STATE OF FLORIDA
COMMISSION ON ETHICS

Public Meeting
Tuesday, November 26, 2024, 1:30 p.m.

The public will be able to comment pursuant to Section 286.0114, Florida Statutes. Members of the public can join in person or virtually. If a member of the public wishes to make a written comment prior to the meeting, he or she should send their comments by email to PublicComment@leg.state.fl.us, by U.S. Mail to the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317, or by delivery to the Florida Commission on Ethics, 325 John Knox Road, Building E, Suite 200, Tallahassee, Florida 32303. Comments received on or before the close of business on November 25, 2024, will be provided to the members of the Commission prior to the meeting. If a member of the public wishes to comment during the meeting, and if they are joining the meeting remotely via Zoom https://us06web.zoom.us/j/81559423436. Passcode: 489734. To join by telephone, please see attached notice.

PUBLIC AGENDA

I. CALL TO ORDER, ROLL CALL, DETERMINATION OF QUORUM

II. LITIGATION UPDATE, DISCUSSION, AND DIRECTION

(1) Case Number 2024 CA 000283, Town of Briny Breezes, Florida et al. v. Lukis et al. (Fla. 2d Cir. Ct., Leon County); and
(2) Case Number 1:24-cv-20604-JAL, President of Town Council Elizabeth A. Loper, elected official of the Town of Briny Breezes, et al. v. Lukis et al. (United States District Court Southern District of Florida).

III. ADJOURNMENT

NOTE

In accordance with the American Disabilities Act, persons with disabilities or handicaps who need assistance or reasonable accommodation should contact the Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317-5709, telephone 850/488-7864. If you are hearing or speech impaired, please contact the Commission by using the Florida Relay Service, which can be reached at 1-800-955-8771 (TTY).

Notice of Meeting/Workshop Hearing

COMMISSION ON ETHICS

The Florida Commission on Ethics announces a public meeting to which all persons are invited.

DATE AND TIME: November 26, 2024, 1:30 p.m. - 2:30 p.m.

PLACE: The Florida Commission on Ethics, 325 John Knox Road, Building E, Suite 200, Tallahassee, Florida 32303, or join the meeting Via Zoom at the following: https://us06web.zoom.us/j/81559423436

Passcode: 489734

Or One tap mobile:

+13052241968,81559423436#,,,,*489734# US

+19294362866,81559423436#,,,,*489734# US (New York)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1(305)224-1968 US

+1(929)436-2866 US (New York)

+1(301)715-8592 US (Washington DC)

+1(309)205-3325 US

+1(312)626-6799 US (Chicago)

+1(646)931-3860 US

+1(386)347-5053 US

+1(507)473-4847 US

+1(564)217-2000 US

+1(669)444-9171 US

+1(669)900-6833 US (San Jose)

+1(689)278-1000 US

+1(719)359-4580 US

+1(253)205-0468 US

+1(253)215-8782 US (Tacoma)

+1(346)248-7799 US (Houston)

+1(360)209-5623 US

Webinar ID: 815 5942 3436

Passcode: 489734

International numbers available: https://us06web.zoom.us/u/kc2FrHhjYO

GENERAL SUBJECT MATTER TO BE CONSIDERED: : Litigation update and discussion concerning two ongoing cases involving the Florida Commission on Ethics: (1) Case Number 2024 CA 000283, Town of Briny Breezes, Florida et al. v. Lukis et al. (Fla. 2d Cir. Ct., Leon County); and (2) Case Number 1:24-cv-20604-JAL, President of Town Council Elizabeth A. Loper, elected official of the Town of Briny Breezes, et al. v. Lukis et al. (United States District Court Southern District of Florida). The public will be able to comment pursuant to Section 286.0114, Florida Statutes. If a member of the public wishes to comment during the meeting, and if they are joining the meeting remotely via Zoom, it is requested that they be in a quiet space where there will be no unnecessary noise. If a member of the public wishes to make a written comment prior to the meeting, he or she should send their comments by email to PublicComment@leg.state.fl.us, by U.S. Mail to the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317, or by delivery to the Florida Commission on Ethics, 325 John Knox Road, Building E, Suite 200, Tallahassee, Florida 32303. Comments received on or before the close of business on November 25, 2024, will be provided to members of the Commission prior to the meeting.

A copy of the agenda may be obtained by contacting: Steven J. Zuilkowski, General Counsel, Florida Commission on Ethics (850)488-7864

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Diana Westberry, Office Manager, Florida Commission on Ethics (850)488-7864. If you are hearing or

speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

For more information, you may contact: Steven J. Zuilkowski, General Counsel, Florida Commission on Ethics (850)488-7864

MEMORANDUM

TO: The Commissioners of the Commission on Ethics
FROM: Steven J. Zuilkowski, Deputy Executive Director and General Counsel
DATE: November 19, 2024
RE: Form 6 Litigation: Update and Discussion
Case 1:24-cv-20604-JAL, President of Town Council Elizabeth A. Loper, elected official of the Town of Briny Breezes, et al. v. Lukis et. al. (United States District Court Southern District of Florida).
Case Number 2024 CA 000283, Town of Briny Breezes, Florida et al. v. Lukis et al. (Fla. 2nd Circ. Ct., Leon County).

The purpose of this memorandum is to orient the members of the Commission on Ethics to the litigation that is the subject of this special meeting.

In 2022, as it had for several years prior, the Commission on Ethics recommended to the Legislature that it make a statutory change to require that elected municipal officers file Form 6, "Full and Public Statement of Financial Interests," rather than Form 1, "Statement of Financial Interests." Specifically, the Commission adopted the following recommendation:

> Enhanced Financial Disclosure for Local Elected Officials
> Elected municipal officials are very important and administer vast amounts of public resources. For these, and other reasons, their disclosure should be on par with that of county officials and others who file Form 6, rather than Form 1. The Commission believes the enhanced disclosure should be applied to all elected municipal officials regardless of the population or revenue of the municipality.

In the 2023 Legislative Session, the recommended policy change appeared in SB 774 and HB 37 (which was ultimately substituted for SB 774), along with a few other recommendations of the Commission. Section 3 of SB 774 added "mayors" and "elected members of the governing body of a municipality" to the list of those required to file Form 6.[1] The Legislature ultimately passed the bill, and the Governor signed it on May 11, 2023.

On February 15, 2024, several dozen elected members of municipal governing bodies and mayors (Plaintiffs[2]) filed suit in the United States District Court for the Southern District of Florida against the members of the Commission on Ethics in their official capacities (Defendants).[3] The suit alleges that the disclosures required on Form 6 are compelled speech in violation of the First Amendment of the United States Constitution. Plaintiffs acknowledge that the goals of financial

---

[1] SB 774 also amended Section 112.3144, Florida Statutes, to require the members of the Commission on Ethics to file Form 6.
[2] New plaintiffs have been added to the suit over time. Plaintiffs now consist of 175 elected members of the governing bodies of a municipalities and mayors.
[3] Contemporaneously, Plaintiffs also filed a challenge to SB 774 in state court on the basis that the law violates the Plaintiffs' rights to privacy. That action is effectively stayed while the parties litigate in federal court.

disclosure are supported by a compelling State interest, but argue that the new requirement was not demonstrated to be the least-restrictive, narrowly-tailored means of accomplishing that compelling State interest.

On June 10, 2024, the Court ordered a preliminary injunction against Defendants, enjoining Defendants (the Commission) from enforcing the requirements of SB 774 against all elected members of municipal governing bodies and mayors. Under the injunction, those individuals have reverted to a Form 1 filing requirement.

Plaintiffs moved for summary judgment on October 11, 2024. Plaintiffs essentially argue they are protected from compelled speech by the First Amendment, that strict scrutiny is the proper test to measure the claim, and, even if exacting scrutiny is the proper test, SB 774 was neither narrowly tailored nor the least restrictive means of achieving the State's compelling interest in financial disclosure.

Defendants also moved for summary judgment on October 11, 2024. Defendants argue that Plaintiffs are not entitled to First Amendment protection because they are not private actors engaging in private speech, but are public officials speaking on matters of public concern and the State may control speech made pursuant to official duties. Defendants also argue that, even if the court considers the Form 6 to be private speech, it may be requested of the Plaintiffs because the applicable test outlined in *Pickering v. Board of Education,* 391 U.S. 563 (1968), allows the State to restrict private speech when it acts in its role as an employer. Defendants further argue that the Form 6 requirement is allowed even if it is considered compelled commercial speech.

As of today, the Court has not scheduled a hearing on summary judgment.

Plaintiffs are represented by Jamie A. Cole and other attorneys of Weiss Serota Helfman Cole + Bierman, P.L.

Defendants are represented by William Stafford and Sara Spears of the Office of the Attorney General.

---End of Memorandum---

ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
General Civil Litigation -State Programs Bureau

WILLIAM H. STAFFORD III
Special Counsel
PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300
Fax (850) 487-0168
William.Stafford@myfloridalegal.com
http://www.myfloridalegal.com

TO: **Steve Zuilkowski, General Counsel, Florida Commission on Ethics**

FROM: **Bill Stafford**

CC: **Kerrie Stillman**
Grayden Schafer
Sara Spears

DATE: **November 13, 2024**

RE: ***Loper v Lukis* – Executive Sessions ("Shade Meetings")**

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Steve,

In the wake of the October 25, 2024 Commission meeting, you have asked me to provide a memo regarding the propriety of an executive session to discuss the *Loper v. Lukis* litigation. During the October 25 meeting, the Commission voted to schedule a public meeting for the purpose of going into executive session, or "shade meeting," to discuss potential settlement of the case. After that meeting, you and I discussed the matter with Pat Gleason, Special Counsel for Open Government for Attorney General Moody. Based on that discussion and my independent review of the issue, I have come to the conclusion that the Commission itself cannot call for an executive session to discuss the pending litigation.

I. Shade Meetings

Meetings of the Commission are governed by § 286.011, Fla. Stat. The statute states that "[a]ll meetings of any board or commission of any state agency or authority . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting." § 286.011(1). Regarding shade meetings with an agency's attorneys, the statute includes an exemption that permits "any board or commission of any state agency or authority . . . and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party." § 286.011(8).

In order to have a legal shade meeting, three conditions must be met: (1) the agency's attorney must request for a shade meeting during an open meeting of the agency; (2) the subject matter of the shade meeting must be limited to "settlement negotiations or strategy sessions related to litigation expenditures;" and (3) the entire shade meeting must be recorded by a court reporter. The shade meeting exemption is narrowly construed by the courts in order that the public purpose of the public meetings statute can be most fully carried out. In addition, no final decisions regarding settlement or the conduct of pending litigation may be made at a shade meeting. The matter must be fully considered at a public meeting, and that public meeting may not be for the purpose of simply ratifying decisions actually made at a shade meeting

Two of the three conditions listed above have not been met in this case. First, the Commission's counsel has not made a request for a shade meeting. Second, and directly related to the first, there have been no settlement negotiations with plaintiffs' counsel. There is no settlement offer to convey, nor is there a present need for a strategy session to discuss litigation expenses. Accordingly, holding a shade meeting under these circumstances would likely violate § 286.011 and potentially subject Commission members to civil and criminal liability. § 286.011(3)(b).

As an alternative to a shade meeting, the Commission may discuss pending litigation at a public meeting, but the concern of course is publicly disclosing information that may give opposing parties and counsel an unfair advantage in the litigation. If the Commission wishes to explore settlement in this case, it may, at a public meeting, direct its counsel to contact plaintiffs' counsel to discuss what settlement options, if any, may exist (see discussion below). If this discussion produces any viable settlement options, then the Commission's counsel would ask for a shade meeting to discuss.

II. Case Status and Settlement Options

With respect to the case itself, both parties have just completed briefing their summary judgment motions. We have provided you with copies of all of the filed briefs. I believe that we have made strong arguments to support final judgment in favor of the commission, notwithstanding the court's prior ruling on the preliminary injunction motion. It is my understanding that the court will schedule the summary judgment motions for a hearing and then enter final judgment in the case. This means that, except for the final hearing, there will be no further litigation before the trial court. If the court rules against the commission, I would strongly advise that the ruling be appealed to the Eleventh Circuit. I would also expect that plaintiffs would appeal any judgment against them.

With respect to settlement options, I believe they are few if any. In this lawsuit, plaintiffs seek a declaration that SB 774, which amended the Form 6 requirement, is unconstitutional. The Commission cannot agree to any settlement that would include a concession that the amendment is constitutional. The Commission would limited to making a recommendation or proposal to the Legislature to amend the form 6 requirement again, and even the if the Legislature could be brought on board, it cannot commit ahead of time to pass or amend a law. Therefore, I realistically see no viable basis for settlement here.

I hope you find this helpful. Sara and I would be happy to discuss and provide any additional information that you may want.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:24-CV-20604

PRESIDENT OF TOWN COUNCIL ELIZABETH A. LOPER, ALDERMAN KEITH J. BLACK, ALDERMAN KATHLEEN M. GROSS, ALDERMAN WILLIAM BIRCH, and ALDERMAN JEFFERY M. DUNCAN, elected officials of the Town of Briny Breezes, Florida;

COUNCILMEMBER WALTER FAJET, COUNCILMEMBER JACKY BRAVO, and COUNCILMEMBER JORGE SANTIN, elected officials of Miami Springs, Florida;

COMMISSIONER PATRICIA PETRONE and COMMISSIONER SANDRA JOHNSON, elected officials of Lighthouse Point, Florida;

MAYOR DANIELLE H. MOORE, PRESIDENT OF TOWN COUNCIL MARGARET A. ZEIDMAN, COUNCIL MEMBER EDWARD A. COONEY, COUNCIL MEMBER LEWIS CRAMPTON, COUNCIL MEMBER JULIE ARASKOG, COUNCIL MEMBER BRIDGET MORAN, and PRESIDENT OF TOWN COUNCIL BOBBIE LINDSAY, elected officials of the Town of Palm Beach, Florida;

MAYOR BRENT LATHAM, VICE MAYOR RICHARD CHERVONY, and COMMISSIONER ANDY ROTONDARO, elected officials of North Bay Village, Florida;

MAYOR GLENN SINGER, VICE MAYOR BERNARD EINSTEIN, COUNCIL MEMBER JUDY LUSSKIN, COUNCIL MEMBER JAIME MENDAL and COUNCIL MEMBER KENNETH BERNSTEIN, elected officials of the Town of Golden Beach, Florida;

MAYOR BERNARD KLEPACH and COUNCIL MEMBER IRWIN TAUBER, elected officials of Indian Creek, Florida;

MAYOR JEFFREY P. FREIMARK, VICE-MAYOR SETH E. SALVER, COUNCILMAN DAVID ALBAUM, COUNCILMAN DAVID WOLF, and COUNCILMAN BUZZY SKLAR, elected officials of the Village of Bal Harbour, Florida;

MAYOR MARGARET BROWN, COMMISSIONER MARY MOLINA-MACFIE, COMMISSIONER CHRIS EDDY, COMMISSIONER HENRY MEAD, and COMMISSIONER BYRON L. JAFFE, elected officials of the City of Weston, Florida;

MAYOR SHELLY PETROLIA, VICE-MAYOR RYAN BOYLSTON, DEPUTY VICE-MAYOR ROB LONG, COMMISSIONER ADAM FRANKEL, COMMISSIONER ANGELA BURNS, MAYOR THOMAS CARNEY, and COMMISSIONER THOMAS MARKETT, elected officials of the City of Delray Beach, Florida;

MAYOR JOSEPH AYOUB, COMMISSIONER ANDY STEINGOLD, COMMISSIONER CARLOS DIAZ, COMMISSIONER NANCY J. BESORE, COMMISSIONER CLIFF MERZ, and COMMISSIONER JACOB BURNETT, elected officials of the City of Safety Harbor, Florida;

COMMISSIONER JEREMY KATZMAN, an elected official of Cooper City, Florida;

MAYOR SCOTT J. BROOK, VICE-MAYOR SHAWN CERRA, COMMISSIONER JOSHUA SIMMONS, COMMISSIONER JOY CARTER, and COMMISSIONER NANCY METAYER BOWEN, elected officials of the City of Coral Springs, Florida;

VICE-CHAIR ERIK BRECHNITZ, an elected official of the City of Marco Island, Florida;

VICE MAYOR ARLENE R. SCHWARTZ, COMMISSIONER ANTONIO V. ARSERIO, COMMISSIONER JOANNE SIMONE, and COMMISSIONER ANTHONY N. CAGGIANO, elected officials of the City of Margate, Florida;

MAYOR ROBERT T. WAGNER, COUNCIL MEMBER JOHN STEPHENS III, COUNCIL MEMBER TORY CJ GEILE, COUNCIL MEMBER JAMES B. BAGBY, and COUNCIL MEMBER TERESA HEBERT, elected officials of the City of Destin, Florida;

MAYOR KENNETH R. THURSTON, COMMISSIONER MELISSA P. DUNN, and COMMISSIONER SARAI "RAY" MARTIN, elected officials of the City of Lauderhill, Florida,

MAYOR BILL GANZ, VICE-MAYOR BERNIE PARNESS, COMMISSIONER BEN PRESTON, and COMMISSIONER MICHAEL HUDAK, elected officials of the City of Deerfield Beach, Florida;

VICE-MAYOR PAUL A. KRUSS, COMMISSIONER RACHEL FRIEDLAND, COMMISSIONER MICHAEL STERN, COMMISSIONER AMIT BLOOM, COMMISSIONER LINDA MARKS, and MAYOR HOWARD WEINBERG, elected officials of the City of Aventura, Florida;

MAYOR MICHAEL NAPOLEONE, COUNCILWOMAN TANYA SISKIND, COUNCILMAN JOHN T. MCGOVERN, COUNCILMAN MICHAEL DRAHOS, COUNCILWOMAN AMANDA SILVESTRI, COUNCILWOMAN MARIA ANTUÑA, elected officials of the Village of Wellington;

COMMISSIONER KATHRYN ABBOTT, elected official Village of Pinecrest;

MAYOR FRED CLEVELAND, VICE MAYOR VALLI J. PERRINE, COMMISSIONER RANDY HARTMAN and COMMISSIONER JASON MCGUIRK, elected officials of the City of New Smyrna Beach, Florida;

MAYOR CHARLES EDWARD DODD, VICE MAYOR KELLY DIXON, COUNCIL MEMBER FREDERICK B. JONES, COUNCIL MEMBER BOB MCPARTLAN, AND COUNCIL MEMBER CHRISTOPHER NUNN, elected officials of the City of Sebastian, Florida,

COUNCIL MEMBER MARK LARUSSO and COUNCIL MEMBER TIM THOMAS, elected officials of the City of Melbourne, Florida;

VICE MAYOR FORTUNA SMUKLER, elected official of the City of North Miami Beach, Florida;

MAYOR STEVEN LOSNER and COUNCIL MEMBER ERICA G. AVILA, elected officials of the City of Homestead, Florida;

MAYOR MICHAEL J. RYAN, DEPUTY MAYOR JOSEPH A. SCUOTTO, ASSISTANT DEPUTY MAYOR NEIL C. KERCH, COMMISSIONER JACQUELINE A. GUZMAN, and COMMISSIONER MARK A. DOUGLAS, elected officials of the City of Sunrise, Florida;

MAYOR MARK MCDERMOTT, DEPUTY MAYOR STUART M. GLASS, COUNCIL MEMBER LOREN STRAND, COUNCIL MEMBER BRETT J. MILLER and COUNCIL MEMBER DOUG WRIGHT, elected officials of the Town of Indialantic, Florida;

VICE MAYOR MICHAEL CALLAHAN, COUNCIL MEMBER ROBERT DUNCAN, COUNCIL MEMBER SUZY LORD, and MAYOR TIM MEERBOTT, elected officials of the Town of Cutler Bay, Florida;

MAYOR SCOTT NICKLE, DEPUTY MAYOR FRANK GUERTIN, COUNCIL MEMBER SHAUNA HUME, COUNCIL MEMBER HAMILTON BOONE, COUNCIL MEMBER ADAM DYER, elected officials of the City of Indian Harbour Beach, Florida;

MAYOR GEORGE BURCH, VICE MAYOR JESSE VALINSKY, CONCIL MEMBERS JEROME CHARLES, COUNCIL MEMBER NEIL J. CANTOR and COUNCIL MEMBER SANDRA HARRIS, elected officials of the Village of Miami Shores, Florida;

MAYOR JOSE "PEPE' DIAZ, COMMISSIONER IDANIA LLANIO, COMMISSIONER SAUL DIAZ, COMMISSIONER ISIDRO C. RUIZ, COMMISSIONER JOSE MARTI, COMMISSIONER MARCUS VILLANUEVA, COMMISSIONER REINALDO REY JR, and COMMISSIONER IAN VALLECILLO, elected officials of the City of Sweetwater, Florida;

VICE MAYOR LORI LEWELLEN, COMMISSIONER TAMARA JAMES and COMMISSIONER MARCO A. SALVINO, SR., elected officials of the City of Dania Beach, Florida;

MAYOR SAMUEL PENNANT, VICE MAYOR STEVEN GLENN, COMMISSIONER MARY RICHARDSON, COMMISSIONER WILLIE QUARLES and COMMISSIONER BERTRAM GODDARD, elected officials of the Town of Dundee, Florida;

MAYOR NANCY Z. DALEY, VICE MAYOR MAC FULLER, COMMISSIONER CHARLES LAKE, COMMISSIONER BRENT EDEN and COMMISSIONER JACK DEARMIN, elected officials of the City of Lake Alfred, Florida;

MAYOR H. L. "ROY" TYLER, VICE MAYOR OMAR ARROYO, COMMISSIONER MORRIS WEST, COMMISSIONER ANNE

HUFFMAN and COMMISSIONER VERNEL SMITH, elected officials of the City of Haines City, Florida;

MAYOR RICHARD WALKER, VICE MAYOR JORDAN ISROW and COMMISSIONER KENNETH CUTLER, and COMMISSIONER SIMEON BRIER, elected officials of the City of Parkland, Florida;

COUNCILMEMBER JENNIFER ANDREU, elected official of the City of Plantation, Florida,

COUNCILMEMBER KEM E. MASON, elected official of the Town of Lantana, Florida;

COMMISSIONER DAVID SUAREZ, COMMISSIONER LAURA DOMINGUEZ, COMMISSIONER JOSEPH MAGAZINE and COMMISSIONER KRISTEN ROSEN GONZALES, and COMMISSIONER ALEX J. FERNANDEZ, elected officials of the City of Miami Beach, Florida, and

COMMISSIONER RANDY STRAUSS, elected official of the Town of Lauderdale-By-The-Sea, Florida,

COUNCILMEMBER BRETT MOSS, elected official of the Village of Key Biscayne,

MAYOR SUZY WILSON, COMMISSIONER RANDY BILLINGS, elected officials of the City of Eagle Lake,

MAYOR JAMES MICHAEL O'BRIEN, COUNCILMEMBER AMANDA N. DAVID, COUNCILMEMBER ANTHONY J. DAVIT, COUNCILMEMBER BRANDI SLOSS HAINES, and COUNCILMEMBER LOREN R. WILLIAMS, elected officials of the Town of Windermere,

MAYOR NATHANIEL J. BIRDSONG, JR., MAYOR PRO TEM WILLIAM BRIAN YATES, COMMISSIONER BRADLEY T.

DANTZLER, COMMISSIONER L. TRACY MERCER, COMMISSIONER CLIFTON E. DOLLISON, elected officials of the City of Winter Haven,

Plaintiffs,

vs.

ASHLEY LUKIS, in her official capacity as a Member of the Florida Commission on Ethics; MICHELLE ANCHORS, in her official capacity as Vice Chair of the Florida Commission on Ethics; PAUL D. BAIN, in his official capacity as a Member of the Florida Commission on Ethics; TINA DESCOVICH, in her official capacity as Member of the Florida Commission on Ethics; FREDDIE FIGGERS, in his official capacity as a Member of the Florida Commission on Ethics; LUIS M. FUSTE, in his official capacity as Chair of the Florida Commission on Ethics; LAIRD A. LILE, in his official capacity as a Member of the Florida Commission on Ethics; and WENGAY M. NEWTON, SR., in his official capacity as a Member of the Florida Commission on Ethics,

Defendants.

THIRD AMENDED COMPLAINT[1]

Plaintiffs bring this action against Defendants for declaratory and injunctive relief, and state as follows:

OVERVIEW

1. This is an action by a large number of Florida elected municipal officials challenging a recently enacted law ("SB 774") that on or before July 1, 2024 compels elected

[1] The only changes from the Second Amended Complaint are the substitution of William D. Cervone for Paul D. Bain as a defendant and the addition of Laird A. Lile as a defendant, as reflected in the amended case caption and in paragraphs 24 and 28.

municipal officials in office as of January 1, 2024 to utter very specific statements, in writing and available to the public at large through the Internet, regarding the elected officials' personal finances, including, among other things, stating the exact amount of their net worth and income, the total dollar value of their household goods, and the precise value of every asset and amount of every liability in excess of $1,000. An elected municipal official's failure to make these public statements will result in significant fines, civil penalties, and even potential removal from office.

2. SB 774 amended, among other statutes, Fla. Stat. § 112.3144, and renders elected municipal officials in office as of January 1, 2024, and municipal candidates subject to the financial disclosure requirements of Fla. Const., art. II, § 8(j).

3. Prior to the enactment of SB 774, elected municipal officials and municipal candidates were required to provide financial disclosures via a document called "Form 1" pursuant to Fla. Stat. § 112.3145, but were not subject to the requirements of Fla. Const., art. II, § 8(j). However, Florida Statute sections 112.3144 and 99.061, as amended by SB 774 in 2023, respectively make *all* elected municipal officers and municipal candidates subject to the filing requirements of "Form 6," which demands much more intrusive financial disclosures as outlined in the Florida Constitution and section 112.3144. A copy of Form 1 is attached as Exhibit A, and a copy of Form 6 is attached as Exhibit B.

4. Forcing municipal elected officials and municipal candidates to publicly make such statements impairs their right to be free of government-compelled, content-based, non-commercial speech, in violation of the First Amendment to the United States Constitution.

5. Rather than being the least restrictive, narrowly tailored means of accomplishing a compelling state interest, these new, financial disclosure requirements imposed on elected municipal officials and municipal candidates through SB 744 are the most restrictive means

available – stricter and more onerous than required of federal elected officials (including the President of the United States) and of elected officials in other states throughout the country.

6. The additional, financial information statements required to be made by Form 6 (*e.g.*, the disclosure of exact net worth, exact income and precise values of household goods and other assets and liabilities), as compared to Form 1, have little, if any, bearing on an elected official's municipal service, does not prevent or even ameliorate conflicts of interest or public corruption, and does not increase public confidence in government.

7. Form 1 is a less restrictive, alternative means of accomplishing the same governmental interests, as would be the less onerous disclosure forms used by the federal government or any of the other states in the United States.

8. Indeed, municipal elected officials and candidates operated under the requirements of Form 1 for decades, and nothing in the Legislature's enactment of the new Form 6 requirement reflected that Form 1 was insufficient and necessitated a change.

9. As such, this action seeks an order (i) declaring the 2023 amendments to Fla. Stat. § 112.3144 related to elected municipal officials and any penalties arising therefrom, including those in Fla. Stat. § 112.317, are unconstitutional under the First Amendment of the United States Constitution, and (ii) enjoining Defendants from enforcing the disclosure requirements.

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction over this case pursuant to this Court's federal question jurisdiction, 28 U.S.C. § 1331, as this case arises under the First Amendment to the United States Constitution, as made applicable to the States by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

11. This case seeks declaratory and injunctive relief, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Federal Rule of Civil Procedure 57, and 42 U.S.C. § 1983.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), as two of the Defendants (Freddie Figgers and Luis M. Fuste) reside in this District (and all are residents of this State), the majority of the plaintiffs reside and serve as elected officials in the District, and a substantial part of the events giving rise to the claim herein occurred in this District.

THE PARTIES

A. Plaintiffs

13. Plaintiffs in this action consist of the following current, elected officials of Florida municipalities:

a. Town of Briny Breezes President of Town Council Elizabeth A. Loper;

b. Town of Briny Breezes Alderman Keith J. Black;

c. Town of Briny Breezes Alderman Kathleen M. Gross;

d. Town of Briny Breezes Alderman William Birch;

e. City of Miami Springs Councilmember Walter Fajet;

f. City of Miami Springs Councilmember Jacky Bravo;

g. City of Lighthouse Point Commissioner Patricia Petrone;

h. City of Lighthouse Point Commissioner Sandra Johnson;

i. Town of Palm Beach Mayor Danielle H. Moore;

j. Town of Palm Beach President of Town Council Margaret A. Zeidman;

k. Town of Palm Beach Council Member Edward A. Cooney;

l. Town of Palm Beach Council Member Lewis Crampton;

m. Town of Palm Beach Council Member Julie Araskog;

n. Town of Palm Beach President of Town Counsel Bobbie Lindsay;

o. North Bay Village Mayor Brent Latham;

p. North Bay Village Vice Mayor Richard Chervony;

q. North Bay Village Commissioner Andy Rotondaro;

r. Golden Beach Mayor Glenn Singer;

s. Golden Beach Vice Mayor Bernard Einstein;

t. Council Member Judy Lusskin;

u. Council Member Jaime Mendal

v. Council Member Kenneth Bernstein;

w. Indian Creek Mayor Bernard Klepach;

x. Indian Creek Council Member Irwin Tauber;

y. Village of Bal Harbour Mayor Jeffrey P. Freimark;

z. Village of Bal Harbour Vice-Mayor Seth E. Salver;

aa. Village of Bal Harbour Councilman David Albaum;

bb. Village of Bal Harbour Councilman David Wolf;

cc. City of Weston Mayor Margaret Brown;

dd. City of Weston Commissioner Mary Molina-Macfie;

ee. City of Weston Commissioner Chris Eddy;

ff. City of Weston Commissioner Henry Mead;

gg. City of Weston Commissioner Byron L. Jaffe;

hh. City of Delray Beach Mayor Shelly Petrolia;

ii. City of Delray Beach Vice Mayor Ryan Boylston;

jj. City of Delray Beach Deputy Vice-Mayor Rob Long;

kk. City of Delray Beach Commissioner Adam Frankel;

ll. City of Delray Beach Commissioner Angela Burns;

mm. City of Safety Harbor Mayor Joseph Ayoub;

nn. City of Safety Harbor Commissioner Andy Steingold;

oo. City of Safety Harbor Commissioner Carlos Diaz;

pp. City of Safety Harbor Commissioner Nancy J. Besore;

qq. City of Safety Harbor Commissioner Cliff Merz;

rr. Cooper City Commissioner Jeremy Katzman;

ss. City of Coral Springs Mayor Scott J. Brook;

tt. City of Coral Springs Vice Mayor Shawn Cerra;

uu. City of Coral Springs Commissioner Joshua Simmons;

vv. City of Coral Springs Commissioner Joy Carter;

ww. City of Coral Springs Commissioner Nancy Metayer Bowen;

xx. City of Marco Island Vice-Chair Erik Brechnitz;

yy. City of Margate Vice-Mayor Arlene Schwartz;

zz. City of Margate Commissioner Antonio V. Arserio;

aaa. City of Margate Commissioner Joanne Simone;

bbb. City of Margate Commissioner Anthony N. Caggiano;

ccc. City of Destin Mayor Robert T. Wagner;

ddd. City of Destin Council Member John Stephens III;

eee. City of Destin Council Member Tory CJ Geile;

fff. City of Destin Council Member James B. Bagby;

ggg. City of Destin Council Member Teresa Hebert;

hhh. City of Lauderhill Mayor Kenneth R. Thurston;

iii. City of Lauderhill Commissioner Melissa P. Dunn;

jjj. City of Lauderhill Commissioner Sarai "Ray" Martin;

kkk. City of Deerfield Beach Mayor Bill Ganz;

lll. City of Deerfield Beach Vice-Mayor Bernie Parness;

mmm. City of Deerfield Beach Commissioner Ben Preston;

nnn. City of Deerfield Beach Commissioner Michael Hudak;

ooo. City of Aventura Vice-Mayor Paul A. Kruss;

ppp. City of Aventura Commissioner Rachel Friedland;

qqq. City of Aventura Commissioner Michael Stern;

rrr. Village of Wellington Mayor Michael Napoleone;

sss. Village of Wellington Councilwoman Tanya Siskind;

ttt. Village of Wellington Councilwoman John T. McGovern;

uuu. Village of Wellington Councilwoman Michael Drahos;

vvv. Village of Pinecrest Commissioner Kathryn Abbott;

www. City of New Smyrna Beach Mayor Fred Cleveland;

xxx. City of New Smyrna Beach Vice Mayor Valli J. Perrine;

yyy. City of New Smyrna Beach Commissioner Randy Hartman

zzz. City of New Smyrna Beach Commissioner Jason McGuirk;

aaaa. City of Sebastian Mayor Charles Edward Dodd;

bbbb. City of Sebastian Vice Mayor Kelly Dixon;

cccc. City of Sebastian Council Member Frederick B. Jones;

dddd. City of Sebastian Council Member Bob McPartlan;

eeee. City of Sebastian Council Member Christopher Nunn;

ffff. City of Melbourne Council Member Mark LaRusso;

gggg. City of Melbourne Council Member Tim Thomas;

hhhh. City of North Miami Beach Vice Mayor Fortuna Smukler;

iiii. City of Homestead Mayor Steven Losner;

jjjj. City of Homestead Council Member Erica G. Avila;

kkkk. City of Sunrise Mayor Michael J. Ryan;

llll. City of Sunrise Deputy Mayor Joseph A. Scuotto;

mmmm. City of Sunrise Assistant Deputy Mayor Neil C. Kerch;

nnnn. City of Sunrise Commissioner Jacqueline A. Guzman;

oooo. City of Sunrise Commissioner Mark A. Douglas;

pppp. Town of Indialantic Mayor Mark McDermott;

qqqq. Town of Indialantic Deputy Mayor Stuart M. Glass;

rrrr. Town of Indialantic Council Member Loren Strand;

ssss. Town of Indialantic Council Member Brett J. Miller;

tttt. Town of Indialantic Council Member Doug Wright;

uuuu. Town of Cutler Bay Vice Mayor Michael Callahan;

vvvv. Town of Cutler Bay Council Member Robert Duncan;

wwww. Town of Cutler Bay Council Member Suzy Lord;

xxxx. City of Indian Harbour Beach Mayor Scott Nickle;

yyyy. City of Indian Harbour Beach Deputy Mayor Frank Guertin;

zzzz. City of Indian Harbour Beach Council Member Shauna Hume;

aaaaa. City of Indian Harbour Beach Council Member Hamilton Boone;

bbbbb. City of Indian Harbour Beach Council Member Adam Dyer;

ccccc. Village of Miami Shores Mayor George Burch;

ddddd. Village of Miami Shores Vice Mayor Jesse Valinsky;

eeeee. Village of Miami Shores Council Member Jerome Charles;

fffff. Village of Miami Shores Council Member Neil J. Cantor;

ggggg. Village of Miami Shores Council Member Sandra Harris;

hhhhh. City of Sweetwater Mayor Jose "Pepe" Diaz;

iiiii. City of Sweetwater Commissioner Idania Llanio;

jjjjj. City of Sweetwater Commissioner Saul Diaz;

kkkkk. City of Sweetwater Commissioner Isidro C. Ruiz;

lllll. City of Sweetwater Commissioner Jose Marti;

mmmmm. City of Sweetwater Commissioner Marcus Villanueva;

nnnnn. City of Sweetwater Commissioner Reinaldo Rey, Jr;

ooooo. City of Dania Beach Vice Mayor Lori Lewellen;

ppppp. City of Dania Beach Commissioner Tamara James;

qqqqq. City of Dania Beach Commissioner Marco A. Salvino, Sr.;

rrrrr. Town of Dundee Mayor Samuel Pennant;

sssss. Town of Dundee Vice Mayor Steven Glenn;

ttttt. Town of Dundee Commissioner Mary Richardson;

uuuuu. Town of Dundee Commissioner Willie Quarles;

vvvvv. Town of Dundee Commissioner Bertram Goddard;

wwwww. City of Lake Alfred Mayor Nancy Z. Daley;

xxxxx. City of Lake Alfred Vice Mayor Mac Fuller;

yyyyy. City of Lake Alfred Commissioner Charles Lake;

zzzzz. City of Lake Alfred Commissioner Brent Eden;

aaaaaa. City of Lake Alfred Commissioner Jack Dearmin;

bbbbbb. City of Haines City Mayor H.L. "Roy" Tyler;

ccccc. City of Haines City Vice Mayor Omar Arroyo;

dddddd. City of Haines City Commissioner Morris West;

eeeeee. City of Haines City Commissioner Anne Huffman;

ffffff. City of Haines City Commissioner Vernel Smith;

gggggg. City of Parkland Mayor Richard Walker;

hhhhhh. City of Parkland Vice Mayor Jordan Isrow;

iiiiii. City of Parkland Commissioner Kenneth Cutler;

jjjjjj. City of Plantation Councilmember Jennifer Andreu;

kkkkkk. Town of Lantana Councilmember Kem E. Mason;

llllll. City of Miami Beach Commissioner David Suarez;

mmmmmm. City of Miami Beach Commissioner Laura Dominguez;

nnnnnn. City of Miami Beach Commissioner Joseph Magazine;

oooooo. City of Miami Beach Commissioner Kristein Rosen Gonzales;

pppppp. Town of Lauderdale-By-The-Sea Commissioner Randy Strauss;

qqqqqq. Town of Briny Breezes Alderman Jeffery M. Duncan;

rrrrrr. City of Miami Springs Councilmember Jorge Santin;

ssssss. Town of Palm Beach Council Member Bridget Moran;

tttttt. Village of Bal Harbour Councilman Buzzy Sklar;

uuuuuu. City of Delray Beach Mayor Thomas Carney;

vvvvvv. City of Delray Beach Commissioner Thomas Markert;

wwwwww. City of Eagle Lake Mayor Suzy Wilson;

xxxxxx. City of Eagle Lake Commissioner Randy Billings;

yyyyyy. Town of Cutler Bay Mayor Tim Meerbott;

zzzzzz. City of Sweetwater Commissioner Ian Vallecillo;

aaaaaaa. Town of Windermere Mayor James Michael O'Brien;

bbbbbbb. Town of Windermere Council Member Amanda N. David;

ccccccc. Town of Windermere Council Member Anthony J. Davit;

ddddddd. Town of Windermere Council Member Brandi Sloss Haines;

eeeeeee. Town of Windermere Council Member Loren R. Williams;

fffffff. City of Parkland Commissioner Simeon Brier;

ggggggg. City of Winter Haven Mayor Nathaniel J. Birdsong, Jr.;

hhhhhhh. City of Winter Haven Mayor Pro Tem William Brian Yates;

iiiiiii. City of Winter Haven Commissioner Bradley T. Dantzler;

jjjjjjj. City of Winter Haven Commissioner L. Tracy Mercer;

kkkkkkk. City of Winter Haven Commissioner Clifton E. Dollison;

lllllll. City of Miami Beach Commissioner Alex J. Fernandez;

mmmmmmm. City of Aventura Commissioner Amit Bloom;

nnnnnnn. City of Aventura Commissioner Linda Marks;

ooooooo. City of Aventura Mayor Howard Weinberg;

ppppppp. Village of Key Biscayne Council Member Brett Moss;

qqqqqqq. Village of Wellington Council Member Amanda Silvestri; and

rrrrrrr. Village of Wellington Council Member Maria Antuña.

sssssss. City of Safety Harbor Commissioner Jacob Burnett

14. Plaintiffs are each duly elected or appointed officials of incorporated municipalities existing under the laws of the State of Florida and are currently in office.

15. As a result of the passage of SB 774, as of January 1, 2024, each, individual Plaintiff is subject to the financial disclosure requirements of Fla. Const., art. II, § 8(j) and Fla. Stat. § 112.3144, and are further subject to the fines, penalties and other enforcement mechanisms outlined in Fla. Stat. §§ 112.317 and 112.324.

16. Each Plaintiff is, therefore, required to file the requisite Form 6 (rather than the prior Form 1) on or before July 1, 2024.

17. The failure of any municipal elected official, including each Plaintiff, to make the compelled statements subjects him or her to a daily fine of $25 per day up to a maximum of $1,500 and, following an investigation and public hearing, a potential civil penalty of up to $20,000 and, among other things, a potential recommendation of removal from office. *See* Fla. Stat. §§ 112.3144(8)(f), 112.324(4), and 112.317.

18. Plaintiffs now face prior to the imminent deadline of July 1, 2024, the obligation to engage in non-commercial, content-based speech requirement to publicly disclose, against their will, the financial information required in Form 6, or face fines or other penalties.

19. Throughout Florida, more than 100 municipal elected officials resigned rather than agree to engage in such unwanted speech.

20. Plaintiffs strongly desire to continue to serve the public and have therefore not yet resigned, but instead have chosen to challenge the new compelled speech requirement.

21. Accordingly, Plaintiffs have each suffered a concrete and particularized injury-in-fact that is actual or imminent.

B. Defendants

22. Defendant, Luis Fuste ("Fuste"), is the Chair and a member of the Florida Commission on Ethics ("Commission"), a commission existing pursuant to Fla. Const., Art. II, §

8(h)(1) and Fla. Stat. § 112.320. Fuste is sued in his official capacity as Chair of the Commission and is a resident of this District.

23. Defendant, Michelle Anchors ("Anchors") is the Vice Chair and a member of the Commission. Anchors is sued in her official capacity as Vice Chair of the Commission.

24. Defendant, Paul D. Bain ("Bain") is a member of the Commission. Bain is sued in his official capacity as member of the Commission.

25. Defendant Tina Descovich ("Descovich") is a member of the Commission. Descovich is sued in her official capacity as member of the Commission.

26. Defendant, Freddie Figgers ("Figgers") is a member of the Commission. Figgers is sued in his official capacity as member of the Commission and is a resident of this District.

27. Defendant, Ashley Lukis ("Lukis") is a member of the Commission. Lukis is sued in her official capacity as member of the Commission.

28. Defendant, Laird A. Lile ("Lile") is a member of the Commission. Lile is sued in his official capacity as member of the Commission.

29. Defendant, Wengay M. Newton, Sr. ("Newton") is a member of the Commission. Newton is sued in his official capacity as member of the Commission.

30. Lukis, Anchors, Bain, Descovich, Figgers, Fuste, Lile, and Newton, collectively, comprise the Commission.

31. "The Agency Head is the entire Commission, which is responsible for final agency action." *See* Statement of Organization and Operation of the Commission on Ethics, https://www.ethics.state.fl.us/Documents/Ethics/statement%20of%20org.pdf?cp=2024127 (last accessed February 12, 2024).

32. The Commission, through each Defendant, is charged with implementing and enforcing the State's financial disclosure laws, including, among many other things, the receipt of Form 6 disclosures, training regarding Form 6, investigating alleged violations regarding Form 6 filings, imposing fines for failure to file Form 6, holding enforcement hearings regarding failure to file Form 6, making recommendations of removal from office for failure to file Form 6, and rendering legally binding advisory opinions regarding Form 6. *See* Fla. Const., Art. II, § 8(g); Fla. Stat. §§ 112.3144, 112.317, 112.320.

33. The Commission is also required to identify every person required to file Form 6, provide notification of said requirement to each person subject to these disclosures, and ensure compliance with the disclosure requirements by each person subject thereto. *See* Fla. Const., Art. II, § 8(g); Fla. Stat. §§ 112.3144, 112.317, 112.320.

34. In addition, the Commission's 2022 Annual Report (as well as previous annual reports) expressly requested that the Legislature enact legislation to require that elected municipal officials complete Form 6, rather than Form 1, leading to the enactment of SB 774. *See* Annual Report to the Florida Legislature for Calendar Year 2022, pg. 23, https://ethics.state.fl.us/Documents/Publications/2022%20Annual%20Report.pdf?cp=202425 (last accessed February 12, 2024).

35. The only justification given by the Commission for its recommendation was:

> Elected municipal officials are very important and administer vast amounts of public resources. For these, and other reasons, their disclosure should be on par with that of county officials and others who file Form 6, rather than Form 1. The Commission believes the enhanced disclosure should be applied to all elected municipal officials regardless of the population or revenue of the municipality.

36. Nowhere in its report did the Commission conclude that there has been an increase in the need to oppose corruption or conflicts of interest at the municipal level or that Form 1 in any way was insufficient to the task of guarding against those governmental ills. In short, the

Commission justified its recommendation merely by noting that municipal officials should have to disclose the same information others already disclose, without regard to the municipality's population, revenue, annual budget, or any elected municipal compensation amount, if any.

37. All acts alleged herein by Defendants and their agents, servants, employees, or persons acting on their behalf were done and are continuing to be done under color of state law.

38. Plaintiffs bring this action against the state officers (namely, the members of the Commission) who have the responsibility to enforce the Form 6 requirement against municipal elected officials (including Plaintiffs) and seek only prospective equitable relief to end the continuing violations of the First Amendment to the United States Constitution.

BACKGROUND

A. History of Ethical Standards in Florida

39. Beginning in the late 1960s, the Florida Legislature has enacted numerous laws regulating ethical conduct for Florida's elected officials, including laws related to the solicitation or acceptance of gifts, unauthorized compensation, misuse or abuse of public position, disclosure of certain information, doing business with one's agency, conflicting employment, lobbying restrictions, dual public employment, anti-nepotism, conflicts of interest, and financial disclosure. *See generally* Fla. Stat., Chapter 112.

40. The interests that the financial disclosures are intended to serve are stated by the Commission: "Financial disclosure is required of public officials and employees because it enables the public to evaluate potential conflicts of interest, deters corruption, and increases public confidence in government." *See* Florida Commission on Ethics, Financial Disclosure Information, www.ethics.state.fl.us/FinancialDisclosure/Index.aspx, last accessed February 12, 2024.

41. In 1976, the Florida Constitution was amended to require that all elected, state constitutional officers annually file a full and public disclosure of their financial interests, which is done through the state-adopted Form 6, requiring the disclosure of highly personal financial information. *See* Fla. Const. Art. II, § 8; Fla. Stat. § 112.3144; Exh. B.

42. The Form 6 requirement did not apply to elected municipal officials or candidates for municipal office prior to January 1, 2024.

B. The Change from Form 1 to Form 6 for Elected Municipal Officials

43. Instead, prior to January 1, 2024, elected municipal officials were required to make a more limited financial disclosure that nevertheless provides sufficient information to satisfy the interests of preventing conflicts of interest and public corruption and increasing public confidence in government. *See* Fla. Stat. § 112.3145. The elected municipal officials' financial disclosure was done through the state-adopted Form 1. Exh. A.

44. In the 2023 legislative session, the Florida Legislature duly enacted (and the Governor signed) SB 774, which was codified at Laws of Florida 2023-09, and which amended (in relevant part) Fla. Stat. § 112.3144, to change the financial disclosure requirements to require, as of January 1, 2024, that all elected municipal mayors and elected members of municipal governing boards (and candidates for such offices) file a Form 6 financial disclosure, rather than the previously required Form 1. *See* Fla. S.B. 774; Fla. Stat. §§ 99.061, 112.3144 (2023).

C. Comparison of Form 6 to Form 1

45. Form 6 is a highly intrusive and extreme level of required, public financial disclosure, mandating the disclosure of private financial information unrelated to any official duties and unnecessary to satisfy the interest of preventing conflicts of interest and public corruption or increasing public confidence in government. *See* Exh. B.

46. Specifically, Form 6 requires that the official disclose:

> (a) the official's exact net worth, to the penny, (b) the exact aggregate value of all household goods and personal effects, (c) the precise value of every other asset individually valued at over $1,000 (including a description of the asset), (d) the exact outstanding amount of all liabilities in excess of $1,000, including the name and address of the creditor, (e) every primary source of income that exceeded $1,000 during the year, including the name and address of the source of income and the precise amount of income, (f) every secondary source of income in excess of $1,000 from any business of which the official owns more than 5%, including the name of the business entity, the major sources of business income (namely, any that account for 10% or more of the business's revenue), and the address and principal business activity or source, and (g) any interest in certain specified types of businesses.

See Exh. B.

47. In contrast, Form 1 requires that the official disclose:

> (a) the name, address and principal business active for every primary sources of income in excess of $2,500 (but not the amount), (b) every secondary source of income in excess of $5,000 from any business of which the official owns more than 5%, including the name of the business entity, the major source of business income (any that account for 10% or more of the business's revenue), and the address and principal business activity or source, (c) a description of all real property (but not the value) of which the official had more than a 5% ownership interest, (d) a description (but not the value) of intangible property owned by the official and valued at more than $10,000, (e) the name and address of each creditor to whom the official owed more than $10,000 (but not the amount owed), and (f) any interest in certain specified types of businesses.

See Exh. A.

48. The information in Form 1 and Form 6 of each filer is made publicly available through the Commission's website.

COUNT I

COMPELLED, CONTENT-BASED SPEECH IN VIOLATION OF THE FIRST AMENDMENT OF THE U.S. CONSTITUTION, PURSUANT TO 42 U.S.C. § 1983

49. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 48, as if fully set forth herein.

50. The First Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment, prohibits the government, including Defendants, from abridging Plaintiffs' freedom of speech though government-compelled speech.

51. The First Amendment's speech rights include the right to speak freely, the right to refrain from speaking at all, and the right not to speak certain words or messages.

52. The statements required by Fla. Stat. § 112.3144, through Form 6, constitute non-commercial, compelled speech from Plaintiffs in violation of the First Amendment.

53. Specifically, Fla. Stat. § 112.3144 unconstitutionally compels Plaintiffs to make invasive, public disclosures about their personal finances through Form 6.

54. The required disclosures of Fla. Stat. § 112.3144, through Form 6, are content-based speech because they compel individuals to speak a particular message. Compelled speech is no less compelled and no less speech because it is required to be in writing.

55. For example, among many other things, on July 1, 2024, each Plaintiff will be forced to say the words: "My Net Worth as of December 31, 2023 was $_____." *See* Exh. B at 1.

56. Plaintiffs would not otherwise engage in such non-commercial, content-based speech (namely, publicly disclosing to the public their exact net worth, income, asset values and other personal financial information required in Form 6) but for the requirements of Fla. Stat. § 112.3144 and the threat of fines, penalties and other enforcement mechanisms set forth in Fla. Stat. § 112.317.

57. The compelled speech in Form 6, as required by Fla. Stat. § 112.3144, is readily reviewable (now and for many years to come) by the public on the Internet, and the information in each filed Form 6 is clearly and readily associated with the individual filer (i.e., via the name of each individual Plaintiff).

58. Because the compelled speech is effectuated through state statute, the constitutional deprivation at issue here is caused by official policy of the state and under color of state law.

59. Although Plaintiffs recognize the government's interest in preventing conflicts of interest, deterring corruption, and increasing public confidence in government, Fla. Stat. § 112.3144, as amended by SB 744, and the application of Form 6 to elected municipal officials are not narrowly tailored to achieve these interests.

60. Requiring Plaintiffs to make the additional, compelled speech required by Form 6 (as opposed to the statements previously required through Form 1) are not the least restrictive means to accomplish any compelling government purpose.

61. Accordingly, an actual controversy exists between Plaintiffs and Defendants, each of whom have adverse legal interests of sufficient immediacy to warrant the issuance of a declaratory judgment and injunctive relief.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor:

A. Declaring, pursuant to 28 U.S.C. § 2201, 42 U.S.C. § 1983, and Rule 57, Fed. R. Civ P., that Fla. Stat. § 112.3144 (2023) compels Plaintiffs to engage in content-based, non-commercial speech in violation of the First Amendment of the United States Constitution and is, therefore, unconstitutional;

B. 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 a Form 6 while subject to such requirements;

C. Awarding Plaintiffs their costs and expenses (including attorneys' fees) incurred in bringing in this action, pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 1920, and other applicable law; and

D. Granting such other relief as this Court deems just and proper.

Dated this 26th day of September, 2024.

WEISS SEROTA HELFMAN
COLE + BIERMAN P.L.
200 East Broward Blvd., Ste. 1900
Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Facsimile: (954) 764-7770

By: */s/ Jamie A. Cole*
JAMIE A. COLE
Florida Bar No. 767573
jcole@wsh-law.com
msaraff@wsh-law.com
EDWARD G. GUEDES
Florida Bar No. 768103
eguedes@wsh-law.com
szavala@wsh-law.com
ANNE R. FLANIGAN
Florida Bar No. 113889
aflanigan@wsh-law.com
JEREMY S. ROSNER
Florida Bar No. 1018158
jrosner@wsh-law.com
kdoyle@wsh-law.com
Counsel for Plaintiffs

EXHIBIT A

2023 Form 1 - Statement of Financial Interests

General Information

Name: DISCLOSURE FILER

Address: SAMPLE ADDRESS

County: SAMPLE COUNTY

PID SAMPLE

AGENCY INFORMATION

Organization	Suborganization	Title
SAMPLE	SAMPLE	SAMPLE

Disclosure Period

THIS STATEMENT REFLECTS YOUR FINANCIAL INTERESTS FOR CALENDAR YEAR ENDING DECEMBER 31, 2023 .

Primary Sources of Income

PRIMARY SOURCE OF INCOME (Over $2,500) (Major sources of income to the reporting person)
(If you have nothing to report, write "none" or "n/a")

Name of Source of Income	Source's Address	Description of the Source's Principal Business Activity

Secondary Sources of Income

SECONDARY SOURCES OF INCOME (Major customers, clients, and other sources of income to businesses owned by the reporting person) (If you have nothing to report, write “none” or “n/a”)

Name of Business Entity	Name of Major Sources of Business' Income	Address of Source	Principal Business Activity of Source

Real Property

REAL PROPERTY (Land, buildings owned by the reporting person)
(If you have nothing to report, write “none” or “n/a”)

Location/Description

Intangible Personal Property

INTANGIBLE PERSONAL PROPERTY (Stocks, bonds, certificates of deposit, etc. over $10,000)
(If you have nothing to report, write “none” or “n/a”)

Type of Intangible	Business Entity to Which the Property Relates

Liabilities

LIABILITIES (Major debts valued over $10,000):
(If you have nothing to report, write “none” or “n/a”)

Name of Creditor	Address of Creditor

Interests in Specified Businesses

INTERESTS IN SPECIFIED BUSINESSES (Ownership or positions in certain types of businesses)
(If you have nothing to report, write “none” or “n/a”)

Business Entity # 1

Training

Based on the office or position you hold, the certification of training required under Section 112.3142, F.S., is not applicable to you for this form year.

Signature of Filer

Digitally signed:

Filed with COE:

EXHIBIT B

2023 Form 6 - Full and Public Disclosure of Financial Interests

General Information

Name: DISCLOSURE FILER

Address: SAMPLE ADDRESS **PID SAMPLE**

County: SAMPLE COUNTY

AGENCY INFORMATION

Organization	Suborganization	Title
SAMPLE	SAMPLE	SAMPLE

Net Worth

My Net Worth as of December 31, 2023 was $ [AMOUNT].

Assets

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use, whether owned or leased.

The aggregate value of my household goods and personal effect is N/A.

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

Description of Asset	Value of Asset

Liabilities

LIABILITIES IN EXCESS OF $1,000:

Name of Creditor	Address of Creditor	Amount of Liability

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

Name of Creditor	Address of Creditor	Amount of Liability

Income

Identify each separate source and amount of income which exceeded $1,000 during the year, including secondary sources of income. Or attach a complete copy of your 2022 federal income tax return, including all W2s, schedules, and attachments. Please redact any social security or account numbers before attaching your returns, as the law requires these documents be posted to the Commission's website.

☐ I elect to file a copy of my 2023 federal income tax return and all W2s, schedules, and attachments.

PRIMARY SOURCES OF INCOME:

Name of Source of Income Exceeding $1,000	Address of Source of Income	Amount

SECONDARY SOURCES OF INCOME (Major customers, clients, etc. of businesses owned by reporting person):

Name of Business Entity	Name of Major Sources of Business Income	Address of Source	Principal Business Activity of Source

Interests in Specified Businesses

Business Entity # 1

Training

Based on the office or position you hold, the certification of training required under Section 112.3142, F.S., is not applicable to you for this form year.

Signature of Reporting Official or Candidate

Under the penalties of perjury, I declare that I have read the foregoing Form 6 and that the facts stated in it are true.

Digitally signed:

Filed with COE:

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

PRESIDENT OF TOWN COUNCIL ELIZABETH A. LOPER, elected official of the Town of Briny Breezes, et al.,

Plaintiffs,

v. Case No.: 1:24-CV-20604

ASHLEY LUKIS, in her official capacity As Chair of the Florida Commission on Ethics, et al.

Defendants.
_____/

ANSWER TO THIRD AMENDED COMPLAINT[1]

Defendants, pursuant to Federal Rule of Civil Procedure 8(b), hereby answers the Second Amended Complaint [ECF No. 38] as follows:

OVERVIEW

1. Admitted that this is an action to challenge Senate Bill 774 (SB 774), passed during the 2023 legislative session and enacted as chapter 2023-49, Laws of Florida. Admitted that chapter 2023-49, Laws of Florida, speaks for itself.

[1] This answer is identical to Defendants' Answer to Second Amended Complaint [ECF No. 49]. While the Third Amended Complaint reflect the appointments of Laid A. Lile and Paul D. Bain as a members of the Florida Commission on Ethics and the expiration of the term of William P. Cervone as a Commission member, the answer to each allegation of the complaint remains the same.

2. Admitted that SB 774 requires that, beginning January 1, 2024, mayors and elected members of the governing bodies of municipalities comply with the financial disclosure requirements of article II, section 8 of the Florida Constitution.

3. Admitted that SB 774 requires that, beginning January 1, 2024, mayors and elected members of the governing bodies of municipalities comply with the financial disclosure requirements of article II, section 8 of the Florida Constitution.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Admitted as to the relief sought by Plaintiffs; denied that Plaintiffs are entitled to such relief.

JURISDICTION AND VENUE

10. Admitted that based on the allegations of the Second Amended Complaint, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

11. Admitted; denied that Plaintiffs are entitled to the relief sought.

12. Admitted that venue is proper in this District.

THE PARTIES

A. Plaintiffs

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted that, prior to the entry of the Court's preliminary injunction [ECF No. 40], each Plaintiff was required to file a Form 6.

17. The referenced statutory provisions speak for themselves.

18. Denied.

19. Without knowledge; therefore denied.

20. Without knowledge; therefore denied.

21. Denied.

B. Defendants[2]

22. Admitted.

23. Admitted.

24. Admitted with the proviso that Paul D. Bain has been appointed to replace William P. Cervone as a member of the Commission.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

[2] Defendants note that Laird A. Lile has been appointed to fill a vacancy on the Commission. The case caption will be amended accordingly.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted that section 112.3144(8), Florida Statutes, speaks for itself and sets forth the Commission's duties and responsibilities with respect to the list of persons required to file a Form 6 disclosure. Beyond these duties and responsibilities, the Commission encourages and provides guidance on compliance with the Form 6 filing requirements.

34. Admitted that the Commission, in its 2022 Annual Report and prior annual reports recommended that the Legislature enact laws that would require that mayors and elected members of the governing bodies of municipalities file Form 6 disclosures; denied that these recommendations led to the enactment of SB 774.

35. Admitted that the quoted language appears on page 23 of the 2022 Annual Report; denied as to the remainder.

36. The 2022 Annual Report speaks for itself; otherwise, denied.

37. Admitted.

38. Admitted that Plaintiffs bring this action against the state officers who enforce the Form 6 requirements against municipal elected officials; admitted that

Plaintiffs seek prospective equitable relief. denied that Plaintiffs are entitled to such relief. denied that SB 774 violates the First Amendment.

BACKGROUND

A. History of Ethical Standards in Florida

39. Admitted.

40. Admitted that the quoted language appears on the Commission's website at the cited link; denied that those are all of the interests that financial disclosures by public officials and employees.

41. Admitted that article II, section 8 of the Florida Constitution was added by amendment and speaks for itself.

42. Admitted.

B. The Change from Form 1 to Form 6 for Elected Municipal Official

43. Admitted that, prior to January 1, 2024, municipal elected officials were required to file Form 1; otherwise, denied.

44. Admitted.

C. Comparison of Form 6 to Form 1

45. Admitted that Form 6 speaks for itself; denied as to Plaintiffs' characterization of it.

46. Admitted that Form 6 speaks for itself.

47. Admitted that Form 1 speaks for itself.

48. Admitted.

COUNT I

COMPELLED, CONTENT-BASED SPEECH IN VIOLATION OF THE FIRST AMENDMENT OF THE U.S. CONSTITUTION, PURSUANT TO 42 U.S.C. § 1983

49. Defendant reallege and incorporate by reference their responses to paragraphs 1 through 48 above, as if fully set forth herein.

50. Denied as written.

51. Admitted.

52. Denied.

53. Denied.

54. Denied.

55. Admitted that the quoted language is included in Form 6.

56. Without knowledge; therefore denied.

57. Admitted that filed Form 6 disclosures are public records and available to the public on the Commission's website; denied that the disclosures constitute compelled speech.

58. Denied that the Form 6 disclosures constitute compelled speech; denied that the disclosures work a constitutional violation; admitted that the Form 6 disclosures are part of the law of Florida.

59. Without knowledge as to what interests Plaintiffs recognize; denied that § 112.3144 is subject to strict or exacting scrutiny review including a narrow tailoring requirement.

60. Denied that the Form 6 disclosure requirements constitute compelled speech; denied that § 112.3144 is subject to strict or exacting scrutiny review including a least restrictive means requirement.

61. Denied.

WHEREFORE, Defendants respectfully request that the Court deny Plaintiffs the relief they seek and enter judgment in favor of Defendants,

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ *William H. Stafford III*
William H. Stafford III (FBN 70394)
SPECIAL COUNSEL
William.Stafford@myfloridalegal.com
Sara E. Spears (FBN 1054270)
ASSISTANT ATTORNEY GENERAL
Office of the Attorney General
Complex Litigation - Bureau
PL-01 The Capitol
Tallahassee, FL 32399-1050
850-414-3300

Counsel for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-20604-CIV-DAMIAN

ELIZABETH A. LOPER, *et al.*,

Plaintiffs,

vs.

ASHLEY LUKIS, *et al.*,

Defendants.
_____/

ORDER ON PLAINTIFFS' EXPEDITED
MOTION FOR PRELIMINARY INJUNCTION [ECF NO. 10]

THIS CAUSE is before the Court on Plaintiffs' Expedited Motion for Preliminary Injunction and Incorporated Memorandum of Law, filed March 22, 2024 [ECF No. 10 (the "Motion" or "Motion for Preliminary Injunction")].

THE COURT has reviewed the Motion, the Response and Reply thereto [ECF Nos. 16, 18], the supplemental briefs [ECF Nos. 34, 35], the pertinent portions of the record, and the relevant legal authorities and is otherwise fully advised in the premises. The Court also heard from the parties' counsel at an evidentiary hearing held on April 22, 2024. [ECF No. 27].

Plaintiffs seek a preliminary injunction enjoining enforcement of Florida's Senate Bill 774 ("SB 774") on grounds the law impermissibly compels content-based, non-commercial speech in violation of the First Amendment of the United States Constitution. After conducting a hearing and careful review of the record, and for the reasons set forth below, the Court concludes that entry of a preliminary injunction is warranted.

FACTUAL BACKGROUND[1]

A. Financial Disclosure in Florida and Enactment of SB 774

In 1976, the Florida Constitution was amended to require certain public officials and candidates to file full and public disclosures of their financial interests. *See* Art. II, § 8, Fla. Const.; § 112.3144, Fla. Stat. The 1976 Amendment, titled 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 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 1970s, the Florida Commission on Ethics (hereinafter, the "COE") has required certain public officials to file the form known as "Form 6" to satisfy the disclosure requirements of the Sunshine Amendment. *See* § 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; and (4) every source of income,

[1] The parties' filed a Joint Witness and Exhibit List and Stipulations of Fact [ECF No. 19] and Supplemental Stipulations of Fact [ECF No. 25]. The parties, however, conventionally filed the exhibits for the Court's consideration at the evidentiary hearing on April 22, 2024. *See* ECF No. 27. Therefore, citations to the conventionally filed exhibits are referenced herein as "Ex. __ at [page number]" (*e.g.*, Ex. J1 at 2). Where possible, the Court also cites materials readily available to the public.

including name and address of the source, in excess of $1,000. *See generally* Ex. J2; *see also* Fla. Admin. Code R. 34-8.002 (2024).

Prior to January 1, 2024, the Form 6 requirement did not apply to elected municipal officials or candidates for municipal office. *See* § 112.3145, Fla. Stat. (2022). Instead, municipal officials and candidates were required to comply with the disclosure requirements of Form 1, which is less comprehensive than Form 6. Form 1 requires these individuals to disclose: (1) major sources but not amounts of income over $2,500; (2) intangible personal property valued over $10,000 and real property; and (3) liabilities over $10,000. *See generally* Ex. J1; *see also* Fla. Admin. Code R. 34-8.202 (2023).

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, Florida Statutes. *See* Ch. 2023-49, Laws of Fla. As of January 1, 2024, SB 774 applies to mayors and other elected members of the governing bodies of municipalities. § 112.3144(1)(d), Fla. Stat. (2023). The law requires that these municipal officials file Form 6 by July 1, 2024. §112.3145(2)(b), Fla. Stat. (2023). 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. § 112.3144(8)(f), Fla. Stat. (2023). 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* §§ 112.317, 112.324(4), Fla. Stat. (2023).

Plaintiffs challenge SB 774 on the grounds the requirement that they now complete the Form 6 financial disclosures is government-compelled content-based speech that infringes on their rights to free speech under the First Amendment of the United States Constitution.

Analysis of Plaintiffs' First Amendment challenge requires a review of the legislative record leading to the enactment of the law.

B. The Legislative Record.

1. Senate Committee Staff Analyses.

Prior to its passage, SB 774 was considered and reviewed by two Florida Senate Standing Committees: the Committee on Ethics and Elections and the Committee on Rules. Both Committees prepared staff analysis reports (the "Analyses" or "Committee Analyses"). *See generally* Exs. J10(c), J11(b).[2] The Analyses from the two Committees are substantively the same. The Committees' Analyses summarize the history of the COE and the Code of Ethics for Public Officers and Employees, and both explain the effects of the proposed changes in implementing SB 774. However, neither Committee Analysis explains the reasoning behind nor justification for the change to the requirement that municipal elected officials and candidates must now file Form 6, as opposed to the previously required Form 1. A review of the Committees' Analyses reveals that neither includes empirical data nor evidence suggesting that either Committee investigated, studied, or solicited reports on the need for municipal elected officials to comply with the more comprehensive requirement of Form 6. Nor does either Analysis demonstrate that the Committees considered alternative, less burdensome means that would have addressed the interests at stake or the purpose or intent of SB 774.

[2] *See also* Fla. S. Comm. on Ethics & Elections on SB 774 (2023) Post-Meeting Staff Analysis (Mar. 15, 2023), https://www.flsenate.gov/Session/Bill/2023/774/Analyses/2023s00774.rc.PDF; Fla. S. Comm. on Rules on SB 774 (2023) Post-Meeting Staff Analysis (Mar. 30, 2024), https://www.flsenate.gov/Session/Bill/2023/774/Analyses/2023s00774.rc.PDF.

2. House Committee Staff Analyses.

Meanwhile, in the Florida House of Representatives, SB 774 underwent three analyses by two Subcommittees and one Committee: the Local Administration, Federal Affairs & Special Districts Subcommittee; the Ethics, Elections & Open Government Subcommittee, and the State Affairs Committee.[3] *See generally* Exs. J12–J14. Like the Senate Committees' Analyses, the House Analyses detail the requirements SB 774 places on elected municipal officials.[4] Also like the Senate Committees' Analyses, the House Analyses are devoid of reasoning and similarly lack data or other reports underpinning the need, reasoning, or justification for the change in disclosure requirements for municipal elected officials from Form 1 to Form 6. And, like the Senate Committee Analyses, there is no indication in the House Analyses that the legislative entities considered alternative, less intrusive means that would have addressed the interests, purpose, or intent of SB 774 insofar as the change to the disclosure requirements for municipal officials is concerned.

3. COE 2022 & 2023 Annual Reports.

Both Senate Committee Analyses contain an identical footnote that cites to a 2022 Annual Report by the COE and states that "[e]nhanced financial disclosure for local elected officials" was, among others, a recommendation to the Florida Legislature. *See* Exs. J10(c) at

[3] *See also* Fla. H.R. Subcomm. on Local Administration, Federal Affairs & Special Districts for HB 37 (2023) Post-Meeting Staff Analysis (Mar. 15, 2023), https://www.flsenate.gov/Session/Bill/2023/37/Analyses/h0037b.LFS.PDF; Fla. H.R. Subcomm. on Ethics, Elections & Open Government for HB 37 (2023) Post-Meeting Staff Analysis (Apr. 11, 2023), https://www.flsenate.gov/Session/Bill/2023/37/Analyses/h0037c.SAC.PDF; Fla. H.R. Comm. on State Affairs for HB 37 (2023) Post-Meeting Staff Analysis (May 15, 2023), https://www.flsenate.gov/Session/Bill/2023/37/Analyses/h0037z1.EEG.PDF.

[4] The State Affairs Committee conducted its analysis after the bill was signed into law.

10; J11(b) at 10. Like all of the legislative Committee and Subcommittee Analyses discussed above, the 2022 Annual Report does not identify any empirical data or evidence suggesting that the COE investigated, studied, or solicited reports to justify the change to or need for the Form 6 disclosure requirements for these municipal officials, nor does it indicate whether other less intrusive means for addressing their concerns were considered. *See generally* Ex. J7; *see also* ECF No. 16-1.

The COE's 2023 Annual Report adds little, indicating only that there has been a "steady, upward trend" in the number of ethical complaints against elected officials, including municipal officials, received by the COE since 2017. *See* Ex. J24; *see also* ECF No. 16-3 at 13. It does not, however, indicate that any analysis was done that led to the conclusion that more comprehensive financial disclosures are needed or will address that trend, much less that the information required by Form 6 is necessary or relevant to the issue of the steady, upward trend in the number of ethical complaints.

4. Senate Committee On Ethics And Elections March 2023 Meeting.

During a March 14, 2023, meeting of the Senate Committee on Ethics and Elections, Senator Jason Brodeur, the bill's sponsor, stated that the bill would conform the financial disclosure requirements of municipal elected officials and candidates to the financial disclosure requirements of elected state constitutional officers. *See* Ex. J17 at 2:5–11.[5] Senator Brodeur went on to state that "in municipalities where there are five folks who decide millions of dollars in budgets[,] *it is probably better* for the public to have a full financial transparency."

[5] A video recording of the March 14, 2023, Committee proceeding is also publicly viewable. *See generally* Fla. S. Comm. on Ethics & Elections, recording of proceedings (Mar. 14, 2023, 4:00 PM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202303141600&Redirect=true (last visited May 16, 2024).

Id. at 2:13–16 (emphasis added). A Committee member then asked Senator Brodeur what prompted the change, to which Senator Brodeur responded that the more detailed financial disclosure requirement had been requested by the COE for "many years." *Id.* at 6:15–21. Senator Brodeur also reiterated that in municipalities, a few individuals make multi-million-dollar decisions and that voters, in turn, deserve to know "when there would be some kind of collusion and/or some kind of improper incentive." *Id.* at 7:17–20. When asked if he felt that Form 6's disclosure requirements could deter individuals from running, Senator Brodeur responded that "it could, but if you have somebody who's not willing to make that available, do you really want them in public office?" *Id.* at 9:23–25.

During the same meeting, Kerrie Stillman, the Executive Director of the COE, stated that, despite discussions in prior sessions of imposing a fluctuating standard on officials who should abide by Form 6, the Commission nonetheless adopted the standard for all municipal elected officials and candidates. *Id.* at 16:1–5. According to Stillman, the requirement furthers transparency, and, as Stillman explained, citizens who live in smaller communities are entitled to no less transparency than those in larger communities as neither is immune to corruption. *Id.* at 16:6–13. Stillman also pointed out that the new requirement helps avoid conflicts of interest. *Id.* at 16:14–16. Notably, a Committee member asked Ms. Stillman the purpose behind letting local officials file Form 1 over the years, and Ms. Stillman responded that she did not know the specific history behind Form 1. *Id.* at 18:6–12. The bill was voted out of the Ethics and Elections Committee and transferred to the Rules Committee. *See CS/CS/SB 774 Bill History*, https://www.flsenate.gov/Session/Bill/2023/774/?Tab=BillHistory (last visited May 20, 2024) [hereinafter, *SB 774 Bill History*].

5. Senate Rules Committee March 2023 Meeting.

On March 30, 2023, the Rules Committee held a meeting in which the bill was discussed. *See generally* Ex. J18.[6] As he did in the March 14 meeting, Senator Brodeur spoke about the requirements of SB 774 and described the differences between the Form 1 and Form 6 requirements. *Id.* at 3:2–8, 5:22–25, 6:1–10. Once more, Senator Brodeur reiterated the imbalance between the number of individuals making impactful decisions in municipal government versus the greater number of individuals involved in making those decisions at the state level. *Id.* at 6:12–25, 7:1. A Committee member asked if Senator Brodeur would consider amending the bill to exempt officials from towns with populations under certain amounts. *Id.* at 8:10–13, 20–21. Senator Brodeur responded that he would not, underscoring the need for transparency at any level of state and local governance. *Id.* at 8:23–25, 9:1–3. Ms. Stillman also appeared at the meeting and again emphasized that the bill would further public transparency, increase public trust in government, and help identify potential conflicts of interest. *Id.* at 15:13–19. The bill was voted out of the Rules Committee. *See SB 774 Bill History*.

6. Senate Floor Debate In April 2023.

During the Senate floor debate held on April 11, 2023, a Senator expressed concern that the bill would have a chilling effect on people running for local office. Ex. J19(a) at 7:1–10. Senator Brodeur pointed out that the Form 6 disclosure requirements had already been in place for a number of state officials and at varying levels of government and that despite the disclosure requirement, individuals still ran for local office. *Id.* at 7:23–25, 8:1–6. There was

[6] *See also* Fla. S. Comm. on Rules, recording of proceedings (Mar. 30, 2023, 8:30 AM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202303300830&Redirect=true (last visited May 19, 2024).

further debate on SB 774 the next day. This time, a different Senator remarked about the bill's potentially chilling effect, and Senator Brodeur responded that the COE had been working on the measure for a long time and again opined that the law would not discourage people from running. Ex. J19(b) at 2:17–25, 3:10–15.[7] He did not offer any empirical data or studies to support his opinion. SB 774 passed in the Florida Senate by a vote of 35 to 5. *See SB 774 Bill History*.

7. House of Representatives Floor Debate in April 2023.

The bill proceeded to the Florida House of Representatives, which held its first reading of the bill on April 20, 2023, without discussion. *See id.* Although the bill's House sponsor recognized during the bill's second reading on April 25, 2023, that the requirements of Form 6 may be "too intrusive," he went on to state that the "bill simply seeks to have the local elected official do the Form 6 the same as we do." Ex. J20 at 7:1–8.[8] SB 774 moved on to a third reading in the House on April 26, 2023. *See SB 774 Bill History*. It passed in the House by a vote of 113 to 2. *Id.*

8. The Enactment Of SB 774.

On May 11, 2023, the Governor signed SB 774 into law. [ECF No. 19 at 4]. Between the enactment of SB 774 and its effective date of January 1, 2024, approximately 125 municipal elected officials resigned. *Id.* at 5. As it presently stands, municipal elected officials

[7] *See also* Fla. S. Floor Debate (April 12, 2023, 3:00 PM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202304121500&Redirect=true (last visited May 19, 2024).

[8] *See also* Fla. H. Floor Debate (April 25, 2023, 10:00 AM), https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8900 (last visited May 19, 2024).

and candidates must comply with SB 774 by submitting Form 6 by July 1, 2024. § 112.3145(2)(b), Fla. Stat. (2023). They will be subject to penalties sixty (60) days later if they fail to comply. *See* § 112.3144(8)(f), Fla. Stat. (2023).

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"). The Complaint asserts a single claim for violation of 42 U.S.C. § 1983 on grounds SB 774 compels content-based, non-commercial speech in violation of the First Amendment of the United States Constitution. *See generally id.*

Plaintiffs filed a First Amended Complaint on March 22, 2024. [ECF No. 9]. On April 17 and May 7, 2024, Plaintiffs moved for leave to further amend the First Amended Complaint by interlineation to include additional municipal elected officials, and the Court granted the Motions on April 19 and May 13, 2024. *See* ECF Nos. 24, 26, 36, 37. Plaintiffs filed a Second Amended Complaint on May 17, 2024, which is the operative complaint. [ECF No. 38 ("Second Amended Complaint")]. Every iteration of Plaintiffs' Complaints asserts the same solitary claim; the only changes since the original Complaint have been the inclusion of additional municipal elected officials as named plaintiffs. These additions brought the total number of plaintiffs to well over 170 elected officials of municipalities as of the signing of this Order.

B. The Motion For Preliminary Injunction.

1. The Motion.

On March 22, 2024, Plaintiffs filed the Motion for Preliminary Injunction now before the Court. [ECF No. 10]. In the Motion for Preliminary Injunction, Plaintiffs assert there is a substantial likelihood of success on the merits of their claim because SB 774 compels content-based speech and is, therefore, subject to strict scrutiny review. Plaintiffs further argue the law is not narrowly tailored nor the least restrictive means to serve compelling government interests. Specifically, while acknowledging that protecting against conflicts of interest and deterring corruption are compelling government interests, Plaintiffs argue that SB 774 is not narrowly tailored to achieve these interests. Plaintiffs contend the legislative record is devoid of empirical examples, expert studies, or analyses evincing that other alternative and less restrictive means were seriously considered. *See generally* Mot. at 14–19. Plaintiffs thus allege SB 774 violates the First Amendment and causes irreparable injury. *See* Mot. at 19.

Citing *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020), Plaintiffs argue that "[i]t is clear that neither the government nor the public has any legitimate interest in enforcing an unconstitutional [law]." Mot. at 19. Noting the numerous recent resignations of municipal officials since SB 774's enactment, Plaintiffs also allege there "is a strong public interest in ensuring that the continuing existence and enforcement of SB 774 not unreasonably or unnecessarily deter governmental service." Mot. at 19–20. Plaintiffs also argue the First Amendment violation is a *per se* irreparable injury. *Id.* at 19.

Finally, Plaintiffs posit they should not be required to post an injunction bond because "public interest litigation is a recognized exception to the bond requirement." Mot. at 20

(quoting *Vigue v. Shoar*, No. 3:19-CV-186-J-32JBT, 2019 WL 1993551, at *3 (M.D. Fla. May 6, 2019)).

2. Defendants' Response.

In their Response to the Motion for Preliminary Injunction, Defendants do not challenge nor disagree with whether SB 774 implicates the First Amendment. Instead, Defendants insist Plaintiffs' First Amendment challenge is not subject to strict scrutiny review but is 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* Resp. at 3–6. Defendants then argue that Plaintiffs have not established a substantial likelihood of success because they failed to argue a lack of substantial relation between the financial disclosure requirements of Form 6 and the government interests at stake. *Id.*

Citing the 2023 Annual Report's finding that there has been a "steady, upward trend" of the number of ethical complaints, Defendants argue that a substantial relation exists between the Form 6 requirements and compelling government interests. Defendants aver 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).

Defendants also assert that Plaintiffs have failed to allege a substantial threat of irreparable injury, based on the July 1, 2024, deadline, pointing to the 60-day grace period the officials have within which to file Form 6 before penalties are imposed. Resp at 12 (citing § 112.3144(8)(c), Fla. Sta. (2023)). Defendants further contend that the issuance of a

preliminary injunction would disrupt the status *quo* because approximately 127 elected municipal officials have already filed Form 6. According to Defendants, requiring municipal officials to file the less-comprehensive Form 1 from now on would confuse the public and frustrate the compelling government interests that Form 6 is meant to address. Resp. at 12–13. Finally, Defendants disagree with Plaintiffs regarding the bond requirement and argue that a bond should be required if an injunction is ordered.

3. Plaintiffs' Reply.

In their Reply in Support of the Motion for Preliminary Injunction [ECF No. 18], Plaintiffs argue that although courts have referred to the "exacting scrutiny" standard in compelled, content-based non-commercial speech cases, the substantive analysis in even those cases nonetheless involves a strict scrutiny review. Reply at 2–3. Plaintiffs point out that Defendants do not dispute that Form 6 compels content-based, non-commercial speech and argue that regardless of which standard applies, SB 774 fails under both the strict scrutiny and exacting scrutiny analyses. According to Plaintiffs, even if the law does not have to be the *least restrictive* means to further the governmental interest at stake, the government is still obligated to consider *less intrusive* alternatives, and Defendants have failed to demonstrate *any* relationship between the identified interests of protecting against the abuse of the public trust and the change to or need for the more fulsome financial disclosure requirements mandated by SB 774. Reply at 3, 5–6.

Plaintiffs also challenge the bases proffered by Defendants in support of the need for Form 6. Specifically, Plaintiffs point to the record referred to by Defendants as the "steady, upward trend" in the number of ethics complaints and contend that the record actually reveals that, in the five years prior to SB 774's enactment, the total number of complaints has been in

the same range each year and that the number of complaints against municipal elected officials in 2022 was actually lower than in any of the previous four years. Reply 7–8. Plaintiffs also dispute Defendants' suggestion that the elected municipal officials may be more susceptible to corruption if they are wealthier, noting Defendants offer no analysis or data to support such a claim. *Id.* at 8–9. And, Plaintiffs argue that Defendants have altogether failed to demonstrate a substantial relationship between the interests at stake and the change to the heightened disclosure requirements of Form 6 *vis-a-vis* the previously required disclosure requirements of Form 1. *Id.* at 9.

Finally, Plaintiffs argue that the loss of First Amendment freedoms, even where minimal, constitutes irreparable injury and that the true "status *quo*," as argued by Defendants, is not the new law as enacted but, rather, the financial disclosure requirement applicable to municipal elected officials in the nearly fifty years prior to SB 774's enactment. Plaintiffs also assert that Defendants ignore the case law providing that the bond requirement is waived "where the injunction was imposed against the continued enforcement of an unconstitutional law." *Id.* at 10 (citing *Vigue*, 2019 WL 1993551 at *2–3).

4. The April 22, 2024, Hearing And Supplemental Briefs.

The undersigned held a hearing on April 22, 2024, to address the Motion for Preliminary Injunction and take evidence. [ECF No. 27]. Defendants did not offer any additional evidence, studies, or data at the hearing. At the conclusion of the hearing, the Court directed Defendants to file supplemental briefing regarding 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 that 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 argue, 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 persist in their previous contention that if the law does raise First Amendment concerns warranting heightened scrutiny, then, at most, exacting scrutiny applies. *Id.* at 3.

Defendants now argue 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, 211 (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.* at 4.

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 includes none. Apparently conceding there is no evidence in the record to support the purported need for the change from Form 1 to Form 6, Defendants point to the multiple government interests at stake and claim that because the interests underlying SB 774 are the same as those underlying the original Sunshine Amendment, the legislature did not need to "waste time" rehashing those interests in Staff Analyses, Committees, or floor debates. *Id.* at 6. Thus, Defendants contend 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.

In their Supplemental Response, Plaintiffs point out that Defendants failed to identify evidence in the legislative record to demonstrate that SB 774 was necessary, reasonably tailored, or substantially related to the identified government interests. *See* Supp. Resp. at 2–3. Plaintiffs then argue, as before, that Defendants have failed to establish a need for the change from the Form 1 to the Form 6 disclosure requirement. *Id.* at 3–4. That is, although the identified government interests justify the disclosure requirements presently in place (Form 1), Defendants have not identified a need for additional disclosure requirements based on evidence, data, or studies. Plaintiffs also argue that the Supreme Court's determination that it may rely on history in *Burson* does not apply here. And, even if the *Burson* exception does apply, history does not support or justify the need for the imposition of the added requirements of Form 6 from municipal officials over and above the Form 1 requirements previously in place. *Id.* at 4–8. Plaintiffs otherwise contend that Defendants' restatements of the governmental interests at stake are unavailing. *Id.* at 13.

The Court has carefully considered all of the parties' memoranda, authority, and supporting evidence.

LEGAL STANDARD APPLICABLE TO PRELIMINARY INJUNCTIONS

To obtain a preliminary injunction, a party must demonstrate "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." *Schiavo ex. rel*

Schindler v. Schiavo, 403 F.3d 1223, 1225–26 (11th Cir. 2005) (per curiam) (citations omitted). "[T]he third and fourth factors 'merge when, as here, the [g]overnment is the opposing party.'" *Messina v. City of Fort Lauderdale, Fla.*, 546 F. Supp. 3d 1227, 1237 (S.D. Fla. 2021) (Altman, J.) (second alteration in original) (internal quotation marks omitted) (quoting *Gonzalez v. Governor of Georgia*, 978 F.3d 1266, 1271 (11th Cir. 2020)).

"A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the 'burden of persuasion' as to the four requisites." *All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc.*, 887 F.2d 1535, 1537 (11th Cir. 1989) (quoting *United States v. Jefferson County*, 720 F.2d 1511, 1519 (11th Cir.1983)). "[W]here facts are bitterly contested and credibility determinations must be made to decide whether injunctive relief should issue," district courts must hold an evidentiary hearing on the propriety of injunctive relief. *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1312 (11th Cir. 1998 (citing *All Care Nursing Serv.*, 887 F.2d at 1538). At that hearing, the court sits as factfinder. *See Four Seasons Hotels And Resorts, B.V. v. Consorcio Barr, S.A.*, 320 F.3d 1205, 1211 (11th Cir. 2003) ("Where conflicting factual information places in serious dispute issues central to a party's claims and much depends upon the accurate presentation of numerous facts, the trial court errs in not holding an evidentiary hearing to resolve these hotly contested issues." (cleaned up) (citation and quotation marks omitted)).

ANALYSIS

A. The Likelihood Of Success On The Merits.

Plaintiffs contend they are likely to succeed on the merits on the ground that SB 774's requirement that certain individuals file Form 6, as applied to Plaintiffs, is compelled, content-based, non-commercial speech in violation of the First Amendment because Defendants have

failed to show that SB 774's requirement that Plaintiffs file Form 6, as opposed to the previously required and less comprehensive Form 1, is the least restrictive means of addressing the government interests at stake. And, even if Defendants are only required to demonstrate a substantial relationship between SB 774's Form 6 requirement and the government interests, they have failed to do that as well. As set out above, Defendants now contend that the law does not implicate the First Amendment and that even if it did, Plaintiffs have not demonstrated a likelihood that they will succeed in establishing a First Amendment violation because Defendants have shown a substantial relation between the law and the government interests at stake.

In assessing whether the law likely violates the First Amendment, the Court must initially consider whether it triggers First Amendment scrutiny in the first place—*i.e.*, whether it regulates "speech" within the meaning of the Amendment at all. *See Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 6 F.4th 1247, 1254 (11th Cir. 2021). In other words, the Court must determine whether the compelled disclosure of detailed financial information by candidates for elected office is First-Amendment-protected activity. If it is, then the Court must proceed to determine what level of scrutiny applies and whether the law's provisions survive that scrutiny. *See Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale* ("*FLFNB II*"), 11 F.4th 1266, 1291 (11th Cir. 2021).

1. Whether SB 774 Implicates The First Amendment.

The First Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, prescribes that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. 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." *NetChoice, LLC v. Att'y Gen., Fla.*, 34 F.4th 1196, 1203 (11th Cir. 2022)[9] (quoting *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 804 (2019)). It is well established that this protection "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, falls within the purview of the First Amendment. *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.'"); *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").

The Supreme Court has 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) ("[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" (citing *Bartnicki v. Vopper,* 532 U.S. 514, 527 (2001))); *see also Rubin v. Coors Brewing Co.,* 514 U.S. 476, 481 (1995) ("information on beer labels" is speech); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.,* 472 U.S. 749, 759 (1985) (credit report is "speech"). As the *Sorrell* Court explained, "Facts, after all, are the beginning point for much of the speech

[9] *Cert. granted in part sub nom. Moody v. NetChoice, LLC*, 144 S. Ct. 478 (2023), and *cert. denied sub nom. NetChoice, LLC v. Moody*, 144 S. Ct. 69 (2023).

that is most essential to advance human knowledge and to conduct human affairs." 564 U.S. at 570.

Although they originally agreed that the challenged law is subject to First Amendment scrutiny, in their Supplemental Brief, Defendants contend that there is no legal authority supporting Plaintiffs' claim that SB 774 implicates the First Amendment. Supp. Brief at 1. Defendants' new contention is not well taken for several reasons. First, they likely waived that argument by failing to raise it in their initial Memorandum and then failing to seek leave of Court to inject it into the Supplemental Brief.[10] Second, by asserting this new theory, Defendants are directly contradicting their own positions, arguments, and authority relied on in their Response to the Motion for Preliminary Injunction, in which they argue that Plaintiffs' claims are subject to exacting scrutiny review because they are challenging disclosures under the First Amendment and never once suggest the challenged law does not fall within the First Amendment. *See generally* Response. Third, they, at best, ignore Plaintiffs' Motion (and, at worst, misrepresent what it says) when stating that Plaintiffs offer no authority for the claim that the compelled disclosure of financial information at issue here implicates First Amendment scrutiny. Plaintiffs' Motion cites ample authority to support that view. It is Defendants who rely on no authority in support of the contrary view, save for a 1978 decision from the former Fifth Circuit that does not address the question of whether compelled disclosure of information is subject to First Amendment protection and that predates a long line of Supreme Court and Eleventh Circuit precedent holding that it does. *See, e.g.*, Supp. Brief at 2–3 (citing *Plante v. Gonzalez*, 575 F.2d 1119 (5th Cir. 1978)).

[10] *See In re Egidi*, 571 F.3d 1156, 1163 (11th Cir. 2009) ("Arguments not properly presented in a party's initial brief or raised for the first time in the reply brief are deemed waived.").

In any event, based on the authority set forth above, this Court finds that where, 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. Thus, the Court next considers what level of scrutiny applies.

2. Whether Strict Scrutiny Or Exacting Scrutiny Applies.

The level of scrutiny the Court must impose in evaluating the constitutionality of a law that compels speech typically depends on whether the law is content-based or content neutral. "[A] content-neutral regulation of expressive conduct is subject to intermediate scrutiny, while a regulation based on the content of the expression must withstand the additional rigors of strict scrutiny." *NetChoice*, 34 F.4th at 1223 (quoting *FLFNB II*, 11 F.4th at 1291; and citing *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 643–44, 662 (1994)).

To determine whether a law is content-based, courts consider whether the law "suppress[es], disadvantage[s], or impose[s] differential burdens upon speech because of its content," *Turner*, 512 U.S. at 642—*i.e.*, if it "applies to particular speech because of the topic discussed or the idea or message expressed," *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). A law can be content-based either because it draws "facial distinctions . . . defining regulated speech by particular subject matter" or because, though facially neutral, it "cannot be justified without reference to the content of the regulated speech." *Id.* at 163–64 (internal quotation marks omitted) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). In *Riley v. Nat'l Federation of the Blind*, 487 U.S. 781, 795 (1988), the Supreme Court held, "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."

Importantly, "[l]aws that are *content neutral* are . . . subject to lesser scrutiny" than strict scrutiny. *Reed*, 576 U.S. at 172.

As in *Riley*, the Court finds 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.

Content-based compelled speech regulations are, ordinarily, subject to a standard of scrutiny more demanding than rational basis and intermediate scrutiny. As Defendants point out, there is a substantial body of Supreme Court precedent dictating that disclaimer and disclosure requirements are subject to exacting scrutiny. Notably, a review of cases applying the strict scrutiny and exacting scrutiny standards reveals that a content-based regulation compelling speech that fails to pass constitutional muster under exacting scrutiny necessarily fails strict scrutiny. *See, e.g.*, *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 622 (2021) (Alito and Gorsuch, J. concurring). Because the parties dispute the applicable level of scrutiny, the Court briefly discusses the two levels of scrutiny at issue below.

Strict scrutiny, which has historically been applied to the analysis of laws compelling content-based speech, "requires the Government to prove that the [regulation] furthers a compelling interest and is narrowly tailored to achieve that interest." *Reed*, 576 U.S. at 171. However, as noted above, the Supreme Court has enunciated a different standard in cases involving compelled disclosures of information. For example, in *Citizens United v. Federal Election Commission*, 558 U.S. 310, 366–67 (2010), the Supreme Court expressed that disclaimer and disclosure requirements should be subject to exacting scrutiny, "which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently

important' governmental interest." (quoting *Buckley v. Valeo*, 424 U.S. 1, 64, 66 (1976)). In *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 585 U.S. 878, 894 (2018), the Court applied the exacting scrutiny standard in the context of compelled subsidization of private speech. As the Court explained, "Under 'exacting' scrutiny, . . . a compelled subsidy must 'serve a compelling state interest that cannot be achieved through'" significantly less restrictive means. *Id.* at 894 (quoting *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 310 (2012)). In doing so, the Court pointed out that this standard is "a less demanding test than the 'strict' scrutiny." *Id.* More recently, however, the Court recognized in *Americans for Prosperity Foundation v. Bonta*, that "while exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it *does* require that they be narrowly tailored to the government's asserted interest." 594 U.S. at 608 (emphasis added).

While there does not appear to be any binding precedent dictating the correct standard to apply in the specific circumstances presented in this case, the undersigned finds 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. Nevertheless, because the Court finds that the law at issue here satisfies neither standard, this Court need not decide which one 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*, if the law fails to pass muster under the exacting scrutiny test, it necessarily fails under strict scrutiny. *Id.* at 622. Therefore, this Court will apply exacting scrutiny to the analysis of SB 774.

Importantly, to satisfy exacting scrutiny, the government must "demonstrate its need . . . in light of any less intrusive alternatives" and is not "free to enforce any disclosure regime that furthers its interests." *Id.* at 613. Further, "the Supreme Court has held that a governmental entity bears the evidentiary burden of demonstrating that it 'seriously undertook to address the problem with less intrusive tools readily available to it.'" *Messina*, 546 F. Supp. at 1251 (quoting *McCullen v. Coakley*, 573 U.S. 464, 494 (2014)). In other words, the government cannot demonstrate it seriously undertook to address the compelling interest by way of less intrusive means without first *considering* those less intrusive means. The government can satisfy this burden by pointing to the legislative record where it undertook the consideration of less intrusive means—*i.e.*, by pointing to evidence that "it investigated, studied, or even solicited reports on the issue." *Messina*, 546 F. Supp. 3d at 1251.

Applying the exacting scrutiny standard, this Court thus considers whether SB 774 is substantially related to a compelling state interest, which, as discussed above, requires the State to demonstrate that it considered whether there were less intrusive means available to achieve those state interests.

3. Whether Plaintiffs Have Demonstrated A Substantial Likelihood of Success On The Merits Of Their Claim That SB 774 Fails Exacting Scrutiny.

The Court now turns to the question of whether Plaintiffs have clearly established a substantial likelihood of success on their claim that SB 774 does not survive exacting scrutiny.

a. Compelling Government Interests.

Initially, the Court notes that, as discussed above, the parties agree that SB 774's goals of deterring corruption, increasing transparency and public trust in government, and avoiding conflicts of interest all constitute compelling state interests. The Court agrees that these interests constitute compelling interests, and, in fact, these interests justified the need for the

Sunshine Amendment nearly fifty years ago. While these interests remain no less compelling now, it is not clear from the record before the Court that these interests compel a change to increased disclosure requirements for Plaintiffs. In any event, this Court is satisfied that compelling government interests are at stake.

b. 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 they seriously undertook to address the compelling government interests advanced by SB 774's Form 6 disclosure requirement by less intrusive means. Phrased differently, the 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 even considered whether the use of the less intrusive Form 1 requirement previously in place (or any other less burdensome requirement) is inadequate. To prevail here, Defendants need to point to 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). After a thorough and careful consideration of the record, this Court concludes that Defendants have failed to establish that the State seriously undertook the consideration of less intrusive means to address the identified interests.

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 adequate. 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 compelling interests at stake here (deterring corruption and conflicts of interest, bolstering public confidence in state government, and educating the public). At the April 22 evidentiary hearing, the Court expressly directed Defendants to supplement the Court record with evidence that the State considered other means to address the identified issues. In their Supplemental Brief, Defendants provide no such evidence.

So too, 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 revealed none. The Analyses, while detailed and thorough, lack any evidence of a justification or reason for the change from Form 1 to Form 6 and lack any evidence that a less intrusive alternative was seriously considered. To the contrary, it is not at all clear from the legislative record that anyone had determined that Form 1 was not adequately addressing the State interests or, if it was not, that anyone gave any serious consideration to whether a less intrusive alternative to Form 6 might address the State's concerns.

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. What it does not show is that the law was necessary or substantially related to the interests at stake. And, although raised, less intrusive alternatives were summarily, and without explanation, shot down in favor of SB 774's brightline standard for *all* municipal elected officials and candidates. *See* Ex. J17 at 16:1–

5; Ex. J18 at 8:10–13, 20–21, 8:23–25, 9:1–3. As Plaintiffs correctly point out, the COE's Annual Reports are also 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. Even if it were true that complaints against public officials are on the rise, this does not serve as evidence that SB 774's comprehensive disclosure requirements are substantially related to those complaints or that a less burdensome measure could not be used to address these concerns.

Thus, this Court is not satisfied that Defendants have 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.

c. History, Substantial Consensus, and Common Sense.

Defendants rely on the *Burson* opinion for the proposition that "history, [] substantial consensus, and simple common sense," 504 U.S. at 211, sufficiently demonstrate that SB 774 is necessary to serve legitimate and substantial state interests. Defendants' reliance on *Burson* is misplaced. 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. Indeed, history, substantial consensus, and common sense all dictate that financial disclosure requirements for public officials are justified and necessary. Florida's Sunshine Amendment has been in place since 1976, and Plaintiffs are not suggesting that the law is not warranted or justified. This Court finds, therefore, that *Burson* does not excuse the State from justifying the changes put in place by SB 774.

Instead, the issue now before this Court 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 compelling interests identified by the State. The record before this Court does not demonstrate that any change to the disclosure requirements for municipal officials is 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 609 (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 fulsome financial disclosure requirements, and history does not support or justify the need for 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.

Accordingly, for the reasons stated above, the undersigned finds that Plaintiffs have demonstrated a reasonable likelihood that they will succeed on the merits of their claim.

B. Whether Plaintiffs Will Suffer Irreparable Harm.

Defendants contend that Plaintiffs fail to demonstrate a substantial threat of irreparable injury because SB 774 provides for a 60-day grace period to file Form 6 before penalties are imposed. In so arguing, Defendants ignore precedent, cited by Plaintiffs, holding 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) (quoting *Elrod v. Burs*, 427 U.S. 347, 373 (1976)).

Based on this precedent, this Court finds that because SB 774's Form 6 disclosure requirements on municipal elected officials and candidates likely unconstitutionally compels content-based speech, continued enforcement, for even minimal periods of time, constitutes a *per se* irreparable injury. The Court also finds unpersuasive Defendant's argument that the

grace period before penalties are imposed somehow means Plaintiffs are not harmed by the law in light of the fact they are already required to comply with the law. As Defendants point out, at least 127 officials have already done so. In fact, the record shows that the law has already had a chilling effect on officials in municipal office, as evidenced by the approximately 125 resignations between the enactment of SB 774 and its effective date. *See* ECF No. 19 at 5.

Therefore, this Court finds that Plaintiffs have demonstrated that they will suffer irreparable harm if an injunction is not granted.

C. Whether The Threatened Injury Outweighs The Potential Harm From An Injunction And Whether An Injunction Serves The Public Interest.

As stated above, when the government opposes the issuance of a preliminary injunction, the third and fourth requisites for injunctive relief merge. *See Otto*, 981 F.3d at 870; *see also Messina*, 546 F. Supp. 3d at 1254. Thus, "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.'" *Messina*, 546 F. Supp. 3d at 1253–54 (quoting *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010)). The Court agrees with Plaintiffs that, in light of the recent resignations of numerous municipal officials affected by SB 774, it is crucial to prioritize the public interest by ensuring that SB 774's ongoing existence and enforcement not unnecessarily discourage more people from serving in government roles. Defendants offer little to rebut the showing of irreparable harm from the enforcement of SB 774. Their argument that an injunction will upset the status *quo* is unavailing, as Plaintiffs contend, because the status *quo* is the forty years preceding the enactment of SB 774 rather than the five months since it went into effect.

Accordingly, Plaintiffs have also met the third and fourth requirements for injunctive relief. The Court finds Plaintiffs have clearly established their burden of persuasion as to the four requisites for injunctive relief.

D. The Appropriate Scope Of The Injunction.

Having determined that an injunction is warranted, the Court next considers the appropriate scope of the injunction. Although Defendants argue that Plaintiffs' Motion for Preliminary Injunction should be denied altogether, they contend, in the alternative, that "[i]njunctive relief should be limited in scope to the extent necessary to protect the interests of the parties." Resp. at 13 (quoting *Keener v. Convergys Corp.*, 342 F.3d 1264, 1269 (11th Cir. 2003); and citing *Thomas v. Bryant*, 614 F.3d 1288, 1317–18 (11th Cir. 2010)). Defendants also point to the decision in *Garcia v. Executive Director, Florida Commission on Ethics*, No. 23-12663, ECF No. 36 (11th Cir. Nov. 30, 2023), in which the Eleventh Circuit recently stayed enforcement of a preliminary injunction order because the district court did not explain the need to extend the preliminary injunction beyond the single plaintiff in that case.

In their Reply, Plaintiffs respond that the injunction should apply statewide because SB 774 compels all municipal officials throughout the State to file a Form 6 and the unconstitutionality of the law is not dependent on facts unique to Plaintiffs. Reply at 11 n.8 (citing *Rodgers v. Bryant*, 942 F.3d 451, 457–58 (8th Cir. 2019)).

Initially, this Court observes that *Keener* is not determinative of the issue before it, at least insofar as Defendants rely on it to prevent a statewide injunction. In *Keener*, the Eleventh Circuit reversed the district court's injunction only to the extent it applied nationwide but affirmed the injunction to the extent it applied statewide. *See* 342 F.3d at 1269. Likewise, the *Garcia* decision offers little support for Defendants because in that case, there was only one

Plaintiff and, as the Eleventh Circuit pointed out, the district court did not explain why the injunction should apply statewide. *Garcia*, No. 23-12663, ECF No. 36 at 2–3.

"Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Trump v. Int'l Refugee Assist. Project*, 582 U.S. 571, 579 (2017). This Court is mindful of the "national conversation taking place in both the legal academy and the judiciary concerning the propriety of courts using universal injunctions as a matter of preliminary relief," recognized by my colleague in the Southern District of Florida in weighing the propriety of a statewide preliminary injunction. *See Farmworker Ass'n of Fla., Inc. v. Moody*, No. 23-CV-22655 (S.D. Fla. May 22, 2024), ECF No. 101 at 1 (Altman, J.) (quoting *Walls v. Sanders*, No. 4:24-CV-00270-LPR, 2024 WL 2127044, at *22 (E.D. Ark. May 7, 2024)).

Under the circumstances presented in the instant case, this Court finds that statewide injunctive relief is warranted. As Plaintiffs point out, the law requires compliance by all municipal officials throughout the State, regardless of their specific circumstances. Moreover, a preliminary injunction limited only to the Plaintiffs who have joined this case so far would engender needless follow-on litigation. Because the injunction is not based on facts limited to Plaintiffs' circumstances, all of the other municipal officials subject to this law will be able to file near-identical suits to obtain the same relief. *See, e.g., Koe v. Noggle*, 688 F. Supp. 3d 1321 (N.D. Ga. 2023) (refusing to grant an injunction only as to the plaintiffs because, "if a plaintiffs-only injunction issued, follow-on suits by similarly situated non-plaintiffs based on this [c]ourt's order could create needless and 'repetitious' litigation," and because "affording [p]laintiffs complete relief without a facial injunction would be, at best, very burdensome for [p]laintiffs and the [c]ourt [and,] [a]t worst, . . . practically unworkable"). This reality is readily

apparent from the fact that Plaintiffs have already amended the Complaint in this case three times to add additional plaintiffs. And, as noted above, Defendants offer no persuasive authority for why statewide application of the injunction is not appropriate in this case.

For the reasons set forth above, this Court finds that statewide application of the injunction is appropriate.

E. Whether Plaintiffs Must Post an Injunction Bond.

Plaintiffs submit that they should not be required to post an injunction bond because "public interest litigation is a recognized exception to the bond requirement." Mot. at 20 (quoting *Vigue*, 2019 WL 1993551 at *3). Defendants offer no contrary authority. The Court agrees that "public-interest litigation [constitutes] an area in which the courts have recognized an exception to the Rule 65 security requirement." *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981). Therefore, under the circumstances presented here, the bond requirement should and will be waived.

CONCLUSION

In sum, a review of the record reflects that the State enacted SB 774 without giving serious consideration to whether the government interests at stake could be addressed through less burdensome alternative means. It is not apparent from the record that a change from the Form 1 requirement to the Form 6 requirement was necessary nor that SB 774 is substantially related to the State's identified interests.

For the reasons set forth herein, the Court finds that Plaintiffs have satisfied their burden of establishing a reasonable likelihood of success on the merits of their claim that SB 774, as applied to them, impermissibly compels content-based speech in violation of the First

Amendment. Therefore, Plaintiffs are entitled to an injunction enjoining enforcement of SB 774.

Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. Plaintiffs' Expedited Motion for Preliminary Injunction [ECF No. 10] is **GRANTED**.
2. SB 774 is **PRELIMINARILY ENJOINED**.
3. The posting of a bond is not required for enforcement of the relief herein.
4. Defendants must take no steps to enforce SB 774 unless otherwise ordered. This preliminary injunction binds Defendants and their officers, agents, servants, employees, and attorneys—and others in active concert or participation with them—who receive actual notice of this injunction by personal service or otherwise.

DONE AND ORDERED in the Southern District of Florida, this 10th day of June, 2024.

MELISSA DAMIAN
UNITED STATES DISTRICT JUDGE

CC: All Counsel of Record

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

PRESIDENT OF TOWN COUNCIL ELIZABETH A. LOPER, elected official of the Town of Briny Breezes, *et al.*,

Plaintiffs,

vs.

ASHLEY LUKIS, in her official capacity as Chair of the Florida Commission on Ethics, *et al.*,

Defendants.
_____/

Case No. 1:24-cv-20604-MD

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by and through their undersigned counsel, and pursuant to Federal Rule of Civil Procedure 56(a) and Local Rule 56-1, file this motion for summary judgment, and, as support, state as follows:

INTRODUCTION

This is an action by ***175 Florida elected municipal officials*** challenging a law ("SB 774") that compels all elected municipal officials in office as of and after January 1, 2024, to utter very specific statements, in writing and available to everyone in the world through the Internet, regarding their personal finances. But for the preliminary injunction entered by this Court [ECF No. 40], each of the Plaintiffs would have been compelled to make these statements on or before July 1, 2024 (and by July 1 of every year thereafter). The compelled statements would have included, among other things, stating the exact amount of their net worth and income, the total dollar value of their household goods, and the precise value of every asset and amount of every liability over $1,000, other than household goods. An elected municipal official's failure to make these written, public statements would result in significant fines, civil penalties, and potential removal from office.

Prior to the enactment of SB 774, elected municipal officials in Florida were required to provide more limited financial disclosures, including sources (but not amounts) of income, identification (but not values) of primary assets, and identification (but not amounts) of large liabilities, through a document called "Form 1." *See* Fla. Stat. § 112.3145. Section 112.3144, as

amended by SB 774, now mandates that all elected municipal officials file a "Form 6," which entails far more intrusive financial disclosures than those required in a Form 1. The speech compelled by SB 774 through Form 6 is undoubtedly content-based—municipal elected officials are required to say specific words and compliance with (or violation of) the law can be determined only by examining the content of the words uttered by the elected officials.

The United States Supreme Court has consistently held that a law that compels content-based, non-commercial speech is subject to a high level of scrutiny, described either as "strict scrutiny" or "exacting scrutiny." SB 774 cannot satisfy either level of scrutiny. The legislative record contained no empirical examples, expert studies, analysis, or other evidence showing that the additional financial disclosures required by Form 6 (*e.g.*, the disclosure of exact net worth, exact income, and precise values of household goods and other assets and liabilities), as compared to Form 1 (which required disclosure of sources, but not amounts, of income and identification, but not values or amounts, of assets and liabilities), have any bearing on municipal elected officials' public service or prevent (or even relate) to conflicts of interest or public corruption. The legislative record did not contain even one example of a situation where a public official's violation of conflict of interest or other ethics laws was discovered (or would have been discovered) or prevented through the additional financial disclosures made in a Form 6 as opposed to a Form 1.

The legislative record similarly shows that the Legislature never undertook to address conflict and corruption issues through less intrusive tools, such as continuing with Form 1, slightly modifying Form 1 to lower the threshold amounts for disclosure of sources of income and ownership of assets, or utilizing forms that have been successfully used in other states. There was no evidence in the legislative record that Form 1 disclosures were insufficient or that other less restrictive alternatives would not have adequately served the alleged compelling state interests.

Accordingly, on June 10, 2024, the Court entered a preliminary injunction enjoining defendants from enforcing SB 774 statewide. [ECF No. 40]. Despite having an opportunity to do so, Defendants did not appeal the entry of the preliminary injunction. Plaintiffs now seek a summary judgment (i) declaring that the portion of SB 774 that requires municipal elected officials and candidates to file a Form 6 rather than a Form 1 violates the First Amendment to the United States Constitution and is invalid, and (ii) permanently enjoining Defendants from enforcing that portion of SB 774.

FACTUAL BASIS FOR SUMMARY JUDGMENT

The facts supporting Plaintiffs' motion for summary judgment are set forth in the Joint Statement of Undisputed Facts [ECF No. 56] and Plaintiffs' Statement of Material Facts [ECF No. 60].[1]

ARGUMENT

I. Freedom From Compelled Speech is Protected by the First Amendment.

The Free Speech Clause of the First Amendment, which is applicable to the states through the Fourteenth Amendment, provides that "Congress shall make no law ... abridging the freedom of speech." U.S. Const., amend. I. The Supreme Court has explained that the Free Speech Clause protects not only a person's right to speak freely but also shields the inverse—"the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). The prohibition against compelled speech is not limited to compelled statements of opinion or values—it applies equally to compelled statements of fact, as required by Form 6. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011) (stating "the creation and dissemination of information are speech within the meaning of the First Amendment"). Thus, "compelled statements of fact" are accorded as much constitutional protection as "compelled statements of opinion" because "either form of compulsion burdens protected speech." *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 797–98 (1988) (applying First Amendment to compelled disclosure of the percentage of charitable contributions actually turned over to charity); *see also Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995) (holding the "general rule[] that the speaker has the right to tailor the speech[] applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid").

Here, Plaintiffs are forced by section 112.3144—as well as the threat of fines, penalties and other enforcement set forth in section 112.317, Florida Statutes—to engage in specific speech (namely, publicly disclosing to the public their exact net worth, income, asset values and other personal financial information required by Form 6). [*See* ECF No. 56 ¶¶ 7–8; ECF No. 56-2]. Thus, Plaintiffs' right not to be compelled to submit a Form 6 to the Commission on Ethics and

[1] Plaintiffs' Statement of Material Facts shall be referred to as "PSOF ¶ __".

communicate highly personal information falls under protected speech pursuant to the First Amendment.

II. SB 774 Should be Subjected to a High Level of Constitutional Scrutiny.

From the outset of this litigation, the parties have recognized that a high level of constitutional scrutiny should be applied to SB 774, with Plaintiffs contending that "strict scrutiny" applies [ECF No. 10 at 9–13; ECF No. 54 at 23–25], and Defendants contending that "exacting scrutiny" applies [ECF No. 15 at 3, 6; ECF No. 16 at 2, 4–5].[2] As argued below, *and as already found by the Court in the Preliminary Injunction Order*[3] [ECF No. 40], it does not matter which standard applies—Defendants cannot meet either test.

A. SB 774 Should be Subjected to Strict Scrutiny.

Laws that impinge upon the exercise of free speech can generally be divided into two general categories—content-based laws and content-neutral laws. *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018) ("*NIFLA*"). A content-based law is subject to

---

[2] Contradicting their repeated statements that exacting scrutiny applies in this case, Defendants oddly argued for the first time in their Supplemental Preliminary Injunction Briefing [ECF No. 34] that SB 774 does not implicate the First Amendment at all. This argument was rejected by the Court in the Preliminary Injunction [ECF No. 40 at 20–21] and, if asserted in connection with this Motion, should be rejected again because, as this Court ruled, "where, as here, a law compels disclosure of financial information the speakers would not have otherwise disclosed, the law burdens speech and does fall within the purview of the First Amendment." [ECF No. 40 at 21]; *see also NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1117 (9th Cir. 2024) (recognizing that it is "well-established that the forced disclosure of information … triggers First Amendment scrutiny") (citing *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011)).

[3] Although not binding, the Court's legal determinations in the Preliminary Injunction Order should direct and inform its determination of how to decide this Motion because Defendants did not appeal the Preliminary Injunction Order, there has been no new evidence presented since the entry of the Preliminary Injunction Order, and there has been no intervening change in the controlling law. *See, e.g., Arizona v. California*, 460 U.S. 605, 618 (1983) ("[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case."); *United States v. Uccio*, 940 F.2d 753, 757 (2d Cir. 1991) ("The court's exercise of its power to reconsider and modify its prior interlocutory rulings is informed by the second branch of the law-of-the-case doctrine . . . that when a [trial] court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case."); *In re Cone Constructors, Inc.*, 304 B.R. 513, 520 (Bankr. M.D. Fla. 2003) ("When a trial court has ruled on an issue, but the appellate court has not made a determination of that issue, the trial court's earlier decision should direct, but not limit, the court's determination of the issue at a subsequent stage.").

strict scrutiny and, as a result is "presumptively unconstitutional." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *see also Otto v. City of Boca Raton*, 981 F.3d 854, 868 n.6 (11th Cir. 2020) (observing that "[c]ases where th[e strict scrutiny] standard is met are few and far between" (collecting cases)). Meanwhile, a content-neutral restriction—regulations based on the time, place or manner of speech— "must withstand only intermediate scrutiny...." *Messina v. City of Fort Lauderdale*, 546 F. Supp. 3d 1227, 1237 (S.D. Fla. 2021) (quoting *McCullen v. Coakley*, 573 U.S. 464, 477 (2014)).

The Supreme Court in *Reed* made clear that a law that "expressly draws distinctions based on ... communicative content" is a facial content-based restriction. 576 U.S. at 165. "Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose." *Id.* at 163. "Both are distinctions drawn based on the message a speaker conveys...." *Id.* at 163–64. If a law is content-based on its face (like here), the Court's inquiry stops there, and the law is subject to strict scrutiny analysis, "***regardless*** of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech." *Id.* at 165 (emphasis added) (quotations omitted).[4] "[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." *Id.* at 169.

Here, the challenged law is content-based on its face because, "[b]y compelling individuals to speak a particular message," SB 774 "alter[s] the content of their speech." *See NIFLA*, 585 U.S. at 766 (quotations omitted).[5] Specifically, among other things, the newly mandated Form 6 requires all elected municipal officials, in writing and available to the world on the Internet, to:

---

[4] If a law does not facially restrict content, then a court would proceed to the second step of the *Reed* analysis—assessing whether the law can be "justified without reference to the content of the regulated speech" or whether the law was "adopted by the government because of disagreement with the message the speech conveys." 576 U.S. at 163 (alteration adopted) (quotations omitted). "Those laws, like those that are content based on their face, must also satisfy strict scrutiny." *Id.*

[5] As noted by Justice Breyer in his dissent in *NIFLA*, "[v]irtually every disclosure law could be considered 'content based,' for virtually every disclosure law requires individuals 'to speak a particular message.'" 585 U.S. at 782 (Breyer, J., dissenting); *see also Washington Post v. McManus*, 355 F. Supp. 3d 272, 296 (D. Md.) (stating the "general rule that compelled disclosure laws, like all content-based regulations, must overcome strict scrutiny"), *aff'd* 944 F.3d 506 (4th Cir. 2019) (affirming without deciding what level of scrutiny applies); *NetChoice, LLC*, 113 F.4th

- say the words "My Net Worth as of December 31, 2023 was $[AMOUNT],"
- say the words "The aggregate value of my household goods and personal effect[s] is ___,"
- describe and state the value or amount of all other assets and liabilities over $1,000, and
- identify every source of income in excess of $1,000, including the name and address of the source of income and the precise amount of the income (or, alternatively, to attach a copy of their federal income tax return, including all exhibits).

[ECF No. 56-2]. Thus, SB 774 restricts the freedom of a local elected official's speech by forcing the recital of a "government-drafted script" followed by specific financial information. *See NIFLA*, 585 U.S. at 766 (determining that a statute that requires licensed clinics to provide "a government-drafted script about the availability of state-sponsored services" is a content-based restriction on speech); s*ee also Masonry Bldg. Owners*, 394 F. Supp. 3d at 1297 ("By requiring URM building owners to speak a particular government-drafted message through placards, lease application disclosures, and acknowledgments, the Ordinance 'alters the content of their speech.'") (quoting *NIFLA*, 585 U.S. at 766); *Levine v. Fair Pol. Pracs. Comm'n*, 222 F. Supp. 2d 1182, 1190–91 (E.D. Cal. 2002) (granting a preliminary injunction on First Amendment grounds and finding that a California statute that imposed disclosure requirements on slate mailers was an impermissible content-based speech restriction).

---

at 1119–21 (determining that, in a challenge to a California law requiring businesses offering online services likely to be accessed by children to prepare a report identifying any risks of "material detriment to children" arising from the business's data-management practices, the district court "should have subjected the [statutory] report requirement to strict scrutiny . . . because the [statutory] report requirement (1) compels speech with a particular message about controversial issues, and (2) deputizes private actors into censoring speech based on its content"); *Masonry Bldg. Owners of Oregon v. Wheeler*, 394 F. Supp. 3d 1279, 1296 (D. Or. 2019) ("[A] regulation that compels a disclosure is a content-based regulation of speech, subject to heightened scrutiny, unless an exception applies."); Clay Calvert, *Selecting Scrutiny in Compelled-Speech Cases Involving Non-Commercial Expression: The Formulaic Landscape of A Strict Scrutiny World After Becerra and Janus, and A First Amendment Interests-and-Values Alternative*, 31 Fordham Intell. Prop. Media & Ent. L.J. 1, 112 (2020) ("Because compelled-speech mandates invariably require messages that relate to a particular topic or specific subject matter ... they are almost automatically subject to strict scrutiny under the methodology adopted by most courts.").

In addition, the compelled speech here is also content-based because compliance with (and enforcement of) the law can be determined only by examining the content of the words uttered by the municipal elected officials. *See, e.g., Reed*, 576 U.S. at 164 (finding "laws that cannot be 'justified without reference to the content of the regulated speech'" are considered content-based) (citation omitted). Once filed, any member of the public may access an official's Form 6 and then challenge the veracity of a particular disclosure by lodging a complaint with the Commission. [ECF No. 56-27 at 27:3-8]. "If a complaint ... alleges an error or omission on an annual CE Form 6 – Full and Public Disclosure of Financial Interests …, the Executive Director shall determine whether the complaint contains any allegations other than allegations of an immaterial, inconsequential, or de minimis error or omission on the disclosure form." Fla. Admin. Code § 34-5.002(4)(b); *see also* Fla. Stat. § 112.324(1). To determine whether there are any material omissions or errors and, if so, whether to initiate the complaint procedures of section 112.324, the Commission must review the Form 6 disclosure. *See* Fla. Stat. § 112.3144(11). Thus, under certain circumstances, the Commission will have to resort to reviewing the *content* of a Form 6 in deciding whether the disclosures were complete and accurate. *See Nat'l Ass'n for Gun Rts., Inc. v. Motl*, 188 F. Supp. 3d 1020, 1035 (D. Mont. 2016) (ruling that Montana's voting disclosure requirement is content-based on its face and finding that the statute's "disclosure requirement, as well as the requirement to provide a signed statement affirming that the information is accurate and true, are only triggered by a reference to a candidate's voting record").

Closely on point is the Supreme Court's decision in *Riley*. There, the Supreme Court considered a North Carolina law that required "professional fundraisers [to] disclose to potential donors, before an appeal for funds, the percentage of charitable contribution collected during the previous 12 months that were actually turned over to charity." *Id.* at 795. The Court held that the compelled disclosure of that information constituted a content-based regulation that was subject to strict scrutiny. *Id.* ("Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech. We therefore consider the Act as a content-based regulation of speech.").[6] North Carolina attempted to avoid strict scrutiny by asserting that the standard should

[6] Although the *Riley* Court labelled its form of constitutional scrutiny as "exacting scrutiny," its substantive analysis of the law in question involved, in reality, strict scrutiny, requiring "that government not dictate the content of speech absent compelling necessity, and then, only by means precisely tailored." 487 U.S. at 800. Indeed, the test applied in *Riley* has repeatedly been described

be different for compelled speech as opposed to compelled silence. The Court rejected the argument, stating: "There is certainly some difference between compelled speech and compelled silence, but, in the context of protected speech, the difference is without constitutional significance, for the First Amendment guarantees 'freedom of speech,' a term necessarily comprising the decision of both what to say and what *not* to say." *Id*. at 796–97. Similarly, the content-based speech requirement of SB 774 is subject to strict scrutiny.

B. At a Minimum, SB 774 Should be Subjected to Exacting Scrutiny.

Although Plaintiffs contend that strict scrutiny should be applied because SB 774 affects non-commercial, content-based compelled speech, at a minimum "exacting scrutiny" should be applied. Defendants have conceded as much:

> It is well-settled that "First Amendment challenges to disclosure requirements" are subject to "exacting scrutiny." *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010); *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) ("We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes ... must survive exacting scrutiny.") (citing *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 461 (1958)); *Americans for Prosperity Found.*, [594 U.S. 595, 608 (2021)] ("Regardless of the type of association, compelled disclosure requirements are reviewed under exacting scrutiny."); *see Worley v. Florida Sec'y of State*, 717 F.3d 1238, 1245 (11th Cir. 2013) ("Florida's PAC regulations are subject to exacting scrutiny"); *see also id.* at 1251 ("Supreme Court and Circuit precedent has consistently upheld organizational and reporting requirements against facial challenges, in part because crafting such disclosure schemes is better left to the legislature") (quotations omitted).

[ECF No. 16 at 4]. In *NAACP*, *Buckley*, *Doe* and *Americans for Prosperity,* the Supreme Court evaluated disclosure requirements in the context of freedom of association rather than compelled, content-based speech. In *NAACP*, the NAACP argued that Alabama's compelled disclosure of its membership lists will "abridge the rights of its rank-and-file members to engage in lawful association in support of their common beliefs." 357 U.S. at 460. Determining that the freedom to

---

as "strict scrutiny." *See NIFLA*, 585 U.S. 756 (noting that the *Riley* Court "applied strict scrutiny to content-based laws that regulate ... professional fundraisers"); *McConnell v. FEC*, 540 U.S. 93, 140 (2003) (observing that *Riley* treated "solicitation restriction that required fundraisers to disclose particular information as a content-based regulation subject to strict scrutiny"). Even the dissent in *Riley* referred to the scrutiny applied by the majority of the Court as "strict scrutiny." 487 U.S. at 810 (Rehnquist, C.J., dissenting).

associate is an implicit unenumerated right, the Court proclaimed that the government's actions were subject to the "closest scrutiny" and that the government had a burden to prove that interest was "compelling." *Id.* at 460–61, 463. In so stating, the Court held that Alabama "has fallen short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have." *Id.* at 466.

In *Buckley*, litigants challenged the Federal Election Campaign Act's requirement that candidates and political committees disclose and report campaign contributions as violating their freedom of association. 424 U.S. at 62. Citing *NAACP*, the *Buckley* Court stated, "In several situations concerning the electoral process, the principle has been developed that restrictions on access to the electoral process must survive exacting scrutiny." *Id.* at 93–94. Notably, even in applying exacting scrutiny, the Court considered whether the disclosure requirements were narrowly tailored and were the least restrictive means of furthering the governmental interests. *Id.* at 68, 81.

In *Doe*, the sponsor of a petition and several signers sought to enjoin the secretary of state from publicly releasing any documents that would reveal the names and contact information of people who signed the petition, alleging that the Washington Public Records law was unconstitutional as applied to referendum petitions. 561 U.S. at 193. Importantly, the right-to-association challenge there was to the dissemination of the names and contact information by the Attorney General. Unlike here, where Plaintiffs are challenging a law requiring them to compute, compile, and disclose private financial information, which will then be published to the world, the *Doe* plaintiffs had challenged the dissemination of information that had been provided regarding the plaintiffs' affiliations with a particular group. *Id.* at 191–93

The most recent disclosure requirement challenge in the freedom of association context was *Americans for Prosperity*. There, several charities challenged on freedom of association grounds a California law that required them to disclose the names and addresses of major donors over $5,000. 594 U.S. at 141 S. Ct. at 601–03. The information was supposed to remain confidential, but the trial court found that there had been many leaks and that California could not ensure the confidentiality of donors' information.[7] *Id*. at 602–05. The plaintiffs asserted that their

[7] In contrast, the Form 6 compelled statements will automatically be available on the Internet for everyone's viewing pleasure. [ECF No. 56-27 at 27:3-8]; *see also Public Search Results, Florida Commission on Ethics Electronic Financial Disclosure Management System (EFDMS)*,

freedom of association had been unlawfully infringed when the law eliminated donors' anonymity, thereby making donors less likely to contribute and subject them to the risk of reprisals. *Id*. at 603.

The justices in *Americans for Prosperity* could not come to a majority agreement as to the applicable standard of scrutiny. One, Justice Thomas, indicated strict scrutiny should apply and that it was not satisfied, *id.* at 619; two (Justices Alito and Gorsuch) expressly declined to decide whether strict or exacting scrutiny applied because they found that neither would be satisfied, *id.* at 622–23; three (Chief Justice Roberts and Justices Kavanaugh and Barrett) found that exacting scrutiny applied and was not satisfied, *id*. at 607–08; and the remaining three (Justices Kagan, Sotomayor, and Breyer) dissented, stating that a flexible level of scrutiny should apply depending upon the burden on First Amendment rights and that the standard applicable in that case was satisfied, *id.* at 630–31. Thus, in *Americans for Prosperity*, a majority of Justices could not agree on what form of constitutional scrutiny would apply, although a majority did find that the standard would *at least* be what was labeled as "exacting scrutiny," if not strict scrutiny.

The Supreme Court's stance in *NAACP*, *Buckley*, *Doe* and *Americans for Prosperity* within the freedom of association context does not negate or otherwise diminish the applicability of *Riley*, *NIFLA*, and *Town of Gilbert* (or *Otto*) to the compelled speech claim here. Thus, even if, despite the case law, strict scrutiny is not applied,[8] then exacting scrutiny should apply.

III. Summary Judgment Should be Granted to Plaintiffs Because Defendants Cannot Satisfy Either Strict or Exacting Scrutiny.

The differences between strict scrutiny and exacting scrutiny are marginal, at best. To survive strict scrutiny, the government must prove that the speech regulation was narrowly tailored and the least restrictive means to achieve a compelling governmental interest. To satisfy the exacting scrutiny standard from *Americans for Prosperity*, the government must show that there is "a substantial relation between the disclosure requirement and a sufficiently important

---

https://disclosure.floridaethics.gov/PublicSearch/FilingsResults?FormYear=2023&FormTypeCode=6%2C6F%2C6X&Filters=formYear%2CfirstName%2ClastName%2CorganizationName%2CformTypeCode (last visited Oct. 1, 2024).

[8] *Cf. Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 875 (8th Cir. 2012) ("Allowing states to sidestep strict scrutiny by simply placing a 'disclosure' label on laws … risks transforming First Amendment jurisprudence into a legislative labeling exercise").

governmental interest." 594 U.S. at 607 (citing *Doe*, 561 U.S. at 196). The Supreme Court did not define what would be a "sufficiently important governmental interest." Rather, it appears that the level of important governmental interest would depend upon the burden on First Amendment rights: "To withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Id*. Thus, depending upon the level of burden on First Amendment rights, the government interest may need to be (or be close to) the compelling interest required under strict scrutiny.[9]

The exacting scrutiny standard also requires a tighter fit than merely a substantial relationship:

> A substantial relation is necessary *but not sufficient* to ensure that the government adequately considers the potential for First Amendment harms before requiring that organizations reveal sensitive information about their members and supporters. Where exacting scrutiny applies, the challenged requirement must be *narrowly tailored* to the interest it promotes, even if it is not the least restrictive means of achieving that end.

Id. at 2384 (emphasis added). Thus, both a "substantial relation" and "narrow tailoring" are necessary to satisfy exacting scrutiny. Although the regulation does not necessarily have to be the

---

[9] The interest sought to be furthered by financial disclosure is to protect against the abuse of the public trust. The origin of the "full and public disclosure" required by Form 6 is Article II, Section 8, of the Florida Constitution: "A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right: (a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests." Fla. Const., Art. II, § 8. Defendants, in fact, confirmed that "the overriding mission of the Commission on Ethics is to protect against the abuse of the public trust." [ECF No. 56-27 at 14:3–21]. Accordingly, Form 6 "is intended to assure the right against abuse of the public trust." *Id.* at 15:18–22; *see also id.* at 44:4–8 (acknowledging that "the reason that public officers are required to publicly disclose their financial interest is to avoid conflicts of interest"); [ECF No. 56-8 at 14]. In addition to the primary interest of protecting against abuse of the public trust by avoiding conflict of interest, financial disclosure has other impacts (such as bolstering confidence in government, reminding elected officials of ethics requirements, and educating the public), although these other interests are mere byproducts of the primary interest served by financial disclosure laws. [ECF No. 56-27 at 43–44]. For First Amendment scrutiny, the government must articulate that interest with *specificity* (here, protection from abuse of the public trust), rather than by abstract statements. *See Awad v. Ziriax*, 670 F.3d 1111, 1130 (10th Cir. 2012); *Complete Angler, LLC v. City of Clearwater*, 607 F. Supp. 2d 1326, 1334 (M.D. Fla. 2009). For purposes of this motion, Plaintiffs do not dispute that protecting against the abuse of the public trust is a compelling interest (under strict scrutiny) or a sufficiently important interest (under exacting scrutiny).

least restrictive means, the government is nonetheless *still obliged to consider less intrusive alternatives*. *Id*. at 2386 (stating that the government "is not free to enforce any disclosure regime that furthers its interests. It must instead demonstrate its need for universal production *in light of any less intrusive alternatives*" (citation omitted and emphasis added)); *see also Buckley*, 424 U.S. at 68 (pondering whether the law at issue was the least restrictive means of accomplishing the governmental interests at stake). Overall, the exacting scrutiny standard, which requires a "sufficiently important governmental interest," a "substantial relation," "narrow tailoring," and consideration of "less intrusive alternatives," is only marginally less demanding than strict scrutiny. *Am. for Prosperity*, 594 U.S. at 608–11, 613; *see also* [ECF No. 40 at 24].[10]

The law is well-settled that to pass any level of heightened constitutional scrutiny (including strict or exacting), the government must identify evidence *in the legislative record* supporting the enactment of the challenged law. *See, e.g.*, *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822 (2000) ("No support for the restriction can be found in the near barren legislative record relevant to this provision. … [T]he Government must present more than anecdote and supposition. The question is whether an actual problem has been proved in this case. We agree that the Government has failed to establish a pervasive, nationwide problem justifying its nationwide daytime speech ban."); *Edenfield v. Fane*, 507 U.S. 761, 771 (1993) (invalidating law because no studies or evidence existed in legislative record and stating that "burden not satisfied by mere speculation or conjecture"); *Sable Commc'ns of Cali., Inc. v. FCC*, 492 U.S. 115, 129–30 (1989)

[10] The concepts of narrow tailoring and consideration of less restrictive alternatives are closely intertwined. *E.g., Boos v. Berry*, 485 U.S. 312, 329 (1988) (a law "is not narrowly tailored [where] a less restrictive alternative is readily available"). Thus, defendants must establish that the legislature "seriously undertook to address the problem with less intrusive tools readily available to it." *McCullen v. Coakley*, 573 U.S. 464, 494 (2014). Defendants have to prove that "alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *Id.* at 495. Defendants "would have to show either that substantially less-restrictive alternatives were tried and failed, or that the alternatives were closely examined and ruled out for good reason." *Bruni v. City of Pittsburgh*, 824 F.3d 353, 370 (3d Cir. 2016); *see also Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015) ("As the Court explained in *McCullen* … the burden of proving narrow tailoring requires the [government] to prove that it actually tried other methods to address the problem."); *Messina*, 546 F. Supp. 3d at 1251 (finding that the government's burden of establishing that it "seriously undertook to address the problem with less intrusive tools readily available to it" is not satisfied where "it points to no evidence that it investigated, studied, or even solicited reports on the issue").

("[A]side from conclusory statements during the debates by proponents of the bill, ... the congressional record presented to us contains no evidence as to how effective or ineffective the … regulations were or might prove to be."); *Buehrle v. City of Key West*, 813 F.3d 973, 978–79 (11th Cir. 2015) (stating, in the context of a content-neutral regulation of free speech, that "a municipality cannot get away with shoddy data or reasoning" and instead "must rely on at least some pre-enactment evidence that the regulation would serve its asserted interests"); *Messina v. City of Fort Lauderdale*, 546 F. Supp. 3d 1227, 1251 (S.D. Fla. 2021) (Altman, J.) ("[M]ore problematic[] is the lack of any evidence to justify the law. As we've suggested, that evidentiary lacuna seems to confirm the Plaintiffs' view that the City operated off of assumptions and didn't (as the Supreme Court requires) "seriously [endeavor] to address the problem with less intrusive tools readily available to it."); *see also Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 633 (2d Cir. 2020) (holding the government's demonstration of the least restrictive means prong of narrow tailoring "must be genuine, not hypothesized or invented *post hoc* in response to litigation") (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)).

Here, the Court carefully reviewed the entire legislative record underlying the enactment of SB 774 prior to entering the Preliminary Injunction. [ECF No. 40 at 26]. The legislative record consisted of both House and Senate Legislative Staff Analyses, [ECF Nos. 56-10, 56-11, 56-12, 56-13, 56-14]; PSOF ¶¶ 1–5, and transcripts of all legislative hearings and debates on SB 774, [ECF Nos. 56-17, 56-18, 56-19, 56-20, 56-21]; PSOF ¶¶ 9–30. To ensure that the entire legislative record was before it, the Court at the conclusion of the April 22, 2024, hearing on the motion for preliminary injunction, "directed Defendants to file supplemental briefing regarding the specific evidence in the legislative record that Defendants purport establishes a relationship between Form 6's additional financial disclosure requirements and the compelling govern interests at stake." [ECF No. 40 at 14]. As the Court found in the Preliminary Injunction Order, "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 [Defendants'] Supplemental Brief includes none." [ECF No. 40 at 15].

As set forth in detail in the Plaintiffs' Statement of Material Facts, and as found by the Court in the Preliminary Injunction Order after its careful review of the legislative record, the Defendants are unable to demonstrate that there was evidence in the legislative record justifying the need for SB 774's heightened disclosure requirements (for example, by showing that the

disclosure requirements previously in place with Form 1 were not adequate), or that the State seriously undertook the consideration of less intrusive means to address the identified interests. [*See* ECF No. 40 at 25–26]; PSOF ¶¶ 3–5, 8, 10, 12–14, 19, 21–22. Not only were Defendants unable to point to such evidence in the legislative record, but neither could the Court:

> So, too, 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 revealed none. The Analyses, while detailed and thorough, lack any evidence of a justification or reason for the change from Form 1 to Form 6 and lack any evidence that a less intrusive alternative was seriously considered. To the contrary, it is not at all clear from the legislative record that anyone had determined that Form 1 was not adequately addressing the State interests or, if it was not, that anyone gave any serious consideration to whether a less intrusive alternative to Form 6 might address the State's concerns.

[ECF No. 40 at 26]. The full legislative record was before the Court, and nothing has changed since. There is simply no evidence in the legislative record to satisfy the State's burden to justify SB 774.

In fact, the only empirical evidence in the Court's record—which was not in the legislative record—shows that the disclosures required under the Form 1 adequately protected against the abuse of the public trust by municipal elected officials. Defendants initially claimed that there was a "steady, upward trend" of the number of ethics complaints overall and against elected municipal officials. [ECF No. 16 at 7]. The true numbers, however, showed that was not correct. In fact, the total number of complaints had been in the same range each year, the total complaints in 2022 were actually less than in any of the prior three years, and the number of complaints against municipal officials in 2022 was *lower* than in any of the prior four years:

Year	Total Complaints	Municipal Complaints
2022[11]	223	53
2021[12]	238	72
2020[13]	243	62
2019[14]	231	84
2018[15]	211	68

Moreover, the numbers for 2022 further showed that although State and County elected officials filed Form 6, the percentage of them that had complaints filed against them were 5.83% and 5.29%, respectively. In contrast, for municipal elected officials filing Form 1, the percentage that had complaints filed against them was 2.41%.

2022

Category	Complaints[16]	Total Filed[17]	Percent
State Elected	12	206	5.83%
County Elected	36	681	5.29%
Municipal Elected	53	2200	2.41%

All told, Defendants have not demonstrated, and cannot demonstrate, any relationship, let alone a substantial relationship, between the requirements of Form 6 (forcing elected municipal officials to state the *amount* of their net worth, *amount* of income, *value* of household goods, *value*

[11] [ECF No. 56-7 at 9].

[12] [ECF No. 56-6 at 9].

[13] [ECF No. 56-5 at 10].

[14] [ECF No. 56-4 at 9].

[15] [ECF No. 56-3 at 9].

[16] [ECF No. 56-7 at 9].

[17] [ECF No. 56 ¶¶ 10–12].

of every asset and *amount* of every liability) and protecting from the abuse of the public trust.[18] Specifically:

- Neither the Florida Legislature nor the Commission on Ethics relied upon any expert studies, empirical examples, analysis or research that would justify SB 774. [ECF No. 56-27 at 92:9–13, 94:13–95:22, 159:3–8]; PSOF ¶¶ 4, 8, 10, 22, 27.
- SB 774 itself contained no factual findings. [ECF No. 56-22].
- The Commission on Ethics does not look at financial disclosure forms when they are filed. [ECF No. 56-27 at 12–15, 26]. Neither the Commission on Ethics nor the Florida Legislature discussed disclosure forms utilized by other states prior to the enactment of SB 774. PSOF ¶¶ 4, 8, 10, 22, 27.
- Neither the Commission on Ethics nor the Florida Legislature considered adopting a disclosure form less demanding than a Form 6 before enacting SB 774. PSOF ¶¶ 3–5, 8, 10, 12–14, 19, 21–22.
- The amount of net worth, income, household goods, assets and liabilities are not elements of any ethics violations. [ECF No. 56-27 at 95:23–96:4, 97:22–98:1, 100:9–13, 108:2–8, 150:1–5, 150:23–151:13, 152:13–155:20].

Because the legislative record is devoid of any evidence showing that SB 774 is substantially related to the prevention of the abuse of public trust, that the disclosures required under Form 1 were not adequate, and that the Florida Legislature considered less restrictive alternatives, Defendants cannot carry their burden of proving under either exacting or strict scrutiny that SB 774 is justified under the First Amendment.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court grant summary judgment in their favor, declare that the portions of SB 774 that require municipal elected officials and candidates to file a Form 6 rather than a Form 1 violate the First Amendment to the United States Constitution and therefore are invalid, 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, reserve jurisdiction to consider the award of cost and expenses (including attorney's fees) to Defendants pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988, and award any other relief that the Court deems just and proper.

[18] There may be a relationship between *sources* (not amount) of income and *identification* (not value or amount) of assets and liabilities (as shown on the Form 1) and some conflict of interest laws, but those disclosures in Form 1 are not challenged by Plaintiffs in this action.

Dated: October 11, 2024

WEISS SEROTA HELFMAN
COLE + BIERMAN P.L.
200 East Broward Blvd., Ste. 1900
Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Facsimile: (954) 764-7770

By: */s/ Jamie A. Cole*
JAMIE A. COLE
Florida Bar No. 767573
jcole@wsh-law.com
msaraff@wsh-law.com
EDWARD G. GUEDES
Florida Bar No. 768103
eguedes@wsh-law.com
szavala@wsh-law.com
ANNE R. FLANIGAN
Florida Bar No. 113889
aflanigan@wsh-law.com
JEREMY S. ROSNER
Florida Bar No. 1018158
jrosner@wsh-law.com
kdoyle@wsh-law.com

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

PRESIDENT OF TOWN COUNCIL ELIZABETH A. LOPER, elected official of the Town of Briny Breezes, et al.,

Plaintiffs,

v. Case No.: 1:24-CV-20604

ASHLEY LUKIS, in her official capacity As Chair of the Florida Commission on Ethics, et al.

Defendants.
_____/

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendants hereby move for summary judgment and in support state:

INTRODUCTION AND BACKGROUND

In 1976, Florida voters enacted the Sunshine Amendment which, for the first time, required elected constitutional officers and candidates for those offices, to publicly disclose specified financial information. Governor Askew championed the amendment "to help restore dignity to public offices" because "only a people who have confidence in their leaders and in their government will be able to confront all the many problems we face." ECF No. 56, Exhibit 28 at 5. The voters of Florida approved the Sunshine Amendment by a margin of 80%. *Plante v. Gonzalez*, 575

F.2d 1119, 1122 (5th Cir. 1978).[1] It was enshrined in the Florida Constitution as Article II, Section 8, and codified, in part, at section 112.3144, Florida Statutes. ECF No. 56 at ¶ 3. The amendment requires elected constitutional officers file "full and public disclosure of their financial interests." Art. II, § 8(a), Fla. Const.[2]

In 2023, as authorized by the Sunshine Amendment,[3] the Florida Legislature voted to extend the foregoing public benefits of the Amendment to specified municipal elected officials by requiring those officials to meet the same financial disclosure standards as their state and county colleagues. ECF No. 56 at ¶ 6. In response, a large number of those officials have sued and argue that the Form 6 requirement "compels Plaintiffs to engage in content-based, noncommercial speech in violation of the First Amendment of the United States Constitution and is,

[1] 1,765,626 in favor, 461,940 opposed.

[2] "[F]ull and public disclosure of their financial interests" is defined as:

> a sworn statement showing net worth and identifying each asset and liability in excess of $1,000 and its value together with one of the following:
> a. A copy of the person's most recent federal income tax return; or
> b. A sworn statement which identifies each separate source and amount of income which exceeds $1,000.

[3] Art. II, § 8(a) requires that the financial disclosures be filed by "[a]ll elected constitutional officers and candidates for such offices and, *as may be determined by law, other public officers, candidates, and employees*." (emphasis added). Section 112.3144(d) and (e), Florida Statutes, also provides:

> (d) Beginning January 1, 2024, the following local officers must comply with the financial disclosure requirements of s.8, Art. II of the State Constitution and this section: 1. Mayors. 2. Elected members of the governing body of a municipality.
>
> (e) Beginning January 1, 2024, each member of the Commission on Ethics must comply with the financial disclosure requirements of s. 8, Art. II of the State Constitution and this section.

therefore, unconstitutional." ECF No. 1 at 17. As there is no constitutional or other basis for according municipal elected officials any differential treatment when it comes to financial disclosure, this Court should enter summary judgment in favor of Defendants.

ARGUMENT

I. This case is controlled by *Plante v. Gonzalez.*

In its order granting preliminary injunction, the Court found that "where, 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." ECF No. 40 at 21. Defendants respectfully disagree and contend that the issue of financial disclosure requirements imposed on elected officials and candidates for such offices is properly considered under the constitutional right to privacy as the former Fifth Circuit did in the *Plante* case.

Plante v. Gonzales, 575 F.2d 1119 (5th Cir. 1978), was a challenge to the Sunshine Amendment filed by five state senators shortly before it was to go into effect. *Id.* at 1123. The senators alleged that public disclosure of their personal financial information violates their federal right to privacy. *Id.* at 1124. The court first held that the right to run for office was not a fundamental right and that the Sunshine Amendment did not unconstitutionally burden that right, noting that "[d]isclosure requirements may deter some people from seeking office," but "[a]s

the Supreme Court has made clear, however, mere deterrence is not sufficient for a successful constitutional attack." *Id.* at 1126 (citing *Bullock v. Carter,* 405 U.S. 134, 142-143 (1972)).

Turning to privacy, the court analyzed the Sunshine Amendment under the confidentiality strand of the right to privacy, which is "the individual interest in avoiding disclosure of personal matters." *Id.* at 1132 (citing *Whalen v. Roe*, 429 U.S. 589 (1977). In doing so, the Fifth Circuit rejected the application of heightened scrutiny under the First Amendment to the Sunshine Amendment's financial disclosure requirements. *Plante*, 575 F.2d at 1132–33. The court concluded that required "disclosure of assets, debts, and sources of income, each to be identified and valued" did not facially "implicate first amendment freedoms." *Id.*

While the *Plante* court left open the possibility that "rigorous application" of the disclosure requirements "might implicate first amendment freedoms" if it forced public officials to reveal "memberships, associations, and beliefs" more than "tangentially," *id.*, Plaintiffs do not make such an allegation here.[4] Plaintiffs claim instead that the law is subject to strict scrutiny under the First Amendment simply

[4] Nor have they identified any case in which a court found that "rigorous application" of the Sunshine Amendment has implicated the First Amendment.

because it requires financial disclosure—a position the court in *Plante* rejected.[5] Applying *Plante*, Plaintiffs are not entitled to relief from this Court.

II. Financial disclosures by elected public officials are not private speech and thus not protected by the First Amendment.

Plaintiffs' entire case is based on the proposition that any information that elected officials and candidates for elective office are required to provide on a Form 6 constitutes compelled speech. *See* ECF No. 1 at ¶ 51 ("[t]he statements required by Fla. Stat. § 112.3144, through Form 6, constitute noncommercial, compelled speech from Plaintiffs in violation of the First Amendment"). Under this theory, any personal factual information required to be provided by a government employee or prospective employee constitutes content-based compelled speech and must survive strict scrutiny. Plaintiff has yet to provide support for their novel theory.

To support their compelled speech/strict scrutiny argument in their preliminary injunction motion, (ECF 10), Plaintiffs relied on cases that involved purely *private* actors who claimed they were compelled to speak a government message. *See* ECF No. 56, Ex. 29 at 11:6-7 (stating that *Nat'l Inst. Of Family & Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018)[6] and *Riley v. Nat'l Fed'n of the*

[5] The *Plante* court also noted that "subjecting financial disclosure laws to the same scrutiny accorded laws impinging on autonomy rights, such as marriage, contraception, and abortion, would draw into question many common forms of regulation, involving disclosure to the public and disclosure to government bodies. *Plante,* 575 F.2d at 1134.

[6] *Becerra* concerned a California law that required licensed pregnancy-related clinics to disseminate notice advising patients of the availability of publicly-funded family-planning

Blind of N. Carolina, Inc., 487 U.S. 781, 797-98 (1988)[7] are "directly on point"). But purely private actors enjoy the very highest levels of First Amendment protection. In those cases, the First Amendment works both ways – private actors have 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)). Unsurprisingly, government action that imposes on those protections is generally subject to strict, or in some cases exacting, scrutiny. *Id*. at 1377-38.

That analysis cannot be applied here because Plaintiffs simply are not private actors. They are municipal elected officials. In the First Amendment context, they are government employees, employed by those who elected them. Government employees' speech is subject to an entirely different analysis. *Waters v. Churchill*, 511 U.S. 661, 672 (1994) ("[M]any of the *most fundamental maxims* of [the Supreme Court's] First Amendment jurisprudence *cannot reasonably be applied to speech by government employees*."); *see also*, *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006).

"When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom." *Garcetti*, 547 U.S. at 418.

---

services, including contraception and abortions, and requiring unlicensed pregnancy-related clinics to disseminate notice stating that they were not licensed.

[7] In *Riley,* the law at issue required professional fundraisers to directly disclose to potential donors the average percentage of gross receipts actually turned over to charities by the fundraiser for all charitable solicitations conducted in the State within the previous 12 months.

Government employees' speech is protected when they speak "as a citizen addressing matters of public concern." *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006). However, if a government employee engages in speech pursuant to their official duties, that speech is not protected by the First Amendment. *Garcetti*, 547 U.S. at 421. Plaintiffs "are not ordinary citizens, but [municipal elected officials], people who have chosen to run for office." *Plante,* 575 F.2d at 1135. The State may thus control speech made pursuant to their official duties.

The analysis in *Garcetti* is instructive. In that case, an assistant district attorney wrote a memorandum expressing concerns about the accuracy of an affidavit used to get a search warrant and recommending dismissal of the prosecution. *Garcetti*, 547 U.S. at 414. He was then subjected to a number of allegedly retaliatory actions and sued arguing that his First Amendment rights had been violated. *Id.* The Supreme Court rejected the First Amendment claim because the assistant district attorney was a public employee and the memorandum was written pursuant to his official duties. *Id.* at 421–22. Under *Garcetti*, speech made by public employees pursuant to their official duties is categorically unprotected because "[r]estricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created." *Id.*

So just like the State can make an assistant district attorney say or not say things pursuant to his official duties, the State can make Plaintiffs say things pursuant to their official duties as public officials in the State. Financial disclosure is simply part of the official duties attendant to serving as a public official in the State of Florida. Filing a Form 6 disclosure is a statutory requirement for elected municipal officials. Fla. Stat. § 112.3144(1)(d). If any speech could be considered the *definition* of speech pursuant to one's official duties, this is it. If Plaintiffs were not government officers or employees, SB 774 would not require them to file a Form 6. Under this standard, the Form 6 disclosure requirement does not implicate protected speech, and Plaintiffs' claim unquestionably fails.

III. Even if private speech, financial disclosure by public officials may still be compelled under *Pickering v. Board of Education*.

Even if the financial disclosures required of Plaintiffs were somehow private speech rather than speech made pursuant to their official duties, there would still be no First Amendment violation. The State has "broad discretion to restrict" even private speech "when it acts in its role as employer." *Garcetti*, 547 U.S. at 418.

That principle is not unlimited. The Supreme Court has adopted a test to determine whether government entities are impermissibly "leverag[ing] the employment relationship" to unduly restrict the ability of public officials to speak about matters of public concern. *Id.* at 419. That inquiry—known as the *Pickering* test—requires assessing first whether the employee speech in question is made as a

private citizen "on a matter of public concern." *Id.* at 418. "If the answer is no," then the First Amendment does not apply. *Id.* "If the answer is yes," the court must next determine whether the State has "an adequate justification for treating the employee differently from any other member of the general public." *Id.* If not, then the public official may have a First Amendment claim, but if so, then there is no claim. *Id.* The government may exercise some control over its employees' private speech on matters of public concern when doing so is "necessary for [the government] to operate efficiently and effectively. *Id.* at 419.

As explained above, Plaintiffs are not speaking as private citizens but as public officials when they submit a Form 6. And even if they were speaking as private citizens, the rote factual information required by Form 6 does not compel Plaintiffs to take any position about a "matter of public concern." For both of those reasons, their claim fails at the first step of *Pickering*. But even if by filing a Form 6, Plaintiffs could be said to be speaking as private citizens on a matter of public concern, they would still lose at step 2 of *Pickering*. The State's justification for treating local elected officials "differently from any other member of the general public" for purposes of financial disclosure is self-evident. The State has no interest in the personal finances of the typical member of the public but very much has an interest in the finances of the individuals who wield power in the name of the State. Obtaining that information is necessary for the government to operate "effectively"

because it is necessary to guard against corruption and conflicts of interest. So just like the government may compel judges to disclose gifts received, the State may compel Plaintiffs to disclose their personal financial information as a condition of serving as a public official in the State.

IV. If the First Amendment were implicated, Plaintiffs' claim would fail under a commercial speech analysis.

a. The *Zauderer* analysis applies to this case.

Even if this Court concludes that Plaintiffs' claim implicates the First Amendment, the commercial speech/compelled disclosure analysis is much more akin to the facts of this case than the traditional compelled speech analysis that applies to private citizens. *See generally*, *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 650-51 (1985). In *Zauderer*, the Supreme Court held that "an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Id*. at 651. This context is analogous to the rights of government officials as they "advertise" their services to the public in the form of a campaign. And just as the State has an interest in preventing the deception of consumers in a commercial setting; in the election setting, the State has an arguably *greater* interest in preventing the deception of the voting public.

In *Zauderer*, the Court pointed out that the State did not restrict the plaintiff's speech; rather, it "required [him] to provide somewhat more information than [he] might otherwise be inclined to present." *Id*. The Court then distinguished several of the traditional compelled speech cases,[8] because in those cases, the government attempted to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion" and "force citizens to confess by word or act their faith therein." *Zauderer*, 471 U.S. at 651. While the government action in *Zauderer* prescribed only "what shall be orthodox in commercial advertising," and merely required the plaintiff to "include in his advertising *purely factual and uncontroversial information* about the terms under which his services [would] be available." *Id*. at 651. Furthermore, because commercial speech enjoys protection from restriction based on its "value to consumers," the plaintiff's "constitutionally protected interest in *not* providing any particular factual information . . . [was] minimal."

In this case, SB 774 simply requires Plaintiffs to disclose more information than they might otherwise be inclined to present. The State is prescribing "what shall be orthodox" in a transparent government and requires Plaintiffs to disclose "purely factual and uncontroversial information" about their finances in furtherance of a

[8] *Id*. at 651 (distinguishing *Wooley v. Maynard*, 430 U.S. 705 (1977), *Miami Herald Publishing Company v. Tornillo*, 418 U.S. 241 (1974), and *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)).

legitimate government interest. And even further, the protection of government employees' speech from restriction (in commenting on matters of public concern) is based on that speech's value to the public. *Garcetti*, 547 U.S. at 419 ("The Court has acknowledged the importance of promoting the public's interest in receiving the well-informed views of government employees engaging in civic discussion."). Therefore, in this case, just as in *Zauderer*, any constitutionally protected interest the Plaintiffs have in *not* providing the information required by Form 6 is minimal.

b. SB 774 survives constitutional scrutiny.

If this Court finds that the First Amendment is implicated, it should apply the same level of constitutional scrutiny that was applied in *Zauderer*. Under *Zauderer*, a law need only be "reasonably related to the State's interest" to survive. *Zauderer*, 471 U.S. at 651. However, Defendants respectfully submit that SB 774 survives any level of constitutional scrutiny – including strict or exacting scrutiny.

Form 6 has long been a tool used to achieve greater government transparency and boost public confidence in elected officials. In scrutinizing these state interests, the Court need not constrain itself to any explicit statement by the Legislature. *See, e.g.*, *Burson v. Freeman*, 504 U.S. 191, 211 (1992). While the law at issue in *Burson* was judged against the higher bar of strict scrutiny, it remains informative in the instant case. In *Burson*, the court relied on "history, a substantial consensus, and simple common sense" to find that the government had sufficiently shown that the

law was necessary to serve its compelling state interests. *Id*. at 210. Although SB 774 is subject to a much lower level of constitutional scrutiny, the Court should still look to *Burson* in concluding that it may fully rely on the long history that culminated in the passage of SB 774 – i.e., the history of development, passage, and implementation of the Sunshine Amendment in concluding not only that SB 774 serves multiple state interests, but also that SB 774 is reasonably related to those interests.

The Southern District, in considering the use of *Burson* in a First Amendment challenge to lobbying restrictions, previously noted that "a demonstrated history of lobbying restrictions would constitute evidence that such laws are effective in addressing the problem of corruption." *Garcia v. Stillman*, 661 F. Supp. 3d 1168, 1183 (S.D. Fla. 2023). In the same manner, a demonstrated history of financial disclosure laws constitutes evidence that such laws are effective in addressing the State's interests in preventing corruption, bolstering public confidence in government, promoting voter knowledge, and positively shaping the political community in Florida. Particularly where, as in the instant case, the demonstrated history is not just of financial disclosures generally, but specifically of financial disclosure of the exact same material and in the exact same form as is now required of Plaintiffs.

Just as *Burson* was unique, this case is as well. SB 774 represents a measured expansion of long-existing financial disclosure requirements that were first introduced with the Sunshine Amendment by popular vote of the people of the State of Florida. Even further, Florida by no means stands alone in determining financial disclosure to be a necessary element of functioning government.[9] Indeed, SB 774 cannot even be said to be the first enactment that subjects municipal officials in Florida to public disclosure of net worth.[10] The ample and precise historical comparator of the long-time operation of the *exact same* disclosure requirements make this case the quintessential case for reliance on "common sense." *Burson*, 504 U.S. at 211.

The direct connection between SB 774 and the Sunshine Amendment is undeniable. ECF No. 19 at ¶¶ 3-6. As a result, the state interests that underlaid the Sunshine Amendment are the same state interests that support SB 774. That the benefits of the Sunshine Amendment have so achieved ubiquity in Florida political life that the legislature does not spend time rehashing them fully in staff analyses, committee, or floor debate should not dissuade this Court from the commonsense

[9] *See generally, e.g.*, *Validity and Construction of Orders and Enactments Requiring Public Officers and Employees, or Candidates for Office, to Disclose Financial Condition, Interests, or Relationships* (1983), 22 A.L.R. 4th 237 (collecting and discussing cases which have considered the myriad financial disclosure requirements for various public officers throughout the United States prior to 1983).

[10] Tampa, Fla., Code of Ordinances § 2-501 (Municode through Ordinance No. 2003-255, enacted October 2, 2003), https://library.municode.com/fl/tampa/codes/code_of_ordinances (from menu bar, select "Chapter 2 Administration," then select "Article VIII City of Tampa Ethics Code").

conclusion that an expansion of a financial disclosure law is supported by the same interests as the original law.

Every governmental interest that is evident from the history of the Sunshine Amendment continues to underly legislative expansions of the Amendment. ECF No. 56, Ex. 28 at 15. ("It is possible that the legislature, in accordance with the Amendment, may actually broaden and strengthen its application. The Sunshine Amendment is not viewed by its supporters as being beyond improvement. It is hoped it will be a foundation for further efforts to promote ethics in government in the years ahead.").

To the extent the Court is concerned that the government interests that underlaid the Sunshine Amendment are somehow rendered inapplicable here because Plaintiffs do not occupy the exact positions as those historically covered by the Amendment, it is helpful to consider the actual nature of Plaintiffs' government positions in comparison to those who have historically, constitutionally been required to file a Form 6.[11] Like the elected constitutional officers in the Sunshine Amendment, Plaintiffs are elected officials. Like the elected constitutional officers

[11] *See* § 166.021(1), Fla. Stat. ("municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law."); § 166.021(3) ("[t]he Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act" (and providing four exceptions)).

in the Sunshine Amendment, Plaintiffs wield the purse strings within their jurisdictions, and can direct spending of funds collected from citizens of the municipalities they control. Neither the scale of Plaintiffs' salaries, the number of hours they work, nor the size of the constituency they serve, has any effect on the reality that the office *they sought*, and now hold, bears all the same traditional responsibilities of government as those that were required to file a Form 6 long before the passage of SB 774.

With respect to the relative weight underlying the important government interests that support SB 774, the Sunshine Amendment's history is again informative. SB 774 does not, and was never intended to, stand alone. It may be properly considered an expansion of the Sunshine Amendment. Such an expansion was anticipated from the origin of the Amendment. *See* Art. II, § 8(a) ("All elected constitutional officers and candidates for such offices *and, as may be determined by law, other public officers, candidates, and employees* shall file full and public disclosure of their financial interests.") (emphasis added). Accordingly, the circumstances of the passage of the Sunshine Amendment are instructive here.

The Sunshine Amendment was the result of an initiative petition originated by Governor Askew. *Williams v. Smith*, 360 So.2d 417, 418-19 (Fla. 1978) (discussing the Sunshine Amendment and "the Governor who caused the amendment to be drafted and the petitions prepared."). It was put to a popular vote

before the people of Florida, the same people served by the proffered interests underlying the amendment. The people of Florida responded by overwhelmingly approving the Sunshine Amendment with 79.3% of the vote. *Plante,* 575 F.2d at 1122.

In the same vein, it should be noted that another recent proposed constitutional amendment that received comparable levels of support was also a government ethics amendment that applied to elected municipal officers. *Garcia v. Stillman*, 661 F.Supp.3d 1168, 1174-75 (S.D. Fla. 2023) ("[O]n November 6, 2018, [] 78.9% of Floridians voted in favor of a ballot initiative entitled Lobbying and Abuse of Office by Public Officers."). The tremendous expression of support from the people of Florida at the ballot box for full and public financial disclosures is the best evidence possible for the strength and significance of the governmental interests served by the Sunshine Amendment, and by extension SB 774. The people of Florida know best how to secure their own trust, and in weighing the government's interests this Court should not ignore more than 1.7 million Floridians stepping onto the scale.

1. Bolstering of public confidence in government officials

The first important governmental interest in the Form 6 financial disclosure requirements is the bolstering of public confidence in government officials by transparency. The bolstering of public confidence in government officials persists separately and independently of the interest in actually preventing conflicts of

interest or fraud. *See Plante,* 575 F.2d at 1134 (finding Sunshine Amendment financial disclosures were related to and significantly promoted a specific interest in boosting public confidence in government because, "[d]isclosure may not completely remove this doubt. It should help, however. And more effective methods are not obvious").

The importance of this governmental interest with respect to SB 774 originates inevitably from the history of the Sunshine Amendment. "The question is not whether the public officials are honest. The question is whether the people believe they are honest and whether the people believe their officials are representing the public interest. The Sunshine Amendment can provide the reassurances that the people need and the times demand." ECF No. 56, Ex. 28 at 16; *see also* ECF No. 56, Ex. 28 at 5-6. That the Sunshine Amendment's financial disclosure laws would actually bolster the public's trust in government is supported by that same public's widespread support for it. The will of the people of Florida expressed in the voting booth is certainly entitled to as much if not more significance in the context of a constitutional amendment than the legislative record when reviewing a state statute.

2. Promotion of Voter Knowledge

The Second important governmental interest advanced by SB 774 has been characterized as the public's "right to know." *Plante*, 575 F.2d at 1134-35. Form 6 financial disclosures are necessary for an informed electorate "because it makes

voters better able to judge their elected officials and candidates for those positions." *Id.* at 1135. As the court in *Plante* noted, "It is relevant to the voters to know what financial interests the candidates have." *Id.* This important governmental interest plainly hinges on the elected nature of the official. Because Plaintiffs are also elected officials invested with legislative authority within city limits,[12] this governmental interest applies with full and equal force as would support the same financial disclosures for elected constitutional officers that have long been the standard in Florida. "This educational feature of the [SB 774] serves one of the most legitimate state interests: it improves the electoral process. That goal… can be met in no other way." *Id.* at 1137. In light of the history of the Sunshine Amendment, plain common sense militates in favor of a weighty governmental interest in a fully informed electorate in the instant case as well.

3. The State's interest in its political community

The Supreme Court has long recognized a state's interest "in limiting participation in [] government to those who are within the basic conception of a political community. [The Court] recognize, too, the State's broad power to define its political community." *Sugarman v. Dougall*, 413 U.S. 634, 642-43 (1973). SB 774 operates, as an extension of the Sunshine Amendment, to define Florida's political community as transparent, trustworthy, and ethics focused.

[12] *See* supra, footnote 11.

Again, this governmental interest is derived from the history of the Sunshine Amendment. Governor Askew did not anticipate that the Sunshine Amendment would be an immediate panacea to all of Floridian's concerns regarding their government, rather he recognized that "a constitution must be a statement of broad principle[.]" *Williams v. Smith*, 360 So.2d 417, 419 (Fla. 1978) (quoting Governor Askew's address to the joint session of the Florida Legislature on April 5, 1977). Governor Askew, and all the Floridians who supported the Sunshine Amendment, further understood that the Sunshine Amendment "will be a foundation for further efforts to promote ethics in government in the years ahead." ECF No. 56, Ex. 28 at 15.

That full and public financial disclosures did meaningfully shift the political community of Florida is evidenced by the very law Plaintiffs now challenge. While the Sunshine Amendment had to be passed by the initiative process because the statutory disclosure law already in existence was insufficient,[13] SB 774 extended the Sunshine Amendment via an act of the Legislature. Plainly, Governor Askew foresaw that once the Sunshine Amendment passed, "[p]olitical reality and political responsibility will combine to compel the Legislature to substantially implement the Amendment as adopted. It is possible that the Legislature, in accordance with the Amendment, may actually broaden and strengthen its application." ECF No. 56, Ex.

[13] ECF No. 56, Ex. 28 at 10, 12.

28 at 15. This governmental interest now fully supports SB 774 as Florida attempts to maintain steam and continue to define and refine its political community to be, from the ground up, transparent and ethics focused.

4. Deterrence of Corruption and Conflicts

Protecting public offices against abuse is plainly an important government interest, Plaintiffs agree. ECF No. 18 at 7. Full and public financial disclosure has long been understood to "discourage corruption" in Florida by its mere existence. *Plante*, 575 F.2d at 1135. "The interest in an honest administration is so strong that even small advances are important." *Id.* SB 774 represents just such a small and targeted advance. Just as the disclosures in *Plante* would at least discourage some corruption, so too will the same disclosures when applied to Plaintiffs.

As already thoroughly discussed in Defendants' prior briefing, ECF Nos. 15 and 16, municipal elected officials make up a substantial portion of complaints made to the Commission on Ethics every year[14] to the point that the Commission and the Legislature independently developed the idea that individuals occupying offices like those of Plaintiffs should be subject to the full and public disclosure required by the Sunshine Amendment. ECF No. 17-1 at 156:7-21. This is exactly the operation of the Sunshine Amendment Governor Askew anticipated when he predicted that "the

[14] In 2022, for example, municipal elected officials made up 23 percent of complaints to the Commission. ECF No. 56, Ex. 7 at 13.

Legislature will respect the expressed desires of the vast majority of Florida voters and move in good faith, to further extend the Amendment." *Williams*, 360 So.2d at 419 (quoting Governor Askew's address to the joint session of the Legislature on April 5, 1977, as "[p]erhaps the most obvious expression of framers' intent[.]"). That the Commission on Ethics independently reached the same conclusion as the Legislature only further solidifies the commonsense conclusion that for all the same reasons the Form 6 financial disclosures applied to many other elected government officials, they should also apply to Plaintiffs.

The essential decision remaining for the Court is a determination of whether SB 774 is "reasonably related" to all of these government interests. In the instant case SB 774 is supported by multiple substantial governmental interests. 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." Garcia, 661 F.Supp.3d at 1183 (citing *Burson v. Freeman*, 504 U.S. 191 (1992)).

The long history of Form 6 financial disclosures in Florida and the history of the development and passage of the Sunshine Amendment that preceded it sufficiently support all of the State's proffered governmental interests. That history demonstrates not only why the Sunshine Amendment's financial disclosure requirements are constitutional with respect to the myriad public officials it has applied to over almost fifty years of Sunshine in Florida, but also with respect to the

new expansion to Plaintiffs by SB 774. This Court has before it the perfect comparator to SB 774 in the historical application of the Sunshine Amendment's exact same disclosure requirements to other government officials. The Court can see that the anticipated benefits of the Sunshine Amendment came to pass.

Further, the Court can see that the old fears that have been used to argue against financial disclosures since Governor Askew first put the Sunshine Amendment forward simply have not come to pass. Although opponents of full and public financial disclosure have long raised anxieties about kidnapping and blackmail,[15] the State is not aware of a single instance in which a Form 6 filer was subject to a kidnapping or attempted kidnapping, been blackmailed, or been a victim of identity theft as a result of the filing of a Form 6 in all of its history, nor have Plaintiffs brought any such instances to the attention of the Court. Although opponents to the Sunshine Amendment suggested it would discourage people from participating in government,[16] the State of Florida has managed to continue to find candidates willing to comport to the expectations of their constituents. The Legislature has not undermined or retreated from the Form 6 requirements as was worried about. ECF No. 56, Ex. 28 at 15. Rather, the historical record reflects that

[15] ECF No. 56, Ex. 28 at 16.
[16] ECF No. 56, Ex. 28 at 14.

the full and public financial disclosure facilitated by Form 6 has operated in Florida for nearly half a century.

After well over four decades of observing the Sunshine Amendment's successful operation, the Legislature and the Commission on Ethics both came to the commonsense conclusion that a targeted expansion was in order. That expansion was targeted at Plaintiffs for the same reasons the original, successful Sunshine Amendment has remained targeted at the officials it has been, it works. Notably as well, the weighty government interests of this case are weighed against Plaintiffs' "actual burden" on their First Amendment Rights. *John Doe No.*, 561 U.S. at 196. As argued in the first section of this briefing, it is unclear that Plaintiffs' First Amendment rights have been burdened at all. Even were this Court to find some burden to Plaintiffs' First Amendment rights, this is the rare case where "history, a substantial consensus, and simply common sense," *Burson*, 504 U.S. at 211, are sufficient for this Court to find that the proffered governmental interests reflect and overcome any actual burdens on Plaintiffs' First Amendment rights.

CONCLUSION

For all of the foregoing reasons, there is no genuine dispute as to any undisputed fact and Defendants are entitled to judgment as a matter of law. Defendants therefore respectfully request that this Court grant summary judgment in their favor.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Sara E. Spears
Sara E. Spears (FBN 1054270)
ASSISTANT ATTORNEY GENERAL
William H. Stafford III (FBN 70394)
SPECIAL COUNSEL
Complex Litigation Division
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
sara.spears@myfloridalegal.com
william.stafford@myfloridalegal.com
Complexlitigation.eservice@myfloridalegal.com
850-414-3300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October 2024 a copy of this document was filed electronically through the CM/ECF system and furnished by email to all counsel of record.

/s/ Sara E. Spears
Sara E. Spears

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

PRESIDENT OF TOWN COUNCIL ELIZABETH A. LOPER, elected official of the Town of Briny Breezes, et al.,

Plaintiffs,

v. Case No.: 1:24-CV-20604

ASHLEY LUKIS, in her official capacity As Chair of the Florida Commission on Ethics, et al.

Defendants.
_____/

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to this Court's Order (ECF No. 45), Defendants hereby file their Response in Opposition to Plaintiffs' Motion for Summary Judgment.

INTRODUCTION

Plaintiffs' entire Motion for Summary Judgment relies on the assumption that the First Amendment applies to mandatory financial disclosures by government officials and candidates for public office in the same way it applies to compelled speech by private parties. It does not. Simply put, governments can require such officials and candidates to disclose the financial information at issue in this lawsuit.

In addition, should the Court determine that a permanent injunction is warranted, the scope of the injunction must be limited to the named Plaintiffs in this case.

ARGUMENT

I. The disclosures required by SB 774 are not compelled speech under the First Amendment.

Throughout their Motion for Summary Judgment, Plaintiffs only cite to, and rely on, cases that concern the First Amendment rights of private parties.[1] Those cases are inapplicable here as Plaintiffs are municipal government officials and not private parties[2] – their compelled speech claim must be analyzed under a completely different standard. *Waters v. Churchill*, 511 U.S. 661, 672 (1994) (stating "many of the most fundamental maxims of [the Supreme Court's] First Amendment

[1] *See, e.g.,* ECF No. 59 at 3, 4, 6 (citing *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (requiring vehicle owners to attach a license plate that included the phrase "live free or die" was compelled speech that violated plaintiffs First Amendment rights); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011) (not a compelled speech case; rather, the issue was a state law restricting the sale, use and disclosure of prescriber information collected by pharmacies); *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 797-98 (1988) (law requiring professional fundraisers to disclose to potential donors the percentage of charitable contributions actually turned over to their client charities was unconstitutional compelled speech); and *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995) (Massachusetts public accommodation law violated First Amendment when applied to prohibit association of private citizens from excluding groups from participating in parade organized by the association); *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018) (California law requiring licensed pregnancy-related clinics to provide information concerning the availability of publicly-funded family-planning services, and requiring unlicensed pregnancy-related clinics to provide notice stating that they were unlicensed violated plaintiffs First Amendment as compelled speech); *Masonry Bldg. Owners of Oregon v. Wheeler*, 394 F. Supp. 3d 1279, 1296 (D. Or. 2019) (city ordinance requiring owners of unreinforced masonry buildings that did not meet specified seismic standards to post notice stating the building may be unsafe in an earthquake violated was unconstitutional compelled speech).

[2] Plaintiffs are not private parties for purposes of this lawsuit. Plaintiffs are subject to the financial disclosure requirements of SB 774 only because they are elected municipal officials.

jurisprudence cannot reasonably be applied to speech by government employees"). Plaintiffs fail to address or even acknowledge this critical distinction. Regardless, Plaintiffs' claim must be analyzed under the government-employee speech test set forth in *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

Under *Garcetti*, when a government-employee speaks pursuant to their official duties, that speech is not protected by the First Amendment. *Garcetti*, 547 U.S. at 421. Here, because filing a Form 6 is a statutory requirement for elected municipal officials, it is speech pursuant to Plaintiffs' official duties and not protected by the First Amendment. Because this speech is not protected, Plaintiffs' claim fails and is not subject to constitutional scrutiny as compelled speech.

Plaintiffs do not address the *Garcetti* analysis in their Motion for Summary Judgment. Instead, they conclusively state that mandatory financial disclosures infringe on protected speech simply because "compelled statements of fact are accorded as much constitutional protection as compelled statements of opinion." ECF No. 59 at 3 (quotations omitted) (relying on *Riley*, 487 U.S. at 797-98; and *Hurley*, 515 U.S. at 573). This conclusory statement does not paint an adequate picture.

Indeed, the usual compelled speech analysis simply does not work in this context. For one thing, as far as Defendants have been able to determine, courts have not

applied the First Amendment compelled speech analysis in situations where a government employee was required to submit disclosures to the government agency that employs them or as a condition of seeking elective office. And how could they? The nature of the employee-employer relationship necessarily requires disclosure of information. That the government functions as both an employer and a sovereign does not preclude it from requiring such disclosures. "[T]he government as employer indeed has far broader powers than does the government as sovereign." *Waters v. Churchill*, 511 U.S. 661, 671 (1994). The same reasoning would apply where the government employee is an elected official or candidate for public office.

For example, the government as employer unquestionably has the authority to tell its employees what they *cannot* say within the scope of their employment. *Waters*, 511 U.S. at 672. ("We have never expressed doubt that a government employer may bar its employees from using [an] offensive utterance to members of the public or to the people with whom they work.") ("[S]urely a public employer may, consistently with the First Amendment, prohibit its employees from being 'rude to customers[.]'"). This is, again, the nature of being an employer. *See Garcetti*, 547 U.S. at 418 ("Government employers, like private employers, need a significant degree of control over their employees' words and actions; without it, there would be little chance for the efficient provision of public services."). The right of a government employer to regulate what its employees say as government

employees necessarily extends to requiring reasonable financial disclosures by those employees without running afoul of the First Amendment.

With the *Garcetti* analysis being the closest-fitting test to determine whether Plaintiffs' speech is protected, Defendants submit that this Court should apply it to this case. Under the *Garcetti* framework, Plaintiffs' claim fails because, when Plaintiffs file a Form 6 disclosure, they are not speaking as "citizens." Rather, they are speaking in the course of their official duties as elected government officials. *See Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 585 U.S. 878, 908 (2018) ("Of course, if the speech in question is part of an employee's official duties, the employer may insist that the employee deliver any lawful message."). The "message" conveyed by the financial disclosures at issue has had the blessing of the Eleventh Circuit since 1978, when the former Fifth Circuit issued its opinion in *Plante v. Gonzalez,* 575 F.2d 1119 (5th Cir. 1978).[3] *See* Defendants' Motion for Summary Judgment (ECF No. 61 at 3-5).

That the financial disclosure requirements of SB 774 should not be considered compelled speech under the First Amendment is reinforced by considering the practical effects of the opposite conclusion. A final judgment in favor of Plaintiffs based on a finding that requiring these disclosures is *per se* compelled speech would

[3] Fifth Circuit decisions issued prior to October 1, 1981, are binding on district courts in the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981).

put at risk the entire financial disclosure scheme that was overwhelmingly approved by Florida voters in 1976 and has not been successfully challenged since. With such a judgment, state and county-level elected officials would have every reason to raise their own challenges to the Sunshine Amendment and section 112.3114, Florida Statutes. Indeed, *any* government official or employee could then colorably argue that any disclosures required by their employer, or as a condition of seeking public office, would then be subject to a compelled speech analysis. That includes the Form 1 financial disclosures required of countless state employees in Florida. Yet Plaintiffs claim that being subject to the Form 1 requirements would somehow resolve the purported constitutional problem without acknowledging that under their theory, the Form 1 requirement too would have to undergo heightened First Amendment scrutiny. *See* ECF No. 38 at ¶ 59 (stating that Form 6 constitutes *additional* compelled speech – beyond the speech compelled by Form 1); ECF No. 59 at 16 ("Plaintiffs respectfully request that the Court grant summary judgment in their favor, declare that the portions of SB 774 that require municipal elected officials and candidates to file a Form 6 rather than a Form 1 violate the First Amendment"). And as Plaintiffs note in their motion, statutes subject to strict

scrutiny review are "presumptively unconstitutional" because "cases where the strict scrutiny standard is met are few and far between." ECF No. 59 at 4-5 (cleaned up).[4]

In the alternative, even if this Court views the required disclosures as private speech rather than speech pursuant to Plaintiffs' positions as public officials, it must apply the test articulated in *Pickering v. Board of Education*, 391 U.S. 563 (1968). The Form 6 requirements satisfy *Pickering* because requiring financial disclosures does not compel Plaintiffs to speak on a matter of public concern, and even if it did, the State plainly has a legitimate justification for treating public officials wielding government power differently than the general public when it comes to requiring financial disclosure. *See* Defendants' MSJ, ECF No. 61 at 8–10; *see Wagner v. Fed. Election Comm'n,* 793 F.3d 1, 7 (D.C. Cir. 2015) (noting that the Supreme Court "has held that the government may maintain a statutory restriction on employee speech if it is able to satisfy a balancing test of the *Pickering* form" (citing *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 467 (1995) (cleaned up).[5]

[4] Citing *Reed v. Town of Gilbert,* 576 U.S. 155, 163 (2015); and *Otto v. City of Boca Raton*, 981 F.3d 854, 868 n.6 (11th Cir. 2020).

[5] In addition, in finding the disclosure requirements in *Riley* unconstitutional compelled speech, the Supreme Court noted that North Carolina had "more benign and narrowly tailored options" available to it, 487 U.S. at 800.

> For example, as a general rule, the State may itself publish the detailed financial disclosure forms it requires professional fundraisers to file. This procedure would communicate the desired information to the public without burdening a speaker with unwanted speech during the course of a solicitation. *Id.*

And even if *Garcetti* or *Pickering* did not apply, then *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), would. Under *Zauderer*, the government may compel the disclosure of "purely factual and uncontroversial information" that constitutes commercial speech as long as doing so is "reasonably related" to the State's regulatory interest and the requirement is not "unduly burdensome." *Id.* at 651. The Form 6 disclosures at minimum constitute commercial speech because they are done to obtain and maintain particular employment, and the required information is purely factual and plainly "related" to the State's interest in preventing corruption and ensuring transparent government. *See* Defendants' MSJ, ECF No. 61 at 10–24. Indeed, those interests would be enough for the Form 6 requirements to survive even heightened First Amendment scrutiny, as well as *Zauderer*'s more deferential standard.

II. Any injunction issued by this Court should be limited to Plaintiffs.

In the event this Court deems a permanent injunction necessary in the instant case, that injunction should be limited to the Plaintiffs named in this lawsuit. While this Court's Order on Plaintiffs' Expedited Motion for Preliminary Injunction (ECF No. 40) granted statewide injunctive relief,[6] Plaintiffs' own papers seek relief only as to the individually named Plaintiffs in this case. In their Third Amended Complaint – filed after this Court's Order granting statewide injunctive relief –

[6] ECF No. 40 at 31.

Plaintiffs ask this Court to enjoin Defendants from "enforcing Fla. Stat. § 112.3144 . . . against *Plaintiffs*, arising from the failure of *any Plaintiffs* to file a Form 6[.]" ECF No. 54 at 25. And again, in their Motion for Summary Judgment, Plaintiffs ask this Court to "permanently enjoin Defendants . . . from enforcing [the portions of SB 774 that require *municipal elected officials and candidates* to file a Form 6]." ECF No. 59 at 16. To the extent that Plaintiffs seek a statewide permanent injunction, they have waived that argument; and in any event, Defendants respectfully submit that such an injunction would be improper.

To award a universal injunction here would transgress historic limits on the Court's equitable power. Without specific statutory authorization, *Trump v. Hawaii*, 585 U.S. 667, 713-14 (2018) (Thomas, J., concurring), the equitable powers of the federal courts are "bounded by both historical practice and traditional remedial principles." *Georgia v. President of the United States*, 46 F.4th 1283, 1303 (11th Cir. 2022); *see also*, *Grupo Mexicano de Desarrollo, S.A. v. All Bond Fund, Inc.*, 527 U.S. 308, 318-319 (1999). The "traditional scope of injunctive relief" is "[t]he extent necessary to protect the interests of the parties." *Georgia*, 46 F.4th at 1303 (quotations omitted). It is "limited to the inadequacy that produced the injury in fact that the plaintiff has established." *Id*.; *see also*, *Monsanto Co. v. Geerston Seed Farms*, 561 U.S. 139, 166 (2010) (remedies are generally limited to those "sufficient to redress" a party's "injury"). Equally well-settled is the rule that district courts may

not "grant[] relief that is improperly or even unnecessarily broad." *AFSCME Council 79 v. Scott*, 717 F.3d 851, 870 (11th Cir. 2013). The circumstances justifying universal injunctions are thus "rare," as they often run up against these historic principles. *Georgia*, 46 F.4th at 1304 (quotations omitted); *see also*, Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 427 (2017).

A party-specific focus tracks historical equitable practice. "In 1789, as a general rule, the English Court of Chancery granted injunctions for one overarching purpose: to prevent violations of the moving party's rights." *Rodgers v. Bryant*, 942 F.3d 451, 460–61 (8th Cir. 2019) (Stras, J., concurring in part and dissenting in part) (citing several treatises). When it came to the United States, the most analogous equitable remedy—the injunction to stay proceedings at law—was "directed only to the parties." Joseph Story, *Commentaries on Equity Jurisprudence as Administered in England and America* § 875, at 166 (2d ed. 1839). From that history, "[r]eviewing courts should . . . be skeptical of [universal] injunctions premised on the need to protect nonparties." *Georgia*, 46 F.4th at 1306. As a general rule, a court should not grant an injunction on behalf of nonparties who have neither joined the lawsuit nor shown their standing or entitlement to relief. *See id.* at 1303–06; Order Granting Stay at 2, *Garcia v. Stillman*, No. 23-12663 (11th Cir. Nov. 30, 2023) (ECF No. 36) (granting a stay as to the scope of relief of a permanent injunction because "the

district court found that only one Plaintiff had standing to challenge the state statute").

To be sure, equity provided a limited procedural tool to permit "parties in interest to represent the entire body" of persons affected by a defendant's conduct, *Supreme Tribe of Ben Hur v. Cauble*, 255 U.S. 356, 363 (1921) (quoting *Smith v. Swormstedt*, 57 U.S. 288, 302 (1853)), thereby "resolv[ing] issues that would have otherwise resulted in a 'multiplicity' of individual lawsuits," *Rodgers*, 942 F.3d at 462–63. That device, called a "bill of peace," was the precursor of the modern Rule 23 class action. *Id.* at 463; Joseph Story, *Commentaries on Equity Pleadings* §§ 77–135, at 101–78 (4th ed. 1848); Frederic Calvert, *A Treatise upon the Law Respecting Parties to Suits in Equity* 30–33 (2d ed. 1847). But that tool has specific procedural requisites, which "leaves plaintiffs with no room to argue that they can use some other procedure to seek relief on behalf of others." *Rodgers*, 942 F.3d at 464. And Plaintiffs have not even attempted to certify a class in this case. The same is true of all the Federal Rules of Civil Procedure's "procedural devices" that "allow nonparties with similar interests to seek the protection of injunctive relief—class certification under Rule 23, joinder and intervention in an existing lawsuit, or even filing a new lawsuit of their own." *Georgia*, 46 F.4th at 1306. "A district court cannot circumvent these mechanisms in the name of providing injunctive relief only for nonparties' benefit." *Id.*

The limited nature of injunctive relief also prevents "a single district court" from assuming "an outsized role in the federal system." *Id.* at 1304. "By design, the federal court system allows courts to reach multiple answers to the same legal question," whereas a single district court's universal injunction stops that process of percolation in its tracks. *Id.* The federal system has 94 district courts and 13 circuit courts of appeals, and "[t]he decision of any one of these courts typically has little effect on other courts of [the same] type." *Id.* This allowance for "[d]iffering opinions aid[s] 'the development of important questions of law' and suppl[ies] the Supreme Court with 'the benefit it receives from permitting several courts of appeals to explore a difficult question' before it grants certiorari." *Id.* (quoting *United States v. Mendoza*, 464 U.S. 154, 160 (1984)). Another vice of universal injunctions, in the context of preliminary relief, is that they "tend to force judges into making rushed, high-stakes, low-information decisions." *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in grant of stay, joined by Thomas, J.).

These principles apply equally to parties who have not shown they are entitled to relief. Each party seeking relief from a federal court must demonstrate its entitlement to the relief it seeks. Multi-plaintiff cases do not alter that fundamental rule. *See Alabama v. Blue Bird Body Co.*, 573 F.2d 309, 327–28 (5th Cir. 1978); *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 488–89 (3d Cir. 2000) (treating each

plaintiff moving for injunctive relief as separate when assessing whether in-junctive relief was appropriate).[7] Just as a party is not automatically entitled to money damages because his co-party is, the same is true of injunctive relief. *See Adams*, 204 F.3d at 488–89; *Ohio v. Becerra*, 87 F.4th 759, 783–84 (6th Cir. 2023) (finding that "[b]ecause only Ohio made the requisite showing of irreparable harm," an injunction must be limited to only that plaintiff). After all, "[e]quitable remedies, like remedies in general, are meant to redress the injuries sustained by a particular plaintiff in a particular lawsuit." *Dep't of Homeland Sec.*, 140 S. Ct. at 600 (Gorsuch, J., concurring in grant of stay, joined by Thomas, J.). Equitable remedies should therefore be tailored to the "injury in fact that the plaintiff has established" and to the "violation established." *Georgia*, 46 F.4th at 1303, 1306 (quotations omitted). In short, remedies "operate with respect to *specific parties*," *California v. Texas*, 593 U.S. 659, 672 (2021) (emphasis added), and must be granted in a party-specific and injury-specific manner, *see Gill v. Whitford*, 585 U.S. 48, 73 (2018). History confirms this limited remedial focus because the notion that "each party could only get an injunction (or other relief) to protect its own rights" was so ingrained that

[7] In some instances, a co-party may benefit, in a way that is "merely incidental," from the relief granted to another party. Trump, 585 U.S. at 717 (Thomas, J., concurring). "Injunctions barring public nuisances [a]re an example[:] While these injunctions benefit[] third parties, that benefit [i]s merely a consequence of providing relief to the plaintiff." Id. This kind of injunction is not universal, at least not in the sense of being designed to benefit nonparties or parties without showing an entitlement to relief. When a plaintiff requires broad relief to get complete redress, the injunction may rightly be broad, but it is still party-specific.

English chancery courts "insist[ed] that the plaintiffs join everyone with an interest in the litigation." *Rodgers*, 942 F.3d at 462. Like standing, then, preliminary injunctions are not "dispensed in gross." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021).

For that reason, the proper scope of relief here is at most an injunction prohibiting Defendants from requiring Plaintiffs to file Form 6 financial disclosures related to service as a mayor or elected member of the governing body of a municipality. That injunction will prevent all of the injuries asserted by the individual Plaintiffs. *See Georgia*, 46 F.4th at 1306 ("[A]n injunction that bars action against the plaintiffs obligates a defendant to respect that injunction[.]").Because plaintiffs' remedy must "be limited to the inadequacy that produced the injury in fact that the plaintiff has established," *Lewis v. Casey*, 518 U.S. 343, 357 (1996) (plurality op.); *see also Scott*, 717 F.3d at 870, any injunction should be limited to these specific Plaintiffs. A broader injunction would conflict with "the general rule . . . 'that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.'" *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). Indeed, as recently as this year, the Supreme Court stayed a universal injunction to the extent the injunction applied to parties beyond the plaintiffs in the case. *See Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921, 921 (2024).

CONCLUSION

For any of the foregoing reasons, as well as arguments set forth in Defendants' Motion for Summary Judgment, Defendants respectfully request that the Court enter a final summary judgment in their favor.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Sara E. Spears
Sara E. Spears (FBN 1054270)
ASSISTANT ATTORNEY GENERAL
William H. Stafford III (FBN 70394)
SPECIAL COUNSEL
Complex Litigation Division
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
sara.spears@myfloridalegal.com
william.stafford@myfloridalegal.com
Complexlitigation.eservice@myfloridalegal.com
850-414-3300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October 2024 a copy of this document was filed electronically through the CM/ECF system and furnished by email to all counsel of record.

/s/ Sara E. Spears
Sara E. Spears

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

PRESIDENT OF TOWN COUNCIL ELIZABETH A. LOPER, elected official of the Town of Briny Breezes, *et al.*,

Plaintiffs,

vs.

ASHLEY LUKIS, in her official capacity as Chair of the Florida Commission on Ethics, *et al.*,

Defendants.
_____/

Case No. 1:24-cv-20604-MD

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by and through their undersigned counsel, and pursuant to Federal Rule of Civil Procedure 56(a) and Local Rule 56-1, hereby file this response in opposition to Defendants' "Motion for Summary Judgment" [ECF No. 61] as follows:

INTRODUCTION

In a desperate attempt to defend the indefensible, Defendants have now asserted new legal theories, each of which is (a) inconsistent with the arguments (and legal authorities) previously advanced by the Defendants in this case, and (b) directly contrary to decisions of the United States Supreme Court and the Eleventh Circuit Court of Appeals.

From the outset of this lawsuit, Defendants argued that the Court should apply "exacting" (but not "strict") constitutional scrutiny in its review of SB 774. Then, after the preliminary injunction hearing, Defendants changed course and argued, instead, that SB 774 did not implicate First Amendment protection at all, without providing any legal support. Now, after the Court rejected Defendants' argument in connection with the grant of a preliminary injunction, Defendants have abandoned their original position of "exacting scrutiny" and instead are asserting different legal theories, each of which is equally unavailing.

First, Defendants repeat two arguments that they previously made: (1) that the case is controlled by the nearly 50-year-old decision in *Plante vs. Gonzales*, 575 F.2d 1119 (5thCir. 1978), even though that case was based solely upon the limited federal right to privacy (and did not

include any claim regarding compelled speech), and (2) that the Court should ignore the absolute absence of any empirical examples, expert studies or data in the legislative record and instead allow the intrusion of constitutional rights based upon history and common sense (rather than evidence in the legislative record). Both of these arguments were rejected by the Court at the preliminary injunction stage, and nothing new has been presented now warranting a different result.[1]

Second, Defendants argue that the First Amendment does not apply to this case because, under *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006), "if a government employee engages in speech pursuant to their official duties, that speech is not protected by the First Amendment." Defendants assume, with no support, that municipal elected officials are "government employees" subject to *Garcetti.* In fact, as noted recently by the Eleventh Circuit, elected officials are likely not "employees" covered by *Garcetti*. *Warren v. DeSantis*, 90 F.4th 1115, 1129-30 (11th Cir. 2024). Unlike government employees, elected officials are protected by the First Amendment.

Third, Defendants argue that the Court should apply the less restrictive *Pickering* test applicable to situations where the government is "leveraging the employment relationship" to restrict the ability of government employees to speak about matters of public concern. *Pickering vs. Bd. of Educ.*, 391 U.S. 563, 568 (1968). Again, Defendants improperly assume that municipal elected officials are "employees." They are not. And judicial precedent (including the Eleventh Circuit) has established that *Pickering* (just like *Garcetti*) does not apply to elected officials.

And fourth, again for the first time, Defendants suggest that the Court should apply the less restrictive *Zauderer* test that is applicable to commercial speech. *Zauderer vs. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471, U.S. 626 (1985). This, again, is contrary to the positions previously taken by Defendants, and assumes, with no legal support whatsoever, that the financial disclosure requirements in SB 774 pertain to commercial speech, acting as if a public office is a commodity or service for sale. That is simply not the case. Completing a financial disclosure does not propose a commercial transaction or otherwise constitute commercial

[1] Notably, in their Answer to the Third Amended Complaint (which was untimely filed after Plaintiffs' Motion for Summary Judgment), Defendants did not raise any affirmative defenses that Plaintiffs would have to otherwise address and overcome at this juncture. [*See* ECF No. 63]. Accordingly, Plaintiffs need only to prove their sole cause of action—that SB 774 violates their First Amendment freedom of speech rights—to be awarded summary judgment in their favor and against Defendants.

advertising of a product or a service. Thus, the compelled speech at issue in this case is clearly non-commercial.

The change from Form 1 to Form 6 enacted through SB 774 constitutes compelled, non-commercial content-based speech, and thus Defendants must satisfy heightened constitutional scrutiny (either "exacting" or "strict"). Neither test is satisfied because Defendants have again failed to provide any evidence from the legislative record showing that (a) the Form 1 disclosures were insufficient, (b) the additional Form 6 disclosures are substantially related to the State's identified interests, (c) the change from Form 1 to Form 6 was necessary, or (d) the State Legislature gave serious consideration to whether the government interests at stake could be addressed through less burdensome alternative means.

Defendants' Motion for Summary Judgment should be denied (and Plaintiffs' motion should be granted).

FACTUAL BASIS AGAINST SUMMARY JUDGMENT

The facts supporting Plaintiffs' response in opposition to Defendants' Motion for Summary Judgment are set forth in the Joint Statement of Undisputed Facts [ECF No. 56], Defendants' Statement of Material Facts [ECF No. 62], and Plaintiffs' Response Statement of Material Facts and Additional Facts [ECF No. 67].

ARGUMENT

I. Defendants' Motion for Summary Judgment Should be Denied (and Plaintiffs' Motion for Summary Judgment Should be Granted) Because Defendants Cannot Satisfy Heightened Constitutional Scrutiny (Exacting or Strict)

In their Motion for Summary Judgment, Defendants essentially abandon the position that they had taken from the outset of this litigation that SB 774 should be upheld because it satisfies the exacting scrutiny standard.[2] Instead, the Motion for Summary Judgment is dedicated to arguing that SB 774 should not be subject to any constitutional scrutiny or should be subjected to the lower level of constitutional scrutiny applicable to the federal right to privacy, commercial speech, or government employee speech, and, based on those lower standards, Plaintiffs should

[2] In just one conclusory sentence in their Motion for Summary Judgment, Defendants assert in a perfunctory manner that SB 774 would survive any level of constitutional scrutiny, including heightened levels of scrutiny, such as strict scrutiny and exacting scrutiny. [ECF No. 61 at 12]. Defendants again do not, however, point to any evidence in the legislative record that would satisfy such scrutiny.

not prevail in their challenge to SB 774 because the law is "reasonably related to the State's interest." [ECF No. 61 at 12; *see also id.* at 13 (maintaining that "SB 774 is subject to much a lower level of constitutional scrutiny" and "SB 774 is reasonably related to [multiple state] interests"); *id.* at 22 ("The essential decision remaining for the Court is a determination of whether SB 774 is 'reasonably related' to all of these government interests.")]. Thus, unless the Court decides to change the standard applied in the Preliminary Injunction, there would be no reason for the Court to reach a different result.[3] Not once in their motion do Defendants discuss whether SB 774 is narrowly tailored to the governmental interests or whether the Florida Legislature considered lesser intrusive alternatives to SB 774. By failing to meaningfully apply a strict scrutiny analysis (which would require a showing that SB 774 was narrowly tailored and the least restrictive means of furthering the governmental interests at play were employed, *McCullen v. Coakley*, 573 U.S. 464, 493–94 (2014)) or an exacting scrutiny analysis (which would similarly entail a showing that SB 774 is substantially related to and narrowly tailored towards the governmental interests at stake and that the legislature considered the law in light of any less intrusive alternatives, *Am. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607–10, 612–13 (2021)), Defendants have abandoned their argument that SB 774 would satisfy a heightened level of constitutional scrutiny.[4] *See U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, n.13 (11th Cir. 2007)

[3] The Court's findings in the Preliminary Injunction Order [ECF No. 40] should direct and inform its determination of how to decide this motion because Defendants did not appeal the preliminary injunction order; there has been no new evidence presented since the entry of the preliminary injunction order; and there has been no intervening change in the controlling law. *See, e.g.*, *Arizona v. California*, 460 U.S. 605, 618 (1983) ("[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case."); *United States v. Uccio*, 940 F.2d 753, 757 (2d Cir. 1991) ("The court's exercise of its power to reconsider and modify its prior interlocutory rulings is informed by the second branch of the law-of-the-case doctrine . . . that when a [trial] court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case."); *In re Cone Constructors, Inc.*, 304 B.R. 513, 520 (Bankr. M.D. Fla. 2003) ("When a trial court has ruled on an issue, but the appellate court has not made a determination of that issue, the trial court's earlier decision should direct, but not limit, the court's determination of the issue at a subsequent stage.").

[4] Defendants do not even mention the caselaw they chiefly relied on in opposition to Plaintiffs' motion for preliminary injunction when they sought to combat the application of strict scrutiny in favor of an application of exacting scrutiny. [*See* ECF No. 16 at 3–4 (citing *Am. for Prosperity Found. v. Bonta*, 594 U.S. 595, 608–10 (2021); *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010); *Worley v. Fla. Sec'y of State*, 717 F.3d 1238, 1245 (11th Cir. 2013))].

(treating a party's "perfunctory and undeveloped argument" as waived); *Jim Walter Res., Inc. v. Downard Longwall, Inc.*, No. 7:05-CV-01338-LSC, 2008 WL 11380012, at *4 n.8 (N.D. Ala. Jan. 16, 2008) (denying in part a motion for summary judgment on an issue where the party "failed to develop its position" or otherwise "provide any authority supporting its position").

As explained in depth in Plaintiffs' Motion for Summary Judgment [*see* ECF No. 59 at 4–10, which is hereby incorporated herein], although SB 774 better fits under a strict scrutiny rather than exacting scrutiny framework, there is no question that SB 774 fails to satisfy either form of heightened constitutional scrutiny.[5] That is because Defendants failed to meet their evidentiary burden of identifying evidence in the legislative record supporting the enactment of the challenged law. *See, e.g.*, *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822 (2000) ("No support for the restriction can be found in the near barren legislative record relevant to this provision. … [T]he Government must present more than anecdote and supposition. The question is whether an actual problem has been proved in this case. We agree that the Government has failed to establish a pervasive, nationwide problem justifying its nationwide daytime speech ban."). Here, neither heightened standard (strict or exacting) is met because the legislative record was totally devoid of any evidence showing that SB 774 is substantially related to the governmental interests at issue, that the disclosures required under Form 1 were not adequate, and that the Florida Legislature considered less restrictive alternatives. [*See* ECF No. 56-27 at 92:9–13, 94:13–95:22, 159:3–8; ECF No. 56-22; ECF No. 56-27 at 12–15, 26; ECF No. 56-27 at 95:23–96:4, 97:22–98:1, 100:9–13, 108:2–8, 150:1–5, 150:23–151:13, 152:13–155:20; ECF No. 62 ¶¶ 9–11; ECF No. 67 ¶¶ 9–11]. The law should therefore be found to be unconstitutional.

[5] Remarkably, since the inception of this case, the parties have recognized that a high level of constitutional scrutiny should be applied to SB 774, with Plaintiffs contending that "strict scrutiny" applies [ECF No. 10 at 9–13; ECF No. 54 at 23–25], and Defendants contending that "exacting scrutiny" applies [ECF No. 15 at 3, 6; ECF No. 16 at 2, 4–5]. It was not until Defendants had a preliminary injunction entered against them under an exacting scrutiny framework that they now seek to shy away from an application of exacting scrutiny in favor of a lower level of constitutional review applicable to the federal right to privacy, commercial speech, or government employee speech.

II. Defendants' Arguments that Seek to Escape the Application of Heightened Constitutional Scrutiny (whether Exacting or Strict Scrutiny) are Without Merit.

In their Motion for Summary Judgment, Defendants advance several arguments that were either previously rejected by the Court or have been ubiquitously rejected by other courts. No matter how many old arguments they recycle and new arguments they inject into this case, Defendants cannot bypass the inescapable conclusion that heightened constitutional scrutiny applies to this case and that there is no proof derived from the legislative record that would satisfy the heightened constitutional scrutiny.

A. The Gravamen of this Case is Free Speech, not the Federal Right to Privacy, and Therefore *Plante v. Gonalez* Is Inapplicable

Disagreeing with the Court's earlier finding that the law at issue here "burdens speech" and "falls within the purview of the First Amendment," Defendants contend that the financial disclosure requirements of SB 774 should be examined under the federal constitutional right to privacy, not the First Amendment right to freedom of speech, because that was the constitutional challenge before the Former Fifth Circuit decision in *Plante v. Gonzales*, 575 F.2d 1119 (5th Cir. 1978). [ECF No. 61 at 3]. Defendants' reliance on *Plante* is misplaced.

As the Court already found in its Preliminary Injunction Order, the *Plante* decision does not apply here because the court did "not address the question of whether compelled disclosure of information is subject to First Amendment protection" and "predates a long line of Supreme Court and Eleventh Circuit precedent holding that it does." [ECF No. 40 at 20]. The state senators in *Plante* did not bring a First Amendment compelled, content-based speech claim. Even if they had brought such a claim, First Amendment jurisprudence—especially for compelled speech claims––have drastically evolved since 1976 when *Plante* was decided. To be sure, the 1988 Supreme Court decision of *Riley* was one of the earlier seminal cases that solidified compelled speech claims. Since *Riley*, the Supreme Court has greatly expanded its First Amendment jurisprudence, particularly in connection with compelled speech. *See Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 766–75 (2018) ("*NIFLA*") (invalidating a state law requiring pregnancy-related clinics to disseminate notices stating the existence of publicly funded family planning services and whether the clinic was licensed and proclaiming that, "[b]y compelling individuals to speak a particular message, such notices alte[r] the content of [their] speech" (second and third alterations in original) (quotations omitted)); *Janus v. AFSCME*, 585 U.S. 878, 925 (2018)

(invalidating a state statute that compelled speech on First Amendment grounds). In addition, the "balancing of interests" applied in *Plante* would be different today, given that the Form 6 financial disclosure forms are now readily available to anyone in the world through the internet (which did not exist at the time), the risk of identity theft is far greater now, and the interests of municipal elected officials (particularly in small municipalities where they are often not paid) are different than state legislators. All told, the federal right to privacy holding in *Plante* has no bearing on the Court's disposition of Plaintiffs' First Amendment compelled speech claim. Accordingly, the proper standard for compelled, non-commercial, content-based speech is either strict or exacting scrutiny, not the "balancing of interests" applied in *Plante.*

B. City Commissioners are not "Employees" of the State and Therefore Neither *Garcetti* nor *Pinkerton* Apply

As a wholly new argument in this case, Defendants now assert that compelling elected public officials to make a financial disclosure is not protected by the First Amendment because Plaintiffs are not private actors but rather government employees. [ECF No. 61 at 5–6]. Relying on the government-speech doctrine applicable to government employees formulated by the Supreme Court in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), Defendants contend that Plaintiffs make financial disclosures in the course of their official duties[6] and, as a result, Defendants may impose "speech restrictions that are necessary" to "operate efficiently and effectively." [*Id.* at 6–7]. Based on this doctrine, "the Constitution does not insulate" government speech from employer discipline. *Garcetti*, 547 U.S. at 421.

Garcetti, however, applies only to government employees. In arguing that the financial disclosures are part of Plaintiffs' official duties, Defendants presume that elected officials—such as Plaintiffs—should be classified as government employees subject to employer discipline. This faulty presumption is without legal support. Recently, in fact, the Eleventh Circuit in *Warren v. DeSantis*, 90 F.4th 1115 (11th Cir. 2024), a case involving a First Amendment challenge by an elected state attorney who was suspended by the Governor for signing statements expressing

[6] Defendants leap to the conclusion that the filing of a financial disclosure form "is simply part of the official duties attendant to serving as a public official in the State of Florida." [ECF No. 61 at 8]. That is not correct. The filing of a financial disclosure form is a prerequisite to being a municipal elected official (or candidate)—it is not part of the duties of a municipal elected official (which include enacting laws, approving contracts, setting tax rates, *etc*.).

concern about bills targeting the transgender community, expressed strong skepticism that *Garcetti* applies to elected officials, explaining in part:

> The Supreme Court has never applied *Garcetti* to elected officials. Nor have we. . . .
>
> *Garcetti*'s rationale makes little sense for elected officials. The Supreme Court was concerned in *Garcetti* with ensuring that government employers could supervise employees without the employees constitutionalizing every grievance. *Id.* at 422–23. Government employers, "like private employers, need a significant degree of control over their employees' words and actions." *Id.* at 418.
>
> But often, elected officials do not exercise a significant degree of control over other elected officials. Rather, the electorate controls elected officials and disciplines them by withholding votes if it disapproves of their performance. Consider federal legislators. Some federal legislators are senior to others. Federal legislators have the power to censure and expel fellow legislators. U.S. Const. art. I, § 5, cl. 2. But one legislator cannot control or manage another. Each legislator's constituency does that.

Id. at 1130. The contrast between *Garcetti* and *Warren* is clear: Garcetti was an assistant district attorney employed by the district attorney (and thus subject to the district attorney's personnel rules), while Warren was an elected district attorney not employed by any individual person (reporting, instead, to the voters).[7] Based on the *Warren* Court's analysis, it is plainly evident that *Garcetti* does not apply to municipal elected officials such as Plaintiffs, and neither the Supreme Court nor the Eleventh Circuit has extended *Garcetti* to them. *Warren*, 90 F.4th at 1129-30. Moreover, contrary to Defendants' argument, the law is well-settled that elected officials do have free speech rights under the First Amendment. *Id.* at 1130 (citing *Bond vs. Floyd*, 385 U.S. 116, 136 (1966) (the "First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy.")); *see also Wood v. Georgia*, 370 U.S. 375, 394–95 (1962) (observing the importance of protecting elected officials' First Amendment freedom of speech rights); *Wrzeski v. City of Madison*, 558 F. Supp. 664, 667 (W.D.

[7] Defendants argue: "So just like the State can make an assistant district attorney say or not say things pursuant to his official duties, the State can make Plaintiffs say things pursuant to their official duties as public officials in the State." [ECF No. 61 at 7]. This statement misses the fact that an assistant district attorney is employed by the district attorney and thus subject to his or her personnel rules, while municipal elected officials are not employees at all, let alone employees of the State subject to personnel rules developed by the State Legislature.

Wis. 1983) (noting that "[c]ourts have repeatedly analyzed freedom of speech cases in the legislative context without the use of any special First Amendment standard").[8]

Defendants next argue, yet again for the first time in this case, that if Plaintiffs' compelled speech under SB 774 is treated as private speech, then such speech is subject to the lower level of scrutiny that is typically associated with free speech lawsuits by public employees. [ECF No. 61 at 8]. As the Supreme Court has held, "[t]he State 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." *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968). Courts invoking the so-called "*Pickering* test" must strike "a balance between the employee's interest in commenting on matters of public concern and his employer's interest in efficiently providing public services." *Moss v. City of Pembroke Pines*, 782 F.3d 613, 621 (11th Cir. 2015).

In seeking to apply the *Pickering* standard here, Plaintiffs, without elaboration, again presume that municipal elected officials are public employees subject to *Pickering*. All courts that have addressed this issue—including the Eleventh Circuit—have held to the contrary, however.

The Eleventh Circuit in *Warren* recently observed[9] "[t]he rationale undergirding *Pickering* does not support its application to elected officials." 90 F.4th at 1133. Because the State of Florida does not act as a "traditional employer" in overseeing elected officials, the "*Pickering* test is inapplicable." *Id.* (quoting *Harris v. Quinn*, 573 U.S. 616, 652 (2014)). "Every other circuit to have considered this issue," the *Warren* Court added, "has applied the Supreme Court's guidance in *Harris* and excluded elected officials from *Pickering* balancing." *Id.* (citing *Boquist v. Courtney*, 32 F.4th 764, 779 (9th Cir. 2022) (concluding that "the *Pickering* balancing test [does not] apply to an elected official's claim of First Amendment retaliation"); *Jenevein v. Willing*, 493 F.3d 551, 558 (5th Cir. 2007) (refusing to extend *Pickering* to speech restrictions on elected officials and instead applying strict scrutiny); *Phelan v. Laramie Cnty. Cmty. Coll. Bd. of Trs.*, 235 F.3d 1243,

[8] Even in *Plante*, relied upon by Defendants, the Court, in the context of the limited federal right to privacy, said that choosing to run for office "does not strip them [state legislators] of all constitutional protection." *Plante*, 575 F.2d at 1135.

[9] The *Warren* Court did not need to decide whether the *Pickering* standard should be extended to free speech lawsuits by elected officials because, even if *Pickering* did apply there, its balancing test favored the elected official. 90 F.4th at 1133.

1246–47 (10th Cir. 2000) ("The *Pickering* line of cases does not, however, apply to facts like those in the case we consider today. Ms. Phelan is not a governmental employee or contractor; indeed, the Board members and Ms. Phelan occupy the same positions as elected public officials.")).

In short, SB 774 does not fit within the narrow categories of speech restrictions on government employees that might otherwise escape the rigid application of heightened constitutional scrutiny to Plaintiffs' First Amendment challenge to SB 774.

C. Financial Disclosures Do Not Propose a Commercial Transaction or Relate to the Advertising of a Product or Service, and thus *Zauderer* does not Apply

Defendants next argue (again for the first time) that SB 774 should be subject to the lower *Zauderer* level of constitutional scrutiny applicable to commercial speech cases because the law merely requires government officials to "disclose purely factual and uncontroversial information about their finances in furtherance of a legitimate government interest." [ECF No. 61 at 10–11 (quotations omitted)]. Aside from that single contention, Defendants do not elaborate how the disclosures compelled by SB 774 are "commercial speech." Defendants' argument is without merit.

Commercial speech is "expression related solely to the economic interests of the speaker and its audience." *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 561 (1980). The "core notion of commercial speech [is] speech which does no more than propose a commercial transaction." *Bolger v. Young Drug Prods. Corp.*, 463 U.S. 60, 66 (1983). Although there is a financial component to SB 774 in that public officials are compelled to reveal their finances, the statute does not reference any commercial advertising, the statute is not tied to a particular product or service, and the municipal officials here do not have an economic motivation to fill out a Form 6. *See id.* at 67. A "vote" is not a commodity for sale, nor is the holding of public office. Defendants fail to cite one case where the *Zauderer* commercial speech standard has been applied to an elected official's speech related to seeking vote or holding public office. Rather, in a case presented by Defendants in a prior filing [ECF No. 16 at 4], the Supreme Court applied exacting scrutiny to a law requiring that, among other things, candidates for elected office must file a quarterly report disclosing detailed financial information, including identifying contributions. *See Buckley v. Valeo*, 424 U.S. 1, 64 (1976) ("We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes . . . must survive exacting scrutiny"). The *Buckley* Court certainly did not apply the lower

standard applicable to commercial speech—it applied heightened constitutional scrutiny appropriate for non-commercial speech.

As an analog to SB 774's regulation of the non-commercial speech of elected municipal officials, the Supreme Court has "applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers." *NIFLA*, 585 U.S. at 771 (citing *NAACP v. Button*, 371 U.S 415, 418–19, 438, 443 (1963) (determining that a statute that prohibited "improper solicitation" by attorneys in an attempt to outlaw litigation-related speech of the National Association for the Advancement of Colored People (NAACP) was a non-commercial proscription on free speech in part because "no monetary stakes [were] involved"); *In re Primus*, 436 U.S. 412, 422, 432 (1978) (concluding that a statute that regulated the solicitation of prospective litigants by nonprofit organizations that engage in litigation was a non-commercial abridgment of free speech because the solicitation would not be for "pecuniary gain" and the legal services offered were "not an offer predicated on entitlement to a share of any monetary recovery")). Here, an elected local official is not filling out a Form 6 as a pre-condition to soliciting any goods or services. The statutory mandate here, therefore, does not harness any discernible nexus with the (non-existent) commercial interests of the local officers. Thus, SB 774 does not regulate commercial speech.

D. Defendants Cannot Satisfy Constitutional Scrutiny Based Upon History or Common Sense Because *Burson* Does Not Apply

It is well-established that to pass any level of heightened constitutional scrutiny, the government must identify evidence in the legislative record supporting the enactment of the challenged law. *See, e.g.*, *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822 (2000) ("No support for the restriction can be found in the near barren legislative record relevant to this provision. … [T]he Government must present more than anecdote and supposition. The question is whether an actual problem has been proved in this case. We agree that the Government has failed to establish a pervasive, nationwide problem justifying its nationwide daytime speech ban."); *Edenfield v. Fane*, 507 U.S. 761, 771 (1993) (invalidating law because no studies or evidence existed in legislative record and stating that "burden not satisfied by mere speculation or conjecture"); *Sable Commc'ns of Cali., Inc. v. FCC*, 492 U.S. 115, 129–30 (1989) ("[A]side from conclusory statements during the debates by proponents of the bill, . . . the congressional record presented to us contains no evidence as to how effective or ineffective the . . . regulations were or might prove to be.").

Despite being already placed on notice of the existence of these decisions earlier in this case, in their Motion for Summary Judgment, Defendants do not even mention these cases or try to distinguish them. Instead, Defendants cite *Burson v. Freeman*, 504 U.S. 191, 211 (1992), arguing that this case falls under one of the "rare case[s]" where a court need not look exclusively to the substance of the evidence set forth in the legislative record but instead may also rely upon other indicia, such as history, consensus, and common sense. [ECF No. 61 at 12, 24]. As thoroughly explained by the Court in the Preliminary Injunction Order [ECF No. 40 at 27], Defendants' reliance on *Burson* is misplaced.

In *Burson*, the plaintiff challenged a long-standing Tennessee statute that prohibited solicitation of votes and distribution of campaign material within 100 feet of the entrance to a polling place. The Court, in a plurality opinion, recognized that the interest at stake—the right to vote—is "of the essence of a democratic society" and that no "right is more precious in a free country." *Id.* at 199. The Court then underwent a comprehensive analysis detailing the long history of the right to vote freely in the United States and of the long-established and common use of restricted zones around polling places throughout the country. *Id.* at 200–07. In fact, the Court noted that "all 50 states" have such restrictions. *Id.* at 206. Accordingly, the *Burson* Court created a very limited exception to the requirement that evidence supporting a law be in the legislative record where a law impairs the exercise of a First Amendment right that threatens to interfere with the act of voting itself:

> This modified 'burden of proof' does not apply to all cases in which there is a conflict between First Amendment rights and a State's election process – instead it 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, or cases such as this one, in which the challenged activity physically interferes with electors attempting to cast their ballots.

Id. at 209 n.11 (emphasis added).

The Court created this narrow exception to the legislative record requirement in that limited situation because of certain factors not remotely at issue here: the paramount importance of the right to vote freely, *id.* at 199; all 50 States curb access to the areas in or around polling places, *id.* at 206; the majority of the restricted zone laws "were adopted originally in the 1890s, long before States engaged in extensive legislative hearings on election regulations," *id*. at 208; the difficulty

in isolating the exact effect of these laws on voter intimidation and election fraud, *id*. at 208-09; and the potential damage that would be done to a State's political system before the legislature could take corrective action, *id*. at 209. Thus, in that very limited situation, the Court found that *Burson* constituted the "rare case" where strict scrutiny was met without evidence in the legislative record because of the long history of restricted zone laws, a substantial consensus, and common sense. *Id.* at 211.

Illustrative of the narrow application of the *Burson* standard is this Court's decision in *CBS Broadcasting, Inc. v. Cobb*, 470 F. Supp. 2d 1365 (S.D. Fla. 2006) (Huck, J.). There, Judge Huck granted plaintiffs' motion for preliminary injunction—which was then converted into a permanent injunction—finding that a state statute that prohibited the solicitation of voters inside a polling place or within 100 feet of the entrance to any polling place was unconstitutional as applied to plaintiffs' news-gathering and exit-polling activities. *Id.* at 1366. In so ruling, the Court rejected defendants' argument that *Burson* compelled upholding the statute, stating:

> *Burson* does not save Section 102.031(4)(a) from its constitutionally impermissible status. There, the goal was to protect the voter against inappropriate "electioneering" as the voter was entering the polling station. Exit polling does not implicate the same voting-integrity concerns as electioneering. . . . [T]he Plaintiffs' exit polling is accomplished "unobtrusively" and voters complete the written interviews completely voluntarily. Importantly, voters are only approached after they have voted. Although [the Supervisor of Elections] has made generalized assertions that numerous soliciting activities, including exit polling, contribute to a broader negative "cumulative effect," he provides no direct or specific evidence that exit polling itself has led to any negative consequences for voters. At best, [the Supervisor of Elections] merely implies, but does not directly state, that exit polling may have an adverse effect on voters. The Court draws no such inference. The Court would expect that if [the Secretary of State] had any real, direct evidence to support her contention that exit polling adversely affects the voting process, she would have presented it in an unequivocal way. Indeed, the undisputed evidence specifically directed at exit polling suggests that the contrary is actually true. In a review of voter complaints, Mr. Workman found not one reference to exit pollers causing problems. Likewise, Mr. Workman's declaration shows that voter participation has been continually increasing. Thus, it appears that the Defendants concerns are less problematic than [the Supervisor of Elections] suggests. . . . [The Secretary of State] suggests that the submission of such "hard evidence" is not necessary under the modified strict scrutiny standard established in *Burson*. This argument goes too far. Although [the Secretary of State] is correct that the *Burson* Court sought to permit states to respond to potential deficiencies in the electoral process with foresight rather than reactively, the Court imposed two important

> limitations: (1) the response must be reasonable and not significantly impinge on constitutionally protected rights; and (2) the modified burden of proof only applies "when the First Amendment right threatens to interfere with the act of voting itself." *Burson*, 504 U.S. at 214. In cases like this where the First Amendment right does not interfere with the "act of voting itself," the State must come forward with more specific evidence to support regulations directed at intangible influence. *Id.*

Id. at 1369–71. Accordingly, because SB 774 clearly is not categorized as an electioneering statute, the narrow *Burson* exception does not apply here.

Even if the *Burson* exception applied (which it clearly does not), there is no long history in Florida or anywhere else in the country of requiring municipal elected officials to disclose the amounts of their net worth, income, assets, and liabilities. In fact, the opposite is true.

The history of Florida's financial disclosure regime establishes that elected municipal officials were purposefully not included in the "full and public disclosure" requirement in the original constitutional amendment that created financial disclosure requirements. And it is undisputed that, for the past 50 years, elected municipal officials have completed the Form 1 limited disclosure rather than the Form 6 full disclosure.

The History Supplement shows that in 1975 Governor Reuben Askew spearheaded an initiative campaign to amend the Florida Constitution to add a provision related to ethics called the "Sunshine Amendment." Included in the amendment was "full and public financial disclosure." "Governor Askew and other supporters of the Amendment felt it should apply primarily to elected constitutional officers in the State." [ECF No. 56-27 at 13]. In fact, in the back-up materials, the advocates specifically recognized that elected municipal officials may be different than constitutional offices in that some were for small cities who donated their time without compensation. *Id.* Thus, the proponents purposefully did not include elected municipal officials in the group of officials who would make full and public financial disclosure under the proposed constitutional amendment: "Whether these people [elected municipal officials] should disclose, and who among them should disclose, is a legitimate matter for legislative debate once the Amendment is passed by the people." *Id.*; *see also id.* at 18 (answering question "Why not include all local officers in the Sunshine Amendment," the proponents stated that "the Amendment, however, is intended to cover those with the greatest amount of public power").

The amendment passed in 1976 and the following year, the State Legislature enacted a bill to apply the same full and public disclosure to elected municipal officials. But Governor Askew,

the main proponent of the constitutional amendment and financial disclosure, vetoed the bill. *Plante v. Gonzalez*, 575 F.2d 1119, 1123 n.5 (5th Cir. 1978). Thus, for almost 50 years, elected municipal officials have completed Form 1, which does not require that they disclose the amount of their net worth, income, assets, and liabilities. Therefore, no historical record in Florida supports the need or efficacy of such additional financial disclosures by municipal elected officials, and Plaintiffs merely seek to maintain that long-standing status quo (filing Form 1, not Form 6, financial disclosures).

Unlike the restricted zones near polling places in *Burson,* there exists no long national history of requiring elected municipal officials to disclose the amounts of their net worth, income, assets, and liabilities.[10] Although "all 50 States" have restricted areas around polling places, Defendants did not find a single State that requires such extensive disclosures from municipal elected officials.[11]

[10] Defendants also cite *Garcia v. Stillman*, 661 F. Supp. 3d 1168, 1183 (S.D. Fla. 2023) (Bloom, J.), a case where Judge Bloom, reviewing the history of lobbying restrictions in Florida and the legislative record (including the reports and studies presented to the Constitutional Revision Commission which encompassed a study showing that all but six states had laws prohibiting such lobbying), found that the lobbying restriction contained in the Florida Constitution violated the First Amendment and entered a preliminary injunction. *Id.* at 1184. Although such reports and studies did exist, Judge Bloom, after reviewing the transcripts, concluded that there was "minimal empirical evidence or legislative findings that the Lobbying Restrictions are necessary or adequate to address quid pro quo corruption." *Id.* Remarkably, the history in the legislative record in *Garcia* that was ruled insufficient *was far more extensive* than here (where there is no support whatsoever in the legislative record).

[11] Defendants do point out that, of the hundreds of municipalities in Florida, the elected officials in two municipalities (Tampa and St. Petersburg), voluntarily chose in 2001 and 2003 to impose upon themselves the Form 6 financial disclosure requirements. [ECF No. 61 at 14]. That certainly does not constitute the extensive, long existing history found in *Burson.* Moreover, such a voluntary choice does not implicate compelled speech, and the forms are not placed on the internet for the world to see (although they are public records available only upon request). [ECF No. 67 ¶¶ 12, 17]. Defendants also do not cite any authority for the position that a state legislature may rely on certain city ordinances as a *post-hoc* justification in defending the constitutionality of a particular statute.

E. The Various Interests Asserted Post-Litigation Lack Evidentiary Support in the Legislative Record and thus are Insufficient to Satisfy Constitutional Scrutiny

The last half of Defendants' Motion for Summary Judgment assumes that there is no heightened constitutional scrutiny and that SB 774 should be evaluated under a "reasonable relation" test. [ECF No. 61 at 12–24]. Then, Defendants create *post-hoc* justifications, with no support in the legislative record, to justify SB 774 based upon the non-applicable standard. Based upon the correct standard of heightened scrutiny (either exacting or strict), SB 774 does not pass constitutional muster.

Defendants have attempted to restate the government interest served by requiring that municipal elected officials complete Form 6 rather than Form 1, ignoring the interest, as expressly stated in the Florida Constitution, which is to protect against the abuse of the public trust. The text of Article II, Section 8 of the Florida Constitution (which was added through the Sunshine Amendment in 1976) explicitly says: "A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right: (a) All elected constitutional officers and candidates for such 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*. In deposition testimony, Defendants, in fact, confirmed that "the overriding mission of the [Commission on Ethics] is to protect against the abuse of the public trust." [ECF No. 56-27 at 14:7–14]. Accordingly, Form 6 "is intended to assure the right against abuse of the public trust." *Id.* at 15:18–22; *see also id*. at 44:4–8 (acknowledging that "the reason that public officers are required to publicly disclose their financial interest is to avoid conflicts of interest"); § 112.3144(11)(c), Fla. Stat. Plaintiffs have already agreed that protecting against the abuse of public trust is both an important and compelling interest. [ECF No. 10 at 14].

For First Amendment scrutiny, government must articulate the applicable governmental interest with specificity (here, protection from abuse of the public trust), rather than make abstract statements. *Complete Angler, LLC v. City of Clearwater*, 607 F. Supp. 2d 1326, 1334 (M.D. Fla. 2009) (noting that a governmental entity does not establish a compelling governmental interest through "abstract notions"); *see also Awad v. Ziriax*, 670 F.3d 1111, 1130 (10th Cir. 2012). In their Motion for Summary Judgment, Defendants attempt to define the alleged governmental interest in such an abstract manner that any additional disclosure would serve the interest.

The first interest discussed by Defendants is "bolstering of public confidence in government officials." [ECF No. 61 at 17–18]. Bolstering of public confidence may be the result of protecting against the abuse of public trust; it is not a governmental interest in and of itself. The "bolstering of public confidence" is also very abstract and difficult to quantify. Even if it were the applicable interest, Defendants certainly presented no evidence (in the legislative record or otherwise) that public confidence is higher in State and County elected officials (who have for the past 50 years completed Form 6) than in municipal elected officials (who have completed Form 1). There is also no evidence suggesting that, for example, the disclosure of the amount of an official's net worth, or the value of a specific out-of-state municipal bond that an official owns, creates more or less confidence in the government. Even if the amorphous "bolstering of public confidence" was, in and of itself, a compelling or sufficiently important interest, there is still no evidence here that the change from Form 1 to Form 6 was necessary, would increase public confidence, or was narrowly tailored.

The second interest discussed by Defendants is "promotion of voter knowledge." [ECF No. 61 at 18–19]. Again, this is a very abstract and amorphous concept. The public's "right to know" begs the question: "to know what?" The obvious answer is that the public should know things that are relevant to protecting against the abuse of public trust. The "right to know" cannot simply mean that any level of disclosure is automatically constitutional simply because the more the public knows, the better. In addition, there would still need to be some expert research, studies or empirical evidence in the legislative record showing that each of the items that are to be disclosed (amount of net worth, income, assets and liabilities) are things that the public needs to know.

The third interest discussed by Defendants is "the state's interest in its political community." [ECF No. 61 at 19–21]. This too is a very abstract and amorphous concept. There certainly is no evidence in the record (legislative or otherwise) that the filing of Form 1 rather than Form 6 by municipal elected officials has damaged the "political community" of the State, or that Form 6 filers are somehow members of the "transparent, trustworthy, and ethics focused" community but Form 1 filers are not. Again, this is merely a *post hoc* argument with no support in the form of expert research, studies or empirical evidence in the legislative record.

The fourth and final interest discussed by Defendants is "deterrence of corruption and conflicts." [ECF No. 61 at 21–24]. This is essentially equivalent to protecting against the abuse of the public trust. But, again, Defendants just assume, with no evidence, that Form 1 is not

sufficiently deterring corruption and conflicts, that Form 6 would be better at deterrence, and that the specific additional disclosures (amount of net worth, income, assets and liabilities) are each necessary for such deterrence (in order to be narrowly tailored). There is no expert research, studies or empirical evidence supporting these conclusions in the legislative record (or anywhere in the record). In fact, as noted above, the only empirical evidence suggested to the contrary—the Form 6 State and County elected official filers have a higher percentage of ethics complaints against them than the Form 1 municipal elected official filers—does not advance Defendants' position.

The final argument advanced by Defendants is that there should be some sort of balancing test, like that used under a rational basis test. [ECF No. 61 at 24]. That is simply not the standard by which laws compelling content-based speech are measured. *United States v. Stevens*, 559 U.S. 460, 470 (2010) (observing the First Amendment does not contemplate such "*ad hoc* balancing of relative social costs and benefits"). Rather, the government has the burden of establishing, through the legislative record, that it can satisfy a high level of scrutiny (either strict or exacting). Here, Defendants have failed to show through the legislative record (or otherwise) that requiring municipal elected officials to disclose the exact amount of their net worth and income, the value of every asset over $1000, and the amount of every liability over $1000 meets exacting or strict scrutiny.

CONCLUSION

For the reasons stated above and in Plaintiffs' Motion for Summary Judgment [ECF No. 59], Plaintiffs respectfully request that the Court grant summary judgment in their favor and against Defendants, declare that the portions of SB 774 that require municipal elected officials and candidates to file a Form 6 rather than a Form 1 violate the First Amendment to the United States Constitution and therefore are invalid, 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, reserve jurisdiction to consider the award of cost and expenses (including attorney's fees) to Defendants pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988, and award any other relief that the Court deems just and proper.

Dated: October 25, 2024

WEISS SEROTA HELFMAN
COLE + BIERMAN P.L.
200 East Broward Blvd., Ste. 1900
Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Facsimile: (954) 764-7770

By: */s/ Jamie A. Cole*
JAMIE A. COLE
Florida Bar No. 767573
jcole@wsh-law.com
msaraff@wsh-law.com
EDWARD G. GUEDES
Florida Bar No. 768103
eguedes@wsh-law.com
szavala@wsh-law.com
ANNE R. FLANIGAN
Florida Bar No. 113889
aflanigan@wsh-law.com
JEREMY S. ROSNER
Florida Bar No. 1018158
jrosner@wsh-law.com
kdoyle@wsh-law.com

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

PRESIDENT OF TOWN COUNCIL ELIZABETH A. LOPER, elected official of the Town of Briny Breezes, et al.,

Plaintiffs,

v. Case No.: 1:24-CV-20604

ASHLEY LUKIS, in her official capacity As Chair of the Florida Commission on Ethics, et al.

Defendants.
_____/

DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to this Court's Order (ECF No. 45), Defendants hereby file their Reply in Support of their Motion for Summary Judgment.

INTRODUCTION

Plaintiffs continue to assert that this is a straightforward compelled speech case and that SB 774[1] is therefore subject to strict scrutiny. (ECF No. 68 at 3). It is not. Defendants' Motion for Summary Judgment, (ECF No. 61) and Response to Plaintiffs Motion for Summary Judgment, (ECF No. 66), make clear that this is not a First Amendment case. In short, the state may compel financial information from Plaintiffs and publish that information to the public without running afoul of the First Amendment. However, if the Court determines that this is a First Amendment case, it still fails under the multiple tests

[1] For the sake of consistency with Plaintiffs' briefs, Defendants will refer to § 112.3144, as amended in 2023 as SB 774. References to specific provisions will be by statute number and pincite.

established by the Supreme Court.[2] Accordingly, Defendants are entitled to judgment as a matter of law.

ARGUMENT

I. This is not a First Amendment case.

In their response, Plaintiffs maintain that this is a plain and simple First Amendment compelled speech case. (ECF No. 68 at 6-7). It is not. In support of their First Amendment argument, in their response and elsewhere, Plaintiffs cite to compelled speech cases brought by private actors; vehicle owners,[3] professional fundraisers,[4] pregnancy-related medical clinics,[5] and building owners;[6] challenging laws that required them to provide information or messages they would rather not provide. *Id.; see also* Plaintiffs' summary judgment motion, (ECF No. 59 at 3-4); Defendants' response to Plaintiffs, summary judgment motion at (ECF No. 66 at 2, n.1). At no point in this litigation, have Plaintiffs cited a single First Amendment compelled speech case where, as here, the complaining party was a government official, employee or candidate for public office. In addition, none of Plaintiffs' arguments even address this obvious distinction, much less argue how or why it isn't relevant. It is indeed relevant because the identity of the speaker of allegedly

---

[2] Plaintiffs complain that Defendants have raised new arguments for the first time on Motion for Summary Judgment (ECF No. 68 at 1), but this grievance is of no consequence. Defendants are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Rule 56 places no limit on what parties may argue in support, as long as there is factual and legal support for each argument. The arguments made in opposition to a preliminary-injunction motion have no bearing on the arguments a party may make when adjudicating the case on the merits because a preliminary-injunction motion is a distinct proceeding from the merits. *See J-B Weld Co. v. Gorilla Glue Co.*, 978 F.3d 778, 794 (11th Cir. 2020). Additionally, Plaintiffs appear to invoke the "law of the case" doctrine. ECF No. 68 at 4 n.3. That doctrine is not applicable here as the Preliminary Injunction Order was an interlocutory ruling that was not appealed. *See Gregg v. U.S. Industries, Inc.*, 715 F.2d 1522, 1530 (11th Cir. 1983) (citing *United States v. United States Smelting, Refining & Mining Co.*, 339 U.S. 186, 199 (1949)).

[3] *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

[4] *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 797-98 (1988).

[5] *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018).

[6] *Masonry Bldg. Owners of Oregon v. Wheeler,* 394 F. Supp. 3d 1279, 1296 (D. Or. 2019).

compelled speech matters. Speech that may not be compelled from private parties may be compelled from government officials, employees, and candidates for public office without violating the First Amendment. *See Riley,* 487 U.S. at 800.

An additional factor distinguishing the instant case from those cited by Plaintiffs is that all of Plaintiff's cases involve laws which the complaining parties are required to speak directly to the public; the driving public in *Wooley,* the public seeking information about professional fundraisers in *Riley*; the public visiting a pregnancy-related clinic in *Becerra*; and the public visiting unreinforced masonry buildings in *Wheeler*. In the instant case however, the statute at issue requires that Plaintiffs make their financial disclosures to the Florida Commission on Ethics, and not directly to the public. § 112.3144(1)(a),(d), Fla. Stat. (2023). It is the Commission that is directed, in a separate statute, to publish the information on its website. § 112.3146(1)(b), (2)(b).

This is a distinction with a difference. In *Riley,* the law at issue required professional fundraisers to directly disclose to potential donors the gross percentage of revenue the fundraiser retained in prior public solicitations. 487 U.S. at 786. The Supreme Court ruled that this requirement violated the First Amendment, because it compelled speech from fundraisers and failed to survive exacting scrutiny. *Id.* at 798. In doing so, the Supreme Court said:

> In contrast to the prophylactic, imprecise, and unduly burdensome rule the State has adopted to reduce its alleged donor misperception, more benign and narrowly tailored options are available. For example, *as a general rule, the State itself may publish the detailed financial disclosure forms it requires professional fundraisers to file. This procedure would communicate the desired information to the public without burdening a speaker with unwanted speech during the course of a solicitation.*

Id. at 800 (emphasis added).

This is not mere dicta. It has been cited in multiple cases for the same proposition. *See e.g. Nat'l Federation for the Blind of Texas, Inc. v. Abbott,* 647 F.3d 202, 213-214 (5th Cir. 2011) (citing *Riley* in striking down a public disclosure requirement for professional fundraisers, noting that "there is nothing stopping Texas from requiring for-profit resellers

to file financial disclosure forms, which Texas could publish without burdening the charities with unwanted speech"); *see also American Target Advertising, Inc. v. Giani,* 199 F.3d 1241, 1248 (10th Cir. 2000) (citing *Riley* for the proposition that "[t]he Supreme Court has indicated that registration and disclosure provisions do not raise First Amendment problems.").

This language from *Riley* has also been cited in a very recent case involving a state sex offender registration statute. *Does v. Whitmer,* No. 22-cv-10209, 2024 WL 4340707, at *43-46 (E.D. Mich, Sep. 27, 2024) is a multi-front challenge to Michigan's sex offender statute. One of the arguments raised by the plaintiffs is that the reporting requirements for registered sex offenders constitute unconstitutional compelled speech. *Id.* at *43. In upholding the reporting requirement, the court found "that [the statute's] disclosure requirements do not implicate the First Amendment's prohibition of compelled speech such that a heightened-scrutiny—i.e., either intermediate or strict scrutiny—analysis is required." *Id.* at *44. To support their compelled speech argument, the *Whitmer* plaintiffs relied on the same cases Plaintiff cites in the instant case.[7] *Id.* at *44-45. In rejecting this argument, the court found "[a]s an initial matter, unlike the challenged provisions in *Wooley*, *Pacific Gas*, *Riley*, and *Becerra*, [the challenged statute] does not require registrants to disseminate a message. The message—whatever it might be—is being disseminated by the state. This alone distinguishes the present case from the cases cited by Plaintiffs." *Id.* at *45. The *Whitmer* court also found that the plaintiffs' cited cases "do[] not establish that Plaintiffs' supplying of information to MSP constitutes Plaintiffs' 'support' of the message. None of Plaintiffs' cases involved a compelled-speech claim based on the mere disclosure of factual information that is later publicized by the state." *Id.* at *46.

This Court should follow the same reasoning as *Whitmer* to find that the Form 6 disclosure requirements do not implicate the First Amendment. Like the statutes implicated

[7] *Wooley, Hurley, v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.,* 515 U.S. 557, 573 (1995); *Riley, and Becerra.*

in *Whitmer* and *Riley,* SB 774 does not require elected officials and candidates for elected office to disseminate any message to the public. They simply have to make disclosures to the Ethics Commission. It is the Ethics Commission who disseminates the message by making the required disclosures public. Therefore, Plaintiffs compliance with the statute by making the required disclosures cannot be construed as support of the Commission's message. No member of the public could reasonably conclude that Plaintiffs, or any other elected official or candidate, supports the "message" of the public disclosure of the required financial information. As suggested by *Riley* and held in *Whitmer,* section SB 774's requirement for Plaintiffs' disclosure of information to the Commission and the Commission's publication of that information "would communicate the desired information to the public without burdening a speaker with unwanted speech." *Riley,* 487 U.S. at 800. Accordingly, SB 774 does not implicate or violate Plaintiffs' First Amendment's compelled speech prohibition.

At most, SB 774 may implicate Plaintiffs' right to privacy, but any claim on that ground is conclusively foreclosed by *Plante v. Gonzalez*, 575 F.2d 1119, 1122 (5th Cir. 1978).[8]

II. In the alternative, Plaintiffs' First Amendment claim is subject to the *Garcetti* analysis.

If this Court determines that the language in *Riley* is unavailing, the Court should apply the *Garcetti* analysis to this case.

a. The *Garcetti* principle applies to Plaintiffs, whose official duties are governed by State law, regardless of the manner in which Plaintiffs are selected for their positions.

Plaintiffs' Response erroneously states "it is plainly evident that *Garcetti* does not apply to municipal elected officials such as Plaintiffs" (ECF No. 68 at 8) because of dicta in a recent decision of an Eleventh Circuit panel in *Warren v. DeSantis*, 90 F.4th 1115 (11th

[8] Plaintiffs' argue only that *Plante* does not apply here. They do not argue that if *Plante* is determined to be applicable, that the result would be different for Plaintiffs than it was for the *Plante* plaintiffs.

Cir. 2024).[9] ECF No. 68 at 8. That assertion is not "plainly evident" by any stretch of the imagination. Although the panel in *Warren* thought that applying *Garcetti* to elected officials "seem[ed] suspect," it expressly "decline[d] to decide that question," rendering its "skeptic[ism]" on that point nonbinding dicta. *Warren*, 90 F.4th at 1129–30. And the panel's skepticism was unfounded. The *Garcetti* principle simply stands for the proposition that public officials have no First Amendment interest when speaking on behalf of the government pursuant to their official duties rather than on behalf of themselves as private citizens. Nothing about that principle turns on the happenstance of how State law dictates that a particular government official be selected.[10] State law could just as easily provide that some local officials be appointed rather than elected, and then, under Plaintiffs' view, could constrain their official speech while identically situated elected officials would escape the requirements that State law places on their official speech simply because of their manner of hiring. Such an arbitrary distinction would turn the *Garcetti* rationale on its head.

In any event, the reasons the panel gave for its "skepticism" in *Warren* do not apply to the case at bar. *Warren* dealt with an elected state attorney who signed several statements with his title as State Attorney for the Thirteenth Judicial Circuit of Florida. *See Warren*, 90 F.4th at 1120-21. The Plaintiff, State Attorney Warren, alleged that Governor DeSantis unconstitutionally suspended him in retaliation for signing the statements. *Id*. at 1125. The panel thought—but did not decide—that the application of *Garcetti* to elected officials "seem[ed] suspect" for two reasons.

---

[9] The mandate has yet to issue in *Warren* because a judge on the Eleventh Circuit ordered it withheld after Governor DeSantis petitioned for en banc rehearing. *See* Order, *Warren v. DeSantis*, No. 23-10459 (11th Cir. Feb. 5, 2024), Doc. 103-2. That en banc petition is still pending.

[10] Indeed, several courts have applied the *Garcetti* principle to elected officials. *See Parks v. City of Horseshoe Bend*, 480 F.3d 837, 840 n.4 (8th Cir. 2007); *Hartman v. Register*, No. 1:06-cv-33, 2007 WL 915193, at *6 (S.D. Ohio Mar. 26, 2007); *Hogan v. Twp. of Haddon*, No. 04-2036, 2006 WL 3490353, at *6 (D.N.J. Dec. 1, 2006); *Aquilina v. Wrigglesworth*, 298 F. Supp. 3d 1110, 1116 (W.D. Mich. 2018); *Shields v. Charter Twp. of Comstock*, 617 F. Supp. 2d 606, 615–16 (W.D. Mich. 2009); *but see Boquist v. Courtney*, 32 F.4th 764, 774–75, 779–80 (9th Cir. 2022); *Rangra v. Brown*, 566 F.3d 515, 523–24, 526 (5th Cir. 2009), *vacated as moot on reh'g en banc*, 584 F.3d 206 (5th Cir. 2009).

First, as the panel saw it, one of the purposes *Garcetti* serves is to ensure government employers have the ability to effectively manage their employees. *Id*. at 1129. "Government employers, like private employers, need a significant degree of control over their employees' words and actions." *Id*. at 1129 (cleaned up) (citing *Garcetti*, 547 U.S. at 418). Because in the panel's view, Governor DeSantis did not "exercise a significant degree of control" over State Attorney Warren, DeSantis' "limited managerial role weaken[ed] *Garcetti*'s application to Warren's speech." *Id*. at 1130. Quite the opposite is true here.

In *Warren*, the Eleventh Circuit specifically noted that, rather than elected officials controlling other elected officials, "the *electorate* controls elected officials and disciplines them by withholding votes if it disapproves of their performance." *Id*. at 1130 (emphasis added). If, by way of analogy, the electorate is the "employer" of elected officials, that is all the more reason to uphold the Form 6 requirements that the electorate originally, overwhelmingly voted into the Florida Constitution. The voting public has every right to require its own elected officials to disclose financial information as a prerequisite to holding or running for a public office. Plaintiffs boldly ask this Court to invalidate the will of the very people who are charged with "disciplining" elected officials by voting them out of office when their performance is unsatisfactory.

The second reason for the Eleventh Circuit's skepticism was that elected officials' *political* speech is already governed by better-fitting authority. *Warren*, 90 F.4th at 1130 (citing *Wood v. Georgia*, 370 U.S. 375 (1962) and *Bond v. Floyd*, 385 U.S. 116 (1966)) (emphasizing that elected officials have "the right to enter the field of political controversy[,]" that it is "imperative that they be allowed to freely express themselves[,]" and that legislators must "be given the widest latitude to express their views on issues of policy."). Although Plaintiffs erroneously suggest that Defendants' position is that elected officials do not have free speech rights at all,[11] Defendants' position is the opposite. Elected officials unquestionably enjoy the First Amendment right to engage in private political

[11] ECF No. 68 at 8 ("[C]ontrary to Defendants' argument, the law is well-settled that elected officials do have free speech rights[.]").

speech. But that is not the sort of speech at issue here. There is a significant difference between an elected official's speech on issues of policy or of their worldview in general (matters of public concern), and the *unrecognized* right to refuse to produce factual information to the government pursuant to their official duties, which is then made available to the public they serve. In fact, the Supreme Court has explicitly approved of the government requiring even private individuals to disclose factual information to the government itself. *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 795 (stating that the government may "constitutionally require fundraisers to disclose certain information to the State, as it has since 1981).

Neither of the two reasons for the Eleventh Circuit panel's skepticism are relevant in the context of this case. First, the electorate overwhelmingly voted for the Sunshine Amendment in 1976, and the Florida Legislature took steps to expand the requirements of the Amendment, consistent with the language of the Florida Constitution.[12] Second, the speech at issue here is not political speech. Because the Eleventh Circuit's reasons for skepticism in *Warren* about applying *Garcetti* to elected officials do not apply to this case, the Court should apply *Garcetti* here.

b. Plaintiffs' First Amendment claim fails under *Garcetti*.

Aside from invoking the skeptical dicta of the Eleventh Circuit panel in *Warren*, Plaintiffs cite no authority for the idea that elected officials are not "government employees" within the scope of *Garcetti*. *See* ECF 68 at 8; *see also* ECF 68 at 8 n.7 (conclusively stating that "municipal elected officials are not employees at all"). Contrary to Plaintiffs' baseless assertion, the panel did not reject *Garcetti*'s application to elected officials. Rather, the panel stated that it "remain[ed] skeptical about applying *Garcetti* to elected officials[,]" but *declined to decide the question*. *Warren*, 90 F.4th at 1130. Then, the Eleventh Circuit *did in fact* apply *Garcetti* to an elected official. *Warren*, 90 F.4th at 1131 (determining "whether Warren spoke as a citizen or as a government employee").

[12] *See* Art. II, § 8(a) ("All elected constitutional officers and candidates for such offices, *and, as may be determined by law, other public officers, candidates, and employees* shall file full and public disclosure of their financial interests.").

Following on the Eleventh Circuit's analysis, Plaintiffs are government employees. In the context of filing a Form 6 disclosure, municipal elected officials are unquestionably speaking in their capacities as members of the government (or, at least, candidates seeking to become members of the government) – not as private citizens. Therefore, applying a compelled speech analysis that applies to private citizens, as Plaintiffs propose, would not lead to a legally accurate conclusion. Because Plaintiffs speak as government employees when filing a Form 6, that speech is not protected by the First Amendment under *Garcetti*, and Plaintiffs' claim fails as a matter of law.

III. Even if this Court views the required disclosures as private speech, Plaintiffs' claim fails under *Pickering*.

In their Response, Plaintiffs again argue that Plaintiffs are not government employees and therefore *Pickering* should not apply. ECF No. 68 at 9. For the same reasons discussed above, they are government employees. In *Warren*, the panel also expressed skepticism about applying *Pickering* to elected officials, but again declined to decide the question and did indeed apply *Pickering*. *Warren*, 90 F.4th at 1133-34. As stated in Defendants' Motion and Response, the Form 6 disclosures satisfy *Pickering* because requiring financial disclosures does not compel Plaintiffs to speak on a matter of public concern, and even if it did, the State has a legitimate justification for treating government officials differently than members of the general public when it comes to disclosures. *See* ECF No. 61 at 8-10; ECF No. 66 at 7.

IV. Plaintiffs' claim is not subject to any heightened scrutiny.

Defendants re-incorporate the arguments made in their Motion for Summary Judgment (ECF No. 61) and Response in Support of their Motion for Summary Judgment (ECF No. 66) that Plaintiffs' claim is not subject to any heightened scrutiny. At most, the Court should apply the test set forth in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), that the government may compel the disclosure of "purely factual and uncontroversial information" as long as doing so is "reasonably related to the State's regulatory interest and the requirement is not "unduly burdensome." *Id*. at

651.[13] The Form 6 requirements easily pass this test for the reasons set forth in Defendants' Motion for Summary Judgment. ECF No. 61 at 10-24. And even if it were subject to heightened scrutiny, it would survive because the Form 6 requirement is tailored to the obvious government interest in promoting transparency in government and deterring corruption.

CONCLUSION

For any of the foregoing reasons, as well as the arguments set forth in Defendants' Motion for Summary Judgment and Defendants' Response in Opposition to Plaintiffs' Motion for Summary Judgment, Defendants respectfully request that the Court enter a final summary judgment in their favor.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Sara E. Spears
Sara E. Spears (FBN 1054270)
ASSISTANT ATTORNEY GENERAL
William H. Stafford III (FBN 70394)
SPECIAL COUNSEL
Complex Litigation Division
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
sara.spears@myfloridalegal.com
william.stafford@myfloridalegal.com
Complexlitigation.eservice@myfloridalegal.com
850-414-3300

[13] As mentioned in Defendants' Motion for Summary Judgment, *Zauderer*'s holding was not strictly founded on the determination that the speech at issue was "commercial," per se, rather that the listener's right to receive certain information outweighs the speaker's interest in not providing the information. *See* ECF No. 61 at 11; *Zauderer*, 471 U.S. at 651.

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

PRESIDENT OF TOWN COUNCIL ELIZABETH A. LOPER, elected official of the Town of Briny Breezes, *et al.*,

Plaintiffs,

vs.

ASHLEY LUKIS, in her official capacity as Chair of the Florida Commission on Ethics, *et al.*,

Defendants.
_____/

Case No. 1:24-cv-20604-MD

PLAINTIFFS' REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by and through their undersigned counsel, and pursuant to Federal Rule of Civil Procedure 56(a) and Local Rule 56-1, hereby file this reply in support of their "Motion for Summary Judgment" [ECF No. 59] as follows:

INTRODUCTION

Defendants make two significant concessions in their Response in Opposition to Plaintiffs' Motion for Summary Judgment ("Response") [ECF No. 66]. *First*, by failing to file any response to Plaintiffs' Statement of Material Facts [ECF No. 60], each of the facts set forth therein are deemed admitted pursuant to Local Rule 56.1(c). Thus, Defendants have now admitted that there were no empirical examples, expert studies, analyses, or other evidence in the legislative record showing that (a) the Form 1 disclosures were insufficient, (b) the additional Form 6 disclosures are substantially related to the State's identified interests, (c) the change from Form 1 to Form 6 was necessary, or (d) the State Legislature gave serious consideration to whether the government interests at stake could be addressed through less burdensome alternative means.[1] [ECF No. 60 ¶¶ 3–5, 8, 10, 15, 18–19, 22, 27]. *Second*, Defendants failed to respond to the well-supported

[1] This admission is not overly surprising because the Court, after carefully reviewing the entirety of the legislative record, has already determined that the legislative record is devoid of any such evidence. [ECF No. 40 at 25–27, 32]. No additional evidence in the legislative record has been identified or presented by Defendants since the entry of the Preliminary Injunction.

argument in Plaintiffs' Motion for Summary Judgment that a law cannot survive any level of heightened scrutiny—be it strict (applicable to laws regarding content-based, non-commercial speech), exacting (applicable to disclosure laws generally), or intermediate (applicable to commercial speech, even though the speech at issue here is non-commercial)—in the absence of sufficient evidence in the legislative record. Thus, regardless of the level of heightened scrutiny applied, SB 774's requirement that municipal elected officials complete a Form 6 rather than a Form 1 must be invalidated. Compounding the effect of these concessions, Defendants did not substantively address why or how the Form 6 disclosure requirements survive strict, exacting, or even intermediate scrutiny. Thus, if *any* level of heightened constitutional scrutiny is applied (strict, exacting or intermediate), SB 774's requirement that elected municipal officials fill out Form 6 rather than Form 1 cannot stand.

As a result, Defendants are left with only two tenuous arguments as to the constitutionality of SB 774. First, Defendants contend that elected municipal officials do not have any (or have very little) First Amendment free speech protection because they are "government employees" subject to personnel policies under the *Garcetti*[2] and *Pickering*[3] doctrines. Municipal elected officials, however, are not "government employees." In fact, every appellate court that has addressed this issue—including the Eleventh Circuit—has declined to extend these doctrines to elected officials, recognizing a significant demarcation between government employees and elected officials. Second, Defendants urge that if the Court determines that *Garcetti* and *Pickering* are inapplicable under these circumstances, then SB 774 should be subject to intermediate scrutiny as the Form 6 financial disclosure requirement relates to commercial speech. This position, too, fails because the Form 6 disclosure requirement are not "commercial speech" under well-established jurisprudence (and, as noted above, would fail even under intermediate scrutiny because of a lack of evidence in the legislative record).

Defendants then spend the second half of the Response arguing that a permanent injunction should be limited to the 175 named plaintiffs, even though the Court has previously rejected that same argument and entered a statewide preliminary injunction applicable to all municipal elected officials (the scope of which Defendants did not seek to modify through appeal). The rationale

[2] *See Garcetti v. Ceballos*, 547 U.S. 410 (2006).

[3] *See Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).

used by the Court in granting statewide preliminary injunctive relief applies equally to a permanent injunction: that the challenged law requires compliance by all municipal elected officials equally regardless of their specific circumstances and an injunction limited to the plaintiffs would engender needless follow-on litigation. [ECF No. 40 at 31]. Moreover, the cases relied upon by Defendants that take issue with statewide injunctions generally relate to preliminary, not permanent, injunctions (issued based upon a limited record) and do not concern the issuance of a final declaratory decree invalidating a law that is co-extensive with the permanent injunction. Thus, in addition to declaring the challenged law invalid, the Court should enter a permanent statewide injunction barring Defendants and their officers, agents, employees, and others acting in concert with them from enforcing the challenged portion of SB 774 applicable to all municipal elected officials and candidates in Florida.

ARGUMENT

I. SB 774 is Subject to, and Cannot Survive, Heightened Constitutional Scrutiny.

In their Motion for Summary Judgment, Plaintiffs asserted that SB 774 should be subject to a heightened level of constitutional scrutiny because SB 774 can either be classified as a law that compels content-based, non-commercial speech (subject to strict scrutiny) or a law that contains compelled disclosure requirements (subject to exacting scrutiny). Plaintiffs then argued that Defendants could not satisfy either of these heightened standards of review due to the evidentiary vacuum in the legislative record of SB 774.

In response, Defendants, rather than disputing Plaintiffs' position that SB 774 cannot withstand scrutiny under either heightened constitutional standard, contend instead that SB 774 should be subject to a lower level of constitutional scrutiny applicable to government employees' speech under *Garcetti* and *Pickering* or applicable to commercial speech cases under *Zauderer*.[4]

A. The *Garcetti* and *Pickering* Doctrines Apply Only to Government Employees, Not Elected Officials.

As thoroughly explained in Plaintiffs' Response to Defendants' Motion for Summary Judgment [ECF No. 68 at 6–11], Defendants cannot escape the application of a heightened standard of constitutional scrutiny by relying on the standards enunciated in *Garcetti* and *Pickering*.

[4] *See Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626 (1985).

It is well-settled that the government-speech doctrine in *Garcetti* and the government employer-employee balancing test in *Pickering* only apply to government employees, not elected officials. *See Warren v. DeSantis*, 90 F.4th 1115, 1129–30 (11th Cir. 2024) ("The Supreme Court has never applied *Garcetti* to elected officials. Nor have we. … *Garcetti*'s rationale makes little sense for elected officials. The Supreme Court was concerned in *Garcetti* with ensuring that government employers could supervise employees without the employees constitutionalizing every grievance. Government employers, like private employers, need a significant degree of control over their employees' words and actions. (quotations and citations omitted)); *see also Boquist v. Courtney*, 32 F.4th 764, 779 (9th Cir. 2022) (concluding that "the *Pickering* balancing test [does not] apply to an elected official's claim of First Amendment retaliation"); *Jenevein v. Willing*, 493 F.3d 551, 558 (5th Cir. 2007) (same); *Phelan v. Laramie Cty. Cmty. Coll. Bd. of Trs.*, 235 F.3d 1243, 1246–47 (10th Cir. 2000) (same). The parties have stipulated that the "Plaintiffs are elected officials of municipalities existing under the laws of the State of Florida." [ECF No. 56 ¶ 1]. *Garcetti* and *Pickering* simply do not apply.[5]

[5] Defendants also raise, with no legal support, the slippery-slope argument that the Court should not invalidate the recent *legislatively* imposed Form 6 financial disclosure requirement for elected municipal officials because it could result in a subsequent challenge to the *voter imposed constitutional* Form 6 financial disclosure requirements for state and county elected officials in 1976. [ECF No. 66 at 5–6]. That issue is not before the Court however, and the possibility that such an issue might be before the Court at later date has no weight on the merits of Plaintiffs' constitutional claim at bar. *See Latino Officers Ass'n, New York, Inc. v. City of New York*, 196 F.3d 458, 468–69 (2d Cir. 1999) ("Defendants raise the slippery-slope argument that if they are compelled by the First Amendment to permit the LAO to march, then they would *a fortiori* be compelled to 'allow police officers to march in uniform with any organization whatsoever, including the Ku Klux Klan or the Nazi Party.' But whether or not defendants could, consistent with the First Amendment, prohibit police officers from marching in uniform with a group like the Ku Klux Klan—an issue we need not, and do not, decide today—the mere possibility that such a situation might arise does not justify prohibiting plaintiffs themselves from marching in uniform behind the LAO banner in the parades at issue here."). Indeed, SB 774 is a recently enacted statute and, as such, must be supported by sufficient evidence in the legislative record to withstand (heightened here) constitutional scrutiny. Accordingly, a future challenge to the long-standing constitutional requirement, that was imposed by the people (not the Florida Legislature), and involves officials at a higher level of government, raises substantially different (albeit intellectually interesting) issues, but those issue are not before the Court and should be left for another day.

B. The Challenged Law does not Relate to Commercial Speech and, Even if it did, Could Not Withstand Intermediate Scrutiny.

Similarly, this case does not fall under the narrow category of commercial speech that would subject the law to intermediate, rather than strict or exacting, scrutiny. Commercial speech is "expression related solely to the economic interests of the speaker and its audience." *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 561 (1980). The "core notion of commercial speech [is] speech which does no more than propose a commercial transaction." *Bolger v. Young Drug Prods. Corp.*, 463 U.S. 60, 66 (1983). Although there is a financial aspect to SB 774 in that public officials are compelled to reveal their finances, the statute does not reference any commercial advertising, the statute is not tied to a particular product or service, and the municipal officials here do not have an economic motivation to fill out a Form 6. Contrary to Defendants' suggestion, an elected local official is not filling out a Form 6 as a pre-condition to soliciting any goods or services—holding public office is not a commodity for sale. On the contrary, elected officials hold office by virtue of of the vote of the electorate and not by virtue of some "transaction." The statutory mandate here, therefore, does not harness any discernible nexus with the (non-existent) commercial interests of the local officers. Thus, SB 774 does not regulate commercial speech.

Moreover, even if the speech compelled by SB 774 were "commercial" (which it is not), SB 774 would still fail the intermediate scrutiny applicable to commercial speech regulations. *Cent. Hudson*, 447 U.S. at 566 (to be constitutional, regulation of commercial speech must "directly advance" a "substantial government interest" and not be "more extensive than is necessary to serve that interest"). Similar to strict and exacting scrutiny, to uphold commercial speech regulation under intermediary scrutiny, the government must show evidence in the legislative record establishing the *Central Hudson* criteria. *See, e.g.*, *Edenfield v. Fane*, 507 U.S. 761, 772 (1993) (invalidating a law restricting commercial speech under a *Zauderer* intermediate scrutiny analysis in large part because there was an absence of studies or empirical evidence in the legislative record in support of the law and noting that a governmental entity does not satisfy their constitutional burden "by mere speculation or conjecture").

II. A Statewide Permanent Injunction is Warranted in this Case.

Repeating the same arguments rejected in connection with the Preliminary Injunction, Defendants re-argue that the Court should limit the scope of any permanent injunction to the 175 named Plaintiffs, rather than apply to all municipal elected officials statewide. [ECF No. 66 at 8–14]. The Court should again reject this argument.

A. The Court Should Stand By its Decision that the Injunction Should Be Statewide.

The Court previously granted the Preliminary Injunction statewide, rather than just to the 175 plaintiffs as suggested by Defendants. [ECF No. 40]. The Court's reasoning in connection with the preliminary injunction applies equally now:

> Under the circumstances presented in the instant case, this Court finds that statewide injunctive relief is warranted. As Plaintiffs point out, the law requires compliance by all municipal officials throughout the State, regardless of their specific circumstances. Moreover, a preliminary injunction limited only to the Plaintiffs who have joined this case so far would engender needless follow-on litigation. Because the injunction is not based on facts limited to Plaintiffs' circumstances, all of the other municipal officials subject to this law will be able to file near-identical suits to obtain the same relief. *See, e.g., Koe v. Noggle*, 688 F. Supp. 3d 1321 (N.D. Ga. 2023) (refusing to grant an injunction only as to the plaintiffs because, "if a plaintiffs-only injunction issued, follow-on suits by similarly situated non-plaintiffs based on this [c]ourt's order could create needless and 'repetitious' litigation," and because "affording [p]laintiffs complete relief without a facial injunction would be, at best, very burdensome for [p]laintiffs and the [c]ourt [and,] [a]t worst, . . . practically unworkable"). This reality is readily apparent from the fact that Plaintiffs have already amended the Complaint in this case three times to add additional plaintiffs. And, as noted above, Defendants offer no persuasive authority for why statewide application of the injunction is not appropriate in this case. For the reasons set forth above, this Court finds that statewide application of the injunction is appropriate.

[*Id.*at 31–32]. Despite the lengthy historical discussion [ECF No. 66 at 10–22], Defendants have not presented any reason why the Court should retreat from its prior position regarding the statewide scope of the injunction. Nearly all of the cases cited by Defendants are in connection with a preliminary, rather than permanent, injunction.[6] As acknowledged by Defendants, a

[6] Only two of the cases cited by Defendants involved a permanent injunction: *Keener v. Convergys Corp.*, 342 F.3d 1264 (11th Cir. 2003), and *Garcia v. Exec. Dir., Fla. Comm'n on Ethics*, No. 23-12663, 2023 WL 11965005 (11th Cir. Nov. 30, 2023). Neither case bolsters Defendants' position as this Court has already declined Defendants' invitation to rely on these two cases, explaining that:

primary critique of statewide injunctions in a preliminary injunction context is the limited record available at that stage, an issue not relevant in connection with a permanent injunction. [ECF No. 66 at 12 ("Another vice of universal injunctions, in the context of preliminary relief, is that they 'tend to force judges into making rushed, high-stakes, low-information decisions.'" (quoting *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in grant of stay)))].

Here, once the Court issues a declaratory decree invalidating the part of SB 774 that applies to all municipal elected officials and candidates (including Plaintiffs), the entry of a permanent statewide injunction is appropriate to serve as an additional safety measure to verify that Form 6 will no longer be enforced and administered by Defendants against elected municipal officials and candidates. For example, in *Hetherington vs. Madden*, 640 F. Supp. 3d 1265 (N.D. Fla. 2022), a school board candidate brought a Section 1983 action challenging a Florida law that prohibited candidates for non-partisan office from stating their political party in advertisements as a violation of the First Amendment. Finding that the statutory provision failed strict scrutiny, the Court granted Plaintiff's motion for summary judgment, entered a declaration that the specific portion of the statute was unconstitutional, and issued a permanent injunction enjoining the defendants from enforcing that provision (not limited to the one plaintiff). *Id*. at 1279–80.[7]

In short, Defendants have failed to proffer a persuasive justification as to why a permanent injunction issued in this case should not be applied statewide to all municipal elected officials and candidates, given each is equally affected by the challenged portion of SB 774. *See Rodgers v.*

> In *Keener*, the Eleventh Circuit reversed the district court's injunction only to the extent it applied nationwide but affirmed the injunction to the extent it applied statewide. *See* 342 F.3d at 1269. Likewise, the *Garcia* decision offers little support for Defendants because in that case, there was only one Plaintiff and, as the Eleventh Circuit pointed out, the district court did not explain why the injunction should apply statewide. *Garcia*, No. 23-12663, ECF No. 36 at 2–3.

[ECF No. 40 at 30–31]. In *Garcia*, the lower court had determined that the other plaintiffs lacked standing. In comparison, here, all elected municipal officials are in the exact same position and each would have standing.

[7] Of note, in *Hetherington*, the defendants did not appeal the summary judgment order; instead, the parties reached a settlement as to the amount of attorney's fees and costs. *See Hetherington v. Madden*, No. 3:21cv671-MCR-ZCB (N.D. Fla.) [ECF Nos. 102, 110].

Bryant, 942 F.3d 451, 457–58 (8th Cir. 2019) ("Arkansas argues that the district court 'gave no rationale for enjoining enforcement as to all beggars in [Arkansas].' However, the district court specifically found that: (1) Arkansas's anti-loitering law is 'plainly unconstitutional'; (2) Arkansas's public interest 'is best served by preventing governmental intrusions into the rights protected under the Federal Constitution'; and (3) 'preventing [Arkansas] from enforcing a law that is plainly unconstitutional' would cause 'no injury.' These findings were sufficient to justify the district court's imposition of a statewide preliminary injunction, particularly because they in no way depended on facts unique to Rodgers and Dilbeck." (second and third alteration in original) (citations omitted)).

B. Plaintiffs did not Waive Their Right to Request Statewide Relief.

From the outset, Plaintiffs have challenged the constitutionality of the portion of SB 774 that mandates that all municipal elected officials and candidates, including Plaintiffs, file a Form 6 financial disclosure. Defendants never disputed the standing of any of Plaintiffs, or disputed that all municipal elected officials and candidates were impacted in the same manner. Thus, the appropriate injunctive relief, as supplemental to the requested declaration of unconstitutionality, would be a permanent injunction preventing Defendants from enforcing SB 774 against all municipal elected officials and candidates throughout Florida, including Plaintiffs.

Defendants nevertheless argue that Plaintiffs waived their right to seek a statewide injunction by not explicitly stating the scope of a requested injunction in the iterations of the complaints and in their various motions. Even if such an explicit statement were required (which it is not, as explained below), this is simply untrue. Aside from the additions and substitutions of certain parties, Plaintiffs' complaints have all remained the same throughout the duration of this case. [ECF Nos. 1, 9, 38, 54]. In each complaint, Plaintiffs repeatedly referred to "municipal elected officials" or "municipal elected officials and candidates," not just Plaintiffs. [*See, e.g.* ECF No. 54 ¶¶ 3– 5, 8–9, 17, 38, 43–44, and 59.][8] In fact, in paragraph 9 of each version of the complaint, Plaintiffs clearly notified Defendants and the Court that they were seeking both declaratory and injunctive relief related to all elected municipal officials, not limited to Plaintiffs:

[8] These citations are to the Third Amended Complaint, but were all contained in the prior complaints as well.

> this action seeks an order (i) declaring the 2023 amendments to Fla. Stat. § 112.3144 related to elected municipal officials and any penalties arising therefrom, including those in Fla. Stat. § 112.317, are unconstitutional under the First Amendment of the United States Constitution, and (ii) enjoining Defendants from enforcing the disclosure requirements.

[*E.g.*, ECF No. 54 ¶ 9]. Moreover, in each of the complaints, Plaintiffs also requested "such other relief as this Court deems just and proper." [*E.g.*, ECF No. 54 at 26]. This "just and proper" relief can easily encompass an injunction beyond the named plaintiffs to all municipal elected officials and candidates that are affected by the eventual invalidity of SB 774. In addition, the injunctive relief sought in the conclusion to Plaintiffs' Motion for Summary Judgment was not limited to Plaintiffs, but rather asked the Court to:

> . . . declare that the portions of SB 774 that require municipal elected officials and candidates to file a Form 6 rather than a Form 1 violate the First Amendment to the United States Constitution and therefore are invalid, 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….

[ECF 59 No. at 16]. Based upon the allegations in the complaints and the arguments in the Motion for Summary Judgment, Defendants were on notice that an injunction could apply to all municipal elected officials, and Plaintiffs clearly did not knowingly and intentionally waive their rights to request such a statewide injunction. *See, e.g., Spoerr v. Manhattan Natl. Life Ins. Co.*, No. 05-61891, 2007 WL 128815, at *6 (S.D. Fla. Jan. 12, 2007) ("It is clear that for one to waive his or her rights that this waiver must be knowing and intentional.").

In addition, separate from the request for a permanent injunction, Plaintiffs also seek declaratory relief. *See Samuels v. Mackell*, 401 U.S. 66, 71 (1971) (noting that "declaratory relief alone [can have] virtually the same practical impact as a formal injunction would"). Once the Court enters a final declaratory judgment, the Court is permitted, pursuant to Federal Rule of Civil Procedure 54(c), to "grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." *See Rocket Jewelry Box, Inc. v. Quality Int'l Packaging, Ltd.*, 90 F. App'x 543, 547 (Fed. Cir. 2004) (holding that a plaintiff did not waive their request for a permanent injunction because, once a final judgment has been entered in favor of the plaintiff, the court may grant the plaintiff any other relief it is entitled to regardless of "whether or not [the

plaintiff] had specifically requested [a permanent injunction]"); *accord Valley v. Rapides Par. Sch. Bd.*, 646 F.2d 925, 938 (5th Cir. Unit A 1981) (holding that plaintiffs who moved for supplemental relief in school desegregation case did not waive remedy going beyond one city and its immediate environs where they initially sought desegregation of every racially identifiable school in the parish and, when they endorsed a plan, renewed their request for a systemwide remedy). Given that the issuance of a permanent injunction here is not based on an independent cause of action but rather merely part of the supplemental relief to Plaintiffs' sought-after declaratory decree pursuant to 28 U.S.C. § 2202 and 42 U.S.C. § 1983, it stands to reason that to properly effectuate the requested declaration of invalidating the portion of SB 774 applicable to municipal elected officials and candidates a statewide injunction is necessary and appropriate. As noted by the Ninth Circuit:

> The appellants urge that the district court 'lacked jurisdiction to enjoin all 'gravely disabled' certifications under the LPS Act.' The appellants… recognize that 'a declaratory judgment as to the unconstitutionality of the certification procedure may affect all persons certified under the 'gravely disabled' standard.' In their view, however, '(t)he lower court lacks jurisdiction… to enjoin all certifications on the basis of grave disability within the limited scope of this private action.' We are at a loss to understand this argument.… [T]his case seems an entirely appropriate one in which to exercise the discretion to render a declaratory judgment on the constitutionality of the challenged statutory provisions. Having exercised that discretion, and having declared the statutory scheme unconstitutional on its face, the district court was empowered under 28 U.S.C. s 2202 to grant '(f)urther necessary or proper relief' to effectuate the judgment. The challenged provisions were not unconstitutional as to Doe alone, but as to any to whom they might be applied. Under the circumstances, it was not an abuse of discretion for the district court to enjoin the defendants from applying them.

Doe v. Gallinot, 657 F.2d 1017, 1024–25 (9th Cir. 1981).

CONCLUSION

For the reasons stated above and in Plaintiffs' Motion for Summary Judgment [ECF No. 59], Plaintiffs respectfully request that, pursuant to 28 U.S.C. §§ 2201, 2202, 42 U.S.C. § 1983, and Fed. R. Civ P. 57, the Court grant summary judgment in their favor and against Defendants, (1) declaring that the portion of SB 774 that requires municipal elected officials and candidates to file a Form 6 rather than a Form 1[9] violates the First Amendment to the United States Constitution

[9] The specific language that Plaintiffs challenge that was added in SB 774 is now contained in Section 112.3144 (1)(d), Florida Statues, and reads: "Beginning January 1, 2024, the following local officers must comply with the financial disclosure requirements of s. 8, Art. II of the State

and therefore is invalid, (2) permanently enjoining Defendants (along with their officers, agents, employees, attorneys, and all other persons acting in concert or participating with them) from enforcing that portion of SB 774 as to all municipal elected officials and candidates statewide, (3) reserving jurisdiction to consider the award of cost and expenses (including reasonable attorney's fees) to Plaintiffs pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988, and (4) awarding any other relief that the Court deems just and proper.

Dated: November 8, 2024

WEISS SEROTA HELFMAN
COLE + BIERMAN P.L.
200 East Broward Blvd., Ste. 1900
Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Facsimile: (954) 764-7770

By: */s/ Jamie A. Cole*
JAMIE A. COLE
Florida Bar No. 767573
jcole@wsh-law.com
msaraff@wsh-law.com
EDWARD G. GUEDES
Florida Bar No. 768103
eguedes@wsh-law.com
szavala@wsh-law.com
ANNE R. FLANIGAN
Florida Bar No. 113889
aflanigan@wsh-law.com
JEREMY S. ROSNER
Florida Bar No. 1018158
jrosner@wsh-law.com
kdoyle@wsh-law.com

Counsel for Plaintiffs

Constitution and this section: 1. Mayors. 2. Elected members of the governing body of a municipality." The striking of Section 112.3144(1)(d) would revert the filing requirement for those officials to the Form 1 that they had been filing for many decades, as required under Section 112.3145(2)(b), Florida Statutes. Candidates for those offices are also required, upon qualifying, to file the same financial disclosure form as those holding those offices. § 99.061(5), Fla. Stat.