

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GAINESVILLE RESIDENTS UNITED,)
INC., a Florida not-for-profit corporation,)
IRVING W. WHEELER, JR.,)
ROBERT HUTCHINSON,)

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

SUSAN BOTTCHER,)
MICHAEL VARVEL,)
EVELYN FOXX and)
JOSEPH W. LITTLE,)

Plaintiffs,)

vs.)

RON DESANTIS, in his official capacity as)
Governor of the State of Florida,)
ASHLEY MOODY, in her official capacity)
as Attorney General of the State of Florida,)
CORD BYRD, in his official capacity as)
Secretary of State of the State of Florida,)
and the Nominal Defendant,)
CITY OF GAINESVILLE, a Florida)
municipal corporation,)

Defendants.)

**DEFENDANT CITY OF GAINESVILLE, FLORIDA'S ANSWER AND
AFFIRMATIVE DEFENSES TO THE VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND DAMAGES**

The City of Gainesville (the "City") submits this Answer and Affirmative
Defense to the Counts and allegations against it and states as follows:

JURISDICTION

1. Admits for jurisdictional purposes.
2. Admits for jurisdictional purposes.
3. Admits for jurisdictional purposes.
4. Admits for jurisdictional purposes.
5. Admits for jurisdictional purposes.
6. Admits for jurisdictional purposes.
7. Admits for jurisdictional purposes.

VENUE

8. Admits for purposes of establishing venue.

PARTIES

9. Without knowledge.
10. Without knowledge.
11. Without knowledge.
12. Without knowledge.
13. Without knowledge as to any averred limitations upon Plaintiffs. Admits that Plaintiffs have defined the City's utilities system by the fictitious name of “Gainesville Regional Utilities” or “GRU”, and admits footnote 1 that such name is merely the fictitious name under which the City of Gainesville

provides utility services through departments of the City, and is not a legal entity with the capacity to sue or be sued.

14. Without knowledge.
15. Without knowledge.
16. Without knowledge.
17. Without knowledge.
18. Without knowledge.
19. Without knowledge.
20. Without knowledge.
21. Without knowledge, but admits “Gainesville Regional Utilities” and "GRU" is merely the fictitious name under which the City of Gainesville provides utility services through departments of the City, and is not a legal entity with the capacity to sue or be sued.
22. Admits that Bottcher has sued the City previously, without knowledge regarding the remaining allegations.
23. Admits.
24. Without knowledge.
25. Admits; provided however, that there is no official policy of the City directing Customer Services employees to consider “Diversity, Inclusion, and Equity efforts” in resolving customer issue.

26. Without knowledge.
27. Admits.
28. Without knowledge.
29. Without knowledge. “Gainesville Regional Utilities” was not defined as GRU in this paragraph, and although Plaintiffs define GRU as a city department of utilities that is not a separate legal entity, Defendant confirms that Gainesville Regional Utilities, like the acronym GRU is merely the fictitious name under which the City of Gainesville provides utility services through departments of the City, and is not a legal entity with the capacity to sue or be sued.
30. Without knowledge.
31. Admits “Gainesville Regional Utilities” or “GRU” is merely the fictitious name under which the City of Gainesville provides utility services through departments of the City, and is not a legal entity with the capacity to sue or be sued.
32. Without knowledge. “Gainesville Regional Utilities” or “GRU” is merely the fictitious name under which the City of Gainesville provides utility services through departments of the City, and is not a legal entity with the capacity to sue or be sued.
33. Admits that Mr. Little's bonds were issued by the City of Gainesville secured by revenue generated by the City’s Utility Systems and state that the terms of

the bonds speak for themselves. Denies that any obligations or covenants related to the City of Gainesville debt instruments have been breached to the City's knowledge as the City is presently pursuing relief from the Special Act.

34. Admits.

35. Admits.

36. Admits.

37. Admits that the special law removed the Commission from control, admits that HB 1645 attempts to transfer that power through the Governor to the Authority. The City further admits that it remains liable for debt issued in its name prior to the creation of the Authority, and denies that the A, and admits further that, while the City is unfamiliar with the term "unit" in any legal sense, the GRU is simply a fictitious name for the City's utilities system which itself is a collection of utilities and services provided by the City *qua* city.

38. Denies that there is any doubt over whether "the Authority" is an entity capable of being sued; admits that Plaintiffs have a right to seek a Declaratory Judgment due to the existence of HB 1645.

39. Denies that "unit" is a legal form capable of independence, as it has no corporate or recognized statutory form, and further denies that the legislation has the legal right to seize a municipal department and run it as if the 5

gubernatorial appointees were the Board of a private corporation. Admits the remaining allegations.

40. Admits.

COLOR OF STATE LAW

41. Admits.

42. Admits.

HISTORY OF GAINESVILLE REGIONAL UTILITIES

43. Admits.

44. Admits that the City operates utility systems through its City employees to provide utility services under the fictitious name “Gainesville Regional Utilities” or “GRU.

45. Denies the characterization that GRU – the City's utilities – has or have played an “out-sized role within the City. Denies that the City has withdrawn any more funds than it was entitled to do so under Chapter 180, Fla. Stat.

a. Admit that losing the right to transfer revenue, as granted by the Legislature to all municipal utilities damages the City and causes the City to reassess legislative priorities, including rates of ad valorem taxes.

b. Admits.

- c. Admits that the elective City Commission makes a wide variety of legislative decisions, and that each member of the City Commission is elected by the electors of the City. Without knowledge as to the remainder.
- 46. Admits that prior to the effective date of the special law HB 1645, the elective City Commission appointed the charter officer General Manager for Utilities who served at the pleasure of the City Commission.
- 47. Admits that prior to the effective date of the special law HB 1645, the elective City Commission appointed the charter officer General Manager for Utilities who was subject to the policies of the City Commission.
- 48. Admits.
- 49. Admits that since the inception of a municipal utility system by the City of Gainesville, it has been subject to the control of the elective City Commissioners elected by the electors.
- 50. Admits.
- 51. Admits.
 - a. Admits.
 - b. Admits.
 - c. Admits.
 - d. Admits.

- e. Admits.
52. Admits that Plaintiffs have a right to seek a Declaratory Judgment due to the existence of HB 1645. Denies that the law is unclear on Gainesville's rights.
53. Admits.
54. Admits.
55. Admits that the legislation so states; denies that the legislation is valid as it violates the Florida Constitution and Florida Statutory law; without knowledge as to the United States Constitutional violations of the City, and is not a legal entity with the capacity to sue or be sued.
56. Admits that the quotation is accurate; admits that the actions are prohibited and that ipso fact, discussion of an action on the prohibited topics are forbidden. Denies that the language is clear and therefore is uncertain as to the breadth of it.

ALLEGATIONS IN SUPPORT OF INJUNCTIVE RELIEF

57. Without knowledge, but admits that Special Law HB 1645 is vague and ambiguous.
58. Admits that when acts are unconstitutional, they cause the constituents to suffer the loss of their constitutional rights.
59. Admits that HB 1645 violates the Florida Constitution, and that there is irreparable harm from the enactment.

60. Admits that, because HB 1645 violates the State of Florida Constitution, and without knowledge as to the United States Constitution, that there is no adequate remedy other than an injunction or a declaration that Special Law 1645 is void.

61. Admits.

62. Admits.

63. Admits.

DAMAGES AND ATTORNEY'S FEES

64. Denies that the City is violating the First and Fourteenth Amendments as the City did not pass the special law violating those rights, and is powerless, other than through the Court system, from preventing any harm to Plaintiffs. Admits the remaining allegations.

65. Denies that the City has caused or is causing Little financial harm; without knowledge regarding the remaining allegations.

66. Denies that the City is responsible for attorney fees as the City did not pass the special law that violates the rights of the Plaintiffs, and is powerless to prevent the harm other than through the Courts. Without knowledge as to the remaining allegations.

COUNT I

FIRST AMENDMENT – PETITION CLAUSE

67. The City incorporates its answers to Paragraphs 1 through 3 and 6 through 66.

68. Admits for jurisdictional purposes.
69. Admits for jurisdictional purposes.
70. Admits.
71. Admits.
72. Admits.
73. Admits.
74. Without knowledge, but admits that Special Law 1645 creates many legal issues regarding likely constitutional violations of state and federal law.
75. Admits.
 - a. Admits.
 - b. Admits.
 - c. Admits.
 - i. Admits.
 - ii. Admits.
 - iii. Admits.
 - iv. Admits.
76. Admits.
77. Admits.
78. Without knowledge, but admits to potential effects as alleged. Admits that the Special Law HB 1645 is vague and ambiguous .
79. Admits.

- a. Admits.
 - b. Admits.
80. Admits.
- a. Admits.
 - b. Admits.
 - c. Admits.
81. Admits.
82. Admits.
83. Admits.
84. Admits.

WHEREFORE CLAUSE – The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or attorney fees.

COUNT II

**FIRST AMENDMENT – FREE SPEECH – CONTENT-BASED
AND VIEW-POINT BASED DISCRIMINATION**

85. The City incorporates its answers to Paragraphs 1 through 3, 5 through 64, 66 and 79 through 80.
86. Admits for jurisdictional purposes.
87. Admits for jurisdictional purposes.
88. Admits.

- 89. Admits.
 - a. Admits.
 - b. Admits.
 - c. Admits.
 - d. Admits.
 - e. Admits.

90. Admits.

91. Admits.

92. Admits.

93. Admits.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or attorney fees.

94. The City incorporates its answers to Paragraphs 1 through 3, 5 through 64, 66 and 79 through 80.

95. Admits for jurisdictional purposes.

96. Admits for jurisdictional purposes.

97. Admits.

98. Admits.

99. Admits.

100. Admits.

101. Admits.

102. Admits.

a. Admits.

b. Admits.

c. Admits.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or attorney fees.

COUNT IV

SECTION 7.12 OF THE SPECIAL LAW IS UNENFORCEABLE BECAUSE IT IS UNCONSTITUTIONALLY VAGUE

103. The City incorporates its answers to Paragraphs 1 through 4, 6 through 64, 66 and 79 through 80.

104. Admits for jurisdictional purposes.

105. Admits but clarifies that the City's utilities are owned by it, and do not constitute a separate legal entity.

106. Admits.

107. Admits.

108. Admits.

109. Admits

- a. Admits.
- b. Admits.
 - i. Admits.
 - ii. Admits.
 - iii. Admits.
 - iv. Admits.
 - v. Admits.
 - vi. Admits.
- c. Admits.
 - i. Admits.
 - ii. Admits.
 - iii. Admits.
 - iv. Admits.
 - v. Admits.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or attorney fees.

COUNT V

THE SPECIAL LAW IS INVALID BECAUSE IT VIOLATES ART. III, §11(A), FLA. CONST. BY AFFECTING THE DUTIES OF THE GOVERNOR WHO IS AN OFFICER OF THE STATE

110. The City incorporates its answers to Paragraphs 1 through 4, 6 through 63, 66 and 79 through 80.

111. Admits for jurisdictional purposes.

112. Admits for jurisdictional purposes.

113. Admits.

114. Admits.

115. Admits.

116. Admits.

117. Admits.

118. Admits.

119. Admits.

120. Admits.

a. Admits.

b. Admits.

c. Admits.

d. Admits.

e. Admits.

121. Admits.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or costs.

COUNT VI

**FAILURE TO COMPLY WITH THE NOTICE REQUIREMENTS OF
ART. III, §10, FLA. CONST. AND §11.02, FLA. STAT.**

122. The City incorporates its answers to Paragraphs 1 – 4 and 6 - 63.
123. Admits for jurisdictional purposes.
124. Admits for jurisdictional purposes.
125. Admits.
126. Admits.
127. Admits.
128. Admits.
129. Admits.
130. Admits.
131. Admits.
132. Admits.
133. Admits.
134. Admits and admits that Exhibit 3 is a true and correct copy of the final version of the Special Law.
135. Admits.
136. Admits.
137. Admits.
138. Admits.

139. Admits.

140. Admits.

141. Admits.

142. Admits.

143. Admits.

144. Admits.

145. Admits.

146. Admits.

147. Admits.

148. Admits.

149. Admits.

150. Admits.

151. Admits.

152. Admits.

153. Admits.

154. Admits.

155. Admits.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or costs.

COUNT VII

**FAILURE TO COMPLY WITH THE AFFIDAVIT REQUIREMENTS OF
SECTION 11.03, FLORIDA STATUTES**

156. The City incorporates its answers to Paragraphs 1-4, and 6-63.
157. Admits for jurisdictional purposes.
158. Admits for jurisdictional purposes.
159. Admits.
160. Admits.
161. Admits.
162. Admits.
163. Admits.
164. Admits.
165. Admits.
166. Admits.
167. Admits.
168. Admits.
169. Admits.
170. Admits.
171. Admits.
172. Admits.
173. Admits.

174. Without knowledge.

175. Admits that it can be; subject to remove verification, and admits that the verification is invalid as the requirements for remote notarization and attestation are not met on the misnamed "affidavit."

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or costs.

COUNT VIII

THE SPECIAL LAW VIOLATES ART. VIII, §2(B), FLA. CONST.

176. The City incorporates its answers to Paragraphs 1 – 4 and 6 - 63.

177. Admits for jurisdictional purposes.

178. Admits for jurisdictional purposes.

179. Admits but clarifies that the City's utilities are owned by it, and do not constitute a separate legal entity.

180. Admits and states that additional Florida Constitutional provisions also bar this action.

181. Admits.

182. Admits.

183. Admits.

184. Admits.

185. Admits.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or costs.

COUNT IX

THE SPECIAL VIOLATES ART. III, §10, FLA. CONST.

186. The City incorporates its answers to Paragraphs 1 – 4 and 6 - 63.

187. Admits for jurisdictional purposes.

188. Admits for jurisdictional purposes.

189. Admits.

190. Admits.

191. Admits.

191. (duplicate) Admits.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or costs.

COUNT X

**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**

192. The City incorporates its answers to Paragraphs 1 – 4 and 6 - 62.

193. Admits for jurisdictional purposes.

194. Admits for jurisdictional purposes.

195. Admits.

196. Admits.

197. Admits.

198. Admits.

199. Admits.

200. Admits.

201. Admits.

202. Admits.

203. Admits.

204. Admits.

205. Admits.

206. Admits.

207. Admits.

208. Admits.

209. Admits.

210. Admits.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or costs.

COUNT XI

**THE SPECIAL LAW DIMINISHES THE RIGHT TO VOTE ON
MUNICIPAL LEGISLATIVE OFFICES THAT IS GUARANTEED BY
ART. VIII §2(b) FLA. CONST.**

211. The City incorporates its answers to Paragraphs 1 – 4 and 6 - 63.
212. Admits for jurisdictional purposes.
213. Admits for jurisdictional purposes.
214. Admits.
215. Admits.
216. Admits.
217. Admits.
218. Admits.
219. Admits.
220. Admits.
221. Admits.
222. Without knowledge.
223. Admits.
224. Admits.

225. Admits.

226. Admits.

227. Admits.

228. Admits.

229. Admits.

230. Admits.

231. Admits.

232. Admits that the Special Law does so by its terms; denies that it is valid, enforceable, Special Law.

233. Admits.

234. Admits.

235. Admits.

236. Admits.

237. Without knowledge.

238. Without knowledge.

239. Admits.

240. Without knowledge.

241. Admits.

242. Admits.

243. Admits.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or costs.

COUNT XII

THE SPECIAL LAW IMPAIRS LITTLE'S BOND CONTRACT

244. City incorporates its answers to the allegations set forth in Paragraphs 1 through 4, 6 through 8, 31 through 55 and 63.
245. Admits for jurisdictional purposes.
246. Admits for jurisdictional purposes.
247. Without knowledge.
248. Without knowledge as to the Plaintiff's ownership. Admit that the City's bond issuance is subject to the terms of the duly enacted Bond Resolution which is summarized by the Official Statement and attached thereto and speaks for itself.
249. Admits.
250. Admits.
251. Admits that Plaintiff Little owns such bonds; states that the bonds speak for themselves and denies the characterization other than that the bonds are legal documents, duly approved by the City. Denies that any obligations or

covenants related to the City of Gainesville debt instruments have been breached as the City is seeking relief from HB 1645 also.

252. Admits.

253. Denies.

254. Admits that Plaintiff Little owns such bonds; states that the bonds speak for themselves and denies the characterization other than that the bonds are legal documents, duly approved by the City. Denies that any obligations or covenants related to the City of Gainesville debt instruments have been breached as the City is seeking relief from HB 1645 also.

a. Admits in general, but notes that the pledge is imposed upon the revenues, not the elective Commissioners.

b. Admits that the effect of the Special Law appears to impair the ability of the elective City Commissioners to ensure compliance with the terms of the bond resolution(s) through necessary, future municipal legislative acts. Denies that any obligations or covenants related to the City of Gainesville debt instruments have been breached.

c. Admits that the liabilities cannot remain if the revenues are severed, without knowledge of the ultimate effect as the Court's ruling may cure

d. Admits.

255. Admits that Plaintiff Little owns such bonds; states that the bonds speak for themselves and denies the characterization other than that the bonds are legal documents, duly approved by the City. Denies that any obligations or covenants related to the City of Gainesville debt instruments have been breached as the City is seeking relief from HB 1645 also.

256. Admits to Plaintiff Little's ownership. Otherwise, without knowledge as the City is also pursuing a declaratory judgment on this issue..

257. Without knowledge.

258. Admits to Plaintiff Little's ownership. Otherwise, without knowledge as the City is also pursuing a declaratory judgment on this issue.

WHEREFORE CLAUSE: The City denies that it has any responsibility for the harm alleged, and further denies that the City could prevent any such harm, and therefore denies that the City is liable for any damages or costs.

AFFIRMATIVE DEFENSE

1. For its first affirmative defense, the City states, that even if, as admitted, the Special Law violates the rights as alleged, the City was and is powerless to correct the violations, and therefore cannot be held responsible for attorney fees, or costs, or any damages that may be awarded. Such fees, costs, or damages would have been caused entirely by the State of Florida, and therefore should be paid entirely by the State of Florida.

Dated: September 1, 2023

AKERMAN LLP

By: /s/ Cindy A. Laquidara

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Attorneys for Defendant(s)

City of Gainesville

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 1, 2023, a true and correct copy of the foregoing was electronically filed using the CM/ECF electronic filing system which will automatically serve a copy on all registered CM/ECF users.

/s/ Cindy A. Laquidara