

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

CITY OF GAINESVILLE; CITY OF LAKE
WORTH BEACH; CITY OF
LAUDERHILL; CITY OF MIRAMAR;
CITY OF NORTH MIAMI; CITY OF
NORTH MIAMI BEACH; CITY OF
TALLAHASSEE; and CITY OF WILTON
MANORS,

Plaintiffs,

v.

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; and
the ADMINISTRATION COMMISSION,

Defendants.

CASE NO. 2021 CA 001959

PLAINTIFFS' CONSOLIDATED OPPOSITION
TO DEFENDANTS' MOTIONS TO DISMISS

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INTRODUCTION

Plaintiffs brought this suit to stop the unconstitutional stifling of local democracy in Florida. During the racial justice protests of 2020, Florida municipalities strived to make space for the democratic process that is the lifeblood of this state and country. Cities around the state supported the peaceful exercise of free speech, listened to the lived experiences of constituents, and—perhaps most significantly—engaged with communities to develop local solutions that reflected local needs and values. As much as 2020 was defined by the resurfacing of discussions of racial justice and equality that our country has grappled with since the founding, it was also defined by the responses of local communities to those conversations. The Combatting Public Disorder Act (“HB 1”) undermines local democracy throughout Florida by stalling those community-led conversations to instead impose the views and the will of the State Executive Branch.

Defendants’ Motions to Dismiss suffer from a fundamental flaw: they misconstrue, rather than meaningfully engage with, the controversy Plaintiffs have brought before this Court.¹ HB 1 infringes on the local budgeting process by enabling the State Executive Branch to take over and reformulate municipal law enforcement budgets in direct contravention of the Florida Constitution. To avoid such a harsh and irreversible intrusion, Plaintiff cities have been forced to formulate budgets that forgo or stall consideration of budget options otherwise before them. Defendants’ Motions to Dismiss, however, do not engage with HB 1’s current impact on local decision-making or its deep constitutional flaws. Rather than address the current harm that Plaintiffs have pleaded in detail in the First Amended Complaint, Defendants focus on the

¹ Defendants filed two motions to dismiss. The motion submitted by Governor DeSantis and the Administration Commission was incorporated by reference in Attorney General Moody’s motion. The former will be referred to as “Defs. Mot.” and the latter “AG Mot.”

potential future harm that has yet to pass. Rather than engage with merits of Plaintiffs' constitutional arguments, Defendants build straw-man arguments or ignore HB 1's flaws entirely. And rather than acknowledge their roles in enforcing HB 1, the Governor disclaims his role as head of the Executive Office of the Governor, while the Attorney General disclaims her enforcement authority. Indeed, as detailed in this Opposition, each of Defendants' bases for dismissal is without merit.

First, this case is appropriate for adjudication. Plaintiffs need not wait until the Administration Commission amends a local law enforcement budget to bring suit. This case is properly before the Court now because Defendants' intent is clear: they aim to "actually prevent[]" local governments proposing such reforms, having threatened to "to stop it at the state level."² This threat has had real world consequences already. HB 1 has forced Plaintiffs to stall or minimize community-led reforms to invest more in public services. HB 1 has cast uncertainty over local budgetary authority, stifling local innovation, and curtailing Plaintiffs' discretion to consider budgetary options previously available to them (including increasing capital expenditure for police departments). HB 1's threat of retaliation has prevented Plaintiffs from crafting budgets that reflect community priorities and preferences. In sum, HB 1 has reoriented the local budget process toward state politics and away from the needs of communities. Plaintiffs are entitled to declaratory relief to resolve this present state of insecurity regarding the state and scope of their municipal budgetary authority. There are no bars that prevent this Court from entering that relief.

² See *DeSantis Signs 'Anti-Riot' Bill into Law*, Fox 4 Now, video, at 01:48-01:54 (Apr. 19, 2021), <https://www.youtube.com/watch?v=Tz7qITKczNI> [<https://perma.cc/3XWR-7X3H>] (cited by First Am. Compl. ¶ 88).

Second, all of Plaintiffs' claims are cognizable. In direct conflict with Florida's constitutional separation of powers, HB 1 delegates a quintessential legislative power—the power to make budgetary and appropriations decisions—to the state executive, without guidelines or limits. In blatant contradiction to the Florida Constitution's single-subject rule, HB 1 amalgamates 21 different provisions covering five distinct Titles of Florida Statutes. And although the Florida Constitution prohibits the state from dictating local expenditures without providing a stream of offsetting revenue, HB 1 effectively forces municipalities to maintain or increase their law enforcement funding without providing a state source of revenue. *And third*, both the Governor and the Attorney General are proper parties to this litigation given their roles in and connections to HB 1: the law explicitly tasks the Governor's Executive Office with implementation, and the Attorney General maintains an interest in the law's enforcement.

For all of the reasons stated below, and for the health of local democracy in Florida, the Court should deny Defendants' Motions to Dismiss.

RELEVANT BACKGROUND

Plaintiffs' home rule charters vest them with broad governmental powers that enable them to perform local functions, including the ability to propose and set budgets as well as the ability to protect the health and welfare of their communities. First Am. Compl. ¶¶ 14, 21. Those powers are protected by the Florida Constitution. *See* Art. VIII, § 2(b), Fla. Const. As the governments closest to the people of Florida, Plaintiffs provide crucial services that are a part of their residents' day-to-day lives. First Am. Compl. ¶ 1. Among the services each city provides are public safety and protection, including through their own police departments. *Id.* ¶ 37.

Local Budgeting Process

One chief responsibility of a municipality in Florida is to craft a budget for each fiscal year. State law sets only basic procedural requirements for local budgeting; it leaves the substance of local budgeting—setting budget amounts, allocations, and aims—to municipalities’ discretion. *See generally* § 166.241, Fla. Stat. (2021) (providing that municipal budgets must be adopted annually for a fiscal year running from October 1 to September 30, budgets must be balanced, and budgets need to be posted on the municipality’s website both before it is heard and after its adoption). Municipalities must have free control to craft budgets that meet local needs and circumstances as they arise. Indeed, that is why state law also allows and contemplates regular amendments to municipal budgets, as budgetary conditions and needs inevitably will change throughout the course of any given year. *Id.* at §§ 166.241(7)-(8). HB 1 is unique in its attempt to wrestle this discretion from the hands of municipal leaders.

Given the wide latitude permitted by state law, local budgeting is a dynamic and community-involved process. First Am. Compl. ¶ 2. All Plaintiffs have adopted a commission-manager model of government where power is divided between publicly accountable elected representatives and an appointed city manager. *Id.* ¶ 36. Typically, the manager compiles a budget proposal in the spring, which considers projected revenues and expenses as well as incorporates priorities and direction from the city commissioners. *Id.* ¶ 39. The budget is presented to the commission at public meetings, where residents have access and can provide comments. *Id.* ¶ 40. Following several months of discussion with the public as well as iteration by the city manager, the commission votes to approve the budget. *Id.* ¶ 41. It is understood that this budget is subject to potential amendment and adjustments based on real and changing circumstances, including revenue changes and new or unexpected community needs. *Id.* ¶¶ 41-42.

Across the state, indeed throughout the country, law enforcement comprises the largest expenditure in most cities. *Id.* ¶ 56. Plaintiffs are no exception. *Id.* ¶¶ 57-61.

Calls for Budgetary Reform

During the summer of 2020, the killings of George Floyd, Breonna Taylor, and many others at the hands of police sparked the largest mass movement for racial justice in American history—as well as the backlash that produced HB 1. *Id.* ¶¶ 64-67. Communities held peaceful protests and demonstrations throughout Florida, including in Plaintiff cities. *Id.* ¶¶ 68a-e. In connection with these demonstrations, many advocacy groups and community leaders organized discussions as well as educational events that focused on the relative lack of resources for social services compared to policing. *Id.* ¶ 70. Advocates and community members pushed for the reevaluation of local spending priorities and innovation to find ways that other personnel, not just the police, could be deployed to deescalate non-violent situations. *Id.*

Responding to these calls for change, several Florida cities adopted new policies and practices to invest in social services and alternative approaches to policing. *Id.* ¶ 72. In Tallahassee, the city commission authorized the creation of a pilot program to build community-based responses to non-threatening mental health crises. *Id.* ¶ 81. In Gainesville, the city commission directed the city manager to develop a proposal for reallocating functions out of the police department as well as to repurpose open sworn officer positions. *Id.* ¶ 75. Later in the year, the Gainesville city commission approved the reallocation of certain positions as well as the repurposing of two positions to allow for non-law enforcement intervention specialists. *Id.* ¶¶ 76-77. Governor DeSantis announced HB 1 in September 2020, in direct response to both the racial justice protests as well as these community-led municipal reforms. *Id.* ¶ 89. In his

announcement, Governor DeSantis specifically threatened to cut state funding from cities that “defunded” municipal police budgets. *Id.* ¶ 94 & n.93.

HB 1

Following the Governor’s direction to make HB 1 a “focal point” for the 2021 legislative session, the Florida Legislature fast-tracked the bill to passage. *Id.* ¶ 94. HB 1 moved swiftly through the Legislature with severely limited public hearings. *Id.* ¶ 98. As a result, local officials and advocates found it difficult to engage meaningfully with their representatives and many questions about the bill were left unanswered. *Id.* ¶¶ 96-97. HB 1 was signed into law on April 19, 2021. *Id.* ¶ 98.

HB 1 provides that if the city’s tentative budget contains a “funding reduction to the operating budget of the municipal law enforcement agency,” § 166.241(4)(a), Fla. Stat. (2021), then either the state attorney or a city commissioner who objects to the funding reduction is authorized to initiate review by the Administration Commission. *Id.* The scope and meaning of a “funding reduction” is not defined by the statute. First Am. Compl. ¶ 102. The petition made by the appealing party is submitted to the Executive Office of the Governor (hereinafter, “EOG”); the city commission has five working days to submit a reply; and the EOG provides for a hearing on the matter. §§ 166.241(4)(a), (4)(b), & (5), Fla. Stat. The EOG must submit a “report of findings and recommendations” to the Administration Commission and may make any recommendation to revise a municipal budget, without guidelines or standards dictated by the Legislature. *Id.* at § 166.241(5).

The Administration Commission then has 30 days to either approve the underlying budget reduction or to “amend or modify the budget *as to each separate item within the operating budget of the municipal law enforcement agency.*” § 166.241(5), Fla. Stat. (emphasis

added). In other words, the Administration Commission is authorized to engage in a line-by-line review of the city’s law enforcement budget. The Florida Legislature has provided no standards or guidelines for the Administration Commission’s review. First Am. Compl. ¶ 105. There is no required public meeting at which residents or their elected local officials may be heard about changes contemplated by the Administration Commission, nor is there any requirement that the Administration Commission take into account the specific needs of the community. The budget as approved, amended, or modified by the Administration Commission is final. § 166.241(5), Fla. Stat.

Impact of HB 1 on Municipal Budgeting

HB 1 has had an immediate and significant impact on municipal budgeting decisions since it went into effect in 2021. There are at least three different manifestations of these impacts:

1. Impeding Innovations and Reforms

When proposing HB 1, Governor DeSantis made it clear that the goal of HB 1 was to “actually prevent[]” municipalities from implementing any police reforms. First Am. Compl. ¶ 91. The law has had that exact effect. For example, in Gainesville, the city commission had been planning to shift the funding and oversight of youth services out of the police department and into other facets of city government (or into a newly created Office of Child & Youth Development). *Id.* ¶¶ 120-122. Because of HB 1, this plan has not been implemented. *Id.* ¶ 122. In Tallahassee, because of HB 1’s potential effects, a highly successful multi-disciplinary pilot program remains modest, despite its clear impact. *Id.* ¶¶ 134-136.

2. Injecting Uncertainty into the Budgeting Process

Every city faces uncertainty about the application of HB 1 to its budgetary decisions regarding local law enforcement. HB 1 provides no definition of what constitutes a “funding

reduction,” meaning that any number of routine budgetary fluctuations like pension obligations or capital expenditures could trigger HB 1’s amendment provisions. *Id.* ¶ 102. To minimize the risk of triggering HB 1, cities must be overly cautious and avoid any budgetary options that could lead to a reduction of their police budget in the broadest sense. This leaves cities unable to weigh the full range of budget allocation options that otherwise might be available to them. *Id.* ¶ 114. Cities are thus left with a more limited set of options to respond to needs and are reluctant to make longer-term allocations with the threat of an HB 1 revision or override to their budgets. For example, in 2020, the City of Lauderhill reduced its property tax rate to provide a reprieve to residents. *Id.* ¶ 125. Consequently, and in order to offset the lost revenue, city leadership removed funding for certain open positions and reduced its law enforcement budget. *Id.* Following the passage of HB 1, Lauderhill cannot consider similar changes today. *Id.* ¶ 126. On the flip side, the City of Wilton Manors has increased budgetary allocations for overtime pay as well as capital improvements such as body cameras. *Id.* ¶¶ 137-138. HB 1 deters such allocations in the future, especially capital expenditures, as the city does not know if it can reduce the following year’s budget, assuming such one-time expenses are not needed at the same levels. *Id.* ¶ 139. In this way, HB 1 might actually have a perverse outcome of causing cities to under-invest in police departments if they do not know whether they will need to continue to fund at such levels in perpetuity.

3. The Threat of Retaliation by the Governor

City leaders also have expressed concern about the retaliatory impact of HB 1. Given the Governor’s stated intentions for the law, broader trends in the treatment of local decision-making in Florida, and the fact that the HB 1 complaint process flows through the EOG, these concerns are not mere speculation. Gainesville Mayor Lauren Poe stated that he felt “intimidated and threatened” by HB 1 and that the law affected his ability to do his job. *Id.* ¶ 117. Miramar Mayor

Wayne Messam noted that HB 1 had the effect of impeding the city commission’s ability to serve its residents. *Id.* It would not be fair to call these concerns speculative, as Defendants have influence over state attorneys,³ who can initiate budget reviews by the EOG and Administration Commission. In addition, Governor DeSantis repeatedly has threatened or sanctioned localities and businesses for refusing to fall in line with his policy preferences.⁴

Collectively, these impacts create a “deterrent effect” that has been and continues to cause Plaintiffs cognizable injury. Thus, Plaintiffs have a practical and present need for a declaratory judgment to resolve the uncertainty and insecurity in their budgetary authority.

LEGAL STANDARD

Florida law sets a high bar for dismissal of a complaint for declaratory relief. A complaint should only be dismissed “if the movant can establish beyond any doubt that the claimant could prove no set of facts whatever in support of his claim.” *Johnson v. Gulf Cnty.*, 965 So. 2d 298, 299 (Fla. 1st DCA 2007). “It is axiomatic that on a motion to dismiss, ‘the trial court must

³ State Attorneys are constitutional officers, Art. V, § 17, Fla. Const., who must report to the Attorney General as directed, *see* § 16.09, Fla. Stat. (2021), and who can be reassigned by order of the Governor, § 27.14, Fla. Stat. (2021).

⁴ Those who have been targeted include local school districts for implementing mask mandates, local governments for requiring vaccinations of employees, and corporate advocacy by Walt Disney Company for LGBTQ+ equality and the Tampa Bay Rays related to gun violence prevention. *See, e.g.*, Johnny Diaz, *Florida’s Board of Education approves cutbacks to 8 school districts over mask mandates*, (Aug. 8, 2021) NY Times, <https://www.nytimes.com/live/2021/10/08/world/covid-delta-variant-vaccines#florida-mask-mandates> [<https://perma.cc/SX6Y-ZCTF>]; Karl Eters, *Florida county faces a \$3.57 million fine over its employee vaccine requirement*, (Oct. 12, 2021) USA Today, <https://www.usatoday.com/story/news/nation/2021/10/12/leon-county-fine-florida-vaccine-requirement-mandate-ron-desantis-vince-long-tallahassee/8428557002/> [<https://perma.cc/W3TX-HS9Y>]; Steve Contorno, *DeSantis eyes state takeover of Disney’s special district*, (May 16, 2022) CNN, <https://www.cnn.com/2022/05/16/politics/florida-disney-special-district-ron-desantis/index.html> [<https://perma.cc/SZT8-CRQ3>]; Ron DeSantis blocks funds for Tampa Bay Rays after team’s gun safety tweets, (June 3, 2022) The Guardian, <https://www.theguardian.com/sport/2022/jun/03/ron-desantis-blocks-funds-tampa-bay-rays-gun-safety> [<https://perma.cc/TT8G-27NB>].

confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept as true all well-pleaded allegations.” *Newberry Square Fla. Laundromat v. Jim’s Coin Laundry & Dry Cleaners, Inc.*, 296 So. 3d 584, 589 (Fla. 1st DCA 2020). “[O]nce a cause of action for declaratory relief is sufficiently pleaded, the plaintiff is entitled to a judicial determination of the rights at issue.” *Meadows Cmty. Ass’n v. Russell-Tutty*, 928 So. 2d 1276, 1279-80 (Fla. 2d DCA 2006). In sum, unless the defendant can demonstrate that there would be no set of facts that could entitle plaintiff to declaratory relief—drawing all inferences in plaintiff’s favor—a declaratory judgment action must proceed to judicial determination.

ARGUMENT

I. PLAINTIFFS’ FACIAL CHALLENGE TO HB 1 IS PROPERLY BEFORE THE COURT.

The fatal flaw pervading Defendants’ Motions to Dismiss is their misconstruction of the First Amended Complaint. Defendants’ arguments on standing (Section I), redressability (Section II), and “failure to allege ultimate facts” (Section III) are really three attempts to advance the same argument: that Plaintiffs cannot bring a claim unless (1) they propose a reduction to their law enforcement budget; (2) the proposal is brought in front of the Administration Commission; and (3) the Administration Commission modifies the budget proposal. But this argument fails in each of the ways Defendants seek to invoke it. By inventing these preconditions, Defendants have built a straw-man that conveniently neglects HB 1’s past and ongoing deterrence effects for which existing law clearly grants Plaintiffs causes of action to seek redress. *See generally* § 86.101, Fla. Stat. (2021).

As explained below in **Part A**, the Declaratory Judgment Act was intended to address and has been used to resolve uncertainty over legal rights. *See, e.g., Dep’t of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla. 1994)(holding that plaintiffs need not risk penalization by

the state in order to plead a cause of action for declaratory relief). HB 1 creates such uncertainty, and Plaintiffs have been harmed by it. Namely, the imposition of a process by which the State Executive Branch could unilaterally take over one of the most critical functions of local governance is enough to deter cities from taking any actions that would put them at risk. Having a local budget rewritten by the State Executive Branch would have ripple effects throughout the entire municipality: in order to balance a forced expenditure, cities would have to cut from other programs, interfering with initiatives planned for the next fiscal year. In the face of such consequences, cities now must take steps to avoid triggering HB 1. This deterrence is HB 1's intended effect and Plaintiffs' present injury. In **Part B**, Plaintiffs explain that they have alleged in detail the ultimate facts that entitle them to relief. Plaintiffs can demonstrate cognizable legal interest—that is, how Plaintiffs are affected by the uncertainty HB 1 has introduced to local budgeting and made insecure by HB 1's deterrent effect. In **Part C**, Plaintiffs further address variations of this standing argument by showing Plaintiffs have a very real stake in the outcome of this litigation and interests that are not barred by the public official standing doctrine.

A. The Insecurity and Uncertainty Adversely Affecting Plaintiffs Give Rise to a Present Controversy Requiring Declaratory Relief.

The injury that Plaintiffs are currently suffering from HB 1 necessitates declaratory relief. A declaratory judgment is a statutory remedy that allows Florida courts “to settle and afford relief from insecurity and uncertainty with respect to rights, status, and other . . . legal relations.” § 86.101, Fla. Stat. Florida's Declaratory Judgment Act “is to be liberally administered and construed.” *Id.* Courts are obligated to order declaratory relief where a plaintiff shows:

[1] [T]here is a bona fide, actual, present practical need for the declaration; [2] that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; [3] that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; [4] that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the

subject matter, either in fact or law; [5] that the antagonistic and adverse interest are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991). “[A] court may entertain a declaratory action regarding a statute’s validity” as long as “there [is] a bona fide need for such a declaration based on present, ascertainable facts.” *Id.*

Florida courts have recognized that whether declaratory relief is warranted depends on the unique circumstances of the case. In *Martinez*, 582 So. 2d 1167, for example, the Florida Supreme Court granted declaratory relief about the constitutionality of a revision to the State workers’ compensation laws. The plaintiffs were employers, employees, and labor organizations who were “interested in, or may be in doubt about, their rights” under the amendments and brought a facial challenge to the amendments. *Id.* at 1169-70. Although the amendments had not been triggered or enforced against plaintiffs at the time of filing, the Florida Supreme Court acknowledged that the “rights and obligations of some parties and many others would be affected if the act in its entirety is invalid.” *Id.* at 1171. The uncertainty cast over plaintiffs’ legal relations under the challenged amendments and “importance of th[e] case” presented a “bona fide need for [declaratory relief] based on present, ascertainable facts.” *Id.* at 1170-71.

The Florida Supreme Court also has recognized that when plaintiffs must change their behavior or “risk being penalized by the State,” plaintiffs need not take that risk and suffer such a penalty to demonstrate a bona fide need for a declaration. *Dep’t of Revenue*, 646 So. 2d at 721 (concluding declaratory relief appropriate to evaluate the legality of a state tax applicable to plaintiffs, even though plaintiffs had “submitted no proof that they actually paid [the tax]” or “applied for a refund”). And, particularly “when the cause involve[s] the public interest in the settlement of controversies in the operation of essential government functions and in the

disbursement of public funds,” the Florida Supreme Court has found declaratory relief to be warranted. *Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260, 263 (Fla. 1991) (finding declaratory relief appropriate where foster children challenged members of the Administration Commission to enjoin the Commission from reducing certain appropriations pursuant to a new policy articulated by the Governor).

The uncertainty about their rights that Plaintiffs are experiencing because of HB 1 is precisely the kind of harm the Declaratory Judgment Act is intended to prevent. HB 1 has put Plaintiffs in doubt about the scope of their budgeting powers and immunity from state overreach because HB 1 is written in such broad terms and has no guidelines or limits on the Administrative Commission’s discretion. Plaintiffs accordingly have little ability to predict what will trigger the Administration Commission’s power to review a municipal budget or how far the Governor and Administration Commission could go in rewriting the municipal budget. As a result, not only are Plaintiffs’ decision-making abilities impaired, but they are also deterred from considering any budget proposals that have even a remote possibility of triggering an amendment or revision. *See, e.g.*, First Am. Compl. ¶ 114. Plaintiffs have pleaded facts that demonstrate the current state of uncertainty and the deterrent effect of HB 1, showing that they have not been able to consider and plan for budget options that had been on the table prior to HB 1. *See id.* ¶¶ 114-143. Plaintiffs need not put their budgets at risk of being commandeered in order to avail themselves of declaratory relief, no more than the plaintiffs in *Dep’t of Revenue* had to risk violating state tax statutes and facing state penalties. 646 So. 2d at 721. Particularly because HB 1 impacts an essential government function where local legislative discretion is at its zenith—crafting the municipal budget—this challenge is of the utmost public importance and warrants declaratory relief. *Chiles*, 589 So. 2d at 263.

Further, as explained in the First Amended Complaint, Defendants have an actual, present, adverse, and antagonistic interest in law by virtue of the EOG's role in implementing HB 1 through conducting hearings and making recommendations to the Administration Commission; the Administration Commission's role in deciding whether to approve, modify, or amend a municipal budget; and the Attorney General's role in enforcing the Administration Commission's decisions and ensuring conforming budgets are ultimately adopted by municipalities. Defendants have also taken adverse steps to bolster and formalize HB 1—with Governor DeSantis publicly lauding HB 1 because it would prevent Plaintiffs from attempting to exercise their budgeting authority, *id.* ¶ 91, the Administration Commission publishing regulations to formalize the budget take-over process, *id.* ¶ 105 n.104, and the Attorney General being directed to publish rules that would expand HB 1's scope, *id.* ¶ 115.

Defendants advance an overly narrow reading of the Declaratory Judgment Act. Defendants focus on two circumstances under which declaratory relief may be appropriate: where there is an actual right of action by one party against another and where the threat of litigation is imminent. *See* Defs. Mot. at 15. From this subset of declaratory judgment cases, Defendants argue that Plaintiffs cannot allege a controversy because “the [Administration] Commission has yet to act.” *Id.* at 16. In arguing that only under two sets of circumstances would Plaintiffs be entitled to declaratory relief, Defendants ignore the plain language of the Florida Declaratory Judgments Act, which makes clear the Act was intended to “settle . . . uncertainty with respect to rights, status, and other . . . legal relations.” § 86.101, Fla. Stat. The impairment of Plaintiffs' budgetary decision making and lawmaking function is present, pressing, and ongoing, requiring declaratory relief. Defendants' argument also contradicts several seminal Florida Supreme Court decisions recognizing that courts “may entertain a declaratory action

regarding a statute’s validity” on its face. *See, e.g., Martinez*, 582 So. 2d at 1170. Moreover, in cases Defendants cite in favor of their overly narrow reading, they fail to disclose dispositive distinguishing factors. *See, e.g., Santa Rosa County v. Administration Com’n. Div. of Administrative Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995) (finding that there was no actual controversy requiring declaratory relief because the claims had already been “resolved” and made moot by a “stipulated settlement agreement” between the parties).

In short, Defendants’ argument that declaratory relief would be appropriate only to challenge an application of HB 1 by the Administration Commission contradicts the Florida Supreme Court’s recognition that courts “may entertain a declaratory action regarding a statute’s validity” on its face. *Martinez*, 582 So. 2d at 1170. Defendants cannot dispute that the Florida Supreme Court has afforded declaratory relief in facial challenges where a cause of action arose from a statute that created serious doubt about the scope of the plaintiffs’ legal relations—that is, an immunity, power, privilege, or right—as in this case. *See id.* Thus, Plaintiffs have a justiciable cause of action to redress the “insecurity and uncertainty” created by HB 1 that impairs the decision making of local councils and commissions and deters democratic action by these local legislative bodies.

B. The First Amended Complaint Alleges Ultimate Facts Demonstrating Plaintiffs Are Entitled to Relief.

Were the assertions of legal uncertainty created by HB 1 not enough to confer standing, Plaintiffs have alleged ultimate facts that detail the concrete harm HB 1 has caused and continues to cause them. Under Florida’s fact-pleading standard, Plaintiffs must state a cause of action and the ultimate facts showing their entitlement to relief. *See Fla. R. Civ. P. 1.110(b)(2)*. These ultimate facts alleged in the complaint must be accepted as true. *See Taubenfeld v. Lasko*, 324 So. 3d 529, 537 (Fla. 4th DCA 2021). The First Amended Complaint alleges ultimate facts that

focus on (1) the legal status of municipalities as home rule units of government; (2) the impairment of municipal budgeting processes caused by HB 1; and (3) the ongoing deterrent impact that HB 1 has on Plaintiffs' lawmaking function.

At the outset, the First Amended Complaint establishes Plaintiffs' status as home rule municipalities, First Am. Compl. ¶¶ 14-21, and that they have long enjoyed authority and discretion to craft a municipal budget that reflects community needs and values, *id.* ¶¶ 35-45. The First Amended Complaint alleges that the Florida Constitution vests Plaintiffs with all "governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services," chief among them being the power to set a municipal budget. *Id.* ¶ 35 (citing Art. VIII § 2(b), Fla. Const.). The First Amended Complaint then documents the constant and "iterative process" of municipal budgeting where Plaintiffs have had significant discretion to weigh a variety of options before them to address circumstances that are changing in real time; Plaintiffs must also incorporate the feedback of the local community and plan for the future. *See id.* ¶¶ 35-45. Flexibility to consider the full range of budgeting options is key to developing responsive budgets that provide for needed services while defraying expenses. *Id.* ¶ 43

The First Amended Complaint then focuses on the current and ongoing deterrent impact HB 1 is having on Plaintiffs' budgeting authority. Because HB 1 provides zero guidance about what types of funding reductions could trigger its takeover process, Plaintiffs "do not know the parameters that HB 1 places on their consideration and cannot predict the consequences." *Id.* ¶ 114. Plaintiffs allege being "intimidated and threatened" by HB 1, "imped[ed]" in serving their residents, and "wary" to make decisions that could trigger HB 1's take-over provisions. *Id.* ¶¶ 117, 139. The deterrent effect of HB 1 has had a concrete impact on Plaintiffs' budgeting decisions:

- Prior to HB 1, Plaintiff City of Gainesville had “directed the City Manager to develop a proposal for reallocating non-law enforcement functions from the Gainesville Police Department to other local departments,” *id.* ¶ 75, and identified “[s]everal youth services programs that are currently under the purview of GPD [but] have little to do with law enforcement.” *id.* ¶ 120. Following the passage of HB 1, Gainesville has not been able to determine whether these youth services programs can be transferred from under its police department to an independent office without triggering HB 1 and thus no independent Office of Child & Youth Development has come to fruition. *Id.* ¶ 122. HB 1 is a causal factor of this uncertainty and stagnation. *Id.*
- Prior to HB 1, Plaintiff City of Lauderhill had “voluntarily reduced its property tax rate” to “alleviate the pressures on [Lauderhill’s] residents” caused by the COVID-19 pandemic. *Id.* ¶ 125. This led to a four percent reduction to the police department budget for FY 2021, before HB 1 was passed. *See id.* Following HB 1’s passage, Lauderhill “now lacks the flexibility to meaningfully consider cost-saving measures that could impact the police department,” *id.* ¶ 126.
- Prior to HB 1, Plaintiff City of Miramar had launched a “Voluntary Retirement Incentive Program (“VRIP”), which offered local employees who had worked a certain number of years incentives to retire earlier” so that the city could then “freeze hiring on the vacated position” and avoid city-wide furloughs. *Id.* ¶¶ 128-129. Following the passage of HB 1, however, 26 police officers opted for VRIP. *Id.* ¶ 131. With “Mayor Wayne Messam of Miramar not[ing] that HB 1 ‘doesn’t fully vet the impacts’ on local budgeting,” *id.* ¶ 117, Miramar made adjustments such that its

police budget was not reduced for FY 2022, despite fallen department revenue and the frozen officer positions.⁵

- Prior to HB 1, Plaintiff City of Tallahassee had launched a pilot program called the Tallahassee Emergency Assessment Mobile (TEAM) Unit that “responds to mental health calls with a licensed mental health professional, paramedic from the fire department, and crisis-intervention trained police officer,” rather than leaving these calls solely to traditional policing. *Id.* ¶¶ 81-82. This alternative to traditional policing has been extraordinarily successful and Tallahassee intends to continue the program. *Id.* ¶ 134. However, as Tallahassee considered its options for expanding the program, it lacked “the ability to make informed decisions and set reasonable expectations” about how HB 1 could hinder the program. *Id.* ¶ 136. This uncertainty is influencing Tallahassee’s decision-making by deterring consideration of options involving a reduction to the law enforcement budget. *Id.*

Plaintiffs also allege that HB 1 continues to impact budgetary deliberation and planning by “inject[ing] uncertainty that overshadows all Plaintiffs’ ability to make necessary choices” that continue to arise. *Id.* ¶ 142. The ultimate facts alleged throughout the First Amended Complaint demonstrate HB 1’s current impairment to Plaintiffs’ deliberative and legislative functions and ongoing deterrent impact. They show that an actual controversy presently exists that warrants declaratory relief—notwithstanding the additional and compounded injury that would stem from the Administration Commission commandeering a local budget in the future.

Rather than engage with Plaintiffs’ actual allegations, Defendants’ motion to dismiss erects another straw-man and speculates about a separate type of injury that Plaintiffs have not

⁵ City of Miramar, Fla. FY 2022 Adopted Annual Budget at 45, <https://www.miramarfl.gov/ArchiveCenter/ViewFile/Item/419> [Permalink unavailable].

alleged. According to the Defendants, “without the [Administration] Commission acting, Plaintiffs cannot describe how [HB 1] injured them.” Defs. Mot. at 18. As previously mentioned, these claims ignore the language of the Declaratory Judgements Act, contradict seminal precedent, and misconstrue Plaintiffs’ causes of action. Defendants cannot seek dismissal based on lack of ultimate facts regarding a type of injury which Plaintiffs have not alleged and under a standard that does not apply here. Defendants must focus on the factual elements of the causes of action that Plaintiffs have actually pleaded. *See Wallisville Corp., Inc. v. McGuinness*, 154 So. 3d 501, 503 (Fla. 4th DCA 2015) (“The party moving for dismissal must ‘admit[] all well pleaded facts as true, as well as reasonable inferences that may arise from those facts.’”).⁶

Contrary to Defendants’ claims, the causes of action that Plaintiffs actually advance are not stated in terms that are “general, vague, and conclusory,” Defs. Mot. at 18, as Plaintiffs provide copious examples and inclusion of testimony from local lawmakers to show the concrete urgency of their prayed for relief. Defendants do not dispute these examples or testimony (nor could they at this stage) or point out what allegations are missing from the claims Plaintiffs *actually* pleaded. Indeed, the cases Defendants cite demonstrate that a complaint should be dismissed only where it was missing required allegations for an element of a claim—that is not the case here. *See, e.g., Goldschmidt v. Homan*, 571 So. 2d 422, 423 (Fla. 1990) (dismissing where there were no allegations demonstrating agency, a necessary element to show vicarious liability); *Clark v. Boeing Co.*, 395 So. 2d 1226, 1229 (Fla. 3d DCA 1981) (dismissing where there were no allegations establishing elements of strict liability). Plaintiffs have alleged in detail

⁶ Moreover, Defendants cannot seek dismissal based on facts or assertions beyond the scope of the First Amended Complaint. *Cf. Hewitt-Kier Const. Inc. v. Lemuel Ramos & Assocs., Inc.*, 775 So. 2d 373, 375 (Fla. 4th DCA 2000) (“Where a motion to dismiss a complaint rests on facts outside the scope of the allegations contained in the complaint, the trial court commits reversible error in dismissing the complaint based on those extraneous matters.”) (citing *Reed v. Sampson*, 349 So. 2d 684, 685 (Fla. 4th DCA 1977)).

the ultimate facts that demonstrate a cognizable legal interest and justify their prayer for declaratory relief.

C. Plaintiffs Have Demonstrated that HB 1 Has Caused Injury Redressable by a Declaratory Judgment, Granting Them Standing, Which the Public Official Standing Doctrine Does Not Bar.

The allegations in the First Amended Complaint demonstrate that Plaintiffs have standing to pursue their facial challenge to HB 1. The doctrine of standing does not exist in Florida “in the rigid sense employed in the federal system.” *Dep’t of Revenue*, 646 So. 2d at 720; *accord Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 895 (Fla. 2003). Florida courts require an actual controversy, but this does not mean that they require a plaintiff to experience enforcement of a law before bringing a cause of action, particularly where declaratory judgment is the requested relief. *See Dep’t of Revenue*, 646 So. 2d at 720 (concluding plaintiffs had standing to challenge the constitutionality of a fee that would apply to them even though they had not paid the fee or requested a refund).

In facial challenges to a statutes’ constitutionality, like this one, the Florida Supreme Court has recognized that Plaintiffs have standing where they allege that a statute has caused injury in the form of uncertainty or insecurity about some power, immunity, or right that could be redressed through a declaratory judgment. *See, e.g., Martinez*, 582 So. 2d at 1170. In addition, Plaintiffs are not barred from redressing their claims by the public official standing doctrine, because this case concerns the exercise of legislative discretion, rather than nonperformance of a ministerial duty, and involves the disbursement of public funds.

1. HB 1’s Deterrent Impact Constitutes Plaintiffs’ Injury.

Plaintiffs have suffered and continue to suffer an injury because HB 1 has stopped or slowed progress on budget innovations and prevented them from considering any budget options that could decrease funding to law enforcement. Plaintiffs demonstrate injury when they allege

an injury that “is concrete, distinct and palpable, and actual or imminent.” *State v. J.P.*, 907 So. 2d 1101, 1113 n.4 (Fla. 2004). Applying the more rigid federal rules of standing, the U.S. Supreme Court has found that “apprehension flowing from the uncertainty about the . . . consequences” of a law can constitute injury in fact. *Duke Power Co. v. Caroline Envt. Study Group, Inc.*, 438 U.S. 59, 74 (1978) (finding that plaintiffs were harmed because of the uncertainty flowing from a law regulating nuclear power plants). In the context of municipal budgeting, where cities need flexibility and predictability as they make nuanced budgetary decisions, uncertainty about the laws applicable to the municipal budget and the potential loss of control over a budget can “wreak havoc with [municipal] budgeting processes” because municipalities “[can]not make informed decisions.” *County of Santa Clara v. Trump*, 275 F. Supp. 3d 1196, 1210 (N.D. Cal. 2017) (finding the municipal plaintiffs had standing to challenge executive order that threatened loss of federal funds, even though plaintiffs were not named specifically in order, because “mere existence” of the order had impacted municipal budgeting) (quoting *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 385 (1926)), *aff’d in part, vacated in part, remanded sub nom. City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018).

Plaintiffs have described at length how HB 1 has impacted their ability to make decisions about municipal budgeting. *See supra* Parts I.A & B. Plaintiffs have provided examples of budgetary propositions that had been under consideration or in process prior to the passage of HB 1. *See, e.g.*, First Am. Comp. ¶¶ 74, 120-129. They further described how HB 1 has injected uncertainty into budget proceedings and how the threat of HB 1’s take-over process had impacted their decision-making. *See id.* ¶¶ 114-43. HB 1 has had an actual deterrent impact. Plaintiffs have abandoned and still refrain from any budget proposals that include a reduction to

their law enforcement budgets—regardless of local economic conditions or community preferences—because of the threat of a take-over by the State Executive Branch. *See id.*

Defendants seize on the word “chilling” to argue that Plaintiffs are invoking First Amendment principles in their First Amended Complaint. *See* Defs. Mot. at 12-13. This is plainly not the case. Plaintiffs have not brought a First Amendment action, nor do they frame their harm in terms of First Amendment injury. The injury Plaintiffs allege stems from how HB 1 affects their municipal budgeting processes and lawmaking functions—it is a current and direct impact on their home rule authority.

2. The Public Official Standing Doctrine Does Not Bar Plaintiffs’ Standing.

Defendants next ask this Court to expand the scope of the public official standing doctrine to essentially immunize HB 1 from legal challenge. This effort too fails: the public official standing doctrine has no application here, and even if it did, Plaintiffs fall within the important exception to protect the integrity of processes for the disbursement of public funds.

i. The Public Official Standing Doctrine Is Inapplicable Because There Is No Threat of Nonperformance of a Nondiscretionary Duty.

Plaintiffs’ challenge to HB 1 is beyond the jurisprudential limitations imposed by the public official standing doctrine. The public official standing doctrine provides that “a public official may not defend his nonperformance of a statutory duty by challenging the constitutionality of a statute.” *Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 797 (Fla. 2008). The purpose of the doctrine is to “ensur[e] the orderly and uniform application of state law.” *Id.* That is why it consistently has been reserved for instances where the *execution* of nondiscretionary duty is at stake.

The doctrine is applicable to “ministerial” officers and duties because, in contrast to a legal duty vesting a public agent with “any . . . discretion under the law,” a *ministerial* duty vests a public agent “under the law with no such discretion.”⁷ *Davis v. Crawford*, 95 Fla. 438, 450 (1928). This duty need not stem from the challenged state statute if the lawsuit threatens the performance of related non-discretionary duties under state law. *See Sch. Dist. v. Santa Rosa Dunes Owners Ass’n*, 274 So. 3d 492 (Fla. 1st DCA 2019) (finding the school district could not intervene to challenge the constitutionality of exemption to ad valorem taxes when the school district had a nondiscretionary duty under state law to levy such taxes); *Santa Rosa Cty. v. Admin. Comm’n*, 642 So. 2d 618 (Fla. 1st DCA 1994) (finding that county could not challenge the constitutionality of portions of state statutes governing comprehensive plans when the county had nondiscretionary duties imposed by other portions of the same statutes). As Florida courts’ consistent application of the doctrine makes apparent, the problem that the public official standing doctrine seeks to prevent against is “nonperformance” of a “ministerial” duty under state law by a public agent. *See Dep’t of Transp. v. Miami-Dade Expressway Auth.*, 316 So. 3d 388, 390 (Fla. 1st DCA 2021). Those circumstances cannot be found here.

The public official standing doctrine is inapplicable where discretionary budgetary and lawmaking authority is at issue. Where a government entity seeks clarity about the scope of its budgetary discretion and constitutional immunity from state executive overreach, the risk of nonperformance of a *nondiscretionary* duty is not at issue. In fact, Defendants themselves acknowledge that HB 1 imposes no nondiscretionary duty on municipalities by submitting that

⁷ A ministerial duty is one the executing officer or entity must abide. *See, e.g., State ex rel. Atlantic Coastline Rwy. Co. v. State Bd. of Equalizers*, 84 Fla. 592 (1922) (concluding the Board of Equalizers could not challenge the execution of the process for appealing property assessments, which was binding on them); *Barr v. Watts*, 70 So. 2d 347 (Fla. 1953) (holding that a ministerial officer is one “charged with the duty of administering a legislative enactment).

“HB 1 does not mandate *any* conduct.” Defs. Mot. at 10 (emphasis added). Furthermore, because Florida state law does not impose any duties with regard to the substance of local budgeting, only procedure, HB 1 cannot be said to *affect* the performance of any ministerial duties without expanding the reach of the doctrine by an unprecedented degree. *See* § 166.241, Fla. Stat.⁸ The legislative discretion that HB 1 impacts is in stark contrast to the ministerial duties to which courts consistently apply the public official standing doctrine, like assessing or levying taxes while making exemptions as required by law. *See, e.g., Island Resorts Investments, Inc. v. Jones*, 189 So. 3d 917 (Fla. 1st DCA. 2016) (concluding that a property appraiser did not have standing to challenge the constitutionality of a statute that bound them). Defendants do not and cannot point to a specific nondiscretionary duty that has been affected by Plaintiffs’ challenge to HB 1. *See* Defs. Mot. at 8-9. Accordingly, the public official standing doctrine does not apply and it should not be expanded to bar this Court’s jurisdiction.

ii. The Public Official Standing Doctrine Is Inapplicable Because HB 1 Affects the Disbursement of Public Funds.

Moreover, the public official standing doctrine still would not apply because HB 1 involves the disbursement of public funds. The Florida Supreme Court has long recognized that “the general rule that a ministerial officer cannot in a judicial proceeding attack the validity of a law imposing duties on him is subject to the exception that such a law may be challenged where it involves the disbursement of public funds.” *Kaulakis v. Boyd*, 138 So. 2d 505, 507 (Fla. 1962) (emphasis added). “In such case[s], the necessity of protecting public funds is of paramount importance, and the rule denying ministerial officers the right to question the validity of the act

⁸ There is no risk that Plaintiffs will not perform any of their ministerial duties as a result of this lawsuit. They will continue to propose an annual budget for the October 1-September 30 fiscal year, maintain a balanced budget, and publish the proposed and adopted budget on their website. HB 1 does not affect any of these duties, simply Plaintiffs’ discretion over the substance of their budget.

must give way to a matter of more urgent and vital public interest.” *Green v. City of Pensacola*, 108 So. 2d 897, 901 (Fla. 1959). Accordingly, the public official standing doctrine does not apply where the disbursement of municipal funds is affected by a challenged policy. *See Branca v. City of Miramar*, 634 So. 2d 604, 606 (Fla. 1994) (concluding public officials had standing to bring a declaratory judgment regarding constitutionality of a law affecting the disbursement of local pension funds).

Although the public funds exception is “narrow,” *Crossings*, 991 So. 2d at 797, it is not as narrow as Defendants attempt to construe it. Defendants contend the public funds exception applies only where the expenditure of public funds is *expressly* provided for by the statute being challenged, rather than when affecting the expenditure of public funds is a statute’s implicit aim or inevitable result. Defs. Mot. at 9. But case law does not reflect such a stringent restriction of the public funds exception. The Florida Supreme Court most recently framed the public funds exception as applicable when the “statute at issue *involves* the disbursement of public funds.” *Fuchs v. Robbins*, 818 So. 2d 460, 464 (Fla. 2002) (emphasis added), *disapproved on other grounds by Crossings*, 991 So. 3d at 797. Indeed, the exception has been applied where a statute did not explicitly require an expenditure, but otherwise affected the disbursement of public funds. For example, the First District Court of Appeal applied the exception where a school district was challenging state conditions on allocation of capital millage taxes, even though the law imposed no express requirement for a public expenditure. *Sch. Bd. v. Fla. Dep’t of Educ.*, 279 So. 3d 281, 290 (Fla. 1st DCA 2019); *see also Green*, 108 So. 2d at 901. Because HB 1 is impacting local decisions about how to allocate and disburse municipal budget funds, Plaintiffs’ challenge fits squarely within the public funds exception.

Defendants acknowledge that HB 1 affects municipal budgeting, as they cite to several allegations in the First Amended Complaint that say just that. *See* Defs. Mot. at 21 (stating that HB 1 “concerns municipal operating budgets”). Indeed, the Governor has made it quite clear that the aim of HB 1 is to stop municipalities from exercising their discretion regarding the disbursement of public funds. *See supra* n.2. Protecting local authority and discretion over these public funds is “of paramount importance,” particularly as communities are calling upon local governments to explore new models of funding public services. For all of these reasons, the public official standing doctrine does not bar Plaintiffs’ standing to bring this lawsuit.

II. PLAINTIFFS STATE PROPER CAUSES OF ACTION ON ALL COUNTS.

Defendants only challenge substantively three of Plaintiffs’ five causes of action: HB 1’s violation of constitutional separation of powers (Count I), its violation of the single-subject rule (Count III), and its imposition of an unfunded mandate (Count IV). Similar to their challenge to Plaintiffs’ standing, Defendants misconstrue, rather than engage with, Plaintiffs claims. Each of the five claims in the Amended Complaint state a claim upon which relief can be granted.

A. HB 1 Violates the Florida Constitution’s Separation of Powers Provision by Improperly Conferring Legislative Authority to the Executive Branch.

HB 1 flouts constitutional separation of powers by giving Defendants unchecked authority regarding the appropriation of funds—authority that properly belongs to the Legislature. Article II, Section 3 of the Florida Constitution establishes three branches of state government—legislative, executive, and judicial branches—and explicitly provides that “no person belonging to one branch shall exercise any powers appertaining to either of the other branches.” *Id.* This express prohibition applies even where one branch grants permission to another to exercise its powers: Indeed, the Florida Supreme Court has held that “the legislature is not free to redelegate to an administrative body . . . its lawmaking power as it may seem

expedient.” *Askew v. Cross Key Waterways*, 372 So. 2d 913, 924 (Fla. 1978) (finding a separation of powers violation where the legislature had passed a statute that delegated legislative land use authority to the Administration Commission).

Here, the Legislature was not free to confer upon Defendants, all members of the State Executive Branch, the unchecked power to “amend or modify” appropriations and issue decisions that are “final.” § 166.241(5), Fla. Stat. The Florida Supreme Court has long held that the power to appropriate funds is a “fundamentally legislative” task “to be exercised only through duly enacted statutes,” not through administrative decisions of the State Executive Branch. *Chiles*, 589 So. 2d at 265 (finding a constitutional violation where a statute delegated the authority to review and modify appropriations to the Administration Commission). By re delegating legislative power to an executive body, HB 1 violates the express prohibition of Article II, Section 3 of the Florida Constitution.

Defendants decline to grapple with this serious separation of powers violation, instead, they misconstrue Plaintiffs’ arguments and recycle their standing quarrels in yet another form. Defendants first contend that Plaintiffs’ separation-of-powers cause of action should be dismissed “to the extent [Plaintiffs] claim that the Commission violates separation of powers by usurping municipal power.” Defs. Mot. at 23 (quoting *Locke v. Hawkers*, 595 So. 2d 32, 36 (Fla. 1992)). This misses the point of what Plaintiffs have alleged. The separation of powers violation at issue is HB 1’s delegation of legislative appropriation power from the State Legislature (not the municipality) to the State Executive Branch. The Legislature properly has the power to supervise municipal budgets; the Executive does not. First Am. Compl. ¶¶ 144-153. As an alternative to their misconstruing of Plaintiffs’ separation-of-powers argument, Defendants again seek to contest standing, arguing that Plaintiffs have not stated a separation of powers claim

because they “do not allege the Commission has denied or modified a proposed budget ... [a]nd until it does, the Amended Complaint will not state a claim under Article II, section 3.” Defs. Mot. at 24. This justiciability argument has no place in an argument challenging the merits of Plaintiffs’ separation-of-powers cause of action. Defendants do not argue this claim is not one for which relief could be granted—only that such relief is not yet due. Plaintiffs have addressed Defendants’ standing challenge at length. Defendants have failed to raise any deficiency about the merits of the argument that Plaintiffs *actually* raised.

B. HB 1 Was in Violation of the Single-Subject Rule When Plaintiffs Filed this Case.

HB 1 clearly violates the Florida Constitution’s single-subject and clear-title rules. *See* Art. III, § 6, Fla. Const. HB 1 includes 21 distinct sections,⁹ and a “single subject” cannot be found among these various sections covering five different and distinct Titles. Defendants do not contest the merits of Plaintiffs’ single-subject claim, nor do they attempt to offer a natural or logical connection between the disparate sections of HB 1. Rather, Defendants argue only that Plaintiffs’ single-subject challenge is inapplicable and untimely because it was not filed before the statute was reenacted as part of the Legislature’s annual adoption acts. This argument fails for the simple reason that HB 1 was reenacted after Plaintiffs filed suit.

The Florida Supreme Court has recognized that a single-subject violation may be cured upon the reenactment of a provision as part of the adoption of the Florida Statutes. However, in order to be reenacted, the statute must first be repealed, typically pursuant to the second section of one of the Legislature’s annual “Adoption Acts.” The Florida Supreme Court has described at

⁹ Section 1 of Chapter 2021-6 amends Title XII (“Municipalities”) of the Florida Statutes. Whereas the remaining sections of Chapter 2021-6 amend Title XXIII (“Motor Vehicles”), Title XLV (“Torts”), Title XLVI (“Crimes”), and Title XLVII (“Criminal Procedure and Corrections”).

length in all of the cases Defendants cite that “reenactment” occurs through the “adoption of the Florida Statutes.” *State v. Johnson*, 616 So. 2d 1, 2 (Fla. 1993); *see also Env’t Confederation of Sw. Fla., Inc. v. State*, 852 So. 2d 349, 350 (Fla. 1st DCA 2003) (*quoting with approval Tormey v. Moore*, 824 So. 2d 137, 142 (Fla. 2002) (“The general rule is that a single subject violation is cured when the Legislature reenacts the provision as part of the biennial adoption of the Florida Statutes.”¹⁰)); *State v. Combs*, 388 So. 2d 1029, 1030 (Fla. 1980) (observing that “[o]nce reenacted as a portion of the Florida Statutes” the challenged law “was not subject to challenge under article III, section 6”).¹¹ This adoption process now occurs annually, meaning that there is a one-year window before a single-subject claim is cured.¹² *See generally* House of Rep. Staff Final Bill Analysis, HB 7033 (“The adoption act provides a 1-year curing period for title or single-subject defects before statutory material becomes the best evidence of the law.”).

¹⁰ This adoption process has the same mechanics today but is now done on an annual basis, rather than biennially. The Preface to the official Florida Statutes (2021) is illustrative on this point. It explains that “[t]he two year ‘curing period’ was reduced to 1-year in chapter 2003-25, Laws of Fla., the 2003 adoption act.” Preface to the official Florida Statutes (2021), <http://www.leg.state.fl.us/Statutes/Preface21.pdf> [<https://perma.cc/M5QC-6NC2>] (last visited June 29, 2022).

¹¹ It appears *State v. Combs* sees a distinction between “enactment” and “adoption,” in that adoption is what occurs at the time when the law is cured of single-subject rule violations. *Env’t Confederation of Sw. Fla., Inc. v. State*, 886 So. 2d 1013, 1017 (Fla. 1st DCA 2004) (“It is well-settled that a single subject violation is cured upon *readoption* of the Florida Statutes.”) (emphasis added). As explained in this section, adoption and/or readoption only occurs when the chapter law is first repealed, then consolidated by the Office of Legislative Services, and ultimately reenacted through an Adoption Act.

¹² *See generally* Fla. H. Comm. on Rules, Summary Analysis for HB 7033 (2021), Staff Final Bill Analysis (March 9, 2022), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7033z.RUC.DOCX&DocumentType=Analysis&BillNumber=7033&Session=2022> [<https://perma.cc/3HS9-SLEG>] (“The adoption act provides a 1-year curing period for title or single-subject defects before statutory material becomes the best evidence of the law. This is consistent with the decision by the legislature, beginning in 2000, to publish the Florida Statutes on an annual basis and to have the Division of Law Revision submit an adoption act annually, rather than every 2 years.”)

This case was filed well before the one-year curing period had closed. Defendants submit that “Chapter 2021-50, Laws of Fla., reenacted all chapter and session laws enacted during the 2021 legislative session into the Florida Statutes,” effective May 29, 2021. Defs. Mot. at 25. But, Section 2 of Chapter 2021-50 only repealed statutes “enacted . . . at or prior to the 2020 regular legislative session, and every part of such statute, *not included in Florida Statutes 2021.*” Laws of Fla., Ch. 2021-50, § 2 (emphasis added). Thus, the laws comprising “Florida Statutes 2021,” including HB 1, were not reenacted by Chapter 2021-50. In fact, HB 1 was not repealed and reenacted until Section 2 of Chapter 2022-3 repealed “[e]very statute . . . enacted . . . at or prior to the May 17-21, 2021 special legislative session.” At that point, HB 1 was consolidated and compiled by the Office of Legislative Services as part of the “public statutes of 2021,” and *reenacted* by Section 1 of Chapter 2022-3, effective February 25, 2022.

Thus, HB 1’s single-subject violation could not have been cured until February 25, 2022, more than 100 days after Plaintiffs filed their complaint on November 16, 2021. And once a lawsuit is filed, subsequent reenactment does not moot a single-subject challenge. Chapter 2021-50, Laws of Fla., makes clear that “where a suit is pending” the “repeal” of the statute at issue “by the adoption and enactment of Florida Statutes 2022 . . . shall not affect . . . any civil remedy.” Because Plaintiffs filed their single-subject challenge within the cure period, they are entitled to have their claim heard.

Accepting Defendants’ misunderstanding of the repeal and reenactment process would severely undermine two of the key purposes underlying the single-subject requirement—that is, preventing “surprise or fraud by means of provisions in bills of which the title gave no intimation” and “fairly appris[ing] the people of the subject of legislation that are being considered.” *State v. Thompson*, 750 So. 2d 643, 646 (Fla. 1999). Allowing violations of the

single-subject requirement to be cured in a matter of weeks after a law is enacted—HB 1 became effective April 19, 2021 and Defendants argue its single-subject violation was cured May 29, 2021— would frustrate if not outright deny the will of the people of Florida to be fairly apprised of the content of legislation. *Cf. Zingale v. Powell*, 885 So. 2d 277, 282 (Fla. 2004) (holding that constitutional provisions “must be construed or interpreted in such a manner as to *fulfill the intent of the people*”) (emphasis in original). Enabling a law that does *not* give such notice, and that does *not* fairly apprise the people of Florida, to be cured so quickly after its enactment would deprive the single-subject requirement of any meaningful prophylactic effect. Defendants’ timeliness argument is flawed both in theory and in practice.

C. HB 1 Violates the Constitution’s Prohibition of Unfunded Mandates by Forcing Municipalities to Expend Funds to Avoid HB 1’s Take-over Provisions.

HB 1 imposes an unfunded mandate on municipalities by effectively forcing them to maintain or increase their law enforcement budgets to avoid a state take-over of their budget. The Florida Constitution expressly prohibits the state from forcing municipalities to “spend funds or take an action requiring the expenditure of funds,” unless such a mandate serves an important state interest and the legislature has either provided funds to fulfill the mandate, allowed municipalities to raise the funds, or approved the expenditure by a legislative supermajority. Art. VII §18(a), Fla. Const.

In all of its applications, HB 1 creates an unfunded mandate. Before HB 1’s takeover processes are even invoked, the threat of such harsh consequences effectively forces municipalities to maintain or increase spending on law enforcement. Furthermore, Defendants concede that municipalities will be required to expend funds if the Administration Commission modifies or denies a proposed reduction. Defs. Mot. at 25. Once HB 1’s takeover process is invoked, it requires municipalities to expend funds to prepare a reply on appeal before the

Administration Commission. Such additional, unaccounted for expenditures are typically prohibited by state constitutional provisions like Florida’s restriction. *See, e.g., Brooks v. State*, 128 S.W. 3d 844, 850 (Mo. 2004), *as modified on denial of reh’g* (Mar. 30, 2004) (violation found when “substantial costs may be incurred” by program not offset by other state funding); *Wayne Cnty. Bd. of Comm’rs v. Wayne Cnty. Airport Auth.*, 658 N.W. 2d 804, 821 (Mich. App. Ct. 2002) (Michigan’s “Headlee [amendment] focuses on state-mandated activities requiring local funding”); *Wells v. Ogunquit*, 775 A. 2d 1174, 1176 (Me. 2001) (“[W]e must determine whether the revised funding formula requires [the town] to expand or modify its activities so that it has to expend more local revenue for that expansion or modification.”).

Even if the Administration Commission approves a municipality’s reduction, the municipality will have to incur costs to defend its reduction to the State. Indeed, the staff analysis for HB 1 indicates: “There could be an indeterminate impact to municipal government budgets based on the appeal process for law enforcement funding.”¹³ Because HB 1 forces a municipality to expend funds under every circumstance, Plaintiffs’ unfunded mandate cause of action should not be dismissed.

III. ALL DEFENDANTS ARE PROPER PARTIES TO THIS LAWSUIT.

Both Governor DeSantis and Attorney General Moody wrongly contend that they are not proper parties to this litigation, as they are both involved in the enforcement of HB 1. *See* Defs. Mot. at 19-22; AG Mot. at 4-8. Under Florida law, determining whether a state official is the proper party to sue begins with “ascertaining whether the named state official is charged with

¹³ Fla. H.R. HB 1 Staff Final Bill Analysis, 2021 Sess., at 18 (2021), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0001z.CRM.DOCX&DocumentType=Analysis&BillNumber=0001&Session=2021>. [<https://perma.cc/8Y64-ULFN>].

enforcing the statute.” *Scott v. Francati*, 214 So. 3d 742, 745 (Fla. 1st DCA 2017) (citations omitted). If the named official is not the enforcing authority, “then courts must consider two additional factors: (1) whether the action involves a broad constitutional duty of the state implicating specific responsibilities of the state official; and (2) whether the state official has an actual, cognizable interest in the challenged action.” *Id.* at 746 (citing *Atwater v. City of Weston*, 64 So. 3d 701, 703 (Fla. 1st DCA 2011)). Governor DeSantis is charged with implementing HB 1, and, given the Governor’s asserted positions on municipal police funding, he has an actual, cognizable interest in the current action. Attorney General Moody, who likewise sits on the Administration Commission, has the ultimate enforcement authority for HB 1, given her statutory role as chief law enforcement officer in the state.

A. Governor DeSantis Is a Proper Party Because His Office Is Mandated by Statute to Develop Findings for the Administrative Commission and He Has a Cognizable Interest in the Outcome.

Governor DeSantis, sued in his official capacity, is a proper party to this lawsuit because the text of the statute empowers his office with implementing HB 1, the Governor’s own statements indicate that he intends to ensure that city budgets do not divest funds from police departments, and he is a member of the Administration Commission. As a result, the Governor satisfies all components of the *Francati* test.

To start, Governor DeSantis is charged with enforcing HB 1. HB 1 provides a very specific role for the EOG to play in handling any complaint challenging local budgetary decisions.¹⁴ The EOG receives the complaint and any response from the city, holds a hearing on

¹⁴ It is unclear whether Governor DeSantis asserts in his motion to dismiss that somehow he is distinct from the EOG. To the extent this argument is asserted, it should be rejected. The Governor runs the EOG, as its purpose is to advise and support him in his duties as Governor. *See, e.g.*, Executive Office of the Governor, Organizational Chart, <https://www.flgov.com/wp-content/uploads/2022/01/EOG-Org-Chart-1-14-22.pdf>. [<https://perma.cc/47BR-DZ6F>].

the matter, and then makes findings and recommendations to the Administration Commission. §§ 166.241(4)(a) & (4)(b), Fla. Stat. Governor DeSantis, in turn, is “[t]he head of the Executive Office of the Governor,” § 14.201, Fla. Stat. (2021). Hence, the cases relied upon by the Governor are inapposite because Plaintiffs do not rely on the Governor’s general authority as chief executive but instead on the specific role assigned to him by HB 1. *See Dream Defenders v. DeSantis*, 559 F. Supp. 3d 1238, 1262 (N.D. Fla. 2021) (holding that Governor DeSantis was a proper defendant in challenge to HB 1’s anti-riot provisions because he has authority with respect to those provisions that extend beyond “any mere general supervisory authority as the Chief Executive of Florida”).

Even if the Governor did not have enforcement authority with respect to HB 1, the two other *Francati* factors would nonetheless make him a proper defendant. The Governor is the supreme executive power in Florida. *See* Art. IV, § 1(a), Fla. Const. As a result, the Governor has broad authority to ensure that laws are faithfully executed. Thus, it would be proper to characterize Sections 166.241(4) & (5) of the Florida Statutes as creating specific responsibilities for the Governor. He also has other means to influence the process, including through his power to assign State Attorneys, who have the authority to initiate the budget review under HB 1. *See* § 27.14, Fla. Stat. Additionally, the Governor has an actual interest in the outcome of this case, given his role in advancing this legislation as well as his strong desire that no local governments reduce their police budgets. *See, e.g.*, First Am. Compl. ¶¶ 94-98.

The Florida Supreme Court has held state officials to be proper parties in similar circumstances. For example, in *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996), the Supreme Court concluded that the Senate President, House Speaker, and Governor were proper parties to a declaratory action regarding funding the

public education system. In its opinion, the Court reasoned that except for the Governor, “all of the named appellees have either taken a present, adverse, and antagonistic position to that espoused by appellants or would be necessary parties to an action to determine the State’s responsibility under the controlling constitutional provision,” but that “the Governor, both in his position as chief executive and as chairperson of the Board of Education, is an appropriate party because of the nature of the action.” *Id.* at 402-403. Indeed, the Florida Supreme Court has allowed the Governor to be sued individually “as [a] member[] of the Administration Commission” in a case implicating actions of the Administration Commission. *Chiles*, 589 So. 2d at 562. Here, the Governor has taken an antagonistic position to the Plaintiff cities and is a member of the Administration Commission, which undoubtedly has power to enforce HB 1. *See also Florida House of Representatives v. Florigrown, LLC*, 278 So. 3d 935, 939 (Fla. 1st DCA 2019) (“The House has an actual cognizable interest in [an action concerning the limits of its authority], which will define the scope of its constitutional authority to police certain narcotics.”).

The Governor mistakenly relies on *1000 Friends of Florida, Inc. v. Eagle*, 330 So. 3d 986 (Fla. 1st DCA 2021), to urge the opposite conclusion. But *1000 Friends* does not square with this case. In that decision, the First District Court of Appeal examined whether a lawsuit challenging a change to the award of attorneys’ fee could be brought against the Executive Director of the Department of Economic Opportunity. Because the Department of Economic Opportunity had no role in the award of attorneys’ fees under the relevant statute—only the courts would—he was not the proper defendant according to *Francati*. 330 So. 3d at 988. Here, the nexus is clear, and the Governor is inexorably intertwined with implementation and enforcement of HB 1.

B. Attorney General Moody Is a Proper Party Because She is Florida’s Chief Legal Officer and Will Enforce Any Decisions by the Administration Commission.

Attorney General Moody likewise asserts she is not a proper defendant, but the *Francati* analysis shows that she is. The Attorney General is an enforcing agent of HB 1 and meets the first part of the *Francati* test. She is the chief law enforcement officer of the state. By statute, she “[s]hall appear in and attend to, in behalf of the state, all suits or prosecutions, civil or criminal or in equity, in which the state may be a party, or in anywise interested . . .” § 16.01(4), Fla. Stat. Moreover, the Attorney General’s office has an obligation to the various agencies, boards, and commissions of the state as it “shall be responsible for providing all legal services required by any department, unless otherwise provided by law.” *Id.* § 16.01(5). HB 1, by its terms, provides no prescription on which entity would enforce any final decisions by the Administration Commission; thus, by default, that obligation falls to the Attorney General given her broad statutory duties under Florida law. *See, e.g., Bondi v. Tucker*, 93 So. 3d 1106, 1109 (Fla. 1st DCA 2012) (“The courts of this state have long recognized this advocacy authority, and litigation duty of the Attorney General. It derives from the common law and in only rare instances has the Legislature otherwise provided.”) (citations omitted).

None of the Attorney General’s contentions to the contrary are persuasive. First, the Attorney General argues that even though she has authority to intervene and defend state laws against constitutional challenges, she is not required to do so. *See, e.g., AG Mot.* at 6. Plaintiffs agree. But Plaintiffs have not named the Attorney General here because of her *discretion* to get involved. Instead, Plaintiffs named the Attorney General because she has several direct roles as: (1) enforcer of any final decisions by the Administration Commission; (2) as member of the Administration Commission; and (3) as promulgator of regulations relating to HB 1. Such responsibilities clearly implicate the broad duties of the Attorney General’s office. Similar

circumstances have resulted in other state bodies being deemed proper parties. For example, in *Florigrown*, the First District Court of Appeal held that the House of Representatives had an actual, cognizable interest in the outcome of a declaratory judgment action brought by medical marijuana providers because the case would “define the scope of its constitutional authority.” 278 So. 3d at 939. And, as mentioned, in *Chiles*, the Florida Supreme Court allowed a case to proceed against the Attorney General and the Governor as individual defendants who are members of the Administration Commission. 589 So. 2d at 562.

In addition, the Attorney General contends that HB 1 does not confer her any specific authority and that “[t]he subject of the statute is municipal operating budgets, which is a matter over which the Attorney General has no specific responsibilities.” AG Mot. at 8. Taking the latter point first, the Attorney General notes the irregularity of HB 1, given that neither the Attorney General nor the Administration Commission typically have any role to play but-for HB 1 in the substance of municipal budgeting. Moreover, the State Attorneys report to the Attorney General, and they have the power to initiate the budget review process. *See* § 16.09, Fla. Stat. HB 1 creates a connection where previously there was none and the Attorney General has a clear stake in this matter. As to the first point, while the Attorney General may not be specifically named in the statute, her role as Chief Law Enforcement officer in the state gives her an adverse interest in this litigation. Someone, ultimately, would have to enforce the decisions of the Administration Commission against noncompliant municipalities. The statute is silent as to this point. Thus, the Attorney General is the appropriate party to name.

CONCLUSION

It is of paramount public importance that Plaintiffs regain authority and discretion to build municipal budgets that reflect the needs and values of their communities. HB 1 has injured

Plaintiffs' decision-making, and this injury will only continue unless it can be redressed through declaratory and injunctive relief. Plaintiffs have identified serious constitutional flaws inherent in HB 1 and it is imperative that these flaws be corrected. Defendants do not meaningfully respond to this current and ongoing injury or to the constitutional flaws. For these reasons, Plaintiffs respectfully request this Court deny Defendants' motions to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed Electronically with the court via the Florida E-Filing Portal, which provides notice to all parties, on this 29th day of June, 2022.

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