

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

CITY OF GAINESVILLE, FLORIDA,

_____, _____,

Plaintiffs,

vs.

RON DESANTIS, in his official capacity as
Governor of the State of Florida; and

ASHLEY MOODY, in her official capacity as
Attorney General of the State of Florida,

Defendants.

CASE NO.

COMPLAINT

Plaintiffs, the City of Gainesville, _____, and _____ bring this action for declaratory and injunctive relief against Defendants Ron DeSantis, in his official capacity as Governor of the State of Florida, and Ashley Moody, in her official capacity as Attorney General of the State of Florida, and state as follows:

INTRODUCTION

1. Municipalities are the government closest to the people. Municipal governments provide the day-to-day services that most Floridians rely on, from public transportation to parks and libraries to safety and emergency services. Municipalities have a responsibility to allocate these services in the way that best responds to the needs of the local community, and to do that, they need authority to be able to craft budgets that reflect community values. This budget-making authority lies at the heart of a municipality's legislative powers.

2. Throughout Florida, municipalities have been engaging in meaningful dialogue with residents about investing in public safety strategies that emphasize social services outside of law enforcement, after thousands of Floridians called on municipalities to prioritize racial justice. This dialogue has spurred municipal budget reform proposals that reimagine public safety as responsive and reflective of community needs and values.

3. Governor Ron DeSantis has commandeered this local legislative process through unconstitutional legislation: the Combating Violence, Disorder, and Looting, and Law Enforcement Protection Act, also known as HB 1. HB 1 allows the Governor and his cabinet to wield state-wide executive power to take control of a local budget that reduces law-enforcement spending, thereby reversing the local legislative process and directing local tax dollars with no

guiding standards, no limitations from the state legislature, and no accountability to the impacted local communities.

4. In just the few months since its enactment, HB 1 has impacted municipal budgeting throughout Florida. Municipalities have little ability to predict which decisions could be overruled under HB 1's state takeover provisions, making it unworkable to commit funds to certain services when the state could retroactively reverse that decision. Municipalities are deterred from considering the budgeting reforms that their residents are calling for because doing so could cost them control over their budget and, in turn, hamper their ability to function. Fiscally conservative municipalities are discouraged from pursuing cost-saving measures across all municipal departments. In essence, municipalities have been chilled from structuring their budgets to serve the best interests and needs of their communities.

5. HB 1 violates the Florida Constitution on several grounds:

a. Separation of Powers: The state legislature does not have the authority to convey local budget oversight to the state executive branch under the Florida Constitution's separation of powers provisions, Fla. Const. art. II, § 3;

b. Nondelegation: The legislature does not have the authority to delegate unlimited and unguided discretion to the executive pursuant to the nondelegation doctrine;

c. Single-Subject Rule: HB 1 does not abide by the Florida Constitution's single subject rule because only its first section relates to municipal budgeting while its subsequent sections pertain to individual speech activities, Fla. Const. art. III, § 6;

d. Unfunded Mandate: However it is applied, HB 1 creates an unfunded mandate, forcing municipalities to make expenditures at the command of the state without

any financial support and in violation of the Florida Constitution, Fla. Const. art. VII, § 18;
and

e. Home Rule: HB 1 disregards the protection of internal municipal governance under home rule that voters have time and time again guaranteed to municipalities in Florida, Fla. Const. art. VIII, § 2.

6. These infirmities require a permanent injunction of HB 1's municipal budgeting provisions. Municipalities need control and certainty over their budget in order to serve the needs of their residents with a budget that reflects their communities' priorities and values.

JURISDICTION AND VENUE

7. This is an action seeking declaratory relief, which this Court has jurisdiction to grant pursuant to Chapter 86 of the Florida Statutes, and injunctive relief, which this Court has jurisdiction to grant pursuant to Section 26.012 of the Florida Statutes. *See* Fla. Stat. §§ 26.012, 86.011, 86.021.

8. The City of Gainesville is a proper plaintiff to challenge the constitutionality of HB 1 because this law will require the City to expend public funds on law enforcement that otherwise would have been allocated to other municipal services and because this law has injected substantial uncertainty into the City's overall budgeting process.

9. Venue is proper in Leon County because the Defendants are all located, or have their principal headquarters, in Leon County Florida. *See* Fla. Stat. § 47.011.

THE PARTIES

10. The City of Gainesville is a municipality established in 1927 and vested with "all governmental, corporate, and proprietary powers" that enable it to perform its municipal functions, which include, among others, "expend[ing] the money of the City for all lawful purposes,"

“maintain[ing] a department or division of police,” and “do[ing] all things whatsoever necessary or expedient for promoting or maintaining the general welfare . . . peace, [and] government . . . of the city or its inhabitants.” Fla. Ch. 90-394, art. 1 § 101 (1990); Fla. Ch. 12760, § 7(e), (x)-(y) (1927).

11. Defendant Ron DeSantis currently serves as the Governor of the State of Florida. He is sued in his official capacity. He is the Florida constitutional officer charged with “tak[ing] care that the laws [are] faithfully executed.” Fla. Const. art. IV, § 1(a). Governor DeSantis is responsible for the enforcement of HB 1 and an appropriate defendant in this action.

12. Defendant Ashley Moody currently serves as the Attorney General of the State of Florida. She is sued in her official capacity. She serves as Florida’s chief legal officer. Fla. Const. art. IV, § 4(b). Attorney General Moody is responsible for the enforcement of HB 1 and an appropriate defendant in this action.

FACTS

I. The Florida Constitution Establishes a Distinct and Robust Tripartite System of State Government and Floridians’ Right to Local Self-Governance.

13. From the very first words of the U.S. Constitution, “We the People,” America stands as a system rooted in self-government. A key tenet of the American constitutional tradition is the recognition that the powers imbued in government derive solely from the people.¹

¹ See U.S. Const. preamble (“We the people of the United States...do ordain and establish this Constitution for the United States of America.”); *see also* The Declaration of Independence (U.S. 1776) (“Governments are instituted among Men, deriving their just powers from the consent of the governed[.]”); Mont. Const. art. II, pt. II, § 1 (“All political power is vested in and derived from the people.”); Penn. Const. art. I, § 2 (“All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness.”); Tex. Const. art. I, § 2 (“All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit.”); Virg. Const. art. I, § 2 (“[A]ll power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.”)

14. This American constitutional tradition of self-government is protected by a system of checks and balances.² Constitutional checks and balances not only guard the liberties of the governed against abuse by their government, but also reserve ample power to the people so that the people may govern themselves and their own affairs.³

15. One of the most vital checks and balances is the separation of powers among different branches and different levels of government.⁴ The U.S. and vast majority of state constitutions incorporate both *horizontal* separation of powers principles by establishing tripartite systems of government⁵—consisting of a legislative, executive, and judicial branch—and *vertical* separation of powers principles by reserving power to the people and their local governments through home rule.⁶

16. Vertical separation of powers provides a critical protection of democracy because municipal leadership is based in the local community, rather than a faraway state capital. At the

² See Baron de Montesquieu, *The Spirit of the Laws*, 151-52 (Hafner, Thomas Nugent trans, 1949) (“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.”); John Locke, *Two Treatise of Government* 193 (Thomas I. Cook ed., Hafner Publishing Co. 1947) (“And when the people have said, we will submit to rules and be governed by laws made by such men, and in such forms, nobody else can say other men shall make laws for them; nor can the people be bound by any laws but such as are enacted by those whom they have chosen and authorized to make laws for them.”).

³ See *Gregory v. Ashcroft*, 501 U.S. 452 (1991) (“Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.”); see also Abner S. Greene, *Checks and Balances in an Era of Presidential Lawmaking*, 61 U. Chi. L. Rev. 123, 131-32 (1994) (“[I]t is important to realize that the core value of multiple repositories of power that the citizens are sovereign and their delegated power must be fractured among various governmental actors—is central as well to both judicial review and federalism....the structure of federalism was intended to ensure that the citizens had multiple governmental repositories, at varying levels of locality, into which to delegate powers.”).

⁴ See, e.g., *New York v. United States*, 505 U.S. 144 (1992); *Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen*, 952 S.W. 2d 454 (Tex. 1997).

⁵ *INS v. Chadha*, 462 U.S. 919 (1983) (“[T]he Framers saw fit to divide and balance the powers of Government so that each branch would be checked by the others. Virtually every part of our constitutional system bears the mark of this judgement.”); see also Jim Rossi, *Institutional Design and the Lingering Legacy of Antifederalist Separation of Powers Ideals in the State*, 52 Van. L. Rev. 1167, 1187-1202 (1999) (cataloguing various separation of powers provisions in state constitutions).

⁶ See U.S. Const. amend. X; Lynn A. Baker & Daniel Rodriguez, *Constitutional Home Rule and Judicial Scrutiny*, 86 Denv. L. Rev. 1337, Appendix (2009) (listing various state constitutional home rule provisions).

local level, residents have easier access to their representatives—who often represent fewer constituents than at the state level—which in turn allows municipalities to craft policy that directly responds to community needs and more closely reflects community values.⁷

17. The Florida Constitution of 1968 and its subsequent amendments observe the American constitutional tradition⁸ with especially robust horizontal separation of powers principles, among the strictest and strongest of all state constitutions.⁹

18. The people of Florida additionally amended the Florida Constitution in 1968 to guarantee the vertical separation of powers principle of local self-government by granting municipalities the right to home rule.¹⁰

19. The amended Article VIII, § 2(b) of the Florida Constitution establishes that “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 power for municipal purposes except as otherwise provided by law.” This amendment ensured that home rule, a long-standing tradition in Florida since the earliest days of its history as a Spanish colony, would remain enshrined in the fabric of Florida’s democracy.¹¹

20. The Florida Legislature and state courts have reaffirmed the principle of home rule since the people’s mandate. When the home rule amendment was initially interpreted narrowly,

⁷ See generally Paul A. Diller, *Why Do Cities Innovate in Public Health? Implications of Scale and Structure*, 91 Wash. U. L. Rev. 1219 (2014).

⁸ See, e.g., Fla. Const. art. I, § 1 (“All political power is inherent in the people.”); Fla. Const. art. II, § 3 (“The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”).

⁹ See Jim Rossi, *Institutional Design and the Lingering Legacy of Antifederalist Separation of Powers Ideals in the State*, 52 Van. L. Rev. 1167, 1195 (1999).

¹⁰ See Fla. Const. art. VIII.

¹¹ Florida House of Representatives, *The History and Status of Local Government Powers in Florida* 1-2 (July 31, 1972).

the Florida Legislature enacted the Municipal Home Rules Power Act (MHRPA) (Ch. 166 of the Florida Statutes) to underline the importance of local control under the new constitutional amendment.¹² The Florida Supreme Court has since emphasized: “The clear purpose of the [amendment] was to give the municipalities inherent power to meet municipal needs. . . . The legislature’s retained power is now one of limitation rather than one of grace.” *Lake Worth Utilities Auth. v. City of Lake Worth*, 468 So. 2d 215, 217 (Fla. 1985).

21. Insofar as the state has retained power to influence municipal policy, it may only do so through valid exertion of legislative power. *See Askew v. Cross Key Waterways*, 372 So. 2d 913, 915-19 (Fla. 1978). In order to keep the legislature accountable to the communities they represent, this core legislative power cannot be delegated to another branch of state government.

22. Florida voters have also expanded the protections of local self-governance. When the state legislature began encroaching on local governments’ autonomy by requiring them to make expenditures without providing a revenue stream, Floridians overwhelmingly voted to adopt a new constitutional amendment in 1990 preventing the state legislature from imposing unfunded mandates on local governments.¹³

23. Article VII, § 18 of the Florida Constitution provides that “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” subject to certain limitations.

24. Florida’s horizontal and vertical separation of powers principles—its three-branch system of state government and its home rule guarantee—work together to reinforce checks and

¹² J. James R. Wolf and Harah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. No.6 (2009).

¹³ Fl. Dep’t of State, Fl. General Election Results (Nov. 6, 1990), <https://results.elections.myflorida.com/?ElectionDate=11/6/1990&DATAMODE=>.

balances, empower the people of Florida to govern themselves, and protect this liberty from diminution by any means other than a valid exercise of legislative power.

Charter of the City of Gainesville

25. The City of Gainesville is a home rule city as defined under Article VIII, Section 2, of the Florida Constitution. The Legislature granted the City home rule status, as defined under the Florida home rule constitutional amendment, in 1990 via statute¹⁴:

“The City of Gainesville, created by chapter 12760, Laws of Florida, 1927, as amended, shall continue and is vested with all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.”¹⁵

The statute continued by explicitly providing that “the powers of the city shall be construed liberally in favor of the city, limited only by the State Constitution, general law, and specific limitations contained in this act.”¹⁶

26. Among the powers guaranteed to Gainesville are the powers to “raise taxes”¹⁷; “to expend the money of the City for all lawful purposes”¹⁸; “to exercise full police powers, and establish and maintain a department or division of police”¹⁹; and “to do all things whatsoever necessary or expedient for promoting or maintaining the general welfare, comfort, education, morals, peace, government, health, trade, commerce or industries of the city or its inhabitants”.²⁰

¹⁴ 1990 Fla. Laws, ch. 90- 394, at 47 .

¹⁵ 1990 Fla. Laws, ch. 12760, art. 1.01.

¹⁶ 1990 Fla.Laws, ch. 12760, art. 1.03. .

¹⁷ 1990 Fla. Laws, ch. 12760 at 1388.

¹⁸ 1990 Fla. Laws, ch. 12760 at 1389.

¹⁹ 1990 Fla. Laws, ch. 12760 at 1394.

²⁰ 1990 Fla. Laws, ch. 12760 at 1394.

27. The Charter of the City of Gainesville adopts home rule wholesale.²¹ It also provides that among the enumerated powers of the City are the formulation and approval of an annual budget²² and control over the Gainesville Police Department.²³

II. Florida Municipalities Are Best Positioned to Adopt Budgets that Reflect Their Residents' Needs, Values, and Priorities.

28. Municipal budgets reflect the priorities of the community. Municipalities are expected to provide a wide array of services to residents and must make difficult decisions about how to allocate finite resources to best serve the needs of the community. In some communities, constituents may advocate for a more fiscally conservative budget, while in others, constituents may push for an increase in certain services that necessitate a reallocation of funding. Municipal budgeting enables and celebrates these differences allowing residents to have a voice in their communities.

29. Floridians rely on their municipal governments to provide and maintain a wide array of public services, such as parks, recreation centers, libraries, animal control, water, transportation, and public safety.

30. In Florida, however, municipal revenue streams are limited. The Florida Constitution caps municipal property taxes at \$10 per \$1,000 valuation, Fla. Const. Art. VII, § 9(b), so this funding stream generally accounts for less than half of the revenue that Florida municipalities generate.²⁴ Additionally, municipalities rely on a combination of proprietary and regulatory fees along with grants from the state and federal governments or other external entities.

²¹ Gainesville, Fla., Ordinances, art. 1, § 1.01 (2021).

²² Gainesville, Fla., Ordinances, ch. 3, art. 3, § 3.02 (2021).

²³ Gainesville, Fla., Ordinances, ch. 21, art. 1 (2021).

²⁴ Florida League of Cities, *2019 State of Cities* (2019), http://www.floridaleagueofcities.com/docs/default-source/default-document-library/2019-state-of-the-cities.pdf?sfvrsn=c405dad5_6.

31. These streams of revenue are naturally variable. Municipal tax and fee revenue fluctuate every year based on several factors, including economic conditions and individual activity. When there are natural decreases in local revenues, municipalities have to make budget cuts across the board in order to achieve a balanced budget. During the 2010 recession, for example, several municipalities in Florida had to make budget reductions that impacted law enforcement:

a. In 2010, tax revenues plummeted in Panama City. In order to balance the books, the city unfunded all vacant positions. Of 31 positions, 11 cuts came from the police department, including sworn officers and civilian positions.²⁵

b. The 2011-12 budget approved by the Gainesville City Commission cut Gainesville Police Department's budget by \$946,000, saving 3.2% of the \$29.6 general fund. These funding reductions resulted in the elimination of several command staff positions in the department.²⁶

c. In Jacksonville, between the fiscal years of 2010 and 2013, 147 police officer positions were eliminated due to budget cuts, including the entire mounted police force.²⁷

32. Some decreases in local revenue may arise when an intergovernmental or external grant is time-limited and non-renewable. As the grant period ends, a municipality must decide how to maintain that funding stream or allow the reduction. For example, in 2012, the City of Gainesville was one of only two municipalities to receive a grant from the Center for Children's

²⁵ Katie Landeck, *Chief: Panama City Police Department 'strained'*, Panama City News Herald (Jan. 7, 2017), <https://www.newsherald.com/news/20170107/chief-panama-city-police-department-strained>.

²⁶ Cindy Swirko, *Budget Cuts Hit GPD Command Staff Hard*, The Gainesville Sun (Sept. 17, 2010), <https://www.gainesville.com/article/LK/20100917/news/604164102/GS/>.

²⁷ David Bauerlein, *71 of 147 police cuts not linked to Mayor Brown, analyses find*, The Florida Times-Union (May 14, 2015), <https://www.jacksonville.com/article/20150514/NEWS/801245291>.

Law and Policy to reduce the arrest rates of youth of color. The grant and associated revenue stream expired after two years, so Gainesville allocated its own municipal funds toward the Disproportionate Minority Contact Initiative. Had Gainesville not allocated that continued revenue stream, the police department budget would have been reduced due to the expiration of the grant.

33. Other times, municipalities may reorganize departments and shift funding structures to promote economic efficiency. For example, in 1990, the Live Oak City Council voted to turn the city's law enforcement role over to the Suwannee County Sheriff's Office due to budget constraints. Likewise, Mexico Beach's former police department was dissolved in October 2019 in favor of having the Bay County Sheriff's Office take over. City officials reported the switch saved Mexico Beach money that helped other service areas.²⁸

34. In some cases, municipalities have used their budget authority to dismantle parts of police departments that were found to be engaging in malfeasance and misappropriation. In 1987, the City of West Palm Beach disbanded its ten-member tactical team after members of the city's Haitian community sued the city accusing officers of violating their constitutional rights, conducting unreasonable strip searches, using slurs, and physically abusing them. The city settled the lawsuit for \$75,000.²⁹ And in 1992, the City of Largo disbanded their special investigations unit after evidence surfaced of detectives misusing funds and police vehicles. Money allocated for the special unit moved back into the city's general fund.³⁰

35. Municipalities face difficult budgetary decisions every year, and the current fiscal year is no different. As a result of the economic downturn caused by the COVID-19 pandemic,

²⁸ Blake Brannon, *Officials look back at transition from Mexico Beach Police Department to Bay County Sheriff's Office*, WJHG News Channel 7 (Nov. 2, 2020), <https://www.wjhg.com/2020/11/03/officials-look-back-at-transition-from-mexico-beach-police-department-to-bay-county-sheriffs-office/>.

²⁹ Larry Aydlette, *West Palm May Pay \$75,000 to End Lawsuit*, The Palm Beach Post (Dec. 30, 1987), <https://www.newspapers.com/image/129627445/>.

³⁰ *Police Unit Disbanded*, St. Petersburg Times (Apr. 26, 1992), <https://www.newspapers.com/image/323640260/>.

many cities have been forced to reduce their budgets. The City of Miami was forced to cut 66 sworn police officer positions, along with over a dozen firefighters, due to a projected \$30 million shortfall.³¹

36. In crafting a budget that balances finite resources among a broad array of commitments, municipalities often seek input and collaboration from the community. Municipal budgeting discussions are generally open to the public where comment is invited. In Gainesville, for example, the City Manager proposes a first version of the budget at a public City Commission meeting. Over a period of several months, there are multiple opportunities for public comment and discussion as City Commissioners consider the budget in depth. What is eventually produced reflects public comments and community needs over the next fiscal year within the limits of the city's revenue.

37. Because developing a municipal budget requires a nuanced understanding of the municipality's capacity as well as residents' needs and values, doing so is considered a core application of legislative power—one properly exercised by the municipality itself through its constitutional home rule guarantee. Under no circumstances would a municipal budget crafted and promulgated by the state executive branch be valid under the Florida Constitution's separation of powers provisions.

III. Floridians Have Called on Their Local Governments to Reimagine Public Safety Through Meaningful Changes to Municipal Budgeting.

38. As municipal spending on law enforcement has far outpaced spending on public health and social services, residents have been engaging with their municipal governments to rebalance spending to support social services separate from law enforcement.

³¹ Joey Flechas, *Miami's COVID Budget Passes with Police Layoffs, Transformed NET and Canceled Events*, Miami Herald (Sept. 25, 2020), <https://www.miamiherald.com/news/local/community/miami-dade/article245995330.html>.

39. Law enforcement has grown to account for the lion's share of municipal spending. From 1977 to 2017, state and local spending on law enforcement nearly tripled from \$42 billion to \$115 billion,³² with municipalities contributing 86% of the funding.³³ Policing is now the single largest municipal expenditure in 35 of the country's 50 largest cities.³⁴

40. Municipal spending in Florida is no different. In the three largest cities in Florida, Jacksonville, Miami, and Tampa, police spending accounts for 33% to 40% of the municipal budget.³⁵ In Gainesville, police spending amounts to over one quarter of the city's general fund.³⁶

41. As spending on law enforcement has grown, so has the scope of law enforcement activity. Only around 1% of 911 calls³⁷ and less than 5% of police arrests³⁸ relate to serious violent crime. Instead, police officers spend the biggest share of their time responding to non-emergency calls,³⁹ including by treating overdoses, responding to mental health crises, and addressing homelessness.⁴⁰

³² *Criminal Justice Expenditures: Police, Corrections, and Courts*, Urban Inst., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/criminal-justice-police-corrections-courts-expenditures> (last visited June 12, 2021).

³³ Fola Akinnibi, *Cities' Pleas for Federal Aid Run into Calls to Defund Police*, Bloomberg (June 12, 2020), <https://www.bloomberg.com/news/articles/2020-06-12/cities-s-pleas-for-federal-aid-runs-into-calls-to-defund-police>.

³⁴ Carl Sullivan & Carla Baranauckas, *Here's How Much Money Goes to Police Departments in Largest Cities Across the U.S.*, USA Today (June 26, 2020), <https://www.usatoday.com/story/money/2020/06/26/how-much-money-goes-to-police-departments-in-americas-largest-cities/112004904/>.

³⁵ *What Policing Costs: A Look at Spending in America's Biggest Cities*, Vera, <https://www.vera.org/publications/what-policing-costs-in-americas-biggest-cities> (last visited June 12, 2021).

³⁶ *City Manager's Adopted Budget in Brief*, City of Gainesville (Oct. 1, 2020), <https://www.cityofgainesville.org/Portals/0/bf/FY21-FOP-adopted.pdf>.

³⁷ Jeff Asher & Ben Horwitz, *How Do the Police Actually Spend Their Time?*, N.Y. Times (June 19, 2020), <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>.

³⁸ Betsy Pearl, *Beyond Policing: Investing in Offices of Neighborhood Safety*, Ctr. for Am. Progress (Oct. 15, 2020), <https://www.americanprogress.org/issues/criminal-justice/reports/2020/10/15/491545/beyond-policing-investing-offices-neighborhood-safety/>.

³⁹ Asher & Horwitz, *supra* note 37.

⁴⁰ Pearl, *supra* note 38.

42. Municipal departments that specialize in providing public health and social services, on the other hand, receive a fraction of the dollars spent on policing. The ten largest cities in the U.S. spend anywhere from two to ten times more on policing than public health expenditures, even though health professionals have greater training than police for responding to behavioral or mental health emergencies.⁴¹

43. While policing can account for a quarter to nearly half of a municipal budget,⁴² the average city spends only 5% of funds on public housing, leaving the police to respond to conflicts relating to homelessness rather than social services professionals who could offer targeted resources.⁴³ In Gainesville, with a particularly high ratio of police officers to private citizens, the police department receives seventeen times more funding than is allocated to human services.⁴⁴

44. Although the vast majority of police officers' time is spent handling non-violent activity, they are primarily trained for responding to violent threats rather than deescalating other situations. The average municipal police department spends 168 hours training new officers on use of force, self-defense, and firearm tactics while only devoting 9 hours to conflict management and mediation.⁴⁵ As a result, police officers are more conditioned to use tactics of force, rather than de-escalation, even in response to non-emergency situations.⁴⁶

⁴¹ Ellen Fassler, *10 Largest US Cities Will Spend More on Police Than Public Health This Year*, TruthOut (Feb. 24, 2021), <https://truthout.org/articles/10-largest-us-cities-will-spend-more-on-police-than-public-health-this-year/>.

⁴² Vera, *supra* note 35.

⁴³ Emily Badger & Quoctrung Bui, *Cities Grew Safer. Police Budgets Kept Growing*, N.Y. Times (June 12, 2020), <https://www.nytimes.com/interactive/2020/06/12/upshot/cities-grew-safer-police-budgets-kept-growing.html>.

⁴⁴ Gainesville Budget, *supra* note 36.

⁴⁵ Sarah Hansen & Halah Touryalai, *Call 911: How Police Built Military Arsenals and A Firm Grip on Local Budgets, And Why Defunding May Be Inevitable*, Forbes (June 26, 2020), <https://www.forbes.com/sites/sarahhansen/2020/06/26/call-911-how-police-built-military-arsenals-and-a-firm-grip-on-local-budgets-and-why-defunding-may-be-inevitable/?sh=204c8ce019c3>.

⁴⁶ Roge Karma, *We Train Police to Be Warriors - And Then Send Them Out to Be Social Workers*, Vox (July 31, 2020), <https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training>.

45. Studies have shown that police use of force has been disproportionately directed at communities of color, particularly the Black community.⁴⁷ A national study of nearly 5,000 fatal police shootings between 2015 and 2020 demonstrated that police killed Black Americans at over 2.5 times the rate of white Americans and killed unarmed Black Americans at triple the rate of unarmed white Americans.⁴⁸ Florida’s rate of fatal police shootings between 2015 and 2018 was comparable to national statistics,⁴⁹ and analysis of the racial disparities in police shootings found that Black Floridians are “more likely to be shot in questionable circumstances.”⁵⁰

46. The summer of 2020 brought greater national attention to the disproportionate use of police violence toward communities of color.

47. On May 25, 2020, George Floyd, a 46-year-old Black man, was murdered by Minneapolis police officer Derek Chauvin, who knelt on Floyd’s neck for eight minutes and forty-six seconds as Mr. Floyd lay face-down on the street, handcuffed, gasping “I can’t breathe.”⁵¹

48. Just two months earlier, three plainclothes Louisville police officers forced entry into the apartment of Breonna Taylor, a 26-year-old Black woman, and fatally shot her six times as she slept.⁵²

⁴⁷ Elle Lett, et al., *Racial Inequity in Fatal U.S. Police Shootings, 2015-2020*, 75 J. Epidemiology & Cmty. Health 394 (2021), <https://jech.bmj.com/content/75/4/394>; Emmanuella Asabor, et al., *Fatal Police Shootings Among Black Americans Remain High, Unchanged Since 2015*, Penn. Medicine News (Oct. 28, 2020), <https://www.pennmedicine.org/news/news-releases/2020/october/fatal-police-shootings-among-black-americans-remain-high-unchanged-since-2015>.

⁴⁸ *Id.*

⁴⁹ Steve Steward, *By the Numbers: Florida Police Related Shooting Fatalities*, Tallahassee Reports (June 24, 2020), <https://tallahassee-reports.com/2020/06/24/by-the-numbers-florida-police-related-shooting-fatalities/>.

⁵⁰ Ben Montgomery, *Why Cops Shoot*, Tampa Bay Times (2017), <https://projects.tampabay.com/projects/2017/investigations/florida-police-shootings/>.

⁵¹ Evan Hill, et al., *How George Floyd Was Killed in Police Custody*, N.Y. Times (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

⁵² Rukmini Callimachi, *Breonna Taylor’s Life Was Changing. Then the Police Came to Her Door.*, N.Y. Times (Aug. 30, 2020), <https://www.nytimes.com/2020/08/30/us/breonna-taylor-police-killing.html>.

49. These stories and conversations about police brutality were shared in solidarity with the Black Lives Matter movement and viewed by 1.4 billion people.⁵³

50. These killings sparked what was deemed the largest mass movement for justice in United States history.⁵⁴ The two months following George Floyd's murder saw between 15 and 26 million Americans participate in thousands of racial justice demonstrations, many organized under the banner of or in solidarity with the Black Lives Matter movement.⁵⁵ These racial justice demonstrations spanned over 40% of counties in the United States.⁵⁶

51. Thousands of Floridians joined this call for racial justice, participating in dozens of peaceful demonstrations across the state. In Gainesville, over 1,000 people came together to demand police accountability in the days after Mr. Floyd's murder,⁵⁷ and, in June, over 1,000 united against racial injustice in a demonstration organized by the Dream Defenders, a Black-led organization seeking transformative justice in Florida.⁵⁸

52. Both across the nation and in Florida, these calls for racial justice and for an end to police violence against Black communities were overwhelmingly peaceful: over 95% of protests were non-violent and involved no property damage.⁵⁹

⁵³ Sam Blake, *Why the George Floyd Protests Feel Different—Lots and Lots of Mobile Video*, dot.la (June 12, 2020), https://dot.la/george-floyd-video-2646171522.html?utm_campaign=post-teaser&utm_content=i87yytb3.

⁵⁴ Larry Buchanan, et al., *Black Lives Matter May be the Largest Movement in U.S. History*, N.Y. Times (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Cindy Swirko, *Marchers Call for Justice, Police Accountability*, Gainesville Sun (May 30, 2020), <https://www.gainesville.com/news/20200530/marchers-call-for-justice-police-accountability>.

⁵⁸ Ruelle Fludd & James J. Rowe, *Over a Thousand People Join Protest for Black Lives in Gainesville*, WCJB (June 13, 2020), <https://www.wcjb.com/content/news/Thousands-join-protest-for-black-lives-in-Gainesville-571246111.html>.

⁵⁹ Erica Chenoweth & Jeremy Pressman, *This Summer's Black Lives Matter Protesters Were Overwhelmingly Peaceful, Our Research Finds*, Wash. Post. (Oct. 16, 2020), <https://www.washingtonpost.com/politics/2020/10/16/this-summer-black-lives-matter-protesters-were-overwhelming-peaceful-our-research-finds/>.

53. This nationwide movement against racial injustice and police brutality elevated the conversation about reimagining the model for public safety through municipal budgeting changes. Residents have asked their local governments to reevaluate municipal spending priorities to, in some places, reorient public safety programs to be more community-driven, and in others, reduce the tax burden to local taxpayers, especially to the extent certain expenditures are likely to contribute to systemic racial injustice.

IV. Municipalities throughout Florida Are Responding to Constituents by Considering New Approaches to Funding Public Safety.

54. Municipalities across the nation have heard their residents, and city halls have become central spaces for discussing community-based models for public safety and the reasonableness of certain law enforcement practices and spending decisions. As a result, in 2020, nearly half of the largest U.S. cities redirected money from the police budget to social services.⁶⁰ For example, Minneapolis, Minnesota directed nearly \$8 million from its police budget toward mental health response and violence prevention programs to help vulnerable populations.⁶¹ Austin, Texas shifted \$153 million from the police budget to create new social service programs, including a “Reimagine Safety” fund, and to move non-law enforcement functions out of the police department.⁶²

55. In Florida, several cities listened to constituents’ calls to reimagine public safety by shifting their budgets as well.

City of Gainesville

⁶⁰ See Sam Levin, *These U.S. Cities Defunded Police: “We’re Transferring Money to the Community,”* The Guardian (Mar. 7, 2021), <https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community>.

⁶¹ Brenna Goth & Ayanna Alexander, *“Defund the Police” in Cities Faces Ire of State GOP Lawmakers,* Bloomberg Law (Mar. 16, 2021), <https://news.bloomberglaw.com/social-justice/defund-the-police-in-cities-faces-ire-of-state-gop-lawmakers>.

⁶² Levin, *supra* note 60.

56. After thousands of Gainesville residents peacefully demonstrated against racial injustice and called for meaningful reform, the Gainesville City Commission reexamined the Gainesville Police Department (“GPD”) budget and structure.

57. This evaluation brought to light several non-law enforcement functions under the purview of GPD. For example, the GPD Youth and Community Services Bureau included several purely social service programs, such as the Reichert House, an afterschool enrichment program for youth, and the B.O.L.D. Program, which provides case management and skills training for young men between the ages of 16 and 24 with a background of prior infractions.

58. On July 13, 2020, the Gainesville City Commission directed the City Manager to develop a proposal for reallocating non-law enforcement functions from the Gainesville Police Department to other municipal departments and to repurpose open sworn officer positions.

59. The City Manager returned with a proposal to transfer a Fleet Manager to the Department of Mobility and five IT positions to the Information Technology Department. The City Commission approved this \$524,902 transfer on August 10, 2020.⁶³

60. The City Manager also proposed that two open sworn officer positions be frozen to allow the Reichert House to hire two non-law-enforcement intervention specialists, which the City Commission also approved on August 10, 2020.⁶⁴

61. As these decreases in local law enforcement spending were made, the Gainesville City Commission also voted to approve a \$3.2 million five-year expenditure to equip officers with functioning body cameras with the goal of increasing transparency and accountability in policing.⁶⁵

⁶³ Presentation by the Gainesville City Manager to the Gainesville City Commission (Aug. 10, 2020).

⁶⁴ *Id.*

⁶⁵ See Ruelle Fludd, *Gainesville approves purchase of new police body cameras*, WCJB (Aug. 6, 2020), <https://www.wcjb.com/2020/08/06/gainesville-approves-purchase-of-new-police-body-cameras/>.

62. Although these revisions did not lead to a net decrease in the GPD’s budget for the 2021 fiscal year, they started an ongoing discussion about the shifting of certain programs and functions from the GPD to existing or new municipal departments.

63. In particular, the City of Gainesville has been shifting its budgetary resources away from policing youth. In 2020, the Commission voted to phase out its \$900,000 contribution to the \$2.1 million armed school resource officer program, so that the Alachua County School Board would be fiscally responsible for the program and the City could spend those funds on community activities.⁶⁶

64. Gainesville is one of many cities in Florida and throughout the nation to reimagine public safety through changes to municipal budgeting.⁶⁷ The aim of these changes is to increase the emphasis on non-law-enforcement strategies that promote the safety of all communities.

V. Governor DeSantis Proposed HB 1 to Strike Back at Florida Residents and Municipalities Working to Reimagine a More Just Vision for Public Safety.

65. While local governments came together with their constituents to work toward meaningful justice reform, Governor DeSantis responded by expanding the authority of Florida’s Executive Branch to commandeer these local legislative efforts and stymie reform.

66. Despite acknowledging that the demonstrations for racial justice were “largely peaceful,”⁶⁸ Governor DeSantis demonized the Floridians that stood against racial injustice and

⁶⁶ See Ruelle Fludd, *Gainesville city commissioners tackle school resource officer budget*, WCJB (Jul. 24, 2020), <https://www.wcjb.com/2020/07/24/gainesville-city-commissioners-reverse-course-on-school-resource-officer-budget-for-fy-2021/>.

⁶⁷ See Sam Levin, *These U.S. Cities Defunded Police: “We’re Transferring Money to the Community,”* The Guardian (Mar. 7, 2021), <https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community>.

⁶⁸ News Release, *Governor Ron DeSantis Reports that Florida Demonstrations Have Remained Largely Peaceful Over Last 24 Hours* (June 2, 2020), <https://www.flgov.com/2020/06/02/governor-ron-desantis-reports-that-florida-demonstrations-have-remained-largely-peaceful-over-past-24-hours/>.

police brutality as “crazed lunatics”⁶⁹ and “angry mobs.”⁷⁰ Within the first two weeks of peaceful gathering, the Governor mobilized 700 Florida National Guard soldiers against his own constituents.⁷¹

67. Governor DeSantis disparaged any local budget reforms aimed at adjusting municipal law enforcement spending as “insane theor[ies].”⁷² The Governor vowed that these local democratic initiatives were “not going to be allowed to ever carry the day in the state of Florida.”⁷³

68. True to his word, on September 21, 2020, Governor DeSantis held a press conference where he announced the “Combating Violence, Disorder, and Looting, and Law Enforcement Protection Act,” also known as HB 1, a “very robust package” of different criminal penalties for individuals associated with “disorderly assemblies” as well as separate budgeting restrictions for municipalities engaging in public safety reform.⁷⁴

69. Governor DeSantis did not deny that HB 1 would chill political speech. Rather, he made clear that a major goal of HB 1 was to ensure that “a ton of bricks rain down” on demonstrators, so that “people . . . think twice about engaging in this type of conduct” after the summer of 2020’s public movement for racial justice.⁷⁵

⁶⁹ Rev, *Florida Gov. Ron DeSantis Press Conference Transcript: Harsher Penalties for Violent Protesters* (Sept. 21, 2020), <https://www.rev.com/blog/transcripts/florida-gov-ron-desantis-press-conference-transcript-harsher-penalties-for-violent-protesters>.

⁷⁰ News Releases, Office of Gov. Ron DeSantis, *WHAT THEY ARE SAYING: Gov. Ron DeSantis Signs Hallmark Anti-Rioting Legislation Taking Unapologetic Stand for Public Safety* (Apr. 19, 2021), <https://www.flgov.com/2021/04/19/what-they-are-saying-governor-ron-desantis-signs-hallmark-anti-rioting-legislation-taking-unapologetic-stand-for-public-safety/>.

⁷¹ *Id.*

⁷² DeSantis Signs ‘Anti-Riot’ Bill into Law, YouTube (Apr. 19, 2021), <https://www.youtube.com/watch?v=Tz7qITKczNI>.

⁷³ *Id.*

⁷⁴ Rev, *supra* note 69.

⁷⁵ *Id.*

70. Governor DeSantis also stated that a separate and additional goal of HB 1 was to preempt local efforts to deliver meaningful budgetary reforms. HB 1 would not permit municipal governments to exercise control over their budget priorities to shift any funds from law enforcement to other public services.⁷⁶

71. Immediately, the Florida public raised alarm about the political motivations underlying HB 1's heightened sanctions of protest activities. Indeed, the Miami Herald Editorial Board warned that HB 1 "will have deadly consequences and, as history has shown, Black and brown people will likely pay the price."⁷⁷

72. Many municipal leaders also opposed HB 1's budgeting provisions aimed at hindering public safety reform. The Florida League of Cities publicly opposed HB 1.⁷⁸ Twenty-eight local elected officials from throughout Florida wrote to the state legislature and Governor opposing HB 1 because it would allow "partisan statewide officer[s] to line-item-veto local, nonpartisan budgets."⁷⁹

73. Nonetheless, following the Governor's direction to make HB 1 a "focal point"⁸⁰ of the 2021 legislative session, the Florida Legislature took steps to fast-track the bill to passage.

⁷⁶ *Id.*

⁷⁷ The Miami Herald Editorial Board, *Could anything be worse than Florida's Stand Your Ground? Yes, a new, racist legislative proposal*, Miami Herald (Feb. 11, 2021), <https://www.miamiherald.com/opinion/editorials/article249138640.html>.

⁷⁸ Fla. League of Cities, *Combating Public Disorder (Oppose - Impact on Municipal Operations)* (Jan. 28, 2021), [https://www.flcities.com/blog/legislative-bulletin/2021/01/28/combating-public-disorder-\(oppose-impact-on-municipal-operations\)01-28-2021-10-02-49](https://www.flcities.com/blog/legislative-bulletin/2021/01/28/combating-public-disorder-(oppose-impact-on-municipal-operations)01-28-2021-10-02-49).

⁷⁹ Letter from 28 local elected officials to the Florida State Legislature and Governor Ron DeSantis (Mar. 23, 2021), <https://localprogress.org/wp-content/uploads/2021/03/LPFL-Opposes-HB1-SB484.pdf>.

⁸⁰ Wilson, Kirby, *Ron DeSantis: Any Municipality that 'Defunds' Police Will Lose State Funding*, Tampa Bay Times (Sept. 21, 2020), <https://www.tampabay.com/news/florida-politics/2020/09/21/ron-desantis-any-municipality-that-defunds-police-will-lose-state-funding/>.

74. After HB 1 passed the Florida House of Representatives, State Senator Danny Burgess introduced the bill in the Senate even while acknowledging HB 1 could be misapplied, could be enforced in a racially discriminatory manner, and might be wielded against peaceful protesters.⁸¹ Despite these significant concerns, State Senate President Wilton Simpson limited public comment to a single session.⁸²

75. Local officials and the public at large found it difficult to engage meaningfully with their representatives due to restrictions on meeting with legislators that were ostensibly imposed and maintained throughout the duration of the 2021 legislative session due to the COVID-19 pandemic.⁸³

76. Yet, with enormous support from the Governor's office and without a single committee hearing fully open to the public, HB 1 was signed into law by Governor DeSantis on April 19, 2021.⁸⁴

77. The passage of HB 1 amended several criminal statutes to heighten penalties related to protesting and created new protest-related offenses:

a. Section 2 prohibits the willful obstruction of traffic with language broad enough to criminalize standing on the street and temporarily hindering traffic.

⁸¹ News Service of Florida, *Protest bill backed in Florida Senate after emotional debate*, Orlando Sentinel (Apr. 9, 2021), <https://www.orlandosentinel.com/politics/os-ne-riot-bill-florida-senate-20210409-3nogdspusrbajbde33vo3uaa5m-story.html>.

⁸²Florida Senate Committee, *Committee on Appropriations* (Apr. 9, 2021), https://www.flsenate.gov/media/VideoPlayer?EventID=1_3wpkrnbb-202104090830&Redirect=true.

⁸³ Skyler Swisher, *Florida may be an 'oasis of freedom' in COVID reopenings—but the Capitol is still locked down*, South Florida Sun Sentinel (Apr. 21, 2021); James Call, *Controversial bills, a closed Capitol: How COVID defined Florida's 2021 legislative session*, Tallahassee Democrat (Apr. 29, 2021); *see also* Patricia Brigham & Pamela C. Marsh, *Florida lawmakers used COVID as excuse to ignore public opinion*, Florida First Amendment Foundation (May 4, 2021).

⁸⁴ The Florida Senate, HB-1 Bill History, <https://www.flsenate.gov/Session/Bill/2021/1/?Tab=BillHistory> (accessed May 26, 2021).

b. Section 8 creates a new first-degree misdemeanor offense for “mob intimidation,” which prohibits one person “assembled with two or more other persons and acting with a common intent, to use force or threaten to use imminent force, to compel or induce, or attempt to compel or induce, another person to do or refrain from doing any act or to assume, abandon, or maintain a particular viewpoint against his or her will,” a charge that could be levied against those who successfully convince others to change their viewpoint in the course of a demonstration.

c. Section 14 prohibits cyber-intimidation by publishing an individual’s identity, including a public official, with intent for a third party to threaten, harass or commit violence against that person. This could allow individuals to be prosecuted for publicly criticizing a political official on an online forum, for example.

d. Section 15 makes a person “who participates in a public disturbance involving an assembly of three or more people acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property or creating a clear and present danger of injury to another person or property” liable for a third-degree felony charge, punishable by up to five years in prison. Section 15 does not define “participation,” so this third-degree felony charge could be levied against peaceful protestors who find themselves in close proximity to an act of violence or property destruction or who are defending themselves against attack from law enforcement or counter-protesters.

e. Section 16 withholds bail from individuals arrested for breaching the peace, in effect guaranteeing that protestors will spend at least one night in jail.

f. Section 18 creates an affirmative defense to civil liability against wrongful death, personal injury, and property damage for individuals who used force against someone convicted of an aggravated riot. Accordingly, those protesting racial injustice could be convicted of an aggravated riot while counter-protesters who use violence against them would have an affirmative defense.

VI. HB 1 Strips Municipalities of Budget-Setting Authority and Concentrates Power to Appropriate Law Enforcement Funds in the Executive Branch.

78. In addition to these individual criminal penalties, HB 1 creates a new mechanism by which the Executive Branch can commandeer the municipal budgeting process and unilaterally require cities to maintain the prior levels of funding for law enforcement.

79. Section 1 provides that “[i]f the tentative budget of any municipality contains a funding reduction to the operating budget of the law enforcement agency,” that reduction may be contested by either the state attorney—an executive official—or a single dissenting member of the municipality’s governing body within 30 days of the publication of the tentative budget on the municipality’s official website.

80. Section 1 provides no definition of what constitutes a funding reduction. Section 1 could be construed broadly to cover pension or other capital expenditures. Further, there is no clarification as to whether Section 1 would be triggered by any isolated line-item reduction to the operating budget or whether the reduction must lead to a net reduction of the operating budget. Ultimately, without any definition of a “funding reduction,” any number of changes to the law enforcement budget could provide the basis for the state executive’s commandeering mechanism.

81. Any challenge to such a “funding reduction” shall be filed with the Executive Office of the Governor and set forth the municipality’s tentative budget, the municipality’s

operating budget for law enforcement from the previous year, and state the reasons for the challenge. A copy of the challenge will also be served on the municipality's governing body.

82. The municipality is provided only five working days to file a written reply to the Executive Office of the Governor, and HB 1 provides no further role for the municipality as its budget is reviewed by the state executive branch.

83. Upon receipt of the municipality's reply, the Executive Office of the Governor will take up the request, independently convene a budget hearing, and issue a report of its own findings and recommendations to the Administration Commission, chaired by the Governor and composed of the members of his cabinet,⁸⁵ which then has 30 days to make final budgeting decisions for the municipality.

84. HB 1 empowers the Governor and his cabinet to "amend or modify the [municipal] budget as to each separate item of the municipal law enforcement agency" without any further input from the municipality itself or its residents. HB 1 does not provide any standards to guide or limit how the Governor and his cabinet evaluate, amend, or modify budgets. Instead, it confers unfettered discretion.

85. Any amendments or modifications made by the Governor and his cabinet to the municipal budget "shall be final." The scope of potential judicial review is so narrow—limited to whether the Administration Commission "depart[ed] . . . from the essential requirements of law"—that it provides little recourse to a municipality that objects to the budget expenditures mandated by the Governor and his cabinet.

86. The modified budget decreed by the Governor and his cabinet is given binding legal effect. Accordingly, upon receipt of this state-revised budget, the municipality is forced to expend

⁸⁵ Fla. Stat. § 14.202.

funds it otherwise would not have spent at all or would have spent elsewhere to fulfill the state's mandate.

87. The budget takeover process established by HB 1 does not provide any special consideration for the many reasons why a municipality would need to make a reduction for its law enforcement funding, such as growth in demand for municipal services outpacing local tax revenues, the expiration of one-time expenditures or grants, across-the-board fiscal conservatism, or rebalancing investment in needed social services.

88. Essentially, if there is a reduction to the municipal law enforcement budget—no matter the reason or need for the change—HB 1 allows for the municipality's budget to be wrested from its control by a state official (or a single dissenting local official), put to the judgment of the Executive Office of the Governor, which does not have familiarity with the day-to-day operations of the municipality, and then revised line-by-line by the Governor and his cabinet with no further recourse.

89. HB 1 is not comparable to any other Administration Commission appeal process because it imposes a state commandeering process on a purely local budgeting process. The Florida Legislature has authorized the Administration Commission to hear appeals of budgeting items that relate to intergovernmental programs—such as the comprehensive plan, which involves collaboration of the state land planning agency, regional water district, Florida Department of Environmental Protection, Florida Department of State, and Florida Department of Transportation as well as a local government⁸⁶—or state constitutional officers, such as the sheriff.⁸⁷ The municipal budgeting process, however, is a purely local process committed to municipalities through home rule.

⁸⁶ Fla. Stat. 163.1384.

⁸⁷ Fla. Stat. 30.49.

90. No part of HB 1’s state commandeering process involves consultation with the municipality or provides for engagement with the municipality’s residents. Rather, HB 1 allows the Governor and his cabinet to mandate that a municipality fund law enforcement according to the Governor’s vision, rather than applying the considered judgment of local elected officials and advancing the best interests of the municipality and its residents.

VII. Because of HB 1, Florida Municipalities Cannot Structure Their Budgets to Meet the Municipalities’ Needs or Respond to Constituents’ Calls for Reform.

91. Municipalities in Florida are currently finalizing their FY 2022 budgets in consultation with a variety of municipal officials—from city managers to municipal department heads—and community members. This process involves weighing the municipalities’ projected revenues and evaluating community needs and priorities.

92. Because HB 1 provides no guidance or clarification about what qualifies as a reduction subject to its provisions, it injects uncertainty into nonpartisan municipal budgeting discussions.

93. As of this filing, the Governor continues to change the rules governing the application of HB 1’s municipal budgeting provisions. On June 15, 2021, in a session with his cabinet, Governor DeSantis signed off on initial rules that would also allow a county sheriff to challenge a reduction of the law enforcement budget under HB 1. Attorney General Moody has been directed to publish a notice of final rule.⁸⁸

⁸⁸ Matt Dixon, *Florida Panel Paves Way for Law Enforcement to Appeal Local Police Budget Cuts*, Politico (June 15, 2021), <https://www.politico.com/states/florida/story/2021/06/15/florida-panel-paves-way-for-law-enforcement-to-appeal-local-police-budget-cuts-1386464>.

94. In light of these ambiguous and evolving circumstances, it is infeasible for municipalities to know what the scope of their authority is to adjust the law enforcement budget to fit with municipal revenue and priorities.

95. Municipal leaders have described the chilling effect of HB 1 on their nonpartisan budgeting discussions: Mayor Lauren Poe of Gainesville stated in a Commission meeting that he “feel[s] intimidated and threatened by [HB 1]” and believes that he is “being told [he] cannot make government decisions.”⁸⁹

96. HB 1 has impacted municipalities’ evaluation of previously discussed budgetary options that could affect the law enforcement budget. Absent HB 1, municipalities would be free to consider all budgetary options before them and choose the option that best fits the municipality’s circumstances and their residents’ needs and values.

City of Gainesville

97. After directing the City Manager to examine possibilities for transferring non-law-enforcement expenditures from the GPD budget to other municipal departments on July 13, 2020, Gainesville city leaders have engaged in multiple discussions surrounding the possible transfer of youth mentorship programs from the GPD budget.

98. Several youth services programs that are currently under the purview of GPD have little to do with law enforcement. For example, the Reichert House, an after-school program for male youth between 2nd and 12th grade, provides educational support and enrichment as well as mentorship from intervention specialists and involves no provision of law enforcement, even though it is a program within GPD.

⁸⁹ Alexander Lugo, *Gainesville City Commissioners Take First Step In Potential Lawsuit over House Bill 1*, Independent Florida Alligator (May 24, 2021), <https://www.alligator.org/article/2021/05/hb1lawsuit>.

99. Similarly, the B.O.L.D. program describes itself as a “community-based organization” that does not involve law enforcement activity, but rather provides mental health, counseling, and job training services to formerly incarcerated youth between the ages of 16 and 24.

100. The Gainesville City Commission had been evaluating whether to transfer these youth services programs to another municipal department or create a separate Youth Services Department. Recently, the Gainesville City Commission directed the City Manager to provide a variety of options to the Commission to accomplish these ends, including options that would lead to reductions of the GPD budget.

101. HB 1 burdens the Gainesville City Commission’s consideration of these options. Prior to HB 1, the City Commission could focus on which budgetary options were in the best interests of the City of Gainesville and its residents. Now considerations must adjust to avoid triggering HB 1’s commandeering process. Because HB 1 fails to provide legislative standards that could give municipalities notice of what reductions could trigger commandeering and how the State Executive could wield this authority, there is no way to reliably predict what path that will avoid commandeering.

102. This lack of clarity and the powerful deterrence caused by commandeering inject uncertainty into the local budgeting process and impact the Gainesville City Commission’s ongoing deliberation and structuring of its FY 22 budget.

103. By making the Gainesville budget subject to unilateral revision by the Governor and his cabinet, HB 1 utterly disregards Florida’s strict separation-of-powers principles and directly threatens the core home rule authority guaranteed to Gainesville by the Florida Constitution, statute, and the City’s charter.

CAUSES OF ACTION

COUNT I — Separation of Powers (Art. II, Sec. 3 of the Fla. Constitution)

104. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 103 inclusive, as if fully set forth herein.

105. This count is an action for injunctive relief, pursuant to Section 26.012 of the Florida Statutes, and a declaratory judgment, pursuant to Fla. Stat. § 86.011, *et. seq.*, seeking a declaration from the Court that HB 1 violates the separation of powers under Article II, Section 3 of the Florida Constitution.

106. The Florida Constitution divides the powers of the state government into three branches—legislative, executive, and judicial—and prohibits any branch from “exercis[ing] any power appertaining to either of the other branches unless expressly provided [by the constitution].” Fla. Const. art. II, § 3. Additionally, no branch may delegate its constitutionally assigned power to another branch. *See Smith v. State*, 537 So. 2d 982, 987 (Fla. 1989).

107. To the limited extent that the state government has authority to restrict local government power, the Florida Constitution confers this authority exclusively upon valid exertions of legislative power. *See, e.g., Askew v. Cross Key Waterways*, 372 So. 2d 913, 915-19 (Fla. 1978).

108. Furthermore, the power to appropriate public funds is a “fundamentally legislative task” and appropriations must be passed through “duly enacted statutes” rather than through executive administrative decisions. *Chiles v. Child. A, B, C, D, E, & F*, 589 So. 2d 260, 265 (Fla. 1991). Likewise, the power to “reduce appropriations” is a legislative function. *Florida House of Representatives v. Martinez*, 555 So.2d 839, 845 (Fla. 1990).

109. HB 1 impermissibly delegates both of these legislative powers to the executive. HB 1’s budgeting review process limits local authority by allowing the state to unilaterally revise the

municipal budget. If the Florida Constitution allows the State to engage in such at all, then this review is a legislative function that the Florida Constitution does not authorize for delegation to another branch.

110. HB 1's budgeting review process also allows the Administration Commission to make appropriations decisions that are fundamentally legislative in character. The Florida Constitution does not authorize the legislature to delegate to the executive branch "its authority to make decisions regarding the purposes for which public funds may or may not be applied." *Chiles*, 589 So. 2d at 265.

111. This impermissible delegation of legislative power interferes with Plaintiffs' ability to balance their operational budgets and also interferes with Plaintiffs' ability to make fiscal decisions consistent with the political will of their constituents.

112. Because Section 1 of HB 1 impermissibly commits legislative functions to the executive branch, it violates Article II, Section 3 of the Florida Constitution. Section 1 of HB 1 should be enjoined in its entirety.

113. The Court should also declare that HB 1 violates the separation of powers principles articulated in Article II, Section 3 of the Florida Constitution.

COUNT II — Nondelegation Doctrine

114. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 102 inclusive, as if fully set forth herein.

115. This count is an action for injunctive relief, pursuant to Section 26.012 of the Florida Statutes, and a declaratory judgment, pursuant to Fla. Stat. § 86.011, *et. seq.*, seeking a declaration from the Court that HB 1 violates the nondelegation doctrine.

116. Even assuming the legislative branch can delegate its power to appropriate public funds and control municipal budgets to the executive branch (which it cannot), this specific delegation is impermissible due to lack of standards relating to the review by the Administration Commission. This dearth of standards is particularly problematic in light of HB 1’s unprecedented re-assignment of legislative powers.

117. Under Florida law, the nondelegation doctrine requires that “fundamental and primary policy decisions” be made by “members of the legislature.” *Askew*, 372 So. 2d at 925.

118. Legislation delegating the administration of legislative programs “must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.” *Askew*, 372 So. 2d at 925. When legislation is “so lacking in guidelines that neither the agency nor the court can determine whether the agency is carrying out the intent of the legislature in its conduct” then the agency is exercising the core legislative power of policymaking, rather than its constitutionally assigned power of administering the law. *Id.*

119. The guidelines accompanying legislative delegation to an administrative agency “must clearly announce adequate standards to guide . . . in the execution of the powers delegated.” *S. All. for Clean Energy v. Graham*, 113 So. 3d 742, 748 (Fla. 2013). The statute delegating the power must “so clearly define the power delegated that the administrative agency is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.” *Id.*

120. Delegation of legislative functions may pass facial constitutional muster if accompanied by “[c]arefully crafted legislation establishing, among other things, the extent to which appropriations may be reduced, coupled with a recitation of reduction priorities and provisions for legislative oversight.” *Chiles*, 589 So. 2d at 268.

121. HB 1 contains no discernible standards or guidelines for the Administration Commission to follow in carrying out the legislature’s intent. It does not identify when municipal law enforcement budgets should be overridden, by how much, or under what conditions.

122. Section 1 merely provides that the Administration Commission “shall approve the action of the governing body of the municipality or amend or modify the budget as to each separate item within the operating budget of the municipal law enforcement agency.” When the budget control provisions are triggered by complaint, HB 1 allows the Administration Commission full discretion to edit and revise the law enforcement portions of a municipal budget as they see fit.

123. Because HB 1 fails to provide guidelines, the amount Plaintiffs’ budget lines could be revised by is variable and unpredictable. Additionally, HB 1’s lack of standards allows the Administration Commission to override the considered legislative judgment of municipal bodies for any reason or no reason at all.

124. Plaintiffs’ budgeting discussions are currently impacted by the presence of this state commandeering process. Should Plaintiffs reduce their law enforcement budget, they can expect based on the Governor’s stated position, to have their budget lines overridden. Thus, Plaintiffs can only avoid this interference by, at a minimum, maintaining the past year’s level of law enforcement funding.

125. Because Section 1 of HB 1 impermissibly commits unfettered legislative discretion to the executive branch, it violates the nondelegation doctrine. Section 1 of HB 1 should be enjoined in its entirety.

126. The Court should also declare that HB 1 violates the nondelegation doctrine.

COUNT III — Single Subject Rule
(Art. III, Sec. 6 of Fla. Constitution)

127. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 103 inclusive, as if fully set forth herein.

128. This count is an action for injunctive relief, pursuant to Section 26.012 of the Florida Statutes, and a declaratory judgment, pursuant to Fla. Stat. § 86.011, *et. seq.*, seeking a declaration from the Court that HB 1 violates the single subject rule contained in Article III, section 6 of the Florida Constitution.

129. Article III, section 6 of the Florida Constitution provides that “every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”

130. The subject of an act may be wide ranging, but there must be “a natural or logical connection” between the various sections within a law. *Chenoweth v. Kemp*, 396 So. 2d 1122, 1124 (Fla. 1981) (quoting *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969)).

131. The legislature must include a preamble in complex legislation that connects disparate subject matter of the legislation. *See, e.g., Smith v. Department of Insurance*, 507 So. 2d 1080, 1087-89 (Fla. 1987); *Burch v. State*, 558 So. 2d 1, 2-3 (Fla. 1990).

132. The title of an act must express the “real purpose” of the legislation and cannot be misleading or deceptively vague. *Butler v. Perry*, 67 Fla. 405, 410-11 (1914); *see also Fine v. Moran*, 74 Fla. 417 (1917); *Stokes v. Galloway*, 61 Fla. 437 (1911).

133. HB 1 combines two distinct and unrelated legal objects in one law. Section 1 restricts municipal authority by creating a mechanism for state review of the law enforcement budget. Sections 2, 3, 8, 14, 15, 16, and 18 impose heightened criminal penalties upon individuals related to protest activities.

134. There is no “natural or logical connection” between Section 1 and Sections 2, 3, 8, 14, 15, 16 and 18. Section 1 impacts municipal authority while Sections 2, 3, 8, 14, 15, 16, and 18 affect individual liberty. Section 1 has nothing to do with protest activities while Sections 2, 3, 8, 14, 15, 16, and 18 have nothing to do with municipal budgeting for law enforcement.

135. The Legislature has given no explanation of the logical nexus between those sections, nor does the text of HB 1 include a preamble explaining how the budget provisions connect to the anti-protest provisions.

136. Further, the title of HB 1 is misleading and deceptively vague. The title of HB 1 does not briefly express the subjects of the legislation as the municipal law enforcement budget provisions are not expressed in “[a]n act relating to combating public disorder.”

137. Because HB 1 includes multiple subjects that are neither properly connected nor expressed in its title, it violates the single subject rule and accordingly should be enjoined.

138. The Court should also declare that HB 1 violates Article III, Section 6 of the Florida Constitution.

COUNT IV — Unfunded Mandate
(Article VII, Sec. 18 of the Fla. Constitution)

139. Plaintiff repeat and incorporate by reference the allegations contained in paragraphs 1 through 102 inclusive, as if fully set forth herein.

140. This count is an action for injunctive relief, pursuant to Fla. Stat. § 26.012, and a declaratory judgment, pursuant to Fla. Stat. § 86.011 *et. seq.*, seeking a declaration from the Court that HB 1 violates the unfunded mandate rule guaranteed under Article VII, Section 18 of the Florida Constitution.

141. The Florida Constitution broadly prohibits the state from passing an unfunded mandate—in other words “any general law requiring such county or municipality to spend funds

or to take an action requiring the expenditure of funds”—subject to limited exceptions. Fla. Const. art. VII, § 18.

142. The legislature may only require a municipality to take an action involving an expenditure of funds where such a requirement both “fulfills an important state interest” *and* where the legislature has either (1) ensured that funds have been appropriated to cover such an expenditure, (2) authorized the municipality to create a funding source not previously available to it that can cover the cost, or (3) approved the expenditure by a two-third majority in each house of the legislature. An unfunded mandate will also be deemed acceptable if (4) the expenditure stems from compliance with a law that applies to all persons similarly situated or (5) the expenditure is required by a federal law or federal grant conditions that contemplate municipal action. Fla. Const. art. VII, § 18.

143. HB 1 requires a municipality to expend funds in order to maintain the previous year’s funding of the law enforcement budget or else risk the State seizing budgetary control from the municipality and line-editing the budget without the municipality’s consent or collaboration. Already this commandeering mechanism is impacting Plaintiffs’ budgetary considerations for FY 22 and serves as a powerful deterrent against reducing or reallocating law enforcement funding.

144. The outcome of HB 1’s review process also necessarily requires a municipality to spend funds because final decisions by the Administration Commission direct municipalities to pass a particular budget item or otherwise give a budget item legal effect. Accordingly, if the Administration Commission denies a proposed reduction of the law enforcement budget, then it requires the municipality to expend funds to offset the denied reduction. Likewise, if the Administration Commission amends or modifies any line item of the law enforcement budget, it requires the municipality to expend funds as it otherwise would not have. And even if the

Administration Commission approves a proposed reduction, this gives the reduction final legal effect and amounts to a state command that the municipality expend funds. Thus, any outcome of the Administration Commission review process translates to a mandate to expend funds.

145. HB 1 does not qualify for any of the narrow exceptions to the Florida Constitution’s prohibition of unfunded mandates. As an overarching matter, nowhere on the face of HB 1, does the legislature state that its unfunded mandate “fulfills an important state interest.”

146. Nor has the Legislature undertaken any of the steps that could justify an unfunded mandate:

a. The Legislature has not appropriated any state funds to support municipalities maintaining the previous year’s funding of law enforcement

b. The Legislature has not authorized any municipality to create a new funding stream to cover the cost of maintaining the previous year’s level of law enforcement spending.

c. HB 1 was not passed by a two-thirds majority in each house of the legislature: The Florida House passed HB 1 with a 57.5% majority while the Florida Senate passed HB 1 with a 66.1% majority (just under two thirds).⁹⁰

147. Maintaining the previous year’s level of law enforcement funding is not necessary to comply with any generally applicable law that applies equally to all persons. HB 1’s expenditure requirements are targeted at municipalities that make certain budgetary decisions.

148. Maintaining the previous year’s level of law enforcement funding additionally is not required by federal law or to maintain eligibility for any federal grant.

⁹⁰ The Florida Senate, *supra* note 84.

149. Because HB 1’s municipal budgeting provision constitutes an unfunded mandate and satisfies none of the narrow exceptions to the general prohibition of unfunded mandates, it violates Article VII, Section 18 of the Florida Constitution. Section 1 of HB 1 should be enjoined in its entirety.

150. Section 1 of HB 1 should also be declared unconstitutional under Article VII, Section 18 of the Florida Constitution.

COUNT V — Home Rule
(Art. VIII, Sec. 2 of the Fla. Constitution)

151. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 102 inclusive, as if fully set forth herein.

152. This count is an action for injunctive relief, pursuant to Section 26.012 of the Florida Statutes, and a declaratory judgment, pursuant to Fla. Stat. § 86.011, *et. seq.*, seeking a declaration from the Court that HB 1 violates the home rule amendment under Article VIII, Section 2 of the Florida Constitution.

153. Article VIII, Section 2(b) of the Florida Constitution guarantees that “[m]unicipalities shall have government, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services.” The purpose of this constitutional protection of home rule is to “give municipalities inherent power to meet municipal needs.” *Thomas v. State*, 614 So. 2d 468, 472 (Fla. 1993).

154. The Florida Supreme Court has ratified a “broad construction of municipal powers” under Article VIII, Section 2(b). *Fla. Dep’t of Revenue v. City of Gainesville*, 918 So. 2d 250, 263 (Fla. 2005). Core to a municipality’s authority is the ability to expend municipal funds for the general welfare of its residents. *See City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1281-82 (Fla. 1983); *City of Gainesville v. Bd. of Control*, 81 So. 2d 514, 518 (Fla. 1955).

155. Plaintiffs' ability to carry out core budgeting functions and determine municipal expenditures is impacted by HB 1. Not only do HB 1's vague provisions inject uncertainty into the municipal budgeting process, but also HB 1 deters Plaintiffs from reducing law enforcement spending by imposing a state commandeering process.

156. Because Section 1 of HB 1 effectively prevents municipalities from structuring their budget in response to the needs of their constituents, it violates Article VIII, Section 2 of the Florida Constitution. Section 1 of HB 1 should be enjoined in its entirety.

157. Accordingly, the Court should declare that Section 1 of HB 1 violates the home rule amendment under Article VIII, Section 2 of the Florida Constitution.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing facts and arguments, Plaintiffs request that the Court:

a) Declare that Section 1 of HB 1 violates the Florida Constitution as all of the elements necessary to support declaratory relief are present:

- 1) As HB 1 impacts Plaintiffs' ability to pass a budget to serve the needs of their constituents, there is a bona fide, actual, present need for a declaration that HB 1 is invalid and unconstitutional;
- 2) Given the ongoing and imminent harms to Plaintiffs as they are currently structuring their FY 22 budget, the declaration sought deals with a present controversy as to an ascertainable set of facts;
- 3) Plaintiffs' constitutional rights, powers, and privileges are dependent upon the law applicable to the facts because HB 1 implicates Plaintiffs' budgeting power and right to be free from unfunded mandates;

- 4) The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint;
- 5) The antagonistic and adverse interests are all before this Court; and
- 6) Because of the facts described in the foregoing paragraphs, an actual, present and justiciable controversy has arisen between Plaintiff cities and Defendants concerning Plaintiffs' ability to propose and pass municipal budgets;

b) Permanently enjoin Defendants from enforcing, utilizing, or otherwise invoking Section 1 of HB 1; and

c) Grant any relief as the Court may deem just and proper.

Dated: _____