court explained the disastrous effects that would result if a private was permitted overcome the cloak of sovereign immunity by seeking an injunction:

> [I]t is one thing to provide a method by which a citizen may be compensated for a wrong done him by the Government. ***It is a far different matter to permit a court to exercise its compulsive powers to restrain the Government from acting, or to compel it to act. There are the strongest reasons of public policy for the rule that such relief cannot be had against the sovereign. The Government, as representative of the community as a whole, cannot be stopped in its tracks by any plaintiff*** who presents a disputed question of property or contract right. As was early recognized, 'The interference of the Courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief . . . '

Id. at 704 (emphasis added) (quoting *Decatur v. Paulding*, 14 Pet. 497, 516, 10 L.Ed. 559 (1840)); *Murdock Mach. & Eng'g Co. of Utah*, 81 F.3d at 930.

Other state jurisdictions have also barred equitable claims based on sovereign

immunity. *See XL Specialty Ins. Co. v. Commonwealth, Dept. of Transportation*, 624 S.E. 2d 658, 659 (Va. Ct. App. 2006) (holding that equitable claims such as subrogation are barred by sovereign immunity unless a specific statutory waiver exists); *Ga. Dep't of Community Health v. Data Inquiry, LLC*, 722 S.E. 2d 403, 407 (Ga. Ct. App. 2012) (sovereign immunity bars equitable claims against the State); *Texas State Auditor's Office v. Mora-Nichols*, 2003 WL 22453830, at *6 (Tx. Ct. App. Oct. 30, 2003) (recognizing another opinion did not hold that seeking equitable relief provides by itself an independent exception to sovereign immunity); *Columbia Air Servs., Inc. v. Dept. of Transportation*, 977 A.2d 636, 646 (Conn. 2009) (finding action that included declaratory and injunctive relief was barred by sovereign immunity because it failed to meet the exceptions to same); *Arkansas Lottery Commission v. Alpha Mtkg.*, 428 S.W.3d 415, 423 (Ark. 2013) (sovereign immunity barred claim for injunctive and declaratory relief when none of the limited exceptions were applicable); *Amenson v. Dept. of State Police*, 2019 WL 2711292, at *2 (Mich. Ct. App. June 27, 2019) (finding sovereign immunity barred a suit from seeking injunctive relief when the limited exception did not apply).

Here, the Fourth District's decision—that sovereign immunity does not apply because this is an equitable action and special damages were alleged—renders meaningless the sovereign immunity governing discretionary and executive decisions. [12] The City is unable to locate a case in Respondent's Amended Answer

[12] Additionally, the court would be interfering into the long established line of cases granting local governments discretion on its police powers. See, *Everton v. Willard*, 468 So. 2d 936, 939 (Fla. 1985) (recognizing no distinction between immunity

Brief that holds sovereign immunity is waived for actions in equity. Thus, because there is no express waiver of sovereign immunity for claims in equity, the Fourth District erred in holding the City is not entitled to sovereign immunity.

CONCLUSION

The separation of powers doctrine, discretionary doctrine, and sovereign immunity are constitutional protections of vital importance. Barring a constitutional or statutory violation, the judicial branch should have no say in how a municipality creates, implements, or enforces its laws. Such protections must be upheld here today and no exceptions (including for an allegation of "special damages") should be created. A municipality considers various factors in making its discretionary decisions and these should not be affected by the judiciary, regardless of whether a litigant has alleged "special damages." The separation of powers doctrine and sovereign immunity must be furthered. Therefore, this Court should quash the Fourth District Court of Appeal's order and affirm the trial court's ruling.[13]

---

afforded police officer in making arrest and discretionary decision of prosecutors and judiciary; all these decisions are basic discretionary, judgmental decisions that are inherent in enforcing the laws of the state); *Kaisner*, 543 So. 2d at 737 (discretionary" as used in this context means that the governmental act in question involved an exercise of executive or legislative power such that, for the court to intervene by way of tort law, it inappropriately would entangle itself in fundamental questions of policy and planning.").

[13] If the Court were to affirm the Fourth District's decision, the City of Coral Gables would respectfully request that it limits its decision to those rare instances where the alleged act of the municipalities is one that is contrary to the law, i.e. 1983 violation, and were no adequate remedy is provided for in the law.

Dated: December 17, 2020

Respectfully submitted,

/s/Frances G. De La Guardia

Frances G. De La Guardia
Florida Bar No. 775762
frances.guasch@hklaw.com
Suzanne M. Aldahan
Florida Bar No. 1002654
suzanne.aldahan@hklaw.com
HOLLAND & KNIGHT LLP
Counsel for the City of Coral Gables
701 Brickell Ave., Suite 3300
Miami, Florida 33131
Tel.: (305) 374-8500
Fax: (305) 789-7799

Miriam Soler Ramos
City Attorney – FBN 581348
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134-5717
Tel.: (305) 460-5216
Fax: (305) 460-5264
mramos@coralgables.com

CERTIFICATE OF SERVICE

I Hereby Certify that on December 17, 2020, a true and correct copy of the foregoing has been electronically filed with the Supreme Court of Florida via Florida Courts E-Filing Portal which will serve it via transmission of Notices of Electronic Filing generated by the ePortal System on counsel of record on the Service List below.

s/ Frances G. De La Guardia
Frances G. De La Guardia

SERVICE LIST

Peter M. Haver, Esq.
329 Alhambra Plaza
West Palm Beach, FL 33405
p.haver@dmh-law.com

Attorney for Galina Haver and Representing Himself

K. Denise Haire, Esq.
Kimberly L. Rothenburg, Esq.
City of West Palm Beach
City Attorney Office
401 Clematis Street, 5th Floor (33401)
P.O. Box 3366
West Palm Beach, FL 33402
dhaire@wpb.org

Petitioner's counsel of record

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared in Times New Roman, 14-point font.

s/ Frances G. De La Guardia