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**, **SUSAN BOTTCHER**, **MICHAEL VARVEL**, **EVELYN FOXX** and **JOSEPH W. LITTLE**,	)	CASE NO.: 1:23-cv-176-AW-HTC
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.	)	
_____/		

PLAINTIFFS' RESPONSE TO ORDER TO SHOW CAUSE

COME NOW the Plaintiffs, by and through their undersigned attorneys, and respond to the Order to Show Cause (Doc. 38) and say:

1. The City of Gainesville is the proper Defendant in this cause and all of Plaintiffs' claims against the City are fully redressable.

2. The Court cites to several excerpts from Plaintiffs' Complaint describing the City of Gainesville as a "nominal Defendant" and explaining the limitations placed on its ability to control the operations of the Gainesville Regional Utilities Authority after the effective date of HB 1645. While those excerpts are accurately quoted, they are taken out of context and do not reflect the realities of this lawsuit or the nature of the relief sought by the Plaintiffs.

3. The Gainesville Regional Utilities Authority is a "unit" of the City of Gainesville. *See*, HB 1645, §7.01 ("The Authority shall operate as a unit of city government…").[1] The Authority is not a special district or a state agency. *Contrast*, Lederer v. Orlando Utilities Com'n, 981 So.2d 521, 525 (Fla. 5th DCA 2008) (Orlando utility was not a division of the City but a unique and independent "creation of the Florida legislature"). Rather, the Authority is and remains a part of the City of Gainesville, a Florida municipal corporation. As such, the Authority cannot sue or

[1] If there is any doubt as to the subordinate status of the Gainesville Regional Utilities Authority as a "unit" of the City of Gainesville, that doubt can only be removed through an evidentiary proceeding or summary judgment supported by affidavits. *Compare*, Murphy v. City of Aventura, 2008 WL 4540055 (S.D. Fla. 2008) (Declining to dismiss city police department where the Court could not determine from the face of the Complaint whether the police department was capable of being sued).

be sued in its own name. *See*, Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 3–4 (1978) (Acknowledging propriety of dismissal of public utility company by trial court because "a municipality or governmental unit standing in that capacity is not a 'person' within the meaning of §1983."); Joseph v. City of Tampa Solid Waste Dept., 2012 WL 2865492 at *1 (M.D. Fla. 2012) ("[T]he City's Department of Solid Waste lacks the powers of a separate legal entity. The Department is merely a part of the City. 'Suit no more can proceed against [the Department] than it could against the accounting department of a corporation.'" (citation omitted)); Euwema v. Osceola Cnty., 2021 WL 2823443 at *2 (M.D. Fla. 2021) ("[M]unicipal departments and sub-units are not separate legal entities capable of being sued."); Mann v. Hillsborough Cnty. Sheriff's Office, 946 F.Supp. 962, 970-71 (M.D. Fla. 1996) ("Florida has examined the question as to the correct party in interest as it pertains to police departments and found the city or municipal corporation to be the proper party…. In so finding, the courts have reasoned that the police department is the vehicle through which the city fulfills its policing functions. Therefore, the Florida courts have found that the city police department is not a legal entity and has no legal existence separate and apart from the city."); Florida City Police Dept. v. Corcoran, 661 So. 2d 409, 410 (Fla. 3d DCA 1995) ("Here, the plaintiff has sued the Police Department, which does not have the capacity to be sued. The proper defendant, the City, was not joined as a defendant."); Dean v. Hual, 2023 WL 2991949 at *3 (N.D.

Fla. Mar. 15, 2023), *report and recommendation adopted*, 2023 WL 2991480 (N.D. Fla. Apr. 18, 2023) (Citing Corcoran for the proposition that a municipal police department "is not an entity that is capable of being sued."); Post v. City of Fort Lauderdale, 750 F. Supp. 1131 (S.D. Fla. 1990) (Retaining city as a proper defendant but dismissing city zoning department and police department because they are not "persons" for purposes of a §1983 suit); Dew v. Tallulah Water Co., 2020 WL 6852866 at *5 (W.D. La. 2020), *report and recommendation adopted*, 2020 WL 6828032 (W.D. La. 2020) (Dismissing claim against municipal water company because it was a "non-juridical entit[y] not subject to suit…"); Spinks v. City of St. Louis Water Div., 176 F.R.D. 572, 573 (E.D. Mo. 1997) ("The Water Division is merely an arm of the City and lacks a separate legal identity apart from the City. As such, the Water Division is not a suable entity."); Saint Torrance v. Firstar, 529 F.Supp. 2d 836, 850 (S.D. Ohio 2007) ("[t]here is no statutory authority affording a department, such as Cincinnati Water Works, the capacity to be sued. Thus, it appears that the City of Cincinnati is the real party in interest. As such, Plaintiff has failed to demonstrate that the Cincinnati Water Works is sui juris and his claims against such should be dismissed."); Home Loan Sav. Bank v. City of Coshocton, 2:21-CV-133, 2023 WL 423512 at *2 (S.D. Ohio Jan. 26, 2023) (Citing Saint Torrance for the same proposition); Galob v. Sanborn, 160 N.W.2d 262, 265 (Minn. 1968) (Public utilities commission was not a proper defendant because it "is merely

an agency or department of the village and cannot be sued in its own name" despite the fact that the commission had "exclusive control of its operations and funds"); Shimer v. Shingobee Island Water & Sewer Com'n, 2003 WL 1610788 at *4 (D. Minn. 2003) (Dismissing county water and sewer commission as a defendant because "such subordinate entities do not have the capacity to sue or be sued"; collecting cases and citing Galob); Joshua Lee Phillips, Plaintiff, v. Broad River Corr. Inst. & Broad River Secure Facility, Defendants, 2023 WL 8627770 at *2 (D.S.C. Dec. 13, 2023) ("A sheriff's department, detention center, or task force is a group of officers or buildings that is not considered a legal entity subject to suit.").[2]

4. While HB 1645 authorizes the Gainesville Regional Utilities Authority to undertake a variety of actions, such as negotiating bonds and establishing utility rates, nowhere is the Authority given the power to sue or be sued.[3] In similar cases, Courts have found that granting a utility company the power to enter into contracts does not authorize that entity to file suit to sue to enforce such contracts:

> Furthermore, an analysis of Georgia precedent indicates that the mere power to enter contracts does not necessarily bring with it an implied power to sue.

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[2] No one enjoys a string cite. However, the Court's Order to Show Cause turns on this point and the unanimity of the case law addressing this issue warrants extended treatment here.

[3] *See*, HB 1645, §7.03.

> In Parker v. Bd. of Ed. of Sumter County, 209 Ga. 5(5), 70 S.E.2d 369 (1952), we expressly found that, despite the fact that the county board of education involved in that case had been granted the power to, among other things, enter into contracts for the construction, maintenance, and operation of schools, it did not have any ability to sue or be sued with regard to those contracts. We observed that the power to extend this right to sue or be sued rested solely with the Legislature… …
>
> Here, Fitzgerald Water was given the power to enter into contracts such as the one it entered into with Clark. This power to enter contracts, however, does not require access to a court to employ; therefore, it does not carry with it any implicit right to access the court system to enforce the power to contract. As a result, the Court of Appeals erred in its determination that Fitzgerald Water had the power to sue in its own name based solely on its power to contract. For that reason, the Court of Appeals' judgment must be reversed.

Clark v. Fitzgerald Water, Light & Bond Com'n, 663 S.E.2d 237, 239-40 (2008).

5. Because the Gainesville Regional Utilities Authority remains a subordinate "unit of city government", an injunction against the City of Gainesville will fully redress all of Plaintiffs' claims. An injunction against the City of Gainesville will bind all of its agencies, departments and "units" - including the Gainesville Regional Utilities Authority - together with their agents and employees. Rule 65 sets the general parameters for injunctive relief and expressly authorizes relief against related non-parties with notice:

> (2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:
>
> (A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

Rule 65(d)(2), Fed.R.Civ.P.; *See, also*, Regal Knitwear Co. v. N.L.R.B., 324 U.S. 9, 14 (1945) ("This is derived from the commonlaw doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.").

The Eleventh Circuit takes an expansive view of the appropriate reach of injunctive relief, holding that Rule 65 does not limit the potential scope of an injunction. *See*, United States of Am. v. Robinson, 83 F.4th 868, 878–79 (11th Cir. 2023) ("As our predecessor Court explained, Rule 65(d) 'cannot be read to restrict the inherent power of a court to protect its ability to render a binding judgment.'" (citation omitted)). In the freshly-minted Robinson case, the Court concluded that injunctions can reach "nonparties otherwise legally identifiable with the enjoined party":

> Our caselaw also recognizes that the injunction binds (4) those under the "general rubric of privity," a category that includes "nonparty successors in interest" and "nonparties otherwise legally identifiable with the enjoined party." ADT, 853 F.3d at 1352. And some of our sister Circuits have concluded that (5) those who aid and abet those in

> privity with an enjoined party are also bound. As we explain later, we agree that those who aid and abet those in privity with an enjoined party are bound by an injunction.

Robinson, 83 F.4th at 879; *See, also*, ADT LLC v. NorthStar Alarm Services, LLC, 853 F.3d 1348, 1352 (11th Cir. 2017) (Same).

At bottom, the justification for binding non-parties with notice of an injunction is to ensure that court orders are not evaded through subterfuge or technical arguments. *See,* F.T.C. v. Leshin, 618 F.3d 1221, 1235–36 (11th Cir. 2010) ("[The] defendants may not nullify [the injunction] by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding." (citation omitted)); *See, also*, Diamond Resorts Int'l, Inc. v. US Consumer Attorneys, P.A., WL 9596129 at *3 (S.D. Fla. 2021) ("A party does not escape a finding of contempt simply because a non-party actually carried out the violative acts.").

Because the Gainesville Regional Utilities Authority is a "unit" of the City, its members will be bound to an injunction to the same degree as any other agent, officer, employee, or representative of the municipality. *See, generally*, Nat'l Spiritual Assembly of Baha'is of U.S. Under Hereditary Guardianship, Inc. v. Nat'l Spiritual Assembly of Baha'is of U.S., Inc., 628 F.3d 837, 848 (7th Cir. 2010) ("[O]fficers, employees, and other agents of an enjoined party must obey the injunction - even though they are not named parties - when they act in their official

capacities."); People of State of N.Y. by Vacco v. Operation Rescue Nat., 80 F.3d 64, 70 (2d Cir. 1996) ("An injunction issued against a corporation or association binds the agents of that organization to the extent they are acting on behalf of the organization.").

Plaintiffs expect to prevail on the merits of their claim and will request entry of a broad injunction which will bind the Gainesville Regional Utilities Authority along with every other division and department of the City. Plaintiffs will request language in their injunction typical of that employed where a government defendant is involved. The language found in the recent injunction entered in the "Stop WOKE Act" litigation would be suitable:

> The preliminary injunction binds the above-listed Defendants and their officers, agents, servants, employees, and attorneys - and others in active concert or participation with any of them - who receive actual notice of this injunction by personal service or otherwise.

Pernell v. Florida Bd. of Governors of State Univ. Sys., 641 F. Supp. 3d 1218, 1292 (N.D. Fla. 2022).

The fact that the Authority is called by something different from "the City of Gainesville" will not immunize its members from any injunction directed to the City. When it comes to government actors, formal identification with a particular entity is not necessary to ensure that a court's injunction finds its mark.

For instance in Allen v. Sch. Bd. for Santa Rosa Cnty., Florida, 787 F.Supp. 2d 1293 (N.D. Fla. 2011) the Court considered the enforcement of a consent decree meant to remediate ongoing violations of the Establishment Clause by school officials. The Court's order stated that it was binding on "the parties hereto and their respective heirs, successors, and assigns" and defined "school officials" to mean "the Defendants and their officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with them in his or her official capacity." Id. at 1295-96. A number of "official parent volunteers" who were not directly named in the decree attempted to challenge the validity of the consent decree. The Court concluded that the volunteers were bound by the decree and could not challenge it even though they were not strictly government employees and were not named as party defendants. Id. *Compare*, Harvest v. Bd. of Pub. Instruction of Manatee Cnty., Fla., 312 F.Supp. 269, 282 (M.D. Fla. 1970) (Sheriff was bound to school desegregation order against school board where Governor took over school board and Sheriff was acting at the Governor's direction).

In conclusion, an injunction against the City of Gainesville and its associated agents will provide all the redress Plaintiffs require in this litigation.

6. Plaintiffs make the following additional showing in response to the Order to Show Cause:

A. It is no secret that the City of Gainesville was opposed to the loss of control over its utility and to the legally dubious creation of a municipal "unit" which is not appointed by elected City officials and which is relieved from the statutory and constitutional limits which usually govern utility operations. The City of Gainesville went so far as to sue the Governor and other state officials to challenge HB 1645 under the Florida Constitution and various statutes. *See*, City of Gainesville Florida v. The State of Florida, et al, Case No. 2023-CA-1928 (Fla. 2d Jud. Cir. Leon Cty).[4] Because it is reasonable to believe that the City of Gainesville may be sympathetic to many of the claims asserted by Plaintiffs[5] in the instant action, it is

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[4] The Circuit Court entered summary judgment against the City finding that none of the Defendants was amenable to suit and that Florida's "public official standing doctrine" barred its claims. *See*, Omnibus Order Granting Defendants' Motions for Summary Judgment, entered on September 29, 2023 in Case No. 2023-CA-1928. A copy of that Order is attached as Exhibit "1" to this Response. No judgment has yet been entered in that case.

While the City of Gainesville and these Plaintiffs sued the same state officials, this Court should note that Plaintiffs no longer have any claims pending against the state actors, but are proceeding against the City alone. In addition, these Plaintiffs are private individuals, asserting their individual rights, and are not subject to the public official standing doctrine. *See*, Dep't of Transp. v. Miami-Dade Cnty. Expressway Auth., 316 So.3d 388, 390–91 (Fla. 1st DCA 2021) *quoting* Sch. Dist. of Escambia Cnty. v. Santa Rosa Dunes Owners Ass'n, Inc., 274 So.3d 492, 494 (Fla. 1st DCA 2019) ("The public official standing doctrine… provides that '*a public official* may not defend his nonperformance of a statutory duty by challenging the constitutionality of the statute.'" (emphasis added)).

[5] Plaintiffs note that, if the State of Florida believes that it has a lingering interest in this case or merely wishes to defend the statute, the Attorney General can move to

appropriate to refer to the City as a "nominal Defendant". That term was not intended as a formal indication that the City was anything but a full participant in this case and properly joined as a party Defendant.[6]

B. The fact that HB 1645 deprives the City of Gainesville of day-to-day control of utility operations does not mean that the Authority has separate legal existence. In particular, the following provisions of HB 1645 demonstrate the continued involvement of the City in utility and Authority affairs:

(1) By statute, the Authority remains part of the City of Gainesville, being described "as a unit of city government". *See*, HB 1645, §7.01.

(2) All of the tangible equipment and assets of the utility remain the property of the City of Gainesville, *See*, §7.03(1)(c) ("[T]itle to all such property is vested in the City.").

(3) Any property acquired by the Authority through eminent domain likewise remains the property of the City. *See*, §7.03(1)(d).

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intervene notwithstanding Plaintiffs' dismissal of their claims against that former Defendant. *See*, §§16.01(4), (5), Fla.Stat.

[6] But even if the City is no more than a "relief defendant" - another term for a nominal defendant - the Court would nonetheless have the authority to enter declaratory and injunctive relief against it. *See, generally*, S.E.C. v. Founding Partners Capital Mgmt., 639 F.Supp. 2d 1291, 1293 (M.D. Fla. 2009) (Injunctive relief can be entered against a nominal party even if it is not itself accused of wrongdoing).

(4) Any bonds issued or negotiated by the Authority must be "executed and attested by the officers, employees, or agents of the City". *See*, §7.03(1)(e).

(5) Any purchases of additional utility systems are initiated by the Authority, but must be approved by the Gainesville City Commission. *See*, §7.03(1)(i).

(6) All Authority members are to be sworn into office by the mayor of Gainesville. *See*, §7.07(2).

(7) The General Manager of the Authority, as well as all officers and employees, remain subject to the City's pension plans and civil service merit system. *See*, §7.09(3).

(8) Section 7.10(1) confirms that, notwithstanding the creation of the Authority, "there shall be no change to the ownership of the utility system.".

(9) The Authority must secure the cooperation and approval of the Gainesville City Commission before engaging with third parties over debt and bond issues. This fact is shown most clearly in Resolution 2023-1186, passed by the Gainesville City Commission on December 22, 2023, at the request of the Authority, so that the Authority could negotiate for new bond terms. A copy of Resolution

2023-1186 is attached as Exhibit "2" to this Response.[7]

D. The Court's approach to standing overlooks the claims of Plaintiff Joseph W. Little, set forth in Count XII of the Complaint. (Doc. 1 at 83-88). Mr. Little's claims are based on his status as the holder of a municipal bond tied to the operations and income of Gainesville Regional Utilities. That bond was issued by the City of Gainesville, not the Gainesville Regional Utilities Authority. Whatever may be said of the Plaintiffs' other legal challenges to HB 1645, it must be acknowledged that Mr. Little's claims are squarely and properly directed to the City of Gainesville. *Compare*, Inv'rs Syndicate of Am., Inc. v. City of Indian Rocks Beach, Fla., 434 F.2d 871 (5th Cir. 1970) (Holder of municipal bonds stated cause of action against the obligor city for declaratory and injunctive relief).

E. If this action is dismissed because the Court concludes that it cannot grant effective relief against the City of Gainesville, that would effectively insulate HB 1645 from constitutional and legal attack by anybody under any circumstances.

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[7] The unsigned Resolution is available on-line at https://pub-cityofgainesville.escribemeetings.com/FileStream.ashx?DocumentId=80453 (last accessed 12/27/23). Given the recent enactment, a signed version does not appear to be available on-line. However, news reports reflect that the Resolution was enacted on December 22nd by unanimous vote. *See, e.g., Main Street Daily News*, https://www.mainstreetdailynews.com/govt-politics/gainesville-confirms-gru-authority-bonds#:~:text=The%20Gainesville%20City%20Commission%20voted,delay%20the%20resolution%20until%20January. (12/22/23) (last accessed 12-27-23).

Plaintiffs represent the widest possible variety of interests from public activists, to concerned residents and customers, to GRU employees, to the holder of a GRU bond. None are better suited to challenging the validity of the statute.

A state court has determined that the City of Gainesville cannot challenge HB 1645 for a host of reasons, with the public official standing doctrine serving as the principal obstacle.[8] The Gainesville Regional Utilities Authority can neither sue nor be sued because it has no legal existence separate from the City of Gainesville. *See*, argument *supra*. If the Authority cannot be sued due to its status as a unit of the City, the members of the Authority, the utilities General Manager and staff also cannot be named as defendants. *See*, Rodriguez v. Quinones, 508 F. Supp. 3d 1198, 1206 (S.D. Fla. 2020) ("Defendants are correct that the Section 1983 claims brought against Chief Quiñones in her official capacity as the Chief of the Hallandale Beach Police Department must be dismissed because the Department is not a legal entity subject to suit.").[9] This Court has determined that Governor DeSantis is not a proper

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[8] For the same reason, the Gainesville Regional Utilities Authority cannot bring a suit to challenge the validity of HB 1645 as a plaintiff. If the public official standing doctrine bars the City from bringing a suit, it must also prevent the Authority from doing so as the Authority is a unit of the same municipality.

[9] Suit against Authority members or the utility General Manager would also be improper under the law developed by the Eleventh Circuit in Busby v. City of Orlando, 931 F.2d 764, 776 (11th Cir. 1991) which held that suits should be brought against municipal entities rather than municipal officers in their official capacity.

Defendant in any challenge to HB 1645 because, *inter alia*, he is not an enforcing official. The same was found to be true by the state Circuit Court as to the Florida Attorney General and Secretary of State. *See*, Ex. 1 (Summary Judgment Order). There is no person or entity, other than those joined to this suit, who would be more appropriate to prosecute and defend against a challenge to HB 1645. If Plaintiffs lack standing to challenge HB 1645, no one has standing to do so.

Dismissal of Plaintiffs' claims based on the theory posited in the Order to Show Cause would shut the doors of this courthouse - and *every* courthouse - on Plaintiffs and all other concerned citizens.[10] A clever Bill which creates a governmental unit which is simultaneously separate from but an integral part of a municipality should not be immune from challenge merely because it is clever. *Cf.*,

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Under that case law, Plaintiffs have acted correctly in suing the City of Gainesville and not naming the Authority members, Manager or staff as defendants.

[10] This Court has suggested that Plaintiffs cannot sue the City of Gainesville because the municipality lacks day-to-day control over the operations of a unit of itself. This view of redressability would not be limited to the unique features of the Federal "case or controversy" requirement or to Federal decisions regarding redressability. The theorized defect in standing would also preclude review in state court under Florida law. *See, e.g.*, Cmty. Power Network Corp. v. JEA, 327 So.3d 412, 415 (Fla. 1st DCA 2021) ("[A] plaintiff must show a "substantial likelihood" that the relief sought will remedy the alleged injury. … At its core, standing exists when a plaintiff can identify an injury caused by the defendant's conduct that the court can remedy."). To be clear, if Plaintiffs are barred from litigating their claims in Federal Court they will find no relief in state court either. The same would be true of every other conceivable plaintiff.

Whole Woman's Health v. Jackson, 595 U.S. 30, 73 (2021) (J. Sotomayor concurring in part and dissenting in part) ("Although some path to relief not recognized today may yet exist, the Court has now foreclosed the most straightforward route under its precedents. I fear the Court, and the country, will come to regret that choice.").

7. Plaintiffs also take this opportunity to address the Court's recent dismissal of its claims brought under the Petition Clause of the First Amendment. (Doc. 1 at 24-30). Plaintiffs first note that the dismissal came in response to the Governor's Motion to Dismiss, which was granted without prejudice. (Doc, 37 at 11). An appeal of that portion of the Order would be unavailing as there were alternative grounds for the Governor's dismissal (traceability and Eleventh Amendment immunity) which would render the constitutional question merely advisory.

In contrast, the City of Gainesville filed an Answer which tacitly acknowledges that Plaintiffs stated a cause of action with respect to the Petition claim (Count I). No final judgment has been entered as to the City of Gainesville and the Court's Order with respect to Count I should be considered interlocutory and subject to modification. *See*, Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 12 (1983) ("[E]very order short of a final decree is subject to reopening at the discretion of the district judge."); Covenant Christian Ministries, Inc. v. City

of Marietta, Georgia, 654 F.3d 1231, 1242 (11th Cir. 2011) ("[A]n interlocutory order is subject to reconsideration at any time prior to entry of final judgment.").

RECONSIDERATION OF PETITION CLAUSE CLAIM

The Court should reconsider its ruling with respect to Count I because it misconstrued the nature of Plaintiffs' facial challenge. The Court incorrectly characterized Plaintiffs' claim as one based on the loss of political or speech rights before the City Commission:

> Plaintiffs fare no better on the right to petition claim. That claim is essentially that the City Commission no longer controls GRU and that the new Authority will be less responsive to Plaintiffs. Cmpl. ¶¶ 70-80.

(Doc. 37 at 4). But that snapshot captures only part of the issue.

Plaintiffs' Petition claim is not based on the fact that they can no longer air their grievances and seek relief before the City Commission.[11] Rather, Plaintiffs allege that they cannot petition for relief as to a particular set of grievances (those related to "DEI" and other social and political concerns) from anyone under any circumstances. No political relief can be afforded by the City Commission because

[11] Plaintiffs do complain elsewhere in their Complaint about the loss of their voting and political rights guaranteed by the Florida Constitution. Those complaints center around the fact that the Authority members are appointed by the Governor - a distant official unresponsive to local needs - rather than by the elected City Commission. While those views inform Count I, Plaintiffs' Petition Clause claims allege a very different deprivation of rights and ground those rights in the Federal Constitution as opposed to the Florida Constitution and Florida statutory protections.

that entity lacks day-to-day control over its utility unit. And no relief can be afforded by the Gainesville Regional Utilities Authority because the Authority is literally precluded by statute from acting on Plaintiffs' concerns. *See*, §7.12 (Limiting decisions to those based only on "pecuniary factors" … "which do not include consideration of the furtherance of social, political, or ideological interests."). The Petition Clause was specifically drafted to give a meaningful outlet to the people's political concerns. *See, generally*, DeMartini v. Town of Gulf Stream, 942 F.3d 1277, 1288–89 (11th Cir. 2019) ("The right to petition the government for redress of grievances is such a fundamental right as to be 'implied by '[t]he very idea of a government, republican in form.'" (citation omitted)). HB 1645 completely quashes that fundamental constitutional right on its face.[12]

The Court is also incorrect in stating that Plaintiffs have not suffered a constitutional injury because "these harms affect everyone in the community the same way" and that Plaintiffs are not affected in a "personal and individual way". (Doc. 37 at 4). In reaching that conclusion, the Court erred in two respects. First, as

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[12] The Court's observations concerning Plaintiffs' First Amendment Free Speech claims are well taken. (Doc. 37 at 3-4). It is true that, under the HB 1645, Plaintiffs remain free to say anything they want on any topic. The problem is that no one is listening! What good is the right of free speech in a representative democracy if the government refuses to respond to the people's needs? And just how representative is that government where an unelected Authority can act with utter disregard of its constituents' / customers' political concerns?

a factual matter, Plaintiffs' interests are *not* held in common with every GRU customer. If the Plaintiffs were complaining about their utility rates, the Court might be correct, because every customer would be affected by the same financial concerns. However, that is not what is going on here.

Not every GRU customer can claim the same injury as the Plaintiffs assert here because not every GRU customer has raised political / social concerns with their utility representatives in the past or intends to do so in the future; Plaintiffs have.[13] In addition, §7.12 only prohibits Authority action with respect to certain grievances of concern to these Plaintiffs. In contrast, customers complaining that the Authority Manager is overpaid or that the utility's transformers are inefficient can obtain full redress as to those grievances.

Plaintiffs' constitutional complaints are properly limited to the particular set of issues which §7.12 bars from consideration rather than the whole universe of issues which may be raised by them or other residents. *See, generally*, Cmty. Hous. Improvement Program v. City of New York, 59 F.4th 540, 549 (2d Cir. 2023) ("Thus, by defining the focus of a facial challenge as resting on its effect on those

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[13] There are also more subtle differences between Plaintiffs and many GRU customers, including residency within the City (GRU also services some Alachua County residents). Those legal challenges based on loss of political rights or the requirement that municipal utilities be controlled by elected officials are the sort of challenges which Plaintiffs can maintain, but which not all GRU customers can.

'for whom the law is a restriction,' the Supreme Court merely clarified that facial challenges to a statute must establish its unconstitutionality in all "applications of the statute *in which it actually authorizes or prohibits conduct.*" (Citation omitted) (emphasis original).

Second, the Court misapplied the Eleventh Circuit's decision in Garcia-Bengochea v. Carnival Corp., 57 F.4th 916, 923 (11th Cir. 2023). The Eleventh Circuit did not say that a plaintiff is barred from Federal Court just because many other people have been injured in a similar way by the unlawful action. Rather, Garcia-Bengochea stands for the proposition that the plaintiff must allege her own, specific injury caused by the challenged law. The fact that multiple other parties may experience a similar injury means that there are other potential plaintiffs who might bring a claim. It does not mean that every one of the affected claimants is barred from the Court just because others can assert a similar claim.

Plaintiffs have properly alleged that they are interested residents and community activists who have regularly engaged their representatives concerning political and social issues tied to Gainesville Regional Utilities. (Doc. 1 at 5-13). Plaintiffs have suffered a concrete injury because their right to seek redress of these specific grievances was cut off the day §7.12 went into effect.

Plaintiffs have raised a facial challenge asserting that §7.12 violates the Petition Clause of the First Amendment in every application. If the Court's view of

Garcia-Bengochea, holds, no plaintiff could bring this sort of facial challenge because they would be caught between the requirement of demonstrating universal unconstitutionality while simultaneously showing that there is something unique about their claim not shared by other citizens.

The Court should reconsider its ruling with respect to Count I of Plaintiffs' Complaint and confirm that the Petition Clause claim can be maintained against the City of Gainesville.

WHEREFORE, the Plaintiffs pray that the Order to Show Cause be discharged and that this case proceed to a decision on the merits.

Respectfully Submitted,

BENJAMIN, AARONSON, EDINGER & PATANZO, P.A.

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I HEREBY CERTIFY that a true and correct copy of the foregoing Response was furnished to CINDY A. LAQUIDARA, Esquire [cindy.laquidara@akerman.com] 50 North Laura Street, Suite 3100, Jacksonville, Florida 32202, via the CM/ECF System this 4th day of January, 2024.

/s/ Gary S. Edinger
GARY S. EDINGER, Esquire
Florida Bar No.: 0606812

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)

I hereby certify that this motion and memorandum of law contains 5,365 words.

/s/ Gary S. Edinger
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Florida Bar No.: 0606812