

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, ORLANDO,  
FLORIDA

CASE NO.: 2021-CA-004420-O

WILDE CYPRESS BRANCH, BOGGY BRANCH,  
CROSBY ISLAND MARSH, LAKE HART, LAKE  
MARY JANE AND ALL OTHER AFFECTED  
ORANGE COUNTY WATERS; AND CHARLES  
O'NEAL, IN HIS OFFICIAL CAPACITY AS  
PRESIDENT OF SPEAK UP WEKIVA, INC.,  
AND ON BEHALF OF THE WATERS OF  
ORANGE COUNTY,

Plaintiffs,

v.

BEACHLINE SOUTH RESIDENTIAL, LLC,  
AND NOAH VALENSTEIN, IN HIS OFFICIAL  
CAPACITY AS SECRETARY OF THE FLORIDA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Defendants.

**AMENDED COMPLAINT**

Plaintiff, CHARLES O'NEAL ("O'Neal") through undersigned counsel, files this Complaint in his official capacity as President of Speak Up Wekiva, Inc. ("Speak Up Wekiva") and on behalf of WILDE CYPRESS BRANCH, BOGGY BRANCH, CROSBY ISLAND MARSH, LAKE HART, LAKE MARY JANE and all other AFFECTED ORANGE COUNTY WATERS, against Defendants, BEACHLINE SOUTH RESIDENTIAL, LLC. ("Beachline"), and NOAH VALENSTEIN ("Valenstein") in his Official Capacity as Secretary of the Florida Department of Environmental Protection.

Plaintiffs seek declaratory and injunctive relief. Plaintiffs seek a declaration that Defendant Beachline's proposed "Meridian Parks Remainder" development violates Section 704.1 of the Orange County Charter. Given this, Plaintiffs also seek a declaration that Defendant Valenstein's issuance of wetlands dredge and fill permits to Defendant Beachline for the project under Section 404 of the federal Clean Water Act ("CWA") also would violate Section 704.1 of the Orange County Charter. Given these declarations, Plaintiffs ask the Court to enjoin Defendant Beachline from proceeding with the project and Defendant Valenstein from issuing said permits allowing the project to proceed. As support for this relief, Plaintiffs seek a declaration that Fla. Stat. Section 403.412(9), which purports to preempt Section 704.1 of the Orange County Charter, is unconstitutional for multiple independent reasons.

Finally, before the Court even reaches any of these issues, Plaintiffs seek a temporary injunction staying DEP's consideration of the permit for the Meridian Parks Remainder project until the federal courts resolve a parallel action that has been filed, *Center for Biological Diversity v. U.S. EPA* in the United States District Court for the District of Columbia, Civil No. 21-cv-119. In that

case plaintiffs seek to overturn the federal delegation of permit review to the DEP for the program under which the current permit is being sought.

### **Parties**

1. Plaintiffs Wilde Cypress Branch, Boggy Branch, Crosby Island Marsh, Lake Hart and Lake Mary Jane are Waters of Orange County and thereby possess rights as defined in Orange County Charter Section 704.1 A.

2. Plaintiff O'Neal is an adult resident of Orange County and has resided in Orange County for more than a year and is otherwise sui juris. He brings this action in his official capacity as President of Speak Up Wekiva, Inc., a non-profit water protection organization with over six hundred members, including members who have been citizens of Orange County of more than one year and who enjoy and recreate in Orange County water bodies. Plaintiff thus has standing to bring this action under Section 704.1 (B) of the Orange County Charter.

3. Defendant Valenstein was the Secretary of the Florida Department of Environmental Protection and is sued in his official capacity, at the time that this action was filed; and this action should be deemed to be an action against his successor.

4. Defendant Beachline is a limited liability company which is engaged in land development, and has a principal address of 4901 Vineland Road, Suite 450, Orlando, Orange County, Florida 32811.

### **Jurisdiction and Venue**

5. This Court has jurisdiction to adjudicate this case pursuant to §§ 86.011 and 86.021, Florida Statutes, as this is an action for declaratory judgment.

6. Orange County, Florida is a proper venue pursuant to § 47.011, Florida Statutes, as the cause of action accrued in Orange County, and Defendant Beachline has a principal place of business in Orange County.

7. The amount in controversy in this matter is greater than \$30,000.00, excluding interest, costs, and attorney fees.

### **Facts Giving Rise to Complaint**

#### **Orange County Charter Section 704.1**

8. Orange County, Florida is a charter county under Article VIII, Section 1 (g) of the Florida Constitution.

9. The Orange County Charter, Article VII, Section 702, provides that a Charter Review Commission (“CRC”) shall be appointed by the Board of County Commissioners and serve a four-year cycle. The Orange County Charter provides that the CRC may, during its term, place proposed amendments and revisions of the Charter on the ballot at general elections. Such amendments or revisions do not require the approval of the Board of County Commissioners.

10. On or about June 21, 2019, Plaintiff O’Neal, individually and on behalf of Speak Up Wekiva, filed a proposed Orange County Charter Amendment initially titled “the Right to Clean Water”.

11. On July 10, 2019, in a duly noticed public hearing, the full Orange County Charter Review Commission voted to create a committee of commissioners to study the proposed Right to Clean Water amendment and to make a recommendation on whether it should be approved by the full commission. The assigned committee consisted of five members: a retired NASA engineer, three attorneys, and a marine biologist who is a biology professor at the University of Central Florida.



12. Over the next seven months, the Right to Clean Water committee met eleven times, heard public comment, and reviewed extensive literature including facts demonstrating that the Wekiva River and Econlockhatchee River, as well as many other Orange County water bodies including Lake Apopka, were deteriorating and, in fact, have been classified by the Florida Department of Environmental Protection as "impaired." The committee further heard testimony and received evidence that the conditions of the two rivers and Orange County water bodies—including wetlands-- generally were declining and unsustainable.

13. The committee also heard testimony and received evidence that although these Orange County rivers and water bodies were ostensibly protected by multiple state statutes and regulations, these state laws had failed to stop or even meaningfully slow the deterioration of these water bodies, regardless of Article II, Section 7 of the Florida Constitution which requires that "Adequate provision shall be made by law for the abatement of air and water pollution." The committee found that adequate provision had not been made by the State to protect its water bodies. During these meetings there was extensive discussion and revision of the proposed amendment language. All meetings were attended by the Charter Review Commission legal counsel, who participated extensively in the crafting of the final Right to Clean Water proposed amendment.

14. On January 20, 2020, the Right to Clean Water committee approved a final version of the amendment, now titled "Section 704.1—Right to Clean Water, Standing and Enforcement," and unanimously voted that the final amendment language be recommended favorably for passage by the full Charter Review Commission.

15. On March 4, 2020, in a duly noticed public meeting, the full Orange County Charter review commission voted 9-5 in its second and final reading of the language to approve the amendment and place it on the November 3, 2020 ballot in Orange County.

16. On November 3, 2020, the voters of Orange County overwhelmingly approved the amendment by a margin of 89.2%.

17. The complete text of the new charter provision, Article 7, Section 704.1, is as follows:

**Section 704.1 – Right to Clean Water, Standing and Enforcement.**

**A. Natural Rights of Orange County Waters and Citizens.**

(1) The Wekiva River and Econlockhatchee River, portions of which are within the boundaries of Orange County, and all other Waters within the boundaries of Orange County, have a right to exist, Flow, to be protected against Pollution and to maintain a healthy ecosystem.

(2) All Citizens of Orange County have a right to clean water by having the Waters of Orange County protected against Pollution.

**B. Standing, Private Right of Action.**

Orange County, municipalities within Orange County, any other public agency within Orange County, and all Citizens of Orange County shall have standing to bring an action in their own name or in the name of the Waters to enforce the provisions of this Section of the Charter. Such actions shall be filed in the Ninth Judicial Circuit Court in and for Orange County, Florida, or, where jurisdiction exists, in the United States District Court, Middle District of Florida, Orlando Division.

**C. Violations.**

It shall be unlawful and a violation of this Section of the Charter for any governmental agency, non-natural person or corporate entity to intentionally or negligently pollute the Wekiva River and Econlockhatchee Rivers within the boundaries of Orange County, or any other Waters within the boundaries of Orange County. Violations include the Pollution of Waters which exist exclusively on private property owned by the same person(s) or entity, but only where Pollution thereon interferes with or causes Pollution of other Waters within Orange County or unreasonably interferes with or is injurious to the health and welfare of others. This Section of the Charter applies only to violations that occur after the effective date of the amendment as provided in Subsection (H).

**D. Remedies.**

(1) Remedies for violations of this Section of the Charter shall be injunctive and/or other equitable relief, including but not limited to a writ of mandamus requiring the violator, to the greatest extent reasonably possible, to restore the Waters at issue to the condition as it existed prior to being polluted by the violator. The prevailing party shall be entitled to recover its reasonable costs, including costs of expert witnesses.

(2) Attorneys' fees are not compensable unless the court determine that the action brought under this Section of the Charter is frivolous, vexatious, or is brought solely for the purpose of harassing the defendant. If such a finding is made, the Court may also award reasonable attorneys' fees to the defendant as a sanction.

**E. Exception.**

The provisions of the Section shall not apply to Constructed Wetlands.

**F. Definitions.**

(1) "*Citizen*" or "*Citizen of Orange County*" means an adult resident of Orange County with legal residence in the United States who has resided within the county for at least one (1) year prior to filing an action under this Section.

(2) "*Constructed Wetland*" means a non-natural swimming pool and any artificial wetland that uses natural processes involving wetland vegetation, soils, and their associated microbial assemblages to treat domestic wastewater, industrial water, greywater or stormwater runoff, to improve water quality.

(3) "*Flow*" shall have the same meaning as in FLA. STAT. Sec 373.042.

(4) "*Pollutant*" means any substance or contaminant, whether manmade or natural, that is the source or cause of Pollution.

(5) "*Pollution*" shall have the same meanings as in FLA. STAT. §376.031(17) and Rule 62-520.200(15), Florida Administrative Code, and means the non-natural presence in the Waters of Orange County of any one or more substances, contaminants, noise, or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animals, fish, plant life, and water quality or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(6) "*Waters*" shall have the same meaning as in Rule 62-520.200(25), Florida Administrative Code, and includes, but is not limited to rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water within the boundaries of Orange County, including fresh, brackish, saline, tidal, surface or underground waters. Waters owned entirely by one person or entity are included, but only to the extent the pollution thereon interferes or is injurious to other Waters, property or persons within Orange County.



**G. Severability and Conflicts.**

The rights and violations provided herein should be interpreted, to the greatest extent possible, in harmony with any superior state or federal law governing the same rights and conduct. To the extent any provision of this Section of the Charter impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable, and all other provisions shall remain fully enforceable.

**H. Effective Date.**

This amendment shall become effective upon passage, which is the date certified by the Supervisor of Elections and shall not require further enabling legislation by the Orange County Board of County Commissioners.

**The Meridian Parks Remainder Project**

18. On or about November 9, 2020, Defendant Beachline applied to the United States Corps of Engineers for a wetlands dredge and fill permit, Permit Application Number 2020-1109-SAJ-2016-00317 (SP-JSC).

19. On or about January 8, 2021, Defendant Beachline transferred the Permit Application Number 2020-1109-SAJ-2016-00317 (SP-JSC) from the United States Army Corps of Engineers to the Florida Department of Environmental Protection (FDEP). The FDEP Application Number is 0396955-001.

20. Specifically, this permit application requests authorization for Defendant Beachline to fill in approximately 115 acres of Orange County waters for the construction of a mixed-use residential and commercial retail development on approximately 1,923 acres in east Orange County. According to Defendant's application, the proposed development site includes 136.72 acres of Wetland Forested Mixed (630) FLUCFCS classification; 8.22 acres of Freshwater Marsh (641) FLUCFCS classification; and 3.01 acres of Wet Prairie (643) FLUCFC classification.

21. The Meridian Parks Remainder Application violates the rights of the plaintiff water bodies to exist by proposing to dredge and fill 63.23 acres of wetlands on the subject property in



order to build houses and commercial development. The stated purpose for doing so is “to achieve the desired number of lots to make a viable product.” The proposed development would end the existence of these wetlands which “are generally recognized as significantly influencing or positively contributing to the general overall environmental health of vitality of the entire ecosystem of the region.” The proposed development also violates the right to exist of the Crosby Island Marsh, Lake Hart and Lake Mary Jane by cutting off and/or restricting the sufficient flow of clean water into these protected bodies of water.

22. The Meridian Parks Remainder Application violates the rights of the plaintiff water bodies to flow by dredging and filling 33.27 acres of streams and wetlands for the purpose of building roadways within the development. This construction of earthen dams crossing streams and wetlands prevents the natural flow of water from the Wilde Cypress Swamp and Boggy Branch on the North to the Crosby Island Marsh and thereby Lake Hart and Lake Mary Jane to the South. This obstruction of flow would similarly impact the rights of the Crosby Island Marsh, Lake Hart and Lake Mary Jane to flow southward into the Kissimmee River.

23. The Meridian Parks Remainder Project Application violates the rights of Orange County Waters to be protected against Pollution by filling 18.84 acres of wetlands to build stormwater ponds. The construction of these ponds close to the plaintiffs Wilde Cypress Branch and Boggy Branch will pollute both water bodies with chemicals accruing in the stormwater ponds and migrating into the streams and wetlands through the surficial aquifer. Likewise, roadways constructed near these two streams will discharge polluted stormwater into the streams and wetlands thereby violating their right to be protected against pollution. The combined impact of runoff from rooftops and roadways will cause downstream pollution in the Crosby Island Marsh,

Lake Hart and Lake Mary Jane - all of which eventually flow into the Kissimmee River, and thus end up polluting Lake Okeechobee, the St Lucie Estuary and the Caloosahatchee River.

24. The Meridian Parks Remainder Project Application violates the rights of Orange County Waters to maintain a healthy ecosystem by disrupting the delicate ecological balance between Wilde Cypress Branch, Boggy Branch, Crosby Island Marsh, Lake Hart and Lake Mary Jane. All of these water bodies support numerous species of rare plant and animal life. The dredging, filling and construction of earthen dams for roadways crossing the streams, along with the placement of dense housing and commercial mini-malls in close proximity to these ecological treasures, would make it impossible for all of these water bodies to maintain a healthy ecosystem. The amount of roadway and rooftop pollutants coupled with the loss of wetlands to accommodate this massive man-made intrusion will essentially destroy the balance that each ecosystem has developed in Nature over thousands of years.

25 The proposed development would be north of Lake Hart and would affect waters of the United States associated with the Kissimmee River Hydrological Unit.

26. Multiple environmental groups submitted formal objections to this project to the U.S. Army Corps of Engineers, including the Orange Audubon Society, The Florida Native Plant Society, and Sierra Club Central Florida. These objections included that this project would negatively impact the Kissimmee River, as well as nearby Lake Hart and Lake Mary Jane, and that it would further negatively impact the surrounding ecosystems of these water bodies, including Moss Park, Isle of Pines Preserve, and Split Oak Forest Mitigation Park. These groups also noted the adverse effect of the project on migratory wetland birds, including the federally designated threatened wood stork.

27. Further, Sierra Club Central Florida Group, in its objections filed December 18, 2020, specifically noted that the proposed wetlands impacts would violate Orange County Charter Section 704.1:

The Sierra Club believes the proposed wetland impacts violate Article 7 of the Orange County Charter, Section 704.1. This section provides for the rights to clean water, standing and enforcement and provides for the rights of Orange County waters to exist, flow, and to be protected against pollution and to maintain a healthy ecosystem. This section provides standing to bring an action in their own name or in the name of the waters to enforce the provisions in this section.

28. Effective December 22, 2020, the United States Environmental Protection Agency transferred to the Florida DEP the authority to issue wetland permits in Florida under Section 404 of the federal Clean Water Act.

29. On or about January 8, 2021, Defendant Beachline submitted a request to the Florida DEP to issue wetlands dredge & fill permits for its Meridian Parks Remainder development.

30. The wetlands, freshwater marsh and wet prairie described in paragraph 18 are “waters” within the definition of Orange County Charter Section 704.1 F. (6) and Rule 62-520.200 (25), Florida Administrative Code, which includes “all other waters or bodies of water within the boundaries of Orange County, including fresh, brackish, saline, tidal, surface or underground waters.”

31. Further, Lake Hart, Lake Mary Jane and portions of the Kissimmee River Hydrological Unit are in Orange County and are clearly encompassed within the definition of “Waters” in Section 704.1 F. (6).

32. As asserted below, dredging, filling, paving, and/or constructing over the waters within the Meridian Parks Remainder project would violate Section 704.1 A. (1) by impairing the



right of these waters within the Meridian Parks Remainder proposed development, as well as the surrounding waters including Lakes Hart and Mary Jane, and portions of the Kissimmee River Hydrological Unit, to exist, flow, be protected from pollution and to have a healthy ecosystem.

33. Such dredging, filling, paving and/or constructing will further violate Section 704.1 A (2) by violating Plaintiff O’Neal and all Orange County citizens’ rights to clean water by having these waters protected against pollution.

34. Additionally, the issuing of these permits by the Florida DEP would violate the public interest requirement of 33 CFR Section 320.4(a)(1), which provides that the decision to issue such permits must be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. The public interest concerning the subject waterways has already been determined in Orange County and that public interest is codified in Section 704.1 of the Orange County Charter, which prohibits the destruction, impairment of flow, pollution and damage to the ecosystems of these waters, some or all of which these permits would allow.

35. Moreover, issuing these permits violates 33 CFR Section 320.4(j) and (j)(2), which provide that the primary responsibility for zoning and land use matters rests with state, local and tribal governments. In this case, Orange County Charter Section 704.1 clearly prohibits what the subject permits would allow.

36. Section 704.1 B. provides that any adult who has resided in Orange County for at least one year may bring an action in their own name and/or on behalf of the “waters” within Orange County, and Section 704.1 D. provides that these individuals may bring an action for “injunctive and/or other equitable relief.”

**Administrative Remedies are Inapplicable, Futile, and Inadequate**



37. Plaintiffs in this case need not exhaust administrative remedies for two reasons. First, this is not an administrative law case. It is an action to enjoin violation of section 704.1 of the Orange County Charter by a state agency and a private developer, and further for a declaratory judgment that Section 403.412(9)(a), Fla. Stat. (2020) is unconstitutional for multiple reasons. Section 704.1 augments federal and state law by prohibiting entirely what federal and state law allow, namely, permitted violation of the rights of, and pollution of, the waters of Orange County. The Court need not consider or apply administrative law to resolve this case.

38. Second, the administrative remedies are futile and inadequate for two reasons. Defendant Valenstein is administering the CWA 404 wetlands permits under an illegal delegation of authority from the U.S. EPA. And the delegation, whether illegal or not, allows Defendant to grant the permit without abiding by the local law considerations normally required by 33 CFR Section 320.4(j).

39. The delegation to Defendant Valenstein is contained in two Memoranda of Agreement, one between Defendant Valenstein and the U.S. EPA, the other between Defendant Valenstein and the U.S. Department of the Army. Both were signed in or about July and August 2020. True and correct copies of the memoranda are attached as Exhibits 1 and 2.

40. The delegation to Defendant Valenstein is illegal because it violates the CWA in numerous ways. These include, without limitation, that the Florida program: issues scores of general permits without the requisite determinations regarding environmental impact (40 C.F.R. § 233.21(b)); authorizes general permits beyond duration allowed by federal law (33 U.S.C. § 1344(e)(2)); unlawfully expands the circumstances under which emergency permits may issue (40 C.F.R. § 233.22(a)); omits important emergency permit conditions required by

federal law (40 C.F.R. § 233.23(c)(1), (4), (7), and (9)); weakens federal regulations designed to prevent contamination of dredge and fill material (40 C.F.R. § 230.5); weakens restrictions on discharges by creating a new exception for temporary discharges not present in federal law (40 C.F.R. § 230.10); and fails to incorporate CWA 404(b)(1) Guidelines concerning a determination whether a discharge will cause or contribute to a significant degradation of wetlands or other surface waters.

41. For these and other reasons, the illegal delegation to Defendant Valenstein is currently being challenged under the CWA and the Administrative Procedures Act (APA) in *Center for Biological Diversity v. U.S. EPA* in the United States District Court for the District of Columbia, Civil No. 21-cv-119 (filed January 14, 2021, partial summary judgment filed by the Plaintiffs on March 5, 2021). A true and correct copy of the Complaint in that case is attached as Exhibit 3.

42. Even if the delegation to Defendant Valenstein is lawful, it makes administrative remedies futile and inadequate by failing to require the DEP to deny a wetlands permit that violates a local law.

43. In particular, 33 CFR Section 320.4(j)(1) requires denial of a CWA 404 wetlands permit as against the public interest if the project will violate a “local authorization.”

44. Separately, 33 CFR Section 320.4(j)(2) requires denial of a CWA 404 wetlands permit as against the public interest if the project is prohibited by a local “land use” law, unless there are significant issues of overriding national importance.

45. The delegation to Defendant Valenstein does not contain and thereby eliminates these local law considerations from the permit review process.

46. For example, if Charter section 704.1 is a matter of “local authorization” under 33 CFR Section 320.4(j)(1), then Defendant Valenstein would be required to deny the permit. But Defendant Valenstein is not so required, because that portion of the CWA regulations was not delegated to Defendant Valenstein.

47. Also for example, if Charter section 704.1 is a “land use” matter under 33 CFR Section 320.4(j)(1), then Defendant Valenstein would be required to deny the permit absent significant issues of overriding national importance. But Defendant Valenstein is not so required, because that portion of the CWA regulations was not delegated to Defendant Valenstein.

48. In sum, because the delegation to Defendant Valenstein is unlawful, and even if lawful, because it does not contain the local law review process required by 33 CFR Section 320.4(j), the state program does not require Defendant Valenstein to consider or apply Charter Section 704.1. Therefore, administrative remedies are futile and inadequate for Plaintiffs.

## COUNT 1

### **Declaratory Judgment for Violation of Orange County Charter Section 704.1(A)(1) and (C) - Violation of the Rights of Orange County Waters**

49. Plaintiffs restate and incorporate by reference paragraphs 1-48 above.

50. This is an action for declaratory judgment pursuant to § 86.011, Florida Statutes that Defendant Beachline’s proposed Meridian Parks Remainder project violates Orange County Charter Section 704.1 A. (1) and C by violating the rights of the waters within and surrounding this proposed development, as alleged above, to exist, flow, be protected from pollution and to maintain a healthy ecosystem.

51. This is an action for declaratory judgment that Defendant Valenstein’s issuance of the CWA 404 wetlands permits to Defendant Beachline will violate County Charter Section 704.1(A) and (C) by intentionally or negligently permitting illegal pollution.



52. There is a bona fide, actual, present, and practical need for this declaration as Defendant Beachline has already requested Florida DEP to issue these permits, and if the permits are issued and the subject wetlands and waters are dredged, filled, paved and/or otherwise constructed upon, the environmental damage will be lasting and/or permanent.

53. The declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts. Although Section 704.1 was passed on November 3, 2020, and became effective on the date of passage, there has been no acknowledgment by the Florida DEP that the Department will comply with the Orange County Charter amendment.

54. Some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts. As specifically prescribed in Section 704.1 A (1), all Orange County waters have the right to exist, flow, be free from pollution, and to have a healthy ecosystem. These rights depend upon the court enforcing them through a declaratory judgment prohibiting the Florida DEP from granting permits which would impair the waters' flow, pollute the water, injure their ecosystems, and/or destroy them altogether; and a declaration that Beachline's development actions would similarly violate those rights

55. There is some person or persons who have, or reasonably may have an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law. As discussed above, Section 704.1 A (1) provides that the waters of Orange County have a right themselves to exist, flow, be free from pollution, and to have a healthy ecosystem, and thus the waters themselves have an actual, present, adverse, and antagonistic interest in this subject matter. Additionally, as discussed above, Section 704.1 B. provides that Orange County citizens have the right to bring actions in the name of Orange County waters, thus satisfying the requirement of a "person or persons" having an actual, present, adverse, and antagonistic interest in the subject matter.



56. As discussed above, the antagonistic and adverse interests of the subject Orange County waters are all before the court by proper process, and the relief sought is not merely the giving of legal advice before the courts or the answer to questions propounded from curiosity.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order declaring (a) Defendant Beachline's proposed Meridian Parks Remainder project violates Orange County Charter Section 704.1 A. (1) and C by violating the rights of the waters within and surrounding this proposed development to exist, flow, be protected from pollution and to maintain a healthy ecosystem; and that (b) Defendant Valenstein's issuance of the CWA 404 wetlands permits to Defendant Beachline will violate County Charter Section 704.1A and C by intentionally or negligently permitting illegal pollution. Plaintiffs also respectfully request an award of fees and costs, and such further relief as this Court deems just and proper.

## **COUNT 2**

### **Injunction Under Section 704.1A(1) and C – Violation of the Rights of Orange County Waters**

57. Plaintiffs restate and incorporate by reference paragraphs 1-56 above.

58. Irreparable harm will result to the Orange County waters within the proposed Meridian Parks Remainder, as well as the surrounding waters and their ecosystems as described above, if an injunction is not granted in that, without the issuance of an injunction, Defendant Beachline will proceed with its project and the Florida DEP will consider, and may approve, the subject CWA 404 wetlands permits discussed above. Such actions will result in the impairment of the flow of the subject waters, pollute the waters, harm their ecosystem, and/or destroy them, which would unquestionably violate Section 704.1 A (1) and C.

59. The subject Orange County waters, through Plaintiff O'Neal, have a clear legal right to the requested relief, or, in other words, a substantial likelihood of success on the merits. The

language of Section 704.1 A (1) is clear and unambiguous: these Orange County waters have the right to exist, flow, be protected from pollution, and not have their ecosystems harmed. There is no principled argument that the dredging, filling and/or construction over the subject wetlands and waters described above will not negatively affect their flow, cause them to be polluted, harm their ecosystems, and/or destroy them entirely.

60. Given the nature of this dispute, Orange County waters do not have an adequate remedy at law. If the proposed development impacts the flow of these waters, their pollution, the damage to their ecosystems, and their potential destruction cannot be remedied by monetary damages or other relief.

61. The public interest will not be disserved by the granting of an injunction in this matter. Indeed, after a lengthy and deliberate charter review process with a large majority of the elected Orange County charter review commissioners voting in favor of Section 704.1, the voters of Orange County approved the charter amendment by a nearly ninety percent margin, showing the citizens' overwhelming desire to do something about the unrelenting destruction and degradation of Orange County waters.

WHEREFORE, Plaintiffs request that this Court issue an injunction enjoining Beachline South Residential LLC from doing the Meridian Parks Remainder Project and enjoining Defendant Valenstein from issuing the CWA 404 wetlands permits to Defendant Beachline. Plaintiffs also respectfully request an award of fees and costs, and such further relief as this Court deems just and proper.

### **COUNT 3**

**Declaratory Judgment for Violation of Orange County Charter Sections  
704.1(A)(2) and (C)  
- Violation of the Right to Clean Water**

62. Plaintiffs restate and incorporate by reference paragraphs 1-61 above.

63. This is an action for declaratory judgment pursuant to § 86.011, Florida Statutes, that Defendant Beachline's proposed Meridian Parks Remainder project violates Orange County Charter Section 704.1 A. (2) and C by impairing the rights of members of Speak Up Wekiva and Orange County citizens' right to have clean water protected from pollution.

64. This is an action for declaratory judgment that Defendant Valenstein's issuance of the CWA 404 wetlands permits to Defendant Beachline will violate County Charter Section 704.1 A(2) and C by intentionally or negligently permitting illegal pollution.

65. There is a bona fide, actual, present, and practical need for this declaration as Defendant Beachline has already requested Florida DEP to issue these permits, and if the permits are issued and the subject wetlands and waters are dredged, filled, paved and/or otherwise constructed upon, the environmental damage will be lasting and/or permanent, and the rights of Speak Up Wekiva members and Orange County citizens will be affected.

66. The declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts. Although Section 704.1 was passed on November 3, 2020, and became effective on the date of passage, there has been no acknowledgment by the Florida DEP that the Department will comply with the Orange County Charter.

67. Some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts. As specifically prescribed in Section 704.1 A (2), all Orange County citizens, including Speak Up Wekiva members, have a right to clean water protected against pollution. These rights depend upon the court enforcing them through a declaratory judgment prohibiting the Florida DEP from granting permits which would impair these



waters' flow, pollute them, injure their ecosystems, and/or destroy them altogether, and prohibiting Beachline from proceeding with its proposed development.

68. There is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law. As discussed above, Plaintiff O'Neal is an adult resident of Orange County who has legally resided in Orange County for over a year, and thus has standing to bring this action in his official capacity of President of Speak up Wekiva under Section 704.1 B., and further has a right under Section 704 A (2) to clean water in Orange County protected from pollution.

69. As discussed above, the antagonistic and adverse interests of the subject Orange County waters are all before the court by proper process, and the relief sought is not merely the giving of legal advice before the courts or the answer to questions propounded from curiosity.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order declaring that (a) Defendant Beachline's proposed Meridian Parks Remainder project violates Orange County Charter Section 704.1 A. (2) and C by impairing the rights of Speak Up Wekiva members' and Orange County citizens' right to have clean water protected from pollution; and thus (b) Defendant Valenstein's issuance of the CWA 404 wetlands permits to Defendant Beachline will violate County Charter Section 704.1A(2) and C by intentionally or negligently permitting illegal pollution. Plaintiffs also respectfully request an award of fees and costs, and such further relief as this Court deems just and proper.

#### **COUNT 4**

#### **Injunction Under Section 704.1A(2) and C – Violation of the Right to Clean Water**

70. Plaintiffs restate and incorporate by reference paragraphs 1-69 above.



71. Irreparable harm will result to Speak up Wekiva members and Orange County citizens if an injunction is not granted in that, without the issuance of an injunction, the Florida DEP will consider, and may approve, the subject wetlands permits discussed above, and Defendant Beachline's polluting project will then proceed. Such would result in the impairment of the flow of the subject waters as described above, pollute these waters, harm their ecosystems, and/or destroy them, which would unquestionably violate Section 704.1 A (2) and C, which provide that all Orange County citizens have a right to clean water protected from pollution.

72. Speak Up Wekiva members have a clear legal right to the requested relief, or, in other words, a substantial likelihood of success on the merits. The language of Section 704.1 A (2) is clear and unambiguous: all Orange County citizens, including Speak Up Wekiva members, have a right to clean water protected from pollution. There is also no question that the subject waters and wetlands described in this Complaint are included in the Section 704.1 (6) definition of "Waters". There is no principled argument that the dredging, filling and/or construction over the subject wetlands and waters described above will not cause some degree of pollution to these waters, and thus violate Section 704.1 A (2).

73. Given the nature of this dispute, Plaintiff O'Neal and Speak Up Wekiva members do not have an adequate remedy at law. If the proposed development is allowed to impact the flow of these waters, their pollution, the damage to their ecosystems, and their potential destruction cannot be remedied by monetary damages or other relief.

74. The public interest will not be disserved by the granting of an injunction in this matter. Indeed, after a lengthy and deliberate charter review process with a large majority of the Orange County charter review commissioners voting in favor of Section 704.1, the voters of Orange County approved the charter amendment by a nearly ninety percent margin, showing the

citizens' overwhelming desire to do something about the unrelenting destruction and degradation of Orange County waters.

WHEREFORE, Plaintiff requests that this Court issue an injunction enjoining Beachline South Residential LLC from doing the Meridian Parks Remainder Project, and enjoining Defendant Valenstein from issuing the CWA 404 wetlands permits to Defendant Beachline. Plaintiffs also respectfully request an award of fees and costs, and such further relief as this Court deems just and proper.

### COUNT 5

#### **Declaratory Judgment—Fla. Stat. Section 403.412(9) Is Unconstitutional and Otherwise Unlawful and Inapplicable**

75. Plaintiffs restate and incorporate by reference paragraphs 1–69 and 70-74 above.

76. As stated earlier, on March 4, 2020, the Orange County Charter Review Commission voted to approve the language for the Right to Clean Water Initiative and to place it on the November 3, 2020, ballot in Orange County.

77. After the Charter Review Commission's placement of the initiative onto the ballot, a provision was added to Senate Bill 712 attempting to nullify the ballot-ready Right to Clean Water Initiative before the voters of Orange County got to vote on it.

78. Senate Bill 712 was enacted on June 30, 2020, again, after the Right to Clean Water Initiative was placed on the November 2020 ballot and prior to the vote by the people of Orange County. In pertinent part, the Bill says: "A local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law may not recognize or grant any legal rights to a plant, an animal, a body of water, or any other part of the natural environment that is not a person or political subdivision, or grant such person or political subdivision any specific rights relating to the natural environment not otherwise authorized in

general law or specifically granted in the State Constitution.” Senate Bill 712 of 2020 (amending Fl. Stats. 403.412 to add a section 9(a)).

79. Florida’s Declaratory Judgement statute says, “A person ... whose rights ... are affected by a statute ... may have determined any question of construction or validity arising under such statute.” Fla. Stat. 86.021.

80. Plaintiffs are persons whose rights under the Orange County Charter Amendment are affected by Senate Bill 712 and who ask the Court to determine the validity of the preemption provisions of Senate Bill 712.

81. There is a bona fide, actual, present practical need for the declaration, as Defendant Beachline presently seeks a permit for a project that, if permitted, will violate Plaintiffs’ rights under the Charter Amendment.

82. The declaration sought deals with a present, ascertainable state of facts and present controversy with respect thereto, to wit, whether Defendant Beachline’s project and the permitting thereof will violate Plaintiffs’ rights under the Charter Amendment and so should be enjoined. In turn, this present controversy depends on a preliminary finding whether Plaintiffs’ rights under the Charter Amendment survive Senate Bill 712’s preemption provisions because the latter is unconstitutional or otherwise unlawful or inapplicable.

83. Plaintiffs’ rights under the Charter Amendment depend upon application of the law, including Senate Bill 712’s preemption provisions, to the facts of this controversy.

84. Plaintiffs and Defendants have actual, present, adverse, and antagonistic interests in the subject matter of the facts and laws at issue, to wit, Plaintiffs seek to protect their rights under the Charter Amendment by enjoining Defendant Valenstein from permitting, and Defendant Beachline from doing, the development project presently at issue, while