UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GAINESVILLE RESIDENTS UNITED, INC., a Florida not-for-profit corporation, *et al.*,

Plaintiffs,

v. Case No. 1:23-cv-00176-AW-HTC

RON DESANTIS, in his official capacity as Governor of the State of Florida, *et al.*,

Defendants.

GOVERNOR DESANTIS'S MOTION TO DISMISS AMENDED COMPLAINT OR IN THE ALTERNATIVE TO STAY

Defendant Ron DeSantis, in his official capacity as Governor of the State of Florida, pursuant to Federal Rules of Civil Procedure 12(b)(1) and (b)(6), moves to dismiss Plaintiffs' Complaint or, in the alternative, stay the case pending the outcome of parallel state court litigation. In support, Governor DeSantis states:

INTRODUCTION & STATEMENT OF FACTS

The Florida Legislature passed House Bill 1645 ("the Act") during the 2023 legislative session and the Governor signed it on June 28, 2023. Ch. 2023-348, Laws of Fla. The Act amends Article VII of the Gainesville City Charter, Ch. 12760, Laws of

Florida (1927), by creating the Gainesville Regional Utility Authority ("Authority") to govern the Gainesville Regional Utilities ("Utility System").[1]

The Act empowers the Governor to appoint the five members of the Authority on or before October 1, 2023. Art. VII § 7.04(1); 7.05(2). But it does not authorize him to enforce its provisions. Rather, the Act provides that the Authority shall "manage, operate, and control the utilities, and to do all things necessary to effectuate an orderly transition of the management, operations and control of the utilities from the City to the Authority, consistent with this article." *Id.* § 7.03(1)(a). In addition, it directs that the Authority, "in making all policy and operational decisions over the affairs of the [U]tility [S]ystem . . . shall consider only pecuniary factors and utility best industry practices standards, which do not include consideration of the furtherance of social, political, or ideological interests." *Id.* § 7.12.

Plaintiffs, Gainesville Residents United ("GRU"), a not-for-profit advocacy group, and six customers of the Utility System, sue the Governor, Attorney General, Secretary of State, and City of Gainesville. Compl. ¶¶ 9-40. They allege four federal claims under the First and Fourteenth Amendments (Counts I-IV) and eight supplemental state-law claims under the Florida Constitution and Statutes (Counts V-XII).[2]

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[1] Citations to the Act will refer to the section of Article VII in the Gainesville City Charter (Art. VII § __).

[2] Plaintiffs appear to allege Counts I-XI against all Defendants. Plaintiffs allege Count XII only against Defendant City of Gainesville.

Shortly after Plaintiffs filed the Complaint, the City of Gainesville filed a complaint asserting similar state-law claims in the Second Judicial Circuit Court in and for Leon County ("State Litigation"). *See* Exhibit A. The Plaintiffs in the State Litigation have moved for summary judgment and the Second Judicial Circuit has scheduled a hearing on September 22, 2023.

LEGAL STANDARD

To survive a motion to dismiss, a complaint must allege facts sufficient to establish the Court's subject-matter jurisdiction. *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 924-25 (11th Cir. 2020) (en banc) (citations omitted). The complaint must also "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This requires "factual content" that will support a "reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Pleading facts that are "merely consistent with a defendant's liability" is not enough because such pleadings "stop[] short of the line between possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly*, 550 U.S. at 557) (quotation marks omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" either. *Id.* And while courts must "assume the veracity of well-pleaded factual allegations," they must not credit allegations in the form of "labels and conclusions." *Newbauer v. Carnival Corp.*, 26 F.4th 931, 934 (11th Cir. 2022) (cleaned up).

ARGUMENT

This Court should dismiss the Amended Complaint. Eleventh Amendment sovereign immunity bars Plaintiffs' claims against the Governor. Similarly, Plaintiffs do not have associational or organizational standing because they neither allege a cognizable injury in fact, demonstrate that the Governor caused their alleged harm, nor show that their requested relief would redress those injuries. In addition, Plaintiffs' federal claims fail to state a cause of action. And, even if the Court disagrees on all of those points, it should dismiss the Complaint as an impermissible shotgun pleading. In the alternative, the Court should exercise its inherent authority and stay this case pending resolution of the State Litigation.

I. Sovereign Immunity Bars the Complaint.

"The Eleventh Amendment protects states from being subject to suit in federal court." *Freyre v. Chronister,* 910 F.3d 1371, 1380 (11th Cir. 2018). The Supreme Court in *Ex parte Young*, 209 U.S. 123, 167-68 (1908), however, created an exception to states' sovereign immunity for suits against state officials in their official capacities "seeking prospective equitable relief to end continuing violations of federal law." *Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1255 (11th Cir. 2021), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

1. *Sovereign immunity bars all claims against Governor DeSantis.*

But there is an exception to the exception. Plaintiffs may not challenge a state law by "choosing whichever state official appears most convenient and haling them into

federal court under the aegis of 42 U.S.C. § 1983." *Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1208 (N.D. Fla. 2020). Rather, under the *Ex parte Young* exception, litigants must bring their case "against the state official or agency responsible for enforcing the allegedly unconstitutional scheme." *Osterback v. Scott*, 782 Fed. App'x. 856, 859 (11th Cir. 2019) (quoting *ACLU v. The Florida Bar*, 999 F.2d 1486, 1490 (11th Cir. 1993)). That is because "[a] state official is subject to suit in his official capacity [only] when his office imbues him with the responsibility to enforce the law or laws at issue in the suit." *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). "Where the named defendant lacks any responsibility to enforce the statute at issue, 'the state is, in fact, the real party in interest,' and the suit remains prohibited by the Eleventh Amendment." *Osterback*, 782 Fed. App'x. at 859 (quoting *Summit Med. Assocs. P.C. v. Pryor*, 180 F.3d 1326, 1341 (11th Cir. 1999)).

Indeed, "federal courts have refused to apply *Ex parte Young* where the officer who is charged has no authority to enforce the challenged statute." *Summit Med. Assocs.*, 180 F.3d at 1342 (citations omitted); *see also, e.g.*, *Namphy v. DeSantis*, 493 F. Supp. 3d 1130, 1137 (N.D. Fla. 2020) (dismissing Governor as improper defendant under *Ex parte Young* because his office "did not connect[ ] him with the duty of enforc[ing]" the challenged statute); *Support Working Animals, Inc.*, 457 F. Supp. 3d at 1209 (same); *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1255 (N.D. Fla. 2016) (same).

Moreover, the Governor's enforcement authority must be specific, as opposed to his "general executive power" to enforce state law and oversee the Executive Branch,

which is "not a basis for jurisdiction in most circumstances." *Women's Emergency Network v. Bush*, 323 F.3d 937, 949 (11th Cir. 2003); *see also Osterback,* 782 F. App'x at 859 ("[T]he Governor's constitutional and statutory authority to enforce the law and oversee the executive branch do not make him a proper defendant under *Ex parte Young*."); *Support Working Animals, Inc.*, 457 F. Supp. 3d at 1209 (same); *Harris v. Bush*, 106 F. Supp. 2d 1272, 1276-77 (N.D. Fla. 2000) (same) (collecting cases). Otherwise, "any state statute could be challenged simply by naming the governor as a defendant." *Women's Emergency Network*, 323 F.3d at 949.

Nor can Plaintiffs rely on the Governor's supervisory authority over subordinate agencies or officials to satisfy the *Ex parte Young* exception. "It is well established in this Circuit that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability." *Keith v. DeKalb Cnty., Ga.*, 749 F.3d 1034, 1047-48 (11th Cir. 2014); *see also Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010) (affirming dismissal of Secretary of the Department of Corrections because plaintiff failed to allege that Secretary personally participated in conduct causing the plaintiff's injury); *Zuniga v. Jones*, No. 3:18-cv-92-J-32PDB, 2018 WL 2938449, at *2 (M.D. Fla. June 12, 2018).

Thus, to avoid an Eleventh Amendment bar to suit, Plaintiffs must plausibly allege that the Governor possesses the specific power to enforce the Act. They do not, and he does not. Rather, the Act explicitly authorizes the Authority to "manage, operate, and control the utilities, and to do all things necessary to effectuate an orderly transition

of the management, operation, and control of the utilities from the City [of Gainesville] to the Authority, consistent with this article." Art. VII § 7.03(1)(a).

Nonetheless, Plaintiffs argue that the Governor is a proper Defendant because he has "actual[ ] control over the Authority and is intimately connected to the implementation of the [Act]." Compl. ¶ 34. Specifically, they note that the Act empowers the Governor to appoint (and remove) members from the Authority and that he "signed the Special Law as the final step in the enactment process." *Id.* While true, neither fact overcomes the Governor's sovereign immunity.

A state official's appointment power does not establish the required "connection with the enforcement of the [A]ct" that satisfies the *Ex parte Young* exception. *Peter B. v. Sanford*, No. 6:10-cv-767, 2010 WL 5684397, at *3 (D.S.C. Dec. 6, 2010) (holding that appointment power does not imbue the appointing state official with power to enforce challenged statute under *Ex parte Young* and collecting cases). In *Osterback*, for example, the Eleventh Circuit held that the Governor did not enforce a statute restricting prisoners' ability to challenge state agency action through the Division of Administrative Hearings ("DOAH"). 782 Fed. App'x at 859-60. The Court noted that the Governor serves as the chair of the Administrative Commission and, along with members of his cabinet, appoints DOAH's director. *Id.* at 859; *see* § 14.202, 120.65(1), Fla. Stat. But it determined that the Director, as the chief administrative law judge, enforces the challenged statute by precluding inmates from petitioning DOAH for administrative determination of agency action. *Id.* at 859; *see* § 120.65(1), Fla. Stat.

(making the DOAH director "statutorily responsible for final agency action"). Accordingly, it dismissed the Governor because he "d[id] not have authority to enforce the challenged provision." *Osterback*, 782 Fed. App'x at 859. And it made clear that his shared responsibility for appointing state officials is "too attenuated" and "insufficient" to make the Governor a proper defendant under *Ex parte Young*. *Id.*; *see also Equal. Fla. v. Fla. State Bd. of Educ.*, No. 4:22-cv-134, 2022 WL 19263602, at *8 & n.8 (N.D. Fla. Sept. 29, 2022) (observing that *Ex parte Young* did not permit suit against an official based on the official's appointment power, and that the plaintiffs had specifically "withdr[awn] their claims against the Governor because of Eleventh Amendment immunity, even though the Governor" had appointment power); *Sweat v. Hull*, 200 F.Supp.2d 1162, 1175–76 (D. Ariz. 2001) (dismissing claim against Governor who signed allegedly unconstitutional bill into law and appointed the cabinet official responsible for enforcing that law).

Likewise, signing a law is not "enforcing" a law. *See Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1257 (11th Cir. 2020) (holding that plaintiffs may not "challenge a law by suing the legislators who enacted it instead of the officials who execute it"); *see also Support Working Animals, Inc. v. Gov. of Fla.*, 8 F.4th 1198, 1204 (11th Cir. 2021) (recognizing that the Florida Attorney General's role "in crafting [the challenged] legislation" did not "satisfy the traceability requirement"). When the Governor signs a bill, he acts in a legislative, not executive, capacity. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998). "Under the doctrine of absolute legislative immunity, a governor cannot be sued

for signing a bill into law." *Women's Emergency Network*, 323 F.3d at 950. In *Bogan*, for example, a unanimous Supreme Court held that legislative immunity protected a city mayor in his proposing, and signing into law, the city's budget. 523 U.S. at 55. The same is true for the Governor of the Nation's third-largest state in his supporting and signing HB 1645 into law. *See Baraka v. McGreevey*, 481 F.3d 187, 196-97 (3d Cir. 2007) (holding that "when a governor and a governor's appointee advocate bills to the legislature, they act in a legislative capacity," even if their advocacy rises to the level of "orchestrat[ing] and direct[ing]" the passage of legislation) (citing *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951)).

2. *At the very least, sovereign immunity bars Plaintiffs' state-law claims.*

Even if the Court disagrees and determines that sovereign immunity does not bar *all* claims against the Governor, the Court must still dismiss Plaintiffs' state-law claims because the Eleventh Amendment bars any claim in federal court for declaratory or injunctive relief based on state law against a state officer. *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 121 (1984).

Ordinarily, as discussed *supra*, "[s]tate sovereign immunity limits federal court jurisdiction" in actions against state officials. *S&M Brands, Inc. v. Georgia ex rel. Carr*, 925 F.3d 1198, 1204 (11th Cir. 2019); *see* U.S. Const. amend. XI. Under *Ex parte Young*, however, "[s]ome suits requesting injunctive or declaratory relief against state officials are not considered suits against the state," and therefore are not barred by sovereign immunity. *Id.* That is because when a state official violates federal law, the state has no

power to "authorize th[at] action," and "stripped of his official or representative character," the official cannot invoke the state's sovereign immunity. *Pennhurst*, 465 U.S. at 102.

But the situation is different "when the claim of entitlement to relief is based on a violation of state law." *S&M Brands*, 925 F.3d at 1204 (emphasis added). Suits asking a federal court to enforce state law do not implicate *Ex parte Young*'s narrow exception to sovereign immunity because they do not seek to "vindicate the supreme authority of federal law." *Pennhurst*, 465 U.S. at 106. Accordingly, sovereign immunity applies and bars the claims. *See id.; see also Dekalb Cnty. Sch. Dist. v. Schrenko*, 109 F.3d 680, 688 (11th Cir. 1997) ("[A] federal court may not entertain a cause of action against a state for alleged violations of state law, even if that state claim is pendent to a federal claim[.]"). Indeed, "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." *Pennhurst*, 465 U.S. at 106.

The same principles apply here. Indeed, Plaintiffs' state law claims are the paradigm of claims that, under *Pennhurst*, cannot be adjudicated in federal court. Counts V through XI turn entirely on state law. *See* DE 1, ¶¶ 110-243.[3] As a result, Plaintiffs ask this Court not to "vindicate the supreme authority of federal law" but to "instruct[]

[3] Counts V, VIII, IX, and XI allege HB 1645 violates the Florida Constitution, while Counts VII and X allege violations of Florida Statutes. Count VI invokes both sources of state law. Plaintiffs allege Count XII only against Defendant City of Gainesville, but it also alleges a violation of the Florida Constitution.

[a] state official[] on how to conform their conduct to state law." *Pennhurst*, 465 U.S. at 106. Those claims must therefore be brought, if at all, in state court. *See e.g., Corn v. Miss. Dep't of Pub. Safety*, 954 F.3d 268, 274–75 (5th Cir. 2020) (holding *Pennhurst* barred claim for injunctive relief based on alleged state-law violation). And because this question is one for the state courts, the Court should also decline to exercise supplemental jurisdiction over their state claims, even if it determines that sovereign immunity does not apply to their federal claims. *See* 28 U.S.C. § 1367(c).

3. *Sovereign Immunity bars Plaintiffs' claims for damages.*

Last, all Section 1983 claims against each of the state Defendants must be dismissed insofar as they seek damages – even nominal amounts – against the Governor or other state officials. *Nat'l Ass'n of the Deaf v. Fla.*, 980 F.3d 763, 770 (11th Cir. 2020) ("The Eleventh Amendment bars a private citizen from suing a state, including a state official in her official capacity, for damages in federal court.").[4]

II. Plaintiffs Do Not Have Article III Standing Against Governor DeSantis.

Article III of the Constitution limits the subject-matter jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. "To have a case or controversy, a litigant must establish that he has standing, which requires proof of three

[4] *E.g.*, DE 1, ¶ 64 ("Plaintiffs' damages consist of nominal damages associated with the infringement of their constitutional rights."); Count I, Request for Relief D (asking Court to enter "judgment for nominal damages sufficient to compensate the Plaintiffs for the violation of Plaintiffs' [constitutional rights]"). Plaintiff Little also seeks damages, but only against the City of Gainesville. DE 1, ¶ 258.

elements." *Jacobson*, 974 F.3d at 1245 (internal quotation marks and citation omitted). To show Article III standing, Plaintiffs must establish "(1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Id.*

Applying those elements here, Plaintiffs must demonstrate (1) that they were, or imminently will be, injured (2) by the Governor's actions (3) because he can enforce HB 1645 against them and has either done so or threatened to do so. They fail on each, and each failure is fatal. *See I.L. v. Alabama*, 739 F.3d 1273, 1278 (11th Cir. 2014) ("Failure to satisfy any of these three [standing] requirements is fatal.").

1. *Plaintiffs do not allege an injury-in-fact.*

Both individuals and organizations must establish standing to sue. *See Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014). All plaintiffs must demonstrate "proof of an actual injury," defined as an "invasion of a legally protected interest that is both (1) "concrete and particularized" and (2) "actual or imminent, not conjectural or hypothetical." *City of S. Miami v. Governor*, 65 F.4th 631, 636 (11th Cir. 2023). When, as here, "plaintiffs seek prospective relief to prevent future injuries, they must prove that their threatened injuries are 'certainly impending.'" *Id.* (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 401 (2013)).

Plaintiffs allege individual standing through the six individual Plaintiffs and organizational standing through GRU. The latter asserts only associational standing

through three individual Plaintiffs that are its members.[5] Nonetheless, in an abundance of caution, the Governor addresses both types of standing. Regardless of which Plaintiffs allege, they fail at each.

1. Organizations can establish an Article III injury in two ways: "(1) through its [individual] members (i.e., associational standing) and (2) through its own injury in fact that satisfies the traceability and redressability elements." *Ga. Ass'n of Latino Elected Offs. v. Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th 1100, 1114 (11th Cir. 2022).

"To establish standing, an organization, like an individual, must prove that it either suffers actual present harm or faces a threat of imminent harm." *City of S. Miami*, 65 F.4th at 638 (citing *Clapper*, 568 U.S. at 409). An organization suffers actual harm "if the defendant's illegal acts impair [the organization's] ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts." *Jacobson*, 974 F.3d at 1250 (quoting *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008)). Specifically, plaintiffs must allege with particularity a program or service it has diverted resources from, such that it can no longer provide that program or service. *Jacobson*, 974 F.3d at 1250. And they must show that an "identifiable community that the organization seeks to protect" has itself suffered "a legally

[5] The Complaint alleges that "GAINESVILLE RESIDENTS UNITED, INC. has both associational standing and organizational standing to maintain its claims." Compl. ¶ 10. Plaintiffs offer no allegations in support of this legal conclusion, which the Court need not accept as true and does not survive a motion to dismiss. *See Iqbal*, 556 U.S. at 678.

cognizable Article III injury that is closely connected to the diversion." *City of S. Miami*, 65 F.4th at 638-39.

GRU does not allege that it has diverted resources to counteract the Act, much less that it has diverted resources away from a particular program or identifiable community. Accordingly, it does not allege an injury in fact sufficient for organizational standing.

2. "To establish associational standing, an organization must prove that its members 'would otherwise have standing to sue in their own right.'" *Jacobson*, 974 F.3d at 1249 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000)). To do that, they must "make specific allegations establishing that at least one identified member had suffered or would suffer harm." *Summers v. Earth Island Inst.,* 555 U.S. 488, 498 (2009) (cleaned up).

GRU identifies three members and officers – Robert Hutchison, Irving W. Wheeler, Jr., and Susan Bottcher ("GRU members") – upon whose injuries it relies. *See* Compl. ¶¶ 12, 15-22. To establish an injury in fact, a plaintiff must show that he "suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). An injury is "concrete" if it actually exists – i.e., it is "real," as opposed to "abstract." *Ga. Ass'n of Latino Elected Offs.*, 36 F.4th at 1113 (quoting *Spokeo*, 578 U.S. at 340). The GRU members allege that they are both customers of the Utility System and former elected

or appointed members of Gainesville's governing bodies that "continue to pursue [their] interest[s] in the operations of GRU." *See Compl.* ¶¶ 15-22. But these are not injuries. Indeed, nowhere do the GRU members allege that enforcing or implementing the Act will harm them.

The closest they come is alleging that they want GRU to "address social, political, or ideological interests, as well as industry best practices," but these issues "fall within the concepts prohibited by the challenged Special Law." *Id.* ¶ 16. In other words, GRU claims the Act chills their free speech rights by prohibiting the Authority from considering specific concepts which GRU's members wish to discuss. "[A]n actual injury can exist when the plaintiff is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences." *Wilson v. State Bar of Ga.*, 132 F.3d 1422, 1428 (11th Cir. 1998). But plaintiffs have standing to bring a pre-enforcement challenge to a statute only if they plausibly allege "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and *there exists a credible threat of prosecution*." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (emphasis added).

The GRU members allege neither. As discussed further in Section III, *infra*, the Act does not proscribe any speech. It requires the Authority to consider "pecuniary factors and utility industry best practices standards" when making policy and operational decisions, and prohibits consideration of "social, political, or ideological interests." Art. VII § 7.12. But that language plainly does not prohibit citizens from

discussing or advocating for those issues before the Authority. Further, GRU members face no threat of prosecution because the Act is not a criminal statute and has no penalties.

Moreover, even if the Court found that the GRU members allege a cognizable harm, it would not satisfy Article III because it is not unique to them. To have standing, a plaintiff "must establish that he has a personal stake in the alleged dispute, and that the alleged injury suffered is particularized to him." *Raines v. Byrd*, 521 U.S. 811, 819 (1997) (internal quotation marks omitted). This means that the injury "must affect the plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 560–561, and n. 1. That is not the case here.

The GRU members allege only a general interest in participating in "issues concerning Gainesville Regional Utilities" and "maintaining local control over GRU through an elected Gainesville Commission." Compl. ¶¶ 15 and 22; *see also id.* ¶ 21 ("As a private citizen, BOTTCHER has continued to pursue her interest in the operations of GRU."). In fact, Hutchison admits that he "shares concerns regarding Gainesville Regional Utilities in common with thousands of utility customers who are in the 'extra-jurisdictional area' served by the utility." *Id.* ¶ 17. "[A] plaintiff raising only a generally available grievance about government . . . and seeking relief that no more directly and tangibly benefits him than it does the public at large . . . does not state an Article III case or controversy." *Lujan,* 504 U.S. at 573–74.

For each of these reasons, the GRU members do not allege an injury in fact. *See, e.g.*, *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 543–544 (1986) (school board member who "has no personal stake in the outcome of the litigation" has no standing); *Wilson*, 132 F.3d at 1429 (disbarred attorneys did not have standing to bring pre-enforcement challenge because their belief that they could not engage in protected speech was not objectively reasonable). Accordingly, GRU lacks associational standing. *See, e.g.*, *Georgia Republican Party v. Sec. & Exch. Comm'n*, 888 F.3d 1198, 1204 (11th Cir. 2018 (holding plaintiff organization lacked standing because it "failed to identify at least one member who has or will suffer harm from [the Act] as required to show injury in fact").

3. The three remaining individual Plaintiffs also do not allege an injury in fact. Plaintiff Evelyn Foxx alleges that she is a customer of the Utility System and has advocated for "policies which assist local residents to conserve energy and water" and "efforts to open up housing, educational, and employment opportunities for minorities working with local governments and the private sector" as president of the Alachua County Chapter of the NAACP. Compl. ¶ 28. Nowhere does she allege that the Act has or will injure her, much less in a concrete and particularized way.

Likewise, Plaintiff Michael Varvel alleges that he works for the Utility System and is "concerned that . . . [his] employment may be at risk if [he] continue[s] to provide socially useful information that could be perceived as promoting Diversity, Inclusion, and Equity." Compl. ¶ 26. Further, Varvel notes that he is eligible for a pension from

the City of Gainesville, but the Act is "silent" regarding his concerns about "who will be making future decisions about pension issues, including funding levels, investment decisions, and changes in benefits . . . ." *Id.* at ¶ 27.

Neither Varvel's concern over his employment, nor his uncertainty regarding the governance of the pension plan, are cognizable Article III injuries. *See Miccosukee Tribe of Indians of Fla. v. Fla. State Athletic Comm'n*, 226 F.3d 1226, 1228–29 (11th Cir. 2000) ("An allegation of an abstract injury will not suffice" to show Article III standing); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). In any event, the allegations do not establish an Article III injury because "[a]llegations of *possible* future injury" do not "constitute injury in fact." *Clapper*, 568 U.S. at 410 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)) (emphasis in original) (internal quotation omitted).

The final Plaintiff, Joseph Little, alleges that he owns a municipal bond issued by the City of Gainesville and secured by the Utility System's revenues. Compl. ¶ 33. He claims that his "rights as a bondholder have been compromised, the value of his bond has been diminished[,] and certain covenants have been breached" by the Act. *Id.* These allegations, however, are relevant only to the impairment of contract claim in Count XII Little brings against the City of Gainesville. *See* Compl. ¶¶ 244-258. Thus, to the extent these allegations establish Little's injury, they would confer standing only to pursue Count XII. But "standing is not dispensed in gross." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021). Rather, in cases with multiple plaintiffs, at least one plaintiff "must demonstrate standing for each claim [they] seek[ ] to press and for each

form of relief that is sought." *Town of Chester v. Laroe Estates*, 581 U.S. 433, 439 (2017) (quoting *Davis v. FEC*, 554 U.S. 724, 734 (2008)).

Little does not allege any harm related to the Act's alleged violation of the First and Fourteenth Amendments, nor any injury that would give rise to injunctive or declaratory relief against the Governor in Counts I through XI. Instead, he merely alleges that he is a customer of the Utility System and a former Gainesville City Commissioner and mayor. Compl. ¶ 31. And he claims that "[a]s a private citizen, [he] has continued to pursue his interest in the operations of GRU, and has added his voice to that of many other citizens concerned with the finances of that utility as well as social issues . . . ." Compl. ¶ 32. But, again, these are not injuries. And to the extent they are, they do not confer Article III standing because they are not unique or particular to Little. *Lujan,* 504 U.S. at 573–74; *see also Warth v. Seldin*, 422 U.S. 490, 499 (1975).

2. *Plaintiffs' alleged injuries are neither traceable to, nor redressable by, the Governor.*

"[T]raceability and redressability[ ]often travel together." *Support Working Animals*, 8 F.4th at 1201. Indeed, courts often treat these intertwined standing elements as "two sides of [the] causation coin." *Dynalantic Corp. v. Dep't of Defense*, 115 F.3d 1012, 1017 (D.C. Cir. 1997).

To show traceability and redressability in a lawsuit seeking to enjoin a government official from implementing a law, a plaintiff must show "that the official has the authority to enforce the particular provision [being] challenged, such that [the] injunction prohibiting enforcement would be effectual." *Dream Defs. v. Governor of Fla.*,

57 F.4th 879, 889 (11th Cir. 2023) (alterations in original) (quoting *Support Working Animals*, 8 F.4th at 1201).

Plaintiffs ask this Court to "enjoi[n] Defendants and their officers, agents and employees, from enforcing the Special Law, and §7.12 thereof." Compl. 30; *see also Compl.* 33, 35, 43.[6] The Governor does not enforce HB 1645. The Authority does. *See* Ch. 2023-348, § 703.(1)(a) at 2, Laws of Fla. (giving Authority the power to "manage, operate, and control the utilities, and to do all things necessary to effectuate an orderly transition of the management, operation, and control of the utilities from the City [of Gainesville] to the Authority . . .").

As a result, this case is like others in which plaintiffs sued a state official for laws enforced by local officials or private parties. In *City of South Miami*, for instance, plaintiffs sued the Governor for a law that, independent of the Governor's action, required local officials to cooperate with federal immigration authorities. 65 F.4th 631, 640–44 (11th Cir. 2023). Similarly, in *Jacobson*, plaintiffs sued the Florida Secretary of State for an election law administered by local election supervisors. 974 F.3d at 1253. And in *Lewis v. Governor of Alabama*, plaintiffs sued Alabama's Attorney General for a law preempting local minimum wage laws that had no state enforcement scheme. 944 F.3d 1287, 1301 (11th Cir. 2019); *see also Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 532 (2021) (suing

[6] These requests appear in ¶¶ (C) of Count I, II, III's requests for relief, and ¶ (D) of Count IV's request for relief. Counts V-XII seek similar injunctions, but the Governor focuses on Counts I-IV because, as discussed in Section I(1), *supra*, the former assert state law claims that cannot be adjudicated in federal court.

state actors that did not enforce state abortion law, which was instead enforced by private actors).

In all relevant respects, this case is no different. There is no causal chain linking the Governor to Plaintiffs' injuries, which they allege flow from the Act, because he does not enforce its provisions. *See Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1272 (11th Cir. 2019); *see also Lewis*, 944 F.3d at 1299 ("The fact that the Act itself doesn't contemplate enforcement by the Attorney General counts heavily against plaintiffs' traceability argument."). Further, neither the Governor's appointment power under the statute, nor his signature on the bill itself, "connect[ ] him with the duty of enforc[ing]" the Act. *Namphy*, 493 F. Supp. 3d at 1137. And if neither satisfy *Ex parte Young*'s more relaxed "some connection" standard, *see Equal. Fla.*, 2022 WL 19263602, at *8 & n.8, *supra*, they certainly do not meet Article III's more stringent traceability requirement, *see Falls v. DeSantis*, No. 4:22cv166, 2022 WL 19333278, at *1 (N.D. Fla. July 8, 2022) (dismissing Governor from challenge to law he did not enforce for lack of standing while noting that "the *Ex parte Young* analysis is, if anything, more lenient than Article III's traceability requirement . . . ."). *See Denton v. Bd. of Governors*, No. 4:22-cv-341, 2022 WL 19333341, DE 65 at 3–4 (N.D. Fla. Nov. 22, 2023-4) (concluding plaintiffs did not have standing against the Governor, despite his power to appoint members of the Board of Governors, because "he has no direct authority to take remedial action of the kind the plaintiffs seek"); *see also Support Working Animals, Inc.*, 457 F. Supp. 3d at 1210

(dismissing Governor under *Ex parte Young* because he did not enforce challenged statute).

And just like those cases, because the Governor does not enforce the Act, Plaintiffs' requested injunction(s) against him would not "be effectual." *Support Working Animals*, 8 F.4th at 1201. Put differently, Plaintiffs cannot show redressability as to a defendant that cannot implement the relief they seek. *See Lujan*, 504 U.S. at 571 (holding plaintiffs lacked redressability against Defendant Secretary of the Interior because it could not implement requested remedy); *see also Israel v. DeSantis*, No. 4:19CV576-MW/MAF, 2020 WL 2129450, at *4 (N.D. Fla. May 5, 2020).

For these reasons, Plaintiffs' alleged injuries are neither traceable to, nor redressable by, the Governor. *See*, *City of S. Miami*, 65 F.4th at 643 (concluding plaintiffs did not establish traceability or redressability because Governor did not have sufficient connection to enforcement of the challenged statute); *Jacobson*, 974 F.3d at 1253; *Lewis*, 944 F.3d at 1301; *see also Support Working Animals*, 8 F.4th at 1205.

III. Plaintiffs' Federal-Law Claims Fail to State a Claim for Relief.

In addition to the threshold standing and sovereign immunity defects, this Court should also dismiss the Complaint because Plaintiffs' four federal law claims – Counts I through IV – fail to state a cause of action.

1. *The Complaint Does Not State a Claim Under the First Amendment.*

Plaintiffs allege that section 7.12 of the Act violates the First Amendment by denying their rights to petition the Authority and imposing both a content and

viewpoint-based restriction and a prior restraint on their right to free speech. None of the counts in the Complaint state a claim for relief.

Count I argues section 7.12 of the Act denies their right to petition the Authority for "grievances pertaining to social, political, environmental, and ideological issues," Compl. ¶ 76, and during the period between the date of enactment (July 1, 2023) until the Authority's first meeting (October 4, 2023). *Id.* ¶ 78. Count II alleges section 7.12 is a content-based restriction on speech because it prohibits discussion of "social, political, or ideological interests," and a viewpoint-based restriction because it "bans and outlaws any speech or ideas which promote other grounds for action, including non-financial social concerns" Compl. ¶¶ 79(B), 80 (B). Count III claims the Act is a prior restraint on their speech because it "prohibits in advance any communications associated with various 'social' issues," Compl. ¶ 98, and "affords undue discretion to the Authority to determine what speech falls into vague content-defined categories" without providing the substantive and procedural safeguards required by *FW/PBS, Inc. v. City of Dallas*, 493 US. 215 (1990), *id.*

As an initial matter, Plaintiffs offer no facts supporting these counts. Indeed, they do not cite section 7.12. They merely allege that the Act violates their right to petition and imposes unreasonable content restrictions on their speech. That is not enough. To state a claim for relief, complaints must provide "factual content" supporting a "reasonable inference that the defendant is liable for the misconduct

alleged." *Ashcroft*, 556 U.S. at 678. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

But more fundamentally, each fails as a matter of law because section 7.12 does not restrict the Plaintiffs' speech. Instead, it clearly provides that the Authority, "in making all policy and operational decisions over the affairs of the [U]tility [S]ystem . . . shall consider only pecuniary factors and utility industry best practices standards, which do not include consideration of the furtherance of social, political, or ideological interests." Art. VII § 7.12. Thus, the section simply limits what the Authority may consider, not what Plaintiffs or any other citizens may submit to them. For that reason, Plaintiffs' First Amendment claims are not facially plausible and therefore do not state a cause of action. *See Twombly*, 550 U.S. at 570 (complaints must "state a claim to relief that is plausible on [their] face"); *Ashcroft*, 556 U.S. at 678.

2. *The Act Is Not Unconstitutionally Vague.*

Plaintiffs also claim that the phrases "pecuniary factors and utility industry best practice standards" and "social, political, or ideological interests" are unconstitutionally vague. *E.g.*, Compl. 43. They argue the phrases are vague because the Act does not define them and they do not have commonly-accepted definitions. Plaintiffs also claim that the latter phrase gives the Authority too much discretion to regulate speech without providing a "specific list of prohibited topics." *Id.* at 42. Neither argument states a valid vagueness claim.

The vagueness doctrine "is an outgrowth not of the First Amendment, but of the Due Process Clause of the Fifth Amendment." *United States v. Williams*, 553 U.S. 285, 304 (2008). Plaintiffs allege a liberty interest in petitioning the Authority. But, as discussed, the Act does not implicate that interest because it does not restrict Plaintiffs' speech. Thus, Plaintiffs do not allege the violation of a liberty interest required to state a vagueness claim.

But, even if they did, the Act would not be unconstitutionally vague. Failure to define a term or phrase does not render a statute unconstitutionally vague. *See Asgrow Seed Co. v. Winterboer,* 513 U.S. 179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning."); *see also, e.g.*, *Horton v. City of St. Augustine*, 272 F.3d 1318, 1330 (11th Cir. 2001) *Sun-Sentinel Co. v. City of Hollywood*, 274 F. Supp. 2d 1323, 1332 (S.D. Fla. 2003) (similar).

Rather, "a civil statute is unconstitutionally vague only if it is so indefinite as really to be no rule or standard at all." *Leib v. Hillsborough Cnty. Pub. Transp. Comm'n*, 558 F.3d 1301, 1310 (11th Cir. 2009) (internal quotation marks omitted) (citation omitted). In other words, plaintiffs cannot prove vagueness simply by demonstrating that a statute "requires a person to conform his conduct to an imprecise but comprehensible normative standard," but must show "that no standard of conduct is specified at all." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 n.7 (1982) (internal quotation marks omitted) (quoting *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971)). "When the plain text of the statute sets forth clearly perceived boundaries, our

inquiry is ended." *Heyman v. Cooper*, 31 F.4th 1315, 1323 (11th Cir. 2022) (quoting *United States v. Wayerski*, 624 F.3d 1342, 1347 (11th Cir. 2020)). The Act's plain text provides such clear boundaries.

The terms in each phrase have common and ordinary meanings, which courts consider when interpreting statutes. *High Ol'Times, Inc. v. Busbee*, 673 F.2d 1225, 1229 (11th Cir. 1982). Indeed, Plaintiffs acknowledge that the word "pecuniary" has a "commonly understood meaning and, possibly, a statutory definition found elsewhere in Florida law," Compl. ¶ 109(B) (footnotes omitted), and the words "industry" and "best practices" have "definitions which are more or less commonly understood," *id.* ¶ 109(B)(2). Further, if these common understandings were not enough, Plaintiffs also concede that the Act defines the phrase "appropriate pecuniary factors and utility industry best practices" as "those which solely further the fiscal and financial benefit of the Utility system and its customers." Compl. ¶ 109(B)(1). Together, Plaintiffs' concessions make clear that the Authority may only consider factors that financially benefit the Utility System.

To the extent the Act has not made obvious what the phrases prohibit, despite defining them and including terms with commonly understood meanings, they are still not unconstitutionally vague. "The Constitution does not require perfect clarity in the language of statutes and ordinances." *Stardust, 3007 LLC v. City of Brookhaven*, 899 F.3d 1164, 1176 (11th Cir. 2018). Rather, "[a]ll . . . due process . . . requires is fair notice . . . sufficient to enable persons of ordinary intelligence to avoid conduct which the law

forbids." *High Ol'Times, Inc.*, 673 F.2d at 1229 (alteration and ellipses in original). Plaintiffs' statements demonstrate that the phrases provide such notice. For example, Plaintiffs allege that they "have petitioned the elected City Commission of the City of Gainesville for redress of grievances pertaining to '***social, political, or ideological interests***' as they relate to GRU," which "pertain[ ] to rates and services for low[-]income people and social issues such as environmental safety, racial fairness in infrastructure and living wages for GRU employees." Compl. ¶ 72-73 (emphasis added). Further, Plaintiffs note that "[i]n the context of a municipal utility, 'social, political, or ideological interests' necessarily inform a wide range of utility operations ranging from pollution mitigation to the location of infrastructure to the transition to renewable energy." *Id.* ¶ 109(C)(3).

Last, a statute's failure to list all topics/items it prohibits does not render it *per se* vague. Indeed, Plaintiffs do not cite a single authority for this proposition. Nor could that be the standard, given the practical impossibility of listing all "social, political, or ideological interests" which the Authority cannot consider, or the "pecuniary factors" and "utility standards" it must consider, when operating the Utility System. *Accord Waltz v. Herlihy*, 682 F. Supp. 501, 507 (S.D. Ala. 1988), *aff'd*, 871 F.2d 123 (11th Cir. 1989) (internal quotation marks omitted) ("The health sciences are dynamic and as a result, it is impossible to compile a list of every conceivable form of acceptable and unacceptable medical practice.").

Like every statute, HB 1645 will be amenable to various interpretative questions, but that is no constitutional defect. *See Sabetti v. Dipaolo*, 16 F.3d 16, 18 (1st Cir. 1994) ("If run-of-the-mill statutory ambiguities were enough to violate the Constitution, no court could ever clarify statutes through judicial interpretation . . . ."). Instead, Plaintiffs must prove that H.B. 1645 is truly standardless. Based on the Act's plain text and their clear understanding of it, they do not make that showing.

IV. The Complaint Is an Impermissible Shotgun Pleading.

Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 10(b), which also covers pleadings, requires a party to "state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b). A complaint's allegations must also be "simple, concise, and direct[.]" *LaCroix v. W. Dist. of Ky.*, 627 F. App'x 816, 818 (11th Cir. 2015) (quotation marks omitted) (quoting Fed. R. Civ. P. 8(d)(1)). The "self-evident" purpose of these rules is "to require the pleader to present his claims discretely and succinctly, so that[ ] his adversary can discern what he is claiming and frame a responsive pleading." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015) (quoting *T.D.S. Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520, 1544 n.14 (11th Cir. 1985) (Tjoflat, J., dissenting)).

"A shotgun pleading is a complaint that violates either Federal Rule of Civil Procedure 8(a)(2) or Rule 10(b), or both." *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th

Cir. 2021). Generally, there are four types of shotgun complaints. *Weiland*, 792 F.3d at 1321-23. The "unifying characteristic of all . . . shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them." *Id.* at 1321-23. As a result, courts in this Circuit have "little tolerance" for them.*Barmapov*, 986 F.3d at 1324.

Plaintiffs' Complaint is a shotgun pleading. Plaintiffs sue three state officials – the Governor, Attorney General, and Secretary of State – and the City of Gainesville. *See* Compl. 1. Despite describing the parties in detail and providing general factual predicates for the claims, the Complaint commits "the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Weiland*, 792 F.3d at 1323. By omitting these important distinctions, the Complaint fails "to give [] [Defendants] adequate notice of the claims against them[.]" *Id.*

Accordingly, even if the Court denies the Motion on standing, sovereign immunity, and failure to state a claim grounds, it should still dismiss the Complaint and require that Plaintiffs fix their shotgun pleading.

V. In the Alternative, the Court Should Stay This Action Pending Resolution of the State Litigation.

Last, to the extent the Court does not dismiss this case entirely, it should stay the action until the Second Judicial Circuit rules on the pending motions for summary judgment in the State Litigation.

Courts enjoy the "broad authority to grant a stay." *In re Alves Braga*, 789 F. Supp. 2d 1294, 1307 (S.D. Fla. 2011). That authority is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Courts may stay an action pending resolution of a related case in another court to conserve judicial resources, *see Marti v. Iberostar Hoteles y Apartamentos S.L.*, 54 F.4th 641, 649 (11th Cir. 2022), and to promote abstention principles. *See, e.g., Quackenbush v. Allstate Ins. Co.,* 517 U.S. 706 (1996) (noting that abstention principles may require district court to stay case pending resolution of related proceedings). The stay, however, must be reasonable and limited in scope. *See Ortega Trujillo v. Conover & Co. Commc'ns*, 221 F.3d 1262, 1264 (11th Cir. 2000).

A stay is warranted here. First, this case is materially similar to the State Litigation. Both raise the same unsettled questions of state constitutional and statutory law and seek largely the same relief. *See* Exhibit A; *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959) (holding that court can exercise its discretion to stay federal action pending outcome of state litigation where a question of state law is

unsettled and the federal decision would be disruptive to the state efforts to establish coherent policy).

Second, staying this action will conserve judicial resources. Delaying this case until after the Second Judicial Circuit rules on the substantially similar state law claims in the State Litigation will ensure that this Court does not spend time duplicatively litigating a statute that a state court subsequently declares invalid. Doing so also eliminates the possibility that this Court and the Second Judicial Circuit produce conflicting applications of Florida law.

Last, a stay would be temporary – only until the Second Judicial Circuit rules on the parties' pending motions for summary judgment. At that point, to the extent there are any claims remaining in this case and the Second Judicial Circuit does not strike down the Act, the parties could resume this action.

CONCLUSION

For the foregoing reasons, this Court should dismiss Plaintiffs' Complaint.

Respectfully submitted September 11, 2023,

RON DESANTIS
Governor

/s/ Nicholas J.P. Meros
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REQUEST FOR ORAL ARGUMENT

Pursuant to N.D. Fla. Local Rule 7.1(K), the Governor requests oral argument on this Motion. The Governor estimates argument will take thirty (30) minutes per side.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)

Pursuant to N.D. Fla. Local Rule 7.1(F), I hereby certify that this Motion complies with the Rule's font requirements and contains 7,983 words, exclusive of the case style, signature block, and any certificate of service.

/s/ Nicholas J.P. Meros
Deputy General Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the CM/ECF filing portal, which provides notice to all parties, on September 11, 2023.

/s/ *Nicholas J.P. Meros*
Deputy General Counsel

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

CITY OF GAINESVILLE, FLORIDA, a body corporate and politic and a municipality of the State of Florida,

Plaintiff,

v. Case No. 2023 CA 001928

THE STATE OF FLORIDA, by and through its Attorney General, ASHLEY MOODY, Governor RON DESANTIS, and the Secretary Of State, CORD BYRD, in their official capacities,

Defendants.
_____/

VERIFIED COMPLAINT FOR DECLARATORY RELIEF, AND TEMPORARY AND PERMANENT INJUNCTIVE RELIEF AS TO HB 1645 FOR VIOLATION OF THE FLORIDA CONSTITUTION, AND FLORIDA STATUTORY LAW

Plaintiff, City of Gainesville, Florida, a body corporate, politic and a municipality of the State of Florida ("Gainesville" or "City"), brings suit against the State of Florida ("Florida" or "the State"), by and through its Attorney General, Ashley Moody, Governor Ron DeSantis, and the Secretary of State Cord Byrd, in their official capacities, for Declaratory Relief under Fla. Stat. §86.011 et seq., on the grounds that the Florida Legislature, in amending the Charter for the City of Gainesville, chapter 12760, Laws of Florida (1927) (as amended by chapter 90-394, Laws of Florida (hereafter, "HB 1645"), created a special law that on its face

and as applied violates the following: Florida Constitution Art. I, Sec. 9 (Due Process); Art. I, Sec. 10 (Prohibited laws, impairment of contract); Art. III, Sec. 10 (Special laws); Art. IV, Sec. 1, 6, 7 (Executive Branch); and Florida Statutes §166, Fla. Stat. §180, and Fla. Stat. §189.

PARTIES

1. Plaintiff City of Gainesville, Florida, is a Florida municipal corporation, organized and operating under the laws of the State of Florida.

2. Secretary Cord Byrd is charged with enrolling and, when applicable, striking, legislature enrolled by the State of Florida. *See* Fla. Stat. §§ 20.01 and 15.01. He is a proper defendant when the challenge is to the legality of a statute passed by the legislature for the State of Florida. He is named in his official capacity.

3. Attorney General Ashley Moody is charged with defending the laws of the State of Florida, and therefore is named properly as a Defendant in her official capacity. *See* Fla. Stat. §§16.01(4), (5). Further, because HB 1645 is alleged to be unconstitutional, pursuant to Florida Statutes § 86.091, the Attorney General is named in her official capacity and will be served with a copy of the Complaint.

4. Governor Ron DeSantis is named in his official capacity, as he is charged under HB 1645 with appointing all 5 members of the "municipal unit,"

and thereafter managing and re-appointing them, with no oversight from the municipal elected officials, or any other entity. Governor DeSantis therefore acts as the manager or supervisor of this "municipal unit." Various duties are assigned to the Governor under HB 1645 to create this "municipal unit" and thereafter operate it.

JURISDICTION

5. This action seeks a Declaratory Judgment declaring that HB 1645 in its present form is void as violative of the State of Florida Constitution, and Florida Statutes. Further, this action seeks a declaration that HB 1645 is void as violative of either the Florida Constitution or statutory law, or both, and an injunction against the enforcement of this Statute, along with costs as allowed by Florida law.

6. This Court has jurisdiction to hear the claims identified above and herein brought within this Complaint for Declaratory Relief, and to issue a declaratory judgment pursuant to Fla. Stat. Ch. 86. Injunctive relief may be granted pursuant to this Court's general jurisdiction, and Fla.R.Civ.P. 1.610.

7. There is an active controversy between Gainesville and the Defendants that requires the Court to declare the rights and status as well as the legal relationship between the City and the members intended to be appointed by Florida's Governor. As such, Fla. Stat. §86.011 vests jurisdiction with this Court.

VENUE

8. Venue is proper in this Circuit, in Leon County, as venue is proper in the State of Florida's home venue.

FACTS

The City of Gainesville

9. Gainesville is the largest city in Alachua County, Florida, with a population of over 115,000. Gainesville's interests are at issue here, as the City of Gainesville provides various utility services, including electric, natural gas, telecommunications, water, and wastewater, and provides those services to the residents of Gainesville, the University of Florida, and customers located in various sections of Alachua County (the "Utility System"). The City operates the Utility System under the fictitious name Gainesville Regional Utilities. A true and correct copy of the Florida Department of State, Division of Corporations website, along with the original fictitious name registration and most recent renewal, is attached hereto and incorporated herein as **Exhibit 1**.

10. The name Gainesville Regional Utilities and its frequently used acronym, GRU, is but a legal fiction and has no independent corporate stature. (See Exh. 1, the Sunbiz Registration). The Utility Services are provided by departments within the City of Gainesville, staffed with City employees, and directed by the elected City Commission. By way of background, Gainesville held

a referendum mandated by a Special Act of the Legislature in 2018 asking if the Utility Services should be governed by a separate board appointed by the City Commission, and the decision was a resounding: "No."

11. Gainesville provides these services by virtue of Chapter 180, Fla. Stat., as well as other statutory and constitutional provisions. Such rights and liabilities of the City and the persons obtaining these utility services, are governed by various statutes under Florida law including Fla. Stat. §§166 and 180, and are within the power of the City as a municipality under art. VIII of the Florida Constitution. Ultimately, the rates are set legislatively by the elected municipal legislative body, the City Commission.

12. The provision of utilities services of this magnitude is complex, and expensive. Gainesville has issued over $1.8 billion in various debt instruments for the capital infrastructure needed to provide electric, water, wastewater (a/k/a sewer), natural gas, and telecommunication services. The City has accordingly passed a Bond Resolution, which is necessary for the issuance of said revenue bonds and for obtaining a certificate of tax exemption. Gainesville files, as is necessary, Annual Comprehensive Financial Reports, (ACFR) which are publicly available, and governed by Generally Accepted Accounting Principles (GAAP). Thus the income and expenses are provided annually for review, and include the

financial components of the Utilities System. City employees are key to fulfilling the statutory obligations in creating the annual report.

HB 1645

A. Improper Transfer of Authority to the Governor

13. It appears the Florida legislature seemingly did not approve of the manner in which the City of Gainesville runs its Utility Services department, and on May 4, 2023, the Florida Legislature enacted HB 1645 entitled:

> An act relating to the City of Gainesville, Alachua County; amending chapter 12760, Laws of Florida (1927), as amended by chapter 90-394, Laws of Florida, relating to the City's charter; repealing section 3.06 of the charter, relating to the general manager for utilities of Gainesville Regional Utilities; creating the Gainesville Regional Utilities Authority and establishing it as the governing board of Gainesville Regional Utilities; providing an effective date.

14. HB 1645 has an effective date of July 1, 2023. A true and correct copy of the HB 1645 is attached as **Exhibit 2** to this Complaint.

15. The Legislature, in their haste to take control of the Utility Services department from Gainesville, enacted HB 1645 without considering a number of items, including the utility business, issued debt and terms, municipal law, or the Florida Constitution. Instead, they implemented legislation to remove the Utility Services department from the elected City officials, and placed the running of that City department, with its City employees and its City debt of $1.8 billion, under the authority of a 5 member Board appointed solely by the Governor for the State,

without any control by the City and without having to answer to the City Commission.

16. HB 1645, among other things, removes the Utilities System from the control of the City, but denotes that it shall be a "municipal unit." The term "municipal unit" is not a recognized legal term in municipal law that would be distinct from the legislative body such as to shift authority from the constitutional legislative body to gubernatorially appointed individuals, and there exists no such "municipal unit" appointed by the Governor over a City department, within the State of Florida other than the one created here in HB 1645.

17. Indeed, HB 1645 states:

> A. The Authority [the aforementioned 5 member, governor-appointed board] shall operate as a unit of city government, and, except as otherwise provided in this article, **shall be free from direction and control of the City Commission**.

18. HB 1645 transfers all political, legal, financial, and legislative control, including rate setting, over the Utility System from the elected City Commission of the City of Gainesville and reposes it in an unelected Board of five (5) individuals appointed by and subject to removal only by the Governor of Florida, who is an executive official of the State of Florida.

19. The City of Gainesville is obligated pursuant to its Bond Resolution, attached as Exh. 5 and incorporated herein, sections 7.15 and 7.16, to defend its

ability to control its Utility System, and to challenge any changes that affect that ability.

20. Under the Florida Constitution, the governance for a municipal utility does not lie within the State of Florida's Executive Branch. The Governor, under the Florida Constitution, cannot assume the duties of a City department, delegate those powers to 5 gubernatorial appointees, and have their appointee hiring and firing City employees, as HB 1645 §7.09 provides. The Governor's powers over municipalities are limited by the Florida Constitution, with those limitations clearly implemented through various applicable statutes.

21. Under the Florida Constitution, the legislature does not have the power to increase the duties and obligations of the Governor beyond those identified in Art. 4 or elsewhere in the Florida Constitution.

22. The "municipal unit" cannot be a special district, and there is nothing in the legislation to identify it as such. Florida Statute §189.012 does not recognize any unit of local government that is not a part of a municipality. Moreover, Fla. Stat. §189.012 does not allow the creation of a board which provides electrical service and that is a political subdivision or part of a municipality.

23. The legislation does not, and cannot explain, how a unit of municipal government can be excluded from being under the control of the municipal government.

24. Yet the legislation is explicit:

> The Authority is created for the express purpose of managing, operating, controlling, and *otherwise having broad authority* with respect to the utilities owned by the City of Gainesville.

(Emphasis added.)

25. In other words, the State of Florida has seized a department within a Florida City because the State disagrees with the elected officials and the electorate of that City on how that particular department should be run.

26. Owning, operating, and hence controlling utilities is a power granted under art. VIII of the Florida constitution. Pursuant to Fla. Stat. §166.021(3)(c), this power remains with the municipality, and not this gubernatorial board, and cannot be pre-empted, removed, or transferred, via a special act as was enacted here.

27. In contrast, for example, Florida Constitution art. IV, Sec. 6, Executive Departments, states that all functions of the executive branch of state government shall be allocated among not more than twenty five departments . . . .The City's Utilities System department is not one of those executive branch departments.

28. The challenged legislation states that the City of Gainesville's Utilities System is now to be controlled by five (5) individuals to be appointed by the Governor, and that it remains an "enterprise" (and hence a part of the City) and is a municipal "unit" but does not answer to the City Commission. No such creature is allowed under the Florida Constitution.

29. To the extent that the legislature is attempting to create a municipal special district and have gubernatorial appointments control it, such a special act is prohibited by Fla. Stat. §189, Florida statutes on the grounds. Those include:

A. that electric services cannot be transferred into a special district, and

B. that a municipal special district must be controlled by elected municipal officials.

30. The legislature cannot modify or amend the constitutional limits on the Executive Branch under art. III, s. 10, art. art. IV, Sec. 1, art. VII, s. 18, art. VIII, s. 2 and s. 4, or any other section of the Florida Constitution, nor does the legislature have the power to inject the state into the day-to-day running of a City department by appointing members through the Governor.

31. The Governor does not have any municipal functions pursuant to the Constitution. Certainly nothing in the Constitution authorizes the Governor to appoint others to assume control of a City department, and remove all elected official control, along with all of the restraints imposed in other municipal bodies.

It is clear from HB 1645 that, simply put, the new "Authority" is simply choosing to run a City department because the legislature and governor would prefer that it be run differently.

A. For example, this gubernatorial Authority, denoted a "municipal unit" develops its own expense reimbursement policy and then pays itself. Municipal expenditures are governed by strict budgetary restrictions, along with notice, public comment, and related matters under art. VIII, s. 24 ("Each municipal legislative body shall be elective.") and Fla. Stat. §§166, 180, and 189.

B. The gubernatorial authority hires and fires all employees needed for the Utilities System, and decrees that they shall be "City employees" and continue (although, apparently now employed by this non-entity, and the whims of 5 individuals) to be so. But Cities must go through a budgetary process to hire and fire an employee, it cannot be decreed that "let it be so."

C. The legislation appears to create City employees who are not at all governed by the City. To the extent that there are Union contracts, among other issues, such changes in control would need to be bargained. But no, they are merely decreed – the 5 individuals hire

people, define their terms of employment, fire them, and all on the City's tab.

D. There are many other internal contradictions, some of which are identified in this Complaint, and any one of which makes HB 1645 impossible to implement legally or in fact, for example, the 5 gubernatorial individuals have the right to borrow funds and issue in the City's name, (again, without following Constitutional and statutory requirements), and to acquire real property by eminent domain a process under Fla. Stat. §166.401 that can only be accomplished by elected officials

B. Issues With The Purported Transition Of Authority

32. HB 1645 is so unconstitutionally vague as to place the City and its officials at risk for violating the statute and other areas of Florida law, that are contradictory to this special law, without an intent to do so. To the extent that HB 1645's direction to the City can be understood, that direction violates state constitutional law and several general laws.

33. The City has numerous employees operating and managing the Utility Services. Under the City Charter, the City Manager is the administrative head of the City of Gainesville general government, responsible for the management of all departments except those under the direction of other charter officers.

34. The Utility Services was or is run by a Charter Officer General Manager for Utilities. The legislature amended the Charter Officer provision such that the General Manager position was repealed as of July 1, 2023. The State's 5-member Authority is to be installed no earlier than October 4, 2023.

35. The Authority then hires its own Chief Executive Officer/General Manager (CEO/GM) who then hires and fires the remaining employees in the Utilities System. While HB 1645 designates this position as a city employee, and all the employees hired by the new General Manager as city employees, but removes the City Commission's overall policy rights over the employee's salary or terms of employment.

36. Having abolished the Charter position of General Manager, there is no budgetary position for the General Manager to fulfill as directed after July 1, 2023. The position of General Manager for Utilities is thus non-existent or in limbo as of July 1, 2023, with no legal method of filling it.

37. HB 1645 appears to prohibit the City from passing ordinances or taking any action relating to operation of the system until the Authority is seated and takes its actions to modify it. But there is no statutory or constitutional basis for making elected municipal officials subservient to a gubernatorial appointed authority. Such authority is not within the legislature or the executive branch.

38. HB 1645 does not identify, modify, or address compliance with Fla. Stat. §166.241, and contradicts its procedure by, among other things, eliminating the position of the General Manager for Utilities by repealing the Charter provision authorizing the office, but contemplating that the General Manager continue working until replaced. *See* HB §7.07(5); 7.09(1). *See also* Section 1 of HB 1645, Repealing Article III of section 1 of chapter 90-394, and hence abolishing the Charter Position of the General Manager, but then in 7.03 directing that the General Manager – for whom there is no Charter provision or budgeted position – keeps working.

39. The City Manager and the City Commissioners are unable to manage or advise employees regarding the status of their employment due to the internally contradictory timeline for implementation, the abolition of positions with a decree that the individual(s) keep working, the direction to the elected officials "not interfere," and inconsistent start dates that precede by months the decreed appointment dates.

40. There is a need to enjoin this Special Act that violates the Florida constitution, and several statutes and to issue a Declaratory Judgment that the Special Act is void. The statute is void, which is apparent from the internally contradictory language, the forced apparent confusion over the City's Utility System Revenue Bond Covenants, the apparent impairment of the debt instruments

(contracts) and the impairment of a pending sale and transfer of the City's Trunked Radio System (maintained for accounting purposes and revenue bond purposes in the Utilities System enterprise fund), the unconstitutional and statutorily violative grant of borrowing authority granted to the "municipal unit" over City revenues without requiring that laws applicable to municipalities be followed, and numerous additional violations.

41. Further, HB 1645 is both expressly internally contradictory and also vague on key day-to-day necessary obligations that the City is unable to implement its terms as written, even if the law were not void. Thus, Gainesville is uncertain of its rights and requires and needs an interpretation by the Court.

42. Gainesville is genuinely unable to discern how to manage the Utility System, and its employees, if at all, since the passage of HB 1645. Certainly, the not-yet-appointed members cannot direct the City to hire and pay employees, nor can the not-yet-appointed members direct City employees themselves. Nor do they have a right to direct City employees, once appointed. Indeed, the entity paying the salaries of any employees, and the invoices of contractors and consultants, cannot even be determined.

43. For example, the removal of the General Manager for Utilities, via the deletion of Charter Article 3.06, is effective July 1, 2023. However, the current General Manager is supposed to continue working until the Authority's tenure

begins. This creates a number of issues, as the General Manager for Utilities is still a City employee, but is no longer governed by the City Commission or City Manager.

44. Moreover, although Charter provision 3.06 is "hereby repealed" with an effective date of July 1, 2023, the Bill anticipates that the Authority, itself, will not be formed until October 1, 2023. But due to the timeline of publishing notice, selecting members, and appointing such members, the actual appointment date appears to be sometime in late December 2023, or early January 2024. Therefore, the City is supposed, it appears, to be acting as some type of caretaker, in derogation of its Bond Resolution and the Florida Constitutional and statutory restrictions. Accordingly, Gainesville is uncertain of its rights and obligations in the meantime.

45. The Court is being requested, pursuant to Fla. Stat. 86.011, to render a declaratory judgment on the non-existence of the power of the legislature and the governor to interject themselves into a City utilities department, seize control, issue debt, take property by eminent domain, and not be under the authority or control of the elected legislative body, the City Commission.

C. Budget Issues With HB 1645

46. Gainesville has pledged the revenues of the utility system, a/k/a the "Municipal Unit," to the repayment of approximately $1.8 billion in loans for capital needs of the utility system in accordance with its Bond Resolution.

47. Under Florida Stat. §166.241, a detailed annual budget, with the level of detail needed in Fla. Stat. §218.32(1), must be submitted to the state and the City must adhere to it thereafter or amend it in the process set forth in the statutes. Further, the municipal government may not expend or contract for expenditures in any fiscal year except pursuant to the adopted budget. Fla. Stat. §166.241(2).

48. The City maintains a series of utility services that it provides, grouped together under a fictitious name, Gainesville Regional Utilities or GRU, (the "Utility System") which is accounted for in the annual required municipal budget, and in bonds and borrowing instruments, as an enterprise fund.

49. The City Commission is unable to discern when actions taken by it would be "interfering" with the five gubernatorial appointees, and any restriction, such as this, which is addressed by enjoining the application of the HB 1645, Section 7.12 restriction.

50. Internal contradictions and ambiguities abound. For example, the General Manager position is abolished as of July 1, 2023. But HB 1645 requires that the employee remain working, despite not having an authorized budget position. Florida Statute §166 identifies the budgetary requirements of all

municipalities, and requires that the municipality identify positions and salaries before any payments may be made. There is a detailed process that must be followed to modify a budget, and there is no law allowing for payment for work done before a legal obligation exists and hence no method of paying this individual if he does keep on working.

51. Quite simply, a municipality cannot just make up positions and pay people without an authorized budgetary position. Fla. Stat. Ch. 166 prevents these actions, and these appointed officials have no authority to instruct the elected officials of the City who to pay and when.

52. Further, the employees under HB 1645 would be paid by the City, yet the City would be precluded from managing those employees, even though they are part of the Utility System (Gainesville's own department), which is clearly prohibited by HB 1645, 7.01 et. seq.

53. Without an authorized budget position, there is no method of paying the employees. Pending the appointment of this Board, assuming arguendo, constitutionality, there would be no method of having employees fill this gap, without exposing the City to charges of having violated the limits implemented *as of July 1*. The City would be interfering by identifying key permitting issues only to be second-guessed by the eventual appointees.

54. The City's financial reputation and hence the costs of borrowing have already been affected, it is impossible to characterize the effect on the market with any precision, and hence monetary damages will not cure this issue.

55. Section 715 of the Bond Resolution (Exh. 5 hereto) provides in pertinent part:

> **Section 715. No Diminution of Rights**. The city will not enter into any contract or arrangement, nor take any action, the results of which might impair or diminish the rights of the Holders of the Bonds. The City, unless prevented by lawful authority beyond control of the City, shall continue to render electric, water, wastewater and other services of the System within the unincorporated areas of Alachua County and shall continue to extend such services as reasonably prudent so to do. The City shall not voluntarily give up any service area of the System unless the City shall determine that such action will not materially impair or diminish the rights of the Holders of the Bonds, and the City shall in good faith resist all efforts which may result in the diminution of such service area. **The City shall not surrender its power and authority to fix and maintain rates and conditions for services of the System, and the City shall in good faith resist all efforts which may result in the abridgement or diminution of any such power and authority**.

(Emphasis added.)

56. The public interest is served in having a constitutionally-sound entity operating critical infrastructure.

57. The public is disserved when there are potential gaps in time when no one is running the utility services that are now being provided by the City of Gainesville.

58. Municipal utility systems are regulated under §166, Fla. Stat., §180, Fla. Stat., and to some extent, §189, Fla. Stat.

59. Fla. Stat. §189, for example, prohibits the transfer or electric utility services, and governs over any Special Law by its own terms, limiting amendments to general law.

60. Municipal budgets are controlled by Fla. Stat. §166, Fla. Stat. §218, and Art. VII, Sec. 12 (Local bonds and taxation). These budgets control expenditures, and follow various requirements of the market into which they enter to borrow money. This arrangement is essential to the political science of running cities, as embodied in the Florida constitution and statutes.

61. Via HB 1645, the State of Florida has removed the authority of a municipal elected body over one of its internal departments, the Utilities System, and placed the State in charge of this City Department as if the 5 gubernatorial appointees were elected municipal legislators, which they are not.

62. As stated earlier, Gainesville Regional Utilities, a/k/a GRU, is only a fictitious name registration that does not create an entity; it merely provides a name for certain activities. Hence GRU is merely a department within the City of Gainesville which is now being controlled, within the City, by the 5 gubernatorial appointments under the supervision of the Governor.

63. The Florida Constitution, while granting broad authority to the State over Municipalities, does not provide any authority for the State to have the Governor run a City Department. Indeed, the Florida Constitution does not provide any significant authority of the Executive Branch over municipalities.

64. HB 1645 was amended to remove all control by the City Commission, and to substitute 5 appointed individuals who are appointed solely by the Governor to take the place of the elected officials. The sweep is complete; the City Commission is not to interfere. In fact, the City elected officials are directed to pay employees (without interfering); compel them to work for these individuals until the gubernatorial appointees get around to firing them; and to hand over all control but not the ownership, but – by the way – not to transfer anything they do own and have owned since January 2023 in their Utility System.

D. Rate Setting and Revenue Issues

65. HB 1645 states that rate setting will not be performed by the elected officials, as required by the Florida Constitution and Fla. Stat. §180, but will be set by the gubernatorial appointments over this municipal utility. No restraints other than spending less than the revenues generated is imposed; hence unlimited spending would just cause unlimited revenue increases (through rates, presumably) with no recourse, which is contrary to both the Florida Constitution and Florida Statutes §180.

66. HB 1645 authorizes the issuance of debt, but only elected commissioners may borrow to obtain municipal funds, and the 5 Authority members, not being elected officials, are unable to pass the resolutions and ordinances necessary to issue debt on behalf of the City. The Utility Systems department, not being a separate legal entity, cannot issue debt via a 5-member gubernatorial authority that does not own or control any of the revenues.

67. Moreover, §7.12 of HB 1645 redefines best practice standards, by directing that "only pecuniary facts and utility best practice standards, *which do not include consideration of the furtherance of social, political, or ideological interests."* Gainesville is unable to discern what this means, as best practices include each of the foregoing to predict and deliver services to the populace, at rates they can afford.

68. HB 1645 prohibits any discussion or action which might further "social, political, or ideological interests" – issues which have often been referred to as "DEI" for "diversity, equity and inclusion". HB 1645 states:

> 7.12 Limitation on Utility Directives. The Authority, and the CEO/GM, in making all policy and operational decisions over the affairs of the Utility System as contemplated under the provisions of this act, shall consider only pecuniary factors and utility industry best practices standards, which do not include consideration of the furtherance of social, political, or ideological interests. Appropriate pecuniary factors and utility industry best practices are those which solely further the fiscal and financial benefit of the Utility System and customers. This provision does not prohibit the establishment and application of rate structures based on utility usage.

69. As §7.12 of HB 1645 does not state it is preempting the application of Chapter 180. Chapter 180 is the existing forum for challenging municipal rates, and therefore ambiguity and confusion exist on which statute governs.

70. HB 1645 establishes only a simplistic formula, defining "flow of funds," with the only result that the Authority may spend as much as they want of what are in fact City of Gainesville revenues, pledged to bondholders, and belonging to the citizens of Gainesville. If rates are being charged in excess of those allowed under Fla. Stat. §180, there is a process to address that. Defining city revenues as "flow of funds," and placing a gubernatorial board in place to control revenues without any right of appropriation, violates Art. VIII of the Florida Constitution, and Fla. Stat. §166.

71. HB 1645 defines "net revenues" in a manner not allowed by the State of Florida's statutory reporting obligations, by defining "net revenues" as gross revenues less fuel revenues. This definition is unworkable and results in double-counting fuel, which, apparently unknown to the legislature, is a cost of generating electricity and of moving water and wastewater.

72. No other constraints in running this highly-regulated utility are identified, other than this simplistic definition of "flow of funds" that does not meet any of the State of Florida's requirements for municipal utilities.

73. HB 1645 then gives broad authority to the gubernatorially-appointed Board, to set rates, create rules, acquire real property (even though they are a municipal unit, and Florida Statutes would not allow them to do so without City Commission approval.)

74. HB 1645 authorizes the gubernatorially-appointed Board to issue bonds and "other evidences of indebtedness of the City" secured by the City's revenues.

75. HB 1645 purports to grant all powers of Gainesville to issue bonds to this gubernatorially-appointed Board. (HB 1645, §7.03(e)). HB 1645 does not, however, purport to amend general law. Fla. Stat. §166, Part II requires that elected bodies exercise this power, not City departments. Included with this power is, for example, the ability to enter into hedge-fund agreements – all in the City's name.

76. HB 1645 deems certain individuals that it intends for the gubernatorially-appointed board to appoint as "City Agents." This appointment is not recognized in municipal law, as there cannot be agents of municipalities by decree. The Sovereignty, constitutional, statutory, and administrative restrictions cannot be ignored by delegating to "agents."

77. HB 1645 states that the Municipal Unit it creates shall continue to be an "enterprise." Section 7.10(1), General Powers.

> Notwithstanding the reorganization of the governance structure of the management of the utility system as provided in this section, the utility system shall continue to be operated as a single enterprise and there shall be no change to the ownership of the utility system.

78. Clearly the drafters did not understand what that means. In municipal financial terms, an "enterprise" is a group of city functions that maintains its own revenues and expenses for accounting or borrowing purposes, but an "enterprise" is a description of a function, and not a separate corporate entity or company. It is an enterprise, for example, whose revenues are pledged to revenue bonds.

79. HB 1645 allows a municipality, such as Gainesville, to borrow money for capital needs, and to pledge only the revenue from that enterprise as a source of repayment. These are powers that are limited to actual elected legislative bodies pursuant to the Florida Constitution and statutory law. Moreover, the legislature has stated whenever anything related to the City conflicts (budgets, fees, policies, etc.,) this HB 1645 governs. It does not, of course, try to overcome conflicts between general law, or the Florida Constitution, as such are void.

80. Given the numerous conflicts between general law and the Florida Constitution, this legislation is void.

81. The Utility System is comprised of highly-regulated fields, including electrical, water, wastewater, and natural gas. Each of these have required permitting applications and restrictions, that have important deadlines, and each

has to be requested, updated, and amended, as the case may be, in the name of the City to whom the permit is granted. There is no other entity legally created to pursue these permits and amendments, nor can employees do so as the employees are City employees, and are governed by the City Commission and City Manager.

82. Further, under Fla. Stat. §166.241(6), detailed information including the average municipal employee salary must be presented to the State. A process is detailed on how the budget may be amended. Fla. Stat. §166.241(7).

83. HB 1645 is so unconstitutionally vague as to place the City and its officials at risk for violating the statute and other areas of Florida law, that are contradictory to this special law, without an intent to do so. To the extent that HB 1645's direction to the City can be understood, that direction violates state constitutional law and several general laws.

84. There is a bona fide dispute between the parties, and Plaintiff is in need of a Declaratory Judgment to protect its rights and to protect itself from unintentionally violating the terms of HB 1645.

BASIS FOR INJUNCTIVE AND DECLARATORY RELIEF

85. Unless the actions, policies and practices of Defendants are enjoined by this Court, Gainesville will suffer the continuing loss of its statutory and constitutional rights.

86. Gainesville has suffered irreparable injury and will continue to suffer irreparable injury as a result of the HB 1645.

87. Gainesville does not have an adequate or complete remedy to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

88. As stated herein, due to the numerous violations of the Florida Constitution, U.S. Constitution and Florida law, Gainesville has a substantial likelihood of success on the merits.

89. The threatened injury to Gainesville outweighs any possible harm to the State.

90. The granting of injunctive relief will not disserve the public interest public interest, and in fact, would protect the rights of Gainesville residents.

91. The City of Gainesville seeks to comply with applicable laws, but is uncertain in how to implement this law and still adhere to other laws and constitutional provisions, and has a need for the Court to issue a Declaratory Judgment due to that uncertainty.

92. All conditions precedent have been waived or have been performed.

COUNT I – HB 1645 VIOLATES ARTICLE I, SECTION 9 OF THE FLORIDA CONSTITUTION (DUE PROCESS)

93. Gainesville realleges the facts and exhibits set forth in Paragraphs 1-6, 8, and 10-92, and exhibits referenced therein, and incorporates those facts and exhibits into this Count by this reference.

94. This is an action for Declaratory Judgment under Chapter 86 of the Florida Statutes.

95. HB 1645 is ambiguous, unconstitutionally vague, so as to deny the city due process, and internally inconsistent. Furthermore, it conflicts with general law, and leaves the City unable to discern what rights the City has retained.

96. HB 1645 is so vague in its use of terms that "anyone of common intelligence must necessarily guess at its meaning and differ as to its application."

97. For example, HB 1645 appoints five (5) members of a board by the Governor, but states it is a "municipal unit." The term "municipal unit" has no definition in law that negates the role of the municipal elected legislative body. The term is ambiguous because, to the extent that the legislation intended to create an agency, a municipal agency or unit as described in Florida statutes must be controlled by the elected officials. This is not the case here.

98. The running of the Utility System falls within the purview of Florida Statute 180, and as well as falling within the powers of a municipality granted under the Florida Constitution: art. II (by negative implication) art. VIII (expressly).

99. From the legislative history, the impetus for the passage of HB 1645 appears to be a belief among some customers that the City of Gainesville moves too much money out from its enterprise fund for utilities into its general fund. There is a remedy for excessive transfers, however, under Fla. Stat. §180. As a general law, the rights and process for such challenges cannot be modified by a special act.

100. Moreover, any customer of any private electric, water, or wastewater facility has no more authority or control over rates – indeed has less – than those who are customers of municipal utility systems. For example, if the customers based in Alachua County were customers of a private utility, their only recourse for what they consider excessive charges would be through a rate-challenge before the Public Service Commission, with the detailed rules for rate-creation being analyzed through experts.

101. In contrast, if customers in Alachua County believe their rates are too high due to excessive charges, they have the remedies provided in Chapter 180, which, by general law, provides the maximum additional charge to non-resident customers, and provides a pathway for challenging the underlying costs. They can also appear at public comment before the City Commissioners for the City of Gainesville, or raise concerns with their County Commissioners, given the frequent interaction between cities and their counties.

102. Alachua County, like any other utility customer, does not have the right to complain about rates and have the rates changed merely because they would run the utility differently or feel it is being run badly. Indeed, Gainesville is not obligated to Alachua County to continue operating a utilities system for the county's benefit, and there is nothing stopping Alachua County from creating its own. Instead, chapter 180 provides a process for charges to the county to be limited and reviewed.

103. Further, §180.06 Fla. Stat. provides authority to "municipalities and private companies" to take many actions that cannot be taken by this gubernatorial board, as it is neither a municipality nor a private company. Such actions are necessary, however, to the running of the utility system.

104. Fla. Stat. §180 also provides authority for the pledging of revenues for the payment of utility system infrastructure that cannot be exercised by the gubernatorial authority despite it being named a "municipal unit." Chapter 180 therefore conflicts with HB 1645.

105. Fla. Stat. §180, entitled Municipal Public Works, indeed provides the remedies sought, and thus establishes that there is no need to read into the Florida Constitution gubernatorial powers that nowhere exist therein to create a remedy not available to any other customers.

106. Indeed, this odd bill – creating a municipal "unit" governed by 5 state officers, does not exist anywhere within the State of Florida, and conflicts with Fla. Stat. §180.

107. Fla. Stat. §180 provides that the city council *or other legislative body of the municipality . . . may establish the rates* to be charged and provides a cost for reinforcement. By contrast, and creating a conflict between a general law and a special act, HB 1645 provides a municipality unit, clearly not a legislative body of the municipality, with the rights for setting for collection and termination of utilities.

108. Moreover, HB 1645 has a delay between authorization and the appointment of this Board, in which no entity appears to be in charge of this highly-regulated, critical infrastructure or with the financial obligations of the Utility System. As a result, Gainesville is unsure of its rights and/or obligations under HB 1645 during this purported transitionary period.

109. There is a bona fide, actual, present practical need for the declaration, which deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts. Power(s), privilege(s) or right(s) of Gainesville is dependent upon the facts or the law applicable to the facts. The State has an actual, present, adverse and antagonistic interest in the subject matter of the dispute with Gainesville, and such antagonistic and adverse interests are before the court.

Moreover, the relief sought herein is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

WHEREFORE, the City of Gainesville respectfully requests that the Court:

A. Enter a Declaratory Judgment, declaring that HB 1645 is invalid for violation of Article I, Section 9 of the Florida Constitution, and Fla. Stat. §11.01 et seq, particularly §11.065, and is *void ab initio*;

B. Enjoin the implementation of HB 1645 and its terms, temporarily and permanently;

C. Decree that the City may continue to administer its Utilities System in accordance with laws other than HB 1645; and

D. Grant such other relief as the Court deems just and proper, including awarding costs.

COUNT II – HB 1645 VIOLATES ARTICLE 1, SECTION 10 OF THE FLORIDA CONSTITUTION (PROHIBITING IMPAIRMENT OF CONTRACTS)

110. Gainesville realleges the facts and exhibits set forth in Paragraphs 1-6 8, and 10-109, and exhibits referenced therein, and incorporates those facts and exhibits into this Count by this reference.

111. This is an action under Florida law for declaratory and supplemental relief pursuant to Chapter 86, Fla. Stat. and the Florida Constitution.

112. Florida Constitution Article I, Section 10 prohibits actions that impair contracts and contractual rights, except under extremely limited circumstances.

113. Among other things, the City is uncertain whether HB 1645 violates the terms of outstanding bond issues including the Bond Resolution in Exh. C, and the intended sale of the Gainesville Trunked Radio System (*i.e.*, contracts), causing significant and immediate damage to Gainesville through this uncertainty.

114. A true and correct copy of the Interlocal Agreement between the City of Gainesville and the County of Alachua for the transfer of the Trunked Radio System is attached as **Exhibit 3** and incorporated herein.

115. Gainesville has issued Revenue Bonds, where the revenues from the Utility System are pledged to the repayment of those bonds. A true and correct copy of the 2021 Series A Bonds Official Statement is attached hereto and incorporated herein as **Exhibit 4** and incorporated herein.

116. The terms of the Bond Offering constitute a contract between the City and the bond holders who have purchased the bonds. Specifically, Section 103 of Appendix C, **Exhibit 5** hereto states the City's Bond Resolution provides that the Resolution constitutes a contract with the bondholders (and credit enhancers and hedge providers). *See* **Exhibit 5, Appendix C: Section 103** and incorporated herein.

117. The bonds and other debt instruments issued by Gainesville total approximately $1.8 billion dollars.

118. One or more these include short-term variable debt instruments should be refinancing before October 1 and again between October 1 and January 2024.

119. Pursuant to the 2021 Series A Bonds Official Statement, the City of Gainesville has pledged the revenues of its combined utility system to the payment of these bonds. And pursuant to the City's Bond Resolution, the City is contractually obligated to adhere to its terms. As a municipality, such pledge is imposed on the elected commissioners, to allocate within the state of Florida required budget, sufficient revenues to comply with the bond obligations, and to defend a diminution of its powers over the utilities and revenues thereof.

120. HB 1645 removes the authority from the City of Gainesville to control and allocate the revenues received from its combined utilities, instead prohibiting the City from "interfering" with the running of the utilities, and providing sole control to 5 individuals appointed by the Governor. In doing so, HB 1645 removes the revenues from the revenue bonds, and leaves the bondholders with no revenues for the payment of the City's obligations.

121. HB 1645 separates the revenues from the Utility System from the liabilities of the City, and attempts, to allocate them without any knowledge of the underlying contractual obligations.

122. Further, HB 1645 §7.10(2) states that there is no change in ownership, but that is contrary to the decrees contained within §7.10, which change control and asserts dominance over all aspects of the capital infrastructure now owned by the City of Gainesville. In addition, to comply with the Bond Resolution, ownership and operation of the Utilities System must be in the same entity, which is not the case here if the titular use of ownership prevails over the indicia of ownership.

123. Section 705 of the Bond Resolution also requires that the City set rates sufficient to realize 1.25 times the annual debt service. HB 1645 does not place any constraint or obligation on the gubernatorially appointed 5 members, who can set rates and borrow money with almost no restraints. Indeed, HB 1645 requires only an extremely simplistic approach – more income than expenses, with none of the needed detail or statutory or constitutional compliance. *Compare* the City's Bond Resolution, Exh. 4, Appendix C: Section 705.

124. The 5 appointees cannot comply with the Bond Resolution, or the Bond documents, as they are not an elected legislative body, and cannot take the actions necessary and to which the City is obligated.

125. HB 1645 does not contain any requirement that the 5 gubernatorially appointed members comply with the contractual obligations of the City relating to its Utilities System, including the outstanding debt instruments. Indeed, §7.10(2)

contains a HB 1645 preemption clause, noting that in the event of conflict HB 1645 prevails.

126. Section 715 of the City's Bond Resolution, **Exhibit 5** hereto, is entitled No Diminution of Rights. This contractual obligation, part of each bond issue, obligates the City to "not voluntarily" relinquish its control over the Utilities System. In full, Section 715 provides:

> **Section 715. No Diminution of Rights**. The city will not enter into any contract or arrangement, nor take any action, the results of which might impair or diminish the rights of the Holders of the Bonds. The City, unless prevented by lawful authority beyond control of the City, shall continue to render electric, water, wastewater and other services of the System within the unincorporated areas of Alachua County and shall continue to extend such services as reasonably prudent so to do. The City shall not voluntarily give up any service area of the System unless the City shall determine that such action will not materially impair or diminish the rights of the Holders of the Bonds, and the City shall in good faith resist all efforts which may result in the diminution of such service area. **The City shall not surrender its power and authority to fix and maintain rates and conditions for services of the System, and the City shall in good faith resist all efforts which may result in the abridgement or diminution of any such power and authority.**
>
> (Emphasis supplied.)

127. Thus, the City "shall not surrender its power and authority to fix and maintain rates and conditions for services of the System, and the City shall in good faith resist all efforts which may result in the abridgement *or diminution* of such power and authority." Accordingly, the City seeks the Court's Declaratory Judgment, determining whether HB 1645 is void and or unenforceable.

128. The City's Bond Resolution sets significant contractual terms, and is incorporated therefore into the Official Statement as an offer of securities, under set conditions. Potentially breaching outstanding debt instrument contracts carries with it damages to the City, most being presently incalculable: penalties, fees, attorneys' fees, calling the debt to be paid immediately, increased rates, and an impairment to the City's debt rating which could make it impossible for the City to borrow.

129. Indeed, the City has already had difficulty refinancing outstanding debt, and is unable to move forward for new or refinanced debt. It is this opinion of bond counsel that is required by the market, and which advises that the debt would be tax-exempt. Hence, damage is being incurred presently.

130. It is clear from the express language of HB 1645 that the elected officials, otherwise constitutionally charged with running the City, are barred and prohibited by this State law from exerting any control over the electric system. Such does not comport with ownership and violates the bond covenants. As is typical, there is short-term debt that will need to be re-issued, but which presently cannot be.

131. Further, given the internal contradictory requirements (the new 5 members can borrow money, but are not yet appointed; they can buy real property but the legislation states the City owns everything, but the City cannot exercise any

control over that which it supposedly owns, and more). The City has no known remedy to address this issue, for any action to be taken by the City to address this issue appears to violate the prohibitions regarding control contained in HB 1645.

132. In short, severing the control over revenues and the Utility System generating those revenues, and leaving the City and its lenders without the rights bargained for and agreed upon, requires the City, under the terms of its Bond Ordinance, to challenge HB 1645 in good faith, which it clearly is doing.

133. Section 7.10(2) of HB 1645 states that the utility should be operated as a single enterprise, and that there is "no change to the ownership of the utility system." But if the City owns the system, the City has full control, as an Art. VIII municipality, and must be run by elected officials. And further, the ownership cannot be separated from the transfer of all rights, benefits, and indicia of ownership decreed by the statute. Once again, the sentences are non-sequiturs.

134. Moreover, the City of Gainesville operates what is known as a Trunked Radio System, which provides emergency personnel channels of communication during times of emergency. The emergencies cover weather-related states of emergency, as well as political and other unrest.

135. At times of emergency, it is critical that cities and counties be able to communicate and share resources. Due to the critical infrastructure nature of the Utility System, and the intricate role of electricity and water, the Trunked Radio

System assets and key operation personnel were housed within the utilities system enterprise fund, meaning that the asset and its liabilities and expenses are maintained separately from the general fund and other enterprise funds and subfunds of the City.

136. Being housed within the enterprise fund means that the assets and liabilities are accounted for within that fund. This separation serves many purposes, including simplifying rate making, applying for grants, pledging revenues to debt instruments, and identifying the City's obligations to those who purchase the debt instruments as required by federal law.

137. Based on significant input from the professionals in emergency management, the elected officials in Alachua County and the City of Gainesville agreed to transfer the Trunk Radio System to the County.

138. The contract for the transfer is in the process of being finalized.

139. HB 1645, however, prohibits the City from honoring its agreement with the County, as there is a prohibition of transferring any asset "held in the possession by GRU" as of January 1, 2023 to the authority and obligates the City to create whatever "instruments" are necessary. HB 1645 §7.10(1).

140. Because the City is prohibited from transferring that asset HB 1645 breaches the State constitutional prohibition against the impairment of contracts found in Art. I, Sec. 10 of the Florida Constitution.

141. HB 1645 §7.10(1) also conflicts, internally, as that same section states ownership remains with the City and is not transferred to the Board of five appointed individuals.

142. Further, HB §7.10(1), requires that all properties "held in the possession" of GRU as of January 2023 be transferred. If this Court agrees that GRU, being a fictitious entity, holds nothing, and all assets are "held" by the City, then this provision is a nullity and non-sensical – the City owns the assets, and does not transfer assets it owns to itself.

WHEREFORE, the City of Gainesville respectfully requests that the Court:

A. Enter a Declaratory Judgment, declaring that HB 1645 impairs the City's contractual obligations to transfer the Trunked Radio System, and impairs the City's contractual obligations under the outstanding debt instruments, such as bond issues, which violates Article 1, Section 10 of the Florida Constitution and renders HB 1645 void and of no effect;

B. Enjoin the implementation of HB 1645 and its terms, temporarily and permanently;

C. Decree that Gainesville may continue to administer its Utilities System in accordance with laws other than HB 1645 and that Gainesville may continue administering, executing, and enforcing its debt instruments and obligations; and

D. Grant such other relief as the Court deems just and proper, including awarding costs.

COUNT III
THE SPECIAL LAW IS UNENFORCEABLE BECAUSE IT FAILS TO PROVIDE FOR A REFERENDUM BY THE ELECTORATE OF THE CITY OF GAINESVILLE AS REQUIRED BY §166.021(4), FLA. STAT.

143. Plaintiff realleges the facts set forth in Paragraphs 1 through 92, and incorporate those facts into this Count by reference.

144. This is an action under Florida law for declaratory and supplemental relief pursuant to Chapter 86, Fla.Stat. and the Florida Constitution.

145. The City of Gainesville provides municipal utilities services beyond its borders to Alachua County, and thus exercises extraterritorial powers as defined in Fla. Stat. §166.021(4). More particularly, §166.021(4) decrees the following:

> The provisions of this section shall be *so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution*. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. *However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality* . . . . or any changes in a special law or municipal charter which affect the creation or existence of a municipality, . . . matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, **without approval by referendum of**

> **the electors as provided in s. 166.031**. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

(Emphasis added).

146. Section 7.09 of the Special Law is entitled "Management and personnel" contradicts Fl. Stat. §166.031 by transferring the terms of employment from the City to the Authority:

> A chief executive officer/general manager (CEO/GM) shall direct and administer all utility functions, subject to the rules and resolutions of the Authority. The CEO/GM shall serve at the pleasure of the Authority. Appointment or removal of the CEO/GM shall be by majority vote of the Authority. Until such time as the Authority appoints a CEO/GM, the sitting general manager of GRU shall serve as the CEO/GM. A sitting member of the Authority may not be selected as the CEO/GM.
>
> All officers and employees of the City who serve under the supervision and direction of the sitting general manager of GRU shall serve under the CEO/GM. *The CEO/GM shall have the exclusive authority to hire, transfer, promote, discipline, or terminate employees under his or her supervision and direction*.

(Emphasis added)

147. HB 1645 affects the extraterritorial powers of the City. The Special Law also affects matters prescribed by the charter relating to appointive boards, any change in the form of government (the removal and transfer of its utilities department) and the rights of its municipal employees (whose terms of

employment are now subject *only* to the appointed Board) and thus violates §166.021 by implementing these changes without a referendum.

148. HB 1645 violates §166.031 amending the City's charter in two distinct violations: removing power over extraterritorial exercises, through the utilities system, and transferring the terms of employment for hundreds of City employees – while still requiring that they be City employees – from the legislative body to the Authority.

WHEREFORE, Plaintiff prays for a declaratory judgment, for injunction and supplemental relief awarding some or all of the following relief:

A. That this Court take jurisdiction over the parties and this cause;

B. That this Court declare the Special Law to be invalid because it affects extraterritorial areas and municipal employees and does not include a requirement for a referendum in violation of §166.021(4), Fla.Stat. and is therefore null and *void ab initio*; and

C. That this Court declare the Special Law to be invalid because the notice for the Special Law was inadequate and there was no referendum – a failure which renders therefore the Special Law null and *void ab initio* under Article III, Section 10 of the Florida Constitution.

COUNT IV – HB 1645 VIOLATES ARTICLE III, SECTION 10 OF THE FLORIDA CONSTITUTION, AND FLA. STAT. 11.01 ET SEQ.

149. Gainesville realleges the facts and exhibits set forth in Paragraphs 1-142, and exhibits referenced therein, and incorporates those facts and exhibits into this Count by this reference.

150. This is an action seeking a declaratory judgment, and injunction, against the implementation of HB 1645, on the basis that the legislature violated Article III, Section 10 of the Florida Constitution, and its implementing general law, Fla. Stat. §11.01 et seq.

151. Florida Constitution Article III, Section 10 entitled Special Laws, requires that "[n]o special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law . . . ."

152. Fla. Stat. §11.01, et seq. is the general law implementing this constitutional provision. Fla. Stat. § 11.065 requires that the notice of the special or local legislation shall state the substance of the contemplated law, as required by Article III, Section 10 of the State Constitution.

153. The Notice herein was published in March, before the subsequent amendments to HB 1645, and the description of the bill does not identify that the effect of the bill is to shift complete control of the City Utility System to 5 gubernatorial appointments, and to remove the authority from the elected City Commission, while still keeping the City's department a "municipal unit" and

requiring various employees to work for the intended 5 members before those members are actually seated. Thus this unique law, inserting the State into the running of a City department and attempting to assign municipal powers, was not noticed in accordance with Fla. Stat. §11.065.

154. Fla. Stat. §11.065 requires publishing in accordance with Fl. Stat. §11.02, which requires that the Notice:

> shall be by publishing the identical notice as provided in chapter 50 or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, if the notice is not published on a publicly accessible website as provided in s. 50.0311 and there is no newspaper circulated throughout or published in the county, by posting for at least 30 days at not fewer than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution.

155. In passing HB 1645, however, the legislature failed to publish a notice describing the complete transfer of control of the City's utility system from the City Commission to the Governor's appointments, instead publishing only that the bill "concerns the Gainesville City Commissioner's Governance of the Gainesville Regional Utilities." A true and correct copy of the March 2023 Gainesville Sun Publication is attached hereto and incorporated herein as **Exhibit 6,** Gainesville Sun Publication.

156. But HB 1645 does not "concern the governance" it removes the elected municipal body's control over one of its own departments – its Utility System. It removes the City Commission of its oversight role, and inserts 5 gubernatorial appointees into this City department to run a Utilities System, while attempting to imbue them with all the power of the elected officials and declaring them a "municipal unit."

157. The hearings were published as occurring in mid-March. *See* Exh. 6. The Gainesville Sun Publication states only that the subject "concerns the Gainesville City Commission's governance of Gainesville Regional Utilities." *Id.*

158. The Representative determined on April 15, 2023, a month after the last hearing regarding the bill pursuant to the published notice, without any basis in fact, nonetheless certified that there was no need to republish the bill, as HB 1645 – determining that removing a City Department from the control of the elected officials, and making it subject to 5 gubernatorial appointments was "consistent with the published notice of intent . . . ." that stated the bill "concerned the governance" of the utilities. A true and correct copy of the Local Bill Amendment Form is attached hereto and incorporated herein as **Exhibit 7**. Note the publication date of the aforesaid general notice – March 9, 2023.

159. Pursuant to Fla. Stat. §11.065, the notice should have been published to accurately state that the bill was to remove the utilities system from the City's

control and would not be controlled, as in the original bill by the City, as all other departments were, but would uniquely, have 5 gubernatorial appointees controlling the City's utility system outside of the City's control.

160. Lest there be any doubt of who is in control of this City Department, HB 1645 makes it clear it is the 5 appointed members, and the Governor, see Article VII, Gainesville Regional Utilities Authority, 7.01 Establishment:

> There is created a regional utilities authority to be known as the "Gainesville regional Utilities Authority." ("Authority") Gainesville Regional Utilities (the City department, with this fictional name) shall be governed by the Authority upon installation of the Authority's members pursuant to this article. **The Authority shall operate as a unit of city government and, except as otherwise provided in this article, shall be free from direction and control of the Gainesville City Commission. The Authority is created for the express purpose of managing, operating, controlling, and otherwise having broad authority with respect to the utilities owned by the City of Gainesville**.

Emphasis supplied.

161. The sole citation of any statute changed was to the Charter's article 3.06, of 1990-394 which is the Charter article that created the Charter position managing the Utility System. There is no reference to Fla. Stat. §166, §180, or §189.

162. On May 5, 2023, the present and enrolled version, substituting the Governor's appointments for the City Commissioners, and thus removing a City

department from City control (by the bill's express terms) was passed by the legislature. No published notice of this unique action was ever made.

WHEREFORE, the City of Gainesville respectfully requests that the Court:

A. Enter a Declaratory Judgment, declaring that HB 1645 is invalid for violation of Article III, Section 10 of the Florida Constitution, and Fla. Stat. §11.01 et seq, particularly 11.065, and is *void ab initio*;

B. Enjoin the implementation of HB 1645 and its terms, temporarily and permanently;

C. Decree that the City may continue to administer its Utilities System in accordance with laws other than HB 1645; and

D. Grant such other relief as the Court deems just and proper, including awarding costs.

COUNT V – HB 1645 VIOLATES ARTICLE IV, SECTION I OF THE FLORIDA CONSTITUTION

163. Gainesville realleges the facts and exhibits set forth in Paragraphs 1-162, and exhibits referenced therein, and incorporates those facts and exhibits into this Count by this reference.

164. This is an action for Declaratory Judgment under Chapter 86 of the Florida Statues.

165. The governor can exercise only those powers granted by the Constitution.

166. With regard to municipalities, Art. IV, Sec. 1, Fla. Const. only grants the Governor two powers, to "require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices," and the power to initiate judicial proceedings against municipal officers. Specifically, Art. IV, Sec. 1, Fla. Const. states:

> (a) The supreme executive power shall be vested in a governor, who shall be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government. The governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices. The governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state.
>
> (b) The governor may initiate judicial proceedings in the name of the state against any executive or administrative state, county or municipal officer to enforce compliance with any duty or restrain any unauthorized act.

167. This is because municipal officers are not state officers, but are municipal officers. They are elected and granted the power necessary to the performance of their functions and protection of their citizens in their persons and property.

168. "A municipal officer is neither a state officer nor a county officer, although he may be either in addition to being a state officer, unless the statute

pertaining to the municipal officer forbids." *In re Opinion of the Justices*, 163 So. 410, 411 (Fla. 1935).

169. While Art. IV, Sec. 1(f) grants the Governor the right to fill any vacancy in a state or county office, again, it does not grant this right with regard to municipalities:

> (f) When not otherwise provided for in this constitution, the governor shall fill by appointment any vacancy in state or county office for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election.

170. It is clear that provision does not authorize the governor to fill vacancies in municipal offices. 1961 Florida Op. Atty. Gen., 061-185, Nov. 15, 1961.

171. HB 1645 subverts the Constitution and allows the Governor to (i) fire the current municipal officers, and (ii) appoint five (5) members of his choosing.

172. This power is stated nowhere in the Constitution, and as such, does not exist. Further, the Legislature cannot convey this power to the Governor.

173. As such, Gainesville is uncertain as to their rights and remedies under HB 1645.

WHEREFORE, the City of Gainesville respectfully requests that the Court:

A. Enter a Declaratory Judgment, declaring that HB 1645 is invalid for violation of Article IV, Sec. I of the Florida Constitution and is *void ab initio*;

B. Enjoin the implementation of its terms, temporarily and permanently;

C. Decree that the City may continue to administer its Utilities System in accordance with laws other than HB 1645; and

D. Award costs and provide such other relief as is just and proper.

COUNT VI – HB 1645 VIOLATES ARTICLE VIII, SECTIONS 2 AND 4 OF THE FLORIDA CONSTITUTION.

174. Gainesville realleges the facts and exhibits set forth in Paragraphs 1-6, 8, and 10-173, and exhibits referenced therein, and incorporates those facts and exhibits into this Count by this reference.

175. This is an action for a Declaratory Judgment pursuant to Fla. Stat. 86.01 et seq. There is a present and actual dispute on which the Plaintiff needs a Declaration from the Court to determine, as to the requirements under Art. VIII, Sec. 2 and Sec. 4 of the Florida Constitution.

176. The powers of Municipalities are set for in Art. VIII, Sec. 2:

> **Municipalities**, (b) POWERS. Municipalities shall have governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

177. Thus, under Art. VIII, Sec. 2, each municipal legislative body shall be elective. The 5 gubernatorial appointments cannot be municipalities, nor can they be a municipal legislative body, as they are not elective.

178. Art. VIII, Sec. 4 of the Florida Constitution is entitled **Transfer of powers**. It is acknowledged that the legislature may amend the Charter for the City. But the legislature cannot do so in a manner that violates Art. VIII, Sec. 4 or any other provision of the Florida Constitution, the United States Constitution, or Florida law that is not amended by this Special Law.

179. Art. VIII, Sec. 4 provides that by resolution of the city, any function may be transferred to another "county, municipality or special district" after a referendum or "as otherwise provided by law."

180. Thus Art. VIII, Sec. 4 defines the entities that are allowed to transfer between themselves, and the process by which those transfers may be made. Those entities are limited to counties, municipalities, and special districts. The 5 gubernatorial appointments do not qualify as any of those entities.

181. HB 1645 violates Art. VIII, Sec. 4 by requiring that a transfer occur between a municipality and 5 individuals, forming some sort of a board, that are not a county, municipality, or special district.

182. HB 1645 does not transfer the City's Utilities System department to a "county, municipality, or special district" but instead transfers it to 5 individuals who are appointed by the Governor (the "5") and who are supposed to be a "municipal unit." Neither boards appointed by a Governor nor the undefined "municipal unit" are approved entities for transfer under Art. VIII, Sec. 4.

183. The 5 are not a county, municipality, or special district.

184. Nothing in HB 1645 evinces an intent to create a special district, and, pursuant to Ch. 189, Fla. Stat., electric utility services cannot be transferred to a special district even if such intent had been expressed. *See* Fla. Stat. 1961 Florida Op. Atty. Gen., 061-185, Nov. 15, 1961. §189.012(6) (in defining special district, the term does not include "a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.")

185. The Gainesville Utilities System, to be transferred to the 5, includes an electric utility and is part of a department within a municipality.

186. Further, even if Fla. Stat. §189.012(6) were in applicable, Section 189.012 similarly defines a "dependent special district," and local governing authority to include only counties and municipalities.

187. Hence, Fla. Stat. Ch. 189 incorporates Art. VIII, Sec. 4 limitations.

188. Finally, Fla. Stat. §189.013 makes clear that Art. VIII, Sec. 4 is violated by Ch. 189 when its provisions are abrogated, by stating the following:

> All special districts, regardless of the existence of other, more specific provisions of applicable Law, **shall comply with the creation, dissolution, and reporting requirements set forth in this chapter**.

189. Thus Ch. 189 demonstrates a pre-emption that is not addressed by the Special Act, and the Special Act is subservient to Ch. 189.

190. Accordingly, where Art. VIII, Sec. 4 limits the transfer of responsibilities to between counties and cities and special districts (also prohibiting electric services transfers within special districts) and between either of the two foregoing like entities, there is no authority in Art. VIII, Sec. 4 for transferring such power to the State of Florida via the appointment of the 5.

191. HB 1645, in inserting the appointment by the Governor and causing a transfer of control over a municipal department, violates Art. VIII, Sec. 4 and is therefore void.

192. Immediate relief is necessary due to the chaos created by HB 1645 which purports to remove control effective July 1, 2023, including the termination of a position within the Charter, and which prevents the City from managing its own finances in accordance with Florida constitutional and statutory law.

WHEREFORE, the City of Gainesville respectfully requests that the Court:

A. Enter a Declaratory Judgment, declaring that HB 1645 is invalid for violation of Article VIII, Section 4 of the Florida Constitution and is *void ab initio*;

B. Enjoin the implementation of its terms, temporarily and permanently;

C. Decree that the City may continue to administer its Utilities System in accordance with laws other than HB 1645; and

D. Award costs and provide such other relief as is just and proper.

COUNT VII – HB 1645 VIOLATES FLA. STAT. CHAPTER 180

193. Gainesville realleges the facts and exhibits set forth in Paragraphs 1-6 8, and 10-192, and exhibits referenced therein, and incorporates those facts and exhibits into this Count by this reference.

194. This is a claim for declaratory judgment pursuant to Chapter 86, Florida Statutes.

195. Special law HB 1645 is invalid because it violates various provisions of Fla. Stat. Ch. 180, that empower the "city council or other legislative body" to manage municipal public utilities, and specifically, water, sewer, reuse, natural gas, and electric.

196. Section 7.03 of HB 1645, however gives an appointed gubernatorial body broad powers over GRU municipal public utilities, in part stating:

> 7.03 Powers and duties.-
>
> (1) The Authority shall have the following powers and duties, in addition to the powers and duties otherwise conferred by this article:
>
> (a) ***To manage, operate, and control the utilities***, and to do all things necessary to effectuate an orderly transition of the management, operation, and control of the utilities from the City to the Authority, consistent with this article.
>
> (b) ***To establish and amend the rates, fees, assessments***, charges, rules, regulations, and policies governing the sale and use of services provided through the utilities.
>
> (c) ***To acquire real or personal property and to construct such projects as necessary to operate, maintain, enlarge, extend, preserve,***

and promote the utility systems in a manner that will ensure the economic, responsible, safe, and efficient provision of utility services, provided that title to all such property is vested in the City.

(d) ***To exercise the power of eminent domain pursuant to chapter 166, Florida Statutes, and to use utility funds to appropriate or acquire property***, excluding federal or state property, for the purpose of obtaining, constructing, and maintaining utility facilities, provided that title to all such property is vested in the City.

(e) ***To authorize the issuance of revenue bonds and other evidences of indebtedness of the City, secured by the revenues and other pledged funds and accounts of the utility system***, pursuant to Florida law. Upon resolution of the Authority establishing the authorized form, terms, and purpose of such bonds, for the purpose of financing or refinancing utility system projects, and to exercise all powers in connection with the authorization of the issuance, and sale of such bonds by the City as conferred upon municipalities by part II of chapter 166, Florida Statutes, other applicable state laws, and section 103 of the Internal Revenue Code of 1986. Such bonds may be validated in accordance with chapter 75, Florida Statutes. The Authority may not authorize the issuance of general obligation bonds. Such bonds and other forms of indebtedness of the City shall be executed and attested by the officers, employees, or agents of the City, including the chief executive officer/general manager (CEO/GM) or chief financial officer of the utility system, the Authority has so designated as agents of the City. The Authority may enter into hedging agreements or options for the purpose of moderating interest rates on existing and proposed indebtedness or price fluctuations of fuel or other commodities, including agreements for the future delivery thereof, or any combinations thereof.

(f) ***To dispose of utility system assets*** only to the extent and under the conditions that the City Commission may dispose of such assets pursuant to section 5.04 of Article V. control establish rates and charges for utility services within the territory of the Gainesville Regional Utilities.

(Emphasis added.)

197. Fla. Stat. §180.03(1), provides in part as follows:

> (1) When it is proposed to exercise the powers granted by this chapter, a resolution or ordinance shall be passed by the city council, ***or the legislative body of the municipality***, by whatever name known, reciting the utility to be constructed or extended and its purpose, the proposed territory to be included, what mortgage revenue certificates or debentures if any are to be issued to finance the project, the cost thereof, and such other provisions as may be deemed necessary. ***

(Emphasis added.)

198. The 5 appointed members cannot be "the legislative body of the municipality" as municipal legislative bodies must be elected under Art. VIII, Sec. 2 of the Florida Constitution.

199. Section 180.13(2), Fla. Stat. provides in part as follows:

> The city council, ***or other legislative body of the municipality***, . . . may establish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby; * * *

(Emphasis added.)

200. Special law HB 1645 empowers the 5 individuals, appointed by the Governor, named the "Authority" to the exclusion of the municipal legislative body, the city commission, to exercise these and other powers over municipal public utilities. This is inconsistent and violative of Ch. 180.

201. The principle of local self-government is predicated on the theory that the citizens of each municipality or governmental subdivision of a state should

determine their own local public regulations and select their own local officials pursuant to Art. 1 of the Florida Constitution.

202. The Constitution of the State of Florida, Article VIII, provides as follows:

> SECTION 2. Municipalities.—
>
> (a) Establishment. Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors.

203. While the state may establish or abolish municipalities, it cannot take all authority and transfer it willy-nilly to boards or individuals under the Florida Constitution.

204. Further, the Constitution of the State of Florida, Article VIII, Section 2 states:

> (b) Powers. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. ***Each municipal legislative body shall be elective***.

(Emphasis added.)

205. The 5 gubernatorial appointments comprising the Authority are not an "*other legislative body of the municipality*" under Chapter 180, Fla. Stat. Rather, the 5 appointees would be an independent, ***unelected*** board, appointed by the Governor but exercising complete dominion over City funds and employees.

206. As such, Gainesville is uncertain as to their rights and remedies under Special law, HB 1645 as it may be applied to the Plaintiff in violation of Fla. Stat. §§180.03(1) and 180.13(2), which themselves are implementing the Florida Constitution.

WHEREFORE, the City of Gainesville respectfully requests that the Court:

A. Enter a Declaratory Judgment, declaring that HB 1645 is invalid for violation of Fla. Stat. Chapter 180, and is *void ab initio*;

B. Enjoin the implementation of its terms, temporarily and permanently;

C. Decree that the City may continue to administer its Utilities System in accordance with laws other than HB 1645; and

D. Award costs and provide such other relief as is just and proper.

COUNT VIII –HB 1645 VIOLATES ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION (FINANCE AND TAXATION, LOCAL BONDS)

207. Gainesville realleges the facts and exhibits set forth in Paragraphs 1-6 8, and 10-206, and exhibits referenced therein, and incorporates those facts and exhibits into this Count by this reference.

208. Article VII, Sec. 18, Finance and Taxation, limits the State's ability to authorize spending that the municipality must pay for without agreement:

a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been

> appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

209. HB 1645, 7.03, Powers and Duties purports to grant the 5 gubernatorial appointments, denominated as a "municipal unit," the power to issue debt. In doing so HB 1645 grants to the "Authority" the powers that have been reserved under the Florida Constitution to the municipality, Gainesville. Those powers include empowering this "Authority" to borrow money on the City's account and to the City's detriment:

> (e) [The 5 gubernatorially appointed members of the Authority are empowered][t]**o authorize the issuance of revenue bonds and other evidences of indebtedness of the City,** secured by the revenues and other pledged funds and accounts of the utility system, pursuant to Florida law. **Upon resolution of the Authority** establishing the authorized form, terms, and purpose of such bonds, for the purpose of financing or refinancing utility system projects, **and to exercise all powers in connection with the authorization of the issuance, and sale of such bonds by the City as conferred upon municipalities by part II of chapter 166,** Florida Statutes, other applicable state laws, and section 103 of the Internal Revenue Code of 1986. Such bonds may be validated in accordance with chapter 75, Florida Statutes. The Authority may not authorize the issuance of general

> obligation bonds. **Such bonds and other forms of indebtedness of the City shall be executed and attested by the officers, employees, or agents of the City, including the chief executive officer/general manager (CEO/GM)** or chief financial officer of the utility system, the Authority has so designated as agents of the City. The Authority may enter into hedging agreements or options for the purpose of moderating interest rates on existing and proposed indebtedness or price fluctuations of fuel or other commodities, including agreements for the future delivery thereof, or any combinations thereof.

210. HB 1645 therefore violations Art. VII, Sec. 18 as 5 persons appointed by a Governor and denoted an "Authority" does not constitute a municipality, but authorizes expenditures that have to be made by a municipality, Gainesville, but that have not been budgeted, or approved by 2/3 of the State Legislature.

211. Accordingly, the provisions directing that these 5 individuals can borrow funds and pledge revenue and "other evidences of indebtedness of the City of Gainesville," violates the Florida Constitution. Elected bodies, or created bodies with taxing power are identified specifically in the Florida Constitution, and implementing statutes require concomitant hearings and other responsibilities before funds are borrowed and to be done so under the laws under which municipalities operate.

212. Clearly this non-elected "Authority" has no constitutional power to "borrow other revenues" and pledge the City – not themselves – to repay it, thus obligating the citizens of Gainesville to the payment of City debt with no avenue of

input as would happen within an elected municipal commission. This violates the Florida Constitution and statutes as expressly stated therein.

213. Moreover, the reference to Fla. Stat. §166 only provides another route for invalidating the Special Act, HB 1645. Fla. Stat. §166 was drafted to comply with the Florida Constitution, not to supplant it as does HB 1645.

214. Under Fla. Stat. §166.111, **Authority to borrow** – it is the elected municipal commission that is authorized to borrow money and to issue bonds – not an appointed group of individuals by the governor.

215. Fla. Stat. §166.111, **Authority to borrow** provides:

> The **governing body of every municipality** may borrow money, contract loans, and issue bonds as defined in s. 166.100 to finance the undertaking of a capital or other project for the purposes permitted by the state constitution and may pledge the funds, credit, property, and taxing power of the municipality for the payment of such debts and bonds.

Emphasis supplied.

216. Of course, Fla. Stat. §166 does not authorize (and cannot constitutionally authorize) 5 individuals appointed by the Governor to incur debt that the municipality must pay. This is, however, exactly what the Special Act, HB 1645 purports to grant to them:

> *To authorize the issuance of revenue bonds and other evidences of indebtedness of the City*, secured by the revenues and other pledged funds and accounts of the utility system, pursuant to Florida law . . .

> *and to exercise all powers in connection with the authorization of the issuance, and sale of such bonds by the City as conferred upon municipalities by part II of chapter 166*, Florida Statutes . . . .

217. Accordingly, the Special Law, HB 1645 violates Art. VII, Sec. 12 of the Florida Constitution.

218. There is an immediate danger, and need for clarification, given the breadth of the ability of these 5 appointed individuals to borrow whatever money the market will lend to them, in the name of the City of Gainesville. The damage to the City's credit rating, and the cost of the damage – which is inestimable, lying in part in reputation and confusion, warrants immediate relief. The damage to the Florida Constitution would be inestimable.

WHEREFORE, the City of Gainesville respectfully requests that the Court:

A. Enter a Declaratory Judgment, declaring that HB 1645 is invalid for violation of Article VII, Section 12 of the Florida Constitution and is *void ab initio*,

B. Enjoin the implementation of its terms, temporarily and permanently; and

C. Decree that the City may continue to administer its Utilities System in accordance with laws other than HB 1645; and

D. Award costs and provide such other relief as is just and proper.

COUNT X – SPECIAL ACT HB 1645 VIOLATES FLA. STAT. 166

219. Gainesville realleges the facts and exhibits set forth in Paragraphs 1-218, and exhibits referenced therein, and incorporates those facts and exhibits into this Count by this reference.

220. Fla. Stat. §166.021 **Powers** states:

> (1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, *except when expressly prohibited by law*.
> * * *
> (3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except: . . .
> (c) Any **subject expressly preempted** to state or county government by the constitution **or by general law**;

221. HB 1645 is a Special Law, and hence the provision of utilities, being a recognized municipal power, cannot be pre-empted and transferred to the state by a special law.

222. Fla. Stat. §166.041 Procedures for adoption of ordinances and resolutions provides for the method of passing municipal resolutions and ordinances. Neither of these are capable of being performed by the 5 gubernatorial appointees.

223. Fla. Stat. §166.045 Proposed purchase of real property by municipality; confidentiality of records; procedure mandates precise elements that must be accomplished to purchase real property. However, Special Law HB 1645 provides that the 5 gubernatorial appointees have these same powers, even though they are incapable of following the provisions of Fla. Stat. §166.045 as they require submission and approval to the City Commissioners, not an appointed Authority.

224. Fla. Stat. §166.048 Conservation of water; Florida-friendly landscaping requires the City to consider various elements, the consideration of which, may be determined to be "social, political, or ideological" in contravention of HB 1645, Section 7.12 prohibiting such considerations by the 5 appointed members, whose duties include water, reuse water, and the collection of revenues from the sale of such water.

225. HB 1645 also attempts to vest the Authority with powers that are exclusively those of the municipal, elected, legislative body. Fla. Stat. §166.101 and Fla. Stat. §166.111 provides the statutory authority for borrowing funds:

> The governing body of every municipality may borrow money, contract loans, and issue bonds as defined in s. 166.101 from time to time to finance the undertaking of any capital or other project for the purposes permitted by the State Constitution and may pledge the funds, credit, property, and taxing power of the municipality for the payment of such debts and bonds.

226. The 5-member board is not a municipality, but is still granted the powers in HB 1645 to borrow money, *on behalf of the City.* There is no statutory support for such authority – 5 gubernatorial appointees being able to borrow and pledge the revenues of the City – a municipality.

227. Fla. Stat. §166.121(1) and (2) clearly provide that the governing body of the municipality, which for Gainesville is the City Commission, must take certain actions, including by resolution or indenture. These actions, if taken by the 5 gubernatorial appointees, are *ultra vires* and if taken by those appointees, violates Fla. Stat. §166.

228. HB 1645, §7.12, contains express restrictions on the City Commission's interactions, both in speech and action, concerning the City's Utility System. These prohibitions include the use of broad categories of speech included as prohibited considerations. In addition to the prohibited considerations, the City Commission is required to consider the budget of the 5 gubernatorial appointees, but cannot consider "social, political, or ideological interests."

229. The elected officials, in approving a budget, as required under Article VII, Section 10 of the Florida Constitution, and Fla. Stat. §166.241, cannot be prohibited from hearing constituent concerns relating to considering "social, political, or ideological interests." Indeed, by directing that certain interests be excluded, the legislation *creates* a political position – defining best practices

contrary to utilities best practices, and precludes the discussion and implementation in the budget process due to these vague concepts.

230. In addition, and as a separate violation, HB 1645 purports to create some type of municipal authority, with eminent domain powers. But pursuant to Fla. Stat. §166.401, there are significant requirements to exercising eminent domain with which the Governor's Authority cannot comply, such as the local governing body adopting a resolution authorizing the acquisition of the property. This is a municipal power, and the municipality is granted this power, not an "Authority" appointed by the Governor that is not answerable to the municipality.

WHEREFORE, the City of Gainesville respectfully requests that the Court:

A. Enter a Declaratory Judgment, declaring that HB 1645 is invalid for violation of Fla. Stat. §§ 166.021, 166.041, 166.045, 166.101, 166.111, 166.121, and 166.401, and is *void ab initio* such that the 5 gubernatorial appointees cannot borrow in the name of the City nor any of its departments, or the inaptly named "municipal unit;"

B. Enjoin the implementation of HB 1645 and its terms, temporarily and permanently;

C. Decree that the City may continue to administer its Utilities System in accordance with laws other than HB 1645; and

D. Grant such other relief as the Court deems just and proper, including awarding costs.

Dated: July 21, 2023

AKERMAN LLP

By: */s/ Cindy A. Laquidara*

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VERIFICATION BY THE CITY OF GAINESVILLE, FLORIDA

I, Kristen J. Bryant, am Interim City Clerk of the City of Gainesville, Florida ("**Gainesville**"), and as such, am an authorized representative of Gainesville and specifically am authorized to execute this Verification on behalf of Gainesville. I am over the age of twenty-one (21), and I am familiar with and have personal knowledge of the facts asserted in this Verified Complaint.

All records attached to the Verified Complaint filed herein are true and correct copies of documents created at or near the time of the described events by, or from information transmitted by, a person with knowledge of the described events. In addition, all of these documents were kept in the course of a regularly conducted business activity and it was the regular practice of that business activity to make such documents.

Under penalties of perjury, I declare that I have read the foregoing Verified Complaint and that the facts stated in it are true to the best of my knowledge and belief.

CITY OF GAINESVILLE, FLORIDA

By: _____
Name: Kristen J. Bryant
Its: Interim City Clerk

STATE OF FLORIDA)
) ss:
COUNTY OF ALACHUA)

The foregoing instrument was sworn to and subscribed before me by means of physical presence this 21 day of July, 2023, by Kristen J. Bryant, who is:

personally known to me; or

produced a driver's license issued by the _____ Department of Highway Safety and Motor Vehicles as identification; or

produced the following identification: _____

_____
NOTARY PUBLIC, STATE OF FLORIDA

BETSY L. BYRNE
Notary Public - State of Florida
Commission # HH 163197
My Comm. Expires Oct 2, 2025
Bonded through National Notary Assn.

_____
(Print, Type or Stamp Commissioned Name of Notary Public)