IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

ERIC JOSEY, in his capacity as a community representative and member of the George Washington Carver Community Center Interlocal Agreement Committee, **Plaintiff,** **v.** **FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS; SCHOOL BOARD OF FLAGLER COUNTY; FLAGLER COUNTY SHERIFF,** and **CITY COMMISSION OF THE CITY OF BUNNELL,** representatives collectively in their official capacity and members of the George Washington Carver Community Center Interlocal Agreement Committee. **Defendant.**	**Case No.:** 2024 CA 000135

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is a lawsuit for declaratory and injunctive relief. The plaintiff raises a facial challenge to the constitutionality and lawfulness of the defendant's abuse of their county and municipal home rule powers under Article VIII, section 1(g) and 2(b), Fla. Const., codified under § 125.01, § 166.021, § 163.410, Fla. Stats., to arbitrarily execute an Interlocal Agreement, hereinafter ("ILA"), that is unlawful for clear violation of the "Florida Interlocal Cooperation Act of 1969," hereinafter ("Interlocal Cooperation Act"), codified under § 163.01, Fla. Stat.

2. The illicit purpose of the defendant's ILA is to replace the preexisting youth programs of the school district, without cause, and institute the youth programs of the Flagler Sheriff's favored local Police Athletic League, a discrete, privately-owned organization, which is an extrajudicial party operating on behalf of the Flagler County Sheriff's Office, hereinafter (FCSO), in their ILA as an unnamed entity. Their surreptitious plan seeks to take over the City of Bunnell's George Washington Carver Community Center, their only remaining Black historical preservation facility against the will of the Indigenous Black residents and youth.

3. This is not a constitutional challenge of a "state statute or a county or municipal charter, ordinance, or franchise," under Fla. R. of Civ. Pro. R. 1.071., therefore notice is not required. This is a court action under § 86.021, Fla. Stat., narrowly challenging the legality of the defendant's unlawful ILA promulgated in violation of the legislator's Interlocal Cooperation Act, Florida's Constitution, and related statutory laws.

4. The plaintiff, as a committee member and affected party is seeking declaratory relief that may determine the legality of the defendant's ILA which adversely affects the rights of taxpayers and fair use of their George Washington Carver Community Center.

5. This cause seeks the court's judgment on the existence or nonexistence of the

defendant's power, privilege, right, or any fact upon which the same may depend, whether it exists now or will arise in the future to execute ILAs contrary to the state's constitution.

6. In sum, the plaintiff argues that the defendants abused their public entity powers to execute an ILA, that is "inconsistent" with Article VIII, Section 1(g) and 2(b), Fla. Const., § 125.01(1), Fla. Stat., § 163.01, sub. (5)(c)(e) and (7)(a)(b)(c), Fla. Stats., and most egregious, conflicts, cannot coexist and frustrate the preemptive legislator's "private entity" exclusion in the Interlocal Cooperation Act from which Interlocal Agreements were promulgated.

7. Furthermore, the Sheriff knowingly made false representations in purporting that the FCSO would be responsible for "staffing, mentoring, programming, and management," of the youth programs knowing that the FCSO does not operate or manage youth programs nor has the legal right to purport to do so in an ILA.

8. The apparent motive of the defendant's scheme in flouting the state's legislators and constitution is for the FSPAL, surreptitiously funded by the Hammock Dunes community of privileged residents, to take over the G.W. Carver Community Center and modify the historic building for hockey and shuffleboard activities, with the intended purpose of marginalizing and gentrifying Bunnell's Black community in exchange for FSPAL's undisclosed annual funding contribution.

9. The gravamen of the plaintiff's claims is that FSPAL is neither, a "legal nor administrative entity created by the interlocal agreement." See § 163.01, sub. (5)(c)(e) and (7)(a)(b)(c), Fla. Stats. In other words, the FSPAL does not have any legal standing to operate their youth programs on behalf of the FCSO in an ILA as a matter of law. To conceal FSPAL's extrajudicial status, the defendants removed FSPAL as a previously named party and replaced FSPAL with the FCSO, to hide FSPAL's extrajudicial status as a private entity.

10. Lastly, because of the defendant's surreptitious plan to deprive the Bunnell's Indigenous Black community of their historical facility by violating the legislator's authority in the Interlocal Cooperation Act, declaratory judgment and injunction relief is now imperative.

JURISDICTION AND VENUE

11. This Court has authority over this lawsuit pursuant to Article V, § 20(c)(3), Fla. Const., § 86.011 and § 26.012(2)(a)(3)(5), Fla. Stat. Venue lies in this Court because the defendants operate and maintain their principal places of business, and the subject actions of the defendants took place in Flagler County.

PARTIES

12. Plaintiff Eric Josey is a private citizen, widely known community representative civil rights advocate, taxpayer, and voter with a personal stake in the G.W. Carver Community Center. His principal place of residence and business is in Flagler County.

13. Defendant Flagler County Board of County Commissioners, a political subdivision of the State of Florida, an authority under Article VIII, section 1(a)(e)(g), Fla. Const., and §§ 125.01, Fla. Stat. (2023), the legislative and policy-making body of the county government. The County establishes policy, sets legislative priorities, and makes all budget decisions about funding appropriations for county departments and some constitutional officers and has home rule authority to exercise any power except as expressly prohibited by the State Constitution and general law. Its principal place of business is at 1769 E. Moody Blvd., Bunnell, Florida 32110, within Flagler County.

14. Defendant School Board of Flagler County, a political subdivision possessing authority under Article IX, section 4, Fla. Const., operates, controls, and supervises all free

public schools located in Flagler County, Florida, with the home rule authority to exercise any power except as expressly prohibited by the State Constitution and general law. Its principal place of business is at 1769 E. Moody Blvd., Bldg. #2, Bunnell, Florida 32110, within Flagler County.

15. The Defendant Flagler County Sheriff is a county constitutional officer possessing authority under Article VIII, section 1(d), Fla. Const., and § 112.3142(1), Fla. Sta., and has powers running throughout the entire county regardless of whether there are incorporated cities or other independent districts or governmental entities in the county. The sheriff's jurisdiction is concurrent with any city, district, or other law enforcement agency that has jurisdiction in a city or district. Its principal place of business is at 61 Sheriff EW Johnston Drive, Bunnell, FL 32110, within Flagler County.

16. Defendant City Commission of the City of Bunnell, pursuant to authority under Article VIII, section 2(a)(b), Fla. Const., §§ 112.501, Fla. Stat. (2023), the City Commission under this form of city government is the legislative branch of the government and the City Manager is the executive branch of the government. The City Commission enacts Ordinances, and the laws of the City, adopts Resolutions authorizing actions on behalf of the City, reviews development plans, and establishes the policies by which the City is governed. The City Manager is the Chief Executive Officer of the City, overseeing the day-to-day operations, administering the City's service providers, preparing long-range plans, and implementing the policies established by the City Commission within Flagler County. Its principal place of business is at 604 E. Moody Blvd., Unit 6, Bunnell, FL 32110, within Flagler County.

STATEMENT OF FACTS AND CASE

17. In or about September of 2023, the parties' George Washington Carver Interlocal

Agreement Committee, hereinafter ("ILA Committee"), was organized and convened to negotiate a new ILA for the George Washington Carver Community Center, hereinafter ("G.W. Carver Center"), which was executed on March 4, 2024. Annexed hereto as Exhibit "A."

18. The select committee was comprised of the plaintiff representing the Bunnell community and the representatives for each named public entity defendant. Our mission was to amend the defendant's prior 2011 ILA, last amended in 2015. The BOCC and school board were the prior controlling entities that operated, financed, and managed the youth programs and staff for the G.W. Carver Center. Unknown to the plaintiff at the time, the defendants sought to usurp the previous existing school youth programs with FSPAL's youth programs despite its extrajudicial legal standing in the Interlocal Cooperation Act.

The G.W. Carver Community Center Black Historical Facility Preservation

19. Historically, the G.W. Carver Center was the annexed gymnasium of the former George Washington Carver High School. The G.W. Carver Center is considered a historical preservation building founded in 1949 and located on Drain Street in Bunnell, Flagler County.

20. The George Washington Carver High School was a racially segregated [black-only] public high school during the Jim Crow era in operation from 1949 to 1967. Before 1949, the segregated school only went through to the eighth grade. During the same period, Flagler County operated Bunnell High School, a racially segregated [white-only] school that had been in operation since 1917. Black students were prohibited from attending Bunnell High School because of segregation that existed at the time.

21. Flagler County maintained its segregation practice against Black students for (32) years, from 1917 until 1949, until George Washington Carver High School was founded in 1949 and closed after the 1967 school year, exactly (13) years after the Brown v. Board of

Education of Topeka decision.

22. A "historic preservation" is a conversation with our past about our future. More than any other element within the Bunnell community, cultural resources that express its historical, architectural, and archaeological legacy provide a visible and intellectual link with the past, establishing a reassuring, feeling of continuity history and present strives toward positive advancement and change in Flagler County. The distrust of the defendant's motives began with the Sheriff's spurious representation that the FCSO would:

> "be responsible for Daily operation of the Carver Center by FCSO includes athletic staffing, and mentoring, programming origination, and management of the youth programs,"

23. In reality, the FSPAL, an extrajudicial party without legal standing in an ILA, took occupancy of the G.W. Carver Center before the execution of the ILA and began modifying the historic building to accommodate floor hockey and shuffleboard. *In posit*, the FSPAL is a discrete, independent, privately-owned 501(c)(3) organization chapter of The Police Athletic League chapter of The National Association of Police Athletic/Activities Leagues, Inc., hereinafter ("National PAL").

24. The Flagler Sheriff, nor any of the county sheriffs, operate its [own] youth programs because such activities are not the regular duties, function, or service of police agencies. Youth programs are [solely] operated and managed by PALs, and other privately owned organizations that may be merely associated with a sheriff's office or other police agencies. The National PAL and its chapters are autonomous private youth organizations independent from any public entity.

25. The plaintiff informed the defendants numerous times, verbally and in writing, that FSPAL is an extrajudicial entity in an ILA and its purported operation of youth programs for

a historical community facility is not the expressed stated [purpose] of the ILA. See § 163.01, sub. (2), Fla. Stat. The defendants refused the plaintiff's request to obtain the Attorney General's opinion and executed their unlawful ILA anyway despite the legislator's enunciated edict regarding private entity exceptions.

I. Defendant's Inconsistency with The Law

26. Here, the legislators' unambiguous, clearly expressed language precluding the Sheriff from ostensibly purporting the FCSO will operate and manage the youth programs of the FSPAL. The defendant's Carver Center ILA is inconsistent with the county's home rule powers under § 125.01(1), Fla. Sta., which states:

> "The legislative and governing body of a county shall have the power to carry on county government. To the extent **not inconsistent** with general or special law, …"

27. The county's powers purporting FSPAL's youth programs are also inconsistent with Article VIII, section 1(g), Florida Constitution, which states:

> "CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government **not inconsistent** with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances **not inconsistent** with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances."

28. Here, the defendant's collective inconsistency with general law is *res ipsa locquitor*. Knowing this, the defendants paradoxically attempted to revise their scheme numerous times by removing the FSPAL as a previously named party and inserting the "FCSO" in its place to circumvent the legislator's edict.

29. Although the defendants made every effort to avoid this lawsuit by removing the FSPAL and PAL as previously named parties their ILA, the "Recreational activities" and

"programs" referenced in their ILA, is in fact, being operated and managed by the FSPAL. The following are the purported responsibilities of the FCSO and Sheriff in the defendant's Carver Center ILA as executed:

"II. RESPONSIBILITIES OF FLAGLER COUNTY SHERIFF'S OFFICE

A. Flagler County Sheriff's Office (FCSO) will be responsible for the daily operation of the portions of the Carver Center identified as exclusive FCSO space in Attachment A. Daily operation of the Carver Center by FCSO includes athletic staffing, mentoring, programming, and management.

B. Volunteers shall obtain clearance (i.e., background check) to participate in assigned duties sponsored by FCSO.

C. Recreational activities will be scheduled on the School Board programming scheduler (i.e., Facilitron).

D. The Sheriff shall ensure programs will be available to all youth in Flagler County regardless of their race, color, religion, sex, gender, disability, or financial situation.

E. The Sheriff agrees to operate its areas of the Carver Center identified in Attachment A including any buildings, furnishings, fixtures, and equipment or placed upon the premises, in a good state of repair and order, except any ordinary wear and tear arising from use under this Agreement. The Sheriff agrees not to strip, waste, or neglect any building, furnishing, fixture, or equipment. The Sheriff shall obtain the prior written permission of the County for any alterations requiring a building permit.

F. Annually, the Sheriff shall provide funding for the Carver Center in the amount of $10,000. Payments to Flagler County annually by October 1."

II. Defendant's Unlawful Purpose and Use of PAL in an ILA

30. Neither the Flagler Sheriff nor the FCSO has the legal right to usurp the controlling regulatory authority of the National PAL, their Executive Directors, and the Board of Directors, to ostensibly proclaim to operate the PAL programs in an ILA as a matter of law.

31. The Executive Director of FSPAL, who is a full-time deputy sheriff for the

FCSO, would report simultaneously to both the Flagler Sheriff and PAL Board of Directors, which significantly exposes a conflict-of-interest violation of PAL policies. Furthermore, the FSPAL is not under the Flagler Sheriff's exclusive powers or authority even though FCSO employees may volunteer or be employed by PAL which is permissible. The FSPAL chapter operates exclusively under the governance, regulations, and bylaws of the National PAL. These facts are apodictic and unassailable.

32. *In supra*, the defendants have amended their Carver Center ILA numerous times to attenuate FSPAL's current role by inserting the term "FACILITY USE AGREEMENT" in the title of their ILA in order to avoid the judgment of this court.

III. Defendant's Unlawfully Combined a Facility Use Agreement in their ILA to Avoid Declaratory Judgment

33. The defendant's insertion of the term "FACILITY USE AGREEMENT" in the ILA's title, removal of the FSPAL and PAL as previously named parties, and their insertion of the Flagler Sheriff and FCSO in its place by home rule powers, is a glaring illustration of the defendant's shameful disrespect of the state's constitution and statutory laws.

34. Plaintiff agrees that the city and county have broad home rule powers to execute discrete FACILITY USE AGREEMENTS and ILAs, however; no such authority exists that may consolidate or otherwise combine these agreements. ILAs are [stand-alone] agreements with meticulous procedures under § 163.01, Fla. Stat.

35. Clearly, home rule powers do not supersede the legislative authority in special acts and general laws that exclusively govern ILAs. The lawful exercise of the defendants to execute contracts, leases, a memorandum of understanding, FACILITY USE AGREEMENTS, ILAs, etc., must be consistent with the statutory requisite of general laws and special acts. Here,

no such consistency exists.

36. General law is defined by Merriam-Webster, "as a law that is unrestricted as to time, is applicable throughout the entire territory subject to the power of the legislature that enacted it and applies to all persons in the same class. Called also general act, general statute."

37. The plaintiff urged the defendants to obtain an advisory opinion of the Attorney General to resolve the following constitutional questions:

> Does the plain language of section 163.01, Florida Statute, authorize a Sheriff to "manage the daily operation of athletic staffing, mentoring staffing, programming origination, and management of the youth programs" of a Police Athletic League chapter of the National PAL, a discrete, independent, privately owned 501(c)(3) organization in an Interlocal Agreement?
>
> Does the plain language of section 163.01, Florida Statute, authorize a Board of County Commissioners to insert the term "FACILITY USE AGREEMENT," or otherwise combine this type of agreement with an Interlocal Agreement?

38. The defendants refused to do so. In Florida, courts have widely held that local government action should be prohibited if their action is either: 1) preempted by state law or 2) in conflict with state law. *See Tallahassee Mem'l Reg. Med. Ctr. v. Tallahassee Med. Ctr.,*681 So. 2d 826 (Fla. 1st D.C.A. 1996).

39. The defendants cannot present any evidence, whatsoever, that the Sheriff or FCSO in past practice, precedence, agency policy or legal authority show that in the regular course of their police duties may:

> "provided safe and structured athletic programs to the youth of Flagler County, fostering educational programs and activities that will increase student and community knowledge of the function of law enforcement and to serve as mentors and positive role models for the Flagler County youth." See ILA recitals, second to last para.

40. Simply put, law enforcement agencies do not provide and manage youth programs under their authority during their regular police operational duties and no such regular duty or

police function exists. The youth programs proffered by the defendants are solely operated by discrete, privately-owned organizations such as PALs, YMCAs, Boys and Girls Clubs, etc.

41. Furthermore, the defendant's Carver Center ILA is inconsistent with the defined purpose of the ILAs which states:

> "local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities." See § 163.01(2) Fla. Stat.

42. No precedence exists, whatsoever, that may show the National PAL, any of its PAL chapters, have ever been the subject of an ILA to institute youth programs in a historical community facility against the will of a community. Therefore, declaratory judgment and injunctive relief are warranted as a matter of law.

FIRST CAUSE OF ACTION:

HOME RULE POWERS
(Violations of Article VIII, §§ 2(b) and, § 1(g) of the Florida Constitution)

43. The allegations in Paragraphs 1 – 42 are incorporated herein by reference.

44. The plaintiff asserts that the city unlawfully abused their home rule powers under Article VIII, Section 2(b), Florida Constitution which states:

> "POWERS. 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."

45. Municipality powers are codified under § 166.021(1) Fla. Stat., which states,

> "As provided in s. 2(b), Art. VIII of the State Constitution,

> municipalities shall have the 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 when expressly prohibited by law.**"

46. 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 power for municipal purposes except as otherwise provided by law. Municipalities may execute ILAs for "law enforcement services" pursuant to § 166.0495, Fla. Stat., which states:

> **"Interlocal agreements to provide law enforcement services.** — A municipality may enter into an interlocal agreement pursuant to s. 163.01 with an adjoining municipality or municipalities within the same county to provide law enforcement services within the territorial boundaries of the other adjoining municipality or municipalities. Any such agreement shall specify the duration of the agreement and shall comply with s. 112.0515, if applicable. The authority granted a municipality under this section is in addition to and not in limitation of any other authority granted a municipality to enter into agreements for law enforcement services or to conduct law enforcement activities outside the territorial boundaries of the municipality."

47. Passage of section 166.0495, Fla. Stat., therefore, provides the general law authority required by section 2(c), Article VIII, Florida Constitution, for a municipality to exercise its law enforcement powers outside its jurisdictional boundaries through an interlocal agreement with adjoining municipalities within the same county. Obviously, the youth programs of FSPAL are not a "law enforcement service" as referenced here.

48. County home rule powers requires consistency under Article VIII, Section 1(g), of the Fla. Const., which states:

> CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government **not inconsistent** with general law, or with

special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

49. The exercise of powers in counties with home rule charters is codified under § 125.01, all such powers come after subsection (1), Fla. Stat., which states as follows:

> "The legislative and governing body of a county shall have the power to carry on county government. To the extent **not inconsistent** with general or special law, this power includes, but is not restricted to, the power to: …"

50. Codified under § 163.410, Fla. Stat. states in the relevant part as follows:

> "Exercise of powers in counties with home rule charters. — In any county which has adopted a home rule charter, the powers conferred by this part shall be exercised exclusively by the governing body of such county."

51. The plaintiff avers that the BOCC's home rule powers to execute, *inter alia*, discrete "Facility Use Agreements" and ILAs, does not usurp the legislator's authority in general laws and special acts, nor permit consolidation of these agreements or authorize BOCC to conceal an extrajudicial private entity under a public entity in an ILA.

52. The general laws under the Interlocal Cooperation Act that exclusively govern ILAs duly specifies authorized private entities under § 163.01 sub. (5)(c)(e) and (7)(a)(b)(c), Fla. Stat., which states:

> (5)(c) The precise organization, composition, and nature of any separate **legal or administrative entity created thereby with the powers designated thereto**, if such entity may be legally created.
>
> (e) The manner in which funds may be paid to and disbursed by any separate **legal or administrative entity created pursuant to the interlocal agreement.**
>
> (7)(a) **An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the**

> **agreement,** which may be a commission, board, or council constituted pursuant to the agreement.
>
> (b) **A separate legal or administrative entity created by an interlocal agreement shall possess the common power specified in the agreement** and may exercise it in the manner or according to the method provided in the agreement. The entity may, in addition to its other powers, be authorized in its own name to make and enter into contracts; to employ agencies or employees; to acquire, construct, manage, maintain, or operate buildings, works, or improvements; to acquire, hold, or dispose of property; and to incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.
>
> (c) No separate **legal or administrative entity created by an interlocal agreement** shall possess the power or authority to levy any type of tax within the boundaries of any governmental unit participating in the interlocal agreement, to issue any type of bond in its own name, or in any way to obligate financially a governmental unit participating in the interlocal agreement…)

53. The plaintiff avers the defendant's extrajudicial ILA is indisputably inconsistent with these statutes which specify that "not-for-profit corporation" private entities must be either *legal* or *administrative* and *created* by the ILA, as a matter of law.

54. The defendant's ill-conceived actions to hide and consolidate the FSPAL's youth programs under the FCSO conflicts with the state's field of regulation and cannot coexist with the state's constitutional sovereignty in the Interlocal Cooperation Act.

55. In other words, the Defendant's lawful exercise home rule powers to execute discrete contracts, leases, facility use agreements, ILAs, etc., must be consistent with the legislator's authority in general laws and special acts.

SECOND CAUSE OF ACTION:

INVALID PURPOSE CONTRARY TOTHE "FLORIDA INTERLOCAL COOPERATION ACT OF 1969"
(Violation of Article IX, § 1 and § 4 of the Florida Constitution)

56. The allegations in Paragraphs 1 – 55 are incorporated herein by reference.

57. The plaintiff asserts claim that the defendant's Interlocal Agreement is contrary and exceeded the legislative purpose of the Interlocal Cooperation Act, under § 163.01, sub. (2), Fla. Stat., which states:

> It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

58. Here, the plaintiff argues that the defendant's use of an ILA for the [purpose] of unlawfully instituting the extrajudicial youth programs of the Sheriff's favored PAL, against the will of the indigenous Black residents, in a tax-funded Black historical community facility, defies the legislators' legitimate purpose for ILAs to "accord the best with geographic, economic, population, and other factors influencing the needs and development of local communities."

59. The FSPAL, its youth programs, serves no legal or legitimate purpose in an ILA and the defendant's illegal action to operate and manage the youth programs of an extrajudicial party deprives the Bunnell community residents of its choice and fair use of its facility.

THIRD CAUSE OF ACTION:

INTERLOCAL AGREEMENT EXPRESSLY PREEMPTED BY STATE LEGISLATION (Violation of Article IX, § 1 and § 4 of the Florida Constitution)

60. The allegations in Paragraphs 1 - 59 are incorporated herein by reference.

61. The plaintiff asserts a claim that the defendants violated the state's preemption in § 163.01 Fla. Stat., which precludes the defendants from exercising its authority in the state's field of

regulation of exclusion and exemption.

62. Preemption may exist in one of two ways, either expressed or implied. Even in cases of express preemption, it is unlikely that a specific portion of a state statute expressly declaring preemption will directly address the exact action contemplated by the local government. It is more likely that the state statute will demonstrate an intent to occupy a field of regulation in the totality of authority.

63. As here, the state demonstrates its field of regulation occupancy in § 163.01, sub. (5)(c)(e) and (7)(a)(b)(c), Fla. Stat., specifying private entities must be *legal* or *administrative* entities *created* by the ILA.

64. The court must then examine whether the defendant's action for FSPAL to operate its youth programs for the FCSO, and to consolidate a "FACILITY USE AGREEMENT" in an ILA, is within the scope of *expressed* preemption.

65. For instance, in *Florida Power Corp. v. Seminole County*, 579 So. 2d 105 (Fla. 1991), the Supreme Court declared that F.S. §366.04(1) expressly preempted the area of utility rate regulation, and thereby prohibited a county and city ordinance requiring Florida Power to bury its power lines as a result of a proposed road expansion. The court opined that the express wording of the statute preempted the action and prohibited the ordinances, as does §163.01, F.S.

66. The MHRPA states that a municipality may act unless *expressly* prohibited by law. In 1994, the First District recognized for the first time two types of state preemption — implied and expressed. *Santa Rosa County, 635 So. 2d at 100*. Thus, a finding of implied preemption should be reserved for the very narrow class of cases in which the state has legislated pervasively, thereby suggesting a strong policy behind limiting local action. *See Tallahassee Mem'l*, 681 So. 2d at 831.

67. Here, the plaintiff argues that the state has [legislated pervasively] in the "Florida Interlocal Cooperation Act of 1969," and it demonstrates its intent to occupy a field of regulation of "not-for-profit corporations" under § 163.01, sub. (3)(e)(3), must be "A separate legal or administrative entity created by an interlocal agreement," under § 163.01, Fla. Stat., thus, the Defendant's action to hide and consolidate FSPAL's youth programs under the FCSO is *expressly preempted* by state law.

FOURTH CAUSE OF ACTION:

COUNTY AND CITY ACTION CONFLICTS WITH STATE LEGISLATION
(Violation Article IX, § 4 of the Florida Constitution)

68. The allegations in Paragraphs 1 – 67 are incorporated herein by reference.

69. The plaintiff asserts the claim that the defendant's Carver Center ILA conflicts with state legislation. *Beyond* preemption, courts have recognized that state legislation may override local action if that action expressly conflicts with the legislation as here. To avoid conflicting with state legislation, local action must be able to coexist with the state legislation without frustrating its purpose. *Shetler v. State, 681 So. 2d 730 (Fla. 2d D.C.A. 1996), rev. denied, 680 So. 2d 424.*

70. The inclusion of FSPAL's youth programs is a clear example of a prominent conflict and inability to coexist with the state's legislative authority in the Interlocal Cooperation Act, a field of regulation for authorized private entities. The defendant's ILA also conflicts with the state's constitution.

71. While no Florida case has expressly adopted this general inquiry as a necessary prong, federal courts have done so on several occasions. *Hernandez v. Coopervision, 691 So. 2d 639 (Fla. 2d D.C.A. 1997)* (a party seeking to challenge state action as in conflict with federal

law must demonstrate that the state action "frustrates the purpose" of the federal law) citing, *Bravman v. Baxter Healthcare Corp., 842 F. Supp. 747 (S.D.N.Y. 1994). See also Hines v. Davidowitz, 312 U.S. 52, 67 (1941).* This test preserves the intent of local control while recognizing the *state's ultimate sovereignty*.

72. The "frustration of purpose test" has been impliedly used to analyze local government action for conflict, if not expressly so, in *City of Jacksonville v. American Environmental Services Inc.*, 699 So. 2d 255 (Fla. 1st DCA 1997). In a short opinion, the First District invalidated the city's denial of a waste facility variance based on a finding of lack of need for a proposed waste facility. *See City of Jacksonville v. American Environmental Services Inc., 699 So. 2d 255 (Fla. 1st D.C.A. 1997).*

73. The court determined that a state statute mandating the need for regional waste facilities prohibited city action where the statute expressly forbade more stringent local rules on the matter and where the refusal frustrated the state's purpose of encouraging the siting of regional waste facilities.

74. As evidenced by the foregoing, instances in which conflict will be found to exist between local action and state law occur where the local action frustrates the purpose of a state law or constitutional provision and that frustration mandates that the action cannot coexist.

75. Certain types of local action have been found to frustrate the purpose of state law and a conflict has resulted. Florida jurisprudence makes clear that local action cannot:

1) provide for more stringent regulation than the state legislation in violation of the express wording of the statute.

2) provide for a more stringent penalty than that allowed by state statute.

3) prohibit behavior otherwise allowed by state legislation.

4) **allow behavior otherwise prohibited by state statute;** or

5) **provide for a different method for doing a particular act than the method proscribed by state legislation.**

76. Here, it cannot be disputed that the actions of the defendants to insert the term "FACILITY USE AGREEMENT" in the title of their ILA, and action of the Sheriff to misrepresent that FCSO will operate and manage youth programs, frustrates the intended purpose of the ILA's requisites as a matter of law.

77. Thus, if a local action goes as far as to provide an exemption to state regulation without the authority to do so, the action must be invalidated. In addition to the foregoing limitations, if a state statute provides a specific method for doing a particular act, as here, the local government cannot provide for another way to do that same act.

REQUEST FOR EXPEDITED CONSIDERATION

78. Plaintiffs respectfully request that the court expedite consideration of this action pursuant to § 86.111, Fla. Stat. (2023), which authorizes the Court to "order a speedy hearing of an action for a declaratory judgment" and "advance it on the calendar."

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court:

1) Grant a temporary restraint order enjoining the defendants from taking *any action* described in their Interlocal Agreement executed on March 4, 2024.
2) Grant an order that shall *immediately cease* all youth and modification activities of the FSPAL in the George Washington Carver Community Center, *or in the alternative*, grant *status quo ante*, until such a time the court renders its declaratory judgment.
3) Grant an order that shall direct FSPAL to *vacate* the George Washington Carver Community Center within five days of the court's order.
4) Grant declaratory judgment finding the defendant's Carver Center ILA is *inconsistent* and *violative* of the "Florida Interlocal Cooperation Act of 1969."

5) Grant a declaratory judgment order finding the defendants use of home rule powers to execute their Interlocal Agreement is *inconsistent* with the state's constitution.
6) Grant a declaratory judgment order finding that it is *not legally permissible* for a Sheriff to purport providing, organizing, or managing youth programs in an Interlocal Agreement.
7) Grant a declaratory judgment order finding the defendant's Carver Center Interlocal Agreement *invalid*.
8) Grant an order awarding court costs and any such other and further relief this Court may deem just and proper.

DATED: March 6th, 2024

Respectfully submitted,

/s/ *Eric Josey*

Eric Josey,
250 Palm Coast Pkwy NE
Suite 607, PMB 173
Palm Coast, Florida 32137
Phone: (917) 882-1330
Fax: (386) 246-6221
Email: premier.consulting173@aol.com