DEVELOPMENT IN THE SUNSHINE STATE: THE CHILLING EFFECT THAT FLORIDA'S SB 540 WILL HAVE ON LOCAL COMMUNITY INPUT

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I. INTRODUCTION

Uncontrolled urban expansion, otherwise known as sprawl,[2] is pushing Florida's ecosystems to the breaking point.[3] Home to four of the five fastest growing metropolitan areas in the nation,[4] Florida is set to experience unprecedented urban spawl.[5] This growth, which consumes critical natural habitats and farmland essential to Florida's agriculture economy[6] threatens the State's unique biodiversity and the way of life for millions of residents.[7]

The need to guard against urban sprawl was emphasized by President Harry S. Truman's Address on Conservation at the Dedication of Everglades National Park, where he described Florida's unique and precious nature:

> "Here are no lofty peaks seeking the sky, no mighty glaciers or rushing streams wearing away the uplifted land. Here is land, tranquil in its quiet beauty, serving not as the source of water, but as the last receiver of it. To its natural abundance we owe the spectacular plant and animal life that distinguishes this place from all others in our country."[8]

Unfortunately, threats to Florida's "natural abundance"[9] have now been exacerbated by the changes enacted under SB 540,[10] affecting key portions of Florida's Community

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[2] David B. Resnik, *Urban Sprawl, Smart Growth, and Deliberative Democracy*, NAT'L LIBRARY OF MEDICINE, https://pmc.ncbi.nlm.nih.gov/articles/PMC2936977/ (last visited Apr. 14, 2025).
[3] Univ. of Fla. ctr. for Landscape Conservation Plan. & 1000 Friends of Fla., *Fla. Agriculture 2040/2070*, at 4 (Apr. 2024), https://1000fof.org/wp-content/uploads/2024/01/FOF-1306-Ag-2040-2070-Report-v4-WEB.pdf.
[4] Kristie Wilder & Paul Mackun, *Sunshine State Home to Metro Areas Among Top 10 U.S. Population Gainers From 2022 to 2023*, U.S. CENSUS BUREAU, https://www.census.gov/library/stories/2024/03/florida-and-fast-growing-metros.html (last visited Oct. 11, 2024).
[5] Fla. Stat. Ann. § 163.3164(54) (Defining "urban sprawl" as "a development pattern characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses").
[6] Univ. of Fla. ctr. for Landscape Conservation Plan. & 1000 Friends of Fla., *supra* note 3, at 4.
[7] *Id.*
[8] Harry S. Truman, *Address on Conservation at the Dedication of Everglades National Park* [hereinafter *Address on Conservation]* (Dec. 6, 1947), https://www.presidency.ucsb.edu/documents/address-conservation-the-dedication-everglades-national-park.
[9] *Id.*
[10] Florida's Right to Clean Water, *Florida's Need for the RTCW in the days of Sackett, SB540*, YOUTUBE (Jun. 1, 2023), https://www.youtube.com/watch?v=WYeNngb6FmY.

Planning Act ("CPA"), which establishes the requirements for growth policy, county and municipal planning, and land development regulation.[11]

In 2023, the Florida Legislature and Governor Ron DeSantis, through the passage of Senate Bill 540 ("SB 540"), enacted measures that will have a significant chilling effect on the ability for Florida citizens to challenge irresponsible and legally flawed development plans.[12] Described as "the worst environmental bill passed by the Florida Legislature during the 2023 session,"[13] SB 540 will drastically limit a citizen's ability to engage in the comprehensive planning process altogether.[14]

SB 540 will affect a Florida citizen's ability to challenge irresponsible and legally flawed development plans in two major ways: 1) it narrows the legal scope for citizens to challenge the legality of development orders[15] under the CPA;[16] and 2) it assigns attorney fees to the non-prevailing party of any challenge to comprehensive plan amendments.[17] The amendment process under this Act, which has become a means of accommodating otherwise legally insufficient development plans, has resulted in urban sprawl.[18]

The CPA outlines the process through which an aggrieved party may challenge the consistency of a local development order with a comprehensive plan and defines the legal basis for such challenges.[19] Such actions must be within the required scope

[11] Fla. Stat. Ann. § 163.3177.
[12] S.B. 540.
[13] *DeSantis just signed "Sprawl Bill" 540 into law*, FRIENDS OF THE EVERGLADES (May 25, 2023) https://www.everglades.org/desantis-just-signed-sprawl-bill-540-into-law/.
[14] Fla. Stat. Ann. § 163.3177(1) (establishing that the "comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements"); The Miami Herald Editorial Board, *Gov. DeSantis, SB 540 is poison for the environment and a gift to developers. Veto it | Opinion*, MIAMI HERALD, https://www.miamiherald.com/opinion/editorials/article275428621.html (last updated May 17, 2023).
[15] Fla. Stat. Ann. § 163.3164 (defining "development order" as "any order granting, denying, or granting with conditions an application for a development permit").
[16] S.B. 540.
[17] Fla. Stat. Ann. § 163.3167(1)(b) (establishing that the "several incorporated municipalities and counties shall have power and responsibility: To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.").
[18] Florida's Right to Clean Water, *supra* note 10.
[19] Fla. Stat. Ann. § 163.3215(3).

for challenging a development order.[20] SB 540 revised this portion of the statute, such that it strictly limited the legal basis for bringing a challenge.[21]

Furthermore, SB 540 amended the CPA to require that any party challenging an amendment under a comprehensive plan, if unsuccessful, will be responsible for the prevailing party's attorney's fees and costs without requiring a showing that the non-prevailing party initiated its challenge for an improper purpose.[22]

Part one of this article will explain the history of the CPA. Part two will explore the specific changes to Fla. Stat. §163.3184 and §163.3215 that were approved under SB 540, and will present the arguments both in support of and against the changes. Finally, part three will ultimately argue in strong opposition to the changes. In sum, this article will highlight the importance of robust community engagement in the processes and decision making surrounding comprehensive planning and sustainable growth, and will argue for why the passage of SB 540 may result in the death knell to sustainable growth management in Florida.

II. BACKGROUND

a. *A Brief History of the Community Planning Act*

i. *Shifting Priorities for Growth Management: Diminishing the State's Role*

Even prior to SB 540, growth management in Florida was criticized due to what many considered to be inherent flaws of Florida's Community Planning Act ("CPA").[23] The CPA, which was signed into law by Governor Rick Scott in 2011, replaced the previous Growth Management Act ("GMA") and streamlined the process through which development projects get approved in Florida.[24] When enacted,

[20] *Id.*
[21] S.B. 540.
[22] *Id.*
[23] Fla. Stat. Ann. § 163.3161.
[24] Kacie A. Hohnadell, *Community Planning Act: The End of Meaningful Growth Management in Florida*, 42 STETSON L. REV., 715, 728 (2013) [hereinafter *End of Meaningful Growth Management*] (discussing the substantive differences between the Growth Management Act and the Community Planning Act, and the impact these changes will have on growth management in Florida).

because Florida was in the midst of significant economic struggles, the State government was highly motivated to change the comprehensive planning process, such that it would incentivize development across the State, rather than act as a roadblock.[25] Therefore, the CPA diminished the State's authority over local comprehensive planning.[26] Instead of requiring strict consistency with the State's growth management criteria, it transferred much of the authority surrounding comprehensive planning to local governments, while maintaining a statutory scheme in place to provide general oversight.[27] Critics of the CPA stated that grounding the need for these types of pro-development changes in short term economic needs was misguided.[28] Opponents thus argued that in the long term, once the economy inevitably stabilized, these extreme changes would become unnecessary and would only work to the benefit of developers, while facilitating a permanent state of urban sprawl.[29]

Although the previous GMA was not perfect, many consider it to have accomplished much in the way of curtailing sprawl and over development.[30] In fact, Florida was once praised for the intensive review process that local comprehensive plans underwent to ensure compliance with State standards.[31] Specific changes under the CPA, as argued by critics, would have a detrimental effect on slowing urban sprawl. These changes center around the State's expedited review process[32] of local comprehensive plans.[33] Whereas under the GMA, the State played a central role in the comprehensive planning and amendment process undertaken at the local level, the CPA diminished the State's authority and oversight in this respect.[34] Instead of requiring that plans and proposed amendments be submitted for rigorous review and

[25] *Id.* at 731.
[26] *Id.* at 728.
[27] *Id.* at 723.
[28] *Id.* at 720.
[29] *Id.*
[30] The Miami Herald Editorial Board, *supra* note 15.
[31] *Id.*
[32] Fla. Stat. Ann. § 163.3184(2) (stating that "plan amendments adopted by local governments shall follow the expedited State review process in subsection (3)").
[33] Fla. Stat. Ann. § 163.3177(1).
[34] *Id.*

approval by State and regional agencies prior to implementation, the CPA granted local governments much broader authority[35] to make final decisions throughout this process.[36] Although these changes created a more affordable and expedited approval process, they also removed fundamental checks and balances that existed under the GMA, which were intended to ensure that local governments would not approve land use decisions counter to the State's priorities.[37]

ii. The Comprehensive Planning Process

In Florida, the comprehensive planning process, through which all local land use decisions are made, is governed by the CPA. The CPA describes the required elements for local comprehensive plans.[38] Section 163.3177 states that comprehensive plans "shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements."[39] The CPA further states that, upon adopting a comprehensive plan, all actions in furtherance of development projects concerning land encompassed by that plan must be consistent with the plan as adopted.[40] Moreover, the CPA describes the process through which local comprehensive plans are enforced through development orders, which are orders that either grant or deny applications for development permits.[41]

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[35] *End of Meaningful Growth Management, supra* note 25 at 728 (emphasizing that under the CPA, local governments have the power to make final decisions regarding land use, so long as State resources are not impacted).
[36] Fla. Stat. Ann. § 163.3177(1).
[37] *End of Meaningful Growth Management, supra* note 25 at 723-24 (comparing the State enforcement mechanisms that existed under the GMA with those that exist under the CPA).
[38] Fla. Stat. Ann. § 163.3161(6)-(7) (establishing that it "is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act …[i]t is the intent of this act that the activities of units of local government in the preparation and adoption of comprehensive plans, or elements or portions therefor, shall be conducted in conformity with this act.").
[39] Fla. Stat. Ann. § 163.3177(1).
[40] Fla. Stat. Ann. § 163.3194(1) (establishing the legal status and requirements of comprehensive plans adopted by local governments, and their relationship with local development orders).
[41] Fla. Stat. § 163.3164 (providing definitions for various terms used in the CPA).

According to Section 163.3161, the intent of the CPA is to center the State's growth management role around "protecting the functions of important State resources and facilities."[42] However, "State resources and facilities" is not defined by any portion of the CPA, rendering the State's role in growth management unclear.[43]

The CPA does describe an intention to limit urban sprawl[44] and establishes several criteria to guide this objective.[45] These include: approving developments that do not impact natural resources, encouraging developments that efficiently extend "public infrastructure and services," fostering communities that facilitate walkability and multimodal transportation, and maintaining open spaces and agricultural areas.[46] Nevertheless, no matter how noble these criteria may be, without a reliable enforcement mechanism, there is no way to ensure they are achieved.

Without a meaningful State review process with the enforcement authority to ensure compliance with the CPA's requirements, the only consequential avenue for ensuring compliance is through legal challenges brought by Florida residents. These include administrative challenges to comprehensive plans or plan amendments,[47] and *de novo* actions challenging local development orders.[48] The established framework for administrative challenges allows an "affected person"[49] to file a petition challenging the plan or plan amendment's compliance with a comprehensive plan or

[42] Fla. Stat. Ann. § 163.3161 (outlining the intent, purpose, and objectives of the CPA. This includes describing the State's role in the review process for comprehensive plans, as well as emphasizing the key role played by local governments).
[43] *Id.*
[44] Fla. Stat. Ann. § 163.3164(54) (defining urban sprawl as "a development pattern characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses").
[45] Fla. Stat. Ann. § 163.3177(9)(a)-(b).
[46] *Id.*
[47] Fla. Stat. Ann. § 163.3184(5) (establishing that "any affected person…may file a petition with the Division of Administrative Hearings … to request a formal hearing to challenge whether the plan or plan amendments are in compliance").
[48] Fla. Stat. Ann. § 163.3215(3) (establishing that "any aggrieved or adversely affected party may maintain a de novo action … to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order").
[49] Fla. Stat. Ann. § 163.3184(1)(a) (defining "affected person" as "persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map").

a plan amendment.[50] To be "in compliance," the plan or plan amendment must consist of the required elements of a comprehensive plan, satisfy coastal management priorities, maintain the required amount of rural land stewardship areas, and more.[51] Notably, comprehensive plans or plan amendments will be compliant if the question of compliance is "fairly debatable."[52] The CPA also outlines a system for challenging "the consistency of a *development order* with a comprehensive plan."[53]

This burden of enforcement, which falls squarely on the citizens of Florida[54] has, even prior to SB 540, been a difficult burden to bear, and a complex process to navigate.[55] However, as much as the CPA may have weakened growth management in Florida by largely stripping away State oversight—leaving the voice of the people as the only true enforcement mechanism, SB 540 has delivered a final blow, effectively stripping away even the voice of the people. Therefore, although the CPA creates avenues for enforcement through citizen participation, a new question is raised: how meaningful is the availability for recourse when its very purpose is later undermined by the legislature?

iii. The Scope of Review for Challenges to Development Orders

One key mechanism through which local governments exercise their authority to make land use decisions is through development orders.[56] Since the passage of the CPA in 2011, courts have heard many challenges to development orders, and on many occasions, have found orders to be inconsistent with its corresponding comprehensive

[50] § 163.3184(5).
[51] Fla. Stat. Ann. § 163.3184(1)(b) (defining "in compliance" as "consistent with the requirements of § 163.3177, § 163.3178, § 163.3180, § 163.3191, § 163.3245, and § 163.3248").
[52] § 163.3184(5)(c)(1); Zoom Interview with Paul Schwiep, Att'y, Coffey Burlington (Oct. 28, 2024) (positing "what isn't fairly debatable?" Attorney Schwiep argued that "fairly debatable" establishes a very low bar for local governments to meet in defending their determination of compliance).
[53] § 163.3215 (emphasis added).
[54] Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191, 202 (Fla. Dist. Ct. App. 2001) (holding that "citizen enforcement is the primary tool for insuring consistency of development decisions with the Comprehensive Plan").
[55] Richard Grosso, *A Guide to Development Order "Consistency" Challenges Under Florida Statutes Section 163.3215*, 34 J. ENV'T. L. & LITIG. 130 (2019) [hereinafter *Guide to Development Order Challenges*] (examining the rules for "legal challenges to local government development orders on the basis that they violate adopted comprehensive").
[56] Fla. Stat. Ann. § 163.3164(15) (defining "development order" as "any order granting, denying, or granting with conditions an application for a development permit").

plan.[57] However, Florida courts have come to disagree regarding the extent to which a development order may be challenged through Section 163.3215(3).[58] For example, in ruling on the consistency of a development order with a comprehensive plan, some courts have taken a broad view, granting citizens a lot of enforcement authority.[59] However, other courts have taken a much narrower approach, thereby restricting the ability of citizens to enforce the elements of a comprehensive plan.[60] Prior to SB 540, the text of Section 163.3215(3), which defines standing and scope for enforcing comprehensive plans through development orders, read:

> "Any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order, as defined in §163.3164, ***which materially alters the use or density or intensity*** of use on a particular piece of property ***which is not consistent*** with the comprehensive plan adopted under this part."[61]

Many courts have, upon a plain language reading of the statute, interpreted the statute liberally,[62] applying a scope of review that includes considering all inconsistencies of a development order with the elements of the comprehensive

[57] *Growth Management Challenges 1989-2023,* 1000 FRIENDS OF FLA. (April 2024), https://1000fof.org/wp-content/uploads/2019/08/cases.pdf.
[58] *Guide to Development Order Challenges, supra* note 57.
[59] Imhof v. Walton County, 328 So. 3d 32, 42 (Fla. 1st DCA 2021) (holding that there is no limitation on the aspects of a development order that the trial court should consider before concluding that the order … is consistent with the comprehensive plan).
[60] *Guide to Development Order Challenges, supra* note 57, at 144.
[61] S.B. 540 (emphasis added).
[62] Educ. Dev. Ctr., Inc. v. Palm Beach Cty., 751 So. 2d 621, 623 (Fla. Dist. Ct. App. 1999) (holding that the statute must "be liberally construed to advance the intended remedy."); *see, e.g.* Stranahan House, Inc. v. City of Fort Lauderdale, 967 So. 2d 427, 433 (Fla. Dist. Ct. App. 2007); Payne v. City of Miami, 927 So. 2d 904, 907 (Fla. Dist. Ct. App. 2005).

plan.[63] Some courts, however, have interpreted the statute to limit the scope of review to challenges that specifically address "use, density, or intensity"[64] of the land.[65]

In *Imhof v. Walton County,* the First District Court of Appeal interpreted the statute to establish a broad scope.[66] The court stated that the statute's clause, "which is not consistent with the comprehensive plan adopted under this part," is a modifying phrase that "looks past the noun series 'use or density or intensity of use.'"[67] According to the court, this phrasing requires a trial court to find *complete* consistency between a development order and the local government's comprehensive plan.[68]

The court in *Imhof* was not the only court to come to this conclusion.[69] For example, in *Machado v. Musgrove*, the Third District Court of Appeal considered testimony from concerned residents made in opposition to proposed re-zoning under a development order.[70] Here, the residents feared that the development order would negatively impact traffic and disrupt the area's unique characteristics.[71] Because the court found that the order neither conformed with all elements of the comprehensive plan, nor furthered its objectives, it voided the re-zoning plan.[72] Furthermore, in *Franklin County v. S.G.I. Ltd.*, the court found that a development order was inconsistent with the local comprehensive plan's standards regarding negative impacts to the ecological health of Apalachicola Bay.[73] In these cases, the courts did

[63] *Guide to Development Order Challenges, supra* note 57 at 144.
[64] Fla. Stat. Ann. § 163.3164(12) (defining "Density" as "an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre"); § 163.3164(22) (defining "Intensity" as "an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services").
[65] *Guide to Development Order Challenges, supra* note 57.
[66] Imhof v. Walton County, 328 So. 3d 32, 41 (Fla. 1st DCA 2021).
[67] *Imhof*, 328 So. 3d at 41.
[68] *Id.*
[69] Sw. Ranches Homeowners Assoc. v. Broward Cty., 502 So. 2d 931, 935 (Fla. Dist. Ct. App. 1987) (holding that the CPA "demonstrates a clear legislative policy in favor of the enforcement of comprehensive plans by persons adversely affected by local action."); see also Dunlap v. Orange Cty., 971 So. 2d 171, 175 (Fla. Dist. Ct. App. 2007); *Payne*, 927 So. 2d at 907.
[70] Machado v. Musgrove, 519 So. 2d 629, 632 (Fla. Dist. Ct. App. 1987).
[71] *Id.* at 631.
[72] *Id.* at 636.
[73] Franklin Cty. v. S.G.I. Ltd., 728 So. 2d 1210, 1211 (Fla. Dist. Ct. App. 1999) (holding that development order was inconsistent with comprehensive plan objectives to "support the conservation and protection of ecological

not limit its review to inconsistencies dealing only with use, density, or intensity. Rather, these courts applied a broad scope. They considered all existing inconsistencies between the development order and every element of the comprehensive plan.

However, in *Heine v. Lee County,* the Second District Court of Appeal interpreted the statute narrowly, creating a split regarding its proper interpretation.[74] Here, the court held that the statute in fact did limit the scope of challenges to those addressing "use, density, and intensity."[75] The court reasoned that the statute unambiguously articulated only these three bases "upon which a party could challenge a development order's purported inconsistency with a comprehensive plan."[76] In essence, the court held that, upon review of a development order, other aspects of a comprehensive plan, beyond "use, density, and intensity," including a plan's enumerated elements, are not enforceable.[77] Under this application of the law, many of the cases that previously resulted in a development order being found inconsistent with all elements and objectives of a comprehensive plan would have likely reached a different result.[78]

These cases were, on many occasions, instrumental in protecting against urban sprawl, preserving the environment, and safeguarding the way of life of Florida residents; all priorities enunciated by the CPA.[79] Nonetheless, a significant and tangible difference existed between the two interpretations by Florida courts. It was clear that if this split were to be resolved by the legislature, the resolution would have major impacts on the enforceability of the elements and objectives of comprehensive plans, and by extension, the ability for Florida residents to guard against irresponsible development and urban sprawl.

communities" and "maintain the estuarine water quality surrounding coastal resources so that there shall be no loss of any approved shellfish harvesting classifications through the year 2000").
[74] Heine v. Lee Cty., 221 So. 3d 1254 (Fla. Dist. Ct. App. 2017).
[75] *Id.* at 1257.
[76] *Id.*
[77] *Guide to Development Order Challenges, supra* note 57, at 148.
[78] *Growth Management Challenges 1989-2023, supra* note 59.
[79] Fla. Stat. Ann. § 163.3177.

In 2023, the Florida legislature passed SB 540, thereby restricting the ability for Florida residents to oversee comprehensive planning in two major ways.[80] The new law both resolved the circuit split regarding the scope of review for development orders in favor of a limited scope, and established a fee-shifting provision that would discourage residents from bringing challenges altogether.[81]

b. Senate Bill 540

i. Limiting the Scope of Review for Development Orders

SB 540 resolved the previous split regarding challenges to development orders in favor of the narrow scope of review established by the court in *Heine v. Lee County,* limiting the scope to issues surrounding "the use or density or intensity of use on a property."[82] The new version of the statute reads, in relevant part:

> "Any aggrieved or adversely affected party may maintain a de novo action … ***on the basis that the development order materially alters the use or density or intensity*** of use on a particular piece of property, ***rendering it not consistent*** with the comprehensive plan adopted under this part."[83]

Here, the legislature substituted the phrase "which is not consistent with the comprehensive plan" to "rendering it not consistent with the comprehensive plan."[84] In effect, "the bill clarifies that … courts may not review other elements of the order for consistency with the plan."[85] This change severely limits the ability for individuals to uphold the requirements enunciated by the CPA.

[80] S.B. 540.
[81] *Id.*
[82] *Id.*
[83] Fla. Stat. Ann. § 163.3215(3) (emphasis added).
[84] S.B. 540.
[85] H.R. STAFF FINAL BILL ANALYSIS, SB 540, H.R. 2023 Leg., 2024 Sess., at 7 (2023) [hereinafter FINAL BILL ANALYSIS].

ii. Automatic Assignment of Attorney Fees to the Prevailing Party

Perhaps an even more impactful change under SB 540 is the new requirement authorizing the prevailing party of an administrative challenge to a comprehensive plan or plan amendment to recover attorney fees and costs without having to establish that the non-prevailing party initiated the challenge for an improper purpose.[86] After the passage of SB 540, the new version of Section 163.3184(5)(g), which establishes the process for the adoption of comprehensive plans and comprehensive plan amendments, states:

> "The prevailing party in a challenge filed under this subsection is entitled to recover attorney fees and costs in challenging or defending a plan or plan amendment, including reasonable appellate attorney fees and costs."[87]

This change is notable because generally, Florida law explicitly prohibits the automatic awarding of attorney fees and costs to the prevailing party of an administrative proceeding.[88] Under Section 120.595(1)(b) of the Administrative Procedure Act ("APA"), Florida's umbrella statute for all administrative proceedings, courts will only award attorney fees and costs to the prevailing party of an administrative challenge[89] where "the non-prevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose."[90] However, the APA also states that the "provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings,"[91] Therefore, SB 540 serves to

[86] S.B. 540.
[87] Fla. Stat. Ann. § 163.3184(5)(g) (emphasis added).
[88] FINAL BILL ANALYSIS, *supra* note 87.
[89] Fla. Stat. Ann. § 120.595(1)(b) (establishing that challenges to comprehensive plans fall within this rule, prohibiting the automatic awarding of attorney fees and costs to the prevailing party of an administrative proceeding).
[90] FINAL BILL ANALYSIS, *supra* note 87 (citing Fla. Stat. Ann. § 120.595(1)(b)).
[91] Fla. Stat. Ann. § 120.595(1)(a).

expand the ability for a prevailing party to collect attorney fees previously provided for under the APA.

c. Arguments on Both Sides

The threat of saddling non-prevailing parties with the other side's attorney fees and costs is biting. Both proponents and critics agree that this new reality will have major impacts on the comprehensive planning process.[92] It will cause substantial reluctance among private citizens in considering challenges to comprehensive plans or plan amendments.[93] Proponents of this change say that this reluctance is a good thing, as it will force people to have "skin in the game," and will prevent them from filing frivolous lawsuits without considering the now very real costs associated with losing.[94] They also argue that the changes under SB 540 will create more predicable outcomes in consistency challenges, allowing developers to more easily assess risk, and adhere to project timelines.[95]

However, critics argue that, because citizen participation in administrative challenges has been the primary means to combat urban sprawl and prevent the adoption of environmentally irresponsible comprehensive plan amendments,[96] the new roadblocks imposed by SB 540 could result in the effective end of sustainable growth management in Florida altogether.[97]

1000 Friends of Florida, a leading advocate for sustainable growth in Florida has, in strong opposition to SB 540, stated that it "threatens citizens with financial ruin for challenging legally flawed comprehensive plan amendments that pave the way for expanded development."[98] The non-profit further emphasizes that administrative challenges brought by Florida residents are the only true means of

[92] The Miami Herald Editorial Board, *supra* note 15.
[93] 1000 Friends of Fla., *2023 Legislative Session*, [hereinafter *2023 Legislative Session]* https://1000fof.org/legis/2023-legislative-session/ (last visited Oct. 25, 2024).
[94] *Id.*
[95] Jeff Wright, *Understanding the Impact of SB 540 Local Government Comprehensive Plan Changes,* HENDERSON FRANKLIN, https://www.legalscoopswflre.com/land-use/understanding-the-impact-of-sb-540-local-government-comprehensive-plan-changes/ (last visited Oct. 25, 2024).
[96] The Miami Herald Editorial Board, *supra* note 15.
[97] *Id.*
[98] *2023 Legislative Session*, *supra* note 95.

ensuring consistency between comprehensive plan amendments and local comprehensive plans, which are the blueprints for sustainable and environmentally resilient growth."[99] *1000 Friends of Florida* stresses the harsh reality that, for citizens to fulfill their role as the CPA's main enforcement mechanism, they must be prepared to take on "the legal costs of a local government and any developers who intervene—a price that can reach six figures."[100]

Attorney Paul Schwiep, well known for his dedicated representation of South Florida environmental non-profit organizations on issues of national importance,[101] argued that, even prior to the passage of SB 540, those bringing administrative challenges to comprehensive plan amendments under the CPA have always been "outgunned and outmanned."[102] In addition, Schwiep noted that in these proceedings, citizens file a challenge to an action by a local government, but the developers themselves almost always then join the action as an intervenor, and with resources to drive the litigation that far exceed those of the aggrieved party.[103] Schwiep explained that by intervening, these applicants essentially invite themselves to the party, yet have all the same rights of a respondent.[104] Therefore, after protracted litigation, if the petitioner loses, it will be responsible for all attorney fees and costs incurred by the respondent as well as any incurred by intervening parties.[105]

Although proponents of SB 540 argue that these changes will force petitioners to have skin in the game and will prevent frivolous lawsuits, Schwiep argued that Section 163.3184 already accomplished this.[106] He noted that, even prior to SB 540, the statute required good faith filings.[107] Specifically, if any filings in these administrative challenges are made for an "improper purpose, such as to harass or to

[99] *Id.*
[100] *Id.*
[101] *Paul Schwiep*, COFFEY BURLINGTON, ATTORNEYS AT LAW, https://www.coffeyburlington.com/attorneys/paul-schwiep/ (last visited Nov. 15, 2024) (Recognition and experience include: Conservationist of the Year 2008–Everglades Coalition; Chair–Florida Board of Bar Examiners, 2005).
[102] Zoom Interview with Paul Schwiep, Att'y, Coffey Burlington (Oct. 28, 2024).
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*

cause unnecessary delay, or for economic advantage, competitive reasons, or frivolous purposes," the court is required to impose any appropriate sanctions, including requiring the payment of the other party or parties' attorney's fees and costs.[108] Therefore, Schwiep concluded that this new fee-shifting provision "was added for its *in terrorem* effect on potential petitioners."[109]

Hold the Line Coalition ("*HTL*"), another advocacy group dedicated to "protecting green space, limiting sprawl, and encouraging smart development," agrees.[110] *HTL's* director, Laura Reynolds, noted that the passage of SB 540 has forced the advocacy group to consider the feasibility of bringing future challenges to comprehensive plans and plan amendments.[111] Reynolds stated that, even prior to SB 540, *HTL* "had enough of a challenge [bringing] cases, where we had to raise fifty to one hundred thousand dollars."[112] Now, to continue facilitating challenges, non-profit organizations similar to *HTL* will need to secure significantly more funding in advance to ensure their clients are protected.[113] This includes securing enough funding to cover the potential attorney fees of any party that may intervene to defend against the challenge, amounts that can reach millions.[114]

Reynolds also highlighted the expected impact of the new narrowed scope: restricting development order challenges to issues dealing only with use, density, and intensity.[115] She stressed that this new limitation is likely to exclude many of the thirteen elements required by comprehensive plans under the CPA.[116] Specifically, Reynolds is most concerned with the effect that this limited scope will have on the ability to challenge development orders that have an adverse impact on environmental interests.[117] She explained that challenging the expansion of the

[108] Fla. Stat. Ann. § 163.3184(9).
[109] Zoom Interview with Paul Schwiep, Attorney, Coffey Burlington (Oct. 28, 2024).
[110] *About Hold the Line Coalition*, HOLD THE LINE COALITION https://holdthelinecoalition.org/about/our-mission/ (last visited Nov. 15, 2024).
[111] Zoom Interview with Laura Reynolds, Director, Hold the Line (Oct. 28, 2024).
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] Zoom Interview with Laura Reynolds, Director, Hold the Line (Oct. 28, 2024).

Urban Development Boundary ("UDB"),[118] an objective central to *HTL*'s mission, requires implicating various elements that fall outside of the limited scope of use, density, and intensity such as: coastal management and rural land stewardship.[119] Continued efforts to expand the UDB threaten environmental interests that also have also major implications on quality of life in Florida.[120] For example, Reynolds emphasized the importance of restoring "low lying green space[s]" that are "critical for the restoration of Florida Everglades [National Park] and Biscayne Bay [National Park]," areas that are outside of the current UDB.[121] Vital to this effort, is the restoration of the natural flow of fresh water from Lake Okeechobee south, through the Everglades, to South Florida's estuaries.[122] According to Reynolds, this flow of fresh water, which has been adversely impacted by a long history of harmful development projects, is vital to rehydrating Florida's aquifers, which is the source of Florida's drinking water.[123] Furthermore, this flow is fundamental in preventing key habitat loss, sea grass die offs, and fish kills.[124] Reynolds reasoned that "one of the best ways … to restore [these ecosystems] is to make sure [that] we have functioning wetlands," and that the flow of clean fresh water to those estuaries is unencumbered by irresponsible development outside of the UDB.[125] However, the action necessary to protect these interests through challenges to development orders would likely fall outside of the narrowed scope established by SB 540.[126]

[118] *Urban Development Boundary*, MIAMI-DADE COUNTY, (Jun. 5, 2018), https://gis-mdc.opendata.arcgis.com/datasets/MDC::urban-development-boundary/about (noting that the boundary was adopted by the Board of County Commissioners and "identifies the area where urban development may occur through the year 2030").
[119] Zoom Interview with Laura Reynolds, Director, Hold the Line (Oct. 28, 2024).
[120] *Id.*
[121] *Id.*
[122] Dyllan Furness, *Estuaries in South Florida are warming faster than the Gulf of Mexico and global ocean,* UNIV. OF SOUTH FLA. (Aug. 7, 2024), https://www.usf.edu/marine-science/news/2024/estuaries-in-south-florida-are-warming-faster-than-the-gulf-of-mexico-and-global-ocean.aspx ("South Florida's estuaries are home to critical habitats such as seagrass meadows, and adjacent waters in the Florida Keys are home to world-renowned coral reefs").
[123] Zoom Interview with Laura Reynolds, Director, Hold the Line (Oct. 28, 2024).
[124] *Id.*
[125] *Id.*
[126] *See supra Section* II (A).

Furthermore, Reynolds emphasized the importance of agriculture in South Florida as a main economic driver.[127] To sustain sufficient levels of production, South Florida must maintain "68,000 acres of [agricultural land]," a threshold that is "dangerously close" to being defeated.[128] This priority has been echoed statewide.[129] *1000 Friends of Florida*, in conjunction with the *University of Florida Center for Landscape Conservation Planning*, published an extensive report highlighting the millions of acres of agricultural land that is under threat.[130] The report forecasts that between now and 2070, Florida's population could increase by more than 12 million residents; paving the way for the development of roughly 3.5 million acres of land, comprising of around 2.2 million acres of agricultural land.[131] Moreover, the report warns that sprawl "leaves remaining agricultural land and the ecosystem services they provide increasingly vulnerable, fragmented, and often degraded."[132] Through its chilling effects, SB 540 will suppress the legal challenges needed to prevent development plans that would contribute to these troubling projections.

Although Reynolds made it clear that their efforts continue, she does emphasize that these new rules have had a chilling effect.[133] Furthermore, Reynolds indicated that these new barriers have underscored the importance of educating the public to ensure that "the right people are in office making the right decisions," thereby preventing the need for these challenges in the first place.[134]

Although some proponents for SB 540 exist, support is mostly limited to the development community.[135] Conversely, opposition to SB 540 is much more widespread.[136] Whereas support largely centers around a desire to remove roadblocks

[127] Zoom Interview with Laura Reynolds, Director, Hold the Line (Oct. 28, 2024).
[128] *Id.*
[129] Univ. of Fla. ctr. for Landscape Conservation Plan. & 1000 Friends of Fla., *supra* note 3, at 1.
[130] *Id.*
[131] Univ. of Fla. ctr. for Landscape Conservation Plan. & 1000 Friends of Fla., *supra* note 3, at 3.
[132] *Id.* at 2.
[133] Zoom Interview with Laura Reynolds, Director, Hold the Line (Oct. 28, 2024).
[134] *Id.*
[135] *See supra Section* II(C).
[136] *Id.*

to development, critics argue that SB 540 will deliver the final blow to sustainable growth management in Florida.[137]

III. ANALYSIS

a. Protecting Florida's Natural Abundance – Fulfilling a Renowned Environmentalist's Vision for Florida's Future

Renowned conservationist, Marjory Stoneman Douglas, has long been quoted for her vision to protect Florida's environment from over-development.[138] In her 1920s Miami Herald column, "The Galley", Stoneman Douglas expressed her views regarding civil rights, environmentalism, urban planning, and more.[139] Here, she stated:

> "We want civilization for south Florida. And when we say that we do not mean electric lights and running hot and cold water, as you know. We want a place where the individual can be as free as possible, where the life of the community is rich and full and beautiful, where all the people, unhandicapped by misery, can go forward together to those ends which man dimly guessed for himself. Because we are pioneers we have dared to dream that south Florida can be that sort of place, if we all want it badly enough."[140]

Although, at this stage of civilization in South Florida, it is not feasible to fulfill some of these words in a literal sense, the spirit of Stoneman Douglas's sentiment remains. These goals, which describe a Florida in which the community works together to facilitate and shepherd an environment "where the life of the community is rich and full and beautiful, where all the people, unhandicapped by misery, can go

[137] The Miami Herald Editorial Board, *supra* note 15.
[138] *Marjory Stoneman-Douglas*, FLA. DEPT. OF STATE, https://dos.fl.gov/cultural/programs/florida-artists-hall-of-fame/marjory-stoneman-douglas/ (last visited Dec. 18, 2024).
[139] Mary Anne Peine, *Women for the Wild: Douglas, Edge, Murie and the American Conservation Movement*, UNIV. OF MONT. (2009), https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=5792&context=etd (last visited Dec. 18, 2024).
[140] *Id.*

forward together to those ends,"[141] have been expressed through the CPA. However, critics argue that these goals have been deprioritized in the State and Local comprehensive planning process, a shift underscored by the changes introduced under SB 540.[142]

b. THE URGENT NEED FOR RESPONSIBLE GROWTH MANAGEMENT IN FLORIDA

South Florida is a prime example for how unsustainable development can materially alter the essence of an environment such that it becomes altogether unrecognizable. As a result of urban sprawl, Florida's Wildlife Corridor, which consists of 18 million acres of undeveloped land and water, all of which is instrumental in supporting both animal and human life,[143] will see a loss of 1.2 million acres by 2070.[144] In addition to resulting in radical and irreversible aesthetic and cultural changes, unbridled development results in the diminishing capacity for local species to survive due to an over consumption of resources necessary for survival.[145]

Florida faces a unique situation. The preservation of biodiversity and vital natural resources is challenged by both increasing population—resulting in the over-development of critical areas, and by the increasing current and future effects of climate change.[146] Changes to the climate have and will continue to result in "rising temperatures, higher flood and drought risks due to changing precipitation patterns, [and] more coastal erosion linked with sea-level rise."[147] These phenomena, over which Florida residents can affect very little immediate tangible change, exacerbate the impacts that sprawl has on the sustainability of natural resources and the

[141] *Id.*
[142] *See supra Section* II(A)(1).
[143] *The Florida Wildlife Corridor Act,* FLA. WILDLIFE CORRIDOR FOUNDATION, https://floridawildlifecorridor.org/about/about-the-corridor/ (last visited Nov. 15, 2024).
[144] Univ. of Fla. ctr. for Landscape Conservation Plan. & 1000 Friends of Fla., *supra* note 3, at 4.
[145] Florida Wildlife Corridor Foundation, *supra* note 145.
[146] *Id.*
[147] Colin Polsky et al., *The Florida Wildlife Corridor and Climate Change*, FLA. ATLANTIC UNIV.: ARCHBOLD BIOLOGICAL STATION (Apr. 2024), https://archbold-cms.payloadcms.app/media/ClimateReport_FINAL_04152024-1.pdf.

resiliency of critical habitats.[148] Therefore, special attention must be paid to the approval of developments that may negatively impact such interests.

To that end, ensuring that comprehensive planning in Florida remains compliant with the CPA's intent to prevent urban sprawl requires the maintenance of meaningful public participation in growth management. Rather than facilitating this need, SB 540 puts an effective end to it.[149] Both the automatic assignment of attorney fees to prevailing parties and the newly narrowed scope for challenges to development orders will undoubtedly make it exceedingly difficult for Florida residents to oppose environmentally irresponsible development projects.[150]

c. Public Participation as a Check on Undue Influence in Local Government

Public participation in the comprehensive planning process, which largely centers around access to judicial review, must be protected and promoted. Otherwise, the approval of irresponsible development projects will be susceptible to a decision-making process that has long been questioned for its lack of honesty and transparency. South Florida has a well-documented history of corruption among its local government representatives.[151] For example, the City of Miami, which has been dubbed "Shakedown City," has been particularly criticized for rampant allegations of scandal and corrupt practices.[152] Many of these allegations surround questionable relationships existing between real estate developers and some of the City's most prominent leaders.[153] These include accusations of wrongdoing against the City's Mayor, Francis Suarez, who has come under scrutiny for securing a number of employment relationships while in office, including a $10,000 per month consulting

[148] *Id.* at 51.
[149] *See supra* Section II.
[150] *See supra* Section II(C).
[151] Joey Flechas & Tess Riski, *In shakedown city, a 'culture of corruption' prompts calls for competence and reform*, MIAMI HERALD (Dec. 07, 2024, 11:47 AM), https://www.miamiherald.com/news/local/community/miami-dade/article282923473.html.
[152] *Id.*
[153] *Id.*

agreement with Rishi Kapoor, the former CEO of Location Ventures,[154] a now defunct development firm that sought approvals for its development projects from the City.[155]

The City of Miami Mayor's alleged impropriety is only the latest chapter in a long history of questionable practices by local government officials in South Florida, most often surrounding two of South Florida's largest industries, real estate and development.[156]

Therefore, the comprehensive planning process in South Florida, which is governed by local representatives, is at a continual risk of being tainted by corruption. As a result, it is vital that public participation in the comprehensive planning process remain accessible and effective. Without sufficient avenues for robust citizen participation acting as a check to potential wrongdoing by local government officials, these very officials may cast aside the true needs of its local constituents and may feel emboldened to engage in misconduct without the threat of citizen oversight. Moreover, the comprehensive planning process may become dominated by the interests of those with the most to gain financially, and those who have the financial means to influence outcomes in their favor.

Citizen challenges to comprehensive plan amendments and development orders have served as a vital check against the decision-making of local governments in Florida.[157] The reality of these challenges being filed after the adoption stage of the comprehensive planning process strongly incentivized local representatives to adopt legally sufficient and environmentally responsible plans that would not result legal hurdles down the road. However, the changes under SB 540 threaten to undermine this vital role that residents have played.[158] By forcing residents to risk

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[154] Joey Flechas et al., *Developer whose payments to Miami Mayor Suarez are caught up in FBI probe has stepped down*, MIAMI HERALD (Sep. 20, 2023, 12:53 PM) https://www.miamiherald.com/news/local/community/miami-dade/article277430873.html.

[155] Francisco Alvarado, *Location Ventures' receiver seeks to sell Miami Beach dev site site for $18M*, THE REAL DEAL (SEP. 13, 2024, 4:42 PM) https://therealdeal.com/miami/2024/09/13/location-ventures-seeking-to-sell-miami-beach-site-for-18m/.

[156] Bureau of Economic Analysis, *Florida*, U.S. DEPT. OF COMMERCE (Sept. 25, 2018), https://web.archive.org/web/20181023034758/https://apps.bea.gov/regional/bearfacts/pdf.cfm?fips=12000&areatype=STATE&geotype=3.

[157] *See supra* Section II(C).

[158] *Id.*

being saddled with potentially millions of dollars in attorney fees, and by narrowing the scope for challenges, SB 540 has dramatically reduced the likelihood of such challenges being brought. Therefore, the changes under SB 540 will significantly diminish access to public participation through judicial review, leaving the comprehensive planning process vulnerable to undue influence by special interests.

d. Even Florida Itself Has Recognized the Importance of Public Participation, And Has Rejected a Fee-Shifting Structure in Other Contexts

Notably, even the Florida Legislature itself recognized the importance of the public participation process and the flaws of fee-shifting. In 2024, the Florida Legislature attempted to pass SB 738, a bill that had significant support, which would have applied the same fee-shifting language contained in SB 540, assigning attorney fees and costs to the prevailing party of legal challenges brought against the Florida Department of Environmental Protection ("DEP").[159] However, the proposal failed before even coming to a vote.[160] Specifically, the Florida Legislature opted to remove the fee-shifting provision from SB 738 to avoid violating federal rules and policies under the federal Clean Water Act, which provides for an opportunity for judicial review that is sufficient to "provide for, encourage, and assist public participation in the permitting process."[161] The Florida Legislature recognized that the "State will not meet this standard if it narrowly restricts the class of persons who may challenge the approval or denial of permits,"[162] and that the type of fee-shifting proposed in SB 738 was an "unacceptable impingement on the accessibility of judicial review."[163]

Similar to the United States Environmental Protection Agency's ("EPA") rule requiring states to "provide for, encourage, and assist public participation" in the

[159] BILL ANALYSIS AND FISCAL IMPACT STATEMENT, SB 738, S. 2024 Leg., Reg. Sess. (Fla. 2024).
[160] *Id.*
[161] 40 C.F.R. § 123.30 (1996).
[162] *Id.*
[163] 88 Fed. Reg. 55276, 55300 (Nov. 12, 2024).

environmental permitting process,[164] the CPA expressly requires public participation throughout the comprehensive planning process, positioning it as its main enforcement mechanism.[165] This requirement for public participation includes mandating public hearings throughout the adoption stage of comprehensive plan amendments and development orders, as well as establishing a defined process for citizen legal challenges through access to judicial review.[166] It therefore stands to reason that, because the same principles of facilitating fair opportunities for public participation play such a key role in Florida's comprehensive planning process, the changes implemented under SB 540 are just as inconsistent with these principles as they would have been under SB 738. Nevertheless, the very same fee-shifting language that failed to be adopted under SB 738 due to its "unacceptable impingement on the accessibility of judicial review,"[167] was applied to the comprehensive planning process under SB 540.[168]

After the passage of SB 540, Florida no longer "provide[s] for, encourage[s], and assist[s] public participation" in the comprehensive planning process.[169] Although the CPA creates a comprehensive planning process that is intended to be one through which the community actively participates,[170] if the ability for the public to bring a challenge is undermined by the legislature, then the enforcement mechanism becomes irrelevant. As a result, SB 540, ultimately rendered the CPA's primary enforcement mechanism hollow and ineffective.[171]

e. SB 540 also Contradicts Floridians' Constitutional Right to the "Conservation and Protection of Natural Resources"

Finally, SB 540 contradicts the protections established under Article II, Section 7 of Florida's Constitution. The Florida State Constitution describes Florida

[164] 40 C.F.R. § 123.30 (1996).
[165] *See supra* Section II(A)(2).
[166] *Id.*
[167] 88 Fed. Reg. 55276, 55300 (Nov. 12, 2024).
[168] S.B. 540.
[169] 40 C.F.R. § 123.30 (1996).
[170] Fla. Stat. Ann. § 163.3184(5).
[171] *See supra* Section II.

residents' right to Florida's "[n]atural resources and scenic beauty."[172] Article II, Section 7 of Florida's Constitution reads in relevant part that:

> "It shall be the policy of the State to ***conserve and protect its natural resources and scenic beauty***. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise ***and for the conservation and protection of natural resources***."[173]

Although establishing clear goals to facilitate conservation efforts, the provision is not self-executing.[174] According to the court in *Barley v. S. Fla. Water Mgmt. Dist.*, analyzing whether a constitutional provision is self-executing depends on whether "the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment."[175] Here, the court in *Barley* concludes that Florida's Environmental Rights Amendment is not self-executing, requiring "the legislature to enact supplementary legislation to make it effective, to carry out its intended purposes, and to define any rights intended to be determined, enjoyed, or protected."[176]

Therefore, the Florida Constitution assigns the duty to carry out Florida's Environmental Rights Amendment to the legislature. However, although the CPA largely fulfilled this duty, SB 540's substantial chilling effect on public participation in the comprehensive planning process[177] demonstrates the legislature's now failure to fulfill its constitutional mandate in this regard. By significantly weakening the CPA's main enforcement mechanism, which comes in the form of public participation through access to judicial review, the purpose of Article II, Section 7 has been frustrated.

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[172] FLA. CONST. art. II, Sec. 7.
[173] *Id.* (emphasis added).
[174] Barley v. S. Fla. Water Mgmt. Dist., 823 So. 2d 73 (Fla. 2002)
[175] *Id.* at 80.
[176] *Id.* at 81.
[177] *See supra* Section II(C).

The legislature has undermined a uniquely important feature to Florida's comprehensive planning process. Public participation, through access to judicial review, served as a Constitutional safeguard to upholding Article II, Section 7. Limiting access to judicial review restricts the judiciary's ability to act as a check on legislative actions that threaten the environment. Whereas other states, such as Pennsylvania, do have self-executing Environmental Rights Amendments,[178] Florida depends on public participation to alleviate the weaknesses created by its legislated requirement. Therefore, the barriers to public participation created by SB 540 undermine, and potentially infringe upon Floridians' right to their "[n]atural resources and scenic beauty."[179]

f. Conclusion

These changes occur at a time when smart growth and sustainable development are perhaps more important than ever.[180] Even Governor DeSantis, who signed this bill into law, recently underscored the urgent need to "improve local government long-term comprehensive planning to encourage successful and sustainable growth while protecting natural resources."[181] By signing SB 540 into law, DeSantis defied the spirit of his own words.

To usher in a future where Florida's environment and natural resources are protected in the long-term, urban sprawl must be restrained. A future of relentless expansion fueled by special interests is untenable. Furthermore, as many Floridians know, history has proven that "the Florida of today is the America of tomorrow." Although no similar laws have emerged in other states, Florida has long been a testing ground for legislation, often influencing state policies nationwide.[182] Consequently, it is important to remain vigilant and prepared to oppose similar

[178] PA. CONST. art. I, Sec. 27.
[179] FLA. CONST. art. II, Sec. 7.
[180] Univ. of Fla. ctr. for Landscape Conservation Plan. & 1000 Friends of Fla., *supra* note 3.
[181] OFFICE OF THE GOVERNOR, STATE OF FLA., Exec. Order No. 23-06, *Achieving Even More Now for Florida's Environment* (2023).
[182] Julia Manchester, *Florida becomes conservative model for other GOP states*, THE HILL (May, 18, 2023, 6:00 AM), https://thehill.com/policy/healthcare/4001655-florida-becomes-conservative-model-for-other-gop-states/.

efforts elsewhere. To safeguard Florida's environment, biodiversity, and natural resources–and potentially those of other states—laws of these kind, including SB 540, must be struck down.