IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 2018-33927-CA-01

RAUL MAS CANOSA,

Plaintiff,

v.

CITY OF CORAL GABLES, FLORIDA, et al.,

Defendants.
_____/

ORDER ON MOTIONS TO DISMISS

THIS CAUSE came before the Court on Defendant City of Coral Gables' Motion to Dismiss Amended Complaint and Incorporated Memorandum of Law; Florida Secretary of State and Florida Department of State's Motion to Transfer Venue, or, Alternatively, Dismiss First Amended Complaint; and Florida Department of Law Enforcement's Motion to Dismiss Plaintiff's Amended Complaint. The Court, having considered the motions, the responses and replies thereto, and the First Amended Complaint; having heard arguments of counsel and being otherwise fully advised in the premises; hereby finds as follows:

1. Because this order addresses motions to dismiss, all of the facts alleged by the Plaintiff are taken as true.

ALPR Data

2. There are dozens of high-speed cameras located throughout Coral Gables, as part of an "automated license plate recognition" (ALPR) system.[1] These cameras take pictures of the license plates of every vehicle which passes by them, 24 hours a day, seven days a week. Computer algorithms convert the license-plate images into computer-readable data.[2] Coral Gables is a "statewide leader" in the use of this technology. Each week, the ALPR system gathers data from millions of vehicles travelling through Coral Gables. By the end of 2018, the City captured close to 30 million license plate readings through its ALPR system. The information gathered by the ALPR system is searchable, and is available to 80 different law enforcement agencies. The information was originally stored for 30 days, but now is stored for three years.

Retention Policies

3. The decision to retain the ALPR data for three years instead of 30 days occurred when the City of Coral Gables opted to model its retention policy on the Florida Department of State's retention schedule.

4. The Department of State's retention schedule was adopted pursuant to section 316.0778(2), Florida Statutes, which provides that:

> [i]n consultation with the Department of Law Enforcement, the

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[1] "'Automated license plate recognition system'" means "a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data." § 316.0777(1)(c), Fla. Stat. (2014); *see also* § 316.0778(1), Fla. Stat. (2014) (containing an identical definition).

[2] According to the "Guidelines for the Use of Automated License Plate Readers," which is attached to the First Amended Complaint as Exhibit A, and is issued by the Florida Department of Law Enforcement through its Criminal and Juvenile Justice Information Systems Counsel, "ALPRs can . . . store the digital image of the license plate, the time, date, location of the image capture, and the capturing camera information." However, the Guidelines indicate that "[s]tored ALPR data does not include any Personal Identifying Information (PII) of individuals associated with the license plate. Obtaining persons associated with license plate information requires a separate, legally authorized, inquiry to another restricted-access database." A copy of the Guidelines can be found online at https://www.fdle.state.fl.us/CJJIS/Documents/CJJIS-Council-ALPR-Guidelines.

> Department of State shall establish a retention schedule for records containing images and data generated through the use of an automated license plate recognition system. The retention schedule must establish a maximum period that the records may be retained.

§ 316.0778, Fla. Stat. (2014).

5. In accordance with this section, the Florida Department of Law Enforcement, through its Criminal and Juvenile Justice Information Systems Counsel,[3] enacted "Guidelines for the Use of Automated License Plate Readers." Section 6e of the Guidelines provides:

> Data Retention and Use: ALPR data shall be retained in accordance with Florida Statute 316.0778. ALPR data that are part of an ongoing or continuing investigation and *information that is gathered and retained without specific suspicion may be retained for no longer than 3 anniversary years.* Access to ALPR data for criminal investigation or intelligence purposes is limited to authorized Criminal Justice Agency personnel for no longer than 3 anniversary years and requires an agency case number or case name and logging of access. Data captured, stored, generated, or otherwise produced shall be accessible in the ALPR system for 30 days for tactical use.

(Emphasis added).

6. The Department of State also promulgated a three-year retention policy for ALPR data as part of the Florida Administrative Code, Rule 1B-24.003(1)(b):

> LICENSE PLATE RECOGNITION RECORDS Item #217
> This record series consists of license plate records created by license plate recognition systems. The series may include, but is not limited to, images of licenses plates and any associated metadata. These records

[3] The Criminal and Juvenile Justice Information Systems Council was created by Florida Statute section 943.06. Among the Council's duties, section 943.08(1) requires the Council to "facilitate the identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data among federal, state, and local agencies"; and section 943.08(3) requires it, among other things, to make recommendations addressing the privacy of data.

> may become part of a criminal investigative record or some other record series. See Section 316.0778, Florida Statutes, Automated license plate recognition systems; records retention, requiring a maximum retention period for these records. RETENTION: *Retain until obsolete, superseded, or administrative value is lost, but no longer than 3 anniversary years unless required to be retained under another record series.*

Fla. Admin. Code R. 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item #217 (emphasis added).

7. The City of Coral Gables decided to follow the Florida Department of State's retention schedule and keep ALPR data for three years.

Vast Quantity of Data

8. Since Coral Gables keeps data about every vehicle which passes by its ALPR cameras for three years, a vast quantity of searchable data exists. A law enforcement officer with access to Coral Gables' ALPR system can look up the historical data of any vehicle, which will tell the officer every instant that the vehicle passed through a Coral Gables intersection containing an ALPR camera in the last three years.

The Plaintiff and His Complaint

9. The Plaintiff is a resident of Coral Gables, Florida. He has driven his vehicle through the City of Coral Gables nearly every day since the City adopted its ALPR system. The City has recorded images and associated data about the Plaintiff's vehicle hundreds of times since the ALPR system was implemented. The Plaintiff asserts that this is a violation of his right to privacy under the Constitutions of both the State of Florida and the United States.

10. The Plaintiff's First Amended Complaint alleges nine declaratory-judgment Counts seeking to eliminate the use of the ALPR system in Coral Gables.
11. Count I is brought against the Florida Department of State and the Florida Secretary of State. It alleges that Florida Administrative Code, Rule 1B-24.003(1)(b) violates the Fourth Amendment of the United States Constitution and is invalid. It requests that the court enter a declaratory judgment finding that the Rule is unconstitutional, and prohibit the Department of State and the Secretary of State from enforcing it.
12. Count II is brought against the Florida Department of Law Enforcement (FDLE) and its Commissioner. It alleges that the retention schedule set forth in the FDLE's "Guidelines for the Use of Automated License Plate Readers" violates the Fourth Amendment of the United States Constitution and is invalid. It requests that the court enter a declaratory judgment that the Guidelines are unconstitutional, and prohibit the FDLE from enforcing them.
13. Count III is brought against the City of Coral Gables. It alleges that the City's use of its ALPR system violates the Fourth Amendment of the United States Constitution and is invalid. It requests that the court declare that the City's use of the ALPR system is unconstitutional, prohibit the City from operating its ALPR system and from sharing data derived from the system, and order the City to destroy all records collected from the ALPR system.
14. Count IV is brought against the Florida Department of State and the Secretary of State. It alleges that Florida Administrative Code, Rule 1B-24.003(1)(b) violates the Florida Constitution's right to privacy. It requests that the court declare that the Rule is unconstitutional, and prohibit the Department of State and the Secretary of State from enforcing it.

15. Count V is brought against the FDLE and its Commissioner. It alleges that the retention schedule set forth in the FDLE's "Guidelines for the Use of Automated License Plate Readers" violate the Florida Constitution's right of privacy. It requests that the court enter a declaratory judgment that the Guidelines are unconstitutional, and prohibit the FDLE from enforcing them.
16. Count VI is brought against the City of Coral Gables. It alleges that the City's use of its ALPR system violates the Florida Constitution's right of privacy and is invalid. It requests that the court enter a judgment declaring that the City's use of the ALPR system is unconstitutional, prohibiting the City from operating its ALPR system and from sharing data derived from the system, and ordering the City to destroy all records collected from the ALPR system.
17. Count VII is brought against the FDLE and its Commissioner. It alleges that FDLE's "Guidelines for the Use of Automated License Plate Readers" constitute invalid rules, as they were not promulgated pursuant to the appropriate rulemaking authority. It requests that the court enter a declaratory judgment that the Guidelines are invalid unpromulgated rules, and asks the Court to prohibit the FDLE from enforcing them.
18. Count VIII is brought against the City of Coral Gables. It alleges, that in changing the ALPR data retention time period from 30 days to three years, the City violated the City Resolution adopting the use of the ALPR system, and that the change constituted an invalid legislative action. It seeks a declaratory judgment finding such, and prohibiting the City from enforcing the three-year retention policy.
19. Count IX is brought against the City of Coral Gables and alleges that in allowing the retention period to change from 30 days to three years, the City improperly delegated its authority to legislate. It requests that the court enter a declaratory

judgment that the City's use of the ALPR system constitutes an invalid legislative action, and prohibit the use of the ALPR system.

20. The Department of State has filed a motion to transfer venue or, alternatively, to dismiss the First Amended Complaint. The other Defendants have filed motions to dismiss.

The Applicability of the Home Venue Privilege to the Counts Alleged Against the Florida Department of State and Secretary of State

21. The Florida Department of State and Secretary of State argue that Counts I and IV, the Counts alleged against them, should be transferred to the Second Circuit, in Leon County, pursuant to Florida's "home venue privilege."

22. Under the home venue privilege, the venue for civil actions brought against a State agency properly lies in the county where the agency maintains its principal headquarters. *See Fla. Dep't of Transp. v. Sarnoff*, 241 So. 3d 931, 934 (Fla. 3d DCA 2018) (citing *Carlile v. Game & Fresh Water Fish Comm'n*, 354 So. 2d 362, 363–64 (Fla. 1977)). A trial court "'must apply the home venue privilege unless one of the recognized exceptions to the privilege is satisfied.'" *Hunter v. Shaw*, 182 So. 3d 784, 785 (Fla. 1st DCA 2015) (quoting *Fla. Dep't of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1288-89 (Fla. 2004)) (emphasis added).

23. The Florida Department of State maintains its principal place of headquarters in Tallahassee, in Leon County. *See Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. State*, 295 So. 2d 314, 317 (Fla. 1st DCA 1974). Thus, under the home venue privilege, an action against the Department of State is properly heard in Leon County, unless an exception applies.

24. There are four recognized exceptions to the home venue privilege (statutory waiver, the sword-wielder doctrine, the joint-tortfeasor exception, and the public records exception). *Sarnoff*, 241 So. 2d at 934 (citing *Sun–Sentinel, Inc.*, 865 So. 2d at 1287). The Plaintiff asserts that two of the exceptions apply – the "sword-wielder" exception, and the "joint-tortfeasor" exception.

25. The joint-tortfeasor exception, however, only applies when the State agency is being sued as a joint-tortfeasor. This means that the suit against the agency must literally allege a tort. Being sued as a co-defendant, outside of tort, does not exempt the agency from the home-venue privilege. *See School Bd. of Hernando Cty. v. Rhea*, 213 So. 3d 1032, 1039 (Fla. 1st DCA 2017); *Hunter*, 182 So. 3d at 785-86.[4] Because neither the Department of State nor the Secretary of State are being sued as a joint-tortfeasor in this case, the joint-tortfeasor exception does not apply to them.

26. The other exception to the home-venue privilege alleged by the Plaintiff is the "sword-wielder" exception. Figuratively, this exception allows a plaintiff to bring an action against a state agency as a shield from an attack upon the plaintiff by the State's sword. *Fish and Wildlife Conservation Comm'n v. Wilkinson*, 799 So. 2d 258, 260 (Fla. 2d DCA 2001). It applies when the government agency has taken official action against a plaintiff in the plaintiff's county, and where the validity of the agency's rule is only a secondary or incidental issue. Cases which fall under the sword-wielder exception are those:

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[4] At the hearing on the motions to dismiss, the Plaintiff asserted that the *Sun-Sentinel* case applied the joint-tortfeasor exception to a public records case, thus suggesting that its application is not limited solely to tort cases. *See* April 24, 2019 hearing transcript at 59. However, in *Sun-Sentinel*, the Florida Supreme Court specifically found that none of the then-existing exceptions to the home venue applied, including the joint-tortfeasor exception, and instead created a new exception for public records, which it then applied. *Sun–Sentinel, Inc.*, 865 So. 2d at 1288.

> "in which the primary purpose of the litigation is to obtain direct judicial protection from an alleged unlawful invasion of the constitutional rights of the plaintiff within the county where the suit is instituted, because of the enforcement or threatened enforcement by a state agency of rules and regulations alleged to be unconstitutional as to the plaintiff, and where the validity or invalidity of the rules and regulations sought to be enforced comes into question only secondarily and as incidental to the main issue involved."

Sun-Sentinel, Inc., 865 So. 2d at 1287 (quoting *Smith v. Williams*, 35 So. 2d 844 (Fla. 1948)).

27. In *Wilkinson*, a plaintiff who was charged in Lee County with speeding in a manatee zone filed a declaratory judgment action in Lee County against the Fish and Wildlife Conservation Commission. *Wilkinson*, 799 So. 2d at 260. The declaratory judgment action attacked the rule under which he was charged. *Id.* The Commission moved to transfer venue to Leon County under the home venue privilege, but the trial court denied the motion. *Id.* The Second District Court of Appeal determined that because the plaintiff had been issued a manatee-zone speeding ticket in Lee County, the "official action" element of the sword-wielder doctrine was satisfied. *Id.* at 261. However, it determined that the second element of the doctrine [that the validity of the statute, rule, or regulation sought to be enforced must come into question only secondarily and incidentally to the main issue involved] was not met. *Id.* at 261-62. The Court explained that the complaint did not seek protection from the enforcement of the speeding citation, but instead sought a declaration that the rule which it was issued under was unconstitutional and invalid. *Id.* at 262. The Court noted that the citation allegedly resulted in the filing of an enforcement action in the county court, and implied that if the plaintiff raised the constitutional challenge in that action as a defense, the sword-wielder

exception would apply. *Id.* However, since the plaintiff was seeking relief "more comprehensive in nature" by filing a separate declaratory action with the general purpose of overturning the rule promulgated by the Commission, the Second District Court of Appeal concluded that his primary purpose was not merely to [redacted]y action in enforcing the rule. *Id.* It concluded that, in a case which is essentially a frontal challenge to an agency's regulation, the sword-wielder exception does not apply, and the home venue privilege does.

28. In *Rabin v. State*, 884 So. 2d 983 (Fla. 4th DCA 2004), a computer software company and two individuals sued the Department of Revenue. *Id.* at 983-84. Initially, the software company contested a final assessment of corporate income taxes and the Department of Revenue did not dispute jurisdiction. *Id.* at 984. However, the software company voluntarily dismissed its case, leaving only the individuals as plaintiffs. *Id.* Their causes of action were based on having recently paid sales tax. *Id.* They did not allege that the Department issued a final assessment of taxes against them or denied a refund request made by them. (Under precedential case law, paying sales tax did not qualify as an assessment unless the taxpayer requested and was denied a refund.) *Id.* The Fourth District Court of Appeal determined that the sword-wielder exception to the home venue privilege did not apply. *Id.* at 985. It explained that there was no affirmative action against the remaining plaintiffs by the Department of Revenue. *Id.* (Although the Court did not expressly state as such, it appears that it agreed with the Department of Revenue's apparent position that the sword-wielder exception would have prevented it from using the home venue privilege against the software company when it alleged a cause of action challenging an actual assessment of taxes against it.)

29. In the instant case, the Plaintiff's causes of action against the Department of State and the Secretary of State (Counts I and IV) seek a declaration by the court that Rule 1B-24.003(1)(b) of the Florida Administrative Code violates the Fourth Amendment of the United States Constitution and the Florida Constitution's right to privacy.
30. Plaintiff seeks to prohibit the Department of State and the Secretary of State from enforcing the Rule. As in *Rabin*, the Plaintiff is not seeking to shield itself against any affirmative action taken against him by the Department of State or Secretary of State. As the Plaintiff states, "the main issue in the case is the unlawfulness of the City's surveillance program . . . ." *See* Plaintiff's Response to Defendant Florida Department of State's Motion to Transfer, or, Alternatively, Dismiss the Amended Complaint at 4.
31. Although the Plaintiff asserts that the "program has been authorized by the action of" the Department of State, the Department of State did not take any affirmative action against the Plaintiff. The main issue of the Counts against the Department of State is the constitutionality of the Department's Rule, which establishes a retention schedule for ALPR data.
32. As in *Wilkinson*, rather than defending himself from an action by the Department of State, the Plaintiff is engaging in a more comprehensive attack, with the general purpose of overturning the rule promulgated by the Department. As to the Counts filed against the Department of State, the case is essentially a frontal challenge to an agency's regulation.
33. Since the sword-wielder exception does not apply to Counts I and IV, the Department of State and the Secretary of State are entitled to have them transferred to Leon County in accordance with the home venue privilege.

Counts Alleged Against the City of Coral Gables

34. The City of Coral Gables has moved to dismiss the four Counts alleged against it. It asserts, in regard to Counts III and VI, that the "Plaintiff has not alleged facts sufficient to establish an injury to any reasonable expectation of privacy." It asserts that Counts VIII and IX fail to state a cause of action, and that they fail to allege a legally cognizable special injury, so that Plaintiff lacks standing.

The Privacy Invasion Counts Alleged Against the City of Coral Gables

35. Count III alleges that the City's use of its ALPR system violates the Fourth Amendment of the United States Constitution, while Count VI alleges that it violates the Florida Constitution's right of privacy. Both Counts seek a declaratory judgment that the use of the ALPR system is unconstitutional. In arguing that these Counts should be dismissed, the City focuses on the substantive merits of the Counts, asserting that the Plaintiff has no reasonable expectation of privacy when he drives his vehicle on public roads. Although that might be an excellent argument to make at summary judgment, the case is currently at the motion to dismiss stage.

36. "'A motion to dismiss a complaint for declaratory judgment is not a motion on the merits. Rather it is a motion only to determine whether the plaintiff is entitled to a declaration of its rights, not whether it entitled to a declaration in its favor.'" *Keen v. Fla. Sheriff's Self-Insurance Fund*, 854 So. 2d 844, 845 (Fla. 4th DCA 2003) (quoting *Langanella v. Boca Grove Golf & Tennis Club, Inc.*, 690 So. 2d 705, 706 (Fla. 4th DCA 1997)); *see also Murphy v. Bay Colony Prop. Owner's Ass'n*, 12 So. 3d 924, 925 (Fla. 2d DCA 2009) (citing *X Corp. v. Y Person*, 622 So. 2d 1098, 1101 (Fla. 2d DCA 1993)) ("'[t]he test for the sufficiency of a

complaint for declaratory judgment is not whether the plaintiff will succeed in obtaining the decree he seeks favoring his position, but whether he is entitled to a declaration at all.'"). Thus, a complaint for declaratory judgment may not be dismissed for failure to state a cause of action if a justiciable controversy exists. *Murphy*, 12 So. 3d at 925; *see also Ribaya v. Bd. of Trs. of the City Pension Fund for Firefighters and Police Officers in the City of Tampa*, 162 So. 2d 348 (Fla. 2d DCA 2015) (explaining that "even if the answer to the requested declaration seems obvious to the trial judge and the plaintiff is destined to lose, the parties may still need a binding disposition on the merits, which a dismissal does not provide.").

37. Whether a justiciable controversy exists depends upon whether the plaintiff "'is in doubt as to the existence or nonexistence of some right, status, immunity, power, or privilege, and . . . is entitled to have such doubt removed.'" *Murphy*, 12 So. 3d at 926 (quoting *X Corp.*). The plaintiff must show a "'bona fide, actual, present, and practical need for the declaration.'" *Id.*

38. In the *Murphy* case, the plaintiff established doubt as to the existence of her right to add a boat dock because she believed her plan to do so complied with all the applicable requirements and restrictions; thus, she demonstrated a bona fide, actual, present, and practical need for the declaration of that right. *Murphy*, 12 So. 3d at 926. Accordingly, the Second District Court of Appeal determined that the plaintiff in that case "alleged the existence of a justiciable controversy and stated a facially sufficient claim for declaratory relief." *Id.*

39. In *Orange County, et al. v. Expedia, Inc., et al.*, 985 So. 2d 622 (Fla. 5th DCA 2008), Orange County sought a declaratory judgment that a tourist development tax applied to the retail price of the rooms sold by Expedia and Orbitz, rather than on the wholesale price. *Id.* at 624. The Fifth District Court of Appeal determined

that because Orange County's complaint alleged that the defendants owed the tax on the total rent which they charged but paid only on the wholesale price, it alleged a present and practical need for declaratory relief. *Id.* at 626. The Fifth District Court of Appeal explained that the allegations related to the existence of an actual, bona fide, present dispute over the interpretation and effect of the applicable statutes and ordinances. *Id.* It explained that "[t]here is nothing abstract, conjectural or ephemeral about the claim raised by the plaintiffs," but that instead, "[t]he plaintiffs have alleged a present dispute with these defendants over definite facts and the need for a declaration of their rights under the applicable statutes and county code provisions." It rejected the defendant's argument that the absence of an actual assessment of unpaid taxes rendered the complaint purely advisory, explaining that the complaint alleged definite and concrete facts:

> [s]pecifically, the amended complaint alleges that the defendants are purchasing hotel rooms at wholesale price, selling them at a "marked up"' or retail rate, but are only collecting and transmitting the [tax] on the wholesale price. In their motion to dismiss, the defendants acknowledge disagreement with the plaintiffs as to applicability of the tax. Antagonistic, adverse interests are presented.

Id. at 626.

40. In the instant case, the Plaintiff alleges that he is a resident of Coral Gables and that the City has recorded images and associated data about his vehicle hundreds of times since the ALPR system was implemented. He asserts that the City has retained all such images and data and has shared it with members of law enforcement. However, the City points out that the Plaintiff does not allege that the stored license-plate information has been used against him in any investigation or prosecution. The issue is whether the Plaintiff is entitled to a declaration of

whether the City's collection of information regarding his vehicle passing ALPR cameras is a violation of his Florida and Federal privacy rights.

41. The Plaintiff has clearly alleged that the City of Coral Gables has collected ALPR information about his vehicle for years and that it continues to do so. This Court finds that there is a bona fide, actual, present, and practical need for a declaration as to whether the collection of such information violates the Plaintiff's privacy rights. There is nothing abstract, conjectural, or ephemeral about the claim since the City has and continues to collect such information about the Plaintiff's vehicle. The City's argument that there is no allegation that the ALPR information has been used against him in any investigation or prosecution is similar to the argument rejected by the Fifth District Court of Appeal in *Murphy*, that the absence of an actual assessment of unpaid taxes meant that there was no actual controversy between the parties. *Id.* at 626. In this case, even without using any ALPR information about the Plaintiff's vehicle in an investigation or prosecution, the ALPR information is still being collected. There is a real and valid disagreement between the Plaintiff and the City regarding whether or not the collection of ALPR information violates the Plaintiff's privacy rights. As in *Murphy*, "[a]ntagonistic, adverse interests are presented." *Id.*

42. A justiciable controversy exists between the Plaintiff and the City of Coral Gables regarding whether the City's collection of his ALPR information violates his Florida or Federal rights to privacy, and the Plaintiff is entitled to a declaration regarding that issue. As such, Plaintiff has stated a cause of action and there is no basis under which to grant the motion to dismiss Counts III and VI.

The Counts Alleged Against the City of Coral Gables for Invalid Legislative Action or Delegation of Legislative Action

43. Count VIII alleges, that in changing the ALPR data retention time period from 30 days to three years, the City violated the City Resolution adopting the use of the ALPR system, and that the change of the retention time period constitutes an invalid legislative action.
44. Count IX alleges that, in allowing the retention period to change from 30 days to three years, the City improperly delegated its authority to legislate.
45. Both Counts seek declaratory judgments finding that the City acted improperly in changing the retention period and ask the Court to prohibit the City from enforcing the three-year retention policy.
46. The basis of these Counts is the allegation that in 2015, when the City adopted Resolution 2015-307, authorizing the City to enter into contracts for the installation and operation of ALPR and CCTV (closed circuit television) systems, it limited storage of both ALRP and CCTV data to 30 days. When the City later changed to a policy of retaining the data for three years instead of 30 days, without passing a new resolution, the Plaintiff alleges that change violated Resolution 2015-307, and such change constituted an invalid legislative action. The City asserts that the resolution only limited CCTV storage, not ALPR storage to 30 days.
47. Regardless of the merits of the arguments, the issue in regard to these declaratory judgment Counts is whether a justiciable controversy exists between the parties.
48. Pursuant to section 257.36(6), Florida Statutes "[a] public record may be destroyed or otherwise disposed of *only* in accordance with retention schedules established by the division." (Emphasis added). (The "division" referred to in this section is the "Division of Library and Information Services," which is a division of the

Department of State. *See* § 257.36(1), Fla. Stat.). Therefore, even if the Resolution contemplates the destruction of ALPR data within 30 days, the City of Coral Gables could not destroy the data in that timeframe because doing so would violate section 257.36(6), Florida Statutes. Accordingly, whether or not the City invalidly changed its retention period from 30 days to three years would have no effect on the City's ability to destroy the ALPR data. Thus, since there is no justiciable controversy between the parties in regard to Counts VIII and IX, Plaintiff has failed to state a cause of action.

Counts Alleged Against the Florida Department of Law Enforcement and its Commissioner

49. The Florida Department of Law Enforcement and its Commissioner have moved to dismiss Counts II, V, and VII, which are the Counts alleged against them. Counts II and V allege that the FDLE's "Guidelines for the Use of Automatic License Plate Readers" are unlawful and invalid under the Fourth Amendment to the United States Constitution and the Florida Constitution's right of privacy. Count VII alleges that the Guidelines are improper unpromulgated rules, unlawful under Florida's Administrative Procedure Act. Each Count seeks a declaratory judgment prohibiting the FDLE and its Commissioner from enforcing the Guidelines.
50. The Florida Department of Law Enforcement and its Commissioner argue that Counts II, V, and VII should be dismissed for lack of standing.
51. Generally, to have standing, a litigant must demonstrate "'that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly.'" *Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 282 (Fla. 2013) (quoting *Hayes v. Guardianship of Thompson*, 952 So. 2d

498, 505 (Fla. 2006)). "'Standing depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of the litigation.'" *Giuffre v. Edwards*, 226 So. 3d 1034, 1038-39 (Fla. 4th DCA 2017) (quoting *Weiss v. Johansen*, 898 So. 2d 1009, 1011 (Fla. 4th DCA 2005)).

52. As noted, in regard to the Counts alleged against the City of Coral Gables, to assert a valid count for declaratory judgment the plaintiff must all show a "'bona fide, actual, present, and practical need" for a declaratory judgment. *See Murphy*, 12 So. 3d at 926; *Tepper*, 969 So. 2d at 405.

53. Similar to the Counts alleged against the City of Coral Gables, whether the Plaintiff has standing in regard to these Counts depends on whether he would be affected by a finding that the Guidelines are unconstitutional or invalid, and therefore unenforceable. However, unlike the Counts alleged against Coral Gables, it appears that these Counts do not attack just the retention schedule, but they attack the Guidelines as a whole.

54. As such, the proposed invalidation of the Guidelines would have a broader effect than just eliminating the retention schedule set forth in the Guidelines. For example, in addition to setting forth a retention schedule, section 6 of the Guidelines, titled "Data Collection, Access, Use, and Retention" allows Law Enforcement and Criminal Justice Agency personnel to use ALPR data for enforcing statutes, conducting ongoing or criminal investigations and for criminal intelligence operations, and it allows ALPR data to be shared with other Criminal Justice Agencies. If these Guidelines were eliminated, it could affect the Plaintiff because the City of Coral Gables' ability to use and share the ALPR data about his vehicle might be affected. Since the method in which his ALPR data is used and

shared could affect his privacy rights, there is a "'bona fide, actual, present, and practical need" for a declaration as to the validity of the Guidelines, and the Plaintiff would be affected by the outcome of the proceedings. As such, the Plaintiff has stated a cause of action against the FDLE and its Commissioner, and the court denies the motion to dismiss Counts II, V, and VII on this basis.

55. The FDLE's substantive arguments, such as the argument that the Guidelines are not rules, are not properly considered on a motion to dismiss a declaratory judgment count, since a declaratory judgment is needed to determine those very issues.

WHEREFORE, it is **ORDERED** and **ADJUDGED**:

1. The Florida Secretary of State and Florida Department of State's Motion to Transfer Venue is **GRANTED**. Counts I and IV, which are the Counts alleged against them, shall be transferred to the Second Circuit.
2. Defendant City of Coral Gables' Motion to Dismiss the Amended Complaint is **GRANTED** as to Counts VIII and IX.
3. Defendant City of Coral Gables' Motion to Dismiss the Amended Complaint is **DENIED** as to Counts III and VI.
4. Florida Department of Law Enforcement's Motion to Dismiss Plaintiff's Amended Complaint is **DENIED** as to Counts II, V, and VII.

DONE and **ORDERED** in chambers this 15 day of October, 2019 in Miami-Dade County, Florida.

OCT 15 2019

ABBY CYNAMON
CIRCUIT COURT JUDGE

ABBY CYNAMON
CIRCUIT COURT JUDGE