

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

Tallahassee Branch NAACP, Jacqueline Y.
Perkins, Moises Humberto Martinez, Ada
Kilpatrick, and Wilson Barnes,

CASE NO. 2026 CA 000912

Plaintiffs,

vs.

City of Tallahassee, Florida,

Defendant.

_____ /

ORDER ON DEFENDANTS' MOTIONS TO DISMISS

THIS CAUSE came before the Court on the Motion to Dismiss filed by Defendant, the City of Tallahassee (the "City"), on May 22, 2026, and the Motion to Dismiss filed by Intervenor-Defendant, The Florida State University Board of Trustees ("FSU"), on July 16, 2026, together with the parties' supplemental briefing (collectively, the "Motions"). The Court has reviewed the Complaint, the Motions, Plaintiffs' response, the exhibits subject to the City's Request for Judicial Notice, the record, and the argument of counsel at the July 21, 2026, hearing, and is otherwise fully advised. Accordingly, this court finds as follows:

I. LIMITATIONS OF RULING

1. As an initial matter, this case concerns the actions of the Tallahassee City Commission and its policy decisions concerning Tallahassee Memorial Hospital ("TMH"). As a threshold matter, "[t]he wisdom, policy, or motives which prompt a legislative enactment, so far as they do not contravene some portion of the express or implied limitation upon legislative power found in the Constitution [and statutes], are not subject to judicial control." State ex rel. Davis v. Rose, 122 So. 225, 231 (Fla. 1929). Similarly, "[t]he propriety and wisdom of legislation are exclusively matters for legislative determination." In re Apportionment L. Senate Joint Resol. No. 1305, 1972 Regular Session, 263 So. 2d 797, 806 (Fla. 1972). **"Thus, [this**

court’s] ruling today expresses no view as to the wisdom, policy, or motives behind the challenged [hospital transfer] provisions.” (emphasis added). Scott v. Williams, 107 So. 3d 379, 385 (Fla. 2013).

II. BACKGROUND

2. Plaintiffs — the Tallahassee Branch NAACP and four individual residents — filed a two-count Complaint for Declaratory Judgment and Injunctive Relief on April 30, 2026, seeking to void or invalidate the transfer of the TMH assets from the City to FSU. The Complaint alleges that the City failed to comply with section 155.40, Florida Statutes, in effecting that transfer, and that the provision of healthcare to indigent residents is thereby placed at risk.

3. The material transaction facts are drawn from the Complaint and its incorporated exhibits. The hospital was constructed in the 1940s; in 1979, by special act, the City was authorized to lease the facility to a not-for-profit corporation, and it did so, leasing the land and physical assets to Tallahassee Memorial Regional Medical Center, Inc. for a 35-year term. On March 11, 2026, the City Commission voted to transfer the hospital assets to FSU.

4. In ruling on a motion to dismiss, the Court's review is confined to the four corners of the Complaint, its incorporated attachments, and matters properly subject to judicial notice; all well-pleaded allegations are taken as true. *SBP Homes, LLC v. 84 Lumber Co.*, 384 So. 3d 241, 244 (Fla. 4th DCA 2024). The Court need not, however, accept conclusory allegations, unwarranted deductions, or legal conclusions, and where a document incorporated into or relied upon by the Complaint contradicts its allegations, the variance is fatal. *Gallego v. Wells Fargo Bank, N.A.*, 276 So. 3d 989, 990 (Fla. 3d DCA 2019); *Appel v. Lexington Ins. Co.*, 29 So. 3d 377, 379 (Fla. 5th DCA 2010).

III. JUDICIAL NOTICE

5. As a threshold matter, the Court finds that it may resolve the Motions without stepping outside the four corners of the Complaint, and without converting the Motions into motions for summary judgment.

6. The City requested judicial notice of Exhibits A through L, which include the parties' recorded instruments — among them the Transfer of Assets Agreement and the recorded Use and Restriction Agreement — together with the applicable charter provisions, ordinances, and Attorney General opinions. FSU joined the City's Request for Judicial Notice.

7. Plaintiffs expressly stipulated to the Court's consideration of the Transfer of Assets Agreement (Exhibit F), as well as Exhibits A and C, as documents impliedly incorporated by reference into the Complaint. Plaintiffs themselves acknowledge that documents incorporated by reference fall within a recognized exception to the four-corners rule.

8. A court may take judicial notice of records outside the complaint at the motion-to-dismiss stage where the movant properly requests judicial notice and the opposing party stipulates or does not object. *See Medicability, LLC v. Blue Hill Buffalo Consulting, LLC*, 352 So. 3d 467, 469 n.3 (Fla. 2d DCA 2022); *Bal Harbour Vill. v. City of N. Miami*, 678 So. 2d 356, 361 (Fla. 3d DCA 1996). Because the City requested judicial notice, FSU joined, and Plaintiffs stipulated to the Court's reliance upon the Transfer of Assets Agreement (Exhibit F), the Court may consider these records at this stage.

9. Furthermore, the Transfer of Assets Agreement specifically references the Use and Restriction Agreement. *See City's Motion to Dismiss, Transfer of Assets Agreement (Exhibit F)*, § 1(n) (defining the "Use and Restriction Agreement" and providing that, "[i]n the event of any conflict," the Transfer of Assets Agreement provisions "shall control"); *id.* § 3 (subjecting the transfer to the covenants to be "placed of record by a Use and Restriction Agreement"); *see also City's Motion to Dismiss, Use and Restriction Agreement (Exhibit G)*.

Based upon the references to the Use and Restriction Agreement in the Transfer of Assets Agreement, the Use and Restriction Agreement was also appropriately considered.

10. This Court properly considers the Transfer of Assets Agreement and the Use and Restriction Agreement.

IV. GROUNDS FOR DISMISSAL

11. The Court dismisses the Complaint on multiple independent and alternative grounds. Each ground set forth below is, standing alone, a complete and sufficient basis for dismissal. The Court's ruling rests on each ground independently; the failure of any one ground would not disturb the dismissal, because every other ground independently compels the same result.

A. Plaintiffs Lack Standing

12. Plaintiffs lack standing under section 155.40. Section 155.40 restricts review of a hospital-disposition decision to a defined class through a defined procedure. The statute makes any sale or lease "subject to approval by the Secretary of Health Care Administration," and provides that "[a]ny interested party to the action" may seek judicial review of that decision by appeal to the district court of appeal under section 120.68. § 155.40(10), (12), Fla. Stat. (2024). An "interested party" is limited to "a person submitting a proposal for sale or lease" of the hospital, together with the governing board. § 155.40(4)(c), Fla. Stat. (2024). None of the Plaintiffs submitted a proposal, and none sought appellate review of any decision of the Secretary of Health Care Administration.

13. Where a statute confers a particular remedy, "it can be invoked only to the extent and in the manner prescribed." *Gunn v. Robles*, 130 So. 463, 463 (Fla. 1930). Remedies under a statute that creates a right or duty are limited to those the statute specifies, and a court may imply a private cause of action "only where the statutory scheme and statute itself indicate a legislative

purpose to do so." *Curtis v. City of W. Palm Beach*, 82 So. 3d 894, 895 (Fla. 4th DCA 2011) (citation omitted). Where a statute creates a right and prescribes a specific remedy, that remedy is exclusive. *City of Miami v. Cosgrove*, 516 So. 2d 1125, 1127 (Fla. 3d DCA 1987). Legislative intent is the "primary factor," and no private action will be inferred where the Legislature established an administrative enforcement scheme with no textual indication that a private cause of action was contemplated. *Murthy v. N. Sinha Corp.*, 644 So. 2d 983, 985–86 (Fla. 1994). The Declaratory Judgment Act does not supply a cause of action the Legislature withheld. *Moon-Vileno v. Fla. Ass'n of Ct. Clerks, Inc.*, 383 So. 3d 128, 131–32 (Fla. 1st DCA 2024).

14. Section 155.40 vests enforcement in the Secretary of Health Care Administration, limits standing to proposal submitters, and restricts review pursuant to section 120.68, Florida Statutes, to the appellate court. There is no allegation that Plaintiffs have met the statutory standing requirements, nor could there be. Accordingly, Plaintiffs cannot enforce the statute.

15. Independently, Plaintiffs lack standing under general principles. Standing requires an injury that is "concrete, distinct, and palpable," a causal link to the challenged conduct, and redressability, resting on "clear and ascertainable facts, not speculation." *Cnty. Power Network Corp. v. JEA*, 327 So. 3d 412, 415 (Fla. 1st DCA 2021). Beyond that baseline, a plaintiff who challenges a governmental action shared with the public at large must show a special injury peculiar to himself, "different in degree and kind from that suffered by the community at large." *U.S. Steel Corp. v. Save Sand Key, Inc.*, 303 So. 2d 9, 12 (Fla. 1974). The Florida Supreme Court applied that requirement to bar a suit against a public hospital district. *N. Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154 (Fla. 1985); accord *McCall v. Scott*, 199 So. 3d 359, 362 (Fla. 1st DCA 2016) (a "citizen taxpayer must show that he or she suffered or will suffer a special injury, distinct from other members of the community at large"); see also *Renard v. Dade Cnty.*, 261 So. 2d 832, 835 (Fla. 1972) (recognizing the same "special damages peculiar to himself differing in

kind" from those "suffered by the community as a whole" in the context of a suit to enforce a municipal zoning ordinance). A plaintiff must therefore have "a definite interest exceeding the general interest in community good shared in common with all citizens." *Renard*, 261 So. 2d at 837. Plaintiffs sue as residents and potential future patients; that is a generalized grievance shared with every resident who might one day seek care.

16. Plaintiffs' asserted injury is also impermissibly speculative. Their theory depends on a chain of contingencies — that the City will fail to appropriate sale proceeds, that Plaintiffs will later require hospitalization, and that their out-of-pocket costs will then rise. "[T]he mere possibility of injury at some indeterminate time in the future does not supply standing under our Declaratory Judgment Act," and a court will not grant declaratory relief where "the pleadings indicate the possibility that the question will never arise." *Williams v. Howard*, 329 So. 2d 277, 281–82 (Fla. 1976) (citation omitted). Declaratory relief requires "a bona fide, actual, present practical need for the declaration," directed to "a present, ascertained or ascertainable state of facts" — not matters "contingent, uncertain or rest[ing] in the future." *Id.* at 282 (citations omitted). Standing fails where injury is tied to the challenged conduct "by only a tenuous chain of speculation." *Cnty. Power Network*, 327 So. 3d at 415.

B. Section 155.40 Does Not Apply to the Transaction

17. Even if Plaintiffs had standing, the Complaint fails to state a claim because section 155.40 does not govern this transaction. The statute provides that a county, district, or municipal hospital "may sell or lease the hospital to a for-profit or not-for-profit Florida entity." § 155.40(1), Fla. Stat. (2024). FSU is neither; it is a governmental entity and an agency of the State. § 1001.705(1)(d), Fla. Stat. (2024). The statute's text distinguishes governmental operation from private acquisition, comparing operation "by a governmental entity" against operation "by a not-for-profit or for-profit entity," and referring throughout to a "private entity purchaser."

§ 155.40(5)(d), (21), Fla. Stat. (2024). A conveyance to an agency of the State falls outside the transaction the statute regulates.

V. AMENDMENT WOULD BE FUTILE; DISMISSAL IS WITH PREJUDICE

18. Dismissal with prejudice is appropriate where it is clear that the pleading cannot be amended to state a cause of action. *Glatstian v. Cleveland Clinic Fla.*, 680 So. 2d 1141, 1141 (Fla. 3d DCA 1996); *Ins. Concepts & Design, Inc. v. Healthplan Servs., Inc.*, 785 So. 2d 1232, 1236 (Fla. 4th DCA 2001) (dismissal with prejudice "is proper if the pleading cannot be amended to state a cause of action"); *see also Chimera Servs., Inc. v. Prevatt*, 267 So. 3d 556, 557 (Fla. 5th DCA 2019). Here, no amendment could cure any of the independent defects identified above.

19. Standing. A lack of standing at the inception of the case cannot be cured by later-acquired standing or by repleading. *LaFrance v. U.S. Bank Nat'l Ass'n*, 141 So. 3d 754, 756 (Fla. 4th DCA 2014). Plaintiffs did not submit a proposal to purchase or lease the hospital and did not seek appellate review of the Secretary of Health Care Administration's decision; no amendment can retroactively place them within the class the Legislature authorized to sue.

20. Statutory inapplicability. Whether section 155.40 governs a conveyance to a governmental entity, whether TMH is a "municipal hospital," and whether the statute applies retroactively are pure questions of law fixed by the statutory text and the historical transaction structure. No new allegation could alter FSU's status as a governmental entity or the City's decades-long role as a passive landlord.

21. Each of the foregoing grounds independently requires dismissal, and each independently establishes that amendment would be futile. Accordingly, dismissal with prejudice is warranted.

22. This court again reiterates that the decision to transfer TMH assets is a matter of policy, and this court cannot step in and second guess whether that is a good or bad policy. This court can only decide whether or not the policy is legal.

V. DISPOSITION

Based on the foregoing, it is **ORDERED** and **ADJUDGED**:

A. The City of Tallahassee's Motion to Dismiss and the Florida State University Board of Trustees' Motion to Dismiss are **GRANTED**.

B. The Complaint is **DISMISSED WITH PREJUDICE** in its entirety, on each of the independent and alternative grounds set forth above, any one of which independently supports this dismissal.

C. Because amendment would be futile, this dismissal is final and with prejudice.

D. The Court reserves jurisdiction to determine entitlement to and the amount of taxable costs upon timely motion.

DONE AND ORDERED in Chambers in Leon County, Florida on this Monday, August 31, 2026.

26-CA-000912-1000M 08/31/2026 11:34

Lee Marsh, Circuit Judge

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Copies furnished to:

All counsel of record