EXECUTIVE DIRECTOR'S REPORT

TO: **Members, Commission on Ethics**

FROM: **Kerrie Stillman**
Executive Director

DATE: **November 19, 2026**

ADVISORY OPINIONS

The Commission on Ethics rendered two opinions at its October meeting. It has rendered 2,731 opinions since its inception in 1974.

LITIGATION

President of Town Council Elizabeth A. Loper, elected official of the Town of Briny Breezes, President of Town Council Elizabeth A. Loper, elected official of the Town of Briny Breezes, et al. v. Lukis et. al., Case 1:24-cv-20604-JAL, (United States District Court Southern District of Florida).

Background

Plaintiffs are multiple elected municipal officers. They are challenging the validity of the 2023 amendment to Section 112.3144, Florida Statutes, that required municipal elected officials and mayors (and candidates for such offices) to file a CE Form 6 financial disclosure rather than Form 1. Plaintiffs' argument is that requiring these types of officers and candidates to publicly disclose the information required on the CE Form 6 violates their First Amendment rights under the United States Constitution, as it is government-compelled, content-based, non-commercial speech. Plaintiffs seek a declaration that extending the requirements in Section 112.3144 to municipal elected officials and municipal candidates is unconstitutional, preliminary and permanent injunctions against enforcing this provision of the law, and legal costs and fees.

Commission Representation

William Stafford of the Office of the Attorney General is the lead attorney representing the Commission. Gray Schafer and Steven Zuilkowski will be the Commission's points of contact with lead counsel.

Current Status

On June 10, 2024, the Court issued a preliminary injunction prohibiting the Commission from enforcing the Form 6 requirement for municipal elected officials and mayors. The parties each filed Motions for Summary Judgment that were fully briefed by November 8, 2024. The case was then stayed pending the Court's forthcoming order on the cross motions for summary judgment. On September 16, 2026, the Commission met and voted to reject a settlement offer from Plaintiffs. On November 9, 2026, the Court granted Plaintiffs' Motion for Summary Judgment (and denied Defendants' Motion for Summary Judgment) and issued an order declaring the amendment to Section 112.3144, Florida Statutes unconstitutional as a violation of the First Amendment's guarantee against government compelled speech. That order is attached to the Executive Director's Report. The Court did not issue a final judgment but ordered additional briefing as to whether the final judgment should apply only to the plaintiffs who filed suit or to all municipal elected officials, mayors, and candidates. A final judgment will be issued thereafter. After the final judgment is issued, the Commission will have 30 days in which to file an appeal should it choose to do so.

Town of Briny Breezes, Florida et al. v. Rodgers et al., Case Number 2024-CA-000283, (Fla. 2nd Cir. Ct., Leon County)

Background

Plaintiffs are multiple municipalities and elected municipal officers and candidates. They are challenging the validity of the 2023 amendment to Section 112.3144, Florida Statutes, that required municipal elected officials and mayors (and candidates for such offices) to file a CE Form 6 financial disclosure rather than Form 1. It is similar to the Loper v. Lukis case above, this time arguing is that requiring them to file a Form 6 rather than a Form 1 violates their right to privacy under Article I, Section 23 of the Florida Constitution. Plaintiffs claim there is no compelling state interest that would justify having these types of officers and candidates disclose that degree of the information, and, even if there was a compelling interest, requiring these officers and candidates to file a CE Form 6 is not the least restrictive means of accomplishing that interest when the CE Form 1 is also available. Plaintiffs seek a declaration that the 2023 amendment violates Florida's constitutional right to privacy, an injunction against enforcing this provision of the law, and legal costs.

Commission Representation

William Stafford of the Office of the Attorney General is the lead attorney representing the Commission. Gray Schafer and Steven Zuilkowski are the Commission's points of contact with lead counsel.

Current Status

On September 16, 2026, the Commission met and voted to reject a settlement offer from Plaintiffs. On November 4, 2026, the Court denied the Motion to Dismiss filed by the Defendants. On November 17, 2026, the Court held a trial at which both parties made arguments on the law, and the Defendants filed a Motion for Involuntary Dismissal. We now await a ruling from the Court.

Garcia et al. v. Stillman et al., USCA Case No. 23-12663 (11th Circuit Court of Appeals), and S.D. Fla. (1:22-CV-24156-BB)

Background

At the time the case was filed, Plaintiffs were local public officers challenging the In-Office Lobbying Ban found in Article II, Section 8(f)(2), Florida Constitution. The ban became law after the Constitutional Revision Commission proposed it in 2018 via Amendment 12, which passed with 79% of the vote. The District Court entered final judgment in favor of the Plaintiffs, finding that Article II, Section 8(f)(2), was an unconstitutional abridgment of free speech. On August 9, 2023, the District Court entered final judgment enjoining the Commission from enforcing the provision on any public officer in the State. Defendants appealed to the 11th Circuit.

Commission Representation

Nate Forrester of the Office of the Solicitor General is representing Defendants in the appeal. All briefs are filed. Emily Witthoeft of the Office of the Attorney General represents the Commission before the District Court. Steven Zuilkowski is monitoring the appeal.

Current Status

On November 30, 2023, the 11th Circuit stayed the injunction pending a final adjudication of the appeal. The stay allows continued enforcement of the In-Office Lobbying Ban against all public officers except the one named Plaintiff who had standing to challenge the ban. All briefs have

been filed and oral argument on the merits of the appeal occurred on February 24, 2025. The audio of that proceeding is available at this link: https://www.ca11.uscourts.gov/sites/default/files/oral_argument_recordings/23-12663_02262025.mp3 We now await the Court's ruling. There have been no developments since the last report through November 19, 2026.

Ferdell Baker v. Florida Commission on Ethics, Case Number SC2025-1748, (Florida Supreme Court); 2026-CA-000051 (Fla. 2nd Circ. Ct., Leon County); 1D2026-3171 (Fla. 1st DCA)

Background

On November 6, 2025, Petitioner filed this action with the Florida Supreme Court apparently seeking a Writ of Mandamus. On December 23, 2025, the Supreme Court transferred the case to the Circuit Court of the Second Judicial Circuit, in and for Leon County. Steven Zuilkowski and Amelia Naomi are monitoring the case.

Current Status

On August 25, 2026, the Court entered an Order denying the petition for Writ of Mandamus. On October 26, 2026, Petitioner filed a Notice of Appeal with the First District Court of Appeal, seeking de novo review. Also on October 26, 2026, the Court issued four Orders: (1) an Order for the Appellant to either file a certified copy of the lower tribunal's order of insolvency for appellate purposes, or pay the filing fee to the Clerk within thirty days; (2) an Order for the Appellant to file a notice of filing that has attached a complete, signed copy of the lower tribunal order being appealed within ten days; (3) an Order for the Appellant to file an amended notice of appeal that states the date of rendition of the order being appealed within ten days; and (4) an Order for the Appellant to file an amended notice of appeal that contains a proper certificate of service within ten days. On November 13, 2026, Appellant filed an Amended Notice of Appeal.

Shaun Patrick Stewart v. The Honorable Ron DeSantis, et al., Case No. 5D2026-0859 (Fla. 5th DCA)

Background

In Case No. 2026-CA-000007 (Fifth Judicial Circuit Court for Lake County), Appellant sought a writ of mandamus against many public officials, including Executive Director Kerrie Stillman. Ms. Stillman and the Commission were never served with any filings and the lower court issued an order dispensing with the action. The lower court then issued an order declaring Appellant a vexatious litigant. Appellant appeals the order declaring him a vexatious litigant.

Current Status

Appellant filed his amended initial brief on July 31, 2026. Many of the Appellees, including Ms. Stillman, are represented by Assistant Attorney General Lydon William Schultz (Steven Zuilkowski and Amelia Naomi monitoring). Those Appellees filed an answer brief on September 1, 2026.

TRAINING AND STAFF ANNOUNCEMENTS

Staff Announcements:

Senior Investigator Ron Moalli retired from the Commission on October 30, after nearly twenty-three years of service with the Commission. Also, Investigator Marian Lambeth will retire on January 18, after nearly twenty-seven years in public service, four of which were with the Commission. We are grateful for their public service and the contributions Ron and Marian made to the work of the Commission. Congratulations Ron and Marian – you will be missed at the office!

Training:

On November 12, Kerrie provided a one-hour training session at the 2026 Florida Board of Governors Trustee Summit, at Florida International University.

Kerrie provided a two-hour ethics training to members of the Florida Senate, on November 18.

FINANCES & BUDGET

As of October 31, 2026, we've spent $1,041,447.60 (33.19%) of our appropriation, with 33.33% of the FY gone.

PENDING ORDERS IMPOSING PENALTIES

GOVERNOR

Complaint No. 17-088, In re Cheryl Thomas-Hughes (Final Order 12/12/18)
Complaint No. 18-168, In re Dustin Daniels (Final Order 04/21/21)
Complaint No. 21-113, In re Dennis Ward (4-27-22)
Complaint No. 20-060, 20-073, &
20-103(Cons.), In re Douglas Underhill (Final Order Upon DCA Mandate 4/30/2025)
Complaint No. 21-039 to 052, 21-057, 21-060, & 21-064 (Cons), In re Vanessa Baugh (2/1/2023)
Complaint No. 23-168, In re Henry Rosenthal (Final Order 4/19/2024)
Complaint No. 23-200, In re Michael Cusack (Final Order 4/19/2024)
Complaint No. 23-221, In re Ken Mascara (Final Order 7/31/2024)
Complaint No. 22-041, 22-115 (Cons.), In re Gregory Tony (3/7/2025)
Complaint No. 22-103, In re Michael Andrew White (3/7/2025)
Complaint No. 24-156, In re Bowen Kou (3/7/2025)
Complaint No. 24-172, 24-225 (Cons.), In re Lauro Diaz (3/7/2025)
Complaint No. 23-283, In re Angela McDonald (Final Order 4/25/2025)
Complaint No. 24-008, In re Kenneth Brenner (Final Order 4/25/2025)
Complaint No. 24-048, In re Ron Mueller (Final Order 4/25/2025)
Complaint No. 24-268, In re Annette Redman (6/6/2025)
Complaint No. 24-277, In re Tamara Goehler (6/6/2025)
Complaint No. 22-082, In re Vennis Gilmore (9/12/25)
Complaint No. 21-017, 21-031 (cons.), In re John Stevens (Final Order 11/19/25)

Complaint No. 17-107, In re Susan Haynie (1/23/26)
Complaint No. 24-262, In re Reinaldo Diaz (1/23/2026)
Complaint No. 22-116, In re Paule Villard (Final Order 03/06/2026)
Complaint No. 25-034, In re Ronterrious Green (Final Order 03/06/2026)
Complaint No. 23-255, In re Lynn Stoner (Final Order 7/24/2026)
Complaint No. 25-304, In re Jennifer Liotta (Final Order 7/24/2026)
Complaint No. 26, 034 & 035 (Cons.), In re Jackie Espinosa (10/28/2026)

HOUSE

Complaint No. 18-026, In re Kim Daniels (Final Order 1/30/2019)
Complaint No. 20-206, In re Jackie Toledo (Final Order 10/27/2021)
Complaint No. 20-211, In re Tracie Davis (Final Order 10/27/2021)
Complaint No. 21-159, In re Tracie Davis (Final Order 6/8/2022)

SENATE

Complaint No. 18-090, In re Daphne Campbell (Final Order 3/9/2022)

PENDING ACTION ON STATUTORILY-GENERATED LOBBYING FIRM AUDIT MATTERS (GOVERNOR AND CABINET)

Complaint No. 16-017, In re Dean Mead (Probable Cause 01/27/17)
Complaint No. 16-018, In re Buigas and Associates (Probable Cause 01/27/17)
Complaint No. 16-019, In re DDarling Consulting (Probable Cause 01/27/17).
Complaint No. 16-174, In re Kathy Till and Associates, Inc., (Probable Cause 08/02/17)
Complaint No. 16-170, In re Capitol Group, Inc., (Probable Cause 10/25/17)
Complaint No. 16-173, In re Johnson Strategies, LLC (Probable Cause 1213/17)
Complaint No. 16-175, In re Sayfie Law Firm (Probable Cause 10/25/17)
Complaint No. 17-132, In re Andrew J. Liles (Probable Cause 08/01/18)
Complaint No. 17-134, In re Lester Abberger (Probable Cause 08/01/18)
Complaint No. 17-135, In re Pruitt and Associates (Probable Cause 08/01/18)
Complaint No. 17-136, In re Wilson and Associates, LLC (Probable Cause 08/01/18)
Complaint No. 17-137, In re TC Wolfe (Probable Cause 08/01/18)
Complaint No. 19-031, In re Impact GR (Probable Cause 09/18/19)
Complaint No. 20-055, In re All Florida Solutions, Inc. (Probable Cause 03/10/21)
Complaint No. 20-056, In re Carr Allison (Probable Cause 03/10/21)
Complaint No. 20-058, In re Pyle and Associates (Probable Cause 03/10/21)
Complaint No. 21-127, In re Diana Hadi Padgett (Probable Cause 12/3/21)
Complaint No. 21-128, In re CJT Strategies, LLC (Probable Cause 12/3/21)
Complaint No. 22-074, In re Capitol Strategy Group (12/2/22)
Complaint No. 22-075, In re Buchanan, Ingersoll, and Rooney (12/2/22)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-20604-CIV-DAMIAN

ELIZABETH A. LOPER, *et al.*,

Plaintiffs,

v.

ASHLEY LUKIS, *et al.*,

Defendants.
_____/

ORDER ON MOTIONS FOR SUMMARY JUDGMENT [ECF NOS. 59, 61]

THIS CAUSE came before the Court upon Plaintiffs' Motion for Summary Judgment, filed October 11, 2024 [ECF No. 59 ("Plaintiffs' Motion")], Defendants' Motion for Summary Judgment [ECF No. 61 ("Defendants' Motion")], also filed October 11, 2024, and also upon Plaintiffs' Motion to Strike and Disregard New Argument Made in Reply Brief or, Alternatively, for Leave to File Sur-Reply [ECF No. 71 ("Motion to Strike")], filed November 13, 2024.

THE COURT has carefully considered the Motions for Summary Judgment, the Responses [ECF Nos. 66 ("Defendants' Response") and 68 ("Plaintiffs' Response")] and respective Replies thereto [ECF Nos. 69 ("Defendants' Reply") and 70 ("Plaintiffs' Reply)], Plaintiffs' Motion to Strike [ECF No. 71] and the briefing associated with that Motion [ECF Nos. 73 and 75], the applicable law, the pertinent portions of the record, including Defendants' Notice of Supplemental Authority [ECF No. 72], Plaintiffs' Response thereto [ECF No. 74], and Plaintiffs' Notice of Vacatur of Authority [ECF No. 76], and is otherwise fully advised.

The State of Florida has a legitimate interest in protecting its citizens from corrupt politicians and elected officials with conflicts of interest, but Supreme Court precedent instructs that the ability to effectuate such honorable goals is not unbounded. In that vein, the Supreme Court has consistently held that "even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker*, 364 U.S. 479, 488 (1960). And so, "[t]he breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." *Id.*

In this suit, Plaintiffs, 175 elected municipal officials in the State of Florida, contend that the State contravened that limiting principle in passing Senate Bill 774 ("SB 774"), which mandates the filing of detailed financial disclosures without any showing that less burdensome requirements do not or would not serve the same government interests. Plaintiffs seek to enjoin enforcement of SB 774 on grounds the law infringes their free speech rights under the First Amendment to the United States Constitution.

For the reasons set forth below, the undersigned agrees with Plaintiffs that Defendants have not shown that the law withstands heightened scrutiny, and, therefore, Plaintiffs' Motion for Summary Judgment is due to be granted, and Defendants' Motion for Summary Judgment is due to be denied.

I. BACKGROUND[1]

A. The Parties.

Plaintiffs, made up of 175 elected municipal officials, filed this lawsuit to enjoin enforcement of SB 774, a law passed by the Florida Legislature and signed by the Governor during the 2023 legislative session. *See generally* Third Amended Complaint [ECF No. 54]. As alleged in the Third Amended Complaint, SB 774 requires elected municipal officials, who were previously required to annually complete and file a financial disclosure known as "Form 1," to instead annually complete and file the more fulsome financial disclosure known as "Form 6." *See id.*; *see also* JSUF ¶¶ 1, 5–7. The Defendants are members of the Florida Commission on Ethics ("COE"), which is the state agency charged with implementing and enforcing Florida's financial disclosure laws, including SB 774. *See* JSUF ¶ 2.

B. Financial Disclosure In Florida Prior To SB 774.

In 1976, the State of Florida passed the Sunshine Amendment, which amended the Florida Constitution to require certain public officials and candidates to file full and public disclosures of their financial interests. *See* JSUF ¶ 3; *see also* Art. II, § 8, Fla. Const. The Sunshine Amendment states: "[P]ublic office is a public trust. The people shall have the right to secure and sustain that trust against abuse." Art. II, § 8, Fla. Const. The Sunshine Amendment mandates that "[a]ll elected constitutional officers and candidates for such

[1] Unless otherwise stated, the facts here are undisputed and taken from the parties' Joint Statement of Undisputed Facts [ECF No. 56 ("JSUF")], Defendants' Statement of Material Facts [ECF No. 62 ("Defs. SOF")], Plaintiffs' Statement of Material Facts [ECF No. 60 ("Pls. SOF")], and Plaintiffs' Response to Defendants' Statement of Material Facts [ECF No. 67 ("Pls. Resp. SOF")].

offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests." *Id.* at § 8(a).

Since the enactment of the Sunshine Amendment, the COE has required certain public officials[2] to file a financial disclosure known as Form 6 to satisfy the disclosure requirements of the Sunshine Amendment. *See* Fla. Stat. § 112.3144(8) ("Forms or fields of information for compliance with the full and public disclosure requirements of [Section 8, Article II] of the State Constitution must be prescribed by the [COE]."). Form 6, which must be filed annually, requires these certain elected public officials and candidates to state: (1) their net worth; (2) the amount of the aggregate value of household goods and personal effect(s); (3) descriptions and amount of assets and liabilities over $1,000; (4) every source of income, including name and address of the source, in excess of $1,000; and (5) descriptions of interests in certain businesses. *See generally* TAC, Ex. 2 ("Form 6"); *see also* Fla. Admin. Code Ann r. 34-8.002 (2023). Suffice it to say, completion of Form 6 is burdensome for those who are required to submit it.

Prior to January 1, 2024, the Form 6 requirement did not apply to elected municipal officials or candidates for municipal office. *See* JSUF ¶ 4; *see also* Fla. Stat. § 112.3145 (2022). Instead, municipal officials and candidates were required to comply with the disclosure requirements of Form 1, which are less comprehensive than those of Form 6. JSUF ¶ 5. Form

[2] These officials include the Governor, Lieutenant Governor, Cabinet members, members of the Legislature, state court judges, State Attorneys, Public Defenders, Clerks of Circuit Courts, Sheriffs, Tax Collectors, elected Superintendents of Schools, members of District School Boards, administrative judges of compensation claims, members of the Florida Housing Finance Corporation Board, and members of each expressway authority, transportation authority (except the Jacksonville Transportation Authority), bridge authority, toll authority, or expressway agency created pursuant to Florida law, the Duval County Superintendent of Schools, and the Mayor and members of the Jacksonville City Council. Defs. SOF ¶ 7; Pls. Resp. SOF ¶ 7.

1 requires these individuals to disclose: (1) primary sources of income (but not amounts) over $2,500; (2) secondary sources of income (*i.e.*, businesses); (3) intangible personal property valued over $10,000 and real property; (4) liabilities over $10,000; and (5) interests in certain businesses. *See generally* TAC, Ex. 1 ("Form 1"); *see also* Fla. Admin. Code Ann r. 34-8.202 (2023). Though still somewhat burdensome, completion of Form 1 is less onerous for the municipal officials required to complete it than the Form 6 requirement to which the above-described public officials are subject.

C. Changes Implemented By Enactment Of SB 774.

During its 2023 session, the Florida Legislature passed, and the Governor later signed into law, SB 774, which amended Sections 112.3144 and 112.3145 of the Florida Statutes. *See* 2023 Fla Laws ch. 2023-49, pp. 4–8. As a result, as of January 1, 2024, mayors and other elected members of the governing bodies of municipalities are now required to file Form 6 (rather than Form 1). JSUF ¶ 6; *see* Fla. Stat. § 112. 3144.The law requires that these municipal officials file Form 6 by July 1 of each year. JSUF ¶ 7; Fla. Stat. § 112.3145. Any official who fails to comply with this requirement will be subject, after a 60-day grace period, to fines of $25 a day up to $1,500. *See* JSUF ¶ 8; *see also* Fla. Stat. §§ 112.3144(8)(f), 112.317, 112.324(4). And, after an investigation and public hearing, the noncompliant official could be subject to a civil penalty of up to $20,000 and, among other things, a recommendation of removal from office. *See id.*

D. The Legislative Record Of SB 774.

This Court's Preliminary Injunction Order, entered on June 10, 2024, set forth in detail the legislative committee analyses, COE annual reports, Senate committee meetings, and legislative floor debate underlying passage of SB 774. No party appealed or sought

reconsideration of that Order or otherwise raised any reason to question the accuracy of this Court's recitation of those processes, and, therefore, that portion of the Preliminary Injunction Order detailing SB 774's legislative record is incorporated herein. *See* ECF No. 40 at 4–10 ("Prelim. Inj.").

II. PROCEDURAL HISTORY

A. The Complaint.

On February 15, 2024, Plaintiffs, then consisting of more than 150 elected officials of municipalities existing under the laws of the State of Florida, filed a Complaint against Defendants, members of the COE charged with implementing and enforcing Florida's financial disclosure laws. *See generally* ECF No. 1 ("Complaint"). In the Complaint, Plaintiffs assert a single claim for violation of 42 U.S.C. § 1983 on the grounds that SB 774 compels content-based, noncommercial speech in violation of the First Amendment of the United States Constitution. *See generally id.* Plaintiffs amended the Complaint several times by interlineation to include additional elected officials and to change the names of certain Defendants. *See* ECF Nos. 9, 26, 37, 54. Other than the changes to and additions of parties, the Plaintiffs' claim has remained the same throughout each amendment. The Third Amended Complaint is the operative pleading, and it identifies 175 named Plaintiffs.

B. The Preliminary Injunction.

On March 22, 2024, Plaintiffs filed an Expedited Motion for Preliminary Injunction, requesting that this Court enjoin enforcement of SB 774 on grounds there was a substantial likelihood of success on the merits of their claim that SB 774 compels content-based speech in violation of the First Amendment. *See generally* ECF No. 10 ("Mot. for Prelim. Inj."). More specifically, Plaintiffs argued that SB 774 compels content-based speech and is, therefore,

subject to strict scrutiny review. *Id.* at 9–13. Plaintiffs further argued that the law is not narrowly tailored nor the least restrictive means to serve compelling government interests. *Id.* at 14–19. While acknowledging that protecting against conflicts of interest and deterring corruption are compelling government interests, Plaintiffs argued that SB 774 is not narrowly tailored to achieve these interests. *Id.* Plaintiffs also contended that the legislative record is devoid of empirical examples, expert studies, or analyses evincing that other alternative and less restrictive means were seriously considered. *Id.* Plaintiffs therefore argued that a preliminary injunction was warranted because SB 774 violates the First Amendment and causes irreparable injury. *Id.* at 19.

In response to the Motion for Preliminary Injunction, Defendants neither challenged nor disagreed with Plaintiffs' contention that SB 774 implicates the First Amendment. Instead, Defendants insisted that Plaintiffs' First Amendment challenge was not subject to strict scrutiny review but is instead subject to the less rigorous level of "exacting scrutiny," which requires a substantial relation between the law and the compelling government interests, as opposed to a showing that the law is the least restrictive means of addressing the compelling government interests. *See* ECF No. 16 (Resp. to Mot. for Prelim. Inj.) at 3–7. Defendants then argued that Plaintiffs had not established a substantial likelihood of success because they failed to argue that the law does not satisfy exacting scrutiny based on a lack of a substantial relation between the financial disclosure requirements of Form 6 and the government interests at stake. *Id.* at 7–12.

Citing the 2023 Annual Report's finding that there has been a "steady, upward trend" of the number of ethical complaints, Defendants argued that there is a substantial relation between the Form 6 requirements and compelling government interests.*Id.* at 7 (citing ECF

No. 16-1 at 9). Defendants averred that the COE recommended imposing the Form 6 requirements on municipal elected officials and candidates based on these trends as "a narrowly tailored means of deterring corruption and conflicts of interest, bolstering the public's confidence in Florida officials, and educating the public." *Id.* at 8 (citing ECF No. 16-4 ¶ 9).

Plaintiffs replied that even if exacting scrutiny is the applicable standard, Defendants had not shown that SB 774 satisfies that standard, and Plaintiffs challenged Defendants' proffered reasons for needing Plaintiffs to file Form 6 as opposed to Form 1. *See generally* ECF No. 18 (Reply to Mot. for Prelim. Inj.).

After the Motion for Preliminary Injunction was fully briefed by the parties, this Court held a hearing on April 22, 2024, to hear argument on the issues raised in the Motion and to take evidence. [ECF No. 27]. Defendants continued to argue that the appropriate standard for review of Plaintiffs' First Amendment challenge is exacting scrutiny, but they offered no evidence at the hearing. Therefore, at the conclusion of the hearing, this Court directed Defendants to submit supplemental briefing identifying the specific evidence in the legislative record that Defendants purport establishes a relationship between Form 6's additional financial disclosure requirements and the compelling government interests at stake. Defendants filed their supplemental briefing on May 1, 2024 [ECF No. 34 (the "Supplemental Brief")], and Plaintiffs filed a Response to the Supplemental Brief on May 6, 2024 [ECF No. 35 (the "Supplemental Response")].

In their Supplemental Brief, Defendants argued, for the first time, that SB 774 does not implicate the First Amendment and that heightened scrutiny of the law is not warranted. Supp. Brief at 1–2. Defendants then persisted in their earlier contention that if the law does

raise First Amendment concerns warranting heightened scrutiny, then, at most, exacting scrutiny applies. *Id.* at 3.

Defendants then argued (again, for the first time) that the Court should consider "history, [] substantial consensus, and simple common sense" to find that the State has sufficiently shown that the law is necessary to serve compelling state interests. *Id.* at 4 (citing *Burson v. Freeman*, 504 U.S. 191, 210 (1992)). According to Defendants, a "demonstrated history of financial disclosure laws" is evidence that such laws are effective in addressing the State of Florida's interest in preventing corruption, bolstering public confidence in government, promoting voter knowledge, and positively shaping the political community. *Id.*(citing *Garcia v. Stillman*, 661 F.Supp.3d 1168, 1183 (S.D. Fla. 2023) (Bloom, J.).

Notably, although the Court's directive with regard to the Supplemental Brief was for Defendants to provide studies, data, reports, or empirical evidence supporting the need for the heightened disclosure requirements of SB 774, the Supplemental Brief included none. *See generally id.* This Court interpreted Defendants' failure to provide such evidence as a concession that there is no such evidence in the record to support the purported need for the change from Form 1 to Form 6. Instead, Defendants pointed to the multiple government interests underlying the original Sunshine Amendment and claimed that because the interests underlying SB 774 are the same as those, the legislature did not need to "waste time" rehashing those interests in Staff Analyses, Committees, or floor debates. *Id.* at 6. Thus, Defendants contended that they relied on and the Court should consider the circumstances underlying the passage of the Sunshine Amendment as the research, studies, and empirical evidence that support their claim that SB 774 was narrowly tailored to meet the interests at stake. *Id.* at 8–9.

On June 10, 2024, this Court granted Plaintiffs' Motion for Preliminary Injunction and preliminarily enjoined enforcement by Defendants of SB 774. *See* ECF No. 40 ("Prelim. Inj."). In granting that Motion, this Court found that the compelled disclosure of financial information implicates First Amendment scrutiny. *See id.* at 21. Applying the less burdensome of the First Amendment disclosure tests, exacting scrutiny, this Court found that Defendants failed to consider whether the government interests at stake could be addressed through less burdensome means and that the record did not reflect that SB 774 was substantially related to the State's identified interests. *See id.* at 27.

In the Preliminary Injunction Order, this Court pointed out that Defendants had likely waived their argument that SB 774 did not implicate the First Amendment due to Defendants' failure to raise that argument in the memoranda of law and waiting until the Supplemental Brief to inject the issue for the first time. *See id.* at 20. This Court also observed that Defendants' new argument directly contradicted Defendants' own positions, arguments, and authority raised in their Response to the Motion for Preliminary Injunction, and this Court noted that Defendants had misconstrued the legal authority cited by Plaintiffs when they claimed that Plaintiffs did not offer authority for the claim that the compelled disclosure of financial information implicates First Amendment scrutiny. *See id.* Nevertheless, this Court addressed Defendants' arguments on the merits before granting the Preliminary Injunction.

C. The Cross Motions For Summary Judgment.

On October 11, 2024, both sides filed Cross Motions for Summary Judgment on the one-count Third Amended Complaint. *See generally* Pls. Mot.; Defs. Mot. The Motions were fully briefed on November 8, 2024, when the parties filed their Replies. After Defendants filed their Reply, Plaintiffs filed a Motion to Strike on the grounds Defendants asserted new

arguments in their Reply. Mot to Strike. Defendants filed a Response to the Motion to Strike on November 22, 2024 [ECF No. 73], and Plaintiffs filed a Reply on November 29, 2024 [ECF No. 75]. On November 19, 2024, Defendants filed a Notice of Supplemental Authority [ECF No. 72], to which Plaintiffs responded on November 22, 2024 [ECF No. 74]. On February 11, 2025, Plaintiffs filed a Notice of Vacatur of Authority. [ECF No. 76].

The Cross Motions for Summary Judgment are fully briefed and ripe for adjudication.

III. THE PARTIES' ARGUMENTS IN THE CROSS MOTIONS

A. Plaintiffs' Motion.

In their Motion, Plaintiffs argue that SB 774's requirement that Plaintiffs now file Form 6 implicates the First Amendment because the First Amendment applies to compelled speech, including compelled statements of information, and SB 774 compels such speech. *See generally* Pls. Mot. Plaintiffs point out that this Court already found this in the Preliminary Injunction Order, and Defendants neither appealed that ruling nor point to any intervening change in the law since this Court issued the Preliminary Injunction Order. *Id.* at 4 n.3. Plaintiffs further argue that SB 774 should be subject to heightened constitutional scrutiny, contending that the law is content-based, and, therefore, is subject to strict scrutiny and presumptively unconstitutional. *Id.* at 4–8. At a minimum, Plaintiffs contend the law is subject to exacting scrutiny. *Id.* at 8–10.

Plaintiffs argue that Defendants have not shown that either level of scrutiny is satisfied because Defendants have not shown that any less restrictive means were considered and have not come forward with any evidence in the legislative record justifying the need for the change to the heightened disclosure requirements. *Id.* at 10–16.

Defendants' Response largely mirrors their Motion, discussed below, but also adds an argument that if this Court enters an injunction, the injunction should be limited in its application to only the named Plaintiffs. *See* Defs. Resp. at 8–14.

B. Defendants' Motion.

In their Motion, Defendants now completely reject the contention that SB 774 triggers First Amendment scrutiny. Perhaps acknowledging that the law cannot survive heightened scrutiny, Defendants assert numerous bases for avoiding First Amendment scrutiny. They argue that this Court's review is controlled by the Fifth Circuit's 1978 opinion in *Plante v. Gonzalez*, 575 F.2d 1119 (5th Cir. 1978), which addressed a challenge to the Sunshine Amendment shortly after its original passage on right to privacy grounds. Thus, Defendants contend that this Court's analysis should focus on whether SB 774 violates Plaintiffs' rights to privacy, pointing out that no prior case has applied the First Amendment to the Sunshine Amendment. Defs. Mot. at 3-5. Defendants further argue that disclosures by public officials are not private speech, and, therefore, are not protected by the First Amendment. *Id.* at 5–8. On this point, Defendants aver that Plaintiffs are not private actors and that any restrictions on their speech is subject to a different analysis. *Id.* Defendants point out that the authority on which Plaintiffs rely all addresses restrictions on speech by private actors, and, according to Defendants, that authority does not apply to Plaintiffs' speech because Plaintiffs are not private actors. *Id.* Instead, Defendants suggest that the analysis in *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006), is more on point. *Id.* Alternatively, Defendants argue that even if Plaintiffs' disclosures are considered private speech, the disclosures should be analyzed under the rubric of *Pickering v. Board of Education*, 391 U.S. 563 (1968), in which the Supreme Court addressed restrictions on employees' speech. *Id.* at 8–10. Finally, Defendants argue that even if this

Court determines that First Amendment scrutiny is warranted, the disclosures here should be analyzed as commercial speech subject to the reasonable relation test, citing *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), or, as they argued previously, that this Court should look to history, consensus, and commons sense, following *Burson v. Freeman*, 504 U.S. 191 (1992). *Id.* at 10–17.

In their Response, Plaintiffs reject each of Defendants' efforts to avoid First Amendment scrutiny and maintain that Defendants have not satisfied any heightened level of scrutiny here. *See generally* Pls. Resp.

IV. LEGAL STANDARDS

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* In reviewing a motion for summary judgment, the Court is "required to view the evidence and all factual inferences therefrom in the light most favorable to the non-moving party, and resolve all reasonable doubts about the facts in favor of the non-movant." *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1247 (11th Cir. 2013) (quoting *Skop v. City of Atlanta*, 485 F.3d 1130, 1143 (11th Cir. 2007)). Importantly, "at the summary judgment stage the judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter," but only "to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

In opposing a motion for summary judgment, the non-moving party may not rely solely on the pleadings but must show by affidavits, depositions, answers to interrogatories,

and admissions that specific facts exist demonstrating a genuine issue for trial. *See* Fed. R. Civ. P. 56(c), (e); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). A mere "scintilla" of evidence supporting the opposing party's position will not suffice; instead, there must be a sufficient showing that the jury could reasonably find for that party. *Anderson*, 477 U.S. at 252; *see also Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990).

"An issue of fact is material if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case." *Burgos v. Chertoff*, 274 F. App'x 839, 841 (11th Cir. 2008) (internal quotation marks omitted) (quoting *Allen v. Tyson Foods Inc.*, 121 F.3d 642, 646 (11th Cir. 1997)). "A factual dispute is genuine 'if the evidence is such that a reasonable jury could return a verdict for the non[-]moving party.'" *Channa Imps., Inc. v. Hybur, Ltd.*, No. 07-21516-CIV, 2008 WL 2914977, at *2 (S.D. Fla. Jul. 25, 2008) (Simonton, M.J.) (quoting *Anderson*, 477 U.S. at 248). Further, "[f]or factual issues to be considered genuine, they must have a real basis in the record. For instance, mere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion." *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005) (citation omitted).

The standard of review for cross-motions for summary judgment does not differ from the standard applied when only one party files a motion but simply requires a determination of whether either party deserves judgment as a matter of law on the facts that are not disputed. *Am. Bankers Ins. Grp. v. United States*, 408 F.3d 1328, 1331 (11th Cir. 2005). "The court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." Charles Alan Wright, Arthur R. Miller & Mary Kane, *10A Fed. Prac. & Proc. Civ.* § 2720 (4th ed. 2021).

"In practice, 'cross motions for summary judgment may be probative of the nonexistence of a factual dispute . . . .'" *Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336, 1345 (11th Cir. 2015) (quoting *Shook v. United States*, 713 F.2d 662, 665 (11th Cir.1983)). But "'the mere filing of cross motions for summary judgment d[oes] not warrant the entry of summary judgment.'" *Id.*.

V. DISCUSSION

This Court addresses the parties' arguments below. The first issue presented by both Motions is whether SB 774 triggers First Amendment scrutiny, followed by what level of scrutiny should be applied to consideration of the law, and, finally, whether Defendants have satisfied whatever level of scrutiny applies.

A. The First Amendment.

The First Amendment provides that Congress "shall make no law . . . abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.[3] One of the most basic principles of the freedom of speech is that "[t]he Free Speech Clause of the First Amendment constrains governmental actors and protects private actors." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 804 (2019).

It is well established that First Amendment protection of speech "includes both the right to speak freely and the right to refrain from speaking at all." *McClendon v. Long*, 22 F.4th 1330, 1336 (11th Cir. 2022) (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)). Thus, a statute compelling speech, as with a statute forbidding speech, may fall within the purview of

[3] The First Amendment was made applicable to the states through the Fourteenth Amendment. *See Meyer v. Grant*, 486 U.S. 414, 420 (1988).

the First Amendment's protection. *See Wooley*, 430 U.S. at 714 ("The right to speak and the right to refrain from speaking are complementary components of the broader concept of individual freedom of mind." (internal quotation marks omitted)); *see also VoteAmerica v. Raffensperger*, 609 F. Supp. 3d 1341, 1359 (N.D. Ga. 2022) (observing that "courts focus[] in part on the fact that the compelled messages altered the content of the plaintiffs' speech and forced them to convey a message that they would not otherwise communicate").

"At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622 ("*Turner I*"), 641 (1994); *see also Wooley*, 430 U.S. at 714 ("A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts.").

The Supreme Court has consistently held that the creation and dissemination of information are speech within the meaning of the First Amendment. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011); *see also Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001)(("[I]f the acts of 'disclosing' and 'publishing' information do not constitute speech, it is hard to imagine what does fall within that category, as distinct from the category of expressive conduct"); *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 481 (1995) ("information on beer labels" is protected speech); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 759 (1985) (credit report of private information is "speech" albeit subject to less stringent protections). As the *Sorrell* Court explained, "Facts, after all, are the beginning point for much of the speech that is most essential to advance human knowledge and to conduct human affairs." *Id.* at 570.

Not all speech is treated equally when it comes to First Amendment protections. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 422 (1992) (Stevens, J., concurring) ("Our First Amendment decisions have created a rough hierarchy in the constitutional protection of speech. Core political speech occupies the highest, most protected position; commercial speech and nonobscene, sexually explicit speech are regarded as a sort of second-class expression; obscenity and fighting words receive the least protection of all."). Importantly, "[m]erely because an activity is 'carried out by means of language, either spoken, written, or printed,' does not mean that the First Amendment applies." *Euro. Connections & Tours, Inc. v. Gonzales*, 480 F. Supp. 2d 1355, 1370 (N.D. Ga. 2007) (quoting *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978)). Courts have found government regulation of numerous communicative activities do not implicate the First Amendment at all, including "the exchange of information about securities, corporate proxy statements, the exchange of price and production information among competitors, and employers' threats of retaliation for the labor activities of employees." *Ohralik*, 436 U.S. at 456 (citations omitted).

With these standards in mind, this Court must determine whether the disclosure requirements of SB 774 implicate the First Amendment and, if so, what level of scrutiny is warranted.

C. Whether SB 774 Triggers First Amendment Scrutiny.

In the Preliminary Injunction Order, this Court held, "[W]here, as here, a law compels disclosure of financial information the speakers would not otherwise have disclosed, the law burdens speech and does fall within the purview of the First Amendment." Prelim. Inj. at 21. Plaintiffs suggest that Defendants have waived their right to challenge that conclusion by not appealing or seeking reconsideration of the Preliminary Injunction. This Court disagrees and

finds that Defendants' challenge is properly before this Court, and, therefore, this Court considers the merits of the parties' First Amendment arguments.

In their Motion, Plaintiffs argue that SB 774's requirement that Plaintiffs file Form 6 compels speech and implicates the First Amendment. Pls. Mot. at 2–4. As discussed above, it is well established that the First Amendment applies equally to laws that restrain speech and laws that compel speech. *See, e.g.*, *Wooley*, 430 U.S. at 714. This general principle is not up for debate here. Instead, Defendants contend that the nature of the compelled information (here, personal financial information of public officials) does not trigger First Amendment scrutiny. On this point, they offer several arguments. First, Defendants argue that financial disclosure requirements for public officials are controlled by *Plante v. Gonzalez*, 575 F.2d 1119 (5th Cir. 1978), and subject to review only as a matter of right to privacy violations, not First Amendment speech protection. Defs. Mot. at 3–5. Second, Defendants argue that disclosures of financial information by public officials are not private speech and thus are not protected by the First Amendment. *Id.* at 5–8. And, third, they contend that even if the disclosures here are private speech, the appropriate test that should be applied is that set forth in the *Garcetti* and *Pickering* opinions, or, alternatively, that the disclosures should be treated as commercial speech subject to the test set forth in *Zauderer*. *Id.* at 8–12.

This Court addresses each of Defendants' arguments below but first addresses the broader question raised by Plaintiffs – whether compelled disclosure of financial information from elected officials triggers First Amendment scrutiny. While Defendants are correct that there is no Supreme Court or Eleventh Circuit case on all fours with the circumstances present here, for the reasons discussed below, this Court is satisfied that the compelled disclosure of detailed financial information from public officials who would not otherwise have provided such detailed financial information and that will be accessible to the world on the internet

falls well within Supreme Court and Eleventh Circuit precedent applying First Amendment protections to compelled speech.

As noted above, there is no dispute that the First Amendment protects compelled disclosures as it does restraints on speech. *See Wooley*, 430 U.S. at 714 ("The right to speak and the right to refrain from speaking are complementary components of the broader concept of individual freedom of mind.").

Here, the mandated disclosures at issue involve detailed personal financial information of public, elected officials, and it is undisputed that the information will be publicly available.[4] Laws that require disclosure of information, including both government reporting requirements and direct disclosure requirements, are subject to First Amendment scrutiny. *See McLendon*, 22 F.4th at 1336; *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1117 (9th Cir. 2024) ("[T]he forced disclosure of information . . . triggers First Amendment scrutiny."). As the Eleventh Circuit acknowledged in *McLendon*, "The compelled speech doctrine applies to ideological speech and purely factual, non-commercial speech." 22 F.4th 1330, 1336 (citing *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 797–98 (1988); *Nat'l Inst. of Family and Life Advocs. v. Becerra*, 585 U.S. 755, 769 (2018)).

Defendants argue that Plaintiffs cite no authority for the proposition that compelled disclosure of financial information triggers First Amendment scrutiny. This Court disagrees with that assessment of Plaintiffs' Motion and also notes that Defendants cite no authority standing for the contrary proposition. In any event, as stated above, this Court finds that a government regulation mandating speech that a speaker would not otherwise make necessarily alters the content of the speech and is a content-based regulation of speech subject

[4] Defendants dispute how easily accessible the information is but do not dispute that it is accessible to the public.

to First Amendment scrutiny. *See Riley*, 487 U.S. at 795; *see also Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 256 (1974) (statute compelling newspaper to print an editorial reply "exacts a penalty on the basis of the content of a newspaper").

Given the nature of the information subject to compelled disclosure here, that is, personal financial information, this Court agrees with Plaintiffs that the compelled disclosure of such information triggers First Amendment scrutiny. On the other hand, this Court is not persuaded by Defendants' arguments as to why such compelled disclosure does not trigger the First Amendment. As such, this Court finds SB 774 is a content-based regulation of speech subject to First Amendment scrutiny. The next logical question is what level of review applies. This Court addresses that question below, but first, this Court addresses Defendants' arguments for why the compelled disclosures here are not protected by the First Amendment or, if they are, why heightened scrutiny does not apply.

***D. Whether This Court's Review Is Controlled By* Plante v. Gonzalez.**

Defendants argue that this Court's review is controlled by the Fifth Circuit's 1978 opinion in *Plante v. Gonzalez*, *supra*. Defs. Mot. at 3. In *Plante*, the former Fifth Circuit addressed a challenge by state senators to the Sunshine Amendment shortly after it went into effect on right to privacy grounds. The court thoroughly analyzed the plaintiffs' claims of violations of their right to privacy and denied the challenge, finding that the plaintiffs failed to demonstrate that their privacy rights were violated based on the compelled disclosures. *See* 575 F.2d at 1132–33. Seizing on the State's success in defending the disclosure requirements in that case, Defendants contend that this Court's analysis should focus on whether SB 774

violates Plaintiffs' rights to privacy, pointing out that no prior case has applied First Amendment scrutiny to the Sunshine Amendment. Defs. Mot. at 3–5.

The problem with relying here on the court's opinion in *Plante* is that the parties in that case did not assert a challenge to the Amendment on First Amendment grounds. As the court explained the parties' arguments:

> The senators raise two substantial constitutional questions. First, they argue that the public disclosure of their personal financial affairs violates their federally protected right to privacy, derived from the shadows of the Bill of Rights and made applicable to Florida through the fourteenth amendment. Second, they argue that the disclosure scheme unconstitutionally burdens candidates for office, thus depriving voters of their right to vote for candidates of their choice.

575 F.2d at 1123. The court, therefore, did not analyze whether the disclosure requirements do infringe the senators' First Amendment rights.[5] In the case now before this Court, on the other hand, Plaintiffs only raise a First Amendment free speech challenge and do not raise a right to privacy challenge. Thus, the *Plante* opinion has little value for determining the issue before this Court, which is whether, as Plaintiffs assert in their pleadings, the change in the disclosure requirements applicable to them infringes their First Amendment rights. Also problematic, as Plaintiffs point out, is that the opinion, issued almost 50 years ago, predates

[5] The court did acknowledge that the Supreme Court had, by that point, determined that compelled disclosure of information may implicate First Amendment concerns. However, lacking any argument or analysis from the parties on the issue, the court observed only that there did not appear to be a First Amendment issue, writing: "Although in some particular situations, rigorous application of the Amendment might implicate first amendment freedoms, when considering the Amendment on its face this threat is too remote to raise the issue." 575 F.2d at 1132–33.

a substantial body of Supreme Court First Amendment authority in the context of compelled disclosures.[6]

Because the *Plante* opinion did not address the issues raised by the Plaintiffs in this case and it predates relevant Supreme Court authority, this Court finds that the *Plante* opinion does not apply to the determination of the issues in this case.[7]

E. Whether* Garcetti v. Ceballos *or* Pickering v. Board of Education *Controls.

Defendants argue that disclosures by public officials are not private speech, and, therefore, are not protected by the First Amendment. Defs. Mot. at 5. On this point, Defendants aver that Plaintiffs, as elected government officials, are not private actors and that any restrictions on their speech are subject to the Supreme Court's analysis in *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006). *Id.* at 5–8. Alternatively, if the disclosures by Plaintiffs are considered private speech, Defendants contend that they may still properly be compelled under the analysis in *Pickering v. Board of Education*, 391 U.S. 563 (1968). *Id.* at 8–10. Plaintiffs respond that *Garcetti* and *Pickering* do not apply to their claims because they are not employees but, instead, are elected public officials. *See* Pls. Resp. at 7–8.

The Eleventh Circuit has not addressed, in a binding opinion, whether *Garcetti* applies to elected officials, although one panel of the court weighed in on the issue in an opinion that was later vacated. *See Warren v. DeSantis*, 90 F.4th 1115, 1129 (11th Cir. 2024) ("We reject DeSantis's government-speech argument. On the one hand, *Garcetti*'s application to elected

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[6] This Court notes that Defendants did not reply to Plaintiffs' asserted reasons why the *Plante* opinion does not apply here.

[7] To the extent Defendants argue the Court should not apply First Amendment scrutiny because no court has done so before, this argument carries little weight when it is not clear that anyone has ever raised a First Amendment free speech challenge to the law or its predecessor(s).

officials seems suspect. On the other—controlling—hand, even if we apply *Garcetti* to Warren, the First Amendment still protects Warren's signing the statements."), *vacated and superseded*, 125 F.4th 1361 (11th Cir. 2025). [8] As explained below, this Court finds that *Garcetti* and *Pickering* do not apply to the publicly elected officials in this case.

In *Pickering*, the Supreme Court held that a "[s]tate has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." 391 U.S. at 568. As the Court explained, when the state acts as an employer, courts must "balance" the interests of the citizen–employee in commenting on "matters of public concern," and the employer–state's interests in promoting workplace efficiency. *Id.*

Elaborating on *Pickering*, the Court held in *Garcetti* that courts should conduct a two-part analysis. 547 U.S. at 418. First, did the employee speak "as a citizen on a matter of public concern." If the answer is no, there is no First Amendment claim. *Id.* If the answer is yes, then a possible First Amendment claim exists if the state lacked adequate justification for treating the employee differently from the general public. *Id.*

It is important that these opinions be read in the context of other Supreme Court authority addressing the role of legislators. In *Bond v. Floyd*, decided two years before *Pickering*, the Supreme Court emphasized that in a representative government, "[t]he manifest function of the First Amendment requires that legislators be given the widest latitude to express their views on issues of policy." 385 U.S. 116, 135–36 (1966). The Court further elaborated that the Amendment's "central purpose" is to ensure "uninhibited, robust, and wide-open" debate on public issues. *Id.* And the Court explained that legislators have "an obligation to take

[8] The court vacated the opinion on mootness grounds.

positions on controversial political questions so that their constituents can be fully informed," able to assess the elected official's qualifications, and represented in government debates. *Id.*

Based on the *Bond* Court's analysis, the Supreme Court does view the First Amendment as having two different applications—one for public employees, who are entitled to only limited First Amendment protections, and the other for elected officials for whom the Amendment applies with full force. This is consistent with the rationale underlying the Court's later opinions in *Pickering* and *Garcetti*. Those opinions are premised on public employee efficiency and management concerns.

The circuits that have addressed the question consistently conclude that *Pickering* and *Garcetti*'s rationale "is [not] applicable to elected officials." *Boquist v. Cortney*, 32 F.4th 764, 780 (9th Cir. 2022) ("the *Pickering* balancing test [does not] apply to an elected official's claim of First Amendment retaliation"); *Werkheiser v. Pocono Twp.*, 780 F.3d 172, 178–80 (3d Cir. 2015) (noting that "[m]any of the reasons for restrictions on employee speech appear to apply with much less force in the context of elected officials"); *Phelan v. Laramie Cnty. Cmty. Coll. Bd. of Trs.*, 235 F.3d 1243, 1247 (10th Cir. 2000) (concluding that "the *Pickering* approach d[id] not apply" in part because the plaintiff was an "elected public official[ ]"); *Jenevein v. Willing*, 493 F.3d 551, 558 (5th Cir. 2007) (concluding that *Pickering* is inapplicable "for sorting the free speech rights of employees elected to state office"); *see also Stancil v. Barnes*, No. 4:25-cv-00242-SHL-HCA, 2026 WL 2690557, at *6 (S.D. Iowa Mar. 9, 2026) (holding that *Pickering* and *Garcetti* do not apply to elected officials); *Schermerhorn v. Cnty. of McHenry, Ill.*, 766 F. Supp. 3d 790, 793–94 (N.D. Ill. 2025) (finding that *Pickering* and *Garcetti* do not apply to elected officials); *Ellis v. City of Corvallis by & through Corvallis City Council*, No. 6:24-cv-00205-AA, 2025 WL 64103, at *5 (D. Or. Jan. 10, 2025) (elected official's speech entitled to First

Amendment protection where her speech was not using governmental mechanics and not an exercise of the powers of her office).

In the now vacated opinion in *Warren v. DeSantis*, a panel of the Eleventh Circuit similarly observed that the *Garcetti* Court sought to "ensur[e] that government employers could supervise employees without constitutionalizing every grievance." 90 F.4th at 1129–31. Whereas, "the electorate controls elected officials and disciplines them by withholding votes if it disapproves of their performance." *Id.*

Defendants offer no authority holding that the *Garcetti* and *Pickering* rationale should be applied to elected officials. In any event, this Court agrees with the above authority and finds that the rationale underlying *Garcetti* and *Pickering* does not apply to elected officials and does not insulate the compelled disclosures here from First Amendment protection.[9] At bottom, this Court is satisfied that the compelled disclosures at issue here, compelled from elected officials as opposed to government employees, are protected by the First Amendment.

F. Whether* Zauderer *Applies.

Finally, Defendants contend that even if this Court concludes that the compelled disclosures mandated by SB 774 do implicate the First Amendment, the commercial speech/compelled disclosure analysis set out in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), should apply. Defs. Mot. at 10. In support, Defendants aver that the First Amendment rights of government officials are analogous to

[9] As an aside, even if these opinions applied to the elected officials' compelled speech here, Defendants offer no evidence to suggest that the failure to comply with SB 774 "impedes the Government's ability to perform its duties efficiently." *Morales v. Stierheim*, 848 F.2d 1145, 1149–50 (11th Cir. 1988).

those of commercial advertisers on grounds the public officials "'advertise' their services to the public in the form of a campaign." *Id.*

Plaintiffs respond that their financial disclosures are not a commercial transaction and point out that Defendants offer no authority supporting the application of *Zauderer* to speech by elected public officials. Pls. Resp. at 10–11.

Commercial speech is a "narrow category," encompassing only speech that is "related solely to the economic interests of the speaker and its audience, or" that "does no more than propose a commercial transaction." *Dana's R.R. Supply v. Att'y Gen., Fla.*, 807 F.3d 1235, 1246 (11th Cir. 2015) (cleaned up). Although there is an economic or financial component to the compelled disclosures here, nothing about the requirements of SB 774 suggests Plaintiffs are engaged in any kind of commercial transaction. Under Defendants' theory, any time speech involves financial information, it would receive diminished First Amendment protections as commercial speech, which is inconsistent with Supreme Court precedent applying heightened scrutiny to similar financial disclosures. *See Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (applying exacting scrutiny to law requiring disclosure of financial information by candidates for elected office).

Plaintiffs' speech is not commercial. *Zauderer*, by its own terms, applies only to commercial speech by professionals. 471 U.S. at 629 ("This case presents additional unresolved questions regarding the regulation of commercial speech by attorneys."). *See also Nat'l Inst. of Family & Life Advocs*, 585 U.S. at 769 ("*NILFA*") ("[O]ur precedents have applied more deferential review to some laws that require professionals to disclose factual, noncontroversial information in their 'commercial speech.'" (quoting *Zauderer*, 471 U.S. at 651)). As the Court explained in *NILFA*, the *Zauderer* standard does not apply in

circumstances where the compelled disclosures are not limited to "purely factual and uncontroversial information about the terms under which . . . services will be available." 585 U.S. at 769 (citing *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston, Inc.*, 515 U.S. 557, 573 (1995) (explaining that *Zauderer* does not apply outside of these narrow circumstances)).

Defendants' comparison of Plaintiffs' role, as elected officials, to that of vendors selling services is unavailing (to put it lightly). Plaintiffs are not engaged in financial transactions with the state or their electorate that are somehow affected by the compelled disclosure of their own financial information. Plaintiffs are not selling products, and the voting public are not consumers. Even though elected officials do provide a service to their electorate, the compelled disclosures do not relate to services that these officials provide. Instead, they require Plaintiffs to disclose information about their own personal finances which is not tied to anything they expect in return for their services.

In short, Plaintiffs are not engaged in commercial transactions that are affected by the compelled disclosures required by SB 774, and *Zauderer*, which is applied in a narrow set of circumstances, does not apply here. *Zauderer* does not supply the correct test to apply to determine whether SB 774 infringes Plaintiffs' First Amendment rights. The next question, then, is what test does apply.

G. What Level Of Scrutiny Applies.

In their Motion, Plaintiffs argue that SB 774, as a content-based law, should be subjected to strict scrutiny. *See* Pls. Mot. at 4. Plaintiffs go on to contend that, at a minimum, the law should be subjected to exacting scrutiny. *Id.* at 8–10. Defendants, of course, seek application of no constitutional scrutiny, and, if any scrutiny is applied, seek application of

the least restrictive level of scrutiny. After the test applied to commercial transactions, rejected above, the next least restrictive level would be exacting scrutiny.

The Supreme Court first enunciated the exacting scrutiny standard in *Buckley*, a campaign finance case, and it continued to invoke it in other election-related settings, such as in *Citizens United v. Federal Election Commission*, 558 U.S. 310, 366–67 (2010), and *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 608 (2021). The Eleventh Circuit likewise adheres to this precedent in applying exacting scrutiny to disclosure regulations. *See, e.g.*, *Worley v. Fla. Sec'y of State*, 717 F.3d 1238, 1245 (11th Cir. 2013) (concluding that Florida disclosure regulation subject to exacting scrutiny (citing *Citizens United,* 558 U.S. at 366–67)).

In the Preliminary Injunction Order, this Court reviewed Supreme Court and Eleventh Circuit precedent to determine the appropriate level of scrutiny to apply to the determination of whether SB 774 violates Plaintiffs' First Amendment rights. There, this Court concluded that there was no binding precedent that is on all fours with the circumstances presented here – that is, analysis of a law that compels the disclosure of a heightened level of financial information from elected public officials. *See* Prelim. Inj. at 23. And since the entry of that Order, it still does not appear that the Supreme Court or the Eleventh Circuit has issued a binding opinion on all fours. Likewise, since the issuance of the Preliminary Injunction Order, this Court's determination of the issue has not changed.

In the Preliminary Injunction Order, this Court determined that "SB 774, which mandates speech (the disclosure of information) the speakers would not otherwise make, alters the content of their speech and is, therefore, a content-based government regulation of speech subject to higher scrutiny than content-neutral speech." *Id.* at 21 (citing *Riley*,, 487 U.S. at 795 ("Mandating speech that a speaker would not otherwise make necessarily alters

the content of the speech. We therefore consider the [disclosure requirement] as a content-based regulation of speech.")). Rather than apply the more demanding strict scrutiny standard, this Court held that "the circumstances presented here fall within the body of cases in which the Supreme Court has consistently applied the exacting scrutiny standard—that is, cases involving the compelled disclosure of information." *Id.* at 22-23 (citing *Citizens United*, 558 U.S. at 366–67 (expressing that disclaimer and disclosure requirements should be subject to exacting scrutiny); *Buckley*, 424 U.S. at 64, 66; *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 894 (2018) (applying the exacting scrutiny standard in the context of compelled subsidization of private speech)). The parties have offered no authority dictating that this Court should depart from that holding.

This Court maintains that the exacting scrutiny test applies to SB 774. In any event, as discussed in the Preliminary Injunction Order, this Court need not decide whether the strict scrutiny or exacting scrutiny test applies. "The exacting scrutiny test is the less burdensome of the tests, and, as Justices Alito and Gorsuch observed in their concurring opinion in *Bonta*, [594 U.S. at 622], if the law fails to pass muster under the exacting scrutiny test, it necessarily fails under strict scrutiny." Prelim. Inj. at 23.

The next question is how the exacting scrutiny test is applied.

H. Application Of The Exacting Scrutiny Test.

The contours of exacting scrutiny in compelled disclosure cases under the First Amendment were recently clarified by the Supreme Court in *Bonta*. Prior to *Bonta*, under the exacting scrutiny standard, to uphold a disclosure law, there had to be a substantial relation between a sufficiently important governmental interest and the information that must be disclosed. *See Buckley*, 424 U.S. at 64; *Citizens United*, 558 U.S. at 366–67. "To withstand this

scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Doe v. Reed*, 561 U.S. 186, 196 (2010) (internal quotations omitted). In *Bonta*, the Supreme Court steepened exacting scrutiny review by adding a narrow tailoring requirement, although the justices were split on the proper standard of review. *See Bonta*, 594 U.S. at 609-10.

In *Bonta*, the Supreme Court reviewed a California law that required charitable organizations to file with the state Attorney General IRS Forms that disclose the names and addresses of donors who contributed more than $5,000 in a tax year, or in some cases, who gave more than 2% of an organization's total contributions. *Id.* at 602. The petitioners, tax-exempt charities subject to the California law, challenged the disclosure requirement. *Id.* A majority of the Supreme Court concluded that the disclosure requirement was unconstitutional. *Id.* at 610-11, 621.

In so holding, the three-Justice plurality of Justices Roberts, Kavanaugh, and Barrett confirmed that the standard of review for First Amendment challenges to compelled disclosure is "exacting scrutiny." *Bonta*, 594 U.S. at 608. They clarified, however, that exacting scrutiny review in this context requires not only a substantial relation between the law and a sufficiently important government interest, but also that the disclosure regime must "be narrowly tailored to the government's asserted interest." *Id.* Justice Thomas concurred that California's disclosure requirement violated the First Amendment, but he would have applied strict scrutiny review. *Id.* at 620–21. And, as noted above, Justices Alito and Gorsuch concluded that California's law failed both exacting scrutiny and strict scrutiny, so it was unnecessary to decide which standard should be applied in the case or whether the same level of scrutiny should apply in all First Amendment compelled disclosure cases. *Id.* at 622.

Although they declined to decide which standard applied, Justices Alito and Gorsuch agreed "that the exacting scrutiny standard drawn from our election-law jurisprudence has real teeth" and "requires both narrow tailoring and consideration of alternative means of obtaining the sought-after information." *Id.* at 622–23. Consequently, a majority agreed that the standard for disclosure laws in the election-law context requires narrow tailoring.

I. Whether SB 774 Passes Constitutional Muster Under The Exacting Scrutiny Test.

In the Preliminary Injunction Order, the undersigned concluded that Plaintiffs had established a substantial likelihood of success on the merits of their claim that SB 774 does not satisfy either strict scrutiny or exacting scrutiny. Prelim. Inj. at 25-27. The determination of facts at the preliminary injunction stage differs from that applied at the summary judgment stage. *See Heron Dev. Corp. v. Vacation Tours, Inc.*, 814 F. App'x 468, 473 (11th Cir. 2020) (while factual findings were appropriate in deciding a motion for a preliminary injunction, it was impermissible for court to adopt those findings in granting summary judgment). However, here, the parties agree on the relevant facts, and they agree as to the factual record underlying the passage of SB 774, which is the same factual record that was before the Court at the preliminary injunction stage. *See* JSOF at 3.

1. The Government's Interests.

As they did in connection with the Preliminary Injunction, the parties continue to agree that SB 774's goals of deterring corruption, increasing transparency and public trust in government, and avoiding conflicts of interest all constitute important, indeed compelling, state interests. In their Motion now before this Court, Defendants identify the governmental interests underlying SB 774 as bolstering of public confidence in government officials; promotion of voter knowledge; defining political community as transparent, trustworthy, and ethics focused; and the deterrence of corruption and conflicts of interest. Defs. Mot. at 17–23.

As before, this Court agrees that these interests constitute compelling state interests. These interests justified the passage of the Sunshine Amendment nearly fifty years ago, and they remain no less compelling now.

However, the issue presented here is not whether these government interests justify financial disclosures by elected municipal officials - the parties agree that they do. Instead, the issue is whether there is a substantial relation between the government's decision to change the financial disclosure requirement for these officials from Form 1 to Form 6 and these important government interests. It is not evident from the record before this Court that these interests compel a change to increased disclosure requirements for Plaintiffs. To establish that the law advances important governmental interests, the government "must do more than simply posit the existence of the disease sought to be cured. It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner I*, 512 U.S. at 664 (internal quotation marks and citation omitted); *see also City of Los Angeles v. Preferred Commc'ns, Inc.*, 476 U.S. 488, 496 (1986) ("This Court 'may not simply assume that the ordinance will always advance the asserted state interests sufficiently to justify its abridgment of expressive activity.'") (quoting *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 803 n.22 (1984)). When "trenching on first amendment interests, even incidentally, the government must be able to adduce either empirical support or at least sound reasoning on behalf of its measures." *Turner I*, 512 U.S. at 666 (quoting *Century Commc'ns Corp. v. FCC*, 835 F.2d 292, 304 (D.C. Cir. 1987)). In short, the government cannot rely on "speculation or conjecture." *Edenfield v. Fane*, 507 U.S. 761, 770 (1993).

In any event, this Court is satisfied that sufficiently important government interests are at stake, which Plaintiffs do not dispute, and, therefore, Defendants satisfy the requirement

that they identify an important government interest as a matter of law. The problem for Defendants lies in their failure to show that these interests justify the need for a change.

2. Consideration Of Less Intrusive Alternatives To Address The Government Interests At Stake.

The next part of the exacting scrutiny inquiry is the determination of whether Defendants have demonstrated that SB 774 is narrowly tailored to serve the government interests at stake. To establish that the disclosure law is narrowly tailored, the government must "demonstrate its need" for the disclosure regime "in light of any less intrusive alternatives." *Bonta*, 595 U.S. at 613. A court must consider "the extent to which the burdens are unnecessary." *Id.* at 611.

In the context of SB 774, this Court considers whether Defendants have justified the need for SB 774's new, more comprehensive Form 6 disclosure requirements for municipal elected officials and candidates and have considered whether the use of the less intrusive Form 1 requirement previously in place (or any other less burdensome requirement) is inadequate.

Defendants do not indicate where in the legislative record it is evident that the State seriously undertook consideration of less intrusive alternatives. *See Sable Commc'ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 129 (1989) (the legislative record must include sufficient findings to justify the court's conclusion that there are no acceptable less restrictive means to achieve the compelling government interests at stake).

At the Preliminary Injunction stage, this Court undertook a thorough and careful consideration of the legislative record. *See* Prelim. Inj. at 2–10. Based on that review, this Court concluded that Defendants failed to establish that the State seriously undertook the consideration of less intrusive means to address the identified interests. *Id.* at 25–27. Defendants do not offer any reason to question the Court's review and analysis of the record

that is laid out in the Preliminary Injunction Order. The record is clear that nothing has changed insofar as the existence of studies, data, reports, or empirical evidence since this Court issued the Preliminary Injunction Order.[10]

Again, Defendants have not demonstrated the need for SB 774's heightened disclosure requirements for municipal elected officials and candidates by showing, for example, that the disclosure requirements previously in place (Form 1) were not adequately addressing the State's identified interests. This conclusion is borne out by the absence of any evidence, data, or studies in the legislative record indicating that Form 1's disclosure requirements were inadequate to address the government interests at stake here. Defendants did not come forward with evidence at the Preliminary Injunction stage, despite being directed to do so, that the State considered other means to address the identified issues, and they have not done so in connection with the Summary Judgment Motions, either.

This Court has again undertaken a review of the legislative record to determine whether there is sufficient evidence to create a genuine dispute. Again, this Court's review of the various Committee meeting notes and analyses and transcripts of hearings and debates in the Florida Senate and House of Representatives reflects a lack of any evidence that the State had a justification or reason for the change from Form 1 to Form 6 for the elected municipal officials in this case. And, there is a lack of any evidence that a less intrusive alternative was seriously considered. To the contrary, the legislative record makes it clear that no one addressed whether Form 1 was not adequately addressing the State's interests or whether a

[10] During a recent status conference, the undersigned asked Defendants' counsel whether the State had undertaken any further analysis or taken any steps to confirm the need for the law, and Defendants' counsel confirmed that they had not.

less intrusive alternative to Form 6 might address the State's concerns with the sufficiency of Form 1.

As this Court explained in the Preliminary Injunction Order, the legislative record reveals that the justifications behind SB 774's enactment are that it conforms the financial disclosure requirements of municipal elected officials and candidates to the disclosure requirements of elected state constitutional officers and that the more rigorous disclosure requirements have been requested by the COE for "many years." Ex. J17 at 2:5–11, 6:15–21; *see also* Ex. J19(b) at 2:17–25, 3:10–15.[11]

The legislative record shows that there was no consideration of whether SB 774 was necessary at all or substantially related to the interests at stake. Defendants do not meaningfully address whether they considered less intrusive alternatives and instead advocates that Plaintiffs should be treated no differently than other elected officials. *See* Defs. Mot. at 15–17. The problem for Defendants is that Plaintiffs have been treated differently from other elected officials since the Sunshine Amendment passed 50 years ago, and the record shows that such differential treatment has not presented a problem previously or now. The record is devoid of empirical data or evidence suggesting that the COE investigated, studied, or solicited reports regarding the need for the Form 6 disclosure requirements for these municipal officials or that there was not a less intrusive alternative available to address any such need.

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[11] Plaintiffs conventionally filed exhibits for the Court's consideration at the evidentiary hearing on the Motion for Preliminary Injunction on April 22, 2024. *See* ECF No. 27. The parties again submitted the same materials in support of the Motions for Summary Judgment which this Court again reviewed here. *See* JSUF. Citations to the conventionally filed exhibits in support of the preliminary injunction are referenced herein, as in the Preliminary Injunction Order, as "Ex. __ at [page number]" (*e.g.*, Ex. J1 at 2).

In short, Defendants have not identified any part of the record that demonstrates that they seriously undertook to address the compelling government interests advanced by SB 774's Form 6 disclosure requirement by less intrusive means. Therefore, Defendants have failed to demonstrate a genuine issue of material fact as to whether SB 774 is narrowly tailored to address the State's important interests.

3. History, Substantial Consensus, and Common Sense.

Defendants contend that "Form 6 financial disclosures plainly have a demonstrated history in Florida as to 'constitute evidence that such laws are effective in addressing the problem of corruption.'" Defs. Mot. at 22 (citing *Burson*, 504 U.S.). As they did at the preliminary injunction stage, Defendants urge this Court to apply the standard set forth in *Burson* that "history, [] substantial consensus, and simple common sense" should be considered in determining whether the law is reasonably related to the State's important interests. *Id.* at 12 (citing *Burson*, 504 U.S. at 210).

Initially, the undersigned notes that the *Burson* Court noted that the "modified 'burden of proof'" applied in that case applies "only when the First Amendment right threatens to interfere with the act of voting itself, *i.e.,* cases involving voter confusion from overcrowded ballots, like *Munro* [*v. Socialist Workers Party*, 479 U.S. 189 (1986)]," or cases "in which the challenged activity physically interferes with electors attempting to cast their ballots." *Burson,* 504 U.S. at 209 n.11. Defendants offer no authority for the broader application of the *Burson* standard to a compelled disclosure case that does not implicate the right to vote.

And, in advocating for the reliance on "demonstrated history," Defendants miss the point. The issue before this Court is not whether the State of Florida is justified in requiring public officials to comply with financial disclosure requirements. Plaintiffs do not dispute that

it is. Florida's Sunshine Amendment has been in place since 1976, and Plaintiffs are not suggesting that the law is not warranted or justified.

Instead, as this Court explained previously, the issue is whether the change effected by SB 774, requiring municipal officials to file Form 6 after more than forty years of filing Form 1, is substantially related to the important interests identified by the State. The record before this Court does not demonstrate that any change to the disclosure requirements for municipal officials was necessary at all, much less that the highly intrusive level of change effected by SB 774 was necessary when less alternative means were not even considered. *See Bonta*, 594 U.S. at 608-09 (quoting *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)). As stated above, Defendants have not demonstrated a relationship between the interest of protecting against the abuse of the public trust and SB 774's more fulsome financial disclosure requirements, and history does not support or justify the need for the change to requiring municipal elected officials and candidates to comply with the Form 6 requirements when Form 1, a less intrusive method, is available and has not been shown to be ineffective or inadequate.

For the reasons stated above, this Court finds that the *Burson* standard for satisfying exacting scrutiny does not apply here, and, even if it did, Defendants have not shown that demonstrated history justifies the effect of SB 774.

Importantly, the burden is on the government to justify the encroachment on Plaintiffs' First Amendment rights, and it cannot rest on "speculation or conjecture." *Edenfield*, 507 U.S. at 770 ("It is well established that the party seeking to uphold a restriction on . . . speech carries the burden of justifying it.") (internal quotation marks and alteration omitted); *see Ibanez v. Fla. Dep't of Bus. & Prof. Reg.*, 512 U.S. 136, 146 (1994). Federal Rule of Civil Procedure 56 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a sufficient showing to establish the

existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Moreover, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal quotation marks omitted).

Here, all parties have had ample opportunity to point to facts that could develop the issues presented. Discovery has concluded, and the parties substantially agreed on the relevant material facts. Thus, this Court is left to conclude that there are no further facts that could be developed even at trial that would lend support to Defendants' arguments.

Without at least some evidence to support the reasonableness of SB 774's required disclosures, this Court finds that the law violates Plaintiffs' rights under the First Amendment and is therefore unconstitutional. Accordingly, Plaintiffs have demonstrated that they are entitled to summary judgment and that Defendants' Motion is due to be denied.

J. Plaintiffs' Requested Relief.

Having concluded that Plaintiffs have demonstrated that SB 774 violates their First Amendment rights and that they are entitled to summary judgment, the next issue is the appropriate relief.

Plaintiffs request a declaration, pursuant to 28 U.S.C. § 2201, that the portions of SB 774 that require municipal elected officials and candidates to file Form 6 rather than Form 1 violate the First Amendment, and therefore are invalid, and an injunction permanently enjoining Defendants and their officers, agents, employees, attorneys, and all other persons in active concert from enforcing that portion of SB 774. Third Am. Compl. at 25; Pls. Mot. at 16.

1. Declaratory Judgment.

The Declaratory Judgment Act provides: "In a case of actual controversy within its jurisdiction, . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." 28 U.S.C. § 2201. To satisfy the "actual controversy" requirement, the dispute must "be 'definite and concrete, touching the legal relations of parties having adverse legal interests,' . . . 'real and substantial' and 'admi[t] of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'" *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–41 (1937)).

"[T]he Declaratory Judgment Act does not enlarge the jurisdiction of the federal courts," meaning that, at the very least, a controversy under the Act must also be a "case or controversy" under Article III. *GTE Directories Pub. Corp. v. Trimen Am., Inc.*, 67 F.3d 1563, 1567 (11th Cir. 1995); *see also Gagliardi v. TJCV Land Tr.*, 889 F.3d 728, 734–35 (11th Cir. 2018) ("[T]here must . . . be a case or controversy that is live, is 'definite and concrete,' and is susceptible to 'specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'" (quoting *Aetna Life Ins.*, 300 U.S. at 240–41)).

Plaintiffs request a declaration that the portions of SB 774 that require municipal elected officials and candidates to file Form 6 rather than Form 1 violate the First Amendment and therefore are invalid. Defendants do not challenge the availability of relief under the Declaratory Judgment Act, and this Court does not doubt that Plaintiffs' First Amendment free speech challenge presents an actual controversy. *See Henry v. Att'y Gen., Ala.*, 45 F.4th

1272, 1288 (11th Cir. 2022) ("First Amendment free speech violations are concrete and particular injuries for purposes of Article III standing.") (citing *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 926 (11th Cir. 2020) (en banc) (explaining that "[v]iolations of the rights to free speech" are "intangible harms that are also both direct and concrete"); *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1119 (11th Cir. 2022) ("There is no doubt—or dispute—that the [plaintiffs'] claimed injury is 'concrete and particularized' . . . because they have alleged a deprivation of their First Amendment right to free speech.")).

Having concluded that SB 774 violates Plaintiffs' free speech rights under the First Amendment, and noting no opposition from Defendants as to the availability of declaratory relief, this Court finds that Plaintiffs are entitled to the declaratory relief requested in the Third Amended Complaint.

2. Permanent Injunction.

Plaintiffs also seek injunctive relief. Specifically, in the Third Amended Complaint, Plaintiffs request a permanent injunction, "Enjoining, pursuant to 28 U.S.C. § 2202, Defendants from enforcing Fla. Stat. § 112.3144 (including the imposition of any fines, penalties or other enforcement) against Plaintiffs, arising from the failure of any Plaintiffs to file Form 6 while subject to such requirements." Third Am. Compl. at 25.

As Defendants point out, in their Motion for Summary Judgment, Plaintiffs' request for injunctive relief appears to be broader than their request in the Third Amended Complaint. In the Motion, they request that this Court "permanently enjoin Defendants (along with their officers, agents, employees, attorneys, and all other persons in active concert or participation with them) from enforcing that portion of SB 774 [that requires municipal elected officials and candidates to file Form 6 rather than Form 1]." Pls. Mot. at 16. Defendants contend that

if this Court is inclined to grant injunctive relief, that relief should be limited to only the named Plaintiffs. Defs. Mot. at 8–14.

A plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. The "plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

Courts recognize that if "there is no triable issue of fact, [a] court may convert a preliminary injunction to a permanent injunction without an evidentiary hearing." *United States v. Prater,* No. 8:02-CV-2052-T-23MSS, 2005 WL 2715401, at *5 (M.D. Fla. Sept. 23, 2005) (citing *United States v. McGee*, 714 F.2d 607, 613 (6th Cir. 1983)) (other citations omitted). To obtain a permanent injunction, in addition to making the required showing to obtain a temporary injunction, *see Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1246–47 (11th Cir. 2002), a party must prevail in establishing the violation of the right asserted in the complaint. *Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117, 1128 (11th Cir. 2005) (citations omitted).

This Court previously entered a preliminary injunction enjoining enforcement of SB 774, and Defendants do not challenge whether Plaintiffs have established the requirements for a permanent injunction here (other than as to breadth). In any event, on review, this Court is satisfied that Plaintiffs have satisfied the requirements for a permanent injunction.

First, it is well settled that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1271–72 (11th Cir. 2006) ("*KH Outdoor I*") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Cate v. Oldham*, 707 F.2d 1176, 1188–89 (11th Cir. 1983) ("It is well settled that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury justifying the grant of a preliminary injunction." (cleaned up)). Second, money damages cannot compensate Plaintiffs for their injuries. *See Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 896 F.2d 1283, 1285 (11th Cir. 1990) ("[C]hilled free speech and invasions of privacy, because of their intangible nature, could not be compensated for by monetary damages; in other words, plaintiffs could not be made whole."); *see also Cate*, 707 F.2d at 1189. As stated in the Preliminary Injunction Order, Plaintiffs have shown that the disclosure requirements have already had a chilling effect based on the decision of municipal officials to resign or not seek election rather than file Form 6. *See* Prelim. Inj. at 29. And as to the third and fourth requirements, the harm from the threatened injury outweighs any harm to the public interest from granting a permanent injunction. *See Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1270–71 (11th Cir. 2020). A temporary infringement of First Amendment rights "constitutes a serious and substantial injury," whereas "the public, when the state is a party asserting harm, has no interest in enforcing an unconstitutional law." *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010) (quoting *KH Outdoor I*, 458 F.3d at 1272). Enforcing unconstitutional laws not only wastes valuable public resources; it "disserves" the public interest. *Id.* at 1293; *see also Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 870 (11th Cir. 2020) ("The nonmovant is the government, so the third and fourth requirements—'damage to the opposing party' and 'public interest'—can

be consolidated. It is clear that neither the government nor the public has any legitimate interest in enforcing an unconstitutional ordinance."); *KH Outdoor I*, 458 F.3d at 1272 ("As for the third requirement for injunctive relief, the threatened injury to the plaintiff clearly outweighs whatever damage the injunction may cause the city . . . [because] the city has no legitimate interest in enforcing an unconstitutional ordinance. For similar reasons, the injunction plainly is not adverse to the public interest. The public has no interest in enforcing an unconstitutional ordinance.").

Accordingly, for the reasons laid out in the Preliminary Injunction Order and above, Plaintiffs have established that they are entitled to permanent injunctive relief. The only remaining issue is whether that injunction must be limited to the named Plaintiffs.

A permanent injunction "must be tailored to fit the nature and extent of the established [constitutional] violation." *Gibson v. Firestone*, 741 F.2d 1268, 1273 (11th Cir. 1984) (citing *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1041 (5th Cir. Unit B. 1982)). In other words, the injunction "must be no broader than necessary to remedy the constitutional violation." *Young Israel of Tampa, Inc. v. Hillsborough Area Reg'l Transit Auth.*, 89 F.4th 1337, 1351 (11th Cir. 2024) (quoting *Newman v. Ala.*, 683 F.2d 1312, 1319 (11th Cir. 1982); and citing Richard H. Fallon, Jr., *Fact and Fiction About Facial Challenges*, 99 Cal. L. Rev. 915, 923 n.31 (2011) ("When a court pronounces a statute facially invalid, the force of its holding inheres entirely in the doctrines of claim preclusion, issue preclusion, and precedent as well as in the scope of any injunction that the court issues to enforce its judgment.")).

As this Court explained in the Preliminary Injunction Order, it does appear that the grant of the requested declaratory relief will, in itself, have the effect of enjoining enforcement of the law altogether. Nevertheless, the parties put forth their arguments on the appropriate breadth of the injunction here before this Court issued an opinion on the First Amendment

issues raised in the Third Amended Complaint and ruled that declaratory relief is warranted. Therefore, this Court finds that additional briefing on the proper scope of the injunction is warranted in light of the holdings herein.

To be clear, this Court finds that a permanent injunction is warranted and appropriate but invites the parties to address the appropriate scope of that injunction.

V. CONCLUSION

In sum, for the reasons set forth above, Plaintiffs are entitled to summary judgment on the sole Count of the Third Amended Complaint because SB 774 compels content-based speech that Plaintiffs would not otherwise have made in violation of their First Amendment rights. And because the record evidence does not reflect any genuine dispute as to any material facts (or any relevant factual disputes at all), summary judgment in favor of Plaintiffs is due to be granted. Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiffs' Motion for Summary Judgment **[ECF No. 59]** is **GRANTED**.
2. Summary judgment is entered in favor of Plaintiffs as to Count I of the Third Amended Complaint. A final judgment will be entered separately.
3. This Court **DECLARES** that the portions of SB 774 that require municipal elected officials and candidates to file Form 6 rather than Form 1 violate the First Amendment of the United States Constitution and therefore are invalid.
4. Plaintiffs are entitled to a permanent injunction, the breadth of which shall be determined by separate order.

It is further

ORDERED AND ADJUDGED that Defendants' Motion for Summary Judgment [**ECF No. 61**] is **DENIED**. It is further

ORDERED AND ADJUDGED that Plaintiffs' Motion to Strike **[ECF No. 71]** is **DENIED AS MOOT**. It is further

ORDERED that within **14 days** of the date of this Order, Defendants shall submit a Memorandum of Law directed solely to the issues of whether the Court may enter a permanent injunction that broadly enjoins enforcement of SB 774 and whether limitation of the injunction is warranted in light of the grant of declaratory relief above. Plaintiffs may file a Response within **14 days** of the filing of Defendants' Memorandum. The Memoranda shall not exceed 15 pages (double-spaced and in 12-point standard font).

DONE AND ORDERED in Chambers in the Southern District of Florida, this 9th day of November, 2026.

MELISSA DAMIAN
UNITED STATES DISTRICT JUDGE