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

HILLSBOROUGH COUNTY, a political subdivision of the State of Florida, and SANTA ROSA COUNTY, a political subdivision of the State of Florida

Plaintiffs,

Vs.

FRANK PETERMAN, JR., in his official capacity as SECRETARY of the STATE OF FLORIDA DEPARTMENT OF JUVENILE JUSTICE,

Defendant.

CASE NO.: 37 2010 CA 000463

DISPOSED

ORDER OF DISMISSAL

THIS CAUSE came on to be heard before the Court on August 23, 2010, upon Defendant's Motion to Dismiss Plaintiffs' Complaint for Declaratory Judgment and Supplemental Relief and Plaintiffs' Response thereto, and the Court having heard argument of counsel for Defendant, and argument of Plaintiffs' counsel, and being otherwise apprised, the Court finds that the Motion to Dismiss should be granted, as follows:

1. Plaintiffs challenge Defendant's implementation of Section 985.686, Florida Statutes, which requires all Florida counties to participate in funding the

costs of "providing detention care ... for juveniles for the period of time prior to final court disposition." Plaintiffs argue that Defendant Peterman as agency head of the Department of Juvenile Justice (DJJ) is incorrectly implementing Section 985.686, Florida Statutes, and that this statute is unconstitutional facially and as applied.

2. Plaintiffs claim that they have exhausted all administrative prerequisites prior to filing of this suit. However, there are numerous administrative remedies that remain open to the Plaintiffs, including (1) Plaintiffs' opportunity pursuant to s. 120.565, Florida Statutes, to request a declaratory statement from Defendant regarding interpretation and implementation of s. 985.686; (2) Plaintiffs' pending administrative challenges before the State of Florida Division of Administrative Hearings to Defendant's decisions regarding the financial responsibilities of the Plaintiffs and other Florida counties to fund pre-disposition juvenile detention; and (3) Plaintiff Hillsborough County's pending appeal of final agency action in the Second District Court of Appeal (*see, Hillsborough County v. Florida Dep't of Juvenile Justice*, No. 2D09-4751 (Fla. 2nd DCA filed Oct. 14, 2009)). The Florida Supreme Court, in the case of *Flo-Sun, Inc. v. Kirk*, 783 So.2d 1029, 1037 (Fla. 2001), articulated the necessity for circuit courts to refrain from exercising jurisdiction when administrative remedies are available to a plaintiff, citing the doctrine of primary jurisdiction as follows: "Pursuant to the doctrine, 'judicial

intervention in the decision-making function of the executive branch must be restrained in order to support the integrity of the administrative process and to allow the executive branch to carry out its responsibilities as a co-equal branch of government.'" As noted above, Plaintiffs are required to seek a declaratory statement from the Defendant, pursuant to Section 120.565, Florida Statutes, regarding the interpretation of Section 985.686, Florida Statutes. *Dep't of Prof'l Regulation, Florida State Bd. of Med., v. Marrero*, 536 So. 2d 1094, 1097 (Fla. 1st DCA 1988). The Defendant's interpretation of the statute would then be subject to judicial review. *Chiles v. Dep't of State, Div. of Elections*, 711 So.2d 151 (Fla. 1st DCA 1998). "Administrative agencies are in the best position to interpret the statutes they implement and enforce. Therefore the courts generally defer to an agency's interpretation of its own statutes and rules." *Id.* at 155. Furthermore, the DJJ recently completed a massive overhaul of its rules, chapter 63G-1, implementing s. 985.686, Florida Statutes, effective July 6, 2010. The Plaintiffs had the opportunity to comment to DJJ about the new proposed rules and to express their concerns regarding implementation of s. 985.686, pursuant to s. 120.54, Florida Statutes, and now have the opportunity to challenge the new rules pursuant to s. 120.56, Florida Statutes. Florida courts have emphasized that mere assertions of constitutional questions do not exempt a party from the exhaustion requirement. *See, e.g. Hadi v. Liberty Behavioral Health Corp.*, 927 So.2d 34, 40

(Fla. 1st DCA 2006) (noting that the "mere assertion of constitutional questions should not automatically entitle a party to bypass administrative channels."). The Florida Supreme Court has held that "the circuit court should refrain from entertaining declaratory suits except in the most extraordinary cases, where the party seeking to bypass usual administrative channels can demonstrate that no adequate remedy remains available under Chapter 120." *Gulf Pines Mem'l Park, Inc. v. Oaklawn Mem'l Park, Inc.*, 361 So.2d 695, 699 (Fla. 1978). Plaintiffs here have not shown that they do not have an adequate administrative remedy available to them. Therefore, Plaintiffs' Complaint must be dismissed for their failure to exhaust available administrative remedies.

3. Plaintiffs, statutorily and by their own admissions, are public bodies and political subdivisions of the State of Florida. (Sections 1.01(8), 7.29, 7.55, Florida Statutes; Com. Par. 7). As such, they are public agencies which lack standing to challenge the validity of legislation affecting their duties and responsibilities. *See Florida Dep't of Agric. and Consumer Servs. v. Miami-Dade County,* 790 So.2d 555, 557-58 (Fla. 3rd DCA 2001), in which the Third District Court of Appeal held that Miami-Dade County lacked standing to bring an action challenging the constitutionality of Section 581.031(15)(a), Florida Statutes, providing authority for the Florida Department of Agriculture to enter into any place and take possession of any material determined by that Department to pose a threat to the

agricultural or public interests of the State. In support of this determination, the court stated that "[i]n Florida, it is clear that state officers and agencies must presume legislation to be valid and *do not have standing to initiate litigation for the purpose of determining otherwise.*" *Florida Dep't of Agric. and Consumer Servs.*, 790 So.2d at 557-58, supra (emphasis added). It has been the rule in Florida for almost a century that government entities such as Hillsborough County and Santa Rosa County cannot challenge the constitutionality of the laws that they are tasked with administering and obeying. "Every law found upon the statute books is presumptively constitutional until declared otherwise by the courts. . . [and] ministerial officers must obey it, until in a proper proceeding its constitutionality is judicially passed upon." *State ex rel. Atlantic Coast Line Ry. Co. v. State Bd. Of Equalizers*, 94 So. 681, 682 (Fla. 1922). "For important policy reasons, courts have developed special rules concerning the standing of governmental officials to bring declaratory judgment actions questioning a law those officials are duty-bound to apply." *Dep't of Revenue v. Markham*, 396 So.2d 1120, 1121 (Fla. 1981) (superseded in statute) (reversing decisions because the declaratory judgment action "was improperly commenced by one who lacked standing and should never have been entertained"); *Atlantic Coast Line*, 94 So. at 681; *Barr v. Watts*, 70 So.2d 347, 350 (Fla. 1953)(re-affirming the "well-established rule" in *Atlantic Coast Line*). The Florida Supreme Court recently

upheld this "common law principle expressed in *Atlantic Coast Line* and *Markham* that. . . public officials lack standing to challenge the constitutionality of a statute." *The Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So.2d 793, 803 (Fla. 2008). "Disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion." *Markham*, 396 So.2d at 1121. Although there is an exception to this long established rule if complying with the law would involve an expenditure of public funds, here that is not an issue. In fact, Plaintiffs do not challenge the fact that they must expend funds to pay for predisposition detention costs, but instead are only disputing the method by which their share is determined. In *The Crossings* case, the Florida Supreme Court declined to rule on a public funds exception because it was not properly raised before the trial court, but noted: "We do caution that past precedent indicates that the public funds exception is a narrow exception." *The Crossings*, 991 So.2d at 802 (citing *Dep't of Educ. V. Lewis*, 416 So.2d 455, 455, 459 (Fla. 1982)). In our system of government, a challenge in court is not the appropriate method by which Hillsborough County and Santa Rosa, as public bodies, can challenge an act of the Legislature. The proper route would be to seek remedy directly from the Legislature. A "public official may only seek a declaratory judgment when he is 'willing to perform his duties, but

prevented from doing so by others.'" *Markham*, supra, 396 So. 2d at 1121, citing *Reid v. Kirk*, 257 So. 2d 3, 4 (Fla. 1972). Furthermore, it should be noted that all legislative acts are presumed to be constitutional. *Burch v. State*, 558 So.2d 1, 3 (Fla. 1990); *Dep't of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879 (Fla. 1983). Since the Florida Constitution is a limitation of power, unless the challenged law palpably violates some portion of the Constitution, courts are obligated to uphold the law. *State v. Champe*, 373 So.2d 874 (Fla. 1978). The power to declare a law unconstitutional exists only when it is necessary to enforce or protect some constitutional right. *State ex rel. Crim v. Juvenal*, 118 Fla. 487, 159 So. 663 (1935). The Constitution itself must be found to be violated. If the act does not violate the United States or State Constitution, it must be given effect. *Dutton Phosphate Co. v. Priest*, 67 Fla. 370, 65 So. 282 (1914), *see also Crist v. Florida Assn of Criminal Defense Lawyers, Inc.*, 978 So.2d 134, 141 (Fla. 2008) (noting that "unless legislation be clearly contrary to some express or necessarily implied prohibition found in the Constitution, the courts are without authority to declare legislative Acts invalid.") Courts do not have the power to rule upon the policy or wisdom of the law. *Fraternal Order of Police, Metro. Dade County, Lodge No. 6 v. Dep't of State*, 392 So.2d 1296, 1302 (Fla. 1980). In determining the validity of a statute, the courts must give it a construction that will uphold it if at all possible. *See e.g., Miami Dolphins, Ltd. v.*

Metro. Dade County, 394 So.2d 981, 988 (Fla. 1981) (finding that "[g]iven that an interpretation upholding the constitutionality of the act is available to this Court, it must adopt that construction"). If any doubt exists about the validity of the act, all doubt will be resolved in favor of the constitutionality of the statute. *Falco v. State*, 407 So.2d 203, 206 (Fla. 1981). Here, Section 985.686, Florida Statutes is presumed to be constitutional and therefore must be given effect. Under the above-cited cases, Plaintiffs, as public bodies, do not have standing to challenge a statute which they are charged with implementing. Therefore, Plaintiffs' Complaint must be dismissed for lack of standing.

4. Plaintiffs are bringing a suit which would affect the substantial rights and interests of all the counties in Florida. However, they have failed to join all the counties. Two (2) counties (Plaintiffs) cannot speak for all sixty-seven (67) counties in Florida. Therefore, Plaintiffs' Complaint must be dismissed for failure to join indispensable parties pursuant to Florida Rule of Civil Procedure 1.140(b). An indispensable party is one "who not only (has) an interest in the controversy, but an interest of such a nature that a final judgment cannot be made without either affecting that interest or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." *Glancy v. First Western Bank*, 802 So.2d 498, 499 (Fla. 4th DCA 2001). Here, the remaining sixty-five (65) counties throughout Florida are indispensable parties

to this case because they all have a financial stake in the outcome of this litigation. All counties that are not fiscally constrained must provide sufficient funds to pay their share of predisposition juvenile detention costs pursuant to Section 985.686, Florida Statutes. Therefore, all counties in Florida have a critical stake in the outcome of this case, and its disposition without including those counties and an opportunity for them to be heard, leaves this case in the position that its final determination will be wholly inconsistent with equity and good conscience. In the absence of joinder of these indispensable parties, the action cannot go forward and should be dismissed. Furthermore, Section 86.091, Florida Statutes supports dismissal of Plaintiffs' Complaint, stating "[w]hen declaratory relief is sought, all persons may be made parties who have or claim to have any interest which would be affected by the declaration. *No declaration shall prejudice the rights of persons not parties to the proceedings.*" (Emphasis added.) Moreover, before any proceedings for declaratory relief are entertained, all persons who have actual, present, adverse, and antagonistic interest in the subject matter should be before the court. *Florida Dep't of Educ. v. Glasser*, 622 So.2d 944, 948 (Fla. 1993). The remaining counties that are not parties to this action have a present and potentially adverse and antagonistic interest in this case. Consequently, Plaintiffs' Complaint must be dismissed for failure to include all the counties in Florida in this suit.

5. Finally, Plaintiffs' Complaint fails to establish subject matter jurisdiction and fails to state a cause of action, because Plaintiffs seek a judgment against Defendant Peterman and DJJ despite the fact that it is the Legislature through general appropriations and not Defendant Peterman or the DJJ who determines the split between state and county funding; and thus Plaintiffs are asking this Court to violate the constitutional provision regarding the separation of powers, and render a decision in this matter regarding the legislative appropriation of funds for the state and county split of the costs of juvenile detention. Plaintiffs seem to be under the impression that it is DJJ who determines what the split between state and county funds will be for juvenile detention costs. However, this is far from true. The Legislature, through general appropriations, determines how much of the funding needed for the detention of juveniles will come from the state and how much will come from the counties as a whole. Once DJJ is given those figures, its only role is to determine each county's proportion based on their previous use. The separation of powers clause of the Florida Constitution states: "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."[1] The State Constitution assigns the power of appropriating state funds to the

[1] Fla. Const. Art. II § 3.

Legislature. *See,* Fla. Const. Art. III, §8, §12 and §19, and Art. VII, §1.(c). For example, the Supreme Court of Florida has held that adjudicating the adequacy of legislative appropriations of educational funding would result in the unconstitutional usurpation of a legislative power, whether directly or indirectly.[2] In this regard, it would be unconstitutional for this Court to render a decision in this matter regarding the appropriation of funds for the state and county split of the costs of juvenile detention. In *Chiles v. Children*, the Supreme Court of Florida further explained:

> ...fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.[3]

The Court continued:

> Under any working system of government, one of the branches must be able to exercise the power of the purse, and in our system it is the legislature, as representative of the people and maker of laws, including laws pertaining to appropriations, to whom that power is constitutionally assigned. We do not today state that the Governor and Cabinet have no role to play in the budgetary process. For example, section 216.292, Florida Statutes (1989), provides for limited transfers within budget entities under specific circumstances..... The constitution specifically provides for the legislature alone to have the power to appropriate state funds. More importantly, only the legislature, as the voice of the people, may determine and weigh

[2] *See, Chiles v. Children*, 589 So. 2d 260, 266 (Fla. 1991). *See also, Coalition for Adequacy and Fairness in Sch. Funding v. Chiles*, 680 So. 2d 400 (Fla. 1996).
[3] *See, Chiles v. Children*, 589 So. 2d at 266.

> the multitude of needs and fiscal priorities of the State of Florida. The legislature must carry out its constitutional duty to establish fiscal priorities in light of the financial resources it has provided.[4]

Therefore, pursuant to the separation of powers clause of the Florida Constitution, Plaintiffs' Complaint must be dismissed for lack of subject matter jurisdiction. Plaintiffs admit that "[t]he 'cost of detention care as fixed by the legislature' is a figure established solely by the Legislature". (Complaint. Par. 22.) However, Plaintiffs incorrectly believe that "before each fiscal year [DJJ] calculates a total appropriation establishing an amount that the State will pay for juvenile detention costs, and assesses the balance of 'the cost of detention care' to be the responsibility of the counties." (Complaint, Par. 23.) In actuality, however, it is the Legislature who determines what share of the detention costs will be borne by counties. Once DJJ knows what percentage of the total costs will be covered by the State, it only calculates the proper share of each county based on the prior year's usage. Therefore, for example, the determination of one county's share for fiscal year 2011-2012 would be made in fiscal year 2010-2011 using the actual data from 2009-2010. These decisions are mathematical, not arbitrary. The total amount the counties will be responsible for is determined by the Legislature, not DJJ. Plaintiffs' later inconsistent statements that the "Legislature simply rubber-stamps the Department's budget each year" is hardly the case; it is doubtful the

[4] *See id.* at 267.

Legislature rubber-stamps *any* agency's budget. (Complaint, Par. 25.) Additionally, Plaintiffs appear confused about the fixed costs of operating detention centers. Generally, the only way to significantly cut costs is to close a detention center all together. In much the same way that a bus ride costs the same amount if it is transporting one child or twenty children, detention centers cost the same to run regardless of whether, as the Plaintiffs point out "the number of juveniles in detention ha[ve] *decreased* by 6 to 7 percent." (Complaint, Par. 33.) With lower numbers of children, the cost per day per child will be higher, but the total cost remains the same regardless of the number of children in detention. As noted above, both the Constitution and the Florida Statutes exclusively assign the appropriation power to the Legislature. Further, the Constitution does not prohibit the Legislature from delegating certain duties to other departments and agencies. The Supreme Court of Florida has held:

> The Legislature may not delegate the power to enact a law, or to declare what the law shall be, or to exercise an unrestricted discretion in applying a law; but it may enact a law complete in itself, designed to accomplish a general purpose, and may expressly authorize designated officials within valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.[5]

Plaintiffs' proper remedy for addressing its concerns about the appropriation of funds for the state and county split of the costs of juvenile detention is with the

[5] *See, Tilley v. Savannah*, F. & W. Ry. Co.,5 F. 641., 4 Woods 427 (5th Cr. 1881), as cited in *Railroad Commissioners v. P. & A.R.R. Co.*, 24 Fla. 417, 5 So. 129 (1888).

Legislature, not with the Defendant or DJJ. Stripped to its core, Plaintiffs' concerns raise a political question, which is beyond this Court's jurisdiction. *See, Coalition for Adequacy and Fairness,* supra, 680 So. 2d at 408. Accordingly, Plaintiffs' Complaint fails to establish the necessary subject matter jurisdiction and further fails to state a cause of action, and thus should be dismissed.

ACCORDINGLY, finding that Plaintiffs' Complaint for Declaratory Judgment and Supplemental Relief fails to state a cause of action, it is ORDERED AND ADJUDJED that Defendant's Motion to Dismiss is GRANTED. Because Plaintiffs can assert no facts that will overcome the legal impediments to their action here, the Court further concludes that this action should be and is hereby DISMISSED, WITH PREJUDICE.

DONE AND ORDERED this 5th day of ~~September~~ November, 2010, in Chambers at the Leon County Courthouse, Tallahassee, Florida.

JACKIE L. FULFORD
Circuit Judge

cc: Stephen M. Todd, Esq.
Thomas Dannheisser, Esq.
Enoch J. Whitney, Esq.