

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THE DREAM DEFENDERS, THE
BLACK COLLECTIVE, *et al.*,

Plaintiffs,

v.

RON DESANTIS, *et al.*

Defendants.

Case No.: 4:21-cv-191

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION
OR, ALTERNATIVELY, FOR FURTHER RELIEF

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	FACTUAL BACKGROUND	7
A.	Section 15 Expands Existing Riot Offenses and Defines New Offenses.	7
B.	The Legislature Understood Section 15 To Expose Peaceful Protestors to Criminal Liability.....	9
C.	Section 15 Has Chilled Plaintiffs’ Speech and Required Them to Divert Resources.	11
III.	ARGUMENT	15
A.	Plaintiffs Are Likely to Succeed on the Merits of Their Claim That Section 15 Is Unconstitutionally Vague and Overbroad.	16
1.	Plaintiffs satisfy Article III standing and have sued the proper defendants.	16
2.	Section 15 is unconstitutionally vague.	19
3.	Section 15 is unconstitutionally overbroad.....	24
4.	The proscription of First Amendment freedoms is not severable from the remainder of Section 15.	31
B.	Plaintiffs Will Suffer Irreparable Harm Without Court Intervention.	32
C.	Plaintiffs’ Injury Without Injunctive Relief Outweighs Any Potential Harm To Defendants, And The Requested Injunction Is In The Public Interest.....	34
IV.	CONCLUSION.....	36

I. INTRODUCTION

In the summer of 2020, following the murder of George Floyd, protestors in Florida and across the country took to the streets to voice their opposition to police violence against Black people and the over-use of public funding for police departments relative to other public-safety measures. These demonstrations were overwhelmingly non-violent. While counter-protestors or aggressive police engaged in violence *against* protestors, instigating chaos at a few actions¹ despite the explicit intentions and peacekeeping efforts of organizers—including several of the Plaintiff organizations—any violent behavior was punishable under existing Florida laws and in several cases was met with arrest and prosecution.²

Nevertheless, on April 19, 2021, Florida’s legislature enacted HB1, a law that deters and punishes peaceful protests and was created in direct response to the summer’s demonstrations. The legislative proposal which led to HB1 was unveiled by Governor DeSantis on September 21, 2020, and was titled “Combatting Violence,

¹ Sarah Blaskey & Nicholas Nehamas, ‘*They ignited the situation*’: Fort Lauderdale police cracked skull of peaceful protester, Miami Herald (updated Jun. 3, 2020 11:25 AM), <https://www.miamiherald.com/news/local/community/broward/article243193481.html>.

² Megan Reeves, *Hillsborough prosecutors charge dozens more in connection to May protests*, Tampa Bay Times (Jul. 3, 2020), <https://www.tampabay.com/news/crime/2020/07/03/hillsborough-prosecutors-charge-dozens-more-in-connection-to-may-protests/>.

Disorder, and Looting, and *Law Enforcement Protection Act*.”³ During its unveiling, Governor DeSantis promised to have “a ton of bricks rain down on” protestors.⁴ On the day he signed HB1 into law, he called it “the strongest anti-rioting, pro-law enforcement piece of legislation in the country.”⁵

Although HB1 is unconstitutional in its entirety, Plaintiffs specifically seek to preliminarily enjoin HB1’s central enforcement mechanism: Section 15. Section 15 is a guilt-by-association “round-up” provision which Plaintiffs reasonably read as expanding the definition of “riot” far beyond its common-law roots. It gives police discretion to arrest an individual who “willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct...” Fla. Stat. § 870.01(2). However, Section 15 fails to clarify (1) whether violence among a few at a demonstration renders the entire event a “riot,” (2) who must share a “common intent to assist each other in violent and disorderly conduct,” and (3) whether a non-violent demonstrator can be considered as “willfully participating” in a violent

³ Video, Gov. Ron DeSantis Sept. 21, 2020 Press Conf. on Law Enf’t Legis., Fla. Channel (Sept. 21, 2020), <https://thefloridachannel.org/videos/9-21-20-press-conference-on-law-enforcement-legislation/>.

⁴ *Id.* at 7:17–7:43.

⁵ *Gov. DeSantis Signs Florida’s ‘Anti-Riot’ Bill into Law*, NBC Miami (updated Apr. 20, 2021 9:19 AM), <https://www.nbcmiami.com/news/local/govdesantis-signs-floridas-anti-riot-bill-into-law/2431822/>.

public disturbance simply because violence occurs among others who are in close proximity. Because of these ambiguities, Section 15 provides Defendants discretion to subjectively interpret Section 15 and selectively arrest anyone willfully participating in a protest, if and where violence occurs, based solely on the intent and acts of others. Section 15 can thus be reasonably interpreted as a guilt-by-association law incompatible with the First Amendment.

Other sections of HB1 also rely on Section 15's expansive "riot" definition. For example, Section 18 provides an affirmative defense in civil actions for "personal injury, wrongful death, or property damage" of "a [riot] participant." Section 18 thus emboldens counter-protestors to use their vehicles as weapons. Indeed, protestors have increasingly faced vehicles plowing into crowds—a move that has been encouraged by some legislators supporting HB1. Meanwhile, protest leaders—the *victims* of these incidents—have been arrested on the scene as a result. *E.g.*, Dream Defenders Decl. ¶ 28.

Plaintiffs and their members are reasonably frightened, not only because they could be arrested and held without bail for peacefully demonstrating, but also because given Section 15's interaction with Section 18, it is more likely that Plaintiffs and their members could be seriously injured or killed by people who disagree with their message. Consequently, Plaintiffs and their members have canceled or modified planned activities and diverted resources from their regular

activities to respond to the law. Enjoining Section 15 would block HB1's vague and overbroad guilt-by-association effect and curtail the effectiveness of other provisions relying on Section 15, including Section 18.

Plaintiffs have a strong likelihood of success because the plain text of Section 15 is vague and overbroad: it lends itself to subjective interpretation and provides no fair notice of what it proscribes. Moreover, it can reasonably be read as prohibiting a substantial amount of constitutionally-protected conduct. This deprivation of First Amendment rights constitutes irreparable injury. Defendants have no legitimate interest in enforcing an unconstitutional law and cannot identify any harm they or the public will suffer if an injunction issues. Accordingly, Plaintiffs ask this Court to preliminarily enjoin Section 15.⁶

⁶ The Executive Director for the Department of Law Enforcement at the Broward County Sheriff's Office, over which Defendant Sheriff Tony presides, has stated HB1 will not change its enforcement practices. *See* ECF 1, Complaint ¶ 112. However, all Defendants have repeatedly stated they lack "authority to agree that any portion of House Bill 1 is unconstitutional or to agree not to enforce laws that the Complaint alleges each Defendant is responsible for enforcing." *See* ECF 61 ¶ 4.f.; ECF 63 at 2. Even taking the statements by the Broward County Sheriff's Office at face value, a government agency's non-binding extra-judicial promises not to enforce a law do not moot a request for injunctive relief. *See, e.g., Roman Cath. Archdiocese of N.Y. v. Sebelius*, 907 F. Supp. 2d 310, 327 (E.D.N.Y. 2012) (injunctive relief appropriate when government has not made "a formally announced change to official government policy").

II. FACTUAL BACKGROUND

A. Section 15 Expands Existing Riot Offenses and Defines New Offenses.

Before HB1, Florida proscribed rioting under its common-law definition, which required that any person guilty of riot share the common intent to promote violent and disorderly conduct. The law is under Fla. Stat. § 870.01(2), originally enacted in 1832 and (until HB1) last revised in 1971. It provides: “All persons guilty of a riot, or of inciting or encouraging a riot, shall be guilty of a felony of the third degree[.]” Fla. Stat. Ann. § 870.01 (1971). Because the word “riot” was undefined, Florida’s Supreme Court borrowed its common-law definition:

a tumultuous disturbance of the peace by three or more persons, assembled and acting with a common intent, either in executing a lawful private enterprise in a violent and turbulent manner, to the terror of the people, or in executing an unlawful enterprise in a violent and turbulent manner.

State v. Beasley, 317 So. 2d 750, 752 (Fla. 1975).

The primary substantive change the legislature made by revising § 870.01 via Section 15 was arguably to substantially expand the scope of “riot.” The definition can now be reasonably interpreted as encompassing not only those with the “common intent” to commit violence, but also those who willfully participate in a disturbance that turns violent, even if they lack the intent to—and do not—commit any violence themselves. Fla. Stat. § 870.01(2) (2021).

Section 15 was also created to define new offenses that enhance police discretion to arrest non-violent protestors. Fla. Stat. § 870.01(2)–(5). It amends § 870.01 to define and expand previously uncodified offenses of (as relevant here) “riot” and “inciting a riot,” and create new offenses for “aggravated rioting” and “aggravated inciting of a riot.”

A person commits a “riot” under Section 15 if they willfully participate in a violent public disturbance involving an assembly of three or more persons who share a common intent to assist each other in violent and disorderly conduct resulting in: (a) injury to another person; (b) damage to property; or (c) imminent damage of injury to another person or damage to property. *Id.* § 870.01(2). This is a third-degree felony, punishable by up to five years in prison. *Id.* § 775.082(3)(e).

A person commits the new crime of “inciting a riot” if they willfully incite another to participate in “a riot,” resulting in a riot or imminent danger of a riot. *Id.* § 870.01(4). This offense is also a third-degree felony, punishable by up to five years in prison and a \$5,000 fine. *Id.*; *id.* §§ 775.082, 775.083.

Unlike all other third-degree felonies in Florida, which allow an individual to post an initial bond upon being charged,⁷ Section 15 requires that arrestees be held

⁷ All other third-degree felonies under Broward County’s bond schedule have an initial bond of \$1,000 if no bond is outlined in the schedule. Where the bond is outlined, the amount varies by charge. 17th Jud. Cir. Admin. Order No. 2019-98-Crim, at 2 (Dec. 11, 2019), <http://www.17th.flcourts.org/wp->

without bail until they are brought before a judge. *Id.* § 870.01(6). Accordingly, protestors charged with riot or inciting a riot will remain in jail for hours or days, in some cases merely for exercising their First Amendment freedoms.⁸

The new crimes of “aggravated rioting,” Fla. Stat. § 870.01(3), and “aggravated inciting a riot,” *id.* § 870.01(5), are both second-degree felonies, punishable by up to 15 years in prison. Likewise, both new offenses depend on Section 15.

B. The Legislature Understood Section 15 To Expose Peaceful Protestors to Criminal Liability.

[content/uploads/2019/12/2019-98-Crim.pdf](https://www.fljud13.org/Portals/0/AO/DOCS/S-2021-025.pdf). All other third-degree felonies under Hillsborough County’s bond schedule have an initial bond of \$2,000. 13th Jud. Cir. Admin. Order No. S-2021-025, at 4 (Apr. 20, 2021), <https://www.fljud13.org/Portals/0/AO/DOCS/S-2021-025.pdf>. And all other third-degree felonies under Escambia County’s bond schedule have a recommended initial bond of \$2,500. 1st Jud. Cir. Admin. Order No. ECAD2018-01 (Feb. 27, 2018), at 6, https://www.firstjudicialcircuit.org/sites/default/files/document_library/ECAD%202018-01%20Bond%20Schedule%20-%20Escambia%20County.pdf. In Leon County, a \$5,000 bond applies to third-degree felony burglary charges, a \$2,500 bond applies to third-degree felony drug charges, and a \$1,000 bond applies to all other third-degree felony charges. 2d Jud. Cir. Admin. Order No. 2019-5 (Mar. 22, 2019), at 13–14, https://cvweb.leonclerk.com/public/clerk_services/official_records/download_document.asp?book=5298&page=1677.

⁸ Further, the broad “riot” definition enhances penalties for new and existing crimes if committed during a “riot,” including Assault (Fla. Stat. § 784.011), Aggravated assault (*id.* § 784.021), Battery (*id.* § 784.03), Aggravated battery (*id.* § 784.045), Mob intimidation (*id.* § 784.0495), Assault or battery of law enforcement officers (*id.* § 784.07), Burglary (*id.* § 810.02), Theft (*id.* § 812.014), and Unlawful assemblies (*id.* § 870.02). These enhanced penalties, and Section 18 would be ineffective if Section 15 is enjoined.

Several legislators, including the bill’s co-sponsors, Representative Juan Fernandez-Barquin and Senator Danny Burgess, admitted the law could expose peaceful protestors to arrest or prosecution. During a hearing before the House Criminal Justice and Public Safety Subcommittee on January 27, 2021, Representative Fernandez-Barquin explained: “[w]hen an individual is in a group, that individual loses their personal sense of responsibility.” Video: Jan. 27, 2021, H. Criminal Just & Pub. Safety Subcomm. Hearing at 3:53–4:39, <https://thefloridachannel.org/videos/1-27-21-house-criminal-justice-public-safety-subcommittee/>. He continued: “above all, at that moment, they need to be responsible for their actions. If they are in a large group, and they see all these other individuals committing violence—I mean, the switch should go off in their head to stop what they’re doing and just get out of the situation.” *Id.* at 19:03–20:09. Thus, Representative Fernandez-Barquin, at least, understood, and stated that, one purpose of HB1 was “to hold the individuals in groups to a higher sense of responsibility, hence the harsher sentences.” *Id.* at 7:10–7:26.

Lawmakers opposing the bill highlighted its significant constitutional infirmities. Representative Andrew Learned explained that Section 15 could “expand[] the definition of a rioter *to everyone in the crowd, regardless of their own*

individual behavior.”⁹ He remarked if he and other legislators could interpret Section 15 differently, “then judges, States’ Attorneys, and police on the street will [also] have different interpretations.”¹⁰ Senator Gary Farmer expressed similar concerns, noting: “this language could be used, and interpreted, and applied in a way to subject peaceful protestors to punishment for crimes that they simply happened to be present for. And it just goes too far.”¹¹ No amendments were made to the “riot” definition to address these concerns.

C. Section 15 Has Chilled Plaintiffs’ Speech and Required Them to Divert Resources.

Section 15’s text and legislative record lead Plaintiffs to believe their members could be liable for participating in a protest where some persons become violent, regardless of their members’ actions or intent. Plaintiffs reasonably read the “riot” definition, and the new offenses relying on it (*i.e.*, “aggravated riot,” “inciting a riot,” and “aggravated inciting a riot”), to expose their members to criminal liability merely for being part of a protest. *See* The Black Collective Decl. ¶ 17 (“The Black Collective have read Section 15 and become fearful of arrest merely for participating

⁹ Video: Mar. 10, 2021, H. Judiciary Committee at 2:07:53–2:08:03, <https://thefloridachannel.org/videos/3-10-21-house-judiciary-committee/> (emphasis added).

¹⁰ *Id.* at 2:07:53–2:08:47.

¹¹ Video: Apr. 9, 2021, S. Committee on Appropriations at 1:45:10–1:45:26, <https://thefloridachannel.org/videos/4-9-21-senate-committee-on-appropriations-part-1/>.

in a non-violent protest.”); BLMA Broward Decl. ¶ 21 (Section 15 “allows police officers far too much discretion to arrest non-violent protestors... if anything at a protest goes wrong”); Chainless Change Decl. ¶ 12 (“Chainless Change fears that law enforcement will disproportionately and discriminately target its community.”); Dream Defenders Decl. ¶ 14; Northside Coalition of Jacksonville (“Northside”) Decl. ¶¶ 14, 17.

Due to Section 15, Plaintiffs have canceled, modified, or postponed numerous planned events for fear of arrest or injury. BLMA Broward Decl. ¶ 22; Chainless Change Decl. ¶ 12; Dream Defenders Decl. ¶¶ 11, 27; Northside Decl. ¶ 15; The Black Collective Decl. ¶¶ 8–10. For example, Plaintiff Dream Defenders canceled demonstrations around the trial of police officer Derek Chauvin for the murder of George Floyd.¹² Dream Defenders Decl. ¶¶ 20–21. It has also canceled other demonstrations to protect its members from violence, a concern that is well founded as in the few instances Dream Defenders *has* participated in demonstrations, it has seen increased threats to its members’ physical safety, *id.* ¶¶ 29–30,¹³ including from legislators encouraging drivers to plow into the crowd.

¹² The only demonstration organized by Dream Defenders was a somber vigil for George Floyd following the verdict in the trial of Derek Chauvin held by one Dream Defenders chapter (known as a “squaDD”) in Pensacola, Florida. Dream Defenders Decl. ¶ 22.

¹³ In at least three separate instances during HB1’s promotion, Dream Defenders experienced cars intentionally running into assembled protestors. *Id.* ¶ 28. Each time,

Similarly, Chainless Change has stopped engaging in direct actions because its leaders are fearful for their members who, because of their previous involvement with the criminal legal system, are at heightened risk of targeting by police. Chainless Change Decl. ¶ 12. BLMA Broward canceled a planned march scheduled for the one-year anniversary of its May 31, 2020 protest out of fear its members would be subject to arrest under Section 15. BLMA Broward Decl. ¶ 23. Members of the NAACP Florida State Conference and its local branches have also refrained from protest, fearing arrest and prosecution. Marie Rattigan Decl. ¶¶ 7–10; Devan Vilfrard Decl. ¶¶ 12–13.

In addition to canceling demonstrations, Plaintiffs have been forced to divert resources to make additional expenditures. For example, Chainless Change diverted resources to bolster its security for future demonstrations in the event counter-protestors or police cause its members bodily harm. Chainless Change Decl. ¶ 16.

Plaintiffs have also been forced to divert time and scarce resources to respond to issues raised by HB1. For example, Northside has been forced to spend time and resources identifying new legal observers and additional peacekeepers. Northside Decl. ¶ 23. The Black Collective has hired paid canvassers and trained multiple

Black protest leaders were arrested while the drivers were let go. *Id.* Plaintiffs reasonably read Section 18 as jeopardizing their lives and safety by shielding against civil liability those who would injure or kill them. BLMA Broward Decl. ¶ 26; Chainless Change Decl. ¶ 16; Dream Defenders Decl. ¶ 32; Northside Decl. ¶¶ 24–25; The Black Collective Decl. ¶ 25.

volunteers to approach people in majority Black communities to discuss the impact of Section 15. The Black Collective Decl. ¶¶ 18–20. However, because of HB1’s vagueness and overbreadth, The Black Collective is unclear what would violate HB1 and what would be permissible. Thus, even with substantially increased efforts, it cannot communicate how to safely demonstrate. *Id.* ¶ 22.

Even with these measures, Plaintiffs have seen a considerable decline in member participation at their recent demonstrations. On May 19, 2021, BLMA Broward attended a protest organized by Fight for 15 which demanded a \$15-minimum-wage. Only approximately 15 people attended; similar protests historically attracted 50–100 people. BLMA Broward Decl. ¶ 25. Plaintiffs’ members fear emboldened counter-protestors will become violent, creating situations where police feel entitled to arrest otherwise non-violent demonstrators for having to defend themselves. *Id.* ¶ 26; Northside Decl. ¶¶ 17, 19, 24. Indeed, many of Plaintiffs’ members have stopped encouraging family and friends to attend demonstrations feeling responsible to protect the young people they organize. *E.g.*, Dream Defenders Decl. ¶ 36. Because of fears and unpredictability brought on by HB1, Plaintiffs have evaluated ways to seek protection from white allies to avoid being targeted. Chainless Change Decl. ¶ 18.

Before HB1, Florida law already penalized violence and property destruction—penalties that were enforced during the 2020 racial justice protests—

so Plaintiffs reasonably assume HB1 must serve additional purposes. Dream Defenders Decl. ¶¶ 10–11, 15; Black Collective Decl. ¶ 14. Because Section 15 allows for wide-sweeping mass arrests, and because Section 18 emboldens counter-protestors and agitators to create violent disturbances that attract excessive police response, Plaintiffs and their members fear that when these emboldened counter-protestors incite violence, it is Plaintiffs who will be arrested and prosecuted for “rioting” under Section 15. Dream Defenders Decl. ¶ 31. This fear has impacted demonstration attendance. For example, following a demonstration where a prominent white supremacist counter-protestor not only appeared but alerted media he would be relying on HB1 to protect him and punish non-violent demonstrators, Northside saw its member participation at subsequent events decrease by as much as 40%, despite its increased engagement of peacekeepers. Northside Decl. ¶¶ 15, 22, 23.

III. ARGUMENT

Courts grant a preliminary injunction where plaintiffs are: (1) “likely to succeed on the merits,” (2) “likely to suffer irreparable harm in the absence of preliminary relief,” (3) where “the balance of equities tips in [plaintiffs’] favor,” and (4) the provision of interim relief “is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “The chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be

fully and fairly adjudicated.” *Ne. Fla. Chapter of Ass’n of Gen. Contractors of Am. v. Jacksonville, Fla.*, 896 F.2d 1283, 1284 (11th Cir. 1990). “[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury” justifying injunctive relief. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1271–72 (11th Cir. 2006) (quotations omitted).

As outlined below, Plaintiffs satisfy all four prongs of the preliminary injunction standard. Plaintiffs therefore ask this Court to maintain the status quo *before* HB1’s passage and its criminalization of First Amendment freedoms.

A. Plaintiffs Are Likely to Succeed on the Merits of Their Claim That Section 15 Is Unconstitutionally Vague and Overbroad.

1. Plaintiffs satisfy Article III standing and have sued the proper defendants.

As a threshold matter, Plaintiffs have both organizational and associational standing to bring this suit and have sued the proper defendants.¹⁴

First, Plaintiffs have organizational standing under the “diversion of resources” theory.¹⁵ *E.g., Ga. Latino All. for Human Rts. v. Gov. of Ga. (GLAHR)*,

¹⁴ Plaintiffs’ Opposition to Defendants’ Motions to Dismiss will more fully discuss Plaintiffs’ standing.

¹⁵ “In the context of this pre-enforcement challenge to a legislative enactment, the causation element *does not require* that the defendants themselves have ‘caused’ [plaintiffs’] injury by their own acts or omissions in the traditional tort sense; rather it is sufficient that the injury is directly traceable to the passage of [the Act].” *Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1205 (N.D. Fla. 2020) (emphasis added) (internal quotation marks omitted).

691 F.3d 1250, 1259–60 (11th Cir. 2012). Each Plaintiff has suffered injury in fact in that they have cancelled or postponed planned protest activities and have been forced to divert resources to respond to HB1’s changes to the law. *See* Compl. ¶¶ 12–13; *id.* ¶ 16; *id.* ¶ 19; *id.* ¶ 26; *id.* ¶¶ 29–30; *id.* ¶ 35; BLMA Broward Decl. ¶¶ 19–20, 22–23; Chainless Change Decl. ¶¶ 12, 16, 18; Dream Defenders Decl. ¶¶ 11–12, 17–18, 20–24, 27; Northside Decl. ¶¶ 15, 23; The Black Collective Decl. ¶¶ 8–10, 17–19; *see also* *GLAHR*, 691 F.3d at 1259–60; *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1165–66 (11th Cir. 2008). And, because each Plaintiff’s injuries are “directly traceable to the passage of [HB1],” their injuries “would be redressed by enjoining each provision.” *See* *GLAHR*, 691 F.3d at 1260; *accord* *Support Working Animals*, 457 F. Supp. 3d at 1205.

Second, Plaintiff organizations have associational standing on behalf of their members. Not only has Plaintiffs’ speech been chilled by a reasonable fear of enforcement of HB1—where “the injury is self-censorship,” *Wilson v. State Bar of Ga.*, 132 F.3d 1422, 1428 (11th Cir. 1998)—but Plaintiffs Dream Defenders, Chainless Change, and BLMA Broward have canceled scheduled events because of these fears. *See* Compl. ¶¶ 12, 19–20, 22, 25, 27; Dream Defenders Decl. ¶¶ 20, 22; BLMA Broward Decl. ¶ 22. Members of Northside have “expressed that they will not be able to participate in future nonviolent demonstrations due to their fear of

unlawful arrest,” and are “afraid to speak out on social media regarding racial and economic justice.” Compl. ¶¶ 33–34; Northside Decl. ¶¶ 17–18.

Moreover, both the Attorney General (“AG”) and the Governor are proper defendants. The AG’s broad law enforcement authority, including her superintendence of state attorneys, makes her a proper defendant. *See Support Working Animals*, 457 F. Supp. 3d at 1212 (holding AG proper defendant under *Young* because she “wields broad statutory and common law authority to enforce Florida law, including the authority to police compliance with Amendment 13 and to enforce the forthcoming civil or criminal penalties”). The Governor’s authority to mobilize the militia, which he exercised in 2020 to police the very racial justice protests that HB1 targets, demonstrates he, too, is sufficiently connected to HB1’s enforcement to be subject to suit. *See Fla. Stat* § 250.06; Compl. ¶ 37, n.2; *see also Fla. Stat.* § 250.28, (authorizing Governor to mobilize the militia in response to “a riot,” “mob,” or “unlawful assembly,” each of which is defined by HB1).

Sheriff Defendants are also proper defendants as agents of the State of Florida tasked with enforcing the state criminal law, including HB1. *See Troupe v. Sarasota Cty.*, No. 8:02-CV-53T-24MAP, 2004 WL 5572030, at *12 (M.D. Fla. Jan. 22, 2004), *aff’d*, 419 F.3d 1160 (11th Cir. 2005); *see L.S. by Hernandez v. Peterson*, No. 18-CV-61577, 2018 WL 6573124, at *9 (S.D. Fla. Dec. 13, 2018), *aff’d sub nom. L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323 (11th Cir. 2020) (dismissing *Monell*

claim against county for actions of the Sheriff because “[i]n Florida, a county has no authority and control over a sheriff’s law enforcement function”).

That Defendants may not yet have enforced HB1 is of no moment. *ACLU v. Fla. Bar*, 999 F.2d 1486, 1490 (11th Cir. 1993) (“[W]hen a plaintiff challenges the constitutionality of a rule of law, it is the state official designated to enforce that rule who is the proper defendant, even when that party has made no attempt to enforce the rule.”).

Accordingly, Plaintiffs have organizational and associational standing, and have sued the proper defendants.

2. Section 15 is unconstitutionally vague.

Plaintiffs are likely to succeed on the merits because Section 15 is void-for-vagueness. “In our constitutional order, a vague law is no law at all.” *United States v. Davis*, 139 S. Ct. 2319, 2323 (2019). A law “can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or *even encourages* arbitrary and discriminatory enforcement.” *Wollschlaeger v. Governor, Florida*, 848 F.3d 1293, 1319–1320 (11th Cir. 2017) (emphasis added).

In the First Amendment context, vague laws “force potential speakers to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were

clearly marked, thus silencing more speech [and expression] than intended.” *Id.* at 1320 (cleaned-up). For that alone, “standards of permissible statutory vagueness” impacting First Amendment freedoms “are strict.” *NAACP v. Button*, 371 U.S. 415, 432–33 (1963).

The first step in assessing vagueness is to construe the statutory text. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). If the law is vague, then “the role of courts . . . is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite [the state] to try again.” *Davis*, 139 S. Ct. at 2323. Under this standard, Section 15 is undeniably void-for-vagueness.

a. Section 15’s ambiguity fails to provide ordinary people reasonable notice of what the law prohibits.

Section 15 has and will continue to chill Plaintiffs’ protected speech and expression because it lends itself to varying interpretations and thus gives no fair warning as to what it proscribes. Section 15 provides in pertinent part:

A person commits a riot if he or she willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct”

Fla. Stat. § 870.01(2). On its face, this language fails to warn people whether one’s willful, peaceful participation in a demonstration is enough to demonstrate willful participation in a “violent public disturbance” if violence occurs among three or more others in attendance. It is unclear whether in order to be criminally liable a

person must share a common intent to assist the assembly in violent disorderly conduct, or whether he need only “willfully participate” in the demonstration in which the assembly members themselves act with a “common intent to assist each other” in violent disorderly conduct.

If the legislature’s intent was to impose criminal liability *only* when a “person” shares a common intent with “an assembly of three or more persons” to assist in violent and disorderly conduct, such that non-violent protestors at a demonstration are not tainted by mere proximity to violence, then Section 15 fails to make that plain. *First*, as suggested above, it is unclear whether the participle modifying phrase “acting with a common intent to assist each other in violent and disorderly conduct” modifies only “an assembly of three or more persons,” or if it also modifies the person who is the subject of the opening two clauses. BRYAN A. GARNER, GARNER’S MODERN AMERICAN USAGE, 540 (2009) (“When modifying words are separated from the words they modify, readers have a hard time processing the information.”). *Second*, it is unclear whether the pronoun “each other” in the phrase “acting with a common intent to assist each other” relates back to the “assembly” alone (the plural subject), or both the assembly *and* the “person” (the singular subject). *Finally*, because Section 15 does not define what it means to “willfully participate” in a violent public disturbance, non-violent protestors will not know whether their proximity to a violent assembly of three or more will bring them within the scope of

what Section 15 proscribes. That, in turn, will “force potential [protestors] to ‘steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked,’ thus silencing more speech [and expression] than intended.” *Wollschlaeger*, 848 F.3d at 1320.

These textual defects create an unascertainable standard that effectively chills speech and expression. Without fair notice of what the statute proscribes, ordinary people fearing arrest must guess as to Section 15’s meaning and will infer, as Plaintiffs do, that mere presence at a demonstration could subject them to liability should violence occur nearby. *Button*, 371 U.S. at 433 (“The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.”). Indeed, the Supreme Court has held that absent fair warning, vague laws are “a trap for the innocent.” *Cramp v. Bd. of Pub. Instruction of Orange County, Fla.*, 368 U.S. 278, 281 (1961). Because Section 15 provides no fair notice of what it proscribes, it is void-for-vagueness and must be enjoined.

b. Section 15’s ambiguity authorizes and encourages arbitrary and discriminatory enforcement.

The legislature’s failure to clearly provide notice under Section 15—namely, what constitutes a “riot” in the context of a demonstration, who must share a “common intent to assist each other in violent and disorderly conduct,” and what it means to “willfully participate”—gives police discretion to subjectively determine how, when, and against whom to apply Section 15. This both authorizes and

encourages arbitrary enforcement. Without ascertainable standards to govern its enforcement, Section 15 fundamentally undermines the relationship between government and citizens by delegating legislative power to police and giving police the freedom “to pursue their personal predilections” and discriminate as they choose. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

Given that HB1 was enacted following mass protests against police killings of Black people and was promoted as the strongest “pro-law enforcement piece of legislation in the country,”¹⁶ the danger that Section 15 will be selectively applied against Plaintiffs is substantial. Remarks by the Governor and other lawmakers in promoting this law, only highlight this risk. For example, while promoting the then-proposed bill on Fox News in September 2020, Governor DeSantis referred to detractors of the bill as “people on the far left” who are “anti-police” and “believe in defunding the police.”¹⁷ Representative Learned remarked he and Fernandez-Barquin, “just have different interpretations of that phrase.... [I]f we have different interpretations . . . then judges, states attorneys, and police on the street will have different interpretations of that phrase as well.”¹⁸ And, a key supporter of the bill,

¹⁶ *Gov. DeSantis Signs Florida’s ‘Anti-Riot’ Bill into Law*, *supra* note 5.

¹⁷ Gov. Ron DeSantis joins ‘Tucker Carlson Show’, Facebook (Sept. 22, 2020) <https://www.facebook.com/watch/?v=356894608832351>.

¹⁸ Video: Mar. 10, 2021, H. Judiciary Committee at 2:07:53–2:08:28, <https://thefloridachannel.org/videos/3-10-21-house-judiciary-committee/> (emphasis added).

Representative Fernandez-Barquin acknowledged HB1's risk of racially disparate enforcement.¹⁹

“Unless narrowed by interpretation, [Section 15's susceptibility to multiple interpretations will] encourage erratic administration [by police]; individual impressions [will] become the yardstick of action, and result in regulation in accordance with the beliefs of the individual rather than regulation by law.” *Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676, 685 (1968) (cleaned-up). Section 15 must therefore be enjoined.

3. Section 15 is unconstitutionally overbroad.

Plaintiffs are also likely to succeed on the merits because Section 15 is fatally overbroad and criminalizes a substantial amount of protected speech. The provisions vagueness authorizes and encourages law enforcement to supply their own interpretation of the provision, and allows them to thus round-up as many persons at a protest, including non-violent protestors, as they desire anytime violence occurs among three or more persons. Section 15 is thus overbroad and must be enjoined.²⁰

¹⁹ Video: Jan. 27, 2021, H. Criminal Just & Pub. Safety Subcomm. Hearing at 30:10–30:47, <https://thefloridachannel.org/videos/1-27-21-house-criminal-justice-public-safety-subcommittee/>.

²⁰ HB1 is also viewpoint discriminatory and therefore subject to strict scrutiny. *E.g.*, *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 164 (2015); *see RAV v. City of St. Paul, Minn.*, 505 U.S. 377, 382 (1992). However, Plaintiffs are not asking this Court to reach that determination here. As will be demonstrated in this litigation, Defendants cannot meet their burden of establishing Section 15 is necessary to serve a compelling government interest and narrowly tailored to that end.

Ashcroft v. Free Speech Coalition (“*Free Speech Coalition*”), 535 U.S. 234, 244–55 (2002).

The Supreme Court has repeatedly invalidated overbroad laws such as Section 15 within the First Amendment’s “vast and privileged sphere.” *See, e.g., id.* (striking the Child Pornography Prevention Act of 1996 in part because the “overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled”); *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 605–10 (1967) (finding law making membership to the Communist Party, “unaccompanied by specific intent to further the unlawful goals of the organization,” overbroad, and prima facie evidence of categorical disqualification from state employment). The Supreme Court has used this remedy where the threat of enforcement of an overbroad law deters First Amendment freedoms, especially when the risk of criminal penalties exists. *See, e.g., Virginia v. Hicks*, 539 U.S. 113, 119 (2003).

As with vagueness, the “first step in overbreadth analysis is to construe the challenged statute” and assess “whether the statute, as [the Court has] construed it, criminalizes a substantial amount of protected expressive activity.” *United States v. Williams*, 553 U.S. 285, 293, 297 (2008). When interpreting a statute, “courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). The court

next must consider whether “the unconstitutional portion” is “severable” from the remainder; if so, only that portion “is to be invalidated.” *United States v. Miselis*, 972 F.3d 518, 531 (4th Cir. 2020) (quoting *New York v. Ferber*, 458 U.S. 747, 769 n.24 (1982)). Plaintiffs are likely to succeed on the merits under this framework.

a. Section 15 can be reasonably understood to criminalize a substantial amount of First Amendment protected activity.

“Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.” *Button*, 371 U.S. at 433; *Gooding v. Wilson*, 405 U.S. 518 (1972). “In the First Amendment context,” “a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quotations omitted).

Section 15 can reasonably be interpreted to mean a person committing a riot is *not* required to have the same intent as the “assembly of three or more persons,” because the participle modifying phrase “acting with a common intent to assist each other in violent and disorderly conduct” could reasonably be read as relating back only to the “assembly of three or more persons.” See *Lockhart v. United States*, 577 U.S. at 347, 351 (2016) (Under the “rule of the last antecedent,” “a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.”); SCALIA & GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS*, 140, 144–46, 152–53 (2012).

The court may also look to a statute’s legislative history to derive meaning. *Watt v. Alaska*, 451 U.S. 259, 265–66 (1981). Here, the primary substantive change the Florida legislature made by enacting Section 15 was to substantially expand the how the definition of “riot” may be interpreted: it may now be read to reach not only those with the “common intent” to commit violence, but also those who willfully participate in a disturbance that turns violent—even if they were not aware of, and never intended to commit, any violence themselves.²¹ *See supra* § II.A; Fla. Stat. § 870.01(2) (2021).

There is a credible threat that this overbroad interpretation will be applied by police against Plaintiffs. Such application of the common intent of “an assembly of three or more persons” engaged in disorderly conduct to all individuals present at a protest renders non-violent protestors guilty-by-association and holds them criminally responsible for the bad acts of other persons. This expansive reach blatantly violates the First Amendment.

b. Guilt-by-association laws are unconstitutional.

Guilt-by-association has been repeatedly condemned by the Supreme Court, which has long recognized that “disorderly assembly” laws permitting unwitting criminal liability are unconstitutional. *See Coates v. Cincinnati*, 402 U.S. 611, 614 n.4 (1971) (quoting decision striking down a disorderly assembly ordinance because

²¹ Compare Fla. Stat. § 870.01(2), with *Beasley*, 317 So.2d at 752.

“[a]nyone could become an unwitting participant in a disorderly assembly, and suffer the penalty consequences”); *see also De Jonge v. State of Oregon*, 299 U.S. 353, 364–65 (1937) (rejecting state criminal syndicalism statute and concluding, “peaceable assembly for lawful discussion cannot be made a crime”).

A “blanket prohibition of association with a group having both legal and illegal aims” would present “a real danger that legitimate political expression or association would be impaired.” *Scales v. United States*, 367 U.S. 203, 229 (1961). Such a law results in the kind of guilt-by-association found unconstitutional in *NAACP v. Claiborne Hardware Co.*, where the Supreme Court reversed a civil judgment against the NAACP and its members for boycotting white merchants, even though some participants advocated for or engaged in violence. 458 U.S. 886, 908 (1982). “The right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected.” *Id.* Instead, “[f]or liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals *and that the individual held a specific intent to further those illegal aims.*” *Id.* at 920 (emphasis added); *see also Scales*, 367 U.S. at 229 (finding that to punish group association, there must be “clear proof that a defendant specifically [intends] to accomplish [the aims of the organization] by resort to violence”). Such intent must be judged “according to the strictest law,” lest “one in sympathy with the

legitimate aims of such an organization, but not specifically intending to accomplish them by resort to violence, might be punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share.” *Noto v. United States*, 367 U.S. 290, 299–300 (1961).

As observed above, a fair reading of Section 15’s plain language—indeed, how Plaintiffs have interpreted it and acted in response—reveals that an individual risks arrest and criminal prosecution for committing a riot even when they lack the specific intent to both further and participate in any illegal activity. *Contra Keyishian*, 385 U.S. at 606–07. Thus, the fear of guilt-by-association is not mere speculation under Section 15. Indeed, as bill sponsor Representative Fernandez-Barquin acknowledged, Section 15 ensures criminal “responsibility is split amongst the group.”²² By exposing individuals to arrest and prosecution for exercising constitutional rights when violence occurs solely due to others’ intentions, Section 15 “infringes unnecessarily on protected freedoms [and] rests on the doctrine of ‘guilt by association’ which has no place here.” *Elfbrandt v. Russell*, 384 U.S. 11, 19 (1966) (citing *Schneiderman v. United States*, 320 U.S. 118, 136 (1943)).

²² Video: Jan. 27, 2021, H. Criminal Just & Pub. Safety Subcomm. Hearing at 04:00-04:25, <https://thefloridachannel.org/videos/1-27-21-house-criminal-justice-public-safety-subcommittee/>.

Punishing associational activity based on the unlawful aims of others is *exactly* what Section 15 does and was intended to do. In the summer of 2020, largely peaceful protests were on few occasions interrupted by violent or disorderly conduct. Although some of this violence was instigated by counter-protestors²³ or police²⁴ (and condemned by organizers), many people were arrested, including peaceful protestors swept up by police in the fray.²⁵ Section 15 now expressly legalizes such arrests. It empowers police to target individuals engaged in protected speech and assembly, regardless of whether they intentionally commit violence or are—knowingly or unknowingly—merely in the vicinity of such violence. As detailed above, the fear of wrongful arrest posed by Section 15 has chilled Plaintiffs’ speech and expression. The further chilling of Plaintiffs’ and others’ First Amendment

²³ Grace Hauck, *Cars Have Hit Demonstrators 104 Times Since George Floyd Protests Began*, USA Today (Sept. 27, 2020 6:55 PM), <https://www.usatoday.com/story/news/nation/2020/07/08/vehicle-ramming-attacks-66-us-since-may-27/5397700002/>; Ari Weil, *Protesters Hit By Cars Recently Highlight A Dangerous Far-Right Trend In America*, NBC News (July 12, 2020 11:24 AM), <https://www.nbcnews.com/think/opinion/seattle-protester-hit-car-latest-casualty-dangerous-far-right-trend-ncna1233525>.

²⁴ Sarah Blaskey, *She Returns to Where She Was Struck in The Eye by Police. Her New Cause: Fight ‘Jim Crow’ Bills*, Miami Herald, (Feb. 26, 2021 5:05 PM), <https://www.miamiherald.com/news/local/community/broward/article249526205.html>.

²⁵ Dan Sullivan, *Hillsborough declines to prosecute 67 arrested in protests*, Tampa Bay Times (Jun. 15, 2020), <https://www.tampabay.com/news/hillsborough/2020/06/15/hillsborough-declines-to-prosecute-67-arrested-in-protests/>.

activity is especially likely considering the hefty sanctions Florida has enacted. *See Button*, 371 U.S. at 433 (“The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.”). Section 15 must therefore be enjoined as overbroad.

To the extent Defendants contend the correct reading of Section 15 is any narrower, Plaintiffs require a judicially enforceable way to rely on this interpretation. However, because the plain language of Section 15 indicates participation in a “violent public disturbance” is enough for criminal liability when an assembly of three or more *other* persons engage in disorderly conduct, the provision cannot be saved with a limiting construction. *See Brayshaw v. City of Tallahassee, Fla.*, 709 F. Supp. 2d 1244, 1250 (N.D. Fla. 2010) (“Courts should not rewrite a law to conform it to constitutional requirements, for doing so would constitute a serious invasion of the legislative domain and sharply diminish Congress’s incentive to draft a narrowly tailored law in the first place.”).

4. The proscription of First Amendment freedoms is not severable from the remainder of Section 15.

Severability of state legislative provisions is “a matter of state law.” *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996). Under Florida’s settled severability principles, the proscription of constitutionally protected speech, expression, assembly, and association cannot be severed from Section 15, requiring its wholesale invalidation.

Florida’s test for the severability of legislative enactments is as follows:

When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Smith v. Dep't of Ins., 507 So. 2d 1080, 1089 (Fla. 1987) (citations omitted).

Section 15 cannot satisfy even the first prong of *Smith's* test, because its overly broad language cannot be excised. Rather, saving Section 15 would require this Court to engraft additional language into its text to limit the criminal intent element in a way the statute is not written. Any such redrafting would contravene Florida law. *See Schmitt v. State*, 590 So. 2d 404, 414 (Fla. 1991) (a court may not “read [an element] into a statute that plainly lacks one” due to “Florida’s strong adherence to a strict separation of powers doctrine”) (citing Fla. Const. art. II, § 3); *see also Westphal v. City of St. Petersburg*, 194 So. 3d 311, 313–14 (Fla. 2016); *Richardson v. Richardson*, 766 So. 2d 1036, 1042 (Fla. 2000). Florida’s Constitution requires precise drafting by the legislature, not legislation rewritten by the judiciary. *Schmitt*, 590 So. 2d at 414. Because virtually all of Section 15 relies on § 870.01(2)’s expansive definition of “riot,” the provision should be enjoined in its entirety.

B. Plaintiffs Will Suffer Irreparable Harm Without Court Intervention.

The vagueness and overbreadth of Section 15 has already caused Plaintiffs irreparable harm and will continue to do so absent injunctive relief. “[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *KH Outdoor, LLC*, 458 F.3d at 1271–72. The “rationale behind these decisions [is] that chilled free speech . . . , because of [its] intangible nature, could not be compensated for by monetary damages; in other words, plaintiffs could not be made whole.” *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010) (quotations omitted). “[A]n actual injury can exist when the plaintiff is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences.” *Wilson*, 132 F.3d at 1428 (quotations omitted).

Here, Plaintiffs are presented with an untenable choice: *either* forego exercising their First Amendment rights *or* face the threat of criminal sanctions for exercising such rights. As discussed in Section C, *supra*, Plaintiffs and their members have self-censored for fear of arrest and prosecution under HB1 should they engage in protest. The Dream Defenders and BLMA Broward both canceled scheduled events because of fear of subjecting their members to arrest. Dream Def. Decl. ¶¶ 20, 23; BLMA Broward Decl. ¶ 22. Chainless Change has stopped engaging in direct action altogether. Chainless Change Decl. ¶ 12. And members of the NAACP Florida State Conference have self-censored on an individual level to avoid potential criminal exposure. Rattigan Decl. ¶¶ 7-10; Vilfrard Decl. ¶¶ 12-13.

This infringement upon Plaintiffs’ First Amendment rights is a substantial injury that cannot be remedied by monetary damages, *KH Outdoor, LLC*, 458 F.3d at 1271–72, and will not abate until HB1 is enjoined. Plaintiffs are accordingly entitled to injunctive relief.

C. Plaintiffs’ Injury Without Injunctive Relief Outweighs Any Potential Harm To Defendants, And The Requested Injunction Is In The Public Interest.

Plaintiffs’ injury absent injunctive relief—*i.e.*, the continued infringement of their First Amendment rights—is plainly substantial, whereas Defendants will suffer no hardship if they are enjoined from enforcing Section 15, primarily because pre-Section 15 law already allows Defendants to arrest and prosecute those who engage in rioting.²⁶ The Eleventh Circuit has held that “even a temporary infringement of First Amendment rights constitutes a serious and substantial injury, and the [defendant] has no legitimate interest in enforcing an unconstitutional ordinance.” *Id.* at 1272.

²⁶ When “[t]he nonmovant [on a motion for preliminary injunction] is the government, [] the third and fourth requirements—‘damage to the opposing party’ and ‘public interest’—can be consolidated.” *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 870 (11th Cir. 2020); *see also McMahon v. City of Panama City Beach*, 180 F. Supp. 3d 1076, 1111 (N.D. Fla. 2016) (“When the state is a party, the[] considerations [for ‘the threatened injury outweighing whatever damage the injunction may cause’ and the ‘injunction being in the public interest’] are largely the same.”).

The injunction sought by Plaintiffs supports the public interest because “the public interest is always served in promoting First Amendment values.” *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1276 (11th Cir. 2001); *see also Fla. Businessmen for Free Enter. v. City of Hollywood*, 648 F.2d 956, 959 (5th Cir. Unit B June 1981) (“The public interest does not support the city’s expenditure of time, money, and effort in attempting to enforce an ordinance that may well be held unconstitutional.”).

Meanwhile, Defendants will not be harmed if the injunction is granted. First, “a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction.” *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 191 (4th Cir. 2013). Second, before HB1, Florida law already proscribed the crime of “riot” (along with a variety of other violent offenses).²⁷ Defendants will therefore still possess the necessary tools to regulate violent and disorderly conduct should the injunction issue.

Because a preliminary injunction is needed to protect Plaintiffs’ exercise of their First Amendment rights, would serve the public interest, and would not harm Defendants, this Court should grant Plaintiffs’ requested relief.

²⁷ *See* Fla. Stat. §§ 784.011, 784.021, 784.03, 784.045, 784.07, 806.13, 812.014, 810.02, 876.52.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs ask this Court to issue a preliminary injunction against Section 15 of HB1.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

I hereby certify that this Memorandum of Law contains 7,958 words.

Dated: July 14, 2021

Respectfully submitted,

/s/ Max Gaston

Max Gaston

**NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.**

**COMMUNITY JUSTICE PROJECT,
INC.**

/s/ Rachel M. Kleinman

Rachel M. Kleinman*
rkleinman@naacpldf.org
Morenike Fajana*
mfajana@naacpldf.org
40 Rector Street, 5th Floor
New York, NY 10006
Telephone: (212) 965-3709
Facsimile: (212) 226-7592
-and-

Georgina C. Yeomans*
gyeomans@naacpldf.org
700 14th Street NW, Suite 600
Washington, DC 20005
Telephone: (202) 216-2721
Facsimile: (202) 682-1312

/s/ Alana Greer

Alana Greer
Florida Bar No. 92423
alana@communityjusticeproject.com
Berbeth Foster
Florida Bar No. 83375
berbeth@communityjusticeproject.com
Denise Ghartey
Florida Bar No. 1019211
denise@communityjusticeproject.com
Miriam Haskell
Florida Bar No. 069033
miriam@communityjusticeproject.com
3000 Biscayne Blvd.
Suite 106
Miami, Florida 33137
Telephone: (305) 907-7697

**AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
FLORIDA, INC.**

/s/ Anya A. Marino

Anya A. Marino
Florida Bar No. 1021406
amarino@aclufl.org
Max H. Gaston*
mgaston@aclufl.org
Daniel B. Tilley
Florida Bar No. 102882
dtilley@aclufl.org
Nicholas Warren
Florida Bar No. 1019018
nwarren@aclufl.org
4343 West Flagler Street, Suite 400
Miami, Florida 33134
Telephone: (786) 363-2700
Telephone: (786) 363-2707

**AKIN GUMP STRAUSS HAUER &
FELD LLP**

/s/ Joseph L. Sorkin

Joseph L. Sorkin**
jsorkin@akingump.com
Anne M. Evans**
aevans@akingump.com
Erica E. Holland*
eholland@akingump.com
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
-and-
Steven H. Schulman*
ssschulman@akingump.com
James E. Tysse*
jtysse@akingump.com
Caroline L. Wolverton**
cwolverton@akingump.com
Robert S. Strauss Tower
2001 K Street N.W.
Washington, D.C. 20006
Telephone: (202) 887-4000
Facsimile: (202) 887-4288
-and-
Nicholas E. Petree*
npetree@akingump.com
1111 Louisiana Street, 44th Floor
Houston, Texas 77002-5200
Telephone: (713) 220-5800
Facsimile: (713) 236-0822

Counsel for Plaintiffs

**Admitted pro hac vice*

*** Pro Hac Vice Applications to be filed*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July, 2021 a copy of this document was filed electronically through the CM/ECF system and furnished by email to all counsel of record.

/s/ Anya A. Marino
Anya A. Marino

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THE DREAM DEFENDERS,
THE BLACK COLLECTIVE, *et al.*,

Plaintiffs,

v.

RON DESANTIS, *et al.*,

Defendants.

Case No.: 4:21-cv-191-MW-MAF

DECLARATION OF BEN FRAZIER

I, Ben Frazier, hereby declare and state as follows:

1. My name is Ben Frazier. I am founder and President of Northside Coalition of Jacksonville. I have personal knowledge of the matters set forth herein.

2. Northside Coalition of Jacksonville is a Florida nonprofit corporation focused on speaking out against all forms of racial, social, and economic injustice. Northside Coalition of Jacksonville began in 2015 and was officially incorporated in 2017.

3. Currently, there are approximately 1,400 members, supporters, and volunteers of Northside Coalition of Jacksonville. The membership includes folks from a wide range of ages and occupations. Northside Coalition of

Jacksonville includes older people, not just young people. Members include retired teachers, bankers, and correctional officers, among others.

4. Northside Coalition of Jacksonville was essentially created online. In 2015, there was a racialized incident at a service station in Jacksonville, during which a Black customer was being harassed by a store employee. I, Ben Frazier, intervened on behalf of the customer. I went on to recount this experience on Facebook, which in turn led to online engagement and eventually a community boycott of that service station. The boycott lasted two months, after which the owners of that business complied with the community's demands for accountability and change.

5. After the boycott of the service station, Northside Coalition of Jacksonville was formed in 2015. Community members started attending meetings and focusing on new campaigns.

6. Members of Northside Coalition of Jacksonville frequently attend school board meetings and city council meetings to speak on the racial disparities in health, housing, and other issues in Jacksonville communities. Northside Coalition of Jacksonville also addresses subjects such as police-involved shootings, gun violence, driving or walking while Black, and any other issues impacting the Black community.

7. Approximately 280,000 of Jacksonville's 1 million residents are Black. In Jacksonville's northwest quadrant, a large percentage of the population is Black. Northside Coalition of Jacksonville aims to make quality of life better for people in these communities and to address all forms of racial injustice.

8. To do this effectively, Northside Coalition of Jacksonville believes in actively engaging with communities and getting boots on the ground. For example, in May 2018, Northside Coalition of Jacksonville ran a "Boots on the Ground" campaign to "stop the violence and increase the peace," during which Northside Coalition of Jacksonville members marched in the streets against gun violence. This was a two-year campaign, during which Northside Coalition of Jacksonville hosted health fairs and food giveaways, and deployed small canvassing teams of 15–20 people. The canvassers knocked on doors and passed out cards that stated, "We should not shoot it out, but talk it out." The message was to stop the violence and increase the peace. Through that effort, Northside Coalition of Jacksonville reached more than 5,000 households in Black neighborhoods.

9. More recently, since the murder of George Floyd, Northside Coalition of Jacksonville combined efforts with other organizations in Jacksonville and spearheaded marches that led to thousands of community members coming out to march in the streets.

10. In late May 2020, Northside Coalition of Jacksonville watched Sheriff Mike Williams react overzealously to these non-violent mass actions. In one instance, after the formal event ended, non-member march participants continued their own protest. Eventually, Sheriff called the SWAT team out for minor graffiti and a possible broken window. At the end of the day, officers arrested over 70 people, treated many harshly, and in two instances doubled and tripled their bail amounts for no clear reason.

11. Since the murder of George Floyd in May 2020, Northside Coalition of Jacksonville has held 25–30 rallies, marches, and press conferences. In addition, Northside Coalition of Jacksonville has hosted numerous actions at County Commission and other public board meetings.

12. Currently, Northside Coalition of Jacksonville is spearheading a campaign to change the name of nine Jacksonville schools named after confederate soldiers and colonizers, as well as a campaign petitioning for the removal of confederate monuments, names, and symbols from public spaces.

13. By engaging in and deploying the public's rights to agitate, assemble, and protest, Northside Coalition of Jacksonville has succeeded in changing the names of six out of the nine schools named after confederate soldiers and colonizers in Jacksonville school districts.

14. Northside Coalition of Jacksonville first learned of HB1 in October of 2020 and hosted its first rally against HB1 in November of 2020. The organization immediately became concerned that the bill would have a chilling effect on its membership and its work.

15. HB1 has already impacted Northside Coalition of Jacksonville's organizing. Since the enactment of HB1, the number of participants at Northside Coalition of Jacksonville's events has decreased by approximately 30–40 percent. Since HB1 was signed into law, Northside Coalition of Jacksonville has hosted nine events, mostly related to the campaign to remove confederate names, including canvassing efforts on April 20, April 24, and May 1, and rallies on April 27, May 4, May 11, May 26, and June 1. An average of 30 people came out to each of these rallies, compared to an average of 100 prior to HB1.

16. To get the word out about rallies and protests, Northside Coalition of Jacksonville maintains a list of members that staff and volunteers call before big events. During those conversations recently, Northside Coalition of Jacksonville staff and volunteers have been told by members that they are not going to participate in a rally in a public place because of HB1 and that they fear what the police or vigilantes will do to justify causing bodily harm to protesters.

17. Northside Coalition of Jacksonville members have stated that they cannot come to actions and protests because their family members are concerned

about their participation, concerned about their physical welfare, and concerned as to whether or not they will be arrested. HB1 has stifled the membership and instilled fear in them.

18. While some members have been willing to attend meetings—however, in reduced numbers—it has been increasingly difficult to bring people out to rallies. HB1 has had a chilling effect on people’s attitudes and willingness to get back out there.

19. In addition, Northside Coalition of Jacksonville members have stated that they fear there may be an agent provocateur within their ranks. This refers to someone who is not a member of Northside Coalition of Jacksonville, but who may jeopardize members by purposefully agitating a situation at a rally in order to justify vigilante actions under HB1. This fear and uncertainty is exacerbated by COVID-19, as everyone is wearing masks, and staff and volunteers of Northside Coalition of Jacksonville cannot easily identify who is who.

20. On three occasions this spring, a known white power activist and agitator came to a Northside Coalition of Jacksonville event. On one particular instance he, along with others, appeared at the rally with a confederate flag and attempted to provoke rally participants. These white power activists sang the confederate anthem “Dixie” right next to rally participants, while Northside Coalition of Jacksonville rally leaders were trying to address those gathered to

protest the confederate name of a school. It appeared that the white power activists intended to drown out Northside Coalition of Jacksonville's protest and message.

21. Before the event, the agitator contacted local media to let them know he would be attending the rally. Local media notified Northside Coalition of Jacksonville, and Northside Coalition of Jacksonville subsequently asked law enforcement to assist in keeping the peace and to keep both parties at a safe distance from each other. The police showed up but refused to do more to keep the parties separated, still allowing this agitator and his group to stand within three feet of Northside Coalition of Jacksonville's podium.

22. Northside Coalition of Jacksonville fears that with the enactment of HB1, this agitator could have said he felt threatened by the non-violent protestors and taken violent action against Coalition members and subsequently claimed protection under HB1. In fact, in his email to local media, the agitator specifically referenced HB1 and its protections, writing that if "any of them touch me, I will file charges against them, and because of the recent passage of HB1, they will be arrested and kept in jail until they see a judge." Northside Coalition of Jacksonville fears that agitators, such as the one described here, have been emboldened by HB1.

23. To protect folks, Northside Coalition of Jacksonville has increased the number of peacekeepers in the ranks during rallies and actions. Generally, peacekeepers' job is to try to keep people with different views separated. Northside Coalition of Jacksonville has also sought out the help of legal observers and has asked all members to review the organization's non-violence protocols.

24. Northside Coalition of Jacksonville is concerned that people who oppose its stances, emboldened by this law, would do something to harm members of the organization. The Coalition fears people will seek to use this law as justification, rationalization, and as a defense for taking the law into their own hands.

25. Northside Coalition of Jacksonville is concerned about its members, supporters, and volunteers. The organization wants people to feel confident to attend events, for those people to stay safe, and then to go home to their families.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate.

Executed on July 12, 2021.

Ben Frazier

Ben Frazier

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THE DREAM DEFENDERS,
THE BLACK COLLECTIVE, *et al.*,

Plaintiffs,

v.

RON DESANTIS, *et al.*,

Defendants.

Case No.: 4:21-cv-191-MW-MAF

DECLARATION OF DEVAN VILFRARD

I, Devan Vilfrard, hereby declare and state as follows:

1. I am Second Vice President of the Youth & College Division of the Florida State Conference of Branches and Youth Units of the NAACP (the “Florida NAACP”). I have served in this role since April 2021. Through my role as Second Vice President, I am familiar with the activities of the Youth & College Division of the Florida NAACP.
2. I am also a rising senior at Florida Agricultural and Mechanical University (“FAMU”) in Tallahassee and the President of the FAMU University Chapter of the Florida NAACP (the “FAMU NAACP”). I have served as

President of the FAMU NAACP for approximately two years. Through my role as President, I am familiar with the activities of the FAMU NAACP.

Organizational Mission and Activities

3. The national NAACP was formed in 1909 to remove all barriers of racial discrimination through democratic processes and through the enactment and enforcement of federal, state, and local laws that secure civil rights, including laws related to voting rights. Among the organization's objectives is to educate persons regarding their constitutional rights and to take all lawful action to secure the exercise thereof. Demonstrations against racial discrimination and racial injustice are critical to the national NAACP's organizational mission.
4. The Florida NAACP is the statewide branch of the national NAACP and is made up of local branches and units throughout Florida, each of which is a membership-based organization. All dues-paying members from each of the local Florida branches and units are also members of the Florida NAACP.
5. The Youth & College Division of the Florida NAACP is a division of the Florida NAACP. The Youth & College Division of the Florida NAACP is made up of junior youth councils, youth councils, high school chapters, and college chapters throughout Florida.
6. The FAMU NAACP is a college chapter within the Florida NAACP's Youth & College Division and maintains the same mission as the national NAACP.

All members of the FAMU NAACP are FAMU students. As such, the FAMU NAACP regularly participates in direct actions that highlight the racial injustices that Black Floridians, including students and young people, continue to face. Additionally, members of the FAMU NAACP organize and attend demonstrations in their individual capacities, such as during the racial justice protests of summer 2020.

Concerns about HB1 Prior to its Passage and Enactment

7. Governor Ron DeSantis announced the legislative proposal that would eventually become HB1 on September 21, 2020.
8. As soon as Governor DeSantis announced this proposal, FAMU NAACP and its members became concerned about its implications for their right to protest. Our concerns were based, at least in part, on the treatment of peaceful protestors in Florida at past protests, including at the Labor Day weekend racial justice protest that took place in Tallahassee in September 2020 and at which nineteen protestors were arrested. Our concerns also were based on past instances in Florida during summer 2020 where individuals who threatened or harmed peaceful racial justice protestors with a vehicle or weapon were not charged with any crime.
9. Before HB1 was passed, I had numerous conversations with FAMU NAACP members who were concerned about its implications. In particular, many FAMU NAACP members expressed concern about the harsher criminal

penalties to be created by HB1 and the devastating consequences that an arrest or conviction can have on a young person's life, career, and ability to participate in civic life. At least some FAMU NAACP members' concerns were exacerbated by the history of disproportionate arrests, prosecutions, and convictions of Black Floridians generally, which makes it more likely that Black Floridians will be unfairly targeted and impacted by HB1.

Impact of HB1 on FAMU NAACP and its Members

10. HB1 was passed by the legislature on April 16, 2021 and enacted on April 19, 2021. Since then, FAMU NAACP and its members have only become more concerned about HB1's impact on their right to protest peacefully and without fear.
11. Many FAMU NAACP members have expressed confusion to me about what they can and cannot do under HB1, particularly Section 15 (which I understand is HB1's broad "anti-rioting" provision that, among other things, creates enhanced penalties and new felonies for those who are deemed to have engaged in "rioting"). In particular, many FAMU NAACP members are concerned that under Section 15, they can be arrested simply for attending a protest where violence or disorderly conduct takes place, even if they do not engage in any such conduct themselves.
12. Since it was passed, HB1 has had a severe chilling impact on demonstrations by FAMU NAACP members. I understand that many FAMU NAACP

members have decided not to protest out of fear of being arrested and potentially charged under this new law. Several FAMU NAACP members have expressly told me that they have decided not to protest because of this fear. I further understand that their fears largely stem from the breadth and scope of Section 15.

13. For example, in May 2021, there was significant social media uproar regarding an incident of police brutality against an unarmed Black man, Jacquez Kirkland, in Tallahassee. Despite the history of direct action by FAMU NAACP members to protest police brutality (*e.g.*, during the racial justice protests of summer 2020), no public demonstrations were held in Tallahassee to protest the assault of Mr. Kirkland. I am certain that at least some FAMU NAACP members would have protested what happened to Mr. Kirkland but for their fears about being arrested or otherwise put at risk by HB1.
14. I believe that the harm caused by HB1 to students and young people is especially grave, as they feel forced to choose between their future and exercising their First Amendment rights.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate.

Executed on July 8, 2021.

Devan Vilfrard

Devan Vilfrard

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THE DREAM DEFENDERS,
THE BLACK COLLECTIVE, *et al.*,

Plaintiffs,

v.

RON DESANTIS, *et al.*,

Defendants.

Case No.: 4:21-cv-191-MW-MAF

DECLARATION OF MARIE RATTIGAN

I, Marie Rattigan, hereby declare and state as follows:

1. I am the Second Vice President of the Tallahassee Chapter of the NAACP Florida State Conference of Branches and Youth Units of the NAACP (the “Florida NAACP”). I have served in this role since 2019. Through this role, I am familiar with the activities of the Tallahassee Chapter.

2. The Tallahassee Chapter is a local branch of the Florida NAACP. All dues-paying members from each of the local Florida branches and units are also members of the Florida NAACP.

3. I am also Lead Organizer for the Dream Defenders in Tallahassee and have served in this role since 2019. By virtue of this role, I am familiar with Dream Defenders’ activities in Tallahassee.

4. Prior to HB1 becoming law, and throughout the summer of 2020, I personally engaged in and organized protest activities concerning racial justice and policing, including sponsoring protests in Tallahassee. I was also involved in efforts to help bail individuals who were arrested during protests out of jail. I engaged in these activities both in my capacity as Lead Organizer for Dream Defenders and as Second Vice President of the NAACP Tallahassee Chapter.

5. Governor Ron DeSantis announced the legislative proposal that would eventually become HB1 on September 21, 2020. HB1 was then introduced in the legislature on January 6, 2021.

6. While HB1 was pending in the legislature, I hosted several Zoom meetings with students at Florida A&M University to inform people about the legislative proposal. I also attended a majority of the legislative hearings on the Act in order to lend my voice to the chorus in opposition to HB1's passage.

7. HB1 was passed by the legislature on April 16, 2021 and enacted on April 19, 2021. Since then, I personally have not engaged in or organized any protest activities. I have refrained from doing so for fear that I could be subject to criminal penalties for the unlawful acts of others in attendance.

8. In particular, I am concerned about Section 15 (which is HB1's "anti-rioting" provision that, among other things, creates enhanced penalties and new felonies for those who are deemed to have engaged in "rioting"). I am concerned

that under Section 15, I could be arrested simply for attending a protest where violence or disorderly conduct takes place, even if I did not engage in any such conduct myself.

9. I know that being convicted of a felony could result in me losing the right to vote, losing financial assistance for my education, and could place significant barriers in the way of my future professional goals. I cannot risk a felony conviction based on behavior that is out of my control.

10.If it were not for HB1, I would have engaged in protest in the past three months. For instance, in May 2021, there was an incident of police brutality of an unarmed Black man named Jacquez Kirkland in Tallahassee. There were no public demonstrations held in Tallahassee to protest the assault. I am certain that I and others would have protested were it not for HB1.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate.

Executed on July 8, 2021.

Marie Rattigan

Marie Rattigan

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THE DREAM DEFENDERS,
THE BLACK COLLECTIVE, *et al.*,

Plaintiffs,

v.

RON DESANTIS, *et al.*,

Defendants.

Case No.: 4:21-cv-191-MW-MAF

DECLARATION OF EMORY MARQUIS MITCHELL

I, Emory Marquis Mitchell, hereby declare and state as follows:

1. My name is Emory Marquis Mitchell, and I am the CEO and Founder of Chainless Change. I have personal knowledge of the matters set forth herein.
2. Chainless Change was established in 2018 to provide programs and services that promote self-sufficiency and public safety for those negatively impacted by the criminal legal system. Chainless Change works to dismantle the school to prison pipeline, mass incarceration and all barriers to socio-economic equality.
3. Chainless Change provides a vast array of services to people returning home after a period of incarceration (“Returning Citizens”) and individuals who are involved with the criminal legal system, as well as their families. Chainless Change provides basic resources and necessities, legal self-advocacy guidance

and assistance, mental and substance abuse counseling, and access to educational resources. All direct services at Chainless Change are provided by individuals who are in recovery from behavioral health conditions and have a criminal arrest record.

4. Chainless Change is a Black-led organization that services a predominantly Black population. Therefore, the imagery and graphics Chainless Change utilizes on its website, social media and informational material intentionally depicts almost exclusively Black and Brown people.

5. Since the earliest days of the organization, Chainless Change has been heavily engaged in pushing the Broward Sheriff's Office and the Broward State Attorney's office to implement policies that safeguard the health and well-being of incarcerated individuals, promote accountability and transparency within local government institutions, and create community-based alternatives to incarceration.

6. Chainless Change regularly engages in direct actions and has led four protests since May 2020. These protests centered around demands for personal protective equipment for people incarcerated in the local jail; demands to reduce incarceration rates during the pandemic; demands for the more humane treatment of incarcerated people like Stephanie Jackson, who gave birth in a jail cell; and accountability for the death of Kevin Desir, who died in police custody. The

majority of the people who participated in those protests were Black, and most were people who have criminal arrest records or are associated with people who were formerly incarcerated and are now returning citizens.

7. As an element of its advocacy work, Chainless Change regularly monitors state legislation and became aware of HB1 in September 2020. Chainless Change began posting to social media about HB1 in the beginning of Fall 2020. Chainless Change started more actively campaigning against HB1 in early 2021 by utilizing social media posts and its email listserv. Furthermore, three staff members, two volunteers, and five organizational partners working with Chainless Change traveled to Tallahassee, where I issued a public statement against HB1 at the bill's final committee hearing.

8. HB1 went into effect on April 19, 2021, the day that it was signed by Governor DeSantis, and one day before the verdict was announced in the criminal trial of Minneapolis police officer Derek Chauvin.

9. After Governor DeSantis signed HB1, Chainless Change leaders became concerned about the law's impact on Chainless Change's ability to fulfill its mission of serving as a community for recovery, advocacy, and support of those involved in the prison and police systems, and promoting racial justice, police reform, and police accountability.

10. Chainless Change leaders read Section 15 of HB1 related to riots and understood it to mean that anyone who attends a protest may be arrested and held without bond. They will also be subjected to a minimum of six months in jail if convicted of related charges.

11. Because language in HB1 is vague, it is not clear to Chainless Change what kind of conduct at a protest would violate the law and what would not. We believe that all of our community actions could potentially result in the arrest of all of our supporters.

12. In response to HB1, Chainless Change stopped engaging in direct actions because leaders within the organization are acutely aware that Chainless Change works with populations that are at risk of abuse by state entity actors. Because the language in HB1 is both unclear and allows for overreach, Chainless Change fears that law enforcement will disproportionately and discriminately target its community of supporters, who are predominantly Black, almost exclusively returning citizens, and advocating for police reform.

13. During our early “deCARcerate Broward” protests, police officers regularly threatened to arrest us for obstructing traffic. Furthermore, I was personally stopped and harassed by officers during a mobile protest that was held on April 17, 2020.

14. At a protest on Oct. 21, 2020, officers approached our group and threatened to arrest our staff and other attendees for disturbing the peace, trespassing, and disorderly conduct. We were protesting at the entrance of public property, the Broward Sheriff's Office headquarters. This tactic was used to intimidate us and deter our team from exercising their First Amendment rights.

15. Additionally, at a protest on February 1, 2021, our group was met by agitators who spit on our staff and made efforts to attack one of our members. Officers nearby took no action to remove the agitators. Instead, officers harassed our members and set up barricades to prevent us from accessing areas of downtown.

16. Because HB1 gives officers even more discretion to target non-violent protestors, our organization does not know how to protect our community of supporters. As such, Chainless Change is no longer able to engage in rapid response direct actions, similar to its last two protests. When Chainless Change engages in future direct actions, it will secure legal observers and security, in order to be hyper vigilant about the conduct of agitators and the reaction of law enforcement. This is because HB1 may embolden agitators and law enforcement to act illegally towards protestors.

17. Before the enactment of HB1, Chainless Change identified the importance of having a physical and visible presence in the community and used

direct actions to build that presence. At protests outside the Broward County Jail in the past, Chainless Change observed incarcerated people holding signs thanking the organization and trying to communicate from inside the jail.

18. As a Black-led organization serving a predominantly Black population, Chainless Change made the decision on April 15, 2021 to find other ways to organize outside the coalition model it previously utilized because a considerable number of our coalition partners are not Black or people of color. However, due to HB1's vague language, and the fear and expectation that HB1 will embolden law enforcement to target Black protestors, Chainless Change is reconsidering that strategy and considering the need to seek protection of white allies.

19. As a Black man who is a Returning Citizen and also the founder of Chainless Change, I have the added fear that HB1 will be disproportionately used against me for the same reasons that the organization is in fear.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate.

Executed on July 12, 2021.



Emory Marquis Mitchell

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THE DREAM DEFENDERS,
THE BLACK COLLECTIVE, *et al.*,

Plaintiffs,

v.

RON DESANTIS, *et al.*,

Defendants.

Case No.: 4:21-cv-191-MW-MAF

DECLARATION OF RACHEL GILMER

I, Rachel Gilmer, hereby declare and state as follows:

1. My name is Rachel Gilmer, and I am the Co-Director of the Dream Defenders (“Dream Defenders”). I have worked for Dream Defenders since 2015 and served as Co-Director since 2016. I have personal knowledge of the matters set forth herein.

2. Dream Defenders is a Florida-based organization that was established in 2012 following the killing of Black teenager Trayvon Martin. Dream Defenders is a chapter- and membership-based organization led by Black and Latinx youth who focus on promoting civic engagement and organizing young people and students against structural inequality.

3. Dream Defenders is a fiscally sponsored project of Tides Advocacy, a California nonprofit public benefit corporation. Dream Defenders bases its operations in Miami, but has chapters and members throughout the state and country. Dream Defenders has over 10,000 members.

4. Historically, Dream Defenders and its members regularly organized and participated in political actions and demonstrations focused on bringing attention to structural inequality. Indeed, political protests, demonstrations and direct actions where a group of people expresses their dissatisfaction against a specific decision maker or actor through protest tactics are absolutely integral to Dream Defenders' work.

5. In 2020, Dream Defenders observed and was engaged in political protests in rural parts of Florida where members had never previously seen activity. The political engagement and calls for racial justice were widespread and larger than any Dream Defenders had previously witnessed.

6. Areas where these political protests took place include Palatka, Florida, where young people led protests and efforts to remove a confederate statue from their city government complex and faced significant counter-protests, including receiving threats.

7. During the summer of 2020, Dream Defenders led demonstrations to protest police violence in line with the national Movement for Black Lives in 10

different counties in Florida. This included marches, rallies, teach-ins, and protests.

8. The organization grew exponentially in the wake of George Floyd's murder in May 2020 and the subsequent calls for justice, gaining more than 8,000 new members across the state.

9. Dream Defenders understands Section 15 of HB1 to allow for the mass arrest of non-violent demonstrators and anyone in the vicinity of a protest.

10. When I read Section 15, I viewed it to be directly in response to Dream Defenders' demonstrations and other calls for racial justice. Because HB1 was announced in response to racial justice protests, Dream Defenders as an organization understood this bill—particularly Section 15—to be a direct attack on its work and the work of similarly aligned groups, including the Movement for Black Lives. This is because the bill specifically focuses on protests and on efforts to reallocate funds from police spending to social programs—two objectives that are critical to Dream Defenders' work.

11. Dream Defenders viewed the bill as a racist dog-whistle to score political points. The organization immediately felt baited by Governor DeSantis, as if his announcement of HB1 was intended to draw Dream Defenders into the streets, where they could be targeted for arrest or mischaracterized as violent

rioters in order to support his false narrative justifying the bill. Because of that, Dream Defenders did not respond immediately with protest.

12. When HB1 began moving in the legislative process and it was clear the bill was going to be assigned to a committee, defeating HB1 became the group's top priority. Dream Defenders pulled together members, canceled local events, and focused on strategizing and fundraising against HB1. This was because the bill (and specifically what would become Section 15) threatened to undermine Dream Defenders' most fundamental tools: protest and direct action.

13. For example, Dream Defenders frequently engages in direct action to draw attention to systemic injustice and affect policy change. Multiple direct actions organized by Dream Defenders in the past have included calls to block roads or highways.

14. On May 31, 2020, Dream Defenders hosted an action that resulted in the blockage of Biscayne Boulevard in Miami, Florida. We estimated more than one thousand people attended that demonstration, and Dream Defenders succeeded at diverting traffic and drawing attention to the unjust killings of Black people at the hands of the police. To Dream Defenders' knowledge, none of its members were arrested that day. Had HB1 been in place at the time, Dream Defenders fear police would have been emboldened to make mass arrests, even of those demonstrators or onlookers who were not doing anything illegal.

15. On May 31, 2020, Dream Defenders participated in multiple demonstrations around Miami calling for racial justice. While dozens of people were arrested that day, under HB1, Dream Defenders fears that hundreds or thousands of people would have been arrested.

16. As HB1 moved through committees, Dream Defenders members from around the state were present at each HB1 hearing during the legislative process.

17. Dream Defenders felt the chilling effect of HB1 as soon as it passed the Legislature. Historically, Dream Defenders members have demonstrated in Tallahassee against legislation they oppose. This has included stand your ground and public funding for private prison, as well as demonstrating in support for reforms to the juvenile detention system. Dream Defenders also participated in a large demonstration against Governor DeSantis' inauguration in January 2019.

18. By contrast, because of the nature of HB1 and the threat it posed, Dream Defenders chose not to gather in opposition to its enactment. Because the bill became effective immediately, Dream Defenders feared that any protest activity around the bill would lead to its members' unlawful arrest under Section 15. If this hadn't been an anti-protest law, we would have been in Tallahassee trying to shut it down.

19. Soon after the signing and enactment of HB1, Dream Defenders watched as people in Minnesota took to the streets honoring George Floyd and

acknowledging that it was a win for the movement that police were held accountable in Mr. Floyd's murder.

20. In Florida, by contrast, Dream Defenders felt it could not call for people to take to the streets for similar protests because of HB1 and the increased likelihood of wrongful arrest associated with Section 15.

21. On May 25, 2021, a national day of action in honor of George Floyd, Dream Defenders would normally have planned numerous events around the state. Because of fear—caused by HB1 and specifically Section 15—that Dream Defenders members would be unlawfully arrested or injured at protests, Dream Defenders did not schedule any events.

22. Since the enactment of HB1, Dream Defenders has not scheduled any direct actions, political protests, or demonstrations. One Dream Defenders chapter (known as a “squaDD”) in Pensacola, Florida, held a somber vigil for George Floyd following the verdict in the trial of Derek Chauvin.

23. Recent conflict in Israel and Palestine led to some small political demonstrations around the state. Because of HB1, Dream Defenders did not recruit people to demonstrate around these issues—something it has historically done and would normally do during periods of conflict. In 2021, for example, Dream Defenders participated in rallies and marches in the street for Palestinian rights in Tallahassee, Orlando, and Gainesville.

24. Because direct actions are a major part of their strategy, Dream Defenders worries that if members are unable to engage in this strategy, there may be policy implications at the local and state level.

25. Dream Defenders relies on word of mouth and on members to encourage and invite friends and family members to attend demonstrations. Because of HB1, Dream Defenders members report no longer wanting to invite friends or family to events, out of fear for their safety.

26. In May, during conversations about potential protests against HB1, members reported fear of participating in protests because of HB1. They asked, “Are we going to be safe while we are out there? Will we have to post people to watch for cars speeding towards the crowd?” Out of fear of this kind of violence being emboldened by HB1 and the threat of arrest, we ultimately decided not to have action against HB1.

27. Dream Defenders fears that police and agitators will be emboldened by HB1 and specifically Section 15.

28. In the past, Dream Defenders has witnessed agitators enter political demonstrations and engage against police in order to draw police into the crowds. We have also witnessed violence against protestors by white supremacist and other counter-protestors, including members of the Proud Boys and other organized groups. For example, in Tallahassee and Gainesville, cars attempted to

run through crowds at protests we organized or our members participated in. In June 2020, a pickup truck violently peeled away from traffic and ran through a protest blocking an intersection in Tampa, striking and injuring a protest leader, a Black woman, and a veteran. On June 27, 2020, a car ran through a crowd of protestors during a moment of silence in Tampa. Police arrested the protestor who had been hit by the car. On or about September 26, 2020 in St. Petersburg, a counter-protestor assaulted and later pulled a gun out and threatened our members as they marched in the street. Rather than arresting this agitator, police arrested two Black protestors.

29. The Tampa Bay Times described the incident: “As the march reached a boiling point, a white man named Laurence Davis ran up to protesters, looking to disrupt them. He shoved one so hard, she ended up in the hospital for head trauma. Then, he drew a gun on Cloud, who is Black. When an officer arrived, Davis was not stopped. He walked back into the crowd, where he shoved others. All of it was captured on video. St. Petersburg Police Chief Anthony Holloway would later say that failing to detain Davis was a mistake. But Davis will face no criminal charges for his actions that night. Instead, police relied on blurry images to blame Cloud and another Black protester for provoking Davis.”

30. A counter-protest leader explained their motivation and linked their presence to the Governor’s statements on HB1: “If these videos continue to come

out with protestors blocking traffic and breaking the law, like the Governor said, it is going to bring more patriots out.”

31. Under Section 15 and Section 18 of HB1, Dream Defenders fears when disruptions by agitators happen again, rather than protect those exercising their First Amendment Rights, police will be emboldened to respond with mass arrests of protestors or even physical force. This has made members afraid to participate in demonstrations.

32. Similarly, Dream Defenders fears police will be emboldened to provoke demonstrators or to respond with extreme force or mass arrests to anyone allegedly inciting a riot, even if they are not associated with the demonstration.

33. Dream Defenders has witnessed disproportionate reactions from police in the past. For example, on September 5, 2020, while organizers reminded protestors not to engage with counter protesters and to move onto the sidewalk when directed to do so by police, police stopped a protestor following along by car, eventually pulling her out of the vehicle and inciting chaos. Nineteen protestors were arrested, many were beaten and three were sent to the hospital due to their injuries. Protestors in Orlando were met with tear gas and kettled by law enforcement.

34. Dream Defenders has planned numerous events around the state focused on educating members and communities on the risks associated with

political protests and public gatherings now that HB1 has been enacted. These “We Keep Us Safe” events are similar to “know your rights” sessions, and have been held in Pinellas, Hillsborough, Broward, and Alachua Counties so far.

35. Dream Defenders drafted a pamphlet that attempts to explain activities that have been criminalized by the new law. The elements of blocking a road and the low amount of damage to trigger an aggravated riot charge are particularly concerning. The bar is so much lower than before; if a particular cop thinks we are unruly or they don’t like what we are saying, that is enough for them to charge us with riot. The level of discretion is huge. We will be arrested due to actions from outside provocateurs or our responses necessary to protect ourselves.

36. It has been very challenging for Dream Defenders leaders to figure out how to talk to people about HB1 and the related threats and fears. Dream Defenders does not want to scare people into thinking they can’t be a part of political process or make people afraid to take any action. At the same time, Dream Defenders feels responsible for the safety of the young people it organizes into political action.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate.

Executed on July 13, 2021.



Rachel Gilmer

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THE DREAM DEFENDERS,
THE BLACK COLLECTIVE *et al.*,

Plaintiffs,

v.

RON DESANTIS, *et al.*,

Defendants.

Case No.: 4:21-cv-191-MW-MAF

DECLARATION OF TIFANNY BURKS

I, Tiffany Burks, hereby declare and state as follows:

1. My name is Tiffany Burks. I am a Community Organizer for Black Lives Matter Alliance Broward (“BLMA Broward”) and I have been with the organization for five years. I have personal knowledge of the matters set forth herein.

2. BLMA Broward was formed in June 2015, after a white supremacist took the lives of nine Black parishioners in a Charleston, South Carolina church. The purpose of BLMA Broward was to bring together the efforts of several small community organizations that were doing similar Black liberation work, in order to amplify our impact. BLMA Broward has approximately 30 members.

3. BLMA Broward is known for our rapid direct action responses. In the past, we have mobilized hundreds of protestors in less than 72 hours, including

the May 31, 2020 protest and another protest on July 9, 2016 in response to the killings of Alton Sterling and Philando Castile.

4. BLMA Broward holds weekly planning meetings with our core group of organizers. It also holds monthly membership meetings and regularly conducts political education workshops for the community. Approximately 90% of our core organizers and membership is Black.

5. BLMA Broward has previously mobilized protests highlighting and demanding accountability for police killings of Black and Brown residents of Florida, including Jermaine McBean, Greg Frazier, Sebastian Gregory, James Leatherwood, Linda Sue Davis, Michael Eugene Wilson Jr. and Tony McDade. BLMA Broward has co-organized approximately 30 protests since May 31, 2020 advocating for the defunding of police. Additionally, BLMA Broward has a police brutality subgroup that works in solidarity with allies in Miami and Palm Beach Counties.

6. Further, BLMA Broward previously worked to amplify the voices and the work of Black student advocates at Marjory Stoneman Douglas High School. After the 2018 shooting there, BLMA Broward co-organized a press conference on March 28, 2018 at North Community Park in Coral Springs, where young organizers such as Mei-Ling Ho-Shing and Tyah-Amoy Roberts spoke. BLMA

Broward also invited these youth activists to co-host the BLMA member meeting that same month.

7. BLMA Broward members regularly meet with local elected officials to advocate for police reform and accountability. BLMA Broward members have participated in the legislative session in Tallahassee every year since the inception of the organization. In this advocacy work, BLMA Broward has previously spoken at committee hearings, held press conferences, and conducted office visits with elected officials.

8. On May 31, 2020, BLMA Broward worked with Girls With Scars Inc., Dream Defenders, and the Broward Chapter of Democratic Socialists of America to organize a mass mobilization of 3,000 protestors in downtown Fort Lauderdale.

9. This demonstration was non-violent and calm, and it was coming to an end when agitators joined the crowd. It appeared that these agitators were deliberately trying to cause chaos and incite a reaction from police.

10. Police deployed tear gas and used physical violence on the protestors.

11. As a result of the chaos caused by a few agitators not associated with BLMA Broward or the protest, the police put a curfew in place that night. The act of a few people resulted in a police response that impacted everyone.

12. BLMA Broward members fear that if HB1 had been in place at the time of the May 31, 2020 demonstration, they would have been arrested under the new rioting provisions (specifically, Section 15) even though the members were non-violent and unaffiliated with the agitators. BLMA Broward members fear they would be guilty by association, even if they were attempting to leave the area when agitators were being disruptive.

13. On June 19, 2020, BLMA Broward organized the Defund the Police Juneteenth Rally that mobilized 1,000 participants. That demonstration remained non-violent—as planned—but BLMA Broward members fear if the same agitators had appeared that day, chaos would have ensued. If HB1 were in place at the time, Section 15 could have resulted in all participants being arrested.

14. Since May 2020, BLMA Broward has supported over 35 direct actions in Broward County, organized by groups including Black Lives Matter Weston, Black Lives Matter Pembroke Pines, Leaders of Liberty, and New Florida Majority.

15. On September 26, 2020, BLMA Broward organized a Black Futures Matter march through the historically Black Sistrunk neighborhood and received large community support. That experience taught BLMA Broward members the importance of having a physical presence within the communities they advocate for.

16. Because of HB1 and fear of being caught up in mass arrests allegedly justified by Section 15, BLMA Broward members have been unable to show similar levels of support this year.

17. Black and Brown people make up the overwhelming majority of the participants of protests organized by BLMA Broward.

18. BLMA Broward learned of HB1 as a result of our advocacy work related to the legislative session and through our coalition. After learning of HB1, BLMA Broward began to reach out to allies statewide to strategize how to combat the bill. BLMA Broward organized a trip of approximately 10 members to travel to Tallahassee for the opening of the legislative session to attend the first committee meeting on March 3, 2020.

19. Beginning February 2021, BLMA Broward conducted weekly meetings focused on combatting HB1. The group utilized social media to educate people and encourage the community to contact their legislators and oppose HB1. However, after realizing that HB1 would likely pass, BLMA Broward began to pivot and focus on reducing the impact of the law.

20. If BLMA Broward had not been forced to shift and address HB1, members would have allocated those resources to a campaign focused on defunding police, decriminalization and reducing incarceration, as well as on participatory budgeting.

21. Because the law is unclear and expansive, BLMA Broward members don't understand what actions will violate the law. Members are concerned that the language in HB1 is so unclear that it allows police officers far too much discretion to arrest non-violent protestors—or even onlookers—if anything at a protest goes wrong or if agitators make trouble.

22. Members are concerned HB1 will be disproportionately enforced against our predominantly Black supporters. For these reasons, and because BLMA Broward believes it must first properly inform the community of the associated risks of protesting under HB1, BLMA Broward has stopped organizing direct actions. By losing its ability to engage in rapid response, BLMA Broward has lost an integral aspect of its mission.

23. For example, BLMA Broward planned a march on the one-year anniversary of its May 31, 2020 protest. However, due to the implementation of HB1, BLMA Broward canceled the march and instead planned a stationary event at Delevoe Park in Fort Lauderdale. This year's event saw a very low turnout as compared to last year's march.

24. BLMA Broward is utilizing its weekly meetings to focus on HB1 and to develop strategies to ensure our people are safe before engaging in future marches. The group has had to consider and develop other ways to accomplish its mission, including planning community debates, healing circles, and finding

different ways to bring the community together in more private settings. BLMA Broward understands that in response to HB1, it must train community members to use their voices in ways other than through protesting. This is a major shift for BLMA Broward.

25. BLMA Broward saw a noticeable decline in participation at a recent protest, following the enactment of HB1. On May 19, 2021, BLMA Broward attended a protest organized by Fight for 15, demanding a \$15 per hour minimum wage. Only approximately 15 people attended that protest, as compared to similar protests that have historically generated support of 50–100 people. The same group organized a caravan protest before HB1 was enacted, on February 16, 2021, also demanding a \$15 per hour minimum wage, and that protest had at least 30 cars of people with multiple protestors.

26. BLMA Broward members are also concerned that white supremacists and agitators will be emboldened by HB1. BLMA Broward has had numerous past experiences with white supremacist counter protestors. For example, in 2017 during the Take Down Racist Street Signs campaign in Hollywood, counter protestors came to BLMA Broward protests with guns, in order to intimidate the group. In addition, BLMA Broward later learned that organizers' names and personal information were being circulated among white supremacist groups around the state on a virtual doxing guide.

27. After its May 31, 2020 protest, BLMA Broward received information that a local police department planted provocateurs in the crowd.

28. As recently as February 1, 2021, a white supremacist counter protestor came to one of BLMA Broward's direct actions and attacked a protestor by kicking and spitting on them. Even though the incident was witnessed by police officers, nothing was done until protestors chased the counter protestor and demanded that police officers arrest him.

29. BLMA Broward fears that HB1 will embolden police officers to act against and target protestors, while at the same time allowing counter protestors to use HB1 as cover after attacking protestors.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate.

Executed on July 14, 2021.

Tiffany Burks

Tiffany Burks

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THE DREAM DEFENDERS,
THE BLACK COLLECTIVE, *et al.*,

Plaintiffs,

v.

RON DESANTIS, *et al.*,

Defendants.

Case No.: 4:21-cv-191-MW-MAF

DECLARATION OF VALENCIA GUNDER

I, Valencia Gunder, hereby declare and state as follows:

1. My name is Valencia Gunder. I am a founding board member of The Black Collective. I currently serve as Treasurer on the board. I have personal knowledge of the matters set forth herein.

2. The Black Collective is a Florida nonprofit corporation focused on promoting political participation and economic empowerment of Black communities. I began working with The Black Collective in 2016. The Black Collective was incorporated in 2019.

3. The Black Collective regularly organizes canvassing programs, trainings and events where people gather. The Black Collective is working toward a membership-based model, and canvassing and convening groups of people is critical both to The Black Collective's mission and its longevity as an

organization.

4. The Black Collective community members include monthly donors, newsletter subscribers, and people who regularly receive calls from The Black Collective regarding political issues and civic engagement opportunities.

5. The majority of The Black Collective's community members are Black. The Black Collective's board is made up of Black people, and The Black Collective's work is focused in primarily Black communities.

6. Although The Black Collective learned of House Bill 1 ("HB1") following a September 2020 press conference that Governor Ron DeSantis gave introducing the bill, we had received alerts and heard rumors that HB1 would be introduced and fast-tracked even before that press conference.

7. The Black Collective understood from Governor DeSantis and from members of the Republican Caucus that HB1 would be a legislative priority and be fast-tracked.

8. In November 2020, The Black Collective hired a full-time campaign manager to organize advocacy against HB1, beginning in January 2021 through the end of session. From March 2021 through the end of legislative session, The Black Collective also hired three organizers to lead canvasses and work on that campaign. We also recruited 30 to 35 volunteer canvassers.

9. The Black Collective decided that, because of limited financial

resources, capacity, and the importance of HB1, it would focus entirely on HB1 in 2021. This represented a shift for The Black Collective, which had been Miami-focused and not planning to do considerable work in Tallahassee until later years.

10. Indeed, The Black Collective's Miami work was derailed by the urgency that HB1 introduced. The Black Collective was forced to focus on HB1 because it understood that if HB1 was enacted, the work of The Black Collective and the community it serves would be forced to be significantly altered.

11. If The Black Collective had not been forced to divert resources in response to HB1, those resources would have been spent on base-building and program development.

12. In 2020, The Black Collective's work centered on redefining public safety and reallocating financial resources in municipal budgets to reduce funding of police and increase funding of preventative health and safety measures. The Black Collective hosted a two-part workshop focused on the Miami-Dade County budget and reallocating funds.

13. When HB1 was introduced, The Black Collective understood it to be in direct opposition to these workshops and discussions because the provisions of HB1 that limit opportunities to reduce municipal police budgets would foreclose this work.

14. The Black Collective also understood that HB1—and particularly Section 15—was intended to target the Movement for Black Lives and related struggles. The Black Collective noted that HB1 was written to prohibit or impede specific strategies of the Movement for Black Lives, including protesting on highways and pushing for changes to police budgets.

15. When I read Section 15, I understand it as not just attacking protest but also attacking our culture. When I read that it can apply to gatherings of groups as small as four people, I was immediately thinking this could be applied to a barbeque at our house or at the park. We felt like they were attacking Black and Brown folks, because that is how we gather. It gives police discretion to harm Black and Brown folks when they do gather. We felt like they were trying to punish us for coming together. As organizers, the goal is to bring groups of people together to educate, to train.

16. I worry that if I attend any protest or demonstration that includes a disruption—even non-violent—I could be considered guilty by association and rounded up in mass arrests permitted by Section 15.

17. Similarly, other leaders within The Black Collective have read Section 15 and have become fearful of arrest merely for participating in a non-violent protest. The Black men in our group are particularly worried, knowing that Black men are targeted the most by police and that their physical presence is already

seen as “threatening.” Black immigrants are also at particular risk.

18. Responding to HB1 generally and Section 15 in particular, The Black Collective hired three paid canvassers and trained multiple volunteer canvassers to approach people in public places, knock on doors and visit schools and churches to discuss the potential impact of HB1. Canvassers focused primarily in majority Black communities in Miami-Dade County, including Liberty City, Overtown, Little Haiti, and Miami Gardens. The canvassers work every Tuesday and Thursday, in three-hour shifts.

19. Earlier this year, canvassers for The Black Collective also canvassed in four counties outside of Miami-Dade. These included Palm Beach, Broward, Duval, and Orange. Canvassing went from March until early May.

20. The Black Collective designed flyers explaining HB1 and distributed more than 20,000 flyers around the state of Florida to their own canvassers and to other groups advocating around HB1. The goal of canvassers was to share information about HB1 so that people would oppose the bill and explain, as best as possible, what HB1 may allow and how they can stay safe while demonstrating or participating in protests.

21. The canvassers also frequently share flyers for demonstrations and political events that are organized by allies of The Black Collective. These include protests and demonstrations that The Black Collective supports and

would have, prior to HB1, encouraged its community members to attend. Because of HB1 and Section 15, The Black Collective has seen a significant decrease in attendance at demonstrations it promotes, ever since Governor DeSantis first announced the legislation.

22. Because HB1 and specifically Section 15 is hard to understand and seems to apply to a wide range of activities, The Black Collective is uncertain what to tell people about the law when canvassing. The Black Collective does not know precisely what kind of speech would violate the law and what would not.

23. The Black Collective is afraid that the lack of clarity and the broadness of HB1 will be used by people in ways that harm Black people.

24. The Black Collective understands that police already had the ability to limit protests, force compliance with traffic rules, and stop riots. I have observed police doing this first-hand, including at demonstrations where leaders in The Black Collective were present.

25. The Black Collective worries that HB1 emboldens police to overreach in these settings and also emboldens civilians to hit protestors with their cars. This has made community members afraid to gather at demonstrations and has made The Black Collective hesitant to call for such attendance.

26. The Black Collective has observed a lack of accountability for law enforcement officers in Florida. Leaders within The Black Collective have witnessed police officers abuse power and have been victims of police violence.

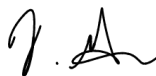
27. Several folks in The Black Collective, our constituents and collaborators, have experienced police violence. They have also been threatened for speaking out against police violence, including in 2016, when organizing after Charles Kinsey and Philando Castile were shot by police. At that time, we received threats and pressure to stop.

28. I have been in protest spaces where things escalated. As peace keepers, we never had concerns about being charged, arrested, or held accountable for actions of someone else until HB1. Now we are afraid of precisely these things.

29. The threat of police abuse, which has been heightened by HB1, has made The Black Collective community members afraid to become politically engaged.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate.

Executed on July 12, 2021.



Valencia Gunder